

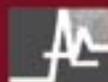


Closing Protection Gaps

Handbook

on Protection of Palestinian Refugees

in States
Signatories to the
1951 Refugee
Convention



by BADIL Resource Center for
Palestinian Residency and Refugee Rights

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BADIL Resource Center for Palestinian Residency and Refugee Rights was established in January 1998 and is registered with the Palestinian Authority and legally owned by the refugee community represented by a General Assembly composed of activists in Palestinian national institutions and refugee community organizations. Badil's Research, Information and Legal Advocacy Unit initiates research and analysis of refugee rights, particularly the right of return and restitution, in order to provide accurate information, inform and raise awareness, and furnish professional analysis to support the local and international community-based campaign for Palestinian refugees rights.

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**Protection of Palestinian Refugees in States
Signatories to the 1951 Refugee Convention**



by **BADIL Resource Center
for Palestinian Residency and Refugee Rights**

August 2005

*Closing Protection Gaps:
A Handbook on Protection of Palestinian Refugees
in States Signatories to the 1951 Refugee Convention*

First Edition

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Preface

The status and protection of Palestinians has been a matter of controversy since the UN Third Committee, in 1949–50, first considered the scope of the Statute then being drafted for the High Commissioner for Refugees. Arab states, in particular, were concerned that the special situation of Palestinians, to whom the United Nations owed in turn a special responsibility, should not be subsumed and lost in the more general regime then being set up for refugees. For this reason, they argued successfully for the non-applicability of the UNHCR Statute and the 1951 Convention to refugees receiving protection and assistance from another UN agency, unless and until such protection or assistance ceased without an internationally accepted solution having been found.

It is sometimes said that this means that Palestinians are “excluded” from the Convention, but this does a disservice to the drafters, and can seriously compromise the goal of protection.

None of the participants in the drafting sessions then taking place would likely have predicted that, over 50 years later, Palestinians would still be without a solution, or that their entitlement to protection would continue to be disputed, or that a Handbook such as this one would need to be published.

It may be that the primary cause of this necessity is the manifest failure of the international community to reach a lasting political solution to the problem posed by the absence of a Palestinian state. But this is only part of the problem, and the status and protection of Palestinian refugees have also commonly been frustrated by drafting inconsistencies in relevant texts, misinterpretation (at times, seemingly for political reasons), and even by abstruse academic readings. Indeed, a review of state practice today does not necessarily leave one with full confidence in the “good faith” interpretation and implementation of international obligations.

Still, certain principles were always clear. The *travaux préparatoires* of paragraph 7(c) of the UNHCR Statute and Article 1D of the 1951 Refugee Convention confirm the agreement of participating states that Palestine refugees were in need of international protection, and that there was no intention to exclude them from the regime of international protection. What was important to all participants was *continuity of protection*; the non-applicability of the 1951 Convention was intended to be temporary and contingent, postponing or deferring the incorporation of Palestine refugees until certain preconditions were satisfied. Unfortunately, however, there is a clear discrepancy between the UNHCR Statute and the 1951 Convention.

Those to whom the Convention is not to apply are those “at present receiving ... protection or assistance”/“qui bénéficient actuellement d’une protection ou d’une assistance”, and then only until such time as protection or assistance has ceased “for any reason” without their position having been definitively settled in accordance with the relevant General Assembly resolutions. In such circumstances, these persons “shall *ipso facto* be entitled to the benefits of this Convention”/“bénéficieront de plein droit du régime de cette Convention.”

The conditional and contingent nature of this provision is reflected in the UNHCR Statute, which limits the High Commissioner’s competence in regard only to a person “who continues to receive... protection or assistance” (UNHCR Statute, paragraph 7(c)). The unresolved textual discrepancy lies in the perceived difference between those “at present receiving...” (the Convention), and those “who continue...” to receive protection and assistance (the Statute).

Those who drafted the various international instruments were nevertheless of the view that the purpose of Article 1D was to provide a non-permanent bar to Convention protection. They expected that the Palestine refugee problem would be resolved on the basis of the principles laid down in UNGA resolution 194(III), particularly through repatriation and compensation in accordance with paragraph 11, and that protection under the 1951 Convention would ultimately be unnecessary. However, they also sought to anticipate a situation of no settlement, and to avoid a lacuna in the provision of international protection.

The refugee character of the protected constituency was never in dispute. Hence, in the absence of any settlement in accordance with relevant General Assembly resolutions, no new determination of eligibility for Convention protection would be required. They would “*ipso facto/de plein droit*” benefit from the Convention regime. The *travaux préparatoires* clearly show the United Nations and member states determining, as a matter of policy, that Palestinian refugees were presumed to be in need of international protection, and that in certain circumstances they would automatically fall within the 1951 Convention.

Clearly, the expectations of the international community in 1949–51 failed to materialize. The “problem” was not resolved, and institutional measures taken to promote a solution (such as the United Nations Conciliation Commission) were frustrated in their work. Over the years, the international dimensions to the Palestinian issue were magnified, not only at the political level, but also at the individual level, as more and more Palestinians sought and found employment and settlement opportunities outside UNRWA’s area of operations.

It was when their legal status was at issue, when they were expelled from their countries of residence, or when they sought asylum elsewhere for compelling

reasons, that the problems of interpretation and application emerged; sense had to be made of rather incomplete and often unclear texts. The practice in a number of jurisdictions suggests that from time to time, decision-makers relied on the textual inconsistency highlighted above, to the prejudice of Palestinian refugees. In particular, instead of applying the 1951 Convention automatically to Palestinians who were outside UNRWA's area of operations and no longer enjoying protection or assistance, many states have required a separate determination of well-founded fear, treating the Palestinian like any other asylum-seeker. In this way, a provision intended to help them has in fact worked against their best interests.

If there is one phrase that appears to be clear in Article 1D of the 1951 Convention, it is that once the general conditions are met, then Palestinians are “*ipso facto* entitled” to the benefits of the Convention. In the compelling French version, they “*bénéficieront de plein droit du régime de la Convention.*”

“*Ipsa facto*” means “by that very fact” or “by virtue of the fact itself” – in this case, the cessation of protection or assistance and the absence of definitive settlement, which are the facts expressly mentioned. The French text is equally or even more clear: “*de plein droit*” means “*par le seul effet de la loi, sans contestation possible; à qui de droit.*” The intent of these words arguably should have guided the application of Article 1D as a whole, and it is seriously to be hoped that, so long as Palestinian refugees continue to be in need of protection and assistance, an approach consistent with the object and purpose of the relevant international instruments will be adopted; the goal of *continuity of protection* especially should be recalled, and given life and meaning.

This Handbook, of course, covers a much broader range of issues and concerns. BADIL, the author and the contributors are to be congratulated on such a monumental gathering of evidence. The Handbook provides a history of the circumstances giving rise to the Palestinian exodus, and of the international institutional mechanisms set up to provide protection and assistance. It explains the “protection gaps” that have emerged in national practice, and makes practical, rule-based suggestions for bridging those gaps. It will be an essential reading and resource for everyone engaged in the Palestinian refugee issue, whether on an individual case level, or in promoting the long wished-for political solution.

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March 2005

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¹ Published with UNRWA's permission.

Introduction

Palestinian refugees present one of the largest and most protracted cases of displacement in the world. Some 7.3 million among a total of seventeen million refugees worldwide are Palestinian.² In other words, Palestinian refugees constitute forty-three per cent of the refugees in the world today.

Most Palestinian refugees were displaced in 1947–1949, when, following the United Nations General Assembly (UNGA) Resolution 181(II) (Partition Resolution),³ which was strongly rejected by the indigenous Arab Palestinian population, the state of Israel established itself by means of military force on the land of Arab towns and villages. Due to the massive scope and collective character of the displacement of urban and rural Palestinians in this context, the United Nations called for a durable solution for Palestinian refugees *as a group* based on the right to return, restitution of properties and compensation (see Resolution of the United Nations General Assembly 194(III)).⁴

More than 57 years later, no such durable solution for Palestinian refugees has been implemented. Consecutive Israeli governments have refused to re-admit a population which is not Jewish according to Israeli law and perceived as a demographic and political threat. Western states, on the other hand, have lacked the political will to enforce international law and UN resolutions against Israel's objections. As a result, the Israeli-Palestinian conflict continues until today, exacting enormous human cost and preventing regional stability and development.

This Handbook does not deal with the historical, political, military or socio-economic aspects of the conflict. It rather addresses one of its more hidden aspects, i.e., the fact that the protracted exile of Palestinians raises serious questions regarding the effectiveness of existing international instruments and mechanisms for the protection of basic human rights of Palestinian refugees until their refugee situation can be ended in accordance with international law and UN resolutions.

² For more detailed information, refer to Chapter One, section 3.

³ Resolution of the United Nations General Assembly No. 181(II) (adopted at the 128th plenary meeting on 29 November 1947 by a vote of 33 in favour, 13 against and 10 abstentions), 2 United Nations General Assembly Official Records, Resolutions 16 September to 29 November, 1947, paras. 131-32, UN Doc. A/519, 8 January 1948 (UNGA Partition Resolution).

⁴ Resolution of the United Nations General Assembly 194(III) (adopted at the 186th plenary meeting on 11 December 1948 by a vote of 35 in favour, 15 against and 8 abstentions), United Nations General Assembly Official Records, Resolutions, paras. 21-25, UN Doc. A/810, 1948 (UNGA Resolution 194(III)). See Appendix 1 for the text of this Resolution. For a detailed study of the Resolution, see UNCCP, *Analysis of paragraph 11 of the General Assembly's Resolution of 11 December 1948*. (Working paper prepared by the Secretariat). UN Doc. A/AC.25/W.45, 15 May 1950. See further Chapter One.

Until today, the majority of Palestinian refugees live in Arab countries adjacent to Israel. Many have suffered renewed displacement, and most of them lack adequate protection of basic human rights. However, prolonged exile under dire circumstances and repeated conflict in the Middle East have caused some Palestinian refugees to move on to countries outside the Middle East, including Europe and North America, in order to seek protection in states signatories to the Convention relating to the Status of Refugees of 28 July 1951 (1951 Refugee Convention) and/or the Convention relating to the Status of Stateless Persons of 28 September 1954 (1954 Stateless Convention) (see also Chapter One). While Palestinian individuals who have found themselves outside the Arab world have sought protection in such third countries under these international instruments, their case remains linked, historically, legally and politically, to the specific framework laid out by the United Nations for a collective and durable solution for Palestinian refugees.

This Handbook addresses problems and protection gaps facing Palestinian refugees who seek protection under the 1951 Refugee Convention and/or the 1954 Stateless Convention in third countries outside the Arab world. The Handbook aims to strengthen implementation of legal protection standards applicable to Palestinian refugees, in particular the rights embodied in Article 1D of the 1951 Refugee Convention.

It is intended to serve primarily as a practical guide for refugee experts, lawyers, judges, offices of the United Nations High Commissioner for Refugees (UNHCR), national authorities, NGOs and others who are involved in asylum claims submitted by Palestinian refugees.⁵ The content of the Handbook has been selected based on the practical relevance it has for this group.

The Handbook was motivated by previous findings by refugee lawyers and BADIL that showed that the specific protection regime applicable to Palestinian refugees is not well understood. Systematic research of domestic law, policies and jurisprudence in asylum cases of Palestinian refugees was conducted in 2003-4 by BADIL in conjunction with a large network of refugee experts and lawyers (see List of Contributors). Research findings confirmed the existence of serious inconsistencies and misunderstandings in national authorities' interpretation and

⁵ The Handbook may also be useful for Palestinian refugees who are considering applying for protection in third countries. They should, however, not rely on the Handbook as a sole source of information on representing themselves in asylum cases, but should rather get qualified legal advice.

application of international protection standards relevant for Palestinian refugees resulting in lack of international protection for this group of refugees.⁶

UNHCR has facilitated contact with local UNHCR offices (see List of Contributors) and also assisted with the interpretation of international protection standards relevant for Palestinian refugees falling under its mandate, including Article 1D (see further Chapters Two, Three and Four). The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) has also been involved in the research, and provided details on the Agency's mandate and its registration system for Palestine refugees falling under its mandate (see further Chapter Two).

The Handbook covers 23 non-Arab countries signatories to the 1951 Refugee Convention and/or the 1954 Stateless Convention. Twenty-three of these countries were researched in detail.⁷

- Europe: Austria, Belgium, Denmark, Finland, France, Germany, Hungary, Iceland, Ireland, Italy, Netherlands, Norway, Poland, Spain, Sweden, Switzerland, United Kingdom.
- North America: United States, Canada.
- Oceania: Australia and New Zealand.
- Central and South America: Mexico.
- Africa: Nigeria, South Africa.

It is our hope that this Handbook will contribute to the implementation of more coherent and effective global standards for the international protection of Palestinian refugees, by providing a logical and consistent interpretation of Article 1D in light of the purpose and drafting history of the provision. Progress in this direction could

⁶ The lack of international protection is compounded by the lack of national protection in the countries where the refugees reside. Between 1982 and 1993, the UNHCR Excom issued numerous conclusions that "[e]xpressed concern about the lack of adequate international protection for various groups of refugees in different parts of the world, *including a large number of Palestinians*, and hoped that efforts would be undertaken within the United Nations system to address their protection needs." UNHCR Excom Conclusion No. 46 (XXXVIII), 1987, Expressing Concern about the Lack of Adequate International Protection for Palestinians cited in *United Nations Resolutions on Palestine and the Arab-Israeli Conflict*, Jody A. Boudreaux (ed.), Vol. Four 1987-1991, Washington DC: Institute for Palestine Studies, 1993. For further references to comments by UN bodies, see Susan M. Akram and Terry Rempel, "Temporary Protection as an Instrument for Implementing the Right of Return for Palestinian Refugees," *Boston University International Law Journal*, Vol. 22, No. 1 (Spring 2004), p.54, footnote 239.

⁷ The Czech Republic, Croatia, Estonia, Iceland and Portugal had no Palestinian asylum-seekers. Latvia and Peru had only one case, and Japan had only two cases about which no information could be obtained, leaving 23 countries which were researched in detail.

help put in place a more efficient process of refugee determination and protection in the Palestinian case, thereby alleviating unnecessary human suffering among Palestinian refugees.

Overview

The Handbook consists of seven chapters. The first two chapters provide relevant background information about Palestinian refugees and the institutional framework set up by the United Nations for protection of and assistance to this refugee population, i.e., United Nations Conciliation Commission for Palestine (UNCCP), United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), and United Nations High Commissioner for Refugees (UNHCR).

Chapters Three and Four focus on the identification and interpretation of relevant international instruments and protection standards (1951 Refugee Convention, including Article 1D, and 1954 Stateless Convention).

Chapters Five and Six provide background, findings and conclusions of the BADIL comparative research on national practices with regard to protection of Palestinian refugees under these instruments.

Chapter Seven provides a brief set of BADIL recommendations for bridging the current protection gaps and improving protection afforded to Palestinian refugees.

BADIL Resource Center
Palestine, August 2005

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Finally, BADIL would like to affirm that, although UNHCR and numerous other experts have provided information and comments, the opinions expressed and conclusions drawn are those of BADIL alone, as is the responsibility for any errors.

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Note Regarding National Jurisprudence

This Handbook examines national jurisprudence in Palestinian asylum cases in twenty-three countries. Relevant jurisprudence is quoted extensively in Chapter Five where application to Palestinian refugees of international conventions and domestic asylum law is presented in detailed “Country Profiles.”

Reference to sources providing the full text of relevant jurisprudence is provided in Chapter Five as available. Moreover, relevant jurisprudence and legal opinions related to Palestinian refugees will be made available on the BADIL website: <http://www.badil.org> on an ongoing basis. BADIL will attempt to keep this website updated to include future jurisprudence relevant for the case of Palestinian refugees.

Any further information concerning new case law or changes in national asylum legislation and practices would be most appreciated. You may contact legal@badil.org to communicate any new information.

Glossary

Asylum	Admission to residence and lasting protection against the exercise of jurisdiction by the state of origin (temporary or permanently). ⁸ A refugee has no right to be granted asylum. States still maintain the discretionary power to grant asylum to refugees and to prescribe the conditions under which asylum is to be enjoyed. However, many States have adopted the refugee definition as the criterion for the grant of asylum.
Complementary forms of protection	Protection offered after a failed asylum status determination, providing a defined status. The term covers cases where there is a need for international protection and, hence, the fundamental principle of <i>non-refoulement</i> is applicable. ⁹ Cases in which protection is based on purely compassionate or practical considerations are not covered by this term.
Country of former habitual residence	The country with respect to which a person who does not have a nationality (a stateless person) may establish his or her status as a refugee (see Article 1A(2) of the 1951 Refugee Convention).
Deportation	Refers to the deportation of a person from one country to any other country.
Displaced persons	UN terminology for Palestinians displaced in/from the West Bank and the Gaza Strip in the context of the 1967 Israeli-Arab conflict and falling within the scope of UNSC Resolution 237 (1967). The term includes persons displaced externally and internally at that time, as well as their descendants. The term is also used by UNRWA as a reference to persons falling under its mandate in accordance with UNGA Resolution 2252 (1967).

⁸ See Guy Goodwin-Gill, *The Refugee in International Law*, second edition. Oxford: Clarendon Press, 1996, p. 201.

⁹ UNHCR Excom, Complementary Forms of Protection: Their Nature and Relationship to the International Refugee Protection Regime, Standing Committee, Eighteen meeting, EC/50/SC/CRP.18, 9 June 2000, para. 4 (reproduced as Appendix 8).

Durable solutions A component of international protection. Voluntary repatriation, local integration in the country of first asylum and resettlement to a third country are the three long-term solutions which UNHCR advocates on behalf of refugees.¹⁰ Voluntary repatriation (or the right of return in human rights law) in safety and dignity, based on the refugees' free and informed decision, is the preferred option and an independent right enshrined in human rights law.

Internally
displaced
Palestinians

Displaced Palestinians who have not crossed an internationally recognized border, i.e., four groups of persons:¹¹

- 1) Palestinians displaced during the first Israeli-Arab conflict in 1947-48 from their homes in that part of Palestine which became Israel on 15 May 1948, and unable to return to their homes.
- 2) Palestinians who were (and continue to be) displaced from their homes inside Israel after 1948 and unable to return to their homes.
- 3) Palestinians originating from the West Bank or the Gaza Strip, who were internally displaced for the first time during the 1967 Israeli-Arab conflict and unable to return to their homes.
- 4) Palestinians originating from the West Bank or the Gaza Strip who were (and continue to be) internally displaced for the first time as a result of human rights violations by the Israeli occupation regime occurring after the 1967 Israeli-Arab conflict (e.g., home demolition, land confiscation, "separation wall")

International
assistance

Aid provided to address physical and material needs. This may include food items, medical supplies, clothing, shelter, as well as the provision of infrastructure, such as schools and health care centres. In UNHCR practice, assistance supports and complements the achievement of protection objectives.

¹⁰ UNHCR, *Framework for Durable Solutions for Refugees and Persons of Concern*. UNHCR/ Core Group on Durable Solutions, May 2003.

¹¹ Israel still does not have internationally recognized borders vis-à-vis Lebanon, Syria, the West Bank and the Gaza Strip, and has unilaterally annexed and/or established *de facto* control over some of these areas. Therefore, the distinction between internally and externally displaced Palestinians is fluid and has been subject to changes over time.

International protection	It is, first and foremost, the responsibility of states to protect their citizens. When governments are unwilling or unable to protect their citizens, individuals may suffer such serious violations of their personal rights that they are willing to leave their homes, their friends, maybe even some of their family, to seek safety in another country. Since, by definition, the basic rights of refugees are no longer protected by the governments of their home countries, the international community then assumes the responsibility of ensuring that those basic rights are respected. The phrase “international protection” covers the gamut of activities through which refugees’ rights are secured, including the implementation of durable solutions. Some important rights are mentioned in the 1951 Refugee Convention, including non-discrimination (Article 3), the right to work (Article 17), the right to housing (Article 21), the right to education (Article 22) and the right to be protected against forcible return (Article 33). In addition to these rights, refugees enjoy basic human rights as well. These rights are described in various legal texts, including the Universal Declaration of Human Rights (1948), International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966) and the UN Convention on the Rights of the Child (1989).
<i>Intifada</i>	Palestinian popular uprising against the Israeli military occupation in the West Bank and the Gaza Strip. The first <i>intifada</i> began in 1987 and ended in 1991 (Madrid Conference). The second <i>intifada</i> began in September 2000 following the collapse of the “Oslo Peace Process” and is still ongoing.
Lawful presence	Presence of an alien, in accordance with the applicable immigration law, for a temporary purpose, e.g., as a student, visitor, or recipient of medical attention. ¹² See, for example, Articles 18, 26 and 32 of the 1951 Refugee Convention.
Lawful residence	Presence of an alien who enjoys asylum in the sense of residence and lasting protection. ¹³ Many articles of the 1951 Refugee Convention only apply to refugees lawfully resident in the country of a state party.

¹² Guy Goodwin-Gill, *The Refugee In International Law*, p. 307.

¹³ *Ibid*, p. 308.

<i>Non-refoulement</i>	The fundamental principle that prescribes that no person should be returned to any country where he or she is likely to face persecution or torture. The principle encompasses both non-return and non-rejection. ¹⁴
Palestinian passport	“Palestinian Passport” functions as a travel document and replaces the earlier Israeli travel document (<i>laissez-passer</i>). The Palestinian passport/travel document is issued by the Palestinian Authority (PA) after clearance by Israel. Only Palestinians resident in the 1967-OPT and their descendants who hold a valid ID-card are entitled to this passport/travel document. While it does not convey citizenship of a state (in the absence of a Palestinian state), it entitles its holder to leave and re-enter the West Bank/Gaza Strip without the need for additional travel and re-entry permits (unless Israeli authorities raise specific “security reasons”).
Palestine refugees	The term is used by UNRWA in its registration system to refer to “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.” ¹⁵
Palestinian refugees	Common language used to designate all those Palestinians who have become (and continue to be) externally displaced (with regard to 1948 refugees, outside the area that became the state of Israel, and with regard to 1967 displaced persons, outside the OPT) in the context of the ongoing Israeli-Palestinian/Arab conflict, as well as their descendants. The term refers to the following three groups: 1) 1948 refugees under UNGA Resolution 194(III)

¹⁴ See *ibid*, p. 124: “By and large, States in their practice and in their recorded views, have recognized that *non-refoulement* applies to the moment at which asylum-seekers present themselves for entry. Certain factual elements may be necessary (such as human rights violations in the country of origin) before the principle is triggered, but the concept now encompasses both non-return and non-rejection. A realistic appraisal of the normative aspect of *non-refoulement* in turn requires that the rule be examined not in isolation, but in its dynamic sense and in relation to the concept of asylum and the pursuit of durable solutions.”

¹⁵ See UNRWA, Consolidated Eligibility and Registration Instructions, Department of Relief and Social Services, January 2002, p. 4. See Appendix 6. This definition has been amended over time. For earlier versions of the definition, see Lex Takkenberg, *The Status of Palestinian Refugees in International Law*. Oxford: Clarendon Press, 1998, pp. 368-69.

- (“Palestine Refugees” in UNRWA terminology, including both registered and non-registered refugees);
- 2) 1967 refugees under UNSC Resolution 237 (“Displaced Persons” in UN terminology and used by UNRWA with particular reference to UNGA Resolution 2252, see above);
 - 3) Other Palestinians originating from the West Bank and the Gaza Strip who have been forced to leave these areas owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, and who are unable or, owing to such fear, unwilling to return to these areas.

Only the first two groups fall within the scope of Article 1D. Persons in the third category qualify as refugees under Article 1A(2) of the 1951 Refugee Convention. As this Handbook focuses on those Palestinian refugees who fall within the scope of Article 1D, the term is used to cover the two first groups, unless otherwise indicated.

Note: It is important to understand that Palestinian refugees to whom the 1951 Refugee Convention has ceased to apply remain refugees within the sense of the relevant General Assembly resolutions of 1948 and 1967. Hence, the international community still has a duty to find durable solutions to their plight in accordance with these UN resolutions¹⁶ and based on their right to return, housing and property restitution and compensation.

Persons found not to be in need of international protection

Persons who have sought international protection and who after due consideration of their claims in fair procedures are found neither to qualify for refugee status on the basis of criteria laid down in the 1951 Refugee Convention, nor to be in need of international protection in accordance with other international obligations or national law.

¹⁶ This has been confirmed, among others, by UNHCR, Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian refugees (2002 UNHCR Note), para. 3: “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”. (See also Appendix 7.)

Protection gaps	Lack of proper implementation of international protection standards to which Palestinian refugees are entitled according to international law (see definition of international protection). Protection gaps can result from a lack of relevant instruments (law, treaties) and/or mechanisms (bodies mandated with implementation) and/or deficient practice in implementation of existing standards. The term “protection gap” is not a legal term. The term has not formally been defined by the United Nations, for example, by UNHCR. It is understood by UNHCR, however, to mean the difference between what refugees need in order to be protected and what the reality is on the ground. ¹⁷
Right of return	It is the right of refugees to return to their country of origin. The right of return is independent from the acquisition of citizenship or any other legal status. It is a fundamental human right enshrined in human rights ¹⁸ and humanitarian law. ¹⁹ At any time, even if locally integrated or resettled in a third country, refugees may decide to return to their homes spontaneously or as part of a repatriation programme. UNHCR stresses these fundamental points: (1) refugees are free and have the right to return to their country of origin at any time; (2) the decision by a refugee to return should be voluntary; (3) refugees must be provided with objective and up-to-date information on the situation in their country of

¹⁷ For UNHCR documents related to “protection gaps”, see: <http://www.unhcr.ch>. The document “The Framework for Identifying Gaps in Protection Capacity” is available at Convention Plus: <http://www.unhcr.ch/cgi-bin/texis/vtx/protect?id=406d21802>.

¹⁸ See Article 13(2) of the Universal Declaration of Human Rights, 10 December 1948, Article 12(4) of the International Covenant on Civil and Political Rights, 16 December 1966 and Article 5 (d)(ii) of the Convention on the Elimination of All Forms of Racial Discrimination, 4 January 1969.

¹⁹ The Fourth Geneva Convention relative to the Protection of Civilians specifically states in Article 45 that this provision: “shall in no way constitute an obstacle to the *repatriation of protected persons, or to their return to their country of residence after the cessation of hostilities*” [Emphasis added]. Fourth Geneva Convention Relative to the Protection of Civilians, 12 August 1949, Article 45. The Additional Protocol (I) affirms: “...the following shall be regarded as grave breaches of this Protocol if committed willfully and in violation of the Conventions or Protocol: b) *unjustifiable delay in the repatriation of prisoners of war or civilians*” [Emphasis added]. UN, Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Article 85 (4)(a). Similarly, the 1990 Turku Declaration declares in Article 7: “Persons or groups thus displaced shall be allowed to return to their homes as soon as the conditions which made their displacement *imperative* have ceased» [Emphasis added] Turku Declaration, Declaration of Minimum Humanitarian Standards, UN Doc. E/CN.4/Sub.2/1991/55, 2 December 1990 cited in Marco Sassoli and Antoine Bouvier. *How Does Law Protect in War?* Geneva: International Committee of the Red Cross, 1999, p. 519.

origin to make an informed decision about repatriation; and (4) the level of assistance and protection provided in the country of refuge should not be the determining factor for refugees to decide whether or not to return.²⁰

Temporary protection

A specific provisional protection response to situations of mass influx providing immediate emergency protection from *refoulement*.²¹ The purpose of temporary protection is to ensure immediate access to safety and protection of basic human rights in countries directly affected by a large-scale influx.²² Temporary protection, by definition, involves a group assessment of international protection needs based on the circumstances in the country of origin, whereas complementary protection measures apply to individuals whose protection needs have been specifically examined.²³

²⁰ UNHCR, *Resettlement Handbook*. Geneva: Department of International Protection, November 2004, Chapter II, p. 5.

²¹ See Appendix 8: UNHCR Excom, *Complementary Forms of Protection: Their Nature and Relationship to the International Refugee Protection Regime*, para. 25 (e).

²² See *ibid*, para. 20.

²³ See *ibid*, para. 21.

Abbreviations

ECOSOC	Economic and Social Council of the United Nations
ECRE	European Council on Refugees and Exiles
Torture Convention	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984
ICESCR	International Covenant on Economic Social and Cultural Rights of 16 December 1966
ICCPR	International Covenant on Civil and Political Rights of 16 December 1966
UNCCP	United Nations Conciliation Commission for Palestine
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
UNHCR ExCom	Executive Committee of UNHCR
UNHCR Handbook	<i>UNHCR's Handbook on Procedures and Criteria for Determining Refugee Status</i> , Geneva, 1979
2002 UNHCR Note	UNHCR's Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees, October 2002
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
1948 Israeli-Arab conflict	Refers to the conflict between the Zionist movement/Israel and Arab states that began following the adoption of Resolution 181(II), 29 November 1947 (see below), including the first Israeli-Arab war that began in May 1948 and ended with the signing of armistice agreements in 1949.

1967 Israeli-Arab conflict	Refers to the war between Israel and Arab states in June 1967
1951 Refugee Convention	Convention relating to the Status of Refugees of 28 July 1951
1967 Refugee Protocol	Protocol relating to the Status of Refugees of 31 January 1967
1954 Stateless Convention	Convention relating to the Status of Stateless Persons of 28 September 1954
1961 Statelessness Convention	Convention on the Reduction of Statelessness of 30 August 1961
Statelessness Conventions	1954 Stateless- and 1961 Statelessness Convention
1967-OPT	Occupied Palestinian Territory (the West Bank, including eastern Jerusalem, and the Gaza Strip occupied by Israel since 1967)
UNGA Partition Resolution	Resolution of the United Nations General Assembly No. 181(II) adopted at the 128th plenary meeting on 29 November 1947 by a vote of 33 in favour, 13 against and 10 abstentions

1

Chapter One

The Palestinian Refugee Population

The Palestinian Refugee Population

1. Circumstances of Displacement²⁴

Forced Displacement of Palestinians

Palestinian refugees represent one of the largest and longest-standing unresolved refugee matters in the world today. Most Palestinians lived inside the borders of Palestine at the beginning of the 20th century. This area is now divided into the state of Israel, and the West Bank, including eastern Jerusalem, and the Gaza Strip. The latter areas have been occupied by the state of Israel since 1967 (occupied Palestinian territories (1967-OPT)).

Around three-quarters of the Palestinian people are displaced. According to the *2003 Survey of Palestinian Refugees and Internally Displaced Persons* (BADIL 2003 Survey), it is estimated that there are some 7.3 million Palestinian refugees and internally displaced persons out of a global population of 9.7 million persons.²⁵ This includes (figures as of 31 December 2003) 4 million “Palestine refugees” registered with the UN Relief and Works Agency (UNRWA), and an estimated 1.6 million non-registered 1948 refugees, 780,000 1967 refugees (“1967-displaced persons”) and 838,000 refugees displaced primarily from the West Bank, eastern Jerusalem and the Gaza Strip after 1967. Approximately half of the Palestinian people have been displaced outside their homeland. Another twenty-five per cent are displaced within Israel and the 1967-OPT. Palestinian refugees are defined as refugees vis-à-vis the state of Israel.

There have been five major waves of displacement from former Palestine. During the British Mandate (1922–1948), around 150,000 Palestinians were displaced within and beyond the borders of the country. Thousands of Palestinians were denationalized under the 1925 Palestine Citizenship Order.²⁶ Several tens of thousands fled the country during the Palestinian uprising in the mid-1930s.²⁷ Others were displaced inside former Palestine as a result of punitive house demolitions and following the sale of land to colonization associations affiliated with the Zionist movement.²⁸

The UN General Assembly recommendation (Resolution 181(II)) to partition Palestine into two states in 1947 and the subsequent Israeli-Arab war led to a second and massive wave of displacement known as the *Nakba* or Catastrophe. An estimated 750,000–900,000²⁹ Palestinians became refugees. Most fled as a direct result of military hostilities and expulsion. The large majority of these 1948 Palestinian refugees found shelter across ceasefire lines in vicinity of their homes, i.e., in the West Bank, the Gaza Strip, the East Bank/Jordan, Syria, Lebanon, or Egypt, hoping to return after the cessation of hostilities. A small number fled to more distant Arab or other countries.

The roughly 150,000 Palestinians who remained in the areas of Palestine that became part of the state of Israel in 1948, including 30,000 internally displaced persons, continued to be displaced after the end of the war due to internal transfer and expulsion, primarily from the northern border villages, the Negev (Naqab), the “Little Triangle” (area ceded to Israel under the 1949 armistice agreement with Jordan), and from villages partially emptied during the first Israeli-Arab war. The majority of Palestinians were displaced during the 1950s. From 1949 until 1966, between 35,000 and 45,000 Palestinians were expelled from Israel, comprising about fifteen per cent of the total Palestinian population of the state of Israel.³⁰

A fourth wave of displacement occurred during the second Israeli-Arab war in 1967 when Israel occupied the West Bank, eastern Jerusalem and the Gaza Strip, as well as the Egyptian Sinai and the Syrian Golan Heights. An estimated 350,000–400,000 Palestinians were displaced, half for a second time. Again, most became refugees as a direct result of military hostilities and expulsion. Some ninety-five per cent of these 1967 Palestinian refugees (often called 1967-displaced persons) fled to Jordan. Smaller numbers found shelter in Syria, Lebanon and Egypt. Some 60,000 Palestinians were abroad at the time of the 1967 war and unable to return to the 1967-OPT.

Since then, Palestinians have continued to be displaced both within and from the 1967-occupied Palestinian territories, and within and from Israel itself, through a process that includes deportation,³¹ revocation of residency rights,³² land confiscation,³³ uprooting of orchards and destruction of farmland,³⁴ and demolition of homes.³⁵ The most recent cause of displacement is Israel’s construction of a separation Wall in the occupied West Bank.³⁶ It is estimated that more than 800,000 Palestinians have been displaced since 1967.³⁷

Palestinian refugees and displaced persons frequently face additional forced displacement within and from their Arab host countries (first country of refuge). Lack of protection from the effects of political and social instability, crisis and armed conflict are the major causes of such secondary Palestinian displacement inside and outside the Arab world, illustrated by the following examples:

- Mid-1950s: Palestinian oil industry workers were expelled from the Gulf States.³⁸
- 1970: numerous Palestinian refugee families were expelled from Jordan as part of the expulsion of the nascent Palestinian resistance movement, Palestinian Liberation Organization (PLO)³⁹ in the events termed “Black September”. Most of them settled in Lebanon.⁴⁰
- 1976–1991: during the civil war in Lebanon, it is estimated that more than 100,000 Palestinians were forced to leave the country.⁴¹
- 1990–1991 Gulf war: more than 400,000 Palestinians were expelled from Kuwait in response to the PLO’s political support of Iraq.⁴²
- 1995: Libya expelled some 30,000 Palestinians from its territory. (Some were subsequently re-admitted.)⁴³
- 2003–: several thousand Palestinian refugees were displaced, and many more remain threatened, in the context of the US-led war against and occupation of Iraq.

More than 500,000 Palestinian refugees and displaced persons have moved to countries outside the Arab world, mainly to the United States (where approximately 236,000 Palestinian refugees reside), and to Europe (approximately 200,000).⁴⁴

Voluntary Refugee Movement

Voluntary refugee movement – in addition to forced displacement – has widened the geographic spread of Palestinian refugees over time. Many Palestinian refugees, mainly young males, have left their homes and families in the first country of refuge in search for better education and employment opportunities elsewhere. In the period between 1950 and the late 1970s, voluntary migration led Palestinians mainly to the Gulf States, where cancellation of visa requirements and issuance of travel documents facilitated the movement of refugees who were needed in an expanding labour market. More recently, Palestinian refugees unable to establish stable lives in the Arab world have arrived in European and other Western countries seeking asylum, education or employment.

Forced and voluntary migration has led to the splitting of Palestinian families on a large scale. The story below illustrates a common phenomenon in most Palestinian families:

After almost four years in Canada – in his early 20s no more – Ahmad was refused refugee status. He cannot work and has already received his deportation notice. As Ahmad’s mother opens the photos, to show her son to my friends in the camp, she begins to cry. All of my sons are in different countries, she explains. Rami has been refused in Canada. Tears fill the eyes of those in the room, for they have all lived the same story. Um-Majed – born in Palestine, who raised her children in the refugee camps of Beirut – comes to comfort her. One of my sons is in Italy. Another in Germany, and Majed is now in Dubai. This is the life for Palestinians here. They will be fine.⁴⁵

UN Partition Plan 1947



Source: ARIJ, Applied Research Institute - Jerusalem

Palestinian Territories Occupied by Israel Since 1967



Source: ARIJ, Applied Research Institute - Jerusalem

Social networks based on the family and village of origin, however, have remained in place, irrespective of forced and voluntary migration and the splitting of Palestinian families on a massive scale across countries and geographical regions.

2. The Framework for Durable Solutions⁴⁶

Given the massive scope and collective character of urban and rural Palestinian displacement prior, during, and immediately after the first Israeli-Arab war in 1948, the United Nations called for a durable solution for 1948 Palestinian refugees as *a group*, affirmed their right to return, restitution of properties and compensation, and established repatriation as the primary durable solution for Palestinian refugees. UNGA Resolution 194(III), paragraph 11, of 11 December 1948:

Resolves that refugees wishing to return to their homes and live in peace with their neighbors 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 which, under principles of international law and equity, should be made good by the Governments or authorities responsible.

Instructs the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation, and to maintain close relations with the Director of the United Nations Relief for Palestine Refugees and, through him, with the appropriate organs and agencies of the United Nations.⁴⁷

This paragraph sets forth a clear hierarchy of solutions for Palestinian refugees by delineating the specific rights and the primary durable solution. The primary durable solution for Palestinian refugees is return, housing and property restitution, and compensation for loss of or damage to property. UNGA Resolution 194(III) does not “resolve” that Palestinian refugees should be resettled. Refugees who choose not to exercise the rights set forth in paragraph 11(a), however, may opt for local integration in the host state or resettlement in third countries, as well as housing and property restitution, and compensation (paragraph 11(b)). Thus, the sole trigger for the resettlement of Palestinian refugees is the voluntary choice of the refugee not to return to his or her place of origin.

All Palestinian refugees, whether they still live in their first country of refuge or have moved to another country, have the voluntary choice to return to their place of origin in what became Israel, and to housing and property restitution, and

compensation for loss of or damage to property. Thus, all Palestinian refugees, including those who have obtained citizenship, should be included in the final durable solution to the Israeli-Arab conflict.

UNGA Resolution 194(III) affirms both the above rights and the principle of individual refugee choice. By 1948, this principle had already become an established principle of refugee law and practice.⁴⁸ This framework is consistent with that set forth in international refugee law – i.e., voluntary repatriation, voluntary local integration, and voluntary resettlement to a third country, in addition to property restitution. Under international refugee law and modern state practice, voluntary repatriation is considered to be the primary solution to refugee flows.

Recognizing the direct role of the UNGA 181(II) in the creation of the Palestinian refugee question, the United Nations took responsibility for bringing about a just solution by means of direct intervention by two UN agencies especially established for this purpose: the United Nations Conciliation Commission for Palestine (UNCCP) was to provide protection and promote the search for a political solution, while the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) was to provide temporary relief and assistance.⁴⁹ A special provision (Article 1D) of the 1951 Refugee Convention was to bring Palestinian refugees under the scope of the Convention – to serve as a safety net that would afford them adequate protection at all times and in changing circumstances.⁵⁰

Additional UN resolutions affirming the right of Palestinian refugees to a just solution based on return followed in the wake of subsequent Israeli-Arab conflicts and other crises involving further Palestinian displacement. Thus, for example, following the 1967 Israeli-Arab war, the United Nations Security Council adopted Resolution 237 of 14 June 1967. Paragraph 1 of the Resolution:

[c]alls upon the Government of Israel to ensure the safety, welfare and security of the inhabitants of the areas where military operations have taken place and to facilitate the return of those inhabitants who have fled the areas since the outbreak of hostilities.⁵¹

Since 1948, the UN framework for a durable solution of the Palestinian refugee question has been welcomed and supported by Palestinian refugees, who continue to put forward their demands to return to homes and properties now located in the state of Israel, to receive restitution for their lost properties, and to receive adequate and fair compensation.

More than five decades after the first mass displacement, no such durable solution

for Palestinian refugees has been found, including in the political negotiations between Israel and the PLO (Madrid-Oslo process, 1991–2000). Consecutive Israeli governments have refused to re-admit a population that is not Jewish according to Israeli law and perceived as a demographic and political threat. Western states, on the other hand, have lacked the political will to enforce international law and UN resolutions in the face of Israel's objections.⁵²

3. Current Scope and Categories of Population

In the absence of durable solutions, Palestinian refugees have grown into one of the largest displaced populations in the world today. At the end of 2003, some 7.3 million of the seventeen million refugees worldwide were Palestinians (see below). Moreover, the overwhelming majority of the Palestinian people, currently estimated to number some 9.7 million persons, are refugees.⁵³

For the purpose of this Handbook, Palestinian refugees and displaced persons can be grouped into three categories:⁵⁴

1. 1948 Palestinian refugees and their descendants, currently estimated to number more than 5.6 million persons, are composed of two sub-groups:
 - 1a. The overwhelming majority, some 4 million as of 31 December 2003, are registered with UNRWA as "Palestine refugees". Most of them reside within UNRWA's area of operations in Lebanon, Syria, Jordan, the West Bank and the Gaza Strip. However, some have left UNRWA's area of operations and taken up residence elsewhere, but continue to be registered with UNRWA.
 - 1b. The minority, some 1.6 million 1948 Palestinian refugees and their descendants, have never registered with UNRWA, although they are entitled to do so.⁵⁵
2. Some 780,000 Palestinians are 1967 refugees and their descendants (also referred to as "1967-Displaced Persons"), i.e., persons who became refugees for the first time as a result of the second Arab-Israeli conflict in 1967. They have never been registered with UNRWA, although the Agency extended its services to them on an emergency basis. The majority of 1967 Palestinian refugees continue to reside in the countries to which they fled in 1967.

3. Some 838,000 Palestinians originating from the 1967-OPT have subsequently become refugees due to various types of forced migration induced by the policies of Israel's military occupation.

A fourth category, some 360,000 internally displaced Palestinians, are not included within the scope of this Handbook as they do not – as IDPs – enjoy protection under the 1951 Refugee Convention.⁵⁶ Some of these IDPs were displaced in 1948 or 1967, while others were forced to move for the first time between or after armed conflicts.

4. Where do Palestinian Refugees Live Today?

Estimated Distribution of Palestinian Refugees, by Area of Residence

Area of Residence	2003
West Bank	703,512
Gaza Strip	922,674
Jordan	2,797,674
Lebanon	415,066
Syria	436,157
Egypt	61,917
Iraq & Libya	115,542
Saudi Arabia	309,582
Kuwait	39,402
Other Gulf Countries	124,230
Other Arab Countries	6,523
United States	236,357
Other Foreign Countries	300,977

Source: Palestinians at the End of Year 2003. Ramallah: Palestinian Central Bureau of Statistics, December 2003. There is no single authoritative source for the global distribution of the Palestinian refugee and IDP population. The chart is derived from the estimated global distribution of the Palestinian people. The majority of Palestinians living outside former Palestine are refugees. Figures are indicative rather than conclusive. At the end of 2003 there were approximately 428,000 Palestinian refugees of concern to UNHCR including Saudi Arabia (240,000), Iraq (100,000), Egypt (70,215) and Libya (8,787). UNHCR, *2003 Global Refugee Trends, Overview of Refugee Populations, New Arrivals, Durable Solutions, Asylum Seekers and Other Persons of Concern to UNHCR*. Geneva, 15 June 2004, Table 4, Refugee population and changes by major origin and country of asylum, 2003, p. 29. According to community estimates there are some 250,000 Palestinians living in the US, as many as 50,000 Palestinians in Canada, at least 237,000 in Europe, some 30,000 in Australia and New Zealand and more than 360,000 in Central and South America. Information on community estimates is provided by the Civitas-Foundations of Participation project's database. See www.civitas-online.org. (For more details, see Chapter Five) PCBS estimates for 'Other Foreign Countries' therefore appear to be an under-estimate of the total Palestinian population living in these areas.

Most Palestinian refugees have remained in the Middle East, primarily in Jordan and in other Arab states bordering Israel, and in the 1967-OPT (figures as of 31 December 2004).

Lebanon: The vast majority of Palestinian refugees in Lebanon are registered with UNRWA (399,152). More than half of these refugees (210,155) reside in twelve refugee camps.⁵⁷

Jordan: Of those Palestinians living in Jordan, 1,776,669 are registered with UNRWA. A relatively small number of refugees (283,262) live in ten refugee camps.⁵⁸

Syria: The vast majority of Palestinian refugees in Syria are registered with UNRWA (421,737). There are 112,008 refugees living in ten refugee camps serviced by UNRWA.⁵⁹

1967-OPT: Almost three million Palestinians reside in the West Bank (1,857,872) and the Gaza Strip (1,039,580). Approximately half this population is made up of 1948 refugees and their descendants.⁶⁰ In the West Bank, 682,657 refugees are registered with UNRWA, with a comparatively small number (179,851) residing in 19 refugee camps.⁶¹ In the Gaza Strip, UNRWA has registered 952,295 refugees, with more than half of them (468,405) living in eight refugee camps.⁶²

Some 595,000 Palestinians reside in Arab countries other than those adjacent to Israel (see table above). This includes Palestinians residing in Iraq and Libya (115,542), Saudi Arabia (309,582), Kuwait (39,402), other Gulf countries (124,230), and other Arab countries (6,523).

It is characteristic of this refugee population that the majority still live within 100km of the borders of Israel and the 1967-OPT, where their original homes are located. In many places of exile, they maintain social relations and structures dating back to Palestinian village life in pre-1948 Palestine. Residents of a particular village tend to be displaced to the same area within a host country, and marriages within the extended family and/or the community based on the village of origin continue to be frequent.⁶³

Most Palestinian refugees do not live in refugee camps, such as two-thirds of UNRWA-registered refugees who live in and around cities and towns, often in the vicinity of refugee camps. While most of UNRWA's installations (such as schools and health centres) are located in refugee camps, some operate outside the camps, and the Agency's services are available to both camp and non-camp residents.

Refugees who are not registered with UNRWA generally do not live in refugee camps serviced by the Agency. Most Palestinian refugees who were displaced for the first time in 1967 live in cities and towns, with only a small number residing in refugee camps in Jordan and Syria.



Jabalia Refugee Camp

Refugee Camps

Only one-third of UNRWA registered refugees, i.e., some 1.3 million, live in 59 recognized refugee camps administered by the government authorities.⁶⁴ A camp, according to UNRWA's working definition, is a plot of land placed at the disposal of UNRWA by the host government for accommodating refugees and for setting up facilities to cater to their needs. Areas not designated as such are not considered camps. Refugees in the camps do not own the land on which their shelters were built, but have the right to use the land for residence. UNRWA's responsibility in the camps is limited to providing services and administering its installations.⁶⁵

Socio-economic conditions in the refugee camps are generally poor, with high population density, crowded living conditions and inadequate basic infrastructure such as roads and sewers. In some areas, infrastructure in camps may be more developed than in refugee areas outside of camps, as a result of targeted international assistance.

Refugee camp populations vary from area to area, with the largest camp population residing in the Gaza Strip (more than half of all registered refugees), and the smallest camp population residing in Jordan (sixteen per cent). The Gaza Strip also has some of the largest refugee camps (107,415 people live in Jabalia camp, 93,928 in Rafah camp and 78,158 people in Beach Camp).⁶⁶ Jabalia camp in the Gaza Strip, for example, is described by UNRWA in the following way:

Jabalia camp is located north of Gaza City beside a village of the same name. The camp was established after the 1948 Arab-Israeli conflict for 35,000 refugees who had fled from villages in southern Palestine. The refugees were at first provided with tents, which UNRWA later replaced with cement block shelters with asbestos roofs. The camp covers an area of 1.4sq.km. The

shelters, which usually consist of two or three small rooms, a small kitchen and bathroom on an area of maximum 40sq.m., are packed closely together. Narrow alleys and pathways, some less than one meter wide, run between the shelters. The camp lacks basic infrastructure. Solid waste is collected by UNRWA's sanitation labourers. Water is supplied by the local municipality or comes from UNRWA and private water wells. The first Palestinian *intifada* started in Jabalia camp in December 1987. Prior to the closure of the Gaza Strip in September 2000 most of the refugees worked as labourers in Israel or locally in agriculture on nearby farms in Beit Lahia. Some own small shops in the camp and a few work in small businesses.⁶⁷

5. Legal Status in Countries of First Refuge⁶⁸

5.1 Legal Status in Arab Host States (inside and outside UNRWA's area of operations)

General

The Protocol on the Treatment of Palestinians ("Casablanca Protocol") is the regional instrument that attempted to regularize the status of Palestinians in Arab states where they have found shelter since 1948. The Protocol, adopted during a special summit conference of Arab heads of states,⁶⁹ held in Casablanca in 1965, required that Palestinians be granted the same treatment as nationals of Arab host states with regard to employment, the right to leave and return to the territory of the state in which they resided, freedom of movement between Arab states, issuance and renewal of travel documents, and freedom of residence, work and movement. Not all member states of the Arab League are signatory to the Casablanca Protocol.⁷⁰

Implementation of Arab League standards varies. Despite the obligation to treat Palestinian refugees the same way as nationals regarding employment, the right to leave and enter, travel documents, and visas and residence, in Egypt, Libya, and Gulf states like Kuwait in particular, they often experience protection standards similar to those accorded to foreigners. In contrast, Palestinian refugees in Jordan, Syria, Algeria, Morocco and Tunisia generally enjoy relatively favourable treatment. In 1991, the League of Arab states adopted Resolution 5093, which authorized states to treat Palestinian refugees in accordance with local norms rather than the provisions set forth in the Protocol.⁷¹

In the absence of binding and enforceable regional standards for the treatment of Palestinian refugees in Arab host states, their legal status is regulated by the national legislation of each country. Restrictions on residency rights, freedom of movement, employment, property

ownership rights and access to government services are imposed in varying degrees on Palestinians who are holders of refugee documents in all Arab countries. Moreover, Palestinian affairs in Arab host countries are often governed by ministerial decrees or administrative orders, which can easily be reversed in response to changing political circumstances.⁷² A Palestinian entitled to certain rights upon departure from his or her country of habitual residence can therefore not be sure that those rights will remain in place.⁷³

The absence of regional standards, moreover, has resulted in a situation where legal status and basic human rights of Palestinian refugees differ from one host country to another. At the same time, Arab host countries share a number of common principles and policies.⁷⁴

- Arab countries do not generally grant foreigners full residency status (naturalization or permission to remain indefinitely). The only exception is Jordan vis-à-vis 1948 Palestinian refugees living in its territory.
- Most countries have special provisions prohibiting naturalization on political grounds.
- Nationality in more than one Arab country is not allowed in principle.
- Marriage to a female citizen of a country does not constitute grounds for naturalization or special residency rights, either for the husband or non-national children.⁷⁵
- The majority of Palestinians (except for those in Jordan) are issued special Refugee Documents, which in most countries do not confer secure residency status.

Refugees registered with UNRWA are entitled to receive the services provided by the Agency, such as education, health care and social services. Registration with UNRWA, however, does not confer protected legal status upon Palestinian refugees living in Arab host countries inside UNRWA's area of operations.⁷⁶

Although UNHCR considers Palestinian refugees in Arab states outside of UNRWA's area of operations as a population of concern, UNHCR's ability to provide legal protection to these refugees is limited by a weak standing vis-à-vis the Arab states, most of which have not acceded to the 1951 Refugee Convention or the Statelessness Conventions,⁷⁷ and – in light of international political pressure for the forced resettlement/integration of Palestinian refugees back in their territory – are reluctant to provide protection benefits. UNHCR continues, however, to promote the accession of Arab states to the 1951 Refugee Convention and to provide training in refugee-related issues.

Lebanon

Palestinian refugees in Lebanon live under extremely adverse conditions and continue to be systematically discriminated against. Most Palestinian refugees have never obtained citizenship and their legal status in Lebanon is that of a special category of foreigners. A few Palestinians were given citizenship in the 1950s to maintain the balance between the Christian and Muslim population in the country.⁷⁸ Only those Palestinian refugees who took direct refuge in Lebanon in 1948 are eligible for residency.⁷⁹ Palestinian refugees who arrived later – including refugees displaced in 1967 – are not eligible for residency and considered to be residing illegally in Lebanon.⁸⁰

Most refugees in Lebanon receive a single-year travel document; unregistered refugees, however, are only eligible for a document valid for three months. Refugees registered with UNRWA receive a travel document that can be renewed three times. Refugees registered with the League of Red Crescent Societies (LRCS) in 1948, but not with UNRWA in 1950, are also eligible for a travel document that can be renewed three times. The document is distinguished from the one given to UNRWA-registered refugees by a stamp indicating “Valid for Return”. Refugees eligible only for a three-month travel document include those not registered with UNRWA or the League of Red Crescent Societies.⁸¹

Palestinian refugees in Lebanon do not have access to public health care and other social services and most cannot afford private health care. Most are unable to attend Lebanese schools and universities for financial reasons.⁸² Foreigners are allowed to constitute up to ten per cent of state school classes in Lebanon. UNRWA thus operates five secondary schools in Lebanon for Palestinian refugees. The Faculty of Arts in the Lebanese University Education section, which prepares teachers for Lebanese secondary schools, does not accept Palestinian students.

Palestinian refugees do not have the right to own property,⁸³ and building in and around Palestinian refugee camps is restricted. They are denied the right to work in skilled and semi-skilled professions, including pharmacy, journalism, medicine, law, education and engineering; and are only allowed to work in a limited number of professions. They cannot seek employment without a work permit, which is difficult to obtain.⁸⁴ In 1999 (the most recent year for which statistics are available), the Lebanese Ministry of Labour issued some 18,000 work permits to Egyptian workers and only 350 work permits to Palestinians.⁸⁵ Lebanon reserves the right to restrict access to employment under the Casablanca Protocol. Lebanon only grants refugees the right to employment based on “the right of keeping their Palestinian nationality, in accordance with prevailing social and economic conditions in the Republic of Lebanon.”⁸⁶ In June 2005 the Lebanese government announced that Palestinian refugees would be

permitted to work in manual and clerical jobs, however, it is too early to assess the implementation of this new policy.

Jordan

Palestinians generally have the same citizenship and residency status as Jordanian nationals and are entitled to Jordanian passports.⁸⁷ Palestinian refugees displaced to Jordan in 1948 hold Jordanian citizenship and do not require travel documents. Jordanian law, however, does not provide automatic citizenship to Palestinians who took up residency in Jordan after 1954. The possession of a Jordanian passport does not necessarily imply citizenship rights in Jordan when the holder of the passport has never lived in Jordan and has no other ties to the country.⁸⁸ Palestinians who took up residency in Jordan after 16 February 1954, including 100,000 Palestinians from the Gaza Strip who fled to Jordan during and immediately after the 1967 war and their descendants, are not considered Jordanian citizens and are required to regularly renew a temporary residency permit.⁸⁹

On 1 June 1983, the Jordanian government created a dual card system to facilitate distinction between Palestinian citizens living in Jordan and Palestinians living in the West Bank. Palestinians who were living in and citizens of Jordan on that date were provided with a yellow card, which represents full residency and citizenship status. Green cards were provided to Palestinians who live in the West Bank and to those who left the West Bank after 1 June 1983. Green card holders have no right to reside in Jordan. They are, however, entitled to visit Jordan for short periods.

Palestinian refugees from the occupied Gaza Strip who entered Jordan during and after the 1967 war do not have Jordanian citizenship; many use Egyptian-issued travel documents when travelling abroad. Between 1960 and 1967, Egypt also issued travel documents to Palestinians in the Gaza Strip, which was then under Egyptian administration.⁹⁰

Palestinian refugees have the right to employment on a par with host state nationals, although they may experience informal discrimination. This includes Palestinian refugees who entered Jordan as a result of the 1948 and 1967 wars, except for those refugees from the Gaza Strip who entered Jordan during and after the 1967 war. Refugees from the occupied Gaza Strip who entered Jordan during or immediately after the 1967 war do not have full access to employment and must obtain approval from state security officials for employment.⁹¹ Most Palestinian refugees have access to all levels of education on par with host state nationals. Those who entered Jordan from the Gaza Strip after 1967, however, must also compete for a limited number of spaces available to Arab students for post-secondary education; fees must be paid in foreign currency and candidates must have a clean security record.⁹²

Syria

Palestinians generally are not eligible for Syrian citizenship.⁹³ Palestinian refugees in Syria may acquire Syrian citizenship if they are women married to Syrian men, had Syrian citizenship before 1948, or by special dispensation from the Ministry of the Interior. However, they enjoy most of the residency, social and civil rights of Syrian nationals. Palestinians are issued identity cards and travel documents similar to Syrian passports. Syria issues six-year travel documents to Palestinian refugees. Those who wish to travel abroad must obtain the same authorization as Syrian nationals.⁹⁴

Most Palestinian refugees have access to all levels of education on par with Syrian nationals. A small number of unregistered refugees, including those who subsequently entered Syria from other Arab states, and refugees from the occupied Gaza Strip who entered Jordan during or immediately after the 1967 war, do not have full access to employment.⁹⁵ Refugees may not own arable land; however, they may acquire a single home provided they are registered with the General Authority for Palestine Refugees (GAPAR).

Egypt

Palestinian refugees in Egypt enjoyed most fundamental rights until 1978, when Egyptian writer Yousef Al-Sibai, a close friend of then-President Anwar Sadat, was assassinated by a Palestinian. The government rescinded all rights previously granted. Few Palestinian refugees now residing in Egypt have acquired Egyptian citizenship. Palestinian refugees are eligible for three types of residency: special (valid for ten years), ordinary and temporary.⁹⁶ Most Palestinians residing in Egypt hold temporary residency permits, which are valid for one to three years. Egypt is the only Arab host state that requires all Palestinian refugees to regularly renew their residency status.

Palestinians holding Egyptian travel documents are not automatically entitled to re-enter Egypt. Re-entry to Egypt is permitted only to holders of a valid re-entry visa, which must usually be obtained prior to departure. Since the Gulf crisis in the early 1990s and the involuntary migration of Palestinians from Kuwait (many of whom held Egyptian travel documents), renewal of residency permits in Egypt has become more difficult. Refugees in Egypt are eligible for a five-year travel document. Travel documents are issued to those refugees who took refuge in the country in 1948. A substantial number of holders of Egyptian travel documents no longer have legal residency in Egypt.

Like other foreign aliens, Palestinian refugees in Egypt have the right to employment, but find it difficult to obtain work permits.⁹⁷ Refugees wishing to practice a profession must hold Egyptian residence and obtain a permit issued by the Ministry of Labor and Training.⁹⁸ Employment in the civil service is based on reciprocal rights for Egyptian

nationals in the foreigner's state of citizenship.⁹⁹ Due to the fact that most Palestinian refugees in Egypt are stateless, there is no possibility of reciprocal agreements and no possibility of public sector employment. However, holders of Egyptian travel documents endorsed with a visa other than for a tourist visit are formally exempt from the requirement that native workers be given priority for employment.¹⁰⁰

Palestinian refugees in Egypt are treated as other foreigners with regard to education.¹⁰¹ Palestinian refugees in Egypt are required to pay university fees in foreign currency. Children of government employees (including retirees), children of Egyptian widows and divorcees, children of mothers who passed their Egyptian high school exams, continuous residents of Egypt and students in need of financial assistance, however, are exempt from ninety per cent of school and university fees. Since 2000, Palestinian students at Egyptian schools have been exempted from paying fees due to the economic difficulties facing Palestinians as a result of the second *intifada*.¹⁰² Palestinian refugees have the same right to own immovable property as foreign aliens.¹⁰³ Property ownership in Egypt is limited to a single private residence; a business may be acquired in partnership with an Egyptian national. Foreigners are not permitted to own agricultural land or desert land in Egypt.¹⁰⁴

Kuwait

The number of Palestinians residing in the Gulf States in general has fluctuated greatly, mainly as a result of political and military crisis, in particular the 1991 Gulf War.¹⁰⁵ Palestinians are considered migrant workers and their residency status is closely related to employment status; any foreigner has to leave the country upon termination of his or her employment. Return to the first country of refuge is often impossible for Palestinians who, in their absence, are likely to have lost their residency status there.

After the first Gulf War, the official deadline for the renewal of residency permits in Kuwait was terminated in the summer of 1992. Some 5,000 Palestinians with Egyptian travel documents who had not managed to renew their residence permits were still in the country, including some Palestinians who had arrived from the Gaza Strip before the 1967 Israeli-Arab war. They found themselves in a legal limbo because they had lost both their residency rights in the Gaza Strip (due to their absence during Israel's 1967 census) and in Egypt (because their temporary residency in Egypt had expired).¹⁰⁶ Since 2002, Arab citizens/residents from non-Gulf Cooperation Council (GCC) states, including Palestinian refugees, have not been allowed to stay in Kuwait for more than three months.¹⁰⁷

Kuwait reserves the right to restrict access to employment under the Casablanca Protocol and to exclude Palestinian refugees from employment in private business on par with

Kuwaiti citizens.¹⁰⁸ Palestinian refugees were treated on par with Kuwaiti nationals with regard to education until the 1960s, when the government introduced a quota system to address overcrowding resulting from increased migration and budgetary problems. There are quotas for the admission of foreigners to public schools and universities.¹⁰⁹ Palestinian refugees in Kuwait are not permitted to own immovable property.¹¹⁰

Libya

Palestinians residing in Libya have largely enjoyed the same residency rights as Libyan nationals, although many Palestinians have had to live in specially designated areas. However, Libyan foreign policy interests have had a direct impact on their residency status. Thus in 1995, for example, Libya cancelled the residency rights of Palestinians in the country, causing a mass exodus of Palestinian refugees and stateless persons towards Egypt and a protracted emergency situation on the border between the two countries. These refugees were assisted by UNHCR and UNRWA. The crisis was resolved only several years later, when Libya retracted its 1995 policy, following intervention by states and international agencies.

Iraq

Until the US-led war and occupation of Iraq in 2003, Palestinians largely enjoyed the same residency rights as Iraqi nationals without being granted citizenship. They were granted preferential treatment in respect of naturalization.¹¹¹ Refugees were eligible for a five-year travel document. Until 2003, Palestinian refugees in Iraq were allowed to leave the country twice per year, once for pilgrimage and once for a visit. Refugees were required to obtain an exit visa.¹¹²

Most Palestinian refugees had the right to employment on par with host state nationals, although they may have experienced informal discrimination.¹¹³ Palestinian refugees had access to all levels of education on par with host state nationals. They were also permitted to own property on par with host state nationals.¹¹⁴

Their situation deteriorated in the context of the war, mainly due to threats to their personal safety and forced eviction from government-subsidized pre-war homes. As a result, some 2,000 Palestinians sought shelter in UNHCR refugee camps, mainly in Baghdad and on the Iraqi-Jordanian border. International intervention secured admission into Jordan of those families of which the mother was a Jordanian national, while most others have remained in Iraq due to lack of access to protection in a third country. By March 2004, UNHCR had registered a total of 22,706 Palestinians in Iraq. The number includes some 1,000 Palestinian refugees who were deported from Kuwait in the aftermath of the 1991 Gulf war.¹¹⁵

5. 2 Legal Status in the 1967 Occupied Palestinian Territories

Palestinian refugees in the occupied West Bank (including eastern Jerusalem) and the Gaza Strip have the same residency status as non-refugee Palestinians there. They are considered resident aliens or foreigners under Israeli civil and military law.¹¹⁶ As a result of the unilateral annexation of occupied eastern Jerusalem by Israel, the legal status of Palestinian residents of the city is regulated under Israeli civil law by Israel's Interior Ministry. The residency status of Palestinians in the rest of the 1967-OPT is regulated by Israeli military orders. Under the 1993 Oslo Accords between Israel and the Palestine Liberation Organization (PLO), administration of residency issues (except in eastern Jerusalem) was coordinated between the Israeli military government/Civil Administration and the Palestinian Authority's Ministry for Civil Affairs.¹¹⁷ This coordination broke down at the beginning of the second *intifada* in September 2000. Israel retains overall control of Palestinian residency in and entry into the 1967-OPT. Israel's recent withdrawal from the Gaza Strip is unlikely to result in a transfer of powers to the Palestinian Authority (PA) over the population registry and entry of persons there.

Identification Cards (ID-Cards)

Only those Palestinians registered in the 1967 Israeli census and their descendants are considered to be legal residents of the 1967-OPT by Israel. Palestinians in the occupied West Bank (except eastern Jerusalem) and Gaza Strip currently hold green ID cards, issued by the Palestinian Authority following approval by Israel. Palestinians residing in occupied eastern Jerusalem hold blue Israeli ID-cards. These cards, the validity of which is not limited in time, serve as the major permanent personal documents of Palestinians living in the 1967-OPT, thus allowing them to reside legally within the territory and obtain travel documents.

In the past, i.e. prior to the 1993 Oslo Accords, Palestinian residents of the 1967 OPT held orange-coloured ID-cards issued by the Israeli military authorities. Still earlier, between 1948 and 1967, the West Bank was controlled by Jordan while Egypt was in control of the Gaza Strip. Palestinian residents of these areas then held documents issued by the respective authorities. Egyptian documents issued to Palestinian residents of the Gaza Strip became invalid following the establishment of Israel's military occupation regime in 1967. In the West Bank, Palestinians – including 1948 refugees – held the same status as Jordanian citizens vis-à-vis Jordan. This situation began to change gradually in 1983, with the introduction of the dual (yellow/green) card system in Jordan and was drastically revised in 1988, when King Hussein renounced his claim of sovereignty over the West Bank and severed Jordan's legal ties therewith.¹¹⁸ In this context, West Bank Palestinians lost their status as Jordanian citizens and, thereby, their right to reside in Jordan.

Travel Documents

Since 1994, Palestinian residents of the occupied West Bank (except eastern Jerusalem) and the Gaza Strip may obtain a “Palestinian Passport” issued under the terms of the Oslo Accords between Israel and the PLO. This “passport” functions as a travel document.¹¹⁹ It does not convey citizenship of a state (in the absence of a Palestinian state). However, it entitles its holder to leave and re-enter the West Bank/Gaza Strip without the need for additional travel and re-entry permits (unless Israeli authorities raise “security reasons”). The Palestinian passport/travel document is issued by the Palestinian Authority (PA) after clearance by Israel. Only Palestinians residents in the 1967-OPT and their descendants who hold a valid ID-card are entitled to this passport/travel document. The document is valid for three years and renewable via the PA Interior Ministry or Palestinian representations abroad. Still, Palestinians may face difficulties renewing their Palestinian passport/travel document while abroad due to a lack of efficient procedures. Holders of such a Palestinian passport/travel document who also hold a passport of a second state must exit and enter Israel and the 1967-OPT on their Palestinian passport/travel document. Since January 2002, holders of a Palestinian passports/travel document, including Palestinians holding the citizenship and passport of another state, have not been permitted to leave and return via Israel’s international airport in Tel Aviv.

Palestinian residents of occupied eastern Jerusalem cannot obtain a Palestinian passport/travel document under the Oslo Accords. Travel abroad via Israel’s international airport requires an Israeli travel document (*laissez-passer*). These travel documents do not guarantee the right to re-enter the country, unless accompanied by a valid Israeli-issued re-entry permit. Such re-entry permits must be renewed annually. Palestinian Jerusalemites without a valid re-entry permit are denied return to Israel and the 1967-OPT and subsequently cancelled from the population registry.

All Palestinian residents of the occupied West Bank (including residents of eastern Jerusalem) may also travel abroad on valid Jordanian passports which serve as travel documents. Jordanian passports/travel documents are valid for two or five years, Palestinian residents of the West Bank who held Jordanian passports before July 1988¹²⁰ are entitled to a five-year renewable Jordanian passport. These Jordanian passports/travel documents do not automatically entitle their holders to re-enter and reside in Jordan and may be used for travel via land crossings between the West Bank and Jordan only. Palestinian Jerusalemites traveling abroad must, moreover, obtain an Israeli-issued re-entry permit (valid for three years) in order to travel and return on a Jordanian passport/travel document.

Palestinians seeking to leave and return via land crossings with Jordan and Egypt face frequent restrictions and delays upon exit and entry. They also face restrictions of movement within the 1967-OPT. Passage between the West Bank and Gaza Strip is closed for ordinary Palestinians. Palestinians are frequently refused passage at checkpoints due to military curfews and internal closures imposed on towns, villages and refugee camps; at some checkpoints, the Israeli authorities require special permits from those wishing to cross.

Social, Economic and Cultural Rights

Palestinian refugees in the 1967-OPT have the same right to employment, education and property ownership as non-refugee Palestinians. These rights, however, are frequently restricted by Israel's military occupation and related regime, including military closures, the permit system, roadblocks, curfews and property destruction. Israel does not accept the *de jure* application of international humanitarian and human rights law in the 1967-OPT. The construction of a separation Wall in the occupied West Bank, beginning in 2002, has imposed further restrictions. In 2003, the Israeli authorities also created a new permit regime in the West Bank area west of the new separation Wall, so that Palestinians are required to obtain permits to enter the area in which they live.¹²¹ Military orders have enabled Israel to acquire control of vast areas of Palestinian land and property.¹²² Property in the 1967-OPT held by the state of Israel and the Jewish National Fund (JNF) may not be transferred by sale or any other manner and, is therefore inaccessible to Palestinians.

Palestinian ID Card



Palestinian Passport / Travel Document



Jordanian Passport



Israeli *Laissez-passer*



Jordanian Yellow Card



Jordanian Green Card



Conclusion

More than five decades after the first mass displacement, the appropriate UN General Assembly-mandated durable solution for refugee protection has not yet been implemented.

The failure to effectively protect most Palestinian refugees in Arab host countries has been widely acknowledged by experts and relevant UN agencies, including UNRWA and UNHCR. Palestinian refugee populations identified as especially vulnerable to violations of basic human rights standards include:¹²³

- Palestinian refugees in Iraq and the no-man's land bordering Jordan;
- Palestinian refugees in the 1967-OPT;
- Palestinian refugees in Egypt;
- Palestinian refugees in Lebanon, especially those not registered with UNRWA (i.e., registered only with the Directorate General for Palestinian Affairs or not registered at all);
- Palestinian refugees in Jordan who previously lived in the Gaza Strip.

Protracted exile under dire circumstances and repeated conflict in the Middle East have caused Palestinian refugees to move on to countries still further away, including

Europe and North America, in order to seek protection in third-country signatories to the 1951 Refugee Convention and/or the two Statelessness Conventions. Thus, proper interpretation and application of these instruments, the need for harmonization and the elimination of existing gaps in the protection available for Palestinian refugees in Western countries, have become matters of increasing concern.

As Palestinians move away from their first countries of refuge in the Arab world, into areas where protection is guided by the standards of the 1951 Refugee Convention and a variety of domestic legislation, the following needs be taken into consideration:

Palestinian refugees and stateless persons are holders of many different types of “passport” issued by authorities of Arab states. In most cases, these are basic travel documents that do not confer citizenship rights (Jordan being an exception). Such travel documents do not necessarily reflect that the holder holds the right to legal residence or other protection rights in the country that has issued the document.

They may also be subject to visa requirements by the Arab country of former residence, and can be refused re-entry, even if they hold a valid travel document from this Arab country (for example, many Palestinians with Egyptian travel documents are not allowed re-entry into Egypt, except under exceptional conditions and only for a limited period of time).¹²⁴

Pending improvement of the protection regime available for Palestinian refugees and stateless persons, they remain vulnerable – not only in the Arab world, but also in the West, where they seek the protection of third states. Numerous reports of the protracted legal limbo and detention of (rejected) asylum-seekers suggest that Palestinians are a group of refugees who are especially likely to suffer extreme hardship in the process of seeking protection.

Protection Gaps: The Human Cost

Multiple forced displacement

Dr Iyad Al-Shurafa has been displaced five times in his life.¹²⁵ He was born in 1948 in Beersheba in the south of Palestine, which then became Israel. During the 1948 Israeli-Arab conflict, he and his family fled to the nearby Gaza Strip. The (Sinai) war of 1956 caused the nine-year-old Iyad and his brother to flee again, walking more than 120 miles across the Sinai Desert into Egypt. The rest of his family, who remained in Gaza, lost their house there in the 1967 Israeli-Arab war, and fled to Kuwait, where they were joined by Dr Al-Shurafa. In 1973, he returned to Egypt to study medicine. There he got married, his wife also being a Palestinian born in the Gaza Strip. Upon completion of his medical training, he left Egypt and returned to Kuwait with his family: his wife, a boy born in Egypt, a girl born in Kuwait and another boy born in New York. Dr Al-Shurafa held Jordanian travel documents issued in Kuwait, which did not entitle him to residence anywhere. Like other Palestinians living in Kuwait, Dr Al-Shurafa never became a Kuwaiti citizen, nor was he allowed to own property under the Kuwaiti government's highly restrictive immigration policies. As a result of the 1991 Gulf War, the family was threatened again. Based on the US citizenship of their second boy, Dr Al-Shurafa and his family were finally able to find shelter in the United States.

A family divided

A Palestinian refugee, born in Egypt and living in Saudi Arabia since the age of three months, applied for asylum in Sweden. He had lived there for four years and married a Russian woman. The couple had two children: a one-year-old son and a newborn baby girl. An earlier application by his wife for asylum in Finland had been rejected. The Swedish authorities (Migration Board and Appeals Board) decided to return her to Russia via Finland and to send the son to Finland, despite the parents' wish to keep him with his father in Sweden. The Palestinian father was requested to return to Saudi Arabia. It subsequently became possible to deport the mother and her son, but turned out impossible to return the father because he had been away from Saudi Arabia for more than six months. In September 2004, the Swedish Refugee Ombudsman submitted a complaint to the European Court of Human Rights (ECHR) in Strasbourg regarding their case. The family continues to live in Sweden without legal status, awaiting the outcome of the case before the ECHR.¹²⁶

Detained, deported, nowhere to go

Mazen Al-Najjar is a Palestinian who was born in the Gaza Strip in 1957. He and his family lived in Saudi Arabia for thirteen years. He studied in Egypt and then worked in the United Arab Emirates from 1979 until 1981 on a temporary work visa. He entered the United States for purposes of study in 1981, and subsequently took up work as an engineering instructor at the University of South Florida.¹²⁷

In 1985, the US Immigration and Naturalization Service initiated deportation proceedings against him for failing to maintain the conditions of his student visa.

In February 1996, a deportation hearing was held against him and his Palestinian wife from Saudi Arabia. Both argued that no Middle East country would accept them as permanent residents because they did not hold citizenship in any country in the world. In May 1997, an Immigration Judge denied all forms of relief, including asylum, suspension of deportation and withholding of removal. The United Arab Emirates were designated as the appropriate country of deportation for Mr Al-Najjar, and Saudi Arabia for his wife. This decision was appealed.

Shortly after the decision, Mr Al-Najjar was arrested and jailed based on classified evidence that allegedly linked him to the Islamic Jihad.¹²⁸ On the basis of secret evidence, he was held without bond on the grounds that he posed a threat to national security. In December 2000, he was released after a district court had ruled that his constitutional rights were violated by the government's refusal to divulge the evidence against him. He had been in jail for three and a half years without any formal criminal charges being lodged against him.

In July 2001, the Court of Appeals for the Eleventh Circuit issued a decision reaffirming the deportation order. The Court ruled that Mr Al-Najjar and his wife were ineligible for asylum on the basis of a fear of persecution, and could not provide sufficient evidence to justify withholding deportation. This decision was not based on classified information or on allegations that Mr Al-Najjar was connected to terrorist groups. In November, the Court confirmed its decision.

Mr Al-Najjar was arrested once again on 11 September 2001 and detained for deportation until August 2002. Initially, Bahrain had granted him a two-week visa, but en route to Bahrain, during a refuelling stop in Ireland, he received official information that he would be denied entry. He therefore changed his flight to Italy. There he spent 25 hours on the tarmac at Rome while the US State Department tried to find another country that would receive him. At that point, Lebanon issued a six-month visitor's visa and he arrived there on 31 August 2001. On the following day, however, Lebanon revoked his visa and deported him to an unknown country.¹²⁹

Another case involved Mr Altawil, a stateless Palestinian refugee who had been residing in Qatar and left temporarily in order to attend university in Afghanistan. Due to the war in Afghanistan, he was unable to return to Qatar in time to submit his biannual report. His residency status therefore expired, and he was denied re-entry. He went to Canada and claimed refugee status. The Canadian Immigration and Refugee Board (IRB) rejected his claim because denial of his re-entry was a matter of general application of the law and not the result of (a well-founded fear of) persecution. The IRB noted that:

It is unfortunate that the claimant, a stateless Palestinian, has nowhere to go and live a normal, productive life. He is in front of this, the panel, seeking protection as a Convention Refugee, but he does not need protection. We have found that he does not have a well-founded fear of persecution. He needs a place to live. He has no place to go legally, not even Qatar, his country of former habitual residence. He is a prime example of a decent, well-educated, stateless person, deserving of a country to live in, but this does not make him a Convention refugee.¹³⁰

Endnotes

- ²⁴ This section is largely based on Chapter One – Historical Overview of the BADIL *2003 Survey of Palestinian Refugees and Internally Displaced Persons*. Bethlehem: BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005.
- ²⁵ BADIL *2003 Survey of Palestinian Refugees and Internally Displaced Persons*, Table 2.1, Palestinian Refugees, Internally Displaced Palestinians and Convention Refugees, p. 34. There is no single authoritative source for the global Palestinian refugee population. These estimates include Palestinians and their descendents whose country of origin is Palestine and who have been displaced outside the borders of Israel and the 1967 occupied Palestinian territories and do not have access to voluntary durable solutions. The actual number of these refugees in need of international protection is not known due to the peculiarities of the protection regime for Palestinian refugees discussed in this Handbook. For a more detailed discussion of these numbers, see, BADIL *2003 Survey of Palestinian Refugees and Internally Displaced Persons*, Appendix 1, Notes for Table 2.1, p. 53. The total refugee population of concern to UNHCR at the end of 2003 was 9.7 million. See UNHCR, *2003 Global Refugee Trends, Overview of Refugee Populations, New Arrivals, Durable Solutions, Asylum-seekers and Other Persons of Concern to UNHCR*. Geneva, 17 June 2005, Table 1, Asylum-seekers, refugees and others of concern to UNHCR, pp. 8-11.
- ²⁶ Out of 9,000 applications from Palestinians outside the country, for example, British officials only approved 100. Based on an average family of six persons, more than 50,000 Palestinians may have been affected. *Palestine Royal Commission Report*, Cmd. 5479. London: HMSO, 1937, p. 331. For a description of the problem facing Bethlehem families, see Adnan A. Musallam, *Folded Pages From Local Palestinian History in the 20th Century: Developments in Politics, Society, Press and Thought in Bethlehem in the British Era 1917-1948*. Bethlehem: WIAM – Palestinian Conflict Resolution Center, 2002.
- ²⁷ Rony Gabbay, *A Political Study of the Arab-Jewish Conflict: The Arab Refugee Problem (A Case Study)*. Geneva: Librairie E. Droz, and Paris, Librairie Minard, 1959, p. 66. Based on an average family of six persons, an estimated 30,000 Palestinians were affected.
- ²⁸ During 1936–39, the British administration demolished some 5,000 Palestinian homes. Yusef Rajab al-Ruday'i, *The 1936 Arab Revolt in Palestine: A Military Study* [Arabic], cited in Yezid Sayigh, *Armed Struggle and the Search for a State, The Palestinian National Movement 1949-1993*. Washington, DC: Institute for Palestine Studies and Oxford University Press, 1999, p. 2. On the eviction of tenant farmers, see Charles Kamen, *Little Common Ground: Arab Agriculture and Jewish Settlement in Palestine 1920-1948*. Pittsburgh: University of Pittsburgh Press, 1991, p. 191.
- ²⁹ There is no single authoritative source for the exact number of refugees displaced or expelled during the 1948 and 1967 Israeli-Arab conflicts, as well as subsequent Palestinian displacement. For a detailed analysis of available figures, see BADIL *2003 Survey of Palestinian Refugees and Internally Displaced Persons*, Table 1.1 and “Annex 1.1 – Notes for Table 1.1” at the end of Chapter One.
- ³⁰ See *ibid*, pp. 11-15.
- ³¹ Israel has deported more than 6,500 Palestinians from the 1967-OPT. Some 4,000 Palestinians alone were deported to Egypt in 1967. See Table 5, ‘Palestinian Estimate of Displaced Persons and Refugees during the 1967 War,’ Tayseer Amro, “Displaced Persons: Categories and Numbers Used by the Palestinian Delegation [to the Quadripartite Committee],” *Article 74*, No. 14. (December 1995). The figure roughly coincides with Israeli figures if Palestinians deported to Egypt during the 1967 war are not included. See *Deportation of Palestinians from the Occupied Territories and the Mass Deportation of December 1992*. Jerusalem: B'tselem, The Israeli Information Center for Human Rights in the Occupied Territories, June 1993.
- ³² Israel has revoked the residency status of more than 100,000 Palestinians from the 1967-OPT. John Quigley, “Family Reunion and the Right to Return to Occupied Territory,” *Georgetown*

- Immigration Law Journal*, Vol. 6, (1992). Between 1967 and 1999, Israel revoked the residency rights of 6,185 Palestinians living in Jerusalem, affecting some 25,000 people. *Eviction from Jerusalem, Restitution and the Protection of Palestinian Rights*. Bethlehem: BADIL Resource Center for Palestinian Residency and Refugee Rights, April 1999, Table III, 'Confiscation of Jerusalem ID Cards, 1967-1998,' p. 19. The table is updated through till the end of 1999 with available statistics from the Israeli Interior Ministry. Also see Noga Kadman, *Families Torn Apart: Separation of Palestinian Families in the Occupied Territories*. Jerusalem: B'tselem, The Israeli Information Center for Human Rights in the Occupied Territories, July 1999, p. 17. For eastern Jerusalem, see Nathan Krystall, *Urgent Issues of Palestinian Residency in Jerusalem*, second edition. Bethlehem: Alternative Information Center, 1994; and *The Quiet Deportation: Revocation of Residency of East Jerusalem Palestinians*. Jerusalem: B'tselem, The Israeli Information Center for Human Rights in the Occupied Territories and Hamoked, Center for the Defence of the Individual, 1997.
- ³³ Israel has expropriated or acquired control of an additional 300km² of Palestinian-owned land inside Israel, and more than 3,000km² of Palestinian-owned land in the 1967-OPT. It is estimated that as of the beginning of 2001, Israel had acquired *de facto* control of 79% of the land in the 1967-OPT. *Passia Diary 2001*, Jerusalem: PASSIA, Palestinian Academic Society for the Study of International Affairs, 2001, p. 257. Also see *Land Grab: Israel's Settlement Policy in the West Bank*. Jerusalem: B'tselem, The Israeli Information Center for Human Rights in the Occupied Territories, May 2002. Inside Israel, it is estimated that Israel has confiscated nearly 80% of the land owned by Palestinian citizens. Salman Abu Sitta, *The End of the Palestinian-Israeli Conflict: From Refugees to Citizens at Home*. London: Palestine Land Society and Palestinian Return Centre, 2001, p. 13. Also see *Economic, Social and Cultural Rights, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living*, Mr Miloon Kothari, Addendum, report on visit to the occupied Palestinian territories, 5-10 January 2002, UN Doc. E/CN.4/2003/5/Add.1, 10 June 2002, paras. 10-15 stating: "Estimates place the proportion of Palestinian land confiscated by Israel at more than 70% of the West Bank ... 33% of Palestinian land in East Jerusalem has been confiscated, and all but 7-8% of the area has been closed to Palestinian construction."
- ³⁴ Israel has razed more than 31km² of agricultural land in the Gaza Strip since the start of the second *intifada* until early 2005. This represents approximately 13% of the total arable land base in the Gaza Strip. For more details on the destruction of agricultural land, see the website of the Palestinian Centre for Human Rights (PCHR). Available at: <http://www.pchrgaza.org/Library/alaqsaintifada.htm>.
- ³⁵ Israel demolished 3,584 Palestinian homes in the West Bank, including eastern Jerusalem since the start of the first *intifada* until early 2005. This includes homes demolished for alleged military purpose, houses built without a permit (which is difficult to obtain), and as collective punishment. For more details on demolition of houses, see B'tselem, The Israeli Information Center for Human Rights in the occupied territories. Available at: <http://www.btselem.org/English/Statistics/Index.asp>. Since the start of the second *intifada* until December 2004, the Israeli authorities had demolished or damaged beyond repair a total of 2,991 shelters, home to over 28,483 people in the Gaza Strip. See UNRWA, "New Shelters for Rafah Homeless," *Press Release*, 4 July 2005. Available at: <http://www.un.org/unrwa/news/releases/pr-2005/gaza05-05.pdf>. An estimated 10,000 refugee shelters destroyed in the 1970s and 1980s. Norma Masriyeh Hazboun, *Israeli Resettlement Schemes for Palestinian Refugees in the West Bank and Gaza Strip Since 1967*. Ramallah: SHAML, Palestinian Diaspora and Refugee Centre, 1996, p. 21.
- ³⁶ The new route of the Wall, published by the Israeli government in February 2005, has an estimated length of 670 km, of which 80% runs within the occupied West Bank. Thus, only 20% of the Wall follows the Green Line (1949 Armistice Line). For more detailed information, see Office for the Coordination of Humanitarian Affairs (OCHA), *Update 5- The West Bank Barrier Report*, March 2005. Available at: <http://www.humanitarianinfo.org/opt/docs/UN/OCHA/>

OCHABarRprt05_Full.pdf. It is estimated that more than 2,300 Palestinians were displaced in 2003 by the construction of the Wall. See *Survey of the Impact of the Wall on the Localities Where it Passed Through, 2003*. Ramallah: Palestinian Central Bureau of Statistics, August 2003, p. 5. For more reports on the Wall and its impact on Palestinian refugees, see UNRWA. Available at: <http://www.un.org/unrwa/emergency/barrier/index.html>.

³⁷ The figure is based on the estimated forced migration rate of Palestinians from the West Bank and the Gaza Strip upgraded to 2001. The figure does not account for Palestinians inside Israel or for the number of Palestinians in exile who were able to return to the 1967-OPT following the establishment of the Palestinian Authority in 1994. See George F. Kossai, *The Palestinian Refugees and the Right of Return*. Information Paper No. 7. Washington, DC: Center for Policy Analysis on Palestine (September 1996), Table 6, Estimated Forced Migration from the West Bank and Gaza Strip, 1967-1986 (in thousands), p. 8.

³⁸ See Laurie A. Brand, *Palestinians in the Arab World: Institution Building and the Search for a State*. New York: Columbia University Press, 1988, pp. 126-27: "In the mid-1950s, Palestinian workers supported by indigenous nationalist elements who opposed the continuation of Western economic domination led a series of strikes throughout the Gulf to protest conditions in the oil sector. Deportations of Palestinians from Saudi Arabia, Iraq, Libya, and Kuwait followed. The governments and oil companies involved then moved to ensure that a larger percentage of oil sector workers would be host country nationals. For example, a 1957 agreement between the Saudi government and American oil companies gave priority in job recruitment to citizens of Arab League countries, thereby excluding all Palestinians who remained stateless. In Kuwait a similar agreement was concluded between the government and the oil companies; however, in the case of Kuwait, the amir was empowered to choose whomever he wanted for employment, without regard to whether the Arabs were citizens of Arab League states. Therefore, in Kuwait the potential impact of the new agreements was lessened."

³⁹ The body formed in January 1964 in order to represent the Palestinian people and restate their rights in their historic homeland as set forth in the Palestine National Charter. The two most important institutions of the PLO are the 669-member parliament and the fifteen-member executive committee. Economic institutions of the PLO include the Palestinian National Fund and the Palestine Martyrs' Works Society. Major social institutions include the Palestinian Red Crescent Society, the Department of Education, the Institute for Social Affairs and multiple unions in which Palestinians have organized themselves. The PLO holds a permanent observer seat in the UN General Assembly.

⁴⁰ See Takkenberg, *The Status of Palestinian Refugees in International Law*, p. 17.

⁴¹ See *ibid.*, p. 18.

⁴² *Ibid.*

⁴³ See *ibid.*, p. 18.

⁴⁴ *Palestinians at the End of 2003*. Ramallah: Palestinian Central Bureau of Statistics, December 2003. Data, to the extent that this is available, on Palestinian refugees in non-Arab countries is included in Chapter Five of this Handbook. Not included in this figure are 500,000 Palestinian (forced) migrants to Central and South America. For example, community sources estimate the number of Palestinian in Chile at 350,000 (see Chapter Five, Country Profile Latin and Central America). The circumstances and scope of this massive out-migration since the early 20th century, mainly from the Bethlehem district, have remained under-researched. For a rare reference, see Musallam, *Folded Pages From Local Palestinian History in the 20th Century: Developments in Politics, Society, Press and Thought in Bethlehem in the British Era 1917-1948*.

⁴⁵ *Al-Awda News*, 27 January 2004, written by Kamal, a Palestinian refugee in Lebanon.

⁴⁶ For a detailed discussion of frameworks and efforts for durable solutions for Palestinian refugees, see *BADIL 2003 Survey of Palestinian Refugees and Internally Displaced Persons*, Chapter Six, pp. 148-177.

⁴⁷ See *ibid.* United Nations General Assembly Resolution 194(III) has been affirmed annually by

- the United Nations since 1948. For a reference to such UN resolutions, see Musa Mazzawi, *Palestine and the Law - Guidelines for the Resolution of the Arab-Israel Conflict*. Reading: Ithaca Press, 1997, Appendix VI.
- ⁴⁸ For a detailed analysis of the meaning of United Nations General Assembly Resolution 194(III), see UNCCP, *Analysis of paragraph 11 of the General Assembly's Resolution of 11 December 1948*. For further references to relevant United Nations documents, see BADIL *2003 Survey of Palestinian Refugees and Internally Displaced Persons*, Chapter Six, pp. 148–177.
- ⁴⁹ See Chapter Two for a more detailed presentation of history and mandates of UN agencies pertaining to Palestinian refugees.
- ⁵⁰ See Chapter Three for proper interpretation of Article 1D.
- ⁵¹ The Resolution was adopted unanimously at the 1361st meeting of the Security Council. A similar statement was adopted on 4 July 1967 by the General Assembly; see United Nations General Assembly Resolution 2252 (ES-V) of 4 July 1967, para. 1(d).
- ⁵² For further details, see BADIL *2003 Survey of Palestinian Refugees and Internally Displaced Persons*, Chapter Six, pp. 148–177.
- ⁵³ *Palestinians at the End of Year 2003*. Palestinian Central Bureau of Statistics, Table 1, Estimated Palestinian Population in the World by Country, p. 27.
- ⁵⁴ For detailed information, including sources and method of calculation of data, see BADIL *2003 Survey of Palestinian Refugees and Internally Displaced Persons*, Appendix 1, Table 2.1, p. 53.
- ⁵⁵ See *ibid*, Chapter Two, pp. 31–55, regarding registered and non-registered refugees.
- ⁵⁶ Palestinian IDPs include persons displaced in the territory that became the state of Israel in 1948 and in the West Bank or the Gaza Strip as a result of the Israeli-Arab conflict in 1967, and 1967-displaced persons at a later stage, including during the second *intifada*. Major causes of internal displacement are similar to the causes for external displacement listed at the beginning of this chapter. For information about Palestinian IDPs, see Terry Rempel, *Internally Displaced Palestinians, International Protection and Durable Solutions*, Information and Discussion Brief No. 9. Bethlehem: BADIL Resource Center on Palestinian Residency and Refugee Rights. See <http://www.badil.org>, and the BADIL *2003 Survey of Palestinian Refugees and Internally Displaced Persons*, Chapter One. See also the Global IDP Project of the Norwegian Refugee Council report on IDPs in Israel. Available at: Israel <http://www.db.idpproject.org/Sites/idpSurvey.nsf/wCountries/Israel>. The report on IDPs in the 1967-OPTs is available at: <http://www.db.idpproject.org/Sites/IdpProjectDb/idpSurvey.nsf/wCountries/Palestinian+Territories>.
- ⁵⁷ *UNRWA in Figures*. Available at: <http://www.un.org/unrwa/publications/index.html>. Figures as of 31 December 2004. Those not registered with UNRWA are registered only with the Directorate General for Palestinian Affairs, or not at all.
- ⁵⁸ *Ibid*. Those not registered with UNRWA are registered only with the Department for Palestinian Affairs
- ⁵⁹ *Ibid*. Those not registered with UNRWA are registered only with the General Authority for Palestine Refugee Affairs.
- ⁶⁰ *Palestinians at the End of Year 2003*. Palestinian Central Bureau of Statistics, Table 1, Estimated Palestinian Population in the World by Country, End Year 2003, p. 27.
- ⁶¹ *UNRWA in Figures*. Available at: <http://www.un.org/unrwa/publications/index.html>.
- ⁶² *Ibid*.
- ⁶³ BADIL *2003 Survey of Palestinian Refugees and Internally Displaced Persons*, Chapter Two, p. 40.
- ⁶⁴ Detailed information on each of the 59 refugee camps is available at: <http://www.un.org/unrwa/refugees/camp-profiles.html>.
- ⁶⁵ A number of so-called unofficial refugee camps have also been established over time by the host governments to provide accommodation for refugees. In all respects, refugees in official and unofficial camps have equal access to UNRWA services, except that UNRWA does not provide for solid waste collection in the unofficial camps.

⁶⁶ UNRWA in *Figures*, Figures as of 31 December 2003.

⁶⁷ UNRWA. Available at: <http://www.un.org/unrwa/refugees/gaza/jabalia.html>.

⁶⁸ This section is based on *BADIL 2003 Survey of Palestinian Refugees and Internally Displaced Persons*, Chapter Five. See also the *BADIL 2003 Survey* for social and living conditions of the refugees, Chapter Three.

⁶⁹ The Casablanca Protocol was adopted by the Council of Foreign Ministers of the Member States of the Arab League. The League of Arab States (LAS) was established in 1945 with the "purpose of ... draw[ing] closer the relations between member States and co-ordinat[ing] their activities with the aim of realizing a close collaboration between them..." Pact of the League of Arab States, effective 10 May 1945, 22 March 1945, 70 United Nations Treaty Series, 237. The 21 members of the League of Arab States are Algeria, Bahrain, Djibouti, Egypt, Jordan, Iraq, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates and Yemen. The League consists of three main bodies: the Council of Ministers, the General Secretariat and the Permanent Committees for each field of co-operation between members. The supreme body of the League, the Council of Ministers, which is composed of the representatives of the member states, meets in ordinary sessions twice a year. See Takkenberg, *The Status of Palestinian Refugees in International Law*, pp. 136ff.

⁷⁰ Kuwait, Lebanon and Libya endorsed the Protocol, but with reservations. Saudi Arabia, Morocco and Tunisia are not signatories.

⁷¹ See Takkenberg, *The Status of Palestinian Refugees in International Law*, p. 144: "Throughout the following decades, the commitment of the member states of the Arab League towards the Palestinian refugees, encapsulated in the Casablanca Protocol, began to wane. Most of the Arab states, in particular Lebanon and the Gulf States, never fully implemented the Protocol, whilst others, such as Egypt and Libya, have done so inconsistently." Also see Abbas Shibliak, "Residency Status and Civil Rights of Palestinian Refugees in Arab Countries," *Journal of Palestine Studies*, Vol. XXV, No. 3 (Spring 1996), p. 42: "For some time, the Arab states on an individual basis had been annulling by administrative decree the rights accorded the Palestinians under the Casablanca Protocol; after the Gulf War, this trend culminated in the adoption by the host countries of Arab League Resolution 5093 officially revoking the protocol, which has been superseded by the internal laws of each host state."

⁷² Palestinians' rights have been revoked following political changes; for example, in 1978 in Egypt, after a Palestinian faction associated with Abu Nidal assassinated Egyptian writer Yousef al-Sibai, a close friend of then-President Anwar Sadat; in Lebanon in 1994 when a new law was adopted requiring Palestinian refugees living in Lebanon to obtain exit and re-entry permits. Five years later, the government lifted this requirement (see Lisa Raffonelli, "With Palestine, against the Palestinians: The Warehousing of Palestinian Refugees in Lebanon," *World Refugee Survey 2004*. Washington, DC: US Committee for Refugees and Immigrants, 2004, pp. 66-73. Available at: <http://www.refugees.org/article.aspx?id=1156>); in Libya in 1995 when 30,000 Palestinian workers were expelled in retaliation for the PLO's acceptance of a peace accord with Israel two years earlier; in Iraq in 2003, "[t]he previous regime had been generous to the Palestinian, Iranian Arab and Syrian refugees who had settled in the south and centre of the country ... When the Government collapsed in May 2003, so did the entire support network for refugees in central and southern Iraq. Many found that once-friendly host communities turned hostile and some refugees were forced to leave their homes". UNHCR, *Global Report 2003*, Geneva, pp. 306-307.

⁷³ See further Shibliak, "Residency Status and Civil Rights of Palestinian Refugees in Arab Countries," p. 42.

⁷⁴ See *ibid*, pp. 39ff. The Arab states' determination to keep United Nations General Assembly Resolution 194(III) on the international agenda might have influenced their policy towards Palestinian refugees. See Oroub al-Abed cited in Raffonelli, "With Palestine, against the Palestinians: The Warehousing of Palestinian Refugees in Lebanon," p. 73: "Arab countries

- deal with Palestinian refugees as a political issue. Any humanitarian solutions, in their point of view, will lead to marginalizing the Palestinian cause.”
- ⁷⁵ For example, following the outbreak of the conflict in Iraq, some mixed-marriage Palestinian families (i.e., in which the wife held a Jordanian passport and the husband did not – approximately 400 persons) who had fled Iraq in spring 2003 were permitted to enter Jordan. The husbands did not enjoy any residence rights in Jordan; initially, the Jordanian authorities were reluctant to allow these families to enter Jordan, regardless of the mother’s citizenship status. Finally, the authorities allowed the families to enter Jordan temporarily on a special humanitarian basis (UNRWA Field Office, Jordan). See also Takkenberg, *The Status of Palestinian Refugees in International Law*, p. 161, footnote 142.
- ⁷⁶ In Lebanon, however, UNRWA registration may facilitate access to identity cards and travel documents issued by the Lebanese authorities, i.e., a UNRWA registration card can be used to establish a person’s identity.
- ⁷⁷ The following Arab countries are parties to the 1951 Refugee Convention: Algeria, Egypt, Morocco, Tunisia and Yemen. As of 1 October 2004, Algeria, Libya and Tunisia are the only Arab countries that have acceded to the 1954 Stateless Convention.
- ⁷⁸ See Takkenberg, *The Status of Palestinian Refugees in International Law*, p. 164.
- ⁷⁹ Decree No. 319 (1962). Between 1969 and 1987, residency status was regulated by the Cairo Agreement between the PLO and the Lebanese government; the agreement was unilaterally abrogated by the Lebanese parliament in 1987. After the expulsion of the PLO from Lebanon in 1982, the right of Palestinian refugees to reside in Lebanon was severely curtailed. It is estimated that 12,000 refugees who were assumed to have acquired residency or citizenship abroad were removed from the population registry.
- ⁸⁰ Decree No. 136 (1969).
- ⁸¹ See Takkenberg, *The Status of Palestinian Refugees in International Law*, p. 163.
- ⁸² Suheil Natour, “The Legal Status of Palestinians in Lebanon,” *Journal of Refugee Studies*, Vol. 10, No. 3 (1997), p. 45.
- ⁸³ Decree No. 296 (2001). Also see Raffonelli, “With Palestine, against the Palestinians: The Warehousing of Palestinian Refugees in Lebanon,” p. 68: “An April 2001 law does not allow ‘anyone who is not a national of a recognized State, or anyone whose access to property is contrary to the Constitution’s provisions ... to acquire real rights of any nature’. This law also prohibits Palestinian refugees from inheriting property already in their family’s possession. Previously, family members transferred the property of a deceased relative to heirs by presenting a certificate from a religious court to the government. Under the new law, ownership automatically reverts to the state.”
- ⁸⁴ Law Regarding Entry to, Residency in and Exit from Lebanon (1962). The law prohibits non-Lebanese persons from engaging in work in Lebanon without a license from the Ministry of Labour and Social Affairs. Also see Law No. 17561 (1964) as amended by Decision No. 289/2 (1982) and Decision No. 621/1 (1995). Under the 1969 Cairo Agreement between the PLO and the Lebanese government, Palestinian refugees were accorded the right to work; this agreement was unilaterally abrogated by the Lebanese parliament in 1987.
- ⁸⁵ Raffonelli, “With Palestine, against the Palestinians: The Warehousing of Palestinian Refugees in Lebanon,” p. 68.
- ⁸⁶ Abbas Shibliak, *The League Of Arab States and Palestinian Refugees’ Residency Rights*. Monograph 11. Ramallah: Shami Palestinian Diaspora and Refugee Center, 1998, p. 36.
- ⁸⁷ Nationality Law (No. 6) (1954).
- ⁸⁸ See the decision by the US Board of Immigration Appeals in *Rumman*, Decision No. A24 087 105, 7 December 1990 regarding a Palestinian from the West Bank: “The respondent entered the United States using a Jordanian passport. The possession of the passport creates a presumption that he is a national of Jordan [...] Under the facts of this case, however, we find that this presumption has been overcome by the respondent’s evidence [...] In this regard, we consider the evidence that: The respondent was born on the West Bank at a time it had been

annexed by Jordan. Jordan's annexation of the West Bank had been without prejudice to the final settlement of the Palestinian issue and, to date, the question of sovereignty over the West Bank has not been finally resolved. The respondent's parents had always resided in the West Bank. The respondent's father obtained a Jordanian passport for him while he was a minor so that he could leave the West Bank after it was occupied by Israel. The respondent could only travel by obtaining a passport from the Jordanian government. The fact that the passport was issued did not in itself permit him to reside in Jordan [...] The respondent never resided in Jordan, nor does he have any family members who reside in that country. The respondent had no contact whatsoever with Jordan other than being issued the passport in 1979. [...] Considering these facts in the totality, we find that the respondent has adequately established that he is not a national of Jordan."

- ⁸⁹ Passport Law (No. 2) (1969). In 1968, Jordan issued ex-Gazans a one-year temporary passport which serves as a residency card. At the beginning of the 1980s, the government issued a three-year passport to ex-Gazans. This regulation was revoked after the failure of the 1985 Amman Agreement. In 1990, the government issued 80,000 two-year passports. More restrictive measures were introduced after the signing of a peace agreement between the PLO and Israel. See Oroub al-Abed, *Stateless Gazans: Temporary Passports in Jordan*, unpublished manuscript on file at BADIL. It is estimated that 3% (approximately 150,000 persons) of the total refugee population in Jordan originates from the Gaza Strip. See Marie Arneberg, *Living Conditions Among Palestinian Refugees and Displaced in Jordan*. Oslo: FAFO, Institute for Applied Social Science, 1997, p. 16.
- ⁹⁰ Decision No. 28 (1960).
- ⁹¹ See al-Abed, *Stateless Gazans: Temporary Passports in Jordan*.
- ⁹² See *ibid*.
- ⁹³ Nationality Law (No. 98) (1951).
- ⁹⁴ Takkenberg, *The Status of Palestinian Refugees in International Law*, p. 168: "Thus, both by law and practice, Palestinian refugees have been treated equally with Syrians in almost all areas. Exceptions are the right to vote, the right to buy arable land, the right to own more than one house." See also *World Refugee Survey 2004, Regional Summaries, Middle East, Country Updates: Syria*. Washington, DC: US Committee for Refugees and Immigrants, 2004. Available at: <http://www.refugees.org/article.aspx?id=1156>.
- ⁹⁵ There are an estimated 40,000 unregistered Palestinian refugees in Syria. In addition, there are an estimated 15,000 Palestinian refugees who entered Syria, primarily from Jordan and Lebanon in the 1970s and from Kuwait in the early 1990s. *Finding Means, UNRWA's Financial Crisis and Refugee Living Conditions. Volume I: Socio-economic Situation of Palestinian Refugees in Jordan, Lebanon, Syria and the West Bank and Gaza Strip*. Laurie Blome Jacobsen (ed.). Oslo: FAFO, Institute for Applied Social Science, 2003, p. 198.
- ⁹⁶ Law No. 89 (1960) as amended by Law No. 49 (1968), Law No. 124 (1980) and Law No. 100 (1983).
- ⁹⁷ During early years of exile in Egypt, and because of Egypt's serious unemployment situation, Palestinian refugees were forbidden to work for or without wages, on the assumption that they would soon return to their homes of origin. Egyptian President Gamal Abdel Nasser introduced more favorable employment laws in the 1950s. For further discussion and relevant legislation, see Brand, *Palestinians in the Arab World, Institution Building and the Search for State*, pp. 52-53.
- ⁹⁸ Law No. 48 (1978). The present restrictions on employment in professions were put in place after the death of Egyptian President Gamal Abdel Nasser. Oroub al-Abed, *The Palestinians in Egypt: An Investigation of Livelihoods and Coping Strategies*. Cairo: Forced Migration Studies Program, American University of Cairo, 2003, p. 8.
- ⁹⁹ Law No. 137 (1981). Palestinian refugees had the same right to state employment as Egyptian nationals under the Abdel Nasser regime.
- ¹⁰⁰ Decree No. 657 (1954). Also see Law No. 137 (1981) and Decree No. 25 (1982).

- ¹⁰¹ Palestinians were treated on par with Egyptian nationals until 1978, when the Egyptian government required all Palestinian students to transfer from public to private schools. Children of members of the Palestine Liberation Army and the Administrative Office of the Governor of Gaza were exempt. Between 1978 and 1995, Palestinian students were prohibited from studying medicine, pharmacology, economics, political science and mass communication. Many students were expelled and the General Union of Palestine Students was closed after student demonstrations against Sadat's decision to visit Jerusalem in 1977. Scholarships and subsidies for universities were terminated and entry restricted. See al-Abed, *The Palestinians in Egypt: An Investigation of Livelihoods and Coping Strategies*, p. 9.
- ¹⁰² See *ibid*, p. 10.
- ¹⁰³ Law No. 81 (1976) as amended in 1981. Palestinian refugees were originally exempt from legislation barring foreigners from owning agricultural land (Law No. 15 (1963)). See *ibid*, p. 11.
- ¹⁰⁴ At least 51% of a business investment must be Egyptian-owned with government approval. The total area of the business is limited to 3,000m² (Law No. 56 (1988)). Guarantees and Investment Incentives Law No. 8 (1997). On agricultural and desert land, see Law No. 104 (1985).
- ¹⁰⁵ Prior to the 1991 Gulf War, an estimated 700,000 Palestinians lived in the Gulf States, including 400,000 in Kuwait. See also Muhammad Hallaj, *The Palestinians and the War in the Gulf*. Washington, DC: The Center for Policy Analysis on Palestine, February 1991, p. 17.
- ¹⁰⁶ See Middle East Watch, "The Palestinians in Kuwait," *The Palestinian Yearbook of International Law*, Vol. VI (1990/91), pp. 87-112. See also Takkenberg, *The Status of Palestinian Refugees in International Law*, pp. 161-162.
- ¹⁰⁷ Nationality Law (1959) as amended by Decree No. 40 (1987), Statute No. 1 (1982), Decree No. 100 (1980) and Statute No. 30 (1970). Palestinian refugees are eligible for residency, which can only be obtained at the request of a Kuwaiti national through the Ministry of the Interior or the Ministry of Social Affairs and Labour. Brand, *Palestinians in the Arab World: Institution Building and the Search for a State*, p. 113. "Kuwait Restricts Stay of Non-GCC Arabs," *Middle East New Line*, Vol. 4, No. 472, 12 December 2002. Under the new regulations, Jordanians, Palestinians, Sudanese and Yemenis are given one-month visas for family visits in Kuwait. After that month, the visa could be extended for up to two more months. At that point, the nationals would be asked to leave the country. Those nationals arriving on business trips would be issued one-month, non-renewable visas.
- ¹⁰⁸ Shiblak, *The League Of Arab States and Palestinian Refugees' Residency Rights*, p. 36.
- ¹⁰⁹ In Kuwait, the government limited the number of non-Kuwaitis in government schools in 1965 to 25%; however, it allowed the Palestinian Liberation Organization (PLO) to open its own schools. Some members of the Palestinian communities established several private schools. The PLO was later given permission to operate its own schools with teachers, buildings and furnishings supplied by the Ministry of Education. The programme, which included 22 schools, lasted until 1976, when these schools were closed for financial and political reasons and the students incorporated into government schools. In the 1980s, due to overcrowding, the government decided that only children of expatriates who had been in Kuwait as of 1 January 1963 would be permitted to register in government schools. Other children had to enroll in private schools; the government subsequently moved to subsidize tuition by 50% for children affected by the ruling. In Kuwait University, 10% of spaces are available for foreign students. See Brand, *Palestinians in the Arab World: Institution Building and the Search for a State*, pp. 119-121.
- ¹¹⁰ Law No. 74 (1979). Arab citizens from other Arab states may purchase only a single piece of real estate with government approval. The person must have residence in Kuwait for a minimum of ten years, sufficient income and a clean security record. The property must not exceed 1,000m². It is also based on reciprocal treatment. The land must not be under joint ownership with a Kuwaiti.
- ¹¹¹ Nationality Law No. 43 (1963).

- ¹¹² *Flight from Iraq: Attacks on Refugees and other Foreigners and Their Treatment in Jordan*. New York: Human Rights Watch, 2003, p. 17.
- ¹¹³ The Iraqi government upgraded the status of Palestinian refugees vis-à-vis public sector employment in 1965 except with regard to retirement benefits (Decision 15108 (1964)). Since 1969, Palestinian refugees employed in the public sector have received retirement benefits (Decree No. 336 (1969)). *Palestinian Refugees in Iraq*. Jerusalem: PLO Refugee Affairs Department, 1999, on file at BADIL.
- ¹¹⁴ Palestinian refugees who entered Iraq between 1948 and 1950 were excluded (Decision No. 133 (1997)) from legislation (Decision No. 23 (1994)) that annulled all laws allowing foreigners to possess real estate, or invest in companies inside Iraq. See Jamil Mus'ab, *Palestinian Diaspora in Iraq*, a study presented at the conference "Future of Expelled Palestinians," Amman, Jordan, 11-13 September 2000, p. 10, cited in Suheil Natour, *The Palestinians in Lebanon: New Restrictions on Property Ownership*, p. 19, on file at BADIL. In early 2000, the Iraqi government announced that Palestinians who had resided in the country since 1948 would be granted the right to own property in Baghdad. However, many refugees stated that legal restrictions remained in force, prohibiting them from registering homes, cars or telephone lines in their own name. *Flight from Iraq: Attacks on Refugees and other Foreigners and Their Treatment in Jordan*, Human Rights Watch, p. 18.
- ¹¹⁵ See also UNHCR, *Global Report 2003*, pp. 305ff.
- ¹¹⁶ For eastern Jerusalem, see 1952 Entry to Israel Law (1952). For the occupied West Bank, see Order No. 234 Relating to Identity Cards and Population Registry (1968) and Order No. 297 Relating to Identity Cards and Population Registry (1969). Similar orders were issued in the Gaza Strip. Between 1967 and 1994, Israel revoked the residency status of some 100,000 Palestinian residents of the 1967-OPT. See Kadman, *Families Torn Apart, Separation of Palestinian Families in the Occupied Territories*, p. 18. In eastern Jerusalem, Israel revoked the residency status of some 6,000 Palestinians between 1967 and 1999, affecting more than 25,000 persons. *Eviction from Jerusalem, Restitution and the Protection of Palestinian Rights*, BADIL Resource Center for Palestinian Residency and Refugee Rights, Table III, Confiscation of Jerusalem ID Cards, 1967-1998, p. 19.
- ¹¹⁷ Agreements between Israel and the PLO eliminated extended residence abroad as a criterion for revocation of residency rights and provided for a joint Palestinian-Israeli committee to find solutions for those persons from the West Bank and Gaza Strip whose residency rights were revoked by Israel. This committee was never established and the issue remains unresolved. For more discussion, see Manal Jamal and Buthaina Darwish, *Exposed Realities, Palestinian Residency Rights in the 'Self Rule Areas' Three Years After Partial Israeli Redeployment*. Bethlehem: BADIL Alternative Information Center, 1997.
- ¹¹⁸ King Hussein's speech in Amman on 31 July 1988. See also Decree by the Council of Ministers of 28 July 1988: "[E]very person residing in the West Bank prior to 31 July 1988 is a Palestinian and not a Jordanian citizen" (Article 2). Article 6 of the same instructions states that passports issued before 31.7.1988 will remain valid until they expire, and thereafter their respective validity shall be limited to two years and temporary passports shall be issued instead without levying the due fees. The Jordanian High Court concluded in its decision of January 1991 (see *The Palestine Yearbook of International Law*, Vol. VI (1990/91), p. 68), regarding a female Palestinian who was a resident of Ramallah in the West Bank and who was deported from Jordan to the West Bank following a stay in Amman, that "[t]he fact that the petitioner is a holder of a Jordanian passport does not compel the government to grant Jordanian citizenship. Not every holder of a Jordanian passport is necessarily a citizen of Jordan, and each category [of passport holder] has its own laws and regulations ... In the light of the foregoing, the administration, by returning the petitioner to the West Bank and by denying her the extension of her stay [on the East Bank], was acting within its discretionary power in this regard and as such it did not violate the law neither did it abuse its power."
- ¹¹⁹ Article VI(1)(d), Agreement on the Gaza Strip and the Jericho Area, 4 May 1994. The front

cover of the “passport” includes the phrase “travel document.” The “passport” is issued jointly by the Palestinian Authority and the Israeli military administration. Restrictions on freedom of movement in the 1967-OPT, however, may prevent Palestinians from reaching exit crossings from the West Bank and Gaza Strip. For further discussion of these changes, see Jamal and Darwish, *Exposed Realities, Palestinian Residency Rights in the ‘Self Rule Areas’ Three Years After Partial Israeli Redeployment*.

- ¹²⁰ Prior to 1995, Palestinians were issued two-year documents. Between 1948 and 1967, Palestinian residents of the West Bank were able to travel abroad on passports issued by the Jordanian government. After 1967, Israel required Palestinian residents of the occupied territories to obtain special permits to travel abroad. In July 1988, the King of Jordan announced that “legal and administrative links” between the East and West Bank would be severed. West Bank Palestinians who held Jordanian passports thus lost their right to citizenship and residence in Jordan. Palestinian residents of the Gaza Strip were able to travel abroad on special travel documents issued by the All Palestine Government until 1960, when they were replaced with Egyptian travel documents. After 1967, they also required special Israeli-issued permits.
- ¹²¹ For further details on curfews and internal closures within the 1967-OPT, see Office for the Coordination of Humanitarian Affairs (OCHA). See: <http://www.humanitarianinfo.org/opt/>.
- ¹²² Military Order No. 25 Concerning Transactions in Real Property (1967); Military Order No. 58 Concerning Abandoned Property (Private Property) (1967) (the Gaza version of the military order is identical, but numbered differently); Military Order No. 59 Concerning Government Properties (1967); Military Order No. 150 Concerning Abandoned Property of Private Individuals [in the West Bank] (Additional Provisions) (1967); Military Order No. 321 Regarding the Lands Law (Acquisition for Public Needs) (1969), (amending the 1953 Jordanian Land Law -Acquisition for Public Needs, Law No. 2 for 1953); Military Order No. 364 Concerning Government Properties (Amendment No. 4) (1969); Military Order No. 569 Concerning the Registration of Special Transactions in Land (1974); Military Order No. 949 Regarding the Lands Law (Acquisition for Public Needs) (1981); Military Order No. 1060 Concerning Law on Registration of Unregistered Immovable Property (Amendment No. 2) (1983). In addition, Israeli military commanders have issued orders for the requisition of privately owned Palestinian land for military needs.
- ¹²³ See, for example, *Summary of Proceedings from the BADIL Expert Seminar entitled “Closing the Gaps: From Protection to Durable Solutions,” hosted by the al-Ahram Center for Strategic and Political Studies, Cairo, 5-8 March 2004*. See: <http://www.badil.org>.
- ¹²⁴ Other examples include Palestinians who were expelled from Libya in 1995. They were holders of Lebanese travel documents, but were refused re-entry into Lebanon. See Raffonelli, “With Palestine, against the Palestinians: The Warehousing of Palestinian Refugees in Lebanon,” p. 69.
- ¹²⁵ See case study in Brian F. Chase, “The Problem of Statelessness: The Gulf War, Palestinian Evacuees and United States Immigration Policy,” *Georgetown Immigration Law Journal*, Vol. 6 (1992), p. 567ff. See also Chapter Five, Country Profile United States.
- ¹²⁶ For more information on the case, see the Ombudsman’s website: <http://www.mfo.nu>. See also Chapter Five, Country Profile Sweden.
- ¹²⁷ The facts of the case are outlined in decisions by courts, including the following two decisions by the Court of Appeals for the Eleventh Circuit: *Al-Najjar v. Ashcroft*, 257 F.3d 1262 (18 July 2001), *Al-Najjar v. Ashcroft*, 273 F.3d 1330 (28 November 2001). Other decisions are referred to in Akram and Rempel, “Temporary Protection as an Instrument for Implementing the Right of Return for Palestinian Refugees,” footnote 255. See also Chapter Five, Country Profile United States.
- ¹²⁸ *Harakat al-Jihad al-Islami al-Filastini*. The Islamic Jihad movement started in the early 1980s as a splinter group of the Muslim Brotherhood Society in Palestine. Islamic Jihad was initially inspired by the Islamic revolution in Iran.
- ¹²⁹ Mitch Stacy, “Lebanon Kicks Out Deported Professor,” *AP Online*, 21 September 2002. Following Al-Najjar’s arrival in Lebanon, a Lebanese Parliament Speaker criticized the United

States: "Has Lebanon become an open land so that an official American plane, hired by the Immigration and Naturalization Service, lands at Beirut's airport and unloads its cargo then takes off as if nothing happened?" See also Keith Epstein and Michael Fechter, "Controversy Follows Al-Najjar to Lebanon," *Tampa Tribune*, 28 August 2002.

¹³⁰ A reference to the IRB decision can be found in the decision of the Federal Court (25 July 1996) in which the IRB decision was upheld. See also Chapter Five, Country Profile Canada.

2

Chapter Two

UN Organizations Mandated to Provide Protection and/or Assistance

UN Organizations Mandated to Provide Protection and/or Assistance to Palestinian Refugees (UNCCP, UNRWA and UNHCR)

Introduction

At the time of the drafting of the 1951 Refugee Convention, there were already two UN agencies providing protection and assistance to Palestinian refugees and searching for durable solutions: the United Nations Conciliation Commission for Palestine (UNCCP) and the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). The United Nations High Commissioner for Refugees (UNHCR) was mandated to serve as an alternative – i.e., a safety net – if protection or assistance provided by UNCCP and UNRWA would “cease for any reason” (Article 1D of the 1951 Refugee Convention), in order to ensure continuity of protection for the Palestinian refugees.

Palestinian refugees are distinct from other refugees:

- a) While all other refugees fall within UNHCR’s mandate, a special protection and assistance regime composed of UNCCP, UNRWA and UNHCR was established for the Palestinian refugees.
- b) While the status of other refugees is determined under Article 1A(2) of the 1951 Refugee Convention, a different and separate analysis based on Article 1D of the same Convention applies in determining Palestinian refugees’ status.

This chapter provides a brief overview of the three UN agencies comprising the special protection and assistance regime set up for Palestinian refugees. It includes information about history, mandates and activities of these agencies crucial for proper assessment of status and entitlements of Palestinian refugees under the 1951 Refugee Convention.

This chapter also includes information about UNRWA’s registration system, because such information is often required for the assessment of asylum claims submitted by Palestinian refugees in third countries.

The chapter thus provides the background for in-depth analysis and interpretation of Article 1D of the 1951 Refugee Convention, as well as the resulting status of and benefits to Palestinian refugees, which will be presented in subsequent chapters.

1. United Nations Conciliation Commission for Palestine (UNCCP)¹³¹

The UNCCP was established by the General Assembly in December 1948 by UNGA Resolution 194(III), paragraph 2, based on a recommendation by the United Nations Mediator on Palestine, Count Folke Bernadotte.¹³² The three members of the UNCCP appointed by the General Assembly were (and still are) the United States, France and Turkey.

1.1 UNCCP's Protection Mandate

In addition to continuing the efforts of the United Nations Mediator on Palestine, the General Assembly instructed the UNCCP to, *inter alia*:

- take steps to assist the governments and authorities concerned to achieve a final settlement of all questions outstanding between them;¹³³
- present to the fourth regular session of the General Assembly detailed proposals for a permanent international regime for the Jerusalem area, which would provide for the maximum local autonomy for distinctive groups consistent with the special international status of the Jerusalem area;¹³⁴
- seek arrangements among the governments and authorities concerned that would facilitate the economic development of the area, including arrangements for access to ports and airfields and the use of transportation and communication facilities.¹³⁵

While affirming the right of Palestinian refugees to return to their homes,¹³⁶ the General Assembly also instructed the UNCCP to:

facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation, and to maintain close relations with the Director of the United Nations Relief for Palestine Refugees and, through him, with the appropriate organs and agencies of the United Nations.¹³⁷

In 1950, the General Assembly specifically requested the UNCCP to protect the rights, properties and interests of the refugees.¹³⁸

The UNCCP was thus established with a dual mandate. Firstly, as suggested by its name, the Commission was to conciliate the parties to find, in accordance with

UNGA Resolution 194(III), a permanent solution to all outstanding problems of the Israeli-Arab conflict, including the Palestinian refugee problem. Secondly, it was to provide protection to the refugees by safeguarding their right to return and other related rights, including their right to property.¹³⁹

1.2 UNCCP Protection Activities

The UNCCP tried to persuade Israel to permit the return of certain categories of refugees (i.e., citrus grove owners and labourers) – without prejudicing the right of all refugees to return to their original homes – based on humanitarian consideration. The UNCCP also attempted to reunite separated Palestinian-Arab families, such as dependents of breadwinners who had remained in the territory which became the state of Israel on 15 May 1948. While a small number of refugee dependents were able to return and be reunited with their families, other groups of refugees, including the owners of citrus groves and their labourers, were not allowed to return. The UNCCP also facilitated the release of blocked accounts and assets belonging to refugees.

The UNCCP attempted to facilitate the return of Palestinian refugees primarily through intervention with Israel and by carrying out the preliminary technical work required for returns. One of the first steps taken by the Commission was to gather basic information about the refugees, as well as the policies and political positions of Arab host countries and Israel. The UNCCP also attempted to facilitate restitution of refugee property through calls for reform of Israeli property laws,¹⁴⁰ intervention with relevant authorities, and actual documentation of Palestinian property inside the borders of the new state of Israel.¹⁴¹

In 1950, the Commission established a sub-office (“Refugee Office”) to identify Arab property ownership inside Israel and examine various interim measures by which refugees could derive income from their properties. A global and individual identification of Palestinian property was conducted based on British mandate records.¹⁴² In the early 1960s, the identification was completed: 430,000 records documenting around 1.5 million individual holdings.¹⁴³ Digitization of this database was completed in the late 1990s. The UNCCP also examined means and principles for the implementation of compensation, recommending that compensation should be paid primarily to individuals (not governments), and should be handled through the Commission or an international body.

The UNCCP also made several interventions with Arab states to secure resettlement spaces for Palestinian refugees choosing not to exercise their right to return to their original homes inside Israel. At the time, the governments of Jordan and Syria

agreed to resettle those refugees choosing not to return to their homes, providing that refugees were given the choice to return by the state of Israel.¹⁴⁴

In addition, the UNCCP established the Economic Survey Mission (ESM) to “examine the economic situation of the countries” affected by the conflict, and recommend to UNCCP an integrated programme to, *inter alia*,

facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation pursuant to the provisions of paragraph 11 of the General Assembly’s Resolution of 11 December 1948, in order to reintegrate the refugees into the economic life of the area on a self-sustaining basis within a minimum period of time.¹⁴⁵

As illustrated by the above, the UNCCP undertook numerous steps to provide protection to Palestinian refugees in the early years of its mandate. Many of these UNCCP activities were similar to protection functions carried out by UNHCR in other refugee situations, such as:

- interventions with state parties to promote and safeguard the internationally-protected rights of the refugees;
- promotion of measures to improve the situation of the refugees;
- collection of basic information to facilitate both protection and implementation of a durable solution;
- promotion of measures for restitution of refugee properties; and
- promotion of options for a durable solution based on refugee choice.

1.3 The Collapse of the UNCCP

The UNCCP’s efforts to find durable solutions for Palestinian refugees failed due to Israel’s objections to refugee return and the lack of sufficient international political will to implement the provisions of UN General Assembly Resolution 194(III). Parallel UNCCP efforts towards resettling Palestinian refugees also failed, as Arab host states and the refugees themselves were opposed to resettlement without being offered the option to return. By the early 1950s, the UNCCP recognized that it was unable to carry out its mandate due to the unwillingness of the parties to fully implement the General Assembly resolutions under which it was operating.¹⁴⁶

In a series of measures, the General Assembly gradually reduced the UNCCP’s mandate.¹⁴⁷ As of the mid-1950s, the Commission limited its activities primarily to property identification and documentation. Funding of the UNCCP was brought in line with this limited mandate.

Since 1964, the Commission has noted a lack of progress in its annual reports to the General Assembly, stating that it had hoped that the situation in the region would move towards the achievement of a comprehensive, just and lasting peace in the Middle East, thus enabling it to carry forward its work in accordance with its mandate.¹⁴⁸ As a result, the UNCCP became practically defunct some 40 years ago. It no longer operates an office in the United Nations, plays no meaningful protection role, and memory and knowledge of its mandate and historical role have sunk into oblivion.

1.4 The UNCCP's Relation to Article 1D, 1951 Refugee Convention

At the time of the drafting of the 1951 Refugee Convention, including Article 1D, the UNCCP had been established and had begun its protection activities. The drafters of the Convention were familiar with the existence and the protection mandate of the UNCCP. This is illustrated by the specific language of Article 1D, such as the reference to more than one UN agency (“organs or agencies of the United Nations”) and the use of the term “protection” as a reference to the UNCCP. The French representative (Mr Rochefort), for example, stated that:

The General Assembly had extended its protection to the Arabs by setting up two bodies, an office to deal with relief questions and a conciliation commission. It was now proposed to set up a new organ to deal with repatriation and resettlement. It could therefore be said that the General Assembly had already delegated certain of its powers with regard to the Arab refugees and that it had delegated those powers to organs other than the High Commissioner's Office.¹⁴⁹

Against this background, what is striking is the almost complete absence of reference to the mandate and historical protection role of the UNCCP in academic analysis and interpretation of the status of Palestinian refugees under the 1951 Refugee Convention, Article 1D.¹⁵⁰ Recognition of the UNCCP's protection mandate, and the actual provision of such protection in the past, is missing in national decisions. A rare and recent example of detailed judicial debate about the UNCCP in the context of a Palestinian asylum case submitted under Article 1D, however, is found in a case heard by the Australian Federal Court (Minister for Immigration and *Multicultural Affairs v. Wabq* [2002] FCAFC 329 of 8 November 2002). In this case, Judge Hill concluded that:

In the broadest sense it may be said that UNCCP provided protection to Palestinian refugees, at least in the significant areas of repatriation, resettlement and the proposal for the demilitarisation of and international status for Jerusalem. The fact that the Charter of UNCCP required that the agency provide compensation to those not wishing to return could be said, also to be a form of assistance.¹⁵¹

However, on any view of the matter, any attempt by UNCCP at providing protection to Palestinian refugees had clearly ceased by 1964.¹⁵²

Thirdly, there was UNCCP. That agency's Charter mandated it to seek a solution to the Palestinian problem through conciliation but also mandated it to provide an element of protection to Palestinians.¹⁵³

Judge Hill thus concluded that the UNCCP had a protection mandate. He questioned, however, whether the UNCCP had ever acted upon this mandate:

What is not easy to deduce from the UNCCP reports, prior to its slide into inactivity, is whether it ever actually embarked upon that part of its mandate expressly referred to as "protection." It may be the reason textbook writers have generally omitted reference to UNCCP is that they formed the view that it never embarked upon a protection function with the consequence that there was never a class of persons who received protection from it. Not only is UNCCP not referred to by text writers discussing Article 1D as providing protection, but also such case law on the Article as there has been in Germany and New Zealand discussed by Takkenberg in his Third Chapter ... likewise omits reference to it and proceeds on the basis that the only relevant United Nations Agency is UNRWA which provided assistance. I think that it is clear that those who framed the Convention intended the reference to protection to be a reference to UNCCP. What is not so clear is whether it was thought that such activities as UNCCP in fact performed were sufficient to constitute the provision of protection or whether, as is also a possibility, the use of the alternative "or" covered the situation which would arise if there was at the time of ratification no agency providing protection.¹⁵⁴

Judge Hill did not answer his question. He concluded that this was a question of fact and thus a matter upon which the Federal Court could not rule in proceedings for judicial review. He therefore suggested that the question as to whether the UNCCP did provide protection at the time of ratification of the 1951 Refugee Convention be answered by the Refugee Review Tribunal.

The two other judges of the Australian Federal Court, Judge Moore and Judge Tamberlin, concluded that the UNCCP did provide protection in 1951 and that the Refugee Review Tribunal was therefore only asked to determine whether the UNCCP had since ceased its protection activities. Judge Moore expressed it this way:

...[I]t is apparent that when the UNCCP was established it was to assume the functions given to the United Nations Mediator on Palestine

by Resolution of the General Assembly of 14 May 1948. By that latter Resolution, the Mediator was empowered to exercise a variety of functions including “arrang[ing] the operation of common services necessary to the safety and well-being of the population of Palestine. It was a body apparently established to provide protection. Moreover, the UNCCP would probably have then been viewed, for the purposes of the future operation of Article 1D, as an organ of the United Nations intended to provide protection to the Palestinians. The framers of the Convention proceeded on the basis that protection (as part of the complementary provisions in the first and second paragraph of Article 1D) were adopted. The unanswered question the Tribunal must address (insofar as protection is concerned) relates to whether protection has ceased in the sense that it is no longer provided.¹⁵⁵

Judge Tamberlin referred to the UNCCP in the following way:

It can be seen from this Resolution [General Assembly Resolution 194(III)] that, unlike UNRWA which was designed to provide assistance in the form of aid, education and welfare, UNCCP was designed to afford protection to Palestinians by permitting them to return to their homes and live at peace and to protect their property rights by enabling them to obtain restitution for loss of, or damage to, property.¹⁵⁶

It is apparent from the progress reports of UNCCP that during the period after it was established on 11 December 1948, steps were being taken to carry out its mandate to protect Palestinians. By way of example, in its Seventh Progress Report to the UN General Assembly, for the period May to July 1950, the record discloses: “As indicated in its Sixth Progress Report to the Secretary-General, the Conciliation Commission for Palestine, on 29 March 1950, submitted concrete proposals to the parties for the establishment of a new procedure, combining direct negotiations in mixed committees with mediation by the Commission itself.” That Report also repeats the commitment of UNCCP to carry out its mandate as specified in paragraph 11 of the UN General Assembly Resolution 194(III) of 11 December 1948. The work of the UNCCP described above can, in my view, properly be characterized as the taking of steps to provide protection to Palestinians. These steps were designed to implement the objectives set out in the UNCCP mandate of December 1948 and lead me to the conclusion that Palestinians as a group were receiving protection under the mandate of UNCCP as at the date of the Convention.¹⁵⁷

In this case, it is important to keep in mind that at the time of the Convention, there were two UN agencies in existence and the function of “protection” was given to UNCCP and the function of providing “assistance” was assigned to UNRWA. This factual context is relevant to the interpretation of Article 1D. There is of course some overlap in the expression “protection” and the expression “assistance” in that protection may qualify as a form of assistance. However, as used in Article 1D, the word “protection” appears to embrace activities or measures extending beyond the social, educational and other types of assistance assigned to UNRWA. This distinct role assigned to UNCCP must be borne in mind in the interpretation of Article 1D.¹⁵⁸

Judge Tamberlin thus concluded that the UNCCP was the UN organization mandated to protect Palestinian refugees. With regard to the question of whether the UNCCP’s protection activities had “ceased” (language of Article 1D, second paragraph), Judge Tamberlin concluded that:

The position which has developed, as appears from the extensive documentation referred to above, is that as from late 1951, UNRWA provided assistance but never provided protection and that after 1951 it became apparent that UNCCP was unable to provide any effective protection to Palestinians, and its protection could therefore be said to have “ceased” within the meaning of the second paragraph of Article 1D. However, notwithstanding the weighty documentary evidence before the Court on appeal indicating that protection has ceased, because such a conclusion involves a finding of fact as to cessation of protection, the matter should be referred back to the Tribunal for determination.¹⁵⁹

Based on the fact that it was no longer possible for the UNCCP to carry out its mandate, Judge Tamberlin reached the conclusion that:

The possibilities envisaged in the second paragraph of Article 1D of the Convention that the protection or assistance may cease, appear to have been realized by the end of 1951.¹⁶⁰

The Refugee Review Tribunal in Melbourne answered the question raised by the Full Court in the *Wabq* case in a decision reached in January 2003. This decision has not been made public, but the Refugee Review Tribunal has informed BADIL that its decision was in favour of *Wabq*. One may therefore assume that the Tribunal agreed with Judge Tamberlin and Judge Moore and concluded that the UNCCP’s protection activities had ceased. *Wabq* would therefore not be excluded from the scope of the 1951 Refugee Convention.¹⁶¹

2. United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA)¹⁶²

2.1 UNRWA's Assistance Mandate

UNRWA was established as a subsidiary organ of the General Assembly, by General Assembly Resolution 302(IV) of 8 December 1949, “to carry out...direct relief and works programmes” for Palestine refugees in a context in which the General Assembly recognized that “continued assistance for the relief of Palestine refugees [was] necessary to prevent conditions of starvation and distress among them and to further conditions of peace and stability.”

Since its inception, UNRWA has continued to provide Palestine refugees with humanitarian assistance in the form of education, health and relief and social services. During emergencies, such as the *intifadas* in the 1967-OPT, UNRWA has also provided the refugees with emergency assistance in addition to the normal services. UNRWA is also running a Microfinance and Microenterprise Programme (MMP) in the West Bank, the Gaza Strip, Jordan, and Syria. The MMP grants loans to, for example, micro- and small-scale enterprises, women's groups, workers and low-paid professionals.

UNRWA's main activities cover:

- *Education*: UNRWA operates one of the largest school systems in the Middle East, and has been the main provider of basic education to Palestine refugees for nearly five decades. The Agency provides primary and preparatory schooling free of charge for all Palestine refugee children in their areas of operation, as well as some secondary schooling in Lebanon. Vocational and technical training is provided in the eight UNRWA vocational training centers and three teacher-training faculties. The Agency also offers a limited number of university scholarships to qualified refugee youths.
- *Health*: UNRWA's health programme aims to protect, preserve and promote the health of Palestine refugees and to meet their basic health needs. Since its establishment, the Agency has been the main health-care provider for the Palestine refugee population, providing the following health services:
 - Primary health care
 - Nutrition and supplementary feeding
 - Assistance with secondary health care
 - Environmental health in refugee camps.
- *Relief and Social Services*: UNRWA aims to ensure a minimum standard of

nutrition and shelter for Palestine refugees, and the Agency's relief and social services programme supports the poorest refugee families who are unable to meet their own basic needs. The programme also facilitates longer-term social and economic development for refugees and their communities without prejudice to their rights as refugees recognized in United Nations General Assembly resolutions. Relief services include food aid, cash assistance, emergency relief, shelter rehabilitation and aid to refugee families in special hardship. Social services include poverty alleviation and community development, such as women's programme centers and community rehabilitation centers.¹⁶³

Following the 1967 Israeli-Arab conflict, the General Assembly expanded UNRWA's mandate from covering only Palestine refugees to also covering, on an emergency basis, persons who were displaced as a result of the conflict, but who were not registered with the Agency (see below).¹⁶⁴

UNRWA's responsibility in the camps is limited to providing services and administering its installations. The Agency does not own, administer or police the camps, as this is the responsibility of the host authorities. UNRWA has a service office in each camp, which the residents visit to update their records or to raise issues relating to Agency services with the Camp Services Officer (CSO). The CSO, in turn, refers refugee concerns and petitions to the UNRWA administration in the area in which the camp is located.

The General Assembly has renewed UNRWA's mandate on a three-year basis, most recently on 25 November 2004, when the current mandate was renewed until 30 June 2008.¹⁶⁵ The Commissioner-General of UNRWA submits an annual report to the General Assembly in which he or she provides information on the Agency's services, general developments in main programmes, statistical data and legal matters, in particular those relating to the Agency staff, services and premises, as well as constraints affecting Agency operations in the West Bank and the Gaza Strip. The latest report covers the period 1 July 2003–30 June 2004.¹⁶⁶ The General Assembly annually adopts several resolutions related to UNRWA.¹⁶⁷

Notwithstanding UNRWA's focus on assistance activities, its mandate has included some additional activities, at various times and in various situations when the security and human rights of the Palestine refugees were under particular threat, which may be considered as types of "protection" in the sense that through these activities the Agency aimed to secure some of the refugees' basic rights.

The first time the General Assembly called upon UNRWA to provide additional activities because the security and human rights of the Palestine refugees were

under particular threat was in 1982, following Israel's invasion of Lebanon and the Sabra and Shatila massacres.¹⁶⁸ In Resolution 37/120J of 16 December 1982, the General Assembly urged:

the Secretary-General, in consultation with the United Nations Relief and Works Agency for Palestine Refugees in the Near East, and pending a withdrawal of Israeli forces from the Palestinian and other Arab territories occupied by Israel since 1967, including Jerusalem, to undertake effective measures to guarantee the safety and security and the legal and human rights of the Palestine refugees in the occupied territories.¹⁶⁹

As a result, UNRWA undertook to monitor the security of the refugees in occupied Lebanon and issued public statements on the situation from time to time.

The first *intifada* of 1987–1993 in the West Bank and the Gaza Strip was the next occasion when the security and human rights of the Palestine refugees came under particular threat, and UNRWA was called upon to implement some additional activities by enhancing its “general assistance” capacity. The Secretary-General provided a report (Goulding Report)¹⁷⁰ to the Security Council in which he outlined four principal means by which the protection of the Palestinian people could be secured:

- physical protection;
- legal protection;
- protection by way of general assistance; and
- protection by publicity.

UNRWA was requested by the Secretary-General to enhance its “general assistance” capacity through the addition of extra international staff in the 1967-OPT.¹⁷¹ UNRWA then initiated the Refugee Affairs Officers programme (RAO) under which international staff were dispatched to monitor, report and intervene with the Israeli authorities, on the ground, if possible.¹⁷²

During the second *intifada*, UNRWA introduced an Operational Support Officers (OSO) programme to facilitate its emergency activities. International staff are hired to facilitate the delivery of humanitarian goods and secure the safe passage of Agency staff through checkpoints. While the OSO programme is not mandated or equipped to provide the refugees with protection, to the extent that it has assisted in the delivery of essential humanitarian aid to the refugees, its activities can be said to qualify as a form of protection.¹⁷³

In short, due to overlaps between some forms of assistance and protection, some

of UNRWA's general assistance activities may be considered types of protection because they relate to securing the basic rights of the refugees,¹⁷⁴ especially those carried out under the RAO Programme and those carried out during the current *intifada*, including reporting allegations of ill treatment and various other violations of humanitarian principles to the Israeli authorities.¹⁷⁵

At its core, UNRWA's mandate continues to be to provide essential humanitarian services and empower refugees through development until there is a just solution to the refugee problem.¹⁷⁶ Irrespective of UNRWA's additional role at various times and in various situations when the security and human rights of Palestinian refugees have been under particular threat (i.e., in Lebanon during the civil war and in the 1967-OPT during the *intifadas*), UNRWA's mandate does not include the full panoply of international protection which covers the gamut of activities through which refugees' rights are secured, including the implementation of durable solutions commonly afforded to refugees.

Primary responsibility for protection of the Palestinian refugees in the Agency's area of operations lies, in principle, with the Arab host governments in Lebanon, Syria and Jordan, and with the state of Israel as the occupying power in the 1967-OPT.¹⁷⁷ The task of seeking durable solutions to the problem of Palestinian refugees was initially given to the UNCCP.¹⁷⁸

2.2 UNRWA's Relation to Article 1D, 1951 Refugee Convention

A review of national policies and jurisprudence reveals a lack of clarity about UNRWA's mandate. However, authorities often reach the correct conclusions that UNRWA's main activities are the provision of humanitarian assistance, and that UNRWA is not in a position to provide effective physical protection, legal protection or protection from persecution on the grounds mentioned in Article 1A(2) of the 1951 Refugee Convention.

In Australia, for example, in the case *The Minister for Immigration & Multicultural & Indigenous Affairs v. Wabq* [2002] FCAFC 329, the three judges agreed that UNRWA had provided assistance to Palestinians, but had never provided "protection" (as referred to in Article 1D) to anyone:

Secondly, there was UNRWA which clearly provided assistance and which still provides assistance to Palestinians. UNRWA never provided protection to anyone, nor did its Charter authorize it to do so.¹⁷⁹

In Denmark, for example, asylum claims submitted by Palestinians from Lebanon

are examined as country-of-first-asylum cases, so that the essential question is whether the applicants enjoy protection in Lebanon. The Danish authorities do not assume that UNRWA is providing protection to refugees in Lebanon.

In the Netherlands, however, the authorities assume that UNRWA also has a protection mandate.¹⁸⁰ This assumption is based on the understanding that the language of Article 1D (“agencies or organs of the United Nations”) refers to UNRWA only, and no reference is made to the historical protection mandate and role of the UNCCP (see above).

2.3 UNRWA’s Beneficiaries

Following the 1948 Israeli-Arab conflict, Palestinians were declared to be refugees as a group/class on a *prima facie* basis. The United Nations did not lay down specific criteria for membership of the category of persons to be assisted by UNRWA, apart from their being persons displaced in this conflict.

In practice, UNRWA provides assistance to 1948 “Palestine refugees” and to «1967-Displaced Persons.» Internally-displaced Palestinians who lost their homes in Israel or the 1967-OPT are not currently registered with or receiving UNRWA’s general services, although some may be receiving emergency assistance pursuant to the directives in the General Assembly resolutions relating to persons displaced by the 1967 and subsequent hostilities.¹⁸¹

Palestine refugees

This group encompasses Palestinians who fulfil the following criteria:

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 (UNRWA Consolidated Eligibility and Registration Instructions).¹⁸²

This definition was implicitly approved by the General Assembly. It has been spelled out in successive UNRWA annual reports submitted to the General Assembly, and the General Assembly has renewed the Agency’s mandate on this basis.¹⁸³ UNRWA has explained the terms used in this definition:

- “Palestine” refers to the territory that is currently the state of Israel according to the formal 1949 cease-fire lines.¹⁸⁴

- “normal place of residence” indicates that the refugees were residing in that territory for the indicated two-year period immediately preceding 15 May 1948.¹⁸⁵
- “who lost both home and means of livelihood” indicates that applicants should show loss of both to be considered genuine Palestine refugees. Those who lost their livelihoods, but not their homes were not allowed to register as refugees.¹⁸⁶
- The language “as a result of the 1948 conflict” is meant to include not only Palestinians who left after 15 May 1948, but also Palestinians who: a) left Palestine before 1948, i.e., after the United Nations Partition Resolution 181(II); b) who became refugees up until June 1952 when UNRWA completed its census; and c) were temporarily outside Palestine for some reason (e.g., for work, trade, study or medical treatment), and were unable to return to Palestine as a result of the 1948 conflict.¹⁸⁷

1967 and later displaced persons

Following the 1967 Israeli-Arab conflict, the General Assembly urged UNRWA to provide assistance to Palestinians who were displaced as a result of that conflict, including both Palestine refugees, i.e., those fleeing for the second time, and other persons. In UNGAR 2252 (4 July 1967),¹⁸⁸ UNRWA was asked:

[T]o provide humanitarian assistance, as far as practicable, on an emergency basis and as a temporary measure, to other persons who are at present displaced and are in serious need of immediate assistance as a result of the recent hostilities.

The General Assembly has on an annual basis extended UNRWA’s mandate along the above lines.¹⁸⁹ In its resolutions, the General Assembly has repeatedly called for the return of those displaced as a result of the June 1967 and subsequent hostilities.¹⁹⁰

The group of Palestinians falling under UNGAR 2252 is composed of:

- a) 1948 Palestine refugees who fled eastern Jerusalem, the West Bank and the Gaza Strip during and after the 1967 Israeli-Arab conflict and who took refuge in Jordan (East Bank) or in Lebanon and Syria – i.e., Palestinians who became refugees in 1948 and in 1967 fled for the second time;
- b) Palestinian residents of eastern Jerusalem, the West Bank or the Gaza Strip who fled to Jordan (East Bank), or in few cases to Lebanon or Syria, for the first time in 1967;
- c) Palestinian refugees in southern Syria who were displaced for a second time when Israeli forces occupied the Golan Heights and the Quneitra area in 1967.

In 1967, the first group comprised of a total of 177,500 persons, with the vast majority fleeing the West Bank (162,500).¹⁹¹ They are assisted by UNRWA in the same way as other 1948 refugees. Of these, some 23,930 have returned to the West Bank or Gaza Strip since June 1967.¹⁹² The second group comprised approximately 240,000 Palestinians in 1967.¹⁹³ A small number of them live in refugee camps where UNRWA provides assistance. The third group included some 115,000 Palestinians.¹⁹⁴ Today the total number of first-time 1967 Palestinian refugees is approximately 780,000.¹⁹⁵

UNRWA did not maintain records of those Palestinians who fled for the first time in 1967.¹⁹⁶ The records of 1948 Palestinian refugees already formally registered with UNRWA before 1967 were integrated into the UNRWA database in the areas to which they fled in 1967, mainly Jordan (ninety-five per cent of the displaced persons).

The 1967-displaced persons who came from the West Bank were considered and registered by the Jordanian authorities as “internally-displaced” persons. Those who came to Jordan from the Gaza Strip, however, were not registered and treated as such. Since 1967, UNRWA and the Jordanian authorities have shared responsibility for the 1967-displaced persons from the Gaza Strip, with UNRWA providing assistance to displaced persons living in refugee camps.

2.4 UNRWA’s Registration System

Who is Eligible for Registration?

UNRWA maintains records of 1948 Palestine refugees. UNRWA has not registered Palestinians who became refugees for the first time in 1967.

In contravention of UN standards of gender equality,¹⁹⁷ UNRWA registers and provides assistance to descendants of male Palestine refugees only. Children born to female Palestine refugees married to non-refugee husbands are thus not registered with UNRWA.¹⁹⁸ UNRWA justifies this policy by arguing that in host countries, children take the nationality of their fathers, and that it has thus followed the practice of the host authorities. UNRWA has, however, recognized that the continued application of its registration rules is unfair and unfounded, and that discrimination of females married to non-refugees, as opposed to males married to non-refugees, is unjustified. UNRWA has therefore decided to review these procedures with a view to enabling descendants of female refugees married to non-refugees to register with UNRWA.¹⁹⁹

The overwhelming majority of 1948 Palestine refugees and their descendants are registered with UNRWA (4.23 million as of 31 December 2004). Most of UNRWA-registered refugees reside in UNRWA’s area of operations. Some have left and taken

up residence elsewhere, but continue to be registered with UNRWA. The Agency does not keep records of refugee movements and thus has no information about the number of registered refugees who have moved outside its area of operations.

Registration with UNRWA was, and continues to be, voluntary, and some 1.6 million 1948 Palestine refugees have never registered with the Agency. According to UNRWA, there is a relatively high number of non-registered refugees in Jordan for two reasons: a) Palestine refugees in Jordan are less dependent on UNRWA services because they have access to public education and health services based on their Jordanian citizenship; and, b) some Palestinians live in parts of Jordan where UNRWA installations and services are not available. There are few non-registered refugees in other areas of UNRWA operations.

Since 1993, UNRWA has accepted registration of previously unregistered refugees if they fulfil the criteria for registration as 1948 Palestine refugees; submit the application for registration in person to the Agency in any of its five fields; and are approved for registration by the Commissioner-General whose authority is currently delegated to the Director of Relief and Social Services.²⁰⁰ At least three reasons may motivate Palestinians to seek registration with UNRWA: a) need of UNRWA's assistance, for example during an emergency; b) need of travel documents which can only be obtained based on registration with UNRWA (e.g., in Lebanon); and c) expectation of a settlement of the Israeli-Arab conflict after the conclusion of the Oslo Accords. Since 1993, approximately 10,972 Palestinians have registered for the first time with UNRWA.²⁰¹

1948 unregistered Palestinian refugees who have never lived in UNRWA's area of operations may choose to be registered with UNRWA if they fulfil the definition of a «Palestine refugee». It is UNRWA's practice to ascertain that refugees applying for new registration are legally residing in the country where they wish to be registered. This is in order to avoid conflict with the host governments.²⁰²

Verification of UNRWA Registration

Registration with UNRWA will assist national authorities in determining whether or not an individual is a Palestinian refugee falling within the scope of Article 1D. Lack of registration with UNRWA, however, does not necessarily mean that the person does not fall within the scope of Article 1D, given that some Palestinian refugees who fall within the scope of Article 1D are not registered with the Agency, i.e., Palestine refugees who have never registered with the Agency and 1967-Displaced Persons who fled for the first time in 1967. The question of whether a Palestinian seeking asylum under the 1951 Refugee Convention is registered with UNRWA must be determined on a case-to-case basis.

Palestine refugees registered with UNRWA are provided with a family registration card composed of an eight-digit number (registration number).

Registration cards are issued to each family. The card includes information on the registered family and its members as follows:

- Family particulars: name of the head of family (first name, father’s name, grandfather’s name and family name), nationality of origin, religion, district of origin in Palestine and UNRWA field, area and district of residence, and whether in-camp or out-of-camp resident;²⁰³
- Individual particulars: first name, sex, date of birth, marital status and relationship to the head of the family.²⁰⁴

Every refugee has a unique number on the card. If the family is also registered as experiencing “Special Hardship”, this will be indicated on the card.

Refugees are provided with the original registration cards. UNRWA does not have copies of the registration cards, but the information contained on them is stored in UNRWA’s databank at headquarters, as well as in the respective field offices, which also keep family files with more detailed information. UNRWA does not have individual photos of the refugees and no photo is attached to the registration cards.

In addition, the General Assembly requested in Resolution 37/120I of 16 December 1982 that the Secretary-General, in co-operation with UNRWA, issue identification cards to the refugees and their descendants, irrespective of whether or not they were

UNRWA Registration Card

UNHWA		REGISTRATION CARD				بطاقة تسجيل - وكالة العون الدولية							
REGISTRATION No	EX-CODE	AREA	RESIDENTIAL CENTRE	DATE OF ISSUE									
11167511	123456	ANNAN SOUTH	AM TOWN SOUTH	11/93									
ORIGIN	PERSONS	HEAD OF FAMILY & FAMILY NAMES			SHC DATE	NATIONALITY							
31193	7	NADER MOHD A AHMAD				PAL							
NO.	FIRST NAME	SEX	RELAT	DOB	M CODE	DATE	NO.	FIRST NAME	SEX	RELAT	DOB	M CODE	DATE
01	NADER	M	MHF	0662	97	1285							
02	HUDA	F	MWI	1068	97	1285							
03	AHMAD	M	BSO	0581	01	1286							
04	MALEK	M	BSO	0692	01	0793							
05	IRAN	F	DDA	1087	01	1193							
06	MOHD	M	BSO	0689	01	1193							
07	ANAS	M	BSO	1290	01	1193							

Source: UNRWA

recipients of rations and services from the Agency, as well as to all displaced persons and those who were prevented from returning to their homes as a result of the 1967 hostilities, and their descendants. UNRWA has so far been unable to carry out this activity due to lack of co-operation from the countries in which the refugees have taken up residence over the years. UNRWA is, however, now considering the possibility of issuing individual registration cards to all refugees registered with the Agency. Each refugee would then be issued a unique (lifetime) identification number. This would enable UNRWA to track individual refugees more easily, better identify who is actually living in its areas of operation, gather and verify addresses, and provide a card that could serve as verification of registration with UNRWA.

If authorities or refugee lawyers wish to verify whether a Palestinian asylum-seeker is registered with UNRWA, they can seek such verification from the Department of Relief and Social Services at UNRWA's headquarters in Amman (see contact address at the end of this chapter). Such a request should include the following information:

- Full name (first name, father's and grandfather's first names and family names)
- Date of birth
- Mother's name
- Place of origin in Palestine
- When did her/his original family leave Palestine in 1948, and to where did they go?
- Is she/he or her/his father or grandfather registered with UNRWA?
- Does/did she/he have paternal relatives living in the UNRWA field in which the person concerned is supposed to have been registered? If so, what are their names and present address/es?
- Does she/he have any document issued by UNRWA, such as a registration card, school certificates, or other?
- Does/did s/he or her/his family receive services (rations, education or health services) from UNRWA? If so, from which UNRWA center?

Once UNRWA receives a request for verification of refugee status, it will first check its files at UNRWA's headquarters and then, if necessary, the files in the field office where the individual is supposed to be registered.

Upon verification of refugee status, UNRWA will inform the authority or refugee lawyer as to whether there is a UNRWA registration for a person with the name and background of the asylum-seeker. UNRWA cannot, however, verify that the person who is applying for refugee status is, indeed, the person with the name on the registration card in question. In other words, UNRWA cannot verify a person's identification on the basis of, for example, a photograph.²⁰⁵

3. The United Nations High Commissioner for Refugees (UNHCR)²⁰⁶

3.1 UNHCR Protection Mandate and Activities

UNHCR has a mandate to provide international protection to refugees worldwide, and to search for durable solutions, in keeping with the humanitarian nature of its mandate. Under its Statute and subsequent General Assembly and ECOSOC resolutions, and in conjunction with the 1951 Refugee Convention, UNHCR's responsibilities relate primarily to several groups of people known collectively as "persons of concern to UNHCR." These generally include refugees and asylum-seekers, returnees, stateless persons, and under certain conditions, internally-displaced persons.²⁰⁷ Under UNHCR's mandate, a refugee is any person who is outside his or her country of origin or habitual residence and is unable or unwilling to return there owing to:

- a well-founded fear of persecution for one of the reasons set out in the 1951 Refugee Convention;
- serious and indiscriminate threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order.

Of particular relevance to the case of Palestinian refugees are paragraph 7(c) of UNHCR's Statute and Article 1D of the 1951 Refugee Convention. The former provides that the competence of the High Commissioner for Refugees shall not apply to a person "who continues to receive from other organs or agencies of the United Nations protection or assistance"²⁰⁸ and the first paragraph of Article 1D of the 1951 Refugee Convention reads along similar lines. As indicated by the second paragraph of Article 1D, however, Palestinian refugees falling within the scope of Article 1D do come within the competence of UNHCR when "protection or assistance from other organs or agencies of the United Nations has ceased for any reason, without the position of the refugees being definitively settled in accordance with relevant resolutions of the UN General Assembly."²⁰⁹

3.2 UNHCR's Relation to Article 1D

UNHCR has interpreted the above provisions to mean that: a) Palestinian refugees receiving or entitled to receive assistance from UNRWA and who are inside UNRWA's area of operations fall outside the mandate of UNHCR; and b) UNHCR does not have a mandate to provide international protection and to search for durable solutions for *all* Palestinian refugees who fall within the

scope of Article 1D, but only for those that fall within its mandate, i.e., those who fulfil the following criteria:

1. they live outside UNRWA's area of operations;
2. they do not fall within the Article 1C (cessation clauses of the 1951 Convention),²¹⁰ and
3. they do not fall within the scope of the exclusion clauses contained in Article 1E or Article 1F.²¹¹

With regard to the above, UNHCR is mandated to carry out activities as outlined in its Statute in order to ensure that the refugees receive the protection to which they are entitled under international law. These activities may include:

- promoting, through special agreements with governments, the execution of any measures calculated to improve the situation of the refugees and to reduce the number requiring protection; and
- assisting governmental and private efforts to promote voluntary repatriation or assimilation of refugees within new national communities.²¹²

3.3 UNHCR Protection Activities vis-à-vis Palestinian Refugees living outside UNRWA's area of operations

UNHCR has carried out various activities in order to improve the protection of Palestinians living outside UNRWA's area of operations, including:

- intervention in asylum cases;
- issuing, in October 2002, a Note on the Applicability of Article 1D to Palestinian refugees (see Appendix 7);
- efforts to assist and protect the Palestinian refugees and others in Iraq following the war in the spring of 2003, including legal protection through registration;
- joint action with UNRWA to protect Palestinian refugees who were forced out of Libya in 1995;
- joint action with UNRWA to assist and protect Palestinians forced out of Kuwait in 1990–91;
- joint action with UNRWA to assist Palestinians from Lebanon who were living outside the country to renew their travel documents (1980s);
- organizing seminars on the situation of Palestinian refugees; and,
- meetings with UNRWA.²¹³

While UNHCR has offices in Jordan, Lebanon and Syria, UNHCR does not consider Palestinians living inside UNRWA's area of operations to be persons of concern.

Conclusion

Palestinian refugees are distinct from other refugees by their being entitled to protection and assistance from three United Nations organizations: UNCCP, UNRWA and UNHCR. Since the demise of UNCCP some 40 years ago, however, only two UN agencies (UNRWA and UNHCR) have been providing Palestinian refugees with protection and assistance. The mandates of UNRWA and UNHCR have been geographically separated, so that Palestinian refugees fall under UNRWA's mandate when living in UNRWA's area of operations and under UNHCR's mandate when living in countries outside that area.

Based on the fact that UNRWA lacks a specific protection mandate, however, the geographic division of protection efforts among UNRWA and UNCHR results in a protection gap for Palestinian refugees living in UNRWA's area of operations (see Chapter One). Moreover, the question of which international agency is responsible for the search for durable solutions for *all* Palestinian refugees remains unresolved. These questions, however, while being matters of ongoing concern and debate among Palestinian refugees, UN agencies and academia, are beyond the scope of this Handbook and will not be further addressed here.²¹⁴

Regarding Palestinian asylum claims in states that are signatory to the 1951 Refugee Convention, the brief review presented in this chapter on the history and mandates of UN agencies composing the special protection regime for Palestinian refugees draws attention to two major issues:

- UNRWA continues to hold an assistance mandate and cannot provide the full panoply of international protection which covers the gamut of activities through which refugees' rights are secured to Palestinian refugees in Arab host states, nor in the 1967-OPT.
- While registration with UNRWA can serve as an indicator of refugee status under Article 1D, such registration does not imply that the person enjoys protection in her or his first Arab country of refuge.

National authorities and refugee lawyers who are seeking to verify whether a Palestinian asylum-seeker is registered with UNRWA should contact:

UNRWA Headquarters
Relief and Social Services Department
P.O. Box 140157
Amman 11814
JORDAN

Telephone: + 962 6 580 8460

Facsimile: + 962 6 580 8479

Email: b.kuttab@unrwa.org

Note that UNRWA requires proof of consent by the asylum-seeker concerned before personal data, including registration status, will be released. It will be presumed that official government offices and representatives at UN agencies will have obtained such consent and will keep appropriate proof thereof in their files. Enquiries from private parties, including attorneys representing asylum-seekers, should be accompanied by a certificate signed by the client indicating consent to the release of information pertaining to them.

National authorities and refugee lawyers who seek clarification about UNRWA's assistance mandate may contact:

UNRWA Headquarters
Department of Legal Affairs Gaza
P.O. Box 140157
Amman 11814
JORDAN

Telephone: + 972 8 677 7711 or 7712

Facsimile: + 972 8 677 7696

Email: s.custer@unrwa.org or l.bartholomeusz@unrwa.org

Endnotes

- ¹³¹ This section is based on Terry Rempel, *The United Nations Conciliation Commission for Palestine, Protection, and Durable Solution for Palestinian Refugees*, Information and Discussion Brief No. 5. Bethlehem: BADIL Resource Center for Palestinian Residency and Refugee Rights. Available at <http://www.badil.org>. The Brief provides a historical overview of the work of the Commission and a critical analysis of the failure of UNCCP to provide international protection and facilitate a durable solution for Palestinian refugees.
- ¹³² See *Progress Report of the United Nations Mediator on Palestine submitted to the Secretary General for Transition to the Members of the United Nations*. United Nations General Assembly Official Records, third session, Suppl. No. 11, UN Doc. A/648, 16 September 1948.
- ¹³³ Para. 6 of United Nations General Resolution 194(III).
- ¹³⁴ Para. 8, *ibid*.
- ¹³⁵ Para. 10, *ibid*.
- ¹³⁶ Para. 11, *ibid*. See Chapter One for further details on the legal principles of return, restitution and compensation.
- ¹³⁷ Para. 11 *ibid*.
- ¹³⁸ See United Nations General Assembly Resolution 394(V), 14 December 1950, United Nations General Assembly Official Records, UN Doc. A/AC.25/W.82/Rev.1 (1951).
- ¹³⁹ See Susan Akram and Guy Goodwin-Gill, "Brief Amicus Curiae" submitted to the United States Department of Justice Executive Office for Immigration Review, Board of Immigration Appeals, Falls Church, Virginia, 1999 (Brief Amicus Curiae). See also Rempel, *The United Nations Conciliation Commission for Palestine, Protection, and Durable Solution for Palestinian Refugees*.
- ¹⁴⁰ At the time, these included the following laws: Abandoned Areas Ordinance (1948); Emergency Regulations Concerning Absentee Property (1948); Emergency Regulations (Security Zones) (1949); Emergency Regulations (Cultivation of Waste [Uncultivated] Lands) (1949); Absentees' Property Law (1950); Development Authority (Transfer of Property) Law (1950).
- ¹⁴¹ In total, more than 500 Palestinian villages were depopulated and destroyed, a land base of more than 17,000km². This included vast areas in the southern Naqab (Negev) region held under traditional or customary ownership by nomadic Bedouin. For a register of villages depopulated during this period, see Salman Abu Sitta, *The Palestinian Nakba 1948, Register, The Register of Depopulated Localities in Palestine*. London: Palestinian Return Centre, 2001. An estimated two-thirds of Palestinian homes inside the new state of Israel were destroyed. Terry Rempel, "Housing and Property Restitution: The Palestinian Refugee Case," in *Returning Home: Housing and Property Restitution Rights of Refugees and Displaced Persons*. Scott Leckie (ed.). New York: Transnational Publishers, 2003, p. 296.
- ¹⁴² For a detailed review of UNCCP's activities and procedures related to property, see Michael Fischbach, *Records of Dispossession, Palestinian Refugee Property and the Israeli-Arab Conflict*. New York: Columbia University Press, 2003. Also see Sami Hadawi, *Palestinian Rights and Losses in 1948, A Comprehensive Study*. London: Saqi Books, 1988.
- ¹⁴³ See UNCCP, *Working Paper Prepared by the Commission's Land Expert on the Methods and Techniques of Identification and Valuation of Arab Refugee Immovable Property Holdings in Israel*. UN Doc. A/AC.25/W.84, 28 April 1964. For analysis of these records, see Fischbach, *Records of Dispossession* and Hadawi, *Palestinian Rights and Losses in 1948*. Estimates of the value of these properties as of 1998 range from US\$23–150 billion. See BADIL 2003 *Survey of Palestinian Refugees and Internally Displaced Persons*, Table 6.2, Estimates of Palestinian Refugee Losses in 1948, p. 162.
- ¹⁴⁴ UNCCP, *Historical Survey of Efforts of the United Nations Conciliation Commission for Palestine to Secure the Implementation of Paragraph 11 of General Assembly Resolution 194 (III), The Question of Reintegration by Repatriation or Resettlement*. (Working paper prepared by the Secretariat). UN Doc. A/AC.25/W.82/Rev.1, 2 October 1961, para. 31.

¹⁴⁵ UNCCP, *Fourth Progress Report (For the period 9 June to 15 September 1949 inclusive)*, 22 September 1949, Annex I.

¹⁴⁶ UNCCP, *Progress Report of the United Nations Conciliation Commission for Palestine*, UN Doc. A/1985, 20 November 1951. In response to the impasse, the United Nations General Assembly passed a series of measures beginning in 1951 that effectively terminated the UNCCP's role of implementing the durable solution of return and curtailed its role as intervener with Israel (or other states) to protect refugees' rights and interests. See Susan A. Akram, "Palestinian Refugees and Their Legal Status: Rights, Politics, and Implications for a Just Solution," *Journal of Palestine Studies*, Vol. XXXI, No. 3 (Spring 2002), pp. 36-51.

¹⁴⁷ See United Nations General Assembly Resolution 394(V), 14 December 1950.

¹⁴⁸ See, for example, UNCCP, *Report of the United Nations Conciliation Commission for Palestine*, UN Doc. A/59/260, 31 August 2004: "In paragraph 2 of its resolution 58/91, the General Assembly requested the United Nations Conciliation Commission for Palestine to report to the Assembly as appropriate but no later than 1 September 2004. The Commission notes its report of 31 August 2003 (A/58/256, annex) and observes that it has nothing new to report since the submission of that report."

¹⁴⁹ United Nations General Assembly Official Records, fifth session, third comm., 326th meeting on 24 November 1950, para. 48. UN Doc.

¹⁵⁰ Most academics have not referred to the UNCCP in their interpretation of Article 1D; James C. Hathaway, *The Law of Refugee Status*. Toronto: Butterworths, 1991, pp. 205-209; Atle Grahl-Madsen, *The Status of Refugees in International Law*, Leyden: A.W. Sijthoff, 1966, p. 140: "At the time when the 1951 Refugee Convention was signed there were two 'organs or agencies' of the United Nations other than the United Nations High Commissioner for Refugees' which were providing assistance and/or protection for international refugees, namely the International Refugee Organization (IRO) and the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA); and it was these 'organs or agencies' which the drafters of the Convention had in mind." See also Takkenberg, *The Status of Palestinian Refugees in International Law*, p. 24ff: although early UNCCP protection activities are mentioned, these are not reflected in his interpretation of Article 1D: "As to the first question, the words 'such protection or assistance' obviously refer to the 'protection or assistance' envisaged in the first sentence of article 1D. It has become clear, however, that the words 'protection or assistance' in the first sentence do not refer to the actual receipt of protection or assistance, but rather to falling under the mandate of a specialized UN agency, UNRWA. What does this imply for the interpretation of the words 'protection or assistance' in the second sentence of Article 1D? The relevance for Palestinian refugees of falling under the mandate of UNRWA is that these persons accordingly have the possibility of receiving 'protection or assistance' from UNRWA if so required, irrespective of whether they actually do so. The conclusion in respect of the first question is, therefore, that the words 'such protection or assistance' refer to the possibility of receiving the services of UNRWA." Guy Goodwin-Gill, on the other hand, has referred to UNCCP's protection mandate: see *The Refugee In International Law*, p. 221: "At the time, both protection and assistance for Palestinian refugees fell within institutional arrangements that included UNCCP and UNRWA"; and p. 91: "This exclusion [Article 1D, first paragraph] also had a functional aspect and served to delimit the respective areas of responsibility of UNHCR, the UNRWA, and the United Nations Conciliation Commission for Palestine (UNCCP)." The consequences of UNCCP's collapse for Guy Goodwin-Gill's interpretation of Article 1D are unclear. See p. 92: "Palestinian refugees who leave UNRWA's area of operations, being without protection and no longer in receipt of assistance, would seem to fall by that fact alone within the Convention, whether or not they qualify independently as refugees with a well-founded fear of persecution." See Chapter Three for an alternative interpretation of Article 1D by Susan Akram, which includes recognition of UNCCP's protection mandate and of the fact that UNCCP no longer provides Palestinian refugees with protection.

¹⁵¹ Para. 23 of the judgment.

- ¹⁵² Para. 27, *ibid.*
- ¹⁵³ Para. 69(4), *ibid.*
- ¹⁵⁴ Para. 69(4), *ibid.*
- ¹⁵⁵ Para. 108, *ibid.*
- ¹⁵⁶ Para. 143, *ibid.*
- ¹⁵⁷ Para. 155, *ibid.*
- ¹⁵⁸ Para. 161, *ibid.*
- ¹⁵⁹ Para. 168, *ibid.* The documentation that Judge Tamberlin referred to was the *Progress Report of the United Nations Conciliation Commission for Palestine*, UN Doc. A/1985, 20 November 1951.
- ¹⁶⁰ Para. 146, *ibid.*
- ¹⁶¹ Para. 7, *ibid.* For more on this case, see Chapter 5, Country Profile Australia.
- ¹⁶² Thanks to UNRWA HQ for providing useful information and comments on this section.
- ¹⁶³ UNRWA's assistance activities are described in detail on UNRWA's website and in UNRWA's annual reports. See: <http://www.unrwa.org>. See also the *BADIL 2003 Survey of Palestinian Refugees and Internally Displaced Persons* (Chapter Five).
- ¹⁶⁴ United Nations General Assembly Resolution 2252 (ES-V) of 4 July 1967, para. 6.
- ¹⁶⁵ United Nations General Assembly Resolution 59/117 Assistance to Palestine Refugees, UN Doc. A/RES/59/117, 15 December 2004.
- ¹⁶⁶ UNRWA, *Report of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, 1 July 2003-30 June 2004, United Nations General Assembly Official Records, Fifty-ninth session, Suppl. No. 13, UN Doc. A/59/13, 19 October 2004 (2003 Annual Report). Available at: <http://www.un.org/unrwa/publications/index.html>.
- ¹⁶⁷ During the General Assembly's meeting in late 2004, the following Resolutions related to UNRWA were adopted: Resolution 59/117 Assistance to Palestine Refugees, UN Doc. A/RES/59/117, 15 December 2004 (in which the General Assembly expressed "grave concern at the especially difficult situation of the Palestine refugees under occupation, including with regard to their safety, well-being and living conditions, and the continuous deterioration of those conditions during the recent period"); Resolution 59/118 Persons displaced as a result of the June 1967 and subsequent hostilities, UN Doc. A/RES/59/118, 15 December 2004; Resolution 59/119 Operations of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, UN Doc. A/Res/59/119, 15 December 2004; and Resolution 59/120 Palestine refugees' properties and their revenues, UN Doc. A/RES/59/120, 15 December 2004.
- ¹⁶⁸ On 17 September 1982, hundreds of Palestinian civilians, including women and children, were massacred in the refugee camps of Sabra and Shatila by Lebanese Christian militias who had entered West Beirut with the help of Israeli forces.
- ¹⁶⁹ See Harish Parvathaneni, *UNRWA's Role in Protecting Palestine Refugees*, Working Paper No. 9. Bethlehem: BADIL Resource Center for Palestinian Residency & Refugee Rights, December 2004. See: <http://www.badil.org>.
- ¹⁷⁰ *Report submitted to the Security Council by the Secretary-General in accordance with Resolution 605 (1987)* (Goulding Report). UN Doc. S/19443, para. 28.
- ¹⁷¹ The United Nations Secretary-General noted with regard to the type of protection described as "general assistance" (para. 37 of the Goulding Report): "I now come to the type of protection described as general assistance in paragraph 28 above. Various agencies are already active in this field. As far as the registered refugees are concerned, UNRWA has the leading role and provides a wide variety of assistance and protection (in addition, of course, to its main function of providing education, health and relief services); in the Gaza Strip, in particular, it provides indispensable support to the refugees in their day-to-day efforts to cope with living under occupation." The Secretary-General noted with regard to the type of protection described as "legal protection:" "Protection" can mean legal protection, i.e., intervention with the security and judicial authorities, as well as the political instances, of the occupying Power, by an outside agency, in order to ensure just treatment of an individual or group of individuals" (para. 28

of the Goulding Report). The Secretary-General noted that “a measure of legal protection is nevertheless provided to the population of the occupied territories by ICRC” (para. 34 of the Goulding Report).

¹⁷² The activities under the RAO programme are described in UNRWA's annual reports for the period. See, for example, UNRWA, *The Report of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, 1 July 1987 – 30 June 1988, United Nations General Assembly Official Records, forty-third session, Suppl. No. 13, UN Doc. A/43/13, 16 September 1988, para. 52 (1988 Annual Report). “UNRWA has sought to provide a greater measure of general assistance or protection to registered refugees. In the current situation, the presence of UNRWA international staff has served to support and reassure staff in the performance of their duties under very difficult circumstances. At times Agency officials have also been able to ease tense situations and prevent ill treatment or injury to refugees and damage to their homes. UNRWA has noted physical ill treatment of refugees and the destruction of their property, the stealing and demolition of houses, instances of intimidation, deportation and the application of collective punishment.” See also UNRWA, *The Report of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, 1 July 1990 – 30 June 1991, United Nations General Assembly Official Records, forty-sixth session, Suppl. No. 13, UN Doc. A/46/13, 9 October 1991, para. 99 (1991 Annual Report): “UNRWA continued in its efforts to provide humanitarian assistance and protection to Palestinians in the occupied territory. International staff played an important role in this regard, attempting to secure, at points of confrontation and by intervention with the Israeli authorities where appropriate, the safety and security and the legal and human rights of the refugees and helping them to cope with the day-to-day difficulties of life under occupation. In addition to the other measures of assistance provided to needy refugees detailed elsewhere in the present report, UNRWA provided financial support to those seeking legal representation.”

¹⁷³ In the UNRWA, *Report of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, 1 July 2003 – 30 June 2004, the OSO programme was described as follows (para. 169): “The Operations Support Officer programme has continued ... with a complement of 10 international staff members in the West Bank and 4 in the Gaza Strip. The programme is designed to reinforce the Agency's existing operations in its core areas of relief and social services, health and education and to help deal with the increasingly severe access restrictions being imposed on these operations by the Israeli authorities. The programme played an invaluable role during the reporting period in facilitating access of staff members and UNRWA vehicles, including ambulances and humanitarian convoys, through checkpoints in the West Bank and into closed areas and other areas affected by ongoing IDF military operations in the Gaza Strip, in reporting on the developing humanitarian crisis among the Palestinian population to which UNRWA provides assistance and in ensuring that the Agency is able to carry out regular monitoring and inspection of UNRWA installations to confirm that they are not being used for any unauthorized or improper purposes. In the West Bank, the programme has also focused on monitoring the humanitarian impact of the wall/fence, concentrating on key issues such as access, health, education and socio-economic factors, especially with regard to refugee populations caught within the seam zone or enclosed areas. In the Gaza Strip, the programme has successfully supported Agency operations and improved the access of Agency vehicles and staff into closed areas, where Agency operations have otherwise been seriously disrupted. Through their presence, international staff assigned as Operations Support Officers have been able to provide a measure of general assistance and passive protection for Agency local staff when accessing sensitive or closed areas and occasionally to the inhabitants of those areas.”

¹⁷⁴ Note, for example, that some of UNRWA's main assistance activities also aim at securing some of the refugees' basic rights, including the right to education (Article 22 of the 1951 Refugee Convention) and the right to housing (Article 21 of the 1951 Refugee Convention). For more on

- UNRWA's mandate, see Parvathaneni, *UNRWA's Role in Protecting Palestine Refugees*.
- ¹⁷⁵ See, for example, "10-Year Old Girl Hit in UNRWA Classroom by Israeli Gunfire," UNRWA *Press Release*, 7 September 2004. The press release stated that: "In the third such incident in 18 months, a child sitting in the classroom of a UN-flagged school has been struck in the head by gunfire from an Israeli position in the Gaza Strip ... UNRWA's Commissioner-General Peter Hansen said: "The kind of live firing into refugee camps that is so indiscriminate that it makes classrooms dangerous for 10-year old children is totally unacceptable. UNRWA will protest this violation of the sanctity of its school in the strongest possible terms to the Israeli authorities." Available at: <http://www.un.org/unrwa/news/releases/pr-2004/hqg25-04.pdf>. See also "10-Year Old Child Killed in UNRWA School in Gaza," UNRWA *Press Release*, 31 January 2005. Available at: <http://www.un.org/unrwa/news/releases/pr-2005/hqg01-05.pdf>.
- ¹⁷⁶ On the evolution of UNRWA's mandate, see also Peter Hansen, Commissioner-General statement, "From Humanitarian Crisis to Human Development, the Evolution of UNRWA's Mandate to the Palestine Refugees," delivered at the American University of Cairo, 21 September 2003. Available at: <http://www.un.org/unrwa/news/statements/auc-sep03.pdf>.
- ¹⁷⁷ With regard to protection in the 1967-OPT, the Norwegian authorities, for example, have concluded that the Palestinian Authority is unable to protect Palestinians living in that area. Palestinians registered with UNRWA in the West Bank and Gaza Strip are therefore entitled to recognition of refugee status under Article 1(D). See further Chapter Five, Country Profile Norway.
- ¹⁷⁸ For more details on international protection of Palestinian refugees living within UNRWA's area of operations, see *BADIL 2003 Survey of Palestinian Refugees and Internally Displaced Persons*, Chapter Five, pp. 116-145.
- ¹⁷⁹ See p. 23 of *Wabq* decision.
- ¹⁸⁰ See Chapter Five, Country Profile Netherlands, with reference to the Court of Appeal's decision of 2 April 2003, No.AWB/03/17365. The Court concluded that the authorities should assess the availability of protection by UNRWA: "[T]he defendant [the State] cannot simply point to the fact that UNRWA was created in order to protect the Palestinians... [I]ts significance can only be taken into consideration if it is known what UNRWA is able to do to protect Palestinians. [...] The Court, however, is unable to discern from the decision, which is the subject of the appeal, what significance has been accorded to UNRWA's role, or how this organization has contributed to the security of Palestinians in the occupied territories."
- ¹⁸¹ See *Interim Report of the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, United Nations General Assembly Records, fifth session, Suppl. No. 19, UN Doc. A/1451/Rev. 1, 6 October 1950, para. 30. See also *Report of the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, United Nations General Assembly Official Records, sixth session, Suppl. No. 16, UN Doc. A/1905, 28 September 1951; and, *Annual Report of the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, 1 July 1951 – 30 June 1953, United Nations General Assembly Official Records, eighth session, Suppl. No. 12, UN Doc. A/2470, 30 June 1953. For a detailed review of IDPs inside Israel, see Hillel Cohen, *The Present Absentees: Palestinian Refugees in Israel Since 1948*. [Hebrew] Jerusalem: Israel Institute of Arab Studies, 2000. There is no international agency with an explicit mandate to provide protection and assistance to IDPs in the 1967-OPT. For an overview of this group of IDPs, see Rempel, *Internally Displaced Palestinians, International Protection and Durable Solutions*.
- ¹⁸² See UNRWA, Consolidated Eligibility and Registration Instructions, p. 4. See Appendix 6.
- ¹⁸³ See UNRWA document, UNRWA, a Brief History, 1950–1982: "This UNRWA definition, which was developed for internal working purposes, has been tacitly accepted but not formally approved by the General Assembly. It is solely for the determination of eligibility for UNRWA assistance."
- ¹⁸⁴ UNRWA, Consolidated Eligibility and Registration Instructions, point 3.12, p. 4. BADIL has been

informed by UNRWA that this definition, which first appeared in the Instructions in January 2002, was incorrect and not in accord with UNRWA's consistent practice, which had been to interpret the term "Palestine" to mean all of what had been Mandate Palestine under pre-1948 British Mandate. The Instructions are being revised to correct this definition as this Handbook goes to press.

¹⁸⁵ UNRWA Consolidated Eligibility and Registration Instructions, p. 4.

¹⁸⁶ However, some Palestinians who were living on the borders of the part of Palestine that became Israel and lost their livelihood, but not their homes, because they used to own land or work in that area were registered with the Agency because they were in need of assistance. These people are referred to as "Frontier villagers, Poor Gaza, Poor Jerusalem and compromise cases in Lebanon." See UNRWA Consolidated Eligibility and Registration Instructions, footnote 2, p. 4. Today, these Palestinians are still registered with UNRWA, although they are not refugees. According to UNRWA, in 2003, the numbers of these Palestinians and their descendants were as follows: Frontier villagers (55,299), Jerusalem Poor (7,821), Gaza Poor (7,821) and compromise cases in Lebanon (2,179).

¹⁸⁷ See UNRWA Consolidated Eligibility and Registration Instructions, p. 4. This definition excludes Palestinians who emigrated and took up permanent residence in other countries prior to the start of the 1948 conflict.

¹⁸⁸ United Nations General Assembly Resolution 2252(ES-V), 4 July 1967, para. 6.

¹⁸⁹ See, for example, General Assembly Resolution, UN Doc A/Res/59/118, 15 December 2004. "Endorses, in the meanwhile, the efforts of the Commissioner-General of the United Nations Relief and Work Agency for Palestine Refugees in the Near East 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."

¹⁹⁰ Paragraph 1 of United Nations General Assembly Resolution 59/118 (see above): "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 occupied by Israel since 1967."

¹⁹¹ Takkenberg, *The Status of Palestinian Refugees in International Law*, p. 82.

¹⁹² See United Nations Secretary-General's annual report to the General Assembly which includes information submitted by UNRWA, and the latest Report included in General Assembly Resolution of 3 July 2003, A/58/119: "Its [UNRWA's] information is based on requests by returning registered refugees for transfer of their entitlements for services to the areas to which they have returned and subsequent correction of records. The Agency would not necessarily be aware of the return of any registered refugees who did not request the provision of services. So far as is known to the Agency, between 1 July 2002 and 30 June 2003, 879 refugees registered with UNRWA returned to the West Bank and 154 to the Gaza Strip from places outside the occupied Palestinian territories. It should be noted that some of these may not themselves have been displaced in 1967, but may be members of the family of a displaced registered refugee. Thus, taking into account the estimate given in paragraph 4 of last year's report, A/57/338, the number of displaced registered refugees who are known by the Agency to have returned to the occupied territories since June 1967 is about 23,930. The Agency is unable to estimate the total number of displaced inhabitants who have returned. It keeps records only of registered refugees and, as pointed out above, even those records, particularly with respect to the location of registered refugees, may be incomplete."

¹⁹³ Takkenberg, *The Status of Palestinian Refugees in International Law*, p. 82.

¹⁹⁴ *Ibid.*

¹⁹⁵ BADIL 2003 *Survey of Palestinian Refugees and Displaced Persons*, Chapter 2, Table 2.1 - Palestinian Refugees, Internally Displaced Palestinians and Convention Refugees, p. 34.

¹⁹⁶ Para. 12 of the UNHCR, Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian refugees (2002 UNHCR Note) incorrectly states that these persons are registered with UNRWA. UNHCR has explained, however, that in order to

determine the applicability of Article 1D, one must examine whether the person belongs to the group of refugees which is entitled to receive protection or assistance from another UN agency, and not whether he or she is registered with that agency. According to subsequent GA resolutions on this matter, UNRWA continues to provide assistance to persons displaced by the 1967 hostilities.

¹⁹⁷ The Convention on Elimination of All Forms of Discrimination Against Women. See also C. M. Cervenak, "Promoting Inequity; Gender-Based Discrimination in UNRWA's Approach to Palestine Refugee Status," *Human Rights Quarterly*, Vol. 16, (1994), p. 300.

¹⁹⁸ See UNRWA, Consolidated Eligibility and Registration Instructions, point 4.2.6, p. 6.

¹⁹⁹ See UNRWA, *Report of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, 1 July 2003 - 30 June 2004, para. 76: "UNRWA has also been grappling with the issue of registration criteria, especially as regards the case of female refugees married to non-refugees, and their descendants. The Agency's rules have until now excluded their descendants from registration and hence from all the services afforded to refugees. These rules are a throwback to an era when various elements of personal law tended to favour male lineage. Since then, however, these norms have shifted considerably. Moreover, the international community has since spawned a number of international conventions, resolutions, world conference declarations and programmes of action which promote the gradual elimination of all forms of discrimination against women at the local, national and international levels. Furthermore, the Agency is of the opinion that the continued application of its registration rules is unfair and unfounded, as the status of refugees should not be based on such considerations, and discrimination between males married to non-refugees vs. females married to non-refugees is unjustified. The rules are also inconsistent with the Agency's policies in other areas: for example, UNRWA is proud to have attained full gender parity in its schools and its full gender equality is a fundamental tenet of the Agency's staff rules and regulations. As a result, the Agency has decided to undertake a review of these procedures with a view to enabling descendants of female refugees married to non-refugees to register with UNRWA. The Agency estimates that this could potentially benefit approximately 340,000 persons, but expects that a significantly lower number will actually wish to register. Of those who will register, not all will be interested in availing themselves of the Agency's services. As a result, the quantitative impact of this modification in the registration rules on the Agency's operations is considered to be manageable."

²⁰⁰ See UNRWA, Consolidated Eligibility and Registration Instructions, point 5.1.2.2, p. 7.

²⁰¹ UNRWA, *Report of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, 1 July 2003 - 30 June 2004, para. 76. With regard to Palestinians living in Iraq, notes that: "In co-ordination with UNHCR and in an effort to gauge the eligibility for refugee status and living conditions of Palestinians in Iraq, an assessment mission was undertaken by the Relief and Social Services Department staff in August, 2003. The team recommended that UNRWA register the Palestine refugees located in Iraq and provide them with basic services. Some 50,900 requests for verification of refugee status were processed in response to enquiries from host authorities as well as government officials outside the UNRWA area of operations."

²⁰² According to UNRWA, this practice is not applied in the 1967-OPT.

²⁰³ This information is listed in terms of the five UNRWA areas of operation. These areas are divided into regions and further into distribution centers.

²⁰⁴ See UNRWA, Consolidated Eligibility and Registration Instructions, point 5.1.5, p. 10.

²⁰⁵ A refugee lawyer has informed BADIL that he had one case in which a client submitted a false letter regarding registration that purported to come from UNRWA. The lawyer had the letter verified as false by UNRWA.

²⁰⁶ Thanks to UNHCR-HQ for providing useful information and comments to this section. This section is also based on Terry Rempel, *UNHCR, Palestinian Refugees, and Durable Solutions*, Information & Discussion Brief No. 7. Bethlehem: BADIL Resource Center for Palestinian

Residency and Refugee Rights. See: <http://www.badil.org>.

- ²⁰⁷ See also UNHCR, *An Introduction to International Protection: Protecting persons of concern to UNHCR*, Geneva, 1 January 2005.
- ²⁰⁸ Statute of the Office of the United Nations High Commissioner for Refugees, United Nations General Assembly Resolution 428 (V), United Nations General Assembly Official Records, fifth session, UN Doc. A/1775, 14 December 1950.
- ²⁰⁹ Article 1D, second sentence, of the 1951 Refugee Convention. The United Nations General Assembly Resolution referred to is UNGA Resolution 194(III), 1948.
- ²¹⁰ *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status*, reedited, Geneva, January 1992, paras. 111-139 as well as UNHCR, *The Cessation Clauses: Guidelines on their Application*, 26 April 1999.
- ²¹¹ On the interpretation of Article 1E, *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status*, see paras. 144-146. With regard to the interpretation of Article 1F, see paras. 147-163 of the Handbook as well as 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 and the accompanying "Background Note on the Application of the Exclusion Clauses."
- ²¹² See for example para. 8 of the UNHCR, Statute of the High Commissioner for Refugees, General Assembly Resolution 428 (V), 14 December 1950.
- ²¹³ See UNRWA, *Report of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, 1 July 2003 - 30 June 2004, para. 92: "A joint UNRWA/UNHCR meeting was organized to enhance co-operation between the two agencies and discuss the role of UNHCR with regard to Palestine refugees living outside the UNRWA area of operations, particularly Palestine refugees residing in Iraq. Both agencies also shared information regarding the new UNHCR global refugee registration system as well as the refugee registration information system under development by UNRWA."
- ²¹⁴ See, for example, *Summary of Proceedings* from the BADIL Expert Seminar entitled "Closing the Gaps: From Protection to Durable Solutions," hosted by the al-Ahram Center for Strategic and Political Studies, Cairo, 5-8 March 2004. See: <http://www.badil.org>.



Chapter Three

**Standards of Article 1D
in Palestinian Refugee Status
Determination**

Standards of Article 1D in Palestinian Refugee Status Determination

Introduction

The 1951 Refugee Convention recognizes the special circumstances and status of Palestinian refugees as a group by providing a special provision for determination of Convention status and entitlement to Convention benefits for their case. Article 1D provides:

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.

Palestinian refugees were thus singled out from other refugees in two ways. Firstly, a special protection and assistance regime composed of UNCCP, UNRWA and UNHCR was established, as discussed in Chapter Two. Secondly, a different and separate analysis based on Article 1D applies in the determination of the Palestinian refugees' status.

There were three main reasons why Palestinian refugees were singled out from other refugees when UNHCR was established and the 1951 Refugee Convention was drafted: firstly, the creation of the Palestinian refugee problem was a direct result of a decision taken by the United Nations, i.e., the Partition Resolution (Resolution 181(II));²¹⁵ secondly, there was a general consensus among the drafters that Palestinian refugees *as a group* were genuine refugees in need of assistance and protection;²¹⁶ and thirdly, at a time when the international community was engaged in efforts to resolve a multitude of refugee problems in post-World War II Europe, Arab states were concerned that unless Palestinian refugees remained the responsibility of *special* United Nations attention, the international support required for their rapid repatriation to homes and properties in accordance with UNGA Resolution 194(III) (1948) would dwindle and become diverted.

Article 1D of the 1951 Refugee Convention makes a reference to relevant UN General Assembly resolutions. Resolutions related to the hostilities of 1948 and 1967 are relevant for determining *the group* of Palestinian refugees as refugees vis-à-vis Israel (the refugee-generating state/persecuting state). Article 1D provides for their entitlement to protection under the Convention until their situation is resolved in accordance with these resolutions, if their protection or assistance by another UN organ or agency has ceased for any reason.²¹⁷ It is thus the purpose of Article 1D to ensure continuity of protection for Palestinian refugees for as long as no durable solutions are found for them.

Based on Article 1D, Palestinian refugees and displaced persons who benefit from special status under international refugee law thus constitute a group distinct from other refugees. Whereas other refugees have to qualify for protection under Article 1A(2) of the 1951 Refugee Convention (either as individuals or on a *prima facie* basis)²¹⁸ Palestinian refugees and displaced persons are *ipso facto* entitled to the benefits of the Convention, as long as they fall within the scope of the second paragraph of Article 1D.

This chapter will deal with Article 1D from a practical and legal point of view, with the aim of providing practitioners with the proper interpretation of Article 1D based on authoritative legal sources. It provides a brief overview of the drafting history and highlights core aspects of interpretations advanced by scholars and national courts. The major focus of the chapter is on discussion of two proper interpretations of Article 1D which can be argued in asylum cases involving Palestinian refugees.

This chapter does not claim to be academic in the sense of providing the reader with comprehensive details of and insight into scholarly debate. Rather, it aims to clarify different readings of Article 1D and to argue for the most consistent interpretation of that provision in light of the Convention's history and purpose.

1. Drafting History and Current Interpretation of Article 1D

Article 1D refers to Palestinians as refugees vis-à-vis Israel. The Article is therefore relevant to Palestinian refugees for as long as their position has not been definitively settled in accordance with the relevant UN resolutions (UNGA Resolution 194(III), UNSC Resolution 237, among others) – a condition which continues to apply more than five decades after their initial displacement.

1.1 Language of Article 1D

The language of Article 1D contains two paragraphs. The English and French versions of the text are equally authentic. The text is therefore equally authoritative in each language:²¹⁹

English:

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.

French:

Cette Convention ne sera pas applicable aux personnes qui bénéficient actuellement d'une protection ou d'une assistance de la part d'un organisme ou d'une institution des Nations Unies autre que le Haut Commissaire des Nations Unies pour les réfugiés.

Lorsque cette protection ou assistance aura cessé pour une raison quelconque, sans que le sort de ces personnes ait été définitivement réglé, conformément aux résolutions y relatives adoptées par l'Assemblée générale des Nations Unies, ces personnes bénéficieront de plein droit du régime de cette Convention.

1.2 Method of Interpretation

A treaty shall be interpreted:

[I]n good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.²²⁰

In addition to the above general rule of interpretation, the VCLT stipulates which supplementary means of interpretation may be used:

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion,

in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable.²²¹

1.3 Drafting History of Article 1D

The drafting of the 1951 Refugee Convention was initiated by the General Assembly in February 1946, when the Assembly referred the problem of refugees and other displaced persons to the Economic and Social Council of the United Nations (ECOSOC) for consideration, recommending that the principle of the refugees' early return to their countries of origin be taken into consideration.²²²

Palestinian refugees were discussed on three occasions during the drafting process at the United Nations: in the session of the *Ad Hoc* Committee on Statelessness and Related Problems, by the General Assembly's Third Committee, and by the final Conference of Plenipotentiaries.

Ad Hoc Committee on Statelessness and Related Problems

ECOSOC established an *Ad Hoc* Committee on Statelessness and Related Problems mandated to consider the desirability of preparing a Convention relating to the international status of refugees and stateless persons, and to consider means of eliminating the problem of statelessness.²²³ The Committee met in January and February 1950 and prepared a draft Convention related to the Status of Refugees and an accompanying Protocol related to the Status of Stateless Persons.²²⁴

One of the main issues of debate was the definition of persons to be covered by the Convention and, in particular, whether refugees should be broadly defined or defined more narrowly by reference to certain categories of refugees, for example, European refugees from the Second World War. The United States supported the latter and proposed three categories of refugees, including so-called "neo-refugees." The representative of the United States (Mr Henkin) proposed to exclude Palestinian refugees from this category because:

Too vague a definition, which would amount, so to speak, to a blank check, would not be sufficient. As the representative of Turkey had rightly pointed out, any unduly inexact definition would be likely to lead subsequently to disagreement between the governments concerned. Furthermore, it was perfectly reasonable for state signatories to the convention to wish to know precisely to whom it should apply.

The United States Government, therefore, did not consider that certain groups should be included within the framework of the convention, such as the approximately 600,000 Arab refugees for whom the United Nations had made special arrangements, nor the very numerous Kashmiri and Indian refugees.²²⁵

The United States' viewpoint was that the group of Palestinian refugees should not be the responsibility of state parties because they already fell under the mandate of a special United Nations regime.²²⁶ The issue was not discussed further at this point. The *Ad Hoc* Committee's final draft included a definition of refugees that was limited to European refugees from the Second World War, victims of the Nazi regime in Germany or the Falangist regime in Spain and statutory refugees (present Article 1A(1)).²²⁷ This definition did not include Palestinian refugees. There was therefore no need to adopt a special provision regarding their case.

Third Committee of the General Assembly

ECOSOC considered the *Ad Hoc* Committee's draft. It adopted a definition of the term "refugee" and decided to reconvene the *Ad Hoc* Committee, in order to review other provisions of the draft Convention in light of comments received from governments. The refugee definition preliminarily adopted by ECOSOC was limited to three categories, including statutory refugees, International Refugee Organization (IRO) refugees and European refugees from the Second World War.²²⁸ ECOSOC did not discuss the issue of Palestinian refugees at this stage. ECOSOC submitted its proposal, the draft Convention prepared by the *Ad Hoc* Committee, and a draft Statute for UNHCR to the General Assembly for consideration during its fifth session in September 1950. In this session, the General Assembly referred the matter to its Third Committee for further debate.

The Third Committee discussed once more whether to support the refugee definition suggested by ECOSOC, or to adopt a broad definition of the term "refugee" which, although limited to events occurring before 1951, would include refugees from outside Europe. In this context, the delegations of Egypt, Lebanon and Saudi Arabia submitted a joint amendment to the definition of the term "refugee" which proposed the addition of a new paragraph:

The mandate of the High Commissioner's Office shall not extend to categories of refugees at present placed under the competence of other organs or agencies of the United Nations.²²⁹

The representative of Lebanon (Mr Azkoul) explained that if the General Assembly were to adopt a broader definition including refugees from outside Europe, it

would “most urgently need” to include the proposed provision in order to exclude Palestinian refugees from UNHCR’s mandate, because:

The delegations concerned were thinking of the Palestine refugees, who 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 obligations 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. Furthermore, the obstacle to their repatriation was not dissatisfaction with their homeland, but the fact that a Member of the United Nations was preventing their return ...²³⁰

The representative of Egypt (Mr Azmi) argued along similar lines:

The definition proposed in the joint amendment submitted by Belgium, Canada, Turkey and the United Kingdom ..., on the other hand, would submerge in the general mass of refugees certain groups which were the particular concern of the General Assembly and the right of which to repatriation had been recognized by General Assembly resolutions.²³¹

The representative of Saudi Arabia (Mr Baroody) affirmed that Palestinian refugees should continue to be granted a separate and special status, adding that:

If the General Assembly were to include the Palestine refugees in a general definition of refugees they would become submerged and would be relegated to a position of minor importance. The Arab States desired that those refugees should be aided pending their repatriation, repatriation being the only real solution of their problem. To accept a general definition without the clause proposed by the delegations of Egypt and Lebanon, as well as his own, would be to renounce insistence on repatriation.²³²

It is clear from these statements that the Arab proposal intended to exclude the Palestinian refugees living in UNRWA’s area of operations from UNHCR’s mandate because they were already the focus of special UN attention derived mainly from UN’s direct responsibility for the creation of the problem.

It is worth mentioning that France, in particular, favoured excluding Palestinian refugees from the scope of the Convention, but based on the fact that the General Assembly had already delegated certain of its powers with regard to the Arab refugees to organs other than UNHCR - i.e., UNCCP and UNRWA. France thus considered that such powers could not be delegated to UNHCR in this case.²³³

A broad consensus appears to have favoured the Arab proposal, which was then included in both the draft Statute of UNHCR (present paragraph 7(c)) and the draft Convention, without further discussion. The Convention also included a broad definition of the term “refugee,” similar to the present Article 1(A).²³⁴ The draft Convention was recommended for consideration by the Conference of Plenipotentiaries to be convened by the General Assembly. The Statute of UNHCR, however, was adopted as drafted at this stage, including the following provision:²³⁵

The present Convention shall not apply to persons who are at present receiving from other organs or agencies of the United Nations protection or assistance.²³⁶

The Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons

The final stage of the drafting process of the 1951 Refugee Convention was the Conference of Plenipotentiaries held in Geneva in July 1951. The main issue of disagreement continued to be the definition of those persons to be covered by the Convention (i.e., the term “refugee”). One group of countries, including France, proposed to limit the scope of the Convention to refugees from Europe, whereas the other group, including the United Kingdom and Belgium, argued for a broad definition of refugees irrespective of their country of origin. A compromise was reached in the form of the current Article 1B providing state parties with the option of limiting their responsibilities to refugees from Europe (Article 1B(a)).²³⁷

Egypt again took the lead in discussing Palestinian refugees, with a number of other countries expressing views on the matter, including Arab states, France, Israel, the United Kingdom and the United States.

The summaries of the debate by the Conference of Plenipotentiaries convey the impression that – as in the Third Committee of the General Assembly – participating states generally agreed on the need for a special status for Palestinian refugees. The only major issue of dispute was whether the draft text proposed by the Third Committee would lead to the permanent exclusion of Palestinian refugees from the scope of the Convention (the United Kingdom’s point of view)²³⁸ or to

a temporary exclusion (the intention of Egypt, who had proposed the language). The disagreement was resolved by means of an amendment to the draft paragraph C (eventually to be renamed Article 1D), again proposed by Egypt: i.e., a second paragraph was added to the existing draft:

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 United Nations General Assembly, they shall *ipso facto* be entitled to the benefits of the Convention.²³⁹

Introducing his amendment (A/Conf. 2/13), the representative of Egypt (Mr Mostafa) explained:

The aim of his delegation at the present juncture was to grant to all refugees the status for which the Convention provided. To withhold the benefits of the Convention from certain categories of refugees would be to create a class of human beings who would enjoy no protection at all. In that connection, it should be noted that Article 6 of Chapter II of the Statute of the High Commissioner's Office for Refugees contained a comprehensive definition covering all categories of refugees. The limiting clause contained in paragraph C of Article 1 of the Convention at present covered Arab refugees from Palestine. From the Egyptian Government's point of view it was clear that so long as United Nations institutions and organs cared for such refugees their protection would be a matter for the United Nations alone. However, when that aid came to an end the question would arise of how their continued protection was to be ensured. It would only be natural to extend the benefits of the Convention to them; hence the introduction of the Egyptian amendment.²⁴⁰

The objective of Article 1D(2) was thus to ensure the continuity of protection for Palestinian refugees (i.e., "... how their protection was to be ensured."). This specific objective of the proposed amendment was further explained by the representative of Egypt (Mr Mostafa) in a subsequent meeting:

The object of the Egyptian amendment was to make sure that Arab refugees from Palestine who were still refugees when the organs or agencies of the United Nations at present providing them with protection or assistance ceased to function, would automatically come within the scope of the Convention.²⁴¹

During the 20th meeting, the representative of Egypt emphasized once more the special responsibility of the United Nations towards Palestinian refugees, resulting

in the need for a “temporary exclusion” of the refugees from UNHCR’s mandate or a “deferred inclusion:”²⁴²

No parallel could, however, be drawn between the problem of refugees in general and that of refugees from Palestine. The former was the result of national phenomena peculiar to each country, such as racial, political or religious persecution. It was not, therefore, legally speaking, a problem which concerned the United Nations, but the United Nations had nevertheless taken an interest in it for humanitarian reasons. The problem of the Arab refugees from Palestine, on the other hand, had actually arisen out of action taken by the United Nations, the various agencies and organs of which had been giving them protection and assistance since 1948. It was for that reason that the delegations to the General Assembly of the Arab States had requested and secured the temporary exclusion of the Palestine refugee from the mandate of the High Commissioner

The Egyptian amendment was supported by the representative of the United Kingdom (Mr Hoare), who emphasized that without the amendment, the provision would permanently exclude Palestinian refugees. However, with the amendment, the scope of the clause was broadening:

He would vote for the Egyptian amendment, because it seemed desirable to meet the wishes of those who had been responsible for inserting the clause in question, now that they were seeking to broaden its scope.²⁴³

The proposal was approved by fourteen votes to two, with five abstentions.²⁴⁴ Article 1D was adopted in its entirety by sixteen votes to none, with three abstentions.²⁴⁵

It is interesting to note here that states at that time apparently did not fear an influx of Palestinian refugees into Europe. This lack of concern can perhaps be explained by the limited means of transport available in the early 1950s, and by the refugees’ strong commitment to return to Palestine. The representative of Iraq (Mr Al Pachachi), for example, stated that:

When the assistance at present being given by the United Nations comes to an end, and the Convention accordingly became applicable to those refugees, it would not by any means follow that they would emigrate to France or other western European countries, if only for purely material reasons. The few persons who would be able to afford such a journey would definitely not become a burden on the government of the receiving

countries, because their journey would not in itself be possible unless they possessed sufficient means to support themselves.²⁴⁶

The Conference adopted the Convention Related to the Status of Refugees, but not the Protocol Related to the Status of Stateless Persons (see Chapter Four).

In summary, the drafting history shows that debate in the early drafting stages of the 1951 Refugee Convention (i.e., the Third Committee) had focused on the need to exclude Palestinian refugees living in the Arab world from UNHCR's mandate and the benefits of the 1951 Refugee Convention, because they were the subject of special UN attention. In the final stages (i.e., the Conference of Plenipotentiaries), however, the discussion focused on ensuring continuity of protection so that these refugees would retain their refugee status in case protection under the special UN regime ceased, thereby avoiding the possibility that Palestinian refugees would become permanently excluded from the scope of the Convention.

Many details of Article 1D were not discussed, including the distinction between protection and assistance,²⁴⁷ or the reasons that might cause “protection or assistance” to cease in the future. The drafters made reference to a situation in which UNRWA would cease its functions – most likely because UNRWA had been established with a temporary mandate. There was no discussion of UNCCP.

1.4 Current Opinion among Scholars

Based on this interpretation of the drafting history of Article 1D, current scholars generally agree that Palestinian refugees do not need to undergo additional or fresh determination of refugee status in order to qualify for protection under the 1951 Refugee Convention.²⁴⁸ Lex Takkenberg, for example, notes with regard to Article 1D, second paragraph, that:

[I]f, however, the possibility of receiving support from UNRWA ceases to be available for whatever reasons, affected refugees will automatically – that is without any determination as to whether they also meet the criteria of any other inclusion clauses and in particular article 1A, paragraph 2 – be entitled to the benefits of the 1951 Convention if they find themselves in a state bound by that instrument. Such a situation will occur if UNRWA ceases to function, either in all or part of its area of operations, but also where Palestinian refugees, after having left UNRWA's area of operations, are unable to return there in a legal manner for reasons beyond their control. This is also the case in respect of Palestinian refugees, who left a country which forms part of UNRWA's area of operations, and who are unwilling to return there for the reasons mentioned

in Article 1A, paragraph 2, of the 1951 Convention or for other compelling reasons that may prompt a state party to that Convention to grant asylum to that person, and who are at the same time unable to reside in any other country where UNRWA operates.²⁴⁹

Guy Goodwin-Gill has argued that:

Palestinian refugees who leave UNRWA's area of operations, being without protection and no longer in receipt of assistance, would seem to fall by that fact alone within the Convention, whether or not they qualify independently as refugees with a well-founded fear of persecution.²⁵⁰

Atle Grahl-Madsen also argued whether individual screening of Palestinian refugees was needed:

Nevertheless the wording of the second paragraph of Article 1D gives rise to the question whether the persons who have been receiving UNRWA assistance and/or protection will automatically – i.e., without any further test – become entitled to the benefits of the Convention, as soon as they cease to receive such assistance and/or protection; or if it is only meant that cessation of UNRWA assistance and/or protection shall free the persons concerned from the suspensive effect of the first paragraph of Article 1D, it being understood that each person's claim to refugeehood is to be tried in accordance with the provisions of Article 1A(2).²⁵¹

He concluded:

There can be no doubt that the Arab refugees from Palestine are truly refugees in a general sense, they may even, as a group, *prima facie* satisfy the requirement of Article 1A(2). They number about a million, and an individual screening procedure in order to ascertain each person's *bona fide* claim to refugee status under Article 1A(2) will undoubtedly be rather problematic, and more so, as time passes. The words "*ipso facto*" in the second paragraph of Article 1D suggest that no new screening is required for the persons concerned to become entitled to the benefits of the Convention."²⁵²

Susan Akram agrees that Article 1D contains an inclusion clause so that Palestinian refugees are not required to fulfil the criteria in Article 1A(2):

Article 1D of the Refugee Convention was meant to ensure that if the twin agency regime of UNRWA/UNCCP were to fail in either of its

functions, the Refugee Convention would automatically cover Palestinian refugees as an entire group or category, without the necessity of applying the individualized definition of refugees in Article 1A(2).²⁵³

2. UNHCR's Interpretation of Article 1D of the 1951 Refugee Convention²⁵⁴

UNHCR is tasked with the function of providing international protection to refugees. One type of protection which falls under the competence of UNHCR is supervising the application of international conventions providing for the protection of refugees²⁵⁵ by, for example, issuing guidelines on the application of certain provisions of the 1951 Refugee Convention. UNHCR is thus the guardian of the 1951 Refugee Convention.²⁵⁶

With regard to the interpretation of Article 1D, in October 2002, UNHCR issued a “Note on the Applicability of Article 1D of the 1951 Convention Relating to the Status of Refugees to Palestinian refugees” (hereinafter 2002 UNHCR Note), which laid out a number of legal considerations and criteria to serve as guidelines for the treatment of Palestinian refugees.²⁵⁷

Although UNHCR's guidelines are not legally binding on national authorities involved in refugee status determination, they may serve as “useful guidance for decision-makers in asylum proceedings.”²⁵⁸ As such, UNHCR guidelines facilitate implementation in good faith of the 1951 Refugee Convention and the 1967 Protocol by state signatories to these instruments.

In the introduction to the 2002 Note, UNHCR emphasizes that Article 1D is intended to avoid overlapping competencies between UNRWA and UNHCR and to ensure the continuity of protection and assistance of Palestinian refugees as necessary.²⁵⁹ The matter of overlapping competencies is addressed by excluding Palestinian refugees from UNHCR's mandate when they reside in UNRWA areas of operation and constitute part of the group which is entitled to receive assistance from UNRWA. The aim of continuity of protection and assistance is addressed by including Palestinian refugees under the 1951 Refugee Convention, thereby ensuring them the benefits of the Convention when they leave UNRWA's area of operations and are in need and deserving of international protection.

The 2002 UNHCR Note is divided into three main sections: i) scope and beneficiaries of Article 1D; ii) the application of Article 1D; and, iii) registration with UNRWA.²⁶⁰ The first two sections can be summarized as follows:

- Persons who fall within the scope of Article 1D are 1948 and 1967 Palestinian refugees, defined on a group basis, provided Articles 1C, 1E or 1F are not applicable.

- Article 1D includes both an exclusion clause (paragraph 1) and an inclusion clause (paragraph 2).
- As Palestinian refugees falling under the inclusion clause are automatically entitled to the benefits of the 1951 Refugee Convention, they do not need to qualify as refugees under Article 1A(2).

Beneficiaries

Beneficiaries of Article 1D are Palestinians who, according to relevant General Assembly resolutions, are part of the group of persons eligible to receive assistance from UNRWA, i.e., the two groups of 1948 Palestine refugees and 1967-displaced persons.²⁶¹

The 2002 UNHCR Note refers to the first group as:

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, who were displaced from that part of Palestine which became Israel, and who have been unable to return there.

UNGA Resolution 194(III) refers to both Palestinians who left what is now Israel, and those who became internally displaced within Israel.²⁶² Both are entitled to return to their homes and properties. However, in accordance with the general principle that the benefits of the 1951 Refugee Convention are granted to persons who have crossed an international border, 1948-internally displaced Palestinians do not fall under the scope of Article 1D.²⁶³

The 2002 UNHCR Note refers to the second group as:

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 1967.²⁶⁴

This second group of Palestinians falling within the scope of Article 1D includes persons who fled from the West Bank (including eastern Jerusalem) and the Gaza Strip as a result of the 1967 Israeli-Arab conflict.

Scope

Descendants of beneficiaries also fall under the scope of Article 1D. Thus, for example, a Palestinian boy born in Gaza in 2004 to a mother whose parents

fled Asqalan (today Ashkelon) in 1948 and took up residence in the Gaza Strip, still belongs to the group of 1948 Palestine refugees, along with his mother and his grandfather. This interpretation draws, by analogy, on the position of family members in international refugee law, who are normally granted refugee status if the head of a family meets the criteria for the definition of refugee, according to the principle of family unity.²⁶⁵ UNRWA has adopted a similar approach when providing assistance to descendants of Palestine refugees, although it limits beneficiaries to descendants of *males* belonging to this category (see Chapter Two).

The applicability of UNRWA's mandate – not entitlement to or actual registration with UNRWA – defines the scope of Article 1D to Palestinian refugees. Most 1948 Palestine refugees are registered with UNRWA. Some have, however, decided not to register with the Agency, although they are eligible for registration. Registration with UNRWA is therefore an indicator of, but not a condition for, determining the applicability of Article 1D.²⁶⁶

The 1967-displaced persons who are not 1948 Palestine refugees are neither registered nor eligible for registration with UNRWA. With regard to this group, registration with UNRWA is therefore not an indicator for determining the applicability of Article 1D.

Application of Article 1D

When a Palestinian is seeking recognition of his or her refugee status before the national authorities of a third state, the first step is to determine whether s/he falls within one of these two categories. If not, Article 1D is not applicable. However, such a person might still qualify as a refugee under Article 1A(2).²⁶⁷

If the person in question falls within the scope of Article 1D, the next step is to determine whether paragraph 1 or paragraph 2 of Article 1D applies to her/his case. Once it is determined whether the person is outside the UNRWA area of operation, the next step would be to ensure that the person does not fall under one of the cessation or exclusion clauses of the 1951 Convention.

Cessation Clauses

The cessation clauses are contained in Article 1C of the 1951 Refugee Convention. These are provisions that set out the conditions under which refugee status comes to an end because it is no longer needed or justified. Once a person's refugee status had been determined, it is maintained, unless she/he comes within the terms of one of the cessation clauses.²⁶⁸

For example, Article 1C may be applicable to the case of a Palestinian refugee from Jordan who has acquired Jordanian citizenship and who enjoys protection from the Jordanian authorities.²⁶⁹ According to Article 1C, “the Convention shall cease to apply” to this person. However, while the 1951 Refugee Convention thus ceases to apply to such a person in relation to her/his status as an Article 1D refugee vis-à-vis Israel, i.e., a refugee from the 1948 or 1967 Israeli-Arab conflicts, she/he may still be a refugee in relation to Jordan.²⁷⁰ The refugee status of such person should, therefore, be examined under Article 1A(2) vis-à-vis Jordan.²⁷¹

Exclusion Clauses

In accordance with international refugee law, a person otherwise meeting the criteria of the refugee definition is not entitled to the benefits of the 1951 Refugee Convention if s/he falls under one of the exclusion clauses in Article 1E and 1F. Considering the serious consequences of exclusion for the person concerned, interpretation of these articles must be restrictive.

In this context, BADIL would like to stress that even if some of the cessation or exclusion clauses apply to a Palestinian refugee, this person will continue to be a refugee in relation to UNGA Resolution 194 or UNSC Resolution 237, and is thus entitled to durable solutions based on the rights of return, housing and property restitution and compensation.²⁷²

According to Article 1E, the 1951 Refugee Convention shall not apply to a person recognized by competent authorities of the country in which she/he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country. Whether or not a Palestinian refugee has obtained that status must be assessed on a case-by-case basis. One factor that has to be taken into consideration is that Palestinians are generally not protected against expulsion from Arab countries in which they have taken up residence.

If a Palestinian refugee falls within the scope of Article 1F of the 1951 Convention, she/he is considered not to be deserving of international protection, and the provisions of the Convention shall not apply to her/him.²⁷³

Article 1D Exclusion and Inclusion Clauses: Which Protection Regime?

A Palestinian refugee falling within the scope of Article 1D and to whom Articles 1C, 1E and 1F do not apply, may fall within the ambit of either paragraph 1 (exclusion clause) or paragraph 2 (inclusion clause) of Article 1D. Assessment of this matter will

determine whether, according to international law, that person is entitled to protection under the special regime available for Palestinian refugees, i.e., UNRWA assistance and Arab host country protection; or under the general regime, i.e., protection by UNHCR and state signatories to the 1951 Refugee Convention.

Paragraphs 6 and 7 of the 2002 UNHCR Note deal with this question:

(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 Article 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.

Thus, according to the 2002 UNHCR Note, the essential criteria for determining whether a Palestinian refugee falls within paragraph 1 or paragraph 2 of Article 1D is whether that person is inside or outside UNRWA's area of operation. As UNRWA's area of operation currently covers Jordan, Syria, Lebanon, the West Bank and the Gaza Strip, verification of this matter is straightforward.

If the Palestinian refugee is inside UNRWA's area of operations, she/he is not entitled to the benefits of the 1951 Refugee Convention and, in light of the Office's Statute, is excluded from the protection and assistance provided by UNHCR. If the person is staying or living outside UNRWA's area of operations, she/he falls under the inclusion clause in paragraph 2. This includes Palestinians who were living in UNRWA's area of operations but have moved away, as well as those who have never lived in UNRWA's area of operations.

Refugees falling under the inclusion clause (Article 1D, second paragraph)

Once it is determined that a Palestinian refugee seeking recognition of refugee status falls under the inclusion clause, she/he is automatically entitled to the benefits of the 1951 Refugee Convention.

According to the 2002 UNHCR Note, and in line with the intentions of the drafters of the 1951 Refugee Convention, the refugee status of that person is determined on the basis of Article 1D. No further screening under Article 1A(2) is required in this case, because the inclusion clause in Article 1D replaces the inclusion clause in Article 1A(2).

The 2002 UNHCR Note does not specify which of the various benefits of the 1951 Refugee Convention such a person is entitled to receive. National policies of the state offering protection will largely determine the kind of protection afforded to a recognized refugee, although these would need to be in keeping with the state's obligations under the 1951 Refugee Convention.

Palestinians recognized as refugees, as well as those seeking asylum, are minimally entitled to protection against "*refoulement*", i.e., expulsion to a country where her/his life or freedom would be threatened on account of her/his race, religion, nationality, membership of a particular social group or political opinion (see Chapter Four).

The granting of residence status by the state that has recognized the individual as a refugee is not specifically addressed in the 1951 Refugee Convention. However, if state parties do not make provision for legal status to those whom they have recognized as refugees, their obligations under the Convention would be seriously undermined. Nevertheless, under certain exceptional circumstances, national authorities might be permitted to return a Palestinian refugee to a country of previous residence where effective protection is guaranteed. If that country is party to the 1951 Refugee Convention, the person will continue to benefit from the Convention. However, if the country or territory of former residence falls within UNRWA's area of operation, the 1951 Refugee Convention will cease to apply in accordance with Article 1D, paragraph 1. While the 1951 Refugee Convention does not address the issue of "returnability" of refugees, guidance has been developed by UNHCR.²⁷⁴

3. An Alternative Interpretation of Article 1D

An alternative to the UNHCR interpretation of Article 1D has been developed by Susan Akram.²⁷⁵ This interpretation agrees with UNHCR that the inclusion clause (second paragraph) in Article 1D entitles Palestinian refugees to Convention refugee status and the benefits of the 1951 Refugee Convention, without having to fulfil the individualized criteria set out in Article 1A(2). The interpretation, however, reaches a different conclusion regarding the event which triggers the applicability of the inclusion clause.

Article 1D Exclusion and Inclusion Clauses: Which Protection Regime?

Unlike UNHCR, which considers cessation of UNRWA assistance as the single and crucial event which triggers the inclusion clause, Susan Akram has asked:

Is the inclusion provision triggered by the cessation of assistance, the cessation of protection, the cessation of either one, or of both? The prevalent interpretation of this provision is that Palestinians must not be receiving any benefits from a UN organ or agency before they will be eligible for Refugee Convention coverage. In other words, according to this interpretation, Palestinians must be receiving neither protection nor assistance before they can be included under the Convention regime. As a preliminary matter, that interpretation appears contrary to the plain language. In order to make sense, the “when such protection or assistance has ceased” language must be read to give meaning to the entire sentence. The plain meaning of the word “or” in this phrase means that those refugees who are not receiving either protection or assistance are to be covered by the alternate protection scheme of the 1951 Refugee Convention. This interpretation is confirmed by the drafting history, and the purpose this provision was intended to fulfil ...²⁷⁶

The cessation of the UNCCP’s protection function triggers the alternative regime under Article 1D, and the Refugee Convention and all its guarantees towards refugees are fully applicable to the Palestinian refugees as well.²⁷⁷

In short, it is argued that the drafters of the 1951 Refugee Convention intended the word “protection” in Article 1D to be a reference to UNCCP and, hence, the language “protection or assistance” in Article 1D refers both to UNCCP as providing protection and UNRWA as providing assistance.

This interpretation is based on several arguments. Firstly, the plain language of Article 1D, i.e., “organs or agencies of the United Nations” in the plural, indicates that the drafters referred to more than one UN organ or agency to provide those benefits and contemplated that such protection or assistance might cease in the foreseeable future for reasons which were unknown at that time (28 July 1951). Secondly, the drafters of the 1951 Refugee Convention knew that there were two agencies of the United Nations other than UNHCR mandated to provide protection or assistance to Palestinian refugees and that the distinction between protection and assistance was clearly delineated between the two agencies. Thirdly, the *travaux préparatoires* show that for the drafters of the 1951 Refugee Convention, protection, rather than assistance, was the critical and necessary ongoing requirement: their main concern was the continuation of international protection.

It is argued, moreover, that UNRWA assistance and UNCCP protection activities are alternatives so that either cessation of UNCCP protection or UNRWA assistance will trigger applicability of the inclusion clause and the benefits of the 1951 Refugee Convention to Palestinian refugees. Since UNCCP had by 1952 ceased to provide effective protection, (see Chapter Two) this cessation of protection is the single crucial event that triggered the inclusion clause for all 1948 Palestinian refugees. The inclusion clause is thus applicable in all asylum cases involving 1948 Palestinian refugees, provided that Articles 1C, 1E and 1F do not apply:

Appropriately analyzed, the heightened regime set up two agencies with immediate mandates over the Palestinian refugees: UNRWA, which was to be the assistance agency, and UNCCP, which was to be the protection agency. Article 1D's function was to ensure that if for some reason either of these agencies failed to exercise its role before a final resolution of the refugee situation, that agency's function was to be transferred to the UNHCR, and the Refugee Convention would fully and immediately apply without preconditions to the Palestinian refugees. This is what the "protection or assistance" and the *ipso facto* language of Article 1D requires.²⁷⁸

Beneficiaries and Scope

Beneficiaries of Article 1D are Palestinians towards whom either UNCCP protection or UNRWA assistance has ceased, i.e:

- All 1948 Palestinian refugees under UNGA Resolution 194(III) (1948);
- Palestinian refugees (displaced persons) who no longer benefit from UNRWA assistance under UNGA Resolution 2252 (ES-V) and subsequent UNGA Resolutions.²⁷⁹

In accordance with the above interpretation of Article 1D and based on the cessation of UNCCP protection, all 1948 Palestinian refugees - irrespective of their current presence inside or outside UNRWA's area of operations - fall *ipso facto* under the scope of the 1951 Refugee Convention. 1967 Palestinian refugees (1967-displaced persons) might similarly be entitled to protection under the 1951 Refugee Convention.²⁸⁰

Application

This alternative interpretation, if adopted, would have far-reaching consequences for the international protection regime currently in place in UNRWA's area of operations, as well as for the role of international agencies, in particular UNHCR, in the search for durable solutions for Palestinian refugees.

However, for Palestinian asylum-seekers in a third country signatory to the 1951 Refugee Convention, processes and conclusions in refugee-status determination do not differ substantially, irrespective of whether they are conducted under this alternative interpretation of Article 1D, or under the interpretation promoted by UNHCR. If a Palestinian asylum-seeker falls within one of the two groups of beneficiaries as defined above, the person is entitled under Article 1D, paragraph 2, to recognition of refugee status and the benefits of the 1951 Refugee Convention, provided that Articles 1C, 1E and 1F do not apply.

The alternative interpretation suggested by Susan Akram is appropriate for Palestinian protection claims/status-determination procedures in state signatories to the 1951 Refugee Convention, in addition to the interpretation advanced by UNHCR. It was fully adopted by Immigration Judge Tim O'Flynn, in the United Kingdom (*Isam El-Issa v. Secretary of State for Home Office*) on 4 February 2002,²⁸¹ and partially adopted by the Federal Court of Australia (*Minister for Immigration and Multicultural Affairs v. Wabq*) in 2002.²⁸²

4. Interpretation of Article 1D of the 1951 Refugee Convention by the European Council (EU), the Council of Europe (CoE), and the European Council on Refugees and Exiles (ECRE)

4.1 European Union (EU)

The European Council, at its meeting in Tampere in October 1999, agreed to work towards establishing a Common European Asylum System based on the full and inclusive application of the 1951 Refugee Convention and the 1967 Refugee Protocol. It was agreed that the system should include, inter alia, the approximation of rules on the recognition and content of refugee status, as well as measures for subsidiary forms of protection, along with common standards for a fair and efficient asylum procedure and common minimum conditions of reception for asylum-seekers.

These rules regarding refugee status and complementary forms of protection were adopted by the European Council on 29 April 2004.²⁸³ The main objectives of this Directive are to ensure that member states apply common criteria for the identification of persons genuinely in need of international protection; and to ensure that a minimum level of benefits are available to these persons in all member states.²⁸⁴ Falling outside the scope of the Directive are those third country nationals or stateless persons who are allowed to remain in the territories of the member states, not because they need international protection, but on a discretionary basis on compassionate or humanitarian grounds.²⁸⁵

The Directive defines a “refugee” along the lines of Article 1A(2) of the 1951 Refugee Convention, but limits the definition to “third country nationals” and stateless persons.²⁸⁶ “Persons eligible for subsidiary protection” are defined as:

[A] third country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) do not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country.²⁸⁷

Article 12 of the Directive sets out the exclusion grounds. Article 12(1)(a) stipulates that a third country national or stateless person is excluded from being a refugee if:

[H]e or she falls 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 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.

The European Council thereby advocates for an exclusion of Palestinian refugees who are receiving assistance from UNRWA. With regard to the automatic status recognition of Palestinian refugees (the inclusion clause of Article 1D), the European Council simply refers to the language of Article 1D, second paragraph. It is therefore unclear whether Palestinian refugees will have to fulfil the criteria set out in Article 1A(2) of the Refugee Convention.²⁸⁸ The initial proposal from the Commission contained only the language of Article 1D, first sentence.²⁸⁹ The Commission explained the provision as follows:

This paragraph refers to Exclusion clause Article 1D of the Geneva Convention, which applies to any persons who is in receipt of protection or assistance from organs or agencies of the United Nations, other than the United Nations High Commissioner for Refugees. The exclusion clause was drawn up within the particular context of Palestine refugees receiving protection from the United Nations Reliefs and Works Agency for Palestine Refugees in the Near East (UNRWA). For purposes of this exclusion clause, the protection or assistance available from the United

Nations agency must have the effect of eliminating or durably suppressing the individual's well-founded fear of being persecuted.

An individual is excluded from refugee status on grounds of United Nations protection or assistance only if he or she has received such protection or assistance before seeking asylum and has not at any time ceased to receive such protection or assistance. Exclusion under this clause shall not occur 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. 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 Directive.²⁹⁰

In accordance with the procedure for adopting this type of Directive (i.e., a consultative procedure), the proposal adopted by the Commission was sent to the European Parliament for consultation.²⁹¹ The European Parliament proposed to delete the initial proposal contained in Article 14(1)(a) (Article 12 in the final Directive), with the justification that:

With regard to the role of international organizations providing “state” protection, recent history has highlighted the ineffectiveness of such organizations in maintaining peace and security and guaranteeing human rights in conflict areas. This is far from surprising to the extent that to date no international organization has been given the broad political mandate that is necessary for guaranteeing the protection of human rights and fully ensuring law and order. The problems in Kosovo provide the most current example.²⁹²

Following that proposal and the subsequent discussion in the European Council, Article 12(1)(a) of the Directive was adopted.

UNHCR has submitted the following comment on Article 12(1)(a):

The objective of Article 1D of the 1951 Convention is to avoid 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. The fact that a Palestinian falls within paragraph 2 of Article 1D (automatic inclusion) does not necessarily mean that she/he cannot be returned to UNRWA's area of operations. Reasons not to return may be a danger of persecution or other serious protection

related problems or his/her inability to return, for example, because the authorities of the country concerned refuse readmission.²⁹³

4.2 Council of Europe

In June 2003, the Parliamentary Assembly of the Council of Europe adopted Recommendation 1612 (2003) on The Situation of Palestinian Refugees, stating that:

The question of the legal status of Palestinian refugees outside the region remains a point of concern. Yet, legal status is essential for the legal, social and economic situation of persons in general, and Palestinian refugees are at a clear disadvantage in this respect and must therefore be given a recognized legal status.²⁹⁴

The Assembly recommended *inter alia* that the Committee of Ministers should call on Council of Europe member states:

[T]o review their policies in respect of Palestinian asylum-seekers, with a view to effectively implementing United Nations High Commission for Refugees' (UNHCR) new guidelines published in 2002 on the applicability of the 1951 Convention relating to the Status of Refugees;

to ensure that where Palestinian refugees are legally recognized, they should be entitled to all benefits of socio-economic rights, including family reunion, normally accorded to recognized refugees in these member states;

to include the information on Palestinian origin in the statistics concerning asylum-seekers and refugees;

to contribute to the international debate on durable solutions offered to the Palestinian refugees, and encourage as well as commission political and academic research and studies concerning refugee problems and compensations.²⁹⁵

The Council of Europe thus advocates an interpretation of Article 1D as recommended by UNHCR²⁹⁶, including recognition of refugee status *ipso facto* if Palestinian refugees leave UNRWA's area of operations.

4.3 European Council on Refugees and Exiles (ECRE)

The European Council on Refugees and Exiles (ECRE) is the umbrella organization for seventy-seven refugee-assisting agencies in thirty countries working towards fair and humane treatment of asylum-seekers and refugees. ECRE has adopted a

position on the Interpretation of Article 1 of the 1951 Refugee Convention which recommends, with regard to Article 1D, that:

Article 1D should not be invoked to exclude a refugee unless it can be shown that the United Nations agency which is mandated to take care of the person has both an assistance and a protection mandate and is able to fulfil these responsibilities in practice. In particular, as a refugee will, by definition, be outside the area of the agency's mandate the asylum determination authorities must prove that the refugee can return to the agency's area of competence.²⁹⁷

ECRE's interpretation addresses solely the issue of Article 1D as an exclusion clause (paragraph 1 of Article 1D) and leaves out the issue of automatic inclusion (paragraph 2).

Conclusion: Practical Application of Article 1D in Refugee Status Determination

The standards of Article 1D as presented in this Chapter are summarized below and applied to a hypothetical refugee determination process before national authorities. Key questions and procedural steps summarized here aim to serve as a practical guideline for parties, including lawyers and national authorities, involved in the process of determining Palestinian refugee status. These guidelines apply irrespective of whether Article 1D is interpreted in line with the 2002 UNHCR Note or the alternative interpretation suggested by Susan Akram.

Which state is to be considered the state of persecution in a claim to refugee status submitted by Palestinians?

Article 1D was included in the 1951 Refugee Convention to ensure that Palestinian refugees would be recognized by national authorities and the international community as refugees vis-à-vis the state of Israel following the 1948 Israeli-Arab conflict during and after which Palestinians fled their home country.²⁹⁸

Israel is therefore to be considered the putative state of persecution in a claim to refugee status submitted by Palestinians under Article 1D.

Refugee determination process

In addition to establishing credibility, national authorities will be required to adhere to the following steps to determine whether a Palestinian asylum-seeker qualifies as a 1951 Convention refugee:

Step 1: Does the Palestinian fall within the scope of Article 1D, i.e., is the person a Palestine Refugee under UNRWA's mandate or a 1967-displaced person under UNGA Resolution 2252?

If the conclusion is that the Palestinian does not fall within the scope of Article 1D, the national authorities should verify whether the person nevertheless qualifies as a refugee under Article 1A(2) vis-à-vis her/his country of last habitual residence.

If the conclusion is that the person falls within the scope of Article 1D, national authorities should move on to step 2 without conducting a screening under Article 1A(2).

Step 2: Does the Palestinian asylum-seeker fall within the exclusion clause (paragraph 1) or the inclusion clause (paragraph 2) of Article 1D?

Indicators:

- The Palestinian asylum-seeker is outside UNRWA's area of operations.
- International protection by UNCCP has ceased.

Since either one or both indicators will apply to most Palestinians seeking protection in third countries under the 1951 Refugee Convention, she/he will fall most likely under the inclusion clause. National authorities should therefore move to Step 3.

If the refugee lives inside UNRWA's area of operations, the 2002 UNHCR Note provides that she/he falls within the exclusion clause and is, therefore, excluded from the benefits of the 1951 Convention.

Step 3: Does the Palestinian refugee fall within one of the cessation clauses (Article 1C) or exclusion clauses in Articles 1E and 1F?

If the conclusion is that the Palestinian does not fall within one of

these Articles, national authorities should move on to Step 4.

If the conclusion is that the Palestinian refugee falls under one of the cessation clauses of Article 1C, national authorities should verify whether the person nevertheless qualifies as a refugee under Article 1A(2) in relation to his or her new country of nationality.

If the conclusion is that the Palestinian refugee falls under Article 1F, the provisions of the 1951 Refugee Convention will not apply.

Step 4:

The Palestinian refugee enjoys the benefits of the 1951 Convention and therefore no act of *refoulement* can be taken against him or her. The type of protection that she/he will enjoy will depend on national legislation and practice.

Endnotes

- ²¹⁵ See the drafting history of Article 1D below, in this chapter.
- ²¹⁶ The magnitude of the problem was highlighted by the representative of Saudi Arabia (Mr Baroodi) during the discussion in the Third Committee of the General Assembly; United Nations General Assembly Official Records, fifth session, Third Committee, 328th meeting, 27 November 1950, para. 49: “The second [peculiarity of the Palestinian problem] was the fact that no other group of refugees constituted such a high percentage of the total population as did the Palestine refugees: some 700,000 to 800,000 – that is, 60 to 70% – of the total of 1,250,000 Palestine Arabs were living outside their homeland.”
- ²¹⁷ While at the time of drafting the 1951 Refugee Convention, United Nations General Assembly Resolution 194(III) (1948) represented the major relevant UN resolutions, the plural chosen in the language “relevant UN resolutions” clearly implies that the drafters intended to make reference also to relevant UN resolutions (e.g., UNGA Resolution 181(II)), including resolutions to be passed in the future (e.g., UNSC Resolution 237 (1967)). See Chapter One and Appendix 1.
- ²¹⁸ *Prima facie* refugees are those persons recognized as refugees, by a State or UNHCR, on the basis of objective criteria related to the circumstances in their country of origin, which justify the presumption that they meet the criteria of the applicable refugee definition. See *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status*, para. 44.
- ²¹⁹ According to Article 33(1) of the Vienna Convention on the Law of Treaties (VCLT), 22 May 1969. The Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons states that the two versions are equally authentic (para. 1).
- ²²⁰ VCLT, Article 31(1). Article 31(2) of the same convention stipulates: “The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes: (a) Any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty; (b) Any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.” Article 31(3) stipulates that, together with the context, the following shall be taken into account: “(a) Any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; (b) Any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation; (c) Any relevant rules of international law applicable in the relations between the parties.”
- ²²¹ *Ibid*, Article 32.
- ²²² General Assembly Resolution 8(I) adopted during its thirtieth Plenary meeting, 12 February 1946, para. c (iii); UN Doc A/64, p. 12: “the main task concerning displaced persons is to encourage and assist in every way possible their early return to their countries of origin.” This Resolution and most of the documents referred to in the following footnotes are published in Lex Takkenberg and Christopher C. Tahbaz, *The Collected Travaux Préparatoires of the 1951 Geneva Convention Relating to the Status of Refugees*, Vol. I, II, III and IV. Amsterdam: Dutch Refugee Council under the auspices of the European Legal Network on Asylum, 1990.
- ²²³ United Nations Economic and Social Council (ECOSOC) Resolution 248(IX)B, UN Doc. E/ OR(IX)/Suppl. No. 1, pp. 62-63, 8 August 1949.
- ²²⁴ See also Chapter Four on the drafting process of the Convention relating to the Status of Stateless persons.
- ²²⁵ *Ad Hoc* Committee on Statelessness and Related Problems, Summary Record of third meeting, 26 January 1950, paras. 37-38. UN Economic and Social Council, General E/AC.32/SR.3, p. 9.
- ²²⁶ The special UN regime and the roles of UNRWA and UNCCP are discussed in Chapter Two.
- ²²⁷ Report of the First *Ad Hoc* Committee on Statelessness and Related Problems, UN Doc. E/1618 and Corr.1, 17 February 1950. See Articles 1A(1), 1A(2) and 1A(3).

- ²²⁸ Economic and Social Council Resolution 319(XI)B, UN Doc. E/1818, 16 August 1950. The term “refugee” was defined as follows: “any person (1) who in the period between 1 August 1914 and 15 December 1946 was considered to be a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, and the Protocol of 14 September 1939; (2) who has been accepted by the International Refugee Organization as falling under its mandate; (3) who has had, or has, well-founded fear of being the victim of persecution for reasons of race, religion, nationality or political opinion, as a result of events in Europe before 1 January 1951, or circumstances directly resulting from such events, and, owing to such fear, has had to leave, shall leave, or remains outside the country of his nationality, before or after 1 January 1951, and is unable, or, owing to such fear or for reasons other than personal convenience, unwilling, to avail himself of the protection of the government of the country of his nationality, or, if he has no nationality, has left, shall leave, or remains outside the country of his former habitual residence.”
- ²²⁹ The representative of Egypt (Mr Azmi). See United Nations General Assembly Official Records, fifth session, Third Committee, 328th meeting, 27 November 1950, para. 45.
- ²³⁰ *Ibid*, paras. 46, 47.
- ²³¹ *Ibid*, para. 39.
- ²³² *Ibid*, para. 52.
- ²³³ *Ibid*, para. 48.
- ²³⁴ For some comments by the representative of Turkey (Mr Savut) and the representative of the United States (Mrs Roosevelt), see United Nations General Assembly Official Records, fifth session, Third Committee, 329th meeting, 29 November 1950, paras. 11, 37. See also United Nations General Assembly Official Records, fifth session, Third Committee, 330th meeting, 30 November 1950, paras. 7, 8 for a comment by Mrs Roosevelt (United States) who had participated in an informal working group on the definition of the term “refugee.”
- ²³⁵ The Statute of UNHCR was adopted by the General Assembly as Annex A to its Resolution 428 (V), 14 December 1950. For reference to the Conference of Plenipotentiaries, see General Assembly Resolution 429(V), UN Doc. A/1751, 14 December 1950.
- ²³⁶ United Nations General Assembly 429(V), UN Doc. A/1751, 19 December 1950.
- ²³⁷ As of 1 October 2003, four states continue to limit their obligations in this way: Congo, Madagascar, Monaco, Turkey.
- ²³⁸ United Nations General Assembly, Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, nineteen meeting, 13 July 1951; A/CONF:2/SR.19, 26 November 1951, p. 18, the representative of the United Kingdom (Mr Hoare): “Turning to the category of refugees who were excluded from the present Convention under paragraph C, for example, the Palestinian Arabs, in his view the effect of the paragraph as drafted was to make the exclusion permanent. That was, indeed, why the Egyptian representative had submitted his amendment (A/CONF.2/13), since he wanted to provide for the possible future inclusion of that group within the Convention. He (Mr Hoare) was supported in this view by the quite different reference to that category in the Statute of the High Commission (E/1831). The Iraqi representative’s argument was also pertinent, and he (Mr Hoare) fully agreed that the risk that European states might be faced with a vast influx of Arab refugees was too small to be taken into account. If such an influx did occur, either from the Arab states, or from the Latin American countries, or from the Far East, the matter would be one for each European country to deal with individually. There was very little likelihood that future movements of refugees caused by events occurring before 1 January 1951 would be felt in Europe. As the French representative had rightly pointed out, such movements would more probably be felt in such countries as Australia or the Non-Self-Governing Territories under British Administration. Even if such an influx into Europe did occur, was it conceivable that European countries which had hitherto given refugees certain minimum rights would, even in the absence of a Convention, give the new arrivals less? They would, by adhering to the Convention, merely be undertaking to give to refugees from outside Europe who were admitted to their territory the rights which they would undoubtedly give them

- in any event.”
- ²³⁹ UN Doc. A/CONF.2/13 published in Takkenberg and Tahbaz, *The Collected Travaux Préparatoires of the 1951 Geneva Convention Relating to the Status of Refugees*, p. 20.
- ²⁴⁰ United Nations General Assembly, Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, nineteen meeting, 13 July 1951; A/CONF:2/SR.19, 26 November 1951, p. 16.
- ²⁴¹ United Nations General Assembly, Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, twenty-ninth meeting, 19 July 1951; A/CONF:2/SR.29, 28 November 1951, p. 6. The same point had been made during the second meeting: “Once United Nations assistance ceased, the Palestine refugees should automatically enjoy the benefits of the Convention. The Egyptian Government had no doubt at all that such refugees came under the terms of article 1.” United Nations General Assembly, Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, second meeting, 2 July 1951; A/CONF:2/SR.2, 20 July 1951, p. 22. The need for the proposed amendment to Article 1D was also emphasized by the representative of Iraq (Mr. Al Pachachi): “It was obvious that, if the Egyptian amendment was rejected, the refugees it was designed to protect might eventually find themselves deprived of any status whatsoever”. United Nations General Assembly, Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, twenty-ninth meeting, 19 July 1951; A/CONF:2/SR.29, 28 November 1951, p. 8.
- ²⁴² Term used by the French representative (Mr Rochefort); United Nations General Assembly, Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, third meeting, 3 July 1951; A/CONF:2/SR.3, 19 November 1951, p. 10.
- ²⁴³ United Nations General Assembly, Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, twenty-nine meeting, 19 July 1951; A/CONF:2/SR.29, 28 November 1951, p. 6.
- ²⁴⁴ Greece also supported the amendment but was absent from the meeting room. *Ibid*, p. 9.
- ²⁴⁵ United Nations General Assembly, Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, thirty-four meeting, 25 July 1951; A/CONF:2/SR.34, 30 November 1951, p. 12.
- ²⁴⁶ United Nations General Assembly, Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, nineteen meeting, 13 July 1951; A/CONF:2/SR.19, 26 November 1951, p. 17. This view was confirmed by the representative of the United Kingdom.
- ²⁴⁷ The Commission of the Churches on International Affairs noted that “material assistance is not in itself a guarantee of protection” and suggested the wording “assistance and protection” rather than “protection or assistance.” United Nations General Assembly, Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons; Observations concerning Article 1 of the draft Convention Relating to the Status of Refugees; A/CONF:2/NGO/10, 6 July 1951.
- ²⁴⁸ James C. Hathaway is an exception; see *The Law of Refugee Status*, p. 208: “More specifically, this exclusion clause applies to all Palestinians eligible to receive UNRWA assistance in their home region. It does not exclude only those who remain in Palestine, but equally those who seek asylum abroad.”
- ²⁴⁹ See Takkenberg, *The Status of Palestinian Refugees in International Law*, p. 123.
- ²⁵⁰ Goodwin-Gill, *The Refugee In International Law*, p. 92.
- ²⁵¹ Atle Grahl-Madsen, *The Status of Refugees in International Law*, p.141.
- ²⁵² *Ibid*, p. 141.
- ²⁵³ Akram and Rempel, “Temporary Protection as an Instrument for Implementing the Right of Return for Palestinian Refugees,” p. 81.
- ²⁵⁴ This section was written following a meeting with UNHCR, HQ, Protection and Policy Advice Section within the Department of International Protection.
- ²⁵⁵ Article 8(a) of the UNHCR, Statute of the High Commissioner for Refugees (UNHCR Statute).
- ²⁵⁶ Article 35 of the 1951 Refugee Convention.

- ²⁵⁷ This Note provides a more elaborate interpretation of these interpretation of issues which were described earlier in *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status*, paras. 142,143. For a critique of UNHCR's interpretation of Article 1D as presented in the Handbook, see Takkenberg, *The Status of Palestinian Refugees in International Law*, pp. 92-93. The UNHCR, Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian refugees (2002 UNHCR Note) is reproduced as Appendix 7.
- ²⁵⁸ See 2002 UNHCR Note, para. 14.
- ²⁵⁹ *Ibid*, para. 2, last sentence.
- ²⁶⁰ The third section is based on information provided by UNRWA and was discussed in Chapter Two.
- ²⁶¹ Based on the 1967 expansion of UNRWA's mandate (see Chapter Two) and the extension by the 1967 Protocol of the applicability of the 1951 Convention to persons who have become refugees as a result of events occurring after 1 January 1951. For UNRWA definitions of its beneficiaries, see Chapter Two.
- ²⁶² See also Chapter One. UNHCR supports this view. See endnote 2 to the 2002 UNHCR Note: "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. 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 Tulkarm."
- ²⁶³ Note, however, that the borders of the state of Israel vis-à-vis the Palestinian West Bank and the Gaza Strip have remained undefined.
- ²⁶⁴ See para. 3 (ii) of the 2002 UNHCR Note.
- ²⁶⁵ *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status*, para. 184, p. 43.
- ²⁶⁶ See further 2002 UNHCR Note, paragraph 13: "The question whether a Palestinian is registered, or is eligible to be registered, with UNRWA will need to be determined individually." See also Chapter Two, section on UNRWA, where the Agency's registration system is described.
- ²⁶⁷ See para. 4 of 2002 UNHCR Note.
- ²⁶⁸ See para. 3, *ibid*.
- ²⁶⁹ It is important to determine that the person in question has not only acquired Jordanian nationality but also that this nationality is effective in that it corresponds to a genuine link between the individual and the state, and grants that person the full protection of the authorities (see wording of Article 1C as well as UNHCR, "The Cessation Clauses: Guidelines on their Application," 26 April 1999, paras. 15-19). The question of whether the authorities provide "effective protection" must be assessed on a case-by-case basis. See also Chapter One, footnote 88, for reference to the US Appeals Board decision in *Rumman* (A24087105, 7 December 1990), which concluded that possession of a Jordanian passport did not necessarily imply citizenship rights in Jordan.
- ²⁷⁰ For example, they may experience persecution related to their Palestinian origin.
- ²⁷¹ See *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status*, para. 131.
- ²⁷² UNHCR stressed this point in the 2002 UNHCR Note, para. 3: "[T]hose individuals to whom Article 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 definitely in accordance with the relevant UN General Assembly resolutions."
- ²⁷³ See UNHCR, "Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees."
- ²⁷⁴ See Chapter Four. See also the 2002 UNHCR Note, paras. 8 and 9 for reference.
- ²⁷⁵ See Susan M. Akram and Terry Rempel, "Recommendations for Durable Solutions for Palestinian

- Refugees: A Challenge to the Oslo Framework,” *Palestine Yearbook of International Law*, Vol. XI, No. 1 (2000/2001), pp. 1-71.
- ²⁷⁶ *Ibid*, p. 30.
- ²⁷⁷ *Ibid*, p. 67.
- ²⁷⁸ *Ibid*, p. 66.
- ²⁷⁹ Susan Akram's analysis has focused on the status under the 1951 Refugee Convention of 1948 Palestinian refugees. While substantial analysis regarding the status of 1967 Palestinian refugees has not been developed, the conclusion that the inclusion clause of Article 1D, para. 2 can be triggered separately and equally by cessation of UNCCP protection and UNRWA assistance implies that 1967 Palestinian refugees (1967-displaced persons) who do not receive UNRWA assistance are entitled to status and benefits under the 1951 Refugee Convention. This would certainly include 1967 refugees who have left UNRWA's area of operations, while the status of those remaining in UNRWA's area of operations would be unclear.
- ²⁸⁰ However, refugee law experts have not yet researched whether 1967 refugees should be included in Article 1D .
- ²⁸¹ Appeal No. CC/21836/2000 and Home Office Reference No. Y76985.
- ²⁸² See Chapter Two and Chapter Five, Country Profile Australia. Adoption of this interpretation, however, has remained partial, because the Australian Federal Court held that the applicability of the inclusion clause was to be interpreted as meaning that the Palestinian asylum-seeker was entitled to apply for asylum with status to be determined according to the criteria set out in Article 1A(2) rather than recognition of refugee status without further assessment.
- ²⁸³ Directive 2004/83/EC, *Official Journal* L 304, (30 September 2004), p. 12.
- ²⁸⁴ See para. 6 of the preamble of the Directive. See also Article 1 of the Directive: “The purpose of this Directive is to lay down minimum standards for the qualification of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.” Note that member states may introduce or retain more favourable standards for determining who qualifies as a refugee or a person eligible for subsidiary protection, and for determining the content of international protection (Article 3 of the Directive).
- ²⁸⁵ See para. 9 of the preamble of the Directive.
- ²⁸⁶ See Article 2 of the Directive.
- ²⁸⁷ See *ibid*.
- ²⁸⁸ The European Council had previously adopted that view; see its Joint Position of 4 March 1996 on the harmonized application of the definition of the term “refugee”.
- ²⁸⁹ See Article 14(1)(a) of Proposal for a Council Directive 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, *Official Journal* C 51 E 17, (26 February 2002), p. 325.
- ²⁹⁰ See the Commission's comments on each of the provisions in its proposal for a Directive, document 2001/0207 (CNS), COM (2001) 510 final of 12 September 2001.
- ²⁹¹ The Committee of the Regions and the Economic and Social Committee were also consulted. The latter did not support Article 14(1)(a) and noted: “An applicant who currently benefits from protection or assistance from organs or agencies of the United Nations, other than the High Commissioner for Refugees, would in this instance be under the protection of an organ or agency which was not a signatory of the 1951 Convention and which might not be in a position to guarantee fully the rights ensuring from the recognition of his refugee status.” See *Official Journal* C 221, (17 September 2002), p. 43, point 3.2.
- ²⁹² Opinion of the European Parliament, *Official Journal* C 300 E, (11 December 2003), p. 25. The justification was included under Article 9, para. 3, in which the European Parliament also noted that “state-like authorities are not and cannot be parties to international human rights instruments and therefore cannot be held accountable for non-compliance with international refugee and human rights obligations”; therefore “non-state persecution cannot be included in

this Directive.”

²⁹³ UNHCR Annotated Comments on the EC Council Directive 2004/83/EC, 29 April 2004. UNHCR has also recommended that states consult its 2002 UNHCR Note.

²⁹⁴ The Assembly also recommended the Committee of Ministers to, *inter alia*, instruct the appropriate committee to examine the issues relating to the legal status of Palestinian refugees in Council of Europe member states, and come up with concrete initiatives to ensure that all Palestinian persons displaced from their homes of origin are provided with an appropriate legal status entitling them to all basic socio-economic rights. Para. 9 of Recommendation 1612.

²⁹⁵ Para. 10 of Recommendation 1612.

²⁹⁶ See previous section 2.

²⁹⁷ ECRE, Position on the Interpretation of Article 1 of the Refugee Convention, *Position Papers*, September 2000, para.68. The Assembly also recommended the Committee of Ministers to, *inter alia*, instruct the appropriate committee to examine the issues relating to the legal status of Palestinian refugees in Council of Europe member states, and come up with concrete initiatives to ensure that all Palestinian persons displaced from their homes of origin are provided with an appropriate legal status entitling them to all basic socio-economic rights. See also reply from the Committee of Ministers regarding Recommendation 1612, adopted at the 864th meeting of the Minister’s Deputies (4 December 2003), doc. 10014, 9 December 2003.

²⁹⁸ Note that Article 1D is relevant as long as the position of Palestinian refugees has not been definitely settled in accordance with the relevant UN resolutions (UN General Assembly Resolution 194(III), UN Security Council Resolution 237).



Chapter Four

**Standards of International
Protection granted to Refugees,
Stateless Persons and other Persons in
need of International Protection**

Standards of International Protection granted to Refugees, Stateless Persons and other Persons in need of International Protection

Introduction

Refugees and stateless persons lack the protection of their country either as a matter of law or as a matter of facts. The 1951 Refugee Convention and the 1954 Stateless Convention aim at protecting those persons who, for whatever reason, are deprived of such protection by providing for a legal status (i.e., “refugee” or “stateless person status”) and prescribing basic humanitarian standards of treatment which persons entitled to such status may enjoy.

The legal status granted to Palestinians and other persons in need of protection thus serves as the basis for access to basic rights. These rights, however, often vary depending on the type of status granted by national authorities (e.g., “recognized refugee,” “person in need of protection on humanitarian grounds,” “tolerated status,” i.e., temporary leave to remain which often is a temporary suspension of a deportation order, or “stateless person”). Persons granted a “tolerated status,” for example, often do not enjoy the same rights as recognized refugees, such as the right to family reunification.

The purpose of this chapter is to examine the provisions of the 1951 Refugee Convention and the 1954 Stateless Convention in order to determine the rights and benefits that refugees and stateless persons may enjoy. With regard to refugees, these rights include the principle of *non-refoulement* and limitations on expulsion and detention measures as well as access to basic civil, political, social and economic rights. With regard to stateless persons, the chapter first provides a brief overview of the background and purpose of the 1954 Stateless Convention, followed by an examination of its application to the Palestinian case. The definition of a stateless person in Article 1 of the Convention is analysed in relation to Palestinians who, with the exception of 1948 Palestinian refugees in Jordan, have rarely obtained citizenship in another state. The application of the exclusion clause in Article 1(2)(i) of the 1954 Stateless Convention – similar to the exclusion clause of Article 1D, first paragraph of the 1951 Refugee Convention – is also discussed in this context.

The chapter also examines the various types of legal status, including complementary forms of protection, which national authorities may grant to Palestinians who are not recognized as refugees or stateless persons. The chapter concludes with a brief review of additional standards under human rights instruments that apply to all persons, regardless of their status; and of regional mechanisms applicable to Palestinians outside the Arab world.

1. Standards of the 1951 Refugee Convention

The 1951 Refugee Convention, as well as the 1967 Protocol Relating to the Status of Refugees (1967 Refugee Protocol), has been widely endorsed by states around the world. The standards set by the 1951 Refugee Convention thus represent an important minimum for protection guarantees in states party to the Convention, which may be extended by higher standards of regional instruments or national practice. UNHCR has been given a supervisory responsibility, both under its Statute and under the 1951 Convention.²⁹⁹

As of 1 May 2005, 142 States Parties have acceded to the 1951 Refugee Convention, 142 to the 1967 Protocol and 139 to both the 1951 Refugee Convention and the 1967 Protocol.³⁰⁰ Four countries - Congo, Madagascar, Monaco and Turkey - have, however, limited the scope of the 1951 Refugee Convention to “events occurring in Europe before 1 January 1951.” They have, therefore, not accepted the applicability of the Convention to events occurring outside Europe and to refugees coming from countries outside Europe, including Palestinian refugees from the Middle East.

Asylum-seekers who are recognized as refugees are entitled to the benefits of the 1951 Refugee Convention, including Palestinian asylum-seekers who are recognized as refugees under Article 1D or Article 1A(2).³⁰¹ However, some of these benefits require a legal stay. Thus, recognition of refugee status serves as the basis for access to the benefits of the 1951 Refugee Convention.

1.1 Basic Standards

Non-refoulement

The fundamental humanitarian and human right principle of *non-refoulement* is a core principle of refugee law that prohibits states from returning refugees in any manner whatsoever to countries or territories in which their lives or freedom may be threatened.

Article 33 of the 1951 Refugee Convention prescribes that no refugee should be

returned to any country where his or her life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. This provision constitutes one of the basic Articles of the 1951 Refugee Convention, to which no reservations are permitted. The principle of *non-refoulement* is broader than Article 33 and also encompasses *non-refoulement* prohibitions deriving from human rights obligations, including Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Article 7 of the International Covenant on Civil and Political Rights.

The principle is considered international customary law. Persons meeting the refugee definition, whether under Article 1A(1), Article 1A(2) or Article 1D(2), are automatically entitled to this fundamental right. The principle also applies while a person is seeking asylum, i.e., prior to recognition of refugee status or until it is established that the applicant does not fulfil the refugee definition.³⁰²

Asylum

Everyone has the right to seek and to enjoy asylum from persecution (Article 14 of the Universal Declaration of Human Rights), but the 1951 Refugee Convention does not impose an obligation on state parties to grant asylum to refugees. The granting of a permanent residence permit, whether asylum or citizenship, thus remains the core prerogative of state sovereignty.

At the same time, access to a permanent residence permit somewhere is of importance for refugees, in particular for stateless refugees, because such legal status is crucial for a measure of personal stability, and decreases the risk of new displacements. In recognition of this, the drafters of the 1951 Refugee Convention recommended that:

Governments continue to receive refugees in their territories and that they act in concert in a true spirit of international co-operation in order that these refugees may find asylum and the possibility of resettlement.³⁰³

This recommendation implies that, although states have no obligation to grant asylum in their territory, states are recommended to co-operate so that refugees find asylum and the possibility of resettlement somewhere.

The UNHCR Executive Committee has expressed concern that some asylum-seekers have encountered serious difficulties in finding a country willing to grant them even temporary refuge, and has noted that refusal of permanent or temporary asylum has led in a number of cases to serious consequences for the persons concerned.³⁰⁴

***Non-refoulement* through Time and Temporary Protection**

“*Non-refoulement* through time” is a concept located between states’ obligation of *non-refoulement* and states’ discretion in granting asylum. Guy Goodwin-Gill has explained this as follows:

However labelled, the concept of temporary refuge/temporary protection as the practical consequence of *non-refoulement* through time provides, first, the necessary theoretical nexus between the admission of refugees and the attainment of a lasting solution. It establishes, a priori, no hierarchy in the field of solutions, but allows a pragmatic, flexible, yet principled approach to the idiosyncrasies of each situation. So, for example, it does not rule out the eventual local integration or third country resettlement of all or a proportion of a mass influx in the State of first refuge, acting in concert with others and pursuant to principles of international solidarity and equitable burden-sharing. Secondly, the concept provides a platform upon which to build principles of protection for refugees pending a durable solution, whereby minimum rights and standards of treatment may be secured.

Non-refoulement through time is nonetheless the core element both promoting admission and protection, and simultaneously emphasizing the responsibility of nations at large to find the solutions. Thus, in admitting large numbers of persons in need of protection and in scrupulously observing *non-refoulement*, the State of first admission can be seen as acting on behalf of the international community.³⁰⁵

In line with the above, it can be argued that Palestinian refugees who are not granted permanent protection in the country of asylum are, at least, entitled to a recognized legal status and certain minimum rights (i.e., temporary protection). This idea has been developed by Susan Akram and Terry Rempel, who argue for the establishment of a global unified temporary protection regime for Palestinian refugees:

Granting temporary protection would be consistent with article 1D of the Refugee Convention as a mechanism toward implementing the appropriate UN General Assembly-mandated durable solution for refugee protection. The right of return called for in UN General Assembly Resolutions would be to the refugees’ place of origin.

Temporary protection would provide Palestinian refugees in Arab states, as well as other states of the Palestinian diaspora, a recognized legal status.

Consistent with the parameters of temporary protection in Europe, or TPS in the United States, temporary protection for Palestinian refugees should afford them the basic protection rights of other persons who are granted such status when fleeing emergency situations, whether Convention-defined refugees or not. Temporary protection specifically addresses the real needs of Palestinian refugees: the need to work, to travel freely, to live where they choose within the temporary protection state, to reunite with family members, and to travel outside and return with special permission. Temporary protection also specifically addresses the fears of both Arab and other states that they would either have to grant asylum or some more permanent type of status to the refugees, or else expel them.³⁰⁶

Effective Protection

The question of whether an asylum-seeker or refugee enjoys “effective protection” usually arises in the context of secondary movements of such persons (e.g., 1948 Palestinian refugees who flee from their first Arab country of refuge) and in relation to deliberations whether they should be granted asylum or returned/removed to the “first country of asylum” or to a “safe” third country.

The term “effective protection” is not an established principle of refugee law. The idea is, however, that refugees and asylum-seekers should have access to “effective protection” and that “effective protection” encompasses access to or at least the prospect of a durable solution.

The Lisbon Roundtable organised by UNHCR and the Migration Policy Institute in 2002 (part of the Global Consultations) discussed the concept of “effective protection”. They concluded that some elements were critical factors for the appreciation of “effective protection” in the context of return to third countries, including:

- The person has no well-founded fear of persecution in the third state on any of the 1951 Convention grounds.
- There will be respect for fundamental human rights in the third state in accordance with applicable international standards...
- There is no real risk that the person would be sent by the third state to another state in which she/he would not receive effective protection or would be at risk of being sent from there on to any other state where such protection would not be available.
- While respecting data protection principles during the notification process, the third state has explicitly agreed to readmit the person as an asylum-seeker or, as the case may be, a refugee...

- While accession to international refugee instruments and basic human rights instruments is a critical indicator, the actual practice of States and their compliance with these instruments is key to the assessment of the effectiveness of protection...
- The third State grants the persons access to fair and efficient procedures for the determination of refugee status...
- The person has access to means of subsistence sufficient to maintain an adequate standard of living. Following recognition as a refugee, steps are undertaken by the third state to enable the progressive achievement of self-reliance, pending the realization of durable solutions...³⁰⁷
- The third State takes account of any special vulnerabilities of the person concerned and maintains the privacy interests of the person and his or her family.
- If the person is recognized as a refugee, effective protection will remain available until a durable solution can be found.

If one of the above criteria is not fulfilled, the asylum-seeker or refugee should be considered as not enjoying effective protection in her/his home country/country of former habitual residence or in a third country and should therefore not be returned. This applies, for example, to persons who are denied re-entry to their country of former habitual residence.³⁰⁸

Return – Deportation

Return to the country of origin is regulated by the principle of *non-refoulement* in Article 33 of the 1951 Refugee Convention (see above).

Expulsion to another country of a refugee who has been granted the right of lawful residence in a particular state is regulated by Article 32 of the 1951 Refugee Convention which stipulates that national security and public order are the only permissible grounds for expulsion. The UNHCR Executive Committee has underlined the obligations deriving from Article 32 that expulsion measures against a refugee be employed only in very exceptional cases and noted that “since a refugee, unlike an ordinary alien, does not have a home country to which he can return, his expulsion may have particularly severe consequences. It implies the withdrawal of the right of residence in the only country -other than his country of origin- in which the refugee is entitled to remain on a permanent basis.”³⁰⁹ The UNHCR Executive Committee has also recommended that an expulsion order should be combined with detention only if absolutely necessary for reasons of national security or public order, and that such detention should not be unduly prolonged.³¹⁰

Detention

States' competence to detain non-nationals pending their removal from, or pending decisions regarding their entry to state territory³¹¹ is limited by the 1951 Refugee Convention (e.g., Articles 9 and 31(2)). More importantly, human rights law prescribes additional limitations, including the prohibition against arbitrary detention.³¹² Guy Goodwin-Gill describes these limitations as follows:

The first line of protection thus requires that all detention must be in accordance with and authorized by law; the second, that detention should be reviewed as to its legality and necessity, according to the standard of what is reasonable and necessary in a democratic society. Arbitrary embraces not only what is illegal, but also what is unjust.³¹³

Detention of asylum-seekers should normally be avoided in view of the hardship it involves.³¹⁴ If detention is considered necessary, UNHCR Executive Committee recommends the following standard:

If necessary, detention may be resorted to only on grounds prescribed by law to verify identity; to determine the elements on which the claim to refugee status or asylum is based; to deal with cases where refugees or asylum-seekers have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State in which they intend to claim asylum; or to protect national security or public order.³¹⁵

In Australia, however, detention of failed asylum-seekers, including Palestinian refugees, pending their removal from state territory is common practice. Moreover, asylum-seekers who enter Australia without a valid visa or passport will be detained in one of the immigration detention centres for the duration of determination process.³¹⁶

1.2 Other Standards and Benefits of the 1951 Refugee Convention

The 1951 Refugee Convention prescribes certain standards of treatment and benefits to be granted to refugees.³¹⁷ Most of them require a legal stay in the host country. The minimum standard is that refugees should receive at least the treatment accorded to aliens in general. A higher standard is that of most-favoured-nation treatment, for example, with respect to the right of association and the right to engage in wage-earning employment. The highest standard is treatment equal to nationals, prescribed with regard to: the freedom of religion (Article 4); protection of artistic rights and

industrial property (Article 14); access to courts, legal assistance, and exemption from the requirement to give security for costs in court proceedings (Article 16); rationing (Article 20); elementary education (Article 22(1)); public relief (Article 23); labour legislation and social security (Article 24(1)); and fiscal charges (Article 29).

The 1951 Refugee Convention specifies benefits and standards of refugee protection regarding the following:

- Principle of non-discrimination (Article 3)
- Freedom of religion (Article 4)
- Rights granted apart from this Convention (Article 5)
- Exemption from Reciprocity (Article 7)
- Exemption from Exceptional Measures (Article 8)
- Continuity of Residence for Persons Displaced during the Second World War (Article 10)
- Refugee Seamen (Article 11)
- Personal Status (Article 12)
- Movable and Immovable Property (Article 13)
- Artistic Rights and Industrial Property (Article 14)
- Right of Association (Article 15)
- Access to Courts (Article 16)
- Wage-earning employment (Article 17)
- Self-employment (Article 18)
- Liberal Professions (Article 19)
- Rationing (Article 20)
- Housing (Article 21)
- Public Education (Article 22)
- Public Relief (Article 23)
- Labour Legislation and Social Security (Article 24)
- Freedom of Movement (Article 26)
- Identity Papers (Article 27)
- Travel Documents (Article 28)
- Fiscal Charges (Article 29)
- Transfer of Assets (Article 30)
- Refugees unlawfully in the country (Article 31)
- Expulsion (Article 32)
- Prohibition of Expulsion or Return (“*refoulement*”) (Article 33)
- Naturalization (Article 34)

2. Legal Status under and Standards of the Statelessness Conventions

The Convention relating to the Status of Stateless Persons (1954 Stateless Convention) was designed as a special instrument to improve the protection of stateless persons who are not refugees protected under the 1951 Refugee Convention. The 1954 Stateless Convention is significant in terms of rights afforded to stateless persons, but unfortunately, its reach is limited. This is for several reasons: firstly, it has been ratified by few states (fifty-seven as of 1 July 2005, including only three Arab states – Algeria, Libya and Tunisia).³¹⁸ Secondly, those states that have acceded to the Convention do not necessarily possess a special procedure for examining an applicant's claim of statelessness.³¹⁹

The Convention on the Reduction of Statelessness (1961 Stateless Convention) aims to reduce or eliminate cases of statelessness by addressing and recommending solutions to situations that often result in persons becoming stateless. As of 1 July 2005, the 1961 Stateless Convention has been endorsed by twenty-nine states.³²⁰

The 1954 Stateless Convention did not establish an international body to protect stateless persons or to monitor compliance with its terms. The issue was never discussed during the Conference of Plenipotentiaries in 1954.³²¹ The 1961 Stateless Convention states that:

The Contracting States shall promote the establishment within the framework of the United Nations ... of a body to which a person claiming the benefit of this Convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority (Article 11).³²²

UNHCR has been charged with the responsibilities under Article 11.³²³ Until the early 1990s, UNHCR did little in terms of its mandate under the 1954 Stateless Convention, but since then it has carried out a global campaign to promote state accession to the international refugee instruments, as well as the two conventions on statelessness.³²⁴ Since 2001, there has been a global expansion of UNCHR's activities in respect of stateless persons, covering Africa, Asia the Middle East and Europe. UNHCR's efforts have been focused on providing technical and advisory services to states and on encouraging states to find equitable solutions.³²⁵

2.1 Background and Drafting History

Nationality³²⁶

The Universal Declaration of Human Rights (1948) states that “[e]veryone has the right to a nationality” (Article 15). The principle has been repeated in several international

instruments, including the 1966 International Covenant on Civil and Political Rights (Article 24), the 1989 United Nations Convention on the Rights of the Child (Article 7(1)) and in the 1997 European Convention on Nationality (Article 4).³²⁷

Nationality indicates a special relationship between an individual and a state. It has been defined by the International Court of Justice as:

A legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties.³²⁸

The 1997 European Convention on Nationality defines nationality along the same lines:

The legal bond between a person and a State and does not indicate the person's ethnic origin (Article 2).

Nationality is also defined by the Inter-American Court of Human Rights as “the political and legal bond that links a person to a given State and binds him with ties of loyalty and fidelity, entitling him to diplomatic protection from that State.”³²⁹

Disadvantages of Statelessness

Nationality is the vehicle for access to basic rights and protection by national authorities (e.g., a state cannot expel nationals).³³⁰ Without this relationship to a state, the individual has no identity under the law.³³¹ Moreover, without the protection conveyed by nationality, the fundamental human rights enshrined by international agreements remain without value, creating the potential for unrest, instability and transmission of statelessness from generation to generation. The disadvantages of being stateless have been described as follows:

In the legal context, statelessness categorizes those individuals who do not have the recognized legal bond of citizenship with any State. As such, stateless persons fall outside the normal legal regime. In the social context, this legal vacuum translates into a lack of secure identity, belonging, and sense of place. Frequently, stateless persons cannot work, own property, access education or health care, travel, register births, marriages or deaths, or seek national protection. Positive developments concerning the rights of resident non-nationals are not always applied to stateless persons, in particular to those who cannot establish a legal status in any country.³³²

One may therefore ask: Who is more appropriately considered in need of

international protection than those who have no legal bond to citizenship with any State, including Palestinian refugees and other stateless persons?

Drafting History

In August 1949, United Nations Economic and Social Council (ECOSOC) appointed an *Ad Hoc* Committee on Refugees and Stateless Persons with the mandate to prepare a convention relating to the international status of refugees and stateless persons, as well as to consider means of eliminating statelessness.³³³

The Committee prepared both a draft Convention relating to the Status of Refugees (which was eventually adopted as the 1951 Refugee Convention) and a draft Protocol relating to the Status of Stateless Persons. The draft Protocol sought to apply *mutatis mutandis* certain provisions of the 1951 Refugee Convention to stateless persons. At the Conference of Plenipotentiaries convened in Geneva in July 1951, adoption of the Protocol regarding stateless persons was deferred because the delegates felt that the matter required more detailed study.³³⁴ ECOSOC therefore convened a new conference in 1954 during which the draft Protocol was finalized in the form of a separate Convention.³³⁵ The 1954 Stateless Convention was opened for signature on 28 September 1954 and entered into force on 6 June 1960. It aims to grant stateless persons the widest possible exercise of fundamental rights and freedoms.³³⁶

The *Ad Hoc* Committee set up by ECOSOC in 1949 was also mandated to consider ways of eliminating statelessness. However, this issue was not taken up for reasons of time and complexity, and in deference to the work of the International Law Commission (ILC).³³⁷ A draft prepared by the ILC was considered by delegates at a conference convened in Geneva in 1959.³³⁸ The 1959 Conference was reconvened in 1961, during which the 1961 Statelessness Convention was finalized and adopted.

2.2 Definition of a Stateless Person and Effect of Recognition (Legal Status)

Definition

A “stateless person” is defined by the 1954 Stateless Convention as:

a person who is not considered as a national by any State under the operation of its law.³³⁹

The 1954 Stateless Convention covers stateless persons in line with this definition. The definition is strictly legal in the sense that the only defining criterion is

recognition under the law of a person as either a national or a non-national; i.e., the latter are *de jure* stateless persons. Another group of persons in need of protection are those who do not enjoy the usual attributes of nationality, including effective protection from their home country, even though they are still legal or formal holders of a nationality. Members of this group are *de facto stateless persons*.

These two categories of stateless persons are defined by the United Nations as follows:

Stateless persons *de jure*: Persons who are not nationals of any state, either because at birth or subsequently they were not given any nationality, or because during their lifetime they lost their own nationality and did not acquire a new one.

Stateless persons *de facto*: Persons who, having left the country of which they were nationals, no longer enjoy the protection and assistance of their national authorities, either because these authorities refuse to grant them assistance and protection, or because they themselves renounce the assistance and protection of the countries of which they are nationals.³⁴⁰

De facto stateless persons were not included in the scope of the 1954 Stateless Convention. The drafters of the Convention assumed that this group would all automatically qualify as refugees protected under the 1951 Refugee Convention because they were not granted effective protection by their home country.³⁴¹ A recommendation that such persons be protected was, however, inserted into the Final Act:

Each Contracting State, when it recognizes as valid the reasons for which a person has renounced the protection of the State of which he is a national, considers sympathetically the possibility of according to that person the treatment which the Convention accords to stateless persons.³⁴²

The scope of the 1961 Statelessness Convention is also limited to *de jure* stateless persons. It was once again assumed by the drafters that *de facto* stateless persons would be refugees who would enjoy protection under the 1951 Refugee Convention and thus fall under UNHCR's mandate.³⁴³ Its Final Act includes a recommendation similar to the recommendation included in the 1954 Stateless Convention.³⁴⁴

States have the discretion to determine under their own law who will be recognized as stateless persons in accordance with the definition set out in the 1954 Stateless

Convention. States may decide to extend the benefits of the Convention to *de facto* stateless persons.

With regard to stateless Palestinian refugees, it is important to emphasize that persons (including stateless refugees) whose refugee status is recognized under the 1951 Refugee Convention, are covered by that Convention. However, persons whose refugee status is not recognized under the 1951 Refugee Convention, including stateless Palestinian refugees who are not recognized under Article 1D, may seek protection under the 1954 Stateless Convention.

The Effect of Recognition

If national authorities recognize an applicant as a “stateless person,” the question of granting legal status and entry – if she/he has not yet been admitted to the territory of that state– will become relevant. The 1954 Stateless Convention does not oblige a state to grant entry to a stateless person.³⁴⁵ Persons recognized as stateless are entitled to treatment no less favourable than that granted to aliens (Article 7(1) of the 1954 Stateless Convention), including basic human rights, which are not dependent on legal status in a given country.³⁴⁶ However, the 1954 Stateless Convention foresees that most rights will be granted only to those stateless persons who are lawfully staying in the country.

In the European Union, the majority of the fifteen member states (prior to 1 May 2004; there are now twenty-five member states) did not anticipate an automatic right to residence based on recognition as a stateless person, as noted by UNHCR:

Those countries with designated statelessness determination procedures [France, Italy and Spain] do provide for residence based on recognition as a stateless person. In the majority of other states, stateless persons tend to receive permission to stay on humanitarian grounds, often granted without a formal finding of statelessness [Denmark, Finland, Ireland, Sweden and the United Kingdom]. This may be done when the stateless person is unable to leave the country for reasons beyond their control [Germany and the Netherlands]. In those countries having a dedicated procedure, including France, Italy and Spain, recognition as a stateless person leads to residence. Spanish legislation grants permanent residence to stateless persons, while in Italy, the residence permit is granted for a period of two years. In France, the aliens’ legislation provides that those who obtain the status of stateless persons are granted a one-year *carte de séjour temporaire* conferring the right to work.³⁴⁷

In practice, therefore, recognition of status as a stateless person does not necessarily

lead to the granting of legal residence. Residence may, however, be granted on humanitarian grounds within the regular aliens' and asylum legal framework. As many of the essential benefits of the 1954 Stateless Convention (see below) are conditioned on "a lawful stay," these benefits are only available to recognized stateless persons who are also granted residence.

2.3 Standards and Benefits of the Statelessness Conventions

1954 Stateless Convention

The 1954 Stateless Convention offers stateless persons the most basic guarantees necessary to conduct a stable life. These benefits are similar to those guaranteed under the 1951 Refugee Convention. The standard of treatment prescribed for stateless persons is similar to the standard applied to refugees, except for the right of association and the right to employment, for which the standard of treatment accorded to stateless persons is lower than the standard of treatment accorded to refugees, who are entitled to "most-favoured-nation treatment."

Article 31 of the 1951 Refugee Convention (prohibition against punishment for illegal entry) and Article 33 of the same Convention (*non-refoulement*) are not included in the 1954 Stateless Convention. The drafters of the 1954 Stateless Convention assumed that because the *non-refoulement* provision was an expression of the generally accepted prohibition on forced return, there was no reason to include it in this Convention.³⁴⁸

The 1954 Stateless Convention specifies benefits and standards regarding the following:³⁴⁹

- Principle of non-discrimination with regard to race, religion or country of origin (Article 3)³⁵⁰
- Freedom of religion (Article 4)³⁵¹
- Rights granted apart from this Convention (Article 5)³⁵²
- Exemption from Reciprocity (Article 7)³⁵³
- Exemption from Exceptional Measures (Article 8)³⁵⁴
- Continuity of Residence for Persons Displaced during the Second World War (Article 10)³⁵⁵
- Stateless Seamen (Article 11)³⁵⁶
- Personal Status (Article 12)³⁵⁷
- Movable and Immovable Property (Article 13)³⁵⁸
- Artistic Rights and Industrial Property (Article 14)³⁵⁹
- Right of Association (Article 15)³⁶⁰

- Access to Courts (Article 16)³⁶¹
- Wage-earning employment (Article 17)³⁶²
- Self-employment (Article 18)³⁶³
- Liberal Professions (Article 19)³⁶⁴
- Rationing (Article 20)³⁶⁵
- Housing (Article 21)³⁶⁶
- Public Education (Article 22)³⁶⁷
- Public Relief (Article 23)³⁶⁸
- Labour Legislation and Social Security (Article 24)³⁶⁹
- Freedom of Movement (Article 26)³⁷⁰
- Identity Papers (Article 27)³⁷¹
- Travel Documents (Article 28)³⁷²
- Fiscal Charges (Article 29)³⁷³
- Transfer of Assets (Article 30)³⁷⁴
- Prohibition of Expulsion for Persons lawfully staying in the territory of a State Party (Article 31)³⁷⁵
- Naturalization (Article 32).³⁷⁶

Under the 1954 Stateless Convention, a stateless person also has duties to the country in which she/he resides, in particular the duty to abide by its laws and regulations (Article 2).³⁷⁷

1961 Statelessness Convention

The 1961 Statelessness Convention includes provisions on the acquisition of nationality (Articles 1–4); for example, “A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless” (Article 1); loss, renunciation or deprivation of nationality (Articles 5–9); for example, “A Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds” (Article 9); and a provision on nationality in the case of transfer of territory (Article 10).

2.4 Palestinians under the Statelessness Conventions

Palestinians and Citizenship³⁷⁸

Until 15 May 1948, Palestine was ruled by a British mandate under the terms of the League of Nations. Palestinian Arabs in Palestine were citizens of the British Mandate and held Palestinian passports issued by the British Mandate Authority (High Commissioner).³⁷⁹ Palestinians were, however, not considered nationals of the United Kingdom. This Palestinian citizenship terminated with the end of the British Mandate in 1948.³⁸⁰

Palestinian citizenship in the area that became Israel as a result of the 1948 Israeli-Arab conflict was revoked by Israel under the 1952 Israeli Nationality Law (and its 1980 amendment). The small minority of Palestinians, i.e., some twenty per cent of the former Palestinian Arab citizens of Palestine who had remained in Israeli state territory, became Israeli citizens under this law, although their citizenship status differs from that granted to Israeli Jews.³⁸¹ For instance, they may face difficulties in retaining their citizenship if they marry Palestinian residents of the 1967-occupied Palestinian territory.³⁸²

The large majority of the Palestinian people, i.e., approximately eighty per cent of the former Palestinian Arab citizens of Palestine, were left in 1948 without citizenship of any country. Among these were 750,000–900,000 Palestinian refugees originating from the area that became Israel, who were effectively denationalized by the restrictive provisions of the 1952 Israeli Nationality Law. Arbitrary denationalization is illegal under international law and the UNGA Partition Resolution (181(II)).³⁸³

With the exception of 1948 Palestine refugees in Jordan, only a minority of Palestinian refugees and non-refugees have acquired the citizenship of a second state.³⁸⁴ Stateless Palestinians who are not refugees form the majority of the indigenous Palestinian population of the 1967-occupied West Bank (including eastern Jerusalem) and the Gaza Strip.³⁸⁵

Palestinians as Stateless Persons

Arab states and Palestinians often refute the claim that Palestinians are stateless persons. They argue that by virtue of the international recognition of Palestinians as a “people” –despite their expulsion, dispossession and denationalization as a people by Israel– they carry a distinct nationality and have a defined territory that belongs to them. Thus, they are not stateless people. This is a strong argument; however, the political and legal implications thereof are beyond the scope of this Handbook.³⁸⁶

The matter of concern here is the much narrower legal question of whether Palestinians who have not acquired the citizenship of any state are stateless persons under the 1954 Stateless Convention.

There is at present no Palestinian state in the sense of international law, i.e., a state that would fulfil the following criteria: a) the presence of a permanent population; b) a defined territory; c) government; and d) the capacity to enter into relations with other states, including full membership of international organizations. There is therefore no Palestinian state, recognized as such by the international community,

of which Palestinians could be considered nationals.³⁸⁷ In line with this argument, and based on the fact that most Palestinians are not recognized as nationals of any state, most Palestinians may be considered as stateless persons in accordance with Article 1 of the 1954 Stateless Convention.

Other Palestinians, having acquired citizenship in a second state, may qualify as *de facto* stateless persons if they lack effective protection of their national authorities. Based on the non-binding recommendations in the Final Acts of the Statelessness Conventions, state parties may, but are not obliged to, grant the benefits of these Conventions to such persons.

Applicability of the Statelessness Conventions to Stateless Palestinians

In line with the purpose of the 1954 Stateless Convention – to provide protection to stateless persons who are not refugees (this includes stateless persons not recognized as refugees under the 1951 Refugee Convention) – the Convention is not applicable to stateless Palestinians whose refugee status is recognized under the 1951 Refugee Convention.

Since the 1954 Stateless Convention was initially intended as an additional protocol to the 1951 Refugee Convention, the drafting history, language and provisions of these two instruments are inter-related. The 1954 Stateless Convention contains, for example, an exclusion clause for stateless persons, the language of which closely resembles the first paragraph of Article 1D of the 1951 Refugee Convention and Article 7(c) of UNHCR's Statute.

Article 1(2)(i) provides that the 1954 Stateless 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.

Article 1(2)(i) aimed – as did Article 1D – to exclude stateless Palestinians from the scope of the 1954 Stateless Convention, for as long as they receive protection or assistance from other UN agencies, i.e., UNCCP and UNRWA.

Article 1(2)(i) does not include a second paragraph comparable with the second paragraph (inclusion clause) of Article 1D because this paragraph was not included in the initial ECOSOC draft of the Refugee Convention submitted to the 1951 Conference of Plenipotentiaries. The inclusion clause was added only later, during the final drafting process (see Chapter Three).

However, in light of their similar language and drafting history, Article 1(2)(i) of the 1954 Stateless Convention should be interpreted along the lines of Article 1D of the 1951 Refugee Convention: i.e., the exclusion clause no longer applies once a Palestinian refugee has left UNRWA's area of operation and, hence, no longer enjoys the assistance of that agency; or because UNCCP has ceased to provide protection.³⁸⁸

For stateless Palestinians seeking protection in third country signatories to the 1954 Stateless Convention, this implies entitlement to the benefits of this Convention providing the following two conditions are fulfilled:

- The stateless Palestinian (refugee) is not recognized as a refugee under the 1951 Refugee Convention;
- The cessation and exclusion clauses in Articles 1(2)(ii) and 1(2)(iii) of the 1954 Stateless Convention do not apply.³⁸⁹

UNHCR has not published guidelines for the interpretation of Article 1(2)(i) vis-à-vis Palestinians. UNHCR has, however, reviewed EU practice related to the application of Article 1(2)(i), and has concluded that few jurisdictions within the EU have interpreted this provision, with Germany being the only exception.³⁹⁰

Palestinian Beneficiaries of the Statelessness Conventions

In line with the above interpretation, stateless Palestinians entitled to protection under the Statelessness Conventions include the groups listed below:

- Stateless Palestinians who are not refugees under Article 1D or Article 1A(2) of the 1951 Refugee Convention but otherwise stateless persons in need of protection;³⁹¹
- Palestinians who have acquired citizenship in a country but do not enjoy the effective protection of that country and who are not refugees under Article 1D or Article 1A(2) of the 1951 Refugee Convention. This category may include *de facto* stateless persons;
- Stateless Palestinian refugees seeking protection in third state signatories to the 1954 Stateless Convention that do not apply Article 1D of the 1951 Refugee Convention in determining refugee status, or do not apply Article 1D correctly, so that these Palestinians are not recognized as refugees.

3. Additional Legal Status and Rights granted to Persons in need of Protection

3.1 Complementary Forms of Protection

Persons in need of international protection, including Palestinians, who are

recognized as refugees or as stateless persons by the authorities of a state Party to these Conventions are entitled to the standards of treatment set out in the 1951 Refugee Convention and the 1954 Stateless Convention, respectively. In practice, however, Palestinians often cannot obtain and enjoy protection from State Parties because national authorities tend to dismiss Palestinian claims for recognition as refugees or stateless persons.³⁹² Consequently, they are not granted the treatment they are entitled to.

In some cases, although they may not grant Palestinian refugees their primary rights, national authorities may recognize a need for protection and thus decide to grant a complementary form of protection.³⁹³

UNHCR recommends certain standards of treatment under complementary forms of protection:

Universal human rights principles argue for persons permitted to remain for protection reasons being afforded a status that allows them to continue their lives with human dignity. Given the disruption they have suffered, a suitable degree of certainty and stability is necessary. A mere withholding of deportation is, in UNHCR's view, not sufficient.

Beneficiaries of complementary forms of protection should enjoy a formal legal status with defined rights and obligations, and should be issued with documents certifying that status. The status should extend for a period of time which is long enough to allow the beneficiaries to regain a sense of normalcy in their lives. It should last for as long as protection is required.

The status afforded to beneficiaries should provide for the recognition and protection of basic rights as defined in relevant international and regional instruments. In some states or regions, domestic or regional human rights provisions may require standards of treatment which are higher than those of other states or regions, but the standards to be respected should not fall below a certain minimal level.³⁹⁴

In summary, UNHCR recommends that persons who are denied the benefits of the 1951 Refugee Convention, but are in need of protection, should enjoy a formal legal status in the country in which they have sought asylum so they can enjoy some degree of certainty and stability. Mere deferral of deportation is inadequate, because the destabilizing effects of living without a legal status are substantial.

With regard to civil and political rights, UNHCR recommends that beneficiaries of complementary forms of protection should enjoy at least the following rights:

- They should be protected from *refoulement* and expulsion;
- They may not be subjected to discrimination on the basis of race, religion, political opinion, nationality, country of origin, gender, physical incapacity or any other such basis;
- They may never be subjected to torture or cruel, inhuman or degrading treatment or punishment;
- They should enjoy basic freedom of movement, and in any case, not be subject to restrictions to their freedom of movement, other than those necessary in the interests of public health and public order;
- They should have access to the courts of justice and administrative authorities.³⁹⁵

With regard to social and economic rights, UNHCR recommends that beneficiaries enjoy rights comparable to those generally available in the host country, including:

- access to adequate housing;
- access to assistance or employment;
- access to health care as needed;
- access to primary and secondary education.³⁹⁶

With regard to family rights, UNHCR recommends that the unity of the (refugee) family be respected:

The family is acknowledged in human rights instruments as the natural and fundamental group unit of society: maintaining or reinstating family unity is one of the most important ways in which persons in need of international protection can enjoy the stability they require to continue their lives. Accordingly, any complementary protection regime should build in appropriate provisions for close family members to be reunited, over time, in the host country.³⁹⁷

Like protection under the 1951 Refugee Convention, complementary forms of protection are not necessarily permanent in nature (see the cessation provisions). UNHCR recommends that:

Ending of complementary status should likewise be based on objective criteria set out in writing, preferable in legislation, and should never be arbitrary. On account of its particular expertise, a consultative role should preferably be envisaged for UNHCR, when deciding whether it is appropriate to end complementary protection measures for refugees.³⁹⁸

3.2 Additional Legal Status and Benefits and the Issue of Returnability

When national authorities have considered an application for asylum or recognition of statelessness and concluded that the applicant is not a person in need of protection, she/he is often required to leave the country. With regard to stateless persons, it is, however, debated as to whether the country of former habitual residence does not have an explicit obligation to receive back stateless persons who have lived within its territory.³⁹⁹

Moreover, as stateless persons often have no right to pursue legal residence in any other country, a common problem is that no state will accept a stateless refugee whose request for protection under the 1951 Refugee Convention and/or the 1954 Stateless Convention has been rejected. Thus, states might experience difficulties in deporting or returning such persons (i.e., the problem of returnability).

Returnees and rejected applicants may be left in a state of legal limbo for years and be forced to live without a legal status that could serve as a platform for access to basic rights.⁴⁰⁰

4. Human Rights Standards

International refugee and human rights laws are complementary. Human rights law is relevant for refugee protection under the 1951 Refugee Convention, and it sets important limitations on state discretion in matters such as the detention of asylum-seekers.

There are certain fundamental human rights which apply to all persons regardless of their status in a country, including asylum-seekers, refugees, persons in need of protection, “tolerated persons” (i.e., those with temporarily suspended deportation orders), stateless persons and aliens slated for removal. These fundamental rights, including the principle of non-discrimination, should be respected by national authorities at all times.

A comprehensive listing of human rights standards is beyond the scope of this Handbook. The following is intended merely to sketch some instruments commonly applied in national asylum practice.⁴⁰¹

Universal Declaration of Human Rights

The principle of non-discrimination is one of the fundamental rights that applies to all persons, regardless of their status or type of stay in a particular state. Article 2 of the Universal Declaration of Human Rights prohibits discrimination on the basis

of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. On the basis of Article 2, the application of the principle of non-discrimination in cases involving recognition of refugee status and statelessness would extend beyond the factors of race, religion and country of origin specifically enumerated in Article 3 of the 1951 Refugee Convention and Article 3 of the 1954 Stateless Convention.

Article 5 provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Article 9 prohibits arbitrary detention.

Article 13 provides that everyone has the right to leave any country, including her/his own, and to return to her/his country.

The Universal Declaration of Human Rights sets out in Article 14(1) that everyone has the right to seek, and enjoy in other countries, asylum from persecution.

Article 15 states that everyone has the right to a nationality. However, as noted earlier, the question often asked is: in which state can a stateless person exercise her/his right to a nationality?

With regard to family reunification, Article 16(3) provides that the family is the natural and fundamental group unit of society and is entitled to protection by society and the state.

With regard to work, Article 23 sets out the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

Article 25 provides that everyone has the right to a standard of living adequate for the health and well-being of her/himself and of her/his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond her/his control.

Everyone also has the right to education, as provided in Article 26.

In addition to political and civil rights, the Universal Declaration of Human Rights recognizes economic, social and cultural rights. These two sets of human rights were transformed into legally binding state obligations under two International Covenants.

International Covenant on Civil and Political Rights

This Covenant,

- provides that all people have the right of self-determination (Article 1). The right of the Palestinian people to self-determination has been recognized by the international community and the United Nations in numerous resolutions.⁴⁰²
- recognizes that every human being has the inherent right to life and that no one shall be arbitrarily deprived of his life (Article 6).
- provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 7).
- recognizes the right to be free from arbitrary arrest and detention (Article 9, based on Article 9 of the Universal Declaration of Human Rights);
- requires that a person legally present in a country must be accorded a minimum level of basic due process rights in connection with expulsion (Article 13);
- recognizes the right to be free from arbitrary interference with family and home (Article 17, based on Article 16(3) of the Universal Declaration of Human Rights);
- provides the right to state protection of the family unit (Article 23).

Protection of the family as the natural and fundamental group unit of society is a widely recognized principle under human rights law. As refugee situations frequently give rise to separation of families, including Palestinian refugee families, the principle of protection of the family unit is very important for refugees.⁴⁰³

Recognized refugees often have the right to family reunification, yet when they apply for this, a state very often places on them (and other aliens) conditions such as a minimum period of stay, sufficient living space, and proof of employment and financial means to sustain family members.

Regarding the question of which family members may benefit from the principle of family unity, the minimum requirement under human rights standards is the inclusion of the spouse and minor children. In practice, other dependants, such as aged parents of refugees, are often considered if they share the same household.⁴⁰⁴

International Covenant on Economic, Social and Cultural Rights

This Covenant recognizes, amongst others:

- the right to work (Articles 6 and 7);
- the right to social security (Article 9);

- the fundamental principle of protection of the family (Article 10);
- the right to education (Article 13).

1984 United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Torture Convention)

Article 3 provides that:

No State Party shall expel, return (“*refouler*”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

If asylum-seekers cannot be returned for one of the reasons mentioned in the Torture Convention, they will often be recognized as persons in need of protection by national authorities.

1989 United Nations Convention on the Rights of the Child

Article 22 provides that:

State Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protecting protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

Article 7 provides that a child shall have the right to acquire a nationality.

Article 3 provides that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

5. Additional Regional Standards regarding Palestinian Refugees

International conventions related to refugees and stateless persons set the basic standards for their treatment by states. These standards and benefits are often supplemented by the provisions of regional instruments. This section will briefly mention some regional instruments that set standards for the treatment of Palestinians, and which are not already covered by the 1951 Refugee Convention and the 1954 Stateless Convention.

Regional instruments, such as the Organization for African Unity (OAU) Convention governing the Specific Aspects of Refugee Problems in Africa and the 1984 Cartagena Declaration on Refugees with regard to Latin America, for example, provide for the protection of refugees based on a definition that is “broader” than the definition under Article 1A(2). These two regional instruments extend protection to persons in need because of a serious threat to life, liberty or security of person in the country of origin as a result of armed conflict or serious public disorder.⁴⁰⁵

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the European Court of Human Rights

The ECHR and the European Court of Human Rights have set legal standards with potential relevance to Palestinian refugees and asylum-seekers in Europe.⁴⁰⁶ BADIL is aware of two cases pertaining to Palestinian asylum-seekers at the European Court of Human Rights. Decisions in these cases by the Court will set an important precedent regarding the interpretation of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) in asylum-related cases.

In September 2004, the Swedish Refugee Ombudsman (*Medborgarnas flyktingombudsman*) submitted a complaint to the European Court of Human Rights regarding the case of a stateless Palestinian from Saudi Arabia who had lived without legal status in Sweden and whose family was about to be separated by the Swedish authorities.⁴⁰⁷

In this complaint, the Swedish Ombudsman claims that the Swedish authorities had acted in violation of:

- Article 3 of ECHR: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”
- Article 8 of ECHR: “Everyone has the right to respect for his private and family life, his home and his correspondence.”

The second case before the European Court of Human Rights is a case from Belgium involving two Palestinian asylum-seekers who were forcibly returned to Lebanon.⁴⁰⁸ The case before the Court relates to the period when both were placed in the Brussels Airport transit zone.

The claimants argue in this case that the following provisions of the ECHR were violated:

- Article 3, by the detention conditions in the airport transit zone and by disrespect of the court decision;
- Article 6, regarding the right to a fair trial;
- Article 8, by the detention conditions in the transit zone, including breach of respect for physical and moral integrity;
- Article 13, regarding the right to an effective remedy.

Endnotes

- ²⁹⁹ See Chapter Two for further details of UNHCR's mandate. Article 35 of the 1951 Refugee Convention prescribes that all state parties undertake to co-operate with UNHCR and shall in particular facilitate its duty of supervising the application of the provisions of the 1951 Refugee Convention.
- ³⁰⁰ See UNHCR, "States parties to the 1951 Refugee Convention and the 1967 Protocol," 1 May 2005. See: <http://www.unhcr.ch>.
- ³⁰¹ See Chapter Three for the interpretation of Article 1D and Chapter Five for state practice on recognition of Palestinian refugees.
- ³⁰² See Goodwin-Gill, *The Refugee in International Law*, p. 137: "It [the principle of *non-refoulement*] also applies to asylum-seekers, at least during an initial period and in appropriate circumstances, for otherwise there would be no effective protection". See also UNHCR Excom Conclusion No. 6 (1977) on *non-refoulement*, which: "[r]eaffirms the fundamental importance of the observance of the principle of *non-refoulement* – both at the border and within the territory of a State of persons who may be subjected to persecution if returned to their country of origin irrespective of whether or not they have been formally recognized as refugees." For further discussion on the principle of *non-refoulement*, see UNHCR Excom, Note on Non-Refoulement, submitted by the High Commissioner, twenty-eighth session, Sub-Committee of the Whole on International Protection, EC/SCP/2, 23 August 1977. See: <http://www.unhcr.ch>.
- ³⁰³ Recommendation D of the Final Act of the 1951 Refugee Convention. The United Nations General Assembly has also recommended international co-operation regarding granting of asylum, see Resolution 2312 (XXII) of 14 December 1967, *Declaration on Territorial Asylum*: "Where a State finds difficult in granting or continuing to grant asylum, States individually or jointly or through the United Nations shall consider, in a spirit of international solidarity, appropriate measures to lighten the burden of that State" (Article 2(2)).
- ³⁰⁴ UNHCR ExCom Conclusion, Asylum, No. 5 (XXVIII), 1977.
- ³⁰⁵ Goodwin-Gill, *The Refugee in International Law*, pp. 201-2.
- ³⁰⁶ Akram and Rempel, "Temporary Protection as an Instrument for Implementing the Right of Return for Palestinian Refugees," p. 161.
- ³⁰⁷ UNHCR Agenda for Protection, Lisbon Expert Roundtable, 9-10 December 2002, Summary Conclusions on the concept of "Effective Protection" in the Context of Secondary Movements of Refugees and Asylum-Seekers, para. 15. See Appendix 9.
- ³⁰⁸ Stateless Palestinians from the Gulf States are often denied re-entry to their country of former habitual residence (see Chapter Five, Country Profile Sweden).
- ³⁰⁹ UNHCR ExCom Conclusion, Expulsion, No. 7 (XXVIII), 12 October 1977.
- ³¹⁰ *Ibid.*
- ³¹¹ Goodwin-Gill, *The Refugee in International Law*, p. 247.
- ³¹² See, for example, Article 9 of the Universal Declaration of Human Rights and Article 9 of the 1966 Covenant on Civil and Political Rights: "1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."
- ³¹³ Guy Goodwin-Gill, *The Refugee in International Law*, p. 248.
- ³¹⁴ UNHCR ExCom Conclusion, Detention of Refugees and Asylum-seekers, No. 44 (XXXVII), 1986, para. b.
- ³¹⁵ *Ibid.*
- ³¹⁶ See Chapter Five, Country Profile Australia.
- ³¹⁷ Note that states might have made reservations to these standards.
- ³¹⁸ See: <http://www.unhcr.ch> under "Statelessness."
- ³¹⁹ With regard to the 15 EU member states in 2003 (now 25 member states), see UNHCR, The 1954 Convention relating to the Status of Stateless Persons: Implementation within the European

Union Member States and Recommendations for Harmonisation, Department of International Protection, October 2003, para. 51. See: <http://www.unchr.ch>: “At present, Spain is the only country in the EU [15 member states of which 13 are parties to the 1954 Stateless Convention] with a sub-legislative act dedicated to defining a procedure by which the designated authority may examine an application for recognition of stateless status.”

³²⁰ See: <http://www.unchr.ch> under “Statelessness.” Countries that have acceded to the Convention and are reviewed in Chapter Five of this Handbook include Australia, Canada, Denmark, France, Germany, Ireland, the Netherlands, Norway, Sweden and the United Kingdom.

³²¹ Carol A. Batchelor (former Senior Legal Officer, Statelessness, UNHCR), “Stateless Persons: Some Gaps in International Protection”, *International Journal of Refugee Law*, Vol. 7, No. 2 (1995), pp. 232-259. She explains that the lack of a supervisory mechanism might have been an oversight: “The implication is that, given the fact that the intended instrument was to be Protocol, there would be a kind of understanding by association with the 1951 Refugee Convention [of Article 35-37 of the 1951 Refugee Convention, “Executory and Transitory Provisions” referring to UNHCR’s role and national authorities co-operation with UNHCR]. Unfortunately, any intended association would be lost when the instrument became a Convention in its own right, something which may have been overlooked in the transition” (p. 246). She concluded that: “Thus, for procedural reasons, namely, time, lack of authority, creation of an independent instrument and failure to raise the issue either with governments or through reference back to the Refugee Convention, the matter of a supervisory body was never discussed.”

³²² See *ibid*, p. 252 for the history of Article 11. The initial drafted article also provided for a tribunal, but the proposal was rejected due to significant objections.

³²³ United Nations General Assembly Resolution 3274 (XXIX), 10 December 1974. In November 1976, the General Assembly reviewed the provisionally allocated duties, and UNHCR was requested to continue to perform these functions without time limit (Resolution 31/36, 30 November 1976).

³²⁴ See UNHCR, Evaluation of UNHCR’s role and activities in relation to statelessness, July 2001, UNHCR Evaluation and Policy Analysis Unit. See also UNHCR ExCom Conclusion, The Prevention and Reduction of Statelessness and the Protection of Stateless Persons, No. 78 (XLVI), 1995.

³²⁵ See UNHCR Excom, *UNHCR’s Activities in the Field of Statelessness: Progress Report*, EC/53/SC/CRPI, 3 June 2003: “For the many cases of statelessness that cannot be resolved, some of them lingering for years and possibly decades, at a minimum, certain basic needs must be met, including a secure legal status and the rights that flow from this. UNHCR has identified many instances throughout the world in which individuals may be physically present in a country, even for generations, but cannot normalize their stay nor establish lawful residence” (para. 7). See also UNHCR Excom, *UNHCR’s Activities in the Field of Statelessness*, EC/55/SC/CRP13, 7 June 2005.

³²⁶ Note that the terms “citizenship” and “nationality” are used synonymously throughout this Handbook unless otherwise indicated. The term “nationality” is “a politico-legal term denoting membership of a state. It must be distinguished from nationality as a historical-biological term denoting membership of a nation;” see Paul Weis, *Nationality and Statelessness in International Law*, Leyden: Sijthoff & Noordhoff, 1979, Chapter One. In the English language, the term “nationality” is less frequently used in its ethnic sense as denoting membership of a race, and is often used interchangeably with “citizenship.” In other languages, the terms are not necessarily used interchangeably. Moreover, the term has various meanings depending on the context. Certain individuals may therefore be considered to have different nationalities for different purposes. Palestinian refugees who have been granted citizenship in Jordan, for example, may consider themselves as Jordanian citizens but as Palestinian nationals. With regard to the term “citizenship,” Weis explains (*Nationality and Statelessness in International Law*, pp. 4-5): “Conceptually and linguistically, the terms ‘nationality’ and ‘citizenship’ emphasize two different aspects of the same notion: State membership. ‘Nationality’ stresses the international,

- 'citizenship' the national, municipal, aspect. Under the laws of most States citizenship connotes full membership, including the possession of political rights... It follows even from this brief survey that the terms 'national' and 'citizen' overlap. Every citizen is a national, but not every national is necessarily a citizen of the State concerned; whether this is the case depends on municipal law; the question is not relevant for international law."
- ³²⁷ Adopted in Strasbourg, 6 November 1997.
- ³²⁸ *Nottebohm Case (Liechtenstein v. Guatemala)* – Second Phase, International Court of Justice Reports, 1955, p. 4. See also Weis, *Nationality and Statelessness*, p. 31.
- ³²⁹ Inter-American Court of Human Rights, 1999. Available at: http://www.corteidh.or.cr/index_ing.html
- ³³⁰ Article 13 of the Universal Declaration of Human Rights.
- ³³¹ See Batchelor, "Stateless Persons: Some Gaps in International Protection," p. 235, referring to Weis: "From the point of view of international law, the stateless person is an anomaly, nationality still being the principal link between the individual and the Law of Nations."
- ³³² Carol A. Batchelor, "The International Legal Framework Concerning Statelessness and Access for Stateless Persons," Contribution to the European Union Seminar on the Content and Scope of International Protection, Madrid, 8-9 January 2002, para. 4.
- ³³³ ECOSOC Resolution 248 B (IX); UN Doc. E/OR (IX)/Suppl. No. 1, 8 August 1949, pp. 62-63. The Secretary-General of the United Nations had undertaken a study for ECOSOC, *A Study of Statelessness*, New York: United Nations, E/1112; E1112/Add.1, August 1949 in which the formation of such a committee had been recommended. See also Chapter Three of this Handbook.
- ³³⁴ For more details, see Batchelor, "Stateless Persons: Some Gaps in International Protection," p. 244.
- ³³⁵ For more details, see *ibid*, p. 245: "Although some cursory discussion ensued regarding the exact meaning of *mutatis mutandis*, it was generally assumed that the Conference was not authorized to make additions and 'that it would be wise not to try to amend the articles of the Geneva Convention, but to restrict itself to deciding whether or not to insert them in the instrument on the status of stateless persons' [Citation from the Conference, UN Doc. E/CONF.17/SR.5, p. 3]. An indication of this hesitation regarding legal powers was that although the representatives convened agreed that a separate instrument would be preferable, there was careful analysis of whether or not they were authorized to create a Convention in lieu of the intended Protocol."
- ³³⁶ See the preamble of the 1954 Stateless Convention: "Considering that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly of the United Nations have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination. Considering that the United Nations has, on various occasions, manifested its profound concern for stateless persons and endeavoured to assure stateless persons the widest possible exercise of these fundamental rights and freedoms."
- ³³⁷ See Batchelor, "Stateless Persons: Some Gaps in International Protection," p. 249.
- ³³⁸ The delegates at the 1959 Conference decided unanimously to take the draft Convention on the Reduction of Future Statelessness as the basis for their work. A draft Convention on the Elimination of Future Statelessness was considered too radical a step. See *ibid*, p. 250, footnote 89.
- ³³⁹ Article 1(1) of the 1954 Stateless Convention. The definition is considered customary international law. It is thus binding also on states not party to the 1954 Stateless Convention.
- ³⁴⁰ United Nations Secretary-General, *A Study of Statelessness*, pp. 8-9.
- ³⁴¹ See Batchelor, "Stateless Persons: Some Gaps in International Protection", p. 248: "One stated aim of the delegates at the 1954 Conference 'was to obtain the greatest possible number of signatures.' A definition which did not overlap with that of *de facto* stateless in the 1951 Convention was more likely to achieve this, for the assumption was that *de facto* stateless

persons were refugees and a State might not wish to accept obligations to both *de jure* and *de facto* stateless persons. If a *de facto* definition was included, not only might the number of signatories decrease, but reservations might be made which would lead to a variety of legal positions vis-à-vis the instrument.”

³⁴² See *ibid*, p. 248.

³⁴³ See *ibid*, p. 250.

³⁴⁴ See *ibid*, p. 258.

³⁴⁵ See also UNHCR, The 1954 Convention relating to the Status of Stateless Persons: Implementation within the European Union Member States and Recommendations for Harmonisation, October 2003, paras. 83-98.

³⁴⁶ *Ibid*, para. 86.

³⁴⁷ *Ibid*, paras. 92-93. See Chapter Five for relevant state practices.

³⁴⁸ See Goodwin-Gill, *The Refugee in International Law*, p. 134, which refers to the Final Act of the 1954 Conference, 360 United Nations Treaty Series 117.

³⁴⁹ For a review of these benefits and their implementation in EU Member States, see UNHCR, The 1954 Convention relating to the Status of Stateless Persons: Implementation within the European Union Member States and Recommendations for Harmonisation, Department of International Protection, October 2003, paras. 100-151.

³⁵⁰ Similar to Article 3 of the 1951 Refugee Convention.

³⁵¹ Similar to Article 4, *ibid*.

³⁵² Similar to Article 5, *ibid*.

³⁵³ Similar to Article 7, *ibid*.

³⁵⁴ Similar to Article 8, *ibid*.

³⁵⁵ Similar to Article 10, *ibid*.

³⁵⁶ Similar to Article 11, *ibid*.

³⁵⁷ Similar to Article 12, *ibid*.

³⁵⁸ Similar to Article 13, *ibid*.

³⁵⁹ Similar to Article 14, *ibid*.

³⁶⁰ Article 15 of the 1954 Stateless Convention provides that stateless persons should receive at least the treatment which is accorded to aliens generally (i.e., “treatment as favourable as possible, and in any event, not less favourable than that accorded to aliens generally in the same circumstances”), whereas Article 15 of the 1951 Refugee Convention regarding the right of association provides for the higher standard of “most-favoured-nation” treatment.

³⁶¹ Similar to Article 16 of the 1951 Refugee Convention.

³⁶² Article 17 provides that stateless persons should receive at least the treatment accorded to aliens generally as regards the right to engage in wage-earning employment, whereas Article 17 of the 1951 Refugee Convention regarding wage-earning employment provides for the higher standard of “most-favoured-nation” treatment.

³⁶³ Similar to Article 18 of the 1951 Refugee Convention. Both provide for the standard, at least, of the treatment accorded to aliens generally.

³⁶⁴ Article 19 of the 1954 Stateless Convention provides for the standard, at least, of the treatment accorded to aliens generally. Article 19 of the 1951 Refugee Convention provides for the same standard, but also obliges states to “use their best endeavours consistently with their laws and constitutions to secure the settlement of such refugees in the territories, other than the metropolitan territory, for whose international relations they are responsible.”

³⁶⁵ Similar to Article 20 of the 1951 Refugee Convention. Both provisions propose that refugees and stateless persons should receive the treatment granted to nationals.

³⁶⁶ Similar to Article 21 of the 1951 Refugee Convention.

³⁶⁷ Similar to Article 22, *ibid*.

³⁶⁸ Similar to Article 23, *ibid*.

³⁶⁹ Similar to Article 24, *ibid*.

³⁷⁰ Similar to Article 26, *ibid*.

- ³⁷¹ Similar to Article 27, *ibid* .
- ³⁷² Similar to Article 28, *ibid*. According to Article 28 of the 1954 Stateless Convention, stateless persons who are lawfully residing in the territory of a state should be issued travel documents. In the EU, the practice varies as to whether a recognized stateless person receives a 1954 Convention Travel Document or an alien's passport. See also UNHCR, *The 1954 Convention relating to the Status of Stateless Persons: Implementation within the European Union Member States and Recommendations for Harmonisation*, Department of International Protection, October 2003, para. 137.
- ³⁷³ Similar to Article 29 of the 1951 Refugee Convention.
- ³⁷⁴ Similar to Article 30, *ibid*.
- ³⁷⁵ Similar to Article 32, *ibid*.
- ³⁷⁶ Similar to Article 34, *ibid*.
- ³⁷⁷ Similar to Article 2, *ibid*.
- ³⁷⁸ See for further details, *BADIL 2003 Survey of Palestinian Refugees and Internally Displaced Persons*, section on "Citizenship and Residency", p. 61.
- ³⁷⁹ Palestinian citizenship was regulated by a statutory instrument and included acquisition by birth.
- ³⁸⁰ For the debate on the continuance of this citizenship upon cessation of the British Mandate, see Guy Goodwin-Gill, *The Rights of Refugees and Stateless Persons*, World Congress on Human Rights, New Delhi, 1990, section on The Status of Palestinians.
- ³⁸¹ The law conferring citizenship on Jews is the Law of Return (*Laws of the State of Israel 114 (1950)*), which provides automatic Israeli citizenship for any Jew in the world who wishes to immigrate to Israel.
- ³⁸² See *BADIL 2003 Survey of Palestinian Refugees and Internally Displaced Persons*, p. 64 for further details.
- ³⁸³ According to the 1952 Nationality Law as amended in 1980 (section 3), Palestinians must be able to prove (among five conditions for those born before the establishment of the state of Israel and three for those born after) that they were in the state of Israel on or after 14 July 1952, or the offspring of a Palestinian who meets this condition. The vast majority of 1948 Palestine refugees were unable to meet these strict physical presence requirements of Israel's 1952 Nationality Law. For a legal analysis of Palestinian denationalization in the context of Israeli state succession, see Gail Boling, *The 1948 Palestinian Refugees and the Individual Right of Return, An International Law Analysis*. Bethlehem: BADIL Resource Center for Palestinian Residency and Refugee Rights, 2001, pp. 15ff. For a discussion of the principle against arbitrary denationalization under international law, see Akram and Rempel, "Temporary Protection as an Instrument for Implementing the Right of Return for Palestinian Refugees," p. 69.
- ³⁸⁴ See *BADIL 2003 Survey of Palestinian Refugees and Internally Displaced Persons*, p. 71, footnote 26: "According to various sources, it is estimated that some 7,500 Palestinians (including refugees) in the West Bank, 3,500 refugees in Syria, and approximately 30,000 refugees in Lebanon have acquired a second citizenship."
- ³⁸⁵ See Chapter One for further details on the legal status of Palestinian refugees in their first country of refuge.
- ³⁸⁶ The argument is supported by the right of the Palestinian people to self-determination, as recognized by the League of Nations and since then regularly affirmed by the international community, including numerous UN resolutions. See Boling, *The 1948 Palestinian Refugees and the Individual Right of Return, An International Law Analysis*, pp. 15ff.
- ³⁸⁷ Some states have in fact recognized "Palestine" (94 states have recognized Palestine, for more information consult the Palestinian National Authority website, available at: http://www.pna.gov.ps/Government/gov/recognition_of_the_State_of_Palestine.asp) and the United Nations has recognized the Palestine Liberation Organization (PLO) as the legitimate representative of the Palestinian people.

- ³⁸⁸ The argument about which event triggers cessation of Article 1(2)(i) will depend upon the specific interpretation of Article 1D adopted. See Chapter Three.
- ³⁸⁹ Those provisions are similar to Articles 1E and 1F of the 1951 Refugee Convention.
- ³⁹⁰ UNHCR, *The 1954 Convention relating to the Status of Stateless Persons: Implementation within the European Union Member States and Recommendations for Harmonisation*, Department of International Protection, October 2003, para. 41. See Chapter Five, Country Profile Germany.
- ³⁹¹ This group would include mainly stateless Palestinians from the 1967-OPT, including eastern Jerusalem.
- ³⁹² See Chapters Five and Six for findings of BADIL research on national practice.
- ³⁹³ UNHCR Excom, *Complementary Forms of Protection: Their Nature and Relationship to the International Refugee Protection Regime*, EC/50/SC/CRP.18, 9 June 2000. In this paper, UNHCR identifies two groups of beneficiaries who may be granted permission to stay in a country on grounds related to an international protection need: “a) Persons who should fall within the terms of the 1951 Convention relating to the Status of Refugees or its 1967 Protocol, but who may not be so recognized by a State as a result of varying interpretations; b) Persons who have valid reasons for claiming protection, but who are not necessarily covered by the terms of the 1951 Convention” (para. 6). Only the first group is dealt with in this section, as it relates, *inter alia*, to Palestinians who are not recognized as refugees by national authorities.
- ³⁹⁴ UNHCR Excom, *Complementary Forms of Protection: Their Nature and Relationship to the International Refugee Protection Regime*, EC/50/SC/CRP.18, 9 June 2000, paras. 13-15.
- ³⁹⁵ *Ibid*, para. 16.
- ³⁹⁶ *Ibid*, para. 17.
- ³⁹⁷ *Ibid*, para. 18.
- ³⁹⁸ *Ibid*, para. 19.
- ³⁹⁹ Article 12(4) of the International Covenant on Civil and Political Rights, for example, provides that “no one shall be arbitrarily deprived of the right to enter his own country.” The language of this provision is not limited to citizens. Note also that the US Department of Justice, General Counsel’s Office, for example, has concluded that international human rights instruments provide guidance in identifying the human rights that may be implicated in cases of denied re-entry, including the right to be free from arbitrary arrest and detention and from arbitrary interference with family and home, as well as the right to state protection of the family as a unit. Moreover, a person legally within a country must be accorded a minimum level of basic due process rights in connection with expulsion. The General Counsel’s concluded: “Whether such a violation is so serious a deprivation of a basic human right as to constitute persecution in the context of an asylum application depends upon the situation of the particular applicant. In the case of a stateless person who has no right to pursue legal residence in any other country, such an expulsion or denial of re-entry may well entail the kind of harm qualify as persecution.” (*Legal Opinion Palestinian Asylum Applicants*, CO 208, October 27, 1995; available on the BADIL Resource Center for Palestinian Residency and Refugee Rights website). See also Chapter Five, Country Profile United States and Sweden.
- ⁴⁰⁰ See Chapter Five for state practices; for example, Germany, Sweden, the United Kingdom and the United States.
- ⁴⁰¹ For discussion of the right of return in Human Rights Law, see Boling, *The 1948 Palestinian Refugees and the Individual Right of Return, An International Law Analysis*, p. 36.
- ⁴⁰² See *ibid*. See also Takkenberg, *The Status of Palestinian Refugees in International Law*, pp. 250-261.
- ⁴⁰³ See further *ibid*, p. 262. See also below and Chapter Five, Country Profile Sweden, regarding the case of a family currently living in Sweden (Palestinian father and Russian mother) that would be dispersed to three different countries if they were deported.
- ⁴⁰⁴ See also *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status*, p. 43.
- ⁴⁰⁵ With regard to instruments adopted by the Arab League, see Chapter One regarding resolutions

concerning the status and treatment of Palestinian refugees; and with regard to draft human rights instruments, see Akram and Rempel, "Temporary Protection as an Instrument for Implementing the Right of Return for Palestinian Refugees," p. 19.

⁴⁰⁶ For protection standards and positions adopted by regional political mechanisms in Europe, see Section 4, Chapter Three. On 21 May 2002, for example, the European Council adopted a Common Position concerning the temporary reception by member states of the European Union of certain Palestinians who had been evacuated from the Church of the Nativity in Bethlehem. Council Common Position 2002/400/CFSP of 21 May 2002, L 138/33, as amended by Council Common Position 2003/366/CFSP of 19 May 2003, L 124/51.

⁴⁰⁷ More information on the case is available on the Ombudsman's. See: <http://www.mfo.nu>. See also Chapter Five, Country Profile Sweden.

⁴⁰⁸ For a description of this case, see Chapter Five, Country Profile Belgium.

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Chapter Five

**Survey of Protection Provided
to Palestinian Refugees at the
National Level**

Survey of Protection Provided to Palestinian Refugees at the National Level

Introduction

This chapter presents a set of “Country Profiles” describing protection currently available for Palestinian refugees worldwide under domestic law and jurisprudence of state signatories to the 1951 Refugee Convention and/or the Statelessness Conventions. These Country Profiles were compiled drawing from information gathered in a survey of thirty-one non-Arab countries signatories to the 1951 Refugee Convention.⁴⁰⁹ The survey was conducted during 2003–2004 by BADIL with the help of numerous lawyers and practitioners (see List of Contributors).

Considerable efforts were made to get relevant information from countries that signed the 1951 Refugee Convention. Time constraints and the varying quality and quantity of available information, however, allowed for only partial achievement of this goal.

Thirty-one countries are covered by this Handbook.⁴¹⁰ Five of the countries surveyed (Croatia, Czech Republic, Estonia, Iceland and Portugal) had no Palestinian asylum-seekers. Latvia and Peru had only one case each and Japan had only two appeal cases about which BADIL has no further information.⁴¹¹ Comparatively little information could be gathered about East European countries⁴¹² and countries in Central and South America. The latter region is discussed in one summary report (with a more detailed Country Profile provided for Mexico). Only a few Asian states are signatory to the 1951 Refugee Convention,⁴¹³ and as relatively few Palestinian refugees have moved to Africa, information is given about only two countries with Palestinians refugees (Nigeria and South Africa).

In total, twenty-three countries were researched in detail. The twenty-three Country Profiles presented here provide an overview of asylum law, jurisprudence and practice in the main countries in which Palestinian refugees have sought protection, in particular Western Europe, Canada, the United States and Australia.

The BADIL Handbook examined if, and how, international protection standards available for Palestinian refugees are implemented by national authorities. Particular efforts were made to verify if, and how, Article 1D of the 1951 Refugee Convention is interpreted and applied by national authorities and courts, and to understand national practice in the light of interpretation and guidelines advanced by UNHCR and legal scholars (see Chapter Three). Law and jurisprudence applied in refugee status determination, legal status and benefits granted to Palestinian refugees, as well as the legal framework in place for protection of stateless Palestinians, were of particular interest in this context.

Country Profiles are presented below in a format that reflects the above purpose and research priorities. Information is organized around ten key topics:⁴¹⁴

- Statistical data
- Status of Palestinians upon entry into the country
- Refugee determination process (refugee status and, if available, complementary forms of protection)
- Article 1D in refugee status determination
- Refugee determination process: outcome
- Return – deportation
- Temporary protection
- Protection under the Statelessness Conventions
- Reference to relevant jurisprudence

This chapter therefore summarizes national practice vis-à-vis Palestinian refugees in search of protection outside Arab states. Major findings and conclusions from this data are presented in Chapter Six.

AUSTRIA⁴¹⁵

1. Statistical Data

Due to inconsistent registration, official figures on the number of Palestinian refugees who have sought asylum in Austria are not available.

According to unofficial sources, some 1,100 Palestinians are living in Austria today, with the majority living in and around Vienna.⁴¹⁶

Palestinians are registered in official statistics in two different categories: as stateless persons, or by country of origin.⁴¹⁷ There appears to be no clear policy regarding the use of these categories.

2. Status of Palestinians upon Entry into Austria

As in the case of other asylum-seekers, Palestinians in Austria may submit an application for asylum to the Federal Asylum Office (“*Bundesasylamt*”). During the admissibility process, the asylum-seeker is obliged to stay at the first reception center. If the asylum application is permitted, asylum-seekers are provided with residence permits valid during the asylum process. They are not entitled to work, except on short contracts in certain fields, such as tourism and agriculture. If an asylum-seeker is able to support her/himself, she/he may decide where she/he wants to live in Austria. Otherwise she/he will be assigned a residence in one of the Federal States (*Länder*).

3. Refugee Determination Process: Refugee Status

Refugee status and asylum is granted in accordance with Article 7 of the Federal Law concerning the Granting of Asylum of 14 July 1997 as amended (Asylum Act),⁴¹⁸ which stipulates that:

Asylum-seekers shall, upon application, be granted asylum by administrative decision of the authority if it is satisfactorily established that they are in danger of persecution in their country of origin (article 1, section A(2), of the Geneva Convention on Refugees) and none of the grounds set forth in the cessation or exclusion clauses in article 1, section C or F of the Geneva Convention on Refugees is present.

3.1 Article 1D in Refugee Status Determination

Asylum applications submitted by Palestinians are generally considered on a case-by-case basis against the criteria of Article 1A(2) of the 1951 Refugee Convention.

The question of whether Article 1D has been incorporated into national legislation has not been conclusively clarified. A positive argument could be made based on Article 43 of the Asylum Act, which includes a general reference to the 1951 Refugee Convention:

The provisions of the Geneva Convention on Refugees shall remain unaffected.

Such an argument would be supported by Article 14 of the Asylum Act (the section “deprivation of the right of asylum”), which refers to Articles 1C and 1F of the 1951 Refugee Convention, but not to Article 1D or Article 1E. So Palestinian refugees falling within the scope of Article 1D are not deprived of the right of asylum. However, in the only Palestinian asylum case in which Article 1D was considered, the Independent Federal Asylum Review Board (Review Board) concluded in its decision of 28 February 2002 that Article 1D is not a provision to be applied under the Austrian asylum law.⁴¹⁹

Due to the scarcity of case law on Article 1D, moreover, there is little track record of administrative and judicial interpretation of its meaning. In the case mentioned above, the Review Board also concluded that Article 1D only applies to persons who received assistance from other organizations of the United Nations at the time of the ratification of the 1951 Refugee Convention on 28 July 1951.⁴²⁰ In another recent case, which involved a Palestinian refugee from the Gaza Strip who was allegedly menaced by Hamas⁴²¹ for being a traitor, the Board concluded that it was not necessary to discuss the application of Article 1D, as there were reasons to grant asylum on the basis of Article 1A(2).⁴²²

4. Refugee Determination Process: Outcome

Recognized refugees are entitled to the benefits of the 1951 Refugee Convention, including travel documents.

Jurisprudence Sample Decisions

Some Palestinians have been recognized as refugees and granted asylum under Article 1A(2). This includes, for example, the Asylum Review Board's decision of 22 April 2003 in the case of the Palestinian from the Gaza Strip referred to above.⁴²³ In its decision of 11 April 2003, the same Review Board granted asylum to a Palestinian from Iraq whose father had been accused of collaboration with Kuwait.⁴²⁴

Other Palestinians, however, have been rejected. Several asylum claims have been rejected by the Review Board on the basis that they were manifestly unfounded. Examples of the reasoning include: a) lack of credibility (for example, persons who were unable to prove their Palestinian identity and/or country of former residence⁴²⁵ and a Palestinian from Syria whose reasons for flight were considered not credible);⁴²⁶ and, b) no fear of persecution (for example, a Palestinian from the OPT who claimed to be at risk of persecution from Hamas and in danger due to the Israeli blockade and bombings).⁴²⁷

5. Return – Deportation

The Austrian asylum system foresees a single procedure, meaning that if an application for asylum is dismissed, the authority shall declare *ex officio* by administrative decision whether the aliens' deportation, rejection at the border or forcible return to their country of origin is admissible (Article 8 of the Asylum Act).

Return may be declared inadmissible if such action would be in violation of Article 3 of the Torture Convention, Articles 2 or 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, or Protocol No. 6 concerning the abolition of the death penalty. Persons who have received such protection against *refoulement* will be granted a restricted temporary residence permit valid for one year (*non-refoulement* status). The permit can be extended for as long as the reasons for the non-return exist. Such persons receive an identity document and can apply for a work permit. They may be issued an alien's passport in accordance with Article 76 of the Aliens Act.⁴²⁸

Palestinians who are neither granted refugee status, nor protection against *refoulement* are requested to leave Austria voluntarily. If they do not comply, they may be deported. A deportation deferment order can be issued if a deportation cannot be carried out for practical reasons (Article 56 of the Aliens Law). However, this provision is not systematically applied in cases where a deportation cannot be conducted.⁴²⁹ Persons issued with a deportation deferment are not issued travel or identity documents. They are not entitled to work. They are, however, entitled to some social care.

In principle, Palestinians from the Gaza Strip, West Bank, Lebanon, Syria, Jordan and Egypt are subjected to forcible return (deportation). In practice, it may be difficult to obtain travel documents for these persons.⁴³⁰

6. Temporary Protection

No special temporary protection regime has been established with regard to Palestinians.

7. Protection under the Statelessness Conventions

Austria is not party to the 1954 Stateless Convention but has acceded to the 1961 Statelessness Convention. BADIL is not aware of any practice regarding recognition of Palestinians as stateless persons under this Convention.

8. Reference to Relevant Jurisprudence

Decisions of the Review Board are available at: <http://ris.bka.gv.at/ubas>, including the following decisions referred to in the text above:⁴³¹

210.192/0-IX/25/99 of 22 April 2003
223.873/0-VII/20-01 of 11 April 2003
228.437/0-VII/23/20 of 22 May 2002
221.736/-IX/25/01 of 4 May 2001
228.437/0-VII/23/20
237.160/0-IV/42/03
237.234/0-Xii/36/03
234.645/0-III/07/03
234.253/0-IX/27/03

9. Links

Asylkoordination: www.asyl.at
Administrative Court decisions: <http://ris.bka.gv.at/vwgh>⁴³²
UNHCR Austria: www.unhcr.at

BELGIUM⁴³³

1. Statistical Data

According to unofficial sources, 150 Palestinians living in Belgium today.⁴³⁴

Palestinians are registered in official Belgian statistics under the category “Palestine,” although there are indicators of this practice being inconsistent.⁴³⁵

Since the establishment of the General Commission for Refugees and Stateless Persons (CGRA) in 1987 and up until 2002, 387 Palestinians have sought asylum in Belgium.⁴³⁶ Out of these, twenty persons were granted asylum by CGRA or the appeal body, the Permanent Board for Refugees’ Appeal (PBRA).⁴³⁷ No statistical data is available for 2003.

2. Status of Palestinians upon Entry into Belgium

As in the case of other asylum-seekers, Palestinians who are in Belgium may submit an application for asylum to the Aliens Office (*Office des Étrangers*). CGRA will make a decision at the first instance.⁴³⁸ During the asylum process, asylum-seekers are provided with a provisional status.⁴³⁹ During the admissibility phase of the procedure, they are not allowed to work and can only receive material support in open reception centers.

If an asylum application is admitted, the authorities will examine the merits of the case. The asylum-seeker will then receive a provisional residence permit that allows him/her to work and receive financial support from a social welfare center during the rest of the asylum procedure.

3. Refugee Determination Process: Refugee Status

In general, asylum-seekers may be recognized as refugees in accordance with the *Loi du 15 Décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers* as amended.⁴⁴⁰ The law does not provide for any complementary form of protection on humanitarian grounds.⁴⁴¹

Article 48 provides:

Peut être reconnu comme réfugié l'étranger qui réunit les conditions requises à cet effet par les conventions internationales liant la Belgique.

Article 49 stipulates:

Sont considérés comme réfugiés au sens de la présente loi et admis au séjour ou à l'établissement dans le Royaume:

- *l'étranger qui, en vertu des accords internationaux antérieurs à la Convention internationale relative au statut des réfugiés, et des Annexes, signées à Genève, le 28 juillet 1951, possédait en Belgique la qualité de réfugié avant l'entrée en vigueur de la loi du 26 juin 1953 portant approbation de ladite convention;*
- *l'étranger auquel la qualité de réfugié a été reconnue par le Ministre des Affaires étrangères ou par l'autorité internationale à laquelle le Ministre a délégué sa compétence;*
- *l'étranger auquel la qualité de réfugié est reconnue par le Commissaire général aux réfugiés et aux apatrides....*

3.1 Article 1D in Refugee Status Determination

Claims submitted by Palestinian asylum-seekers are examined on the basis of the criteria set out in Article 1A(2) of the 1951 Refugee Convention. Article 1D does not play a role in the refugee determination process, despite the general reference in Article 48 to the 1951 Refugee Convention, which presumably includes a reference to Article 1D.

4. Refugee Determination Process: Outcome

Some Palestinians have been recognized as refugees under the criteria set out in Article 1A(2) of the 1951 Convention. Recognized refugees receive a residence permit valid for one year, which automatically becomes renewable each year. After five years of residence in Belgium, they have the right to establishment in Belgium and to receive an identity card for foreigners, which is valid for ten years. After two years of legal residence in Belgium, refugees are entitled to apply for Belgium citizenship.⁴⁴²

Recognized refugees are provided with travel documents and entitled to family reunification and to work without a permit. Contrary to other third country nationals legally residing in Belgium, recognized refugees are also entitled to work as self-employed persons without specific authorization.

Jurisprudence Sample Cases

In two decisions on the appeals level (PBRA), Palestinians were recognized as refugees. The 22 May 2002 decision involved a Palestinian born in Kuwait. In November 1990, he moved to Nablus in the West Bank, where he claimed to have sold some land to an Israeli, an act that led to threats by Hamas. He then fled to Belgium with his wife and two children, arriving in 2001. PBRA concluded that he was at risk of persecution for political reasons if he was returned:

*Considérant qu'en cas de retour dans son pays, le requérant encourt le risque d'être persécuté pour avoir commis un acte considéré comme une trahison, à savoir la vente d'un terrain à un Israélien;
Que nonobstant l'absence de motivation politique consciente dans le chef du requérant, son acte revêt dans le contexte palestinien une dimension politique objective;
Que face à ce type de situation, la Commission a déjà jugé qu'il suffit que le mobile de la persécution soit d'ordre politique et que ce point soit tenu pour suffisamment établi pour que la crainte entre dans le champ d'application de l'article 1er, section A, paragraphe 2 de la Convention de Genève.*

The 9 April 2002 decision involved a Palestinian refugee from Syria, who was registered with UNRWA. He claimed that as a member of the PFLP-General Command, he had acted as secretary of the organization's student group since 1982, and had participated in an attempted revolt against the organization in 1997.⁴⁴³ The attempt failed and he was requested to leave the organization. The General Commission for Refugees and Stateless Persons (CGRA) dismissed his asylum application on credibility grounds. PBRA concluded at his appeal that he fulfilled the criteria set out in Article 1A(2) because if returned, he might be persecuted by the Syrian authorities:

*Que des informations dignes de foi permettent de penser que le fait pour un membre du FPLP-CG de s'opposer à cette organisation et d'être recherché par elle, entraîne le risque d'être poursuivi par les autorités syriennes qui contrôlent ce mouvement...
Considérant qu'à l'audience le requérant tient des propos qui apparaissent sincères et cohérents au sujet des principaux faits invoqués; que la Commission estime dès lors pouvoir les tenir pour établis à suffisance;
Que la crainte du requérant s'analyse donc comme une crainte d'être persécuté en raison de ses opinions politiques au sens de la Convention de Genève.*

5. Return – Deportation

In decisions where refugee status is denied, CGRA will give an opinion on whether the asylum-seeker can be returned to her/his country of former habitual residence. For certain nationalities, CGRA includes a so-called “non-removal” clause in negative decisions. Currently, a “non-removal” clause is included in negative decisions involving Palestinians from the 1967-OPT. Such a clause is not included in negative decisions involving Palestinians arriving from other countries, such as Lebanon.

Asylum-seekers who receive a negative decision are required to leave Belgium. If they do not leave Belgium voluntarily, they will be issued an expulsion order. Those asylum-seekers, including Palestinians, who receive a negative decision with a “non-removal” clause are entitled to stay in Belgium until the CGRA changes its decision and decides that the person can return to her/his country of former habitual residence (the issued expulsion order is automatically prolonged in that period). Such persons are not entitled to work but are entitled to social support.⁴⁴⁴

Case of Palestinian Deportees from Belgium in the European Court of Human Rights⁴⁴⁵

A case of two Palestinian asylum-seekers in Belgium is pending before the European Court of Human Rights (ECHR). Both had lived in Lebanon prior to their arrival and asylum application in Belgium. Following negative decisions in their cases, they were detained in order to be returned to Lebanon. They appealed against the decision to detain them and won their case before the *Chambre du Conseil* and the *Chambre de Mises en Accusation* (appeal court). The administrative body, *Office des Étrangers*, executed these judgments by placing them in the transit zone of Brussels Airport, based on the interpretation that the court did not state explicitly that the two should have access to Belgium territory. They were left in the transit section without means (food, bedding or lodging). A civil judge then condemned this practice and both were returned to detention, and finally forcibly returned to Lebanon.⁴⁴⁶ Their case before the ECHR relates to the period they were placed in the transit zone. The claimants argue that Article 3, 5, 6, 8 and 13 of the European Convention on Human Rights were violated. They argue, among others, that Article 3⁴⁴⁷ was violated by the detention conditions in the transit zone and the disrespect of the court decision, and Article 8⁴⁴⁸ by the detention conditions in the transit zone, where the lack of privacy while living in a public space was physically and morally degrading.

6. Temporary Protection

No special temporary protection regime has been established with regard to Palestinians.

7. Protection under the Statelessness Conventions

Belgium is party to the 1954 Stateless Convention and the 1961 Stateless Convention.

Recognition as a stateless person is granted by a regular court of first instance and not by the asylum authorities. Recently, more and more Palestinians have been granted protection under the 1954 Stateless Convention.⁴⁴⁹

Jurisprudence Sample Cases

The Civil Court in Ghent, in a 24 November 1994 decision, granted stateless status to a Palestinian refugee from Lebanon who was registered with UNRWA. The claimant, married to a Polish woman and father of two children, took up studies in Belgium after having completed his engineering studies in Poland. The Civil Court concluded:

Under article 1.1 of the Convention of New York, a stateless person is a person who is not considered as a national by any State.⁴⁵⁰ In order to establish statelessness, it is not possible to verify whether the claimant may not have the nationality of any country in the world; according to the specific circumstances of the case, the Court must simply examine whether the claimant has the nationality of his birthplace, of his parents or his spouse's birthplace, or of the country of his residence. The claimant cannot be considered as a Palestinian, because no Palestinian state exists. He is not a Pole, as he was identified as a stateless person in the information bulletin for foreigners. He has not applied for Belgian nationality. The Court thus inferred that the claimant sufficiently established that he is eligible for status of stateless person.

Recognition of statelessness does not automatically result in entitlement to a residence permit. A residence permit can be granted by the Aliens Office according to Article 9(3) of the Aliens Act (regularization of stay for third country nationals staying illegally on Belgian territory), if exceptional circumstances exist. In practice, however, stateless persons are almost automatically granted a permanent right of residence. The only exception is rare cases of stateless persons who have right of residence in another country. Stateless persons who have obtained residence permits enjoy the same benefits as third country nationals in Belgium, including a permanent right of residence in Belgium, social support, work authorization and entitlement to family reunification.

8. Reference to Relevant Jurisprudence

Decisions in the first instance (CGRA) are not published, and arguments are included only in negative decisions. On the appeal level (PBRA), both positive and negative decisions on the substance of the asylum claim are published.

Two relevant PBRA decisions in Palestinian asylum cases are:

22 May 2002	01-1257/F1396 ⁴⁵¹
9 April 2002	99-0736/F1382 ⁴⁵²

9. Links

OCIV: <http://www.ociv.org>

FEDASIL: <http://www.fedasil.be/home>

International Organization for Migration: <http://www.belgium.iom.int>

DENMARK⁴⁵³

1. Statistical Data

According to the Danish Ministry of Integration, 23,000 Palestinians are living in Denmark.⁴⁵⁴ Many arrived in Denmark in the 1980s fleeing civil war in Lebanon. A few have arrived from Syria, the Gaza Strip and the West Bank.⁴⁵⁵

Stateless Palestinian refugees are registered by the Danish authorities as “Stateless Palestinians,” whereas Palestinian refugees who have obtained citizenship in a new country are registered according to that country (for example, Palestinians from Jordan).

From 1991 to 2002, 5,045 Palestinians sought asylum in Denmark. This includes 167 persons in 2002, of whom 50 were granted asylum by the Danish Immigration Service.⁴⁵⁶ A total of 78 Palestinians submitted an appeal to the Danish Refugee Board in 2002 regarding negative decisions of the Danish Immigration Service. In ninety-three per cent of these cases (72 cases), the Board upheld the decision of the Immigration Service, whereas in six per cent of the cases (five cases) the asylum-seeker was granted refugee status. In one case, a complementary form of protection was granted (so-called “B-status,” see below).⁴⁵⁷

2. Status of Palestinians upon Entry into Denmark

As in the case of other asylum-seekers, Palestinians in Denmark may submit an application for asylum to the Danish Immigration Service. During the asylum process, the asylum-seeker is usually assigned to an accommodation center. They are not entitled to work during the asylum process.

3. Refugee Determination Process: Refugee Status and Complementary Forms of Protection

In general, Section 7 of the Aliens (Consolidation) Act (*Bekendtgørelse af udlændingeloven*, LBK 685 of 24 July 2003) (Aliens Act) sets out the general provision for granting a residence permit:

- (1) Upon application, a residence permit will be issued to an alien if the alien falls within the provisions of the Convention relating to the Status of Refugees (28 July 1951).
- (2) Upon application, a residence permit will be issued to an alien if the

- alien risks the death penalty or being subjected to torture or inhuman or degrading treatment or punishment in case of return to his country of origin. An application as referred to in the first sentence hereof is also considered an application for a residence permit under subsection (1).
- (3) A residence permit under subsections (1) and (2) can be refused if the alien has already obtained protection in another country, or if the alien has close ties with another country where the alien must be deemed to be able to obtain protection.

Thus, asylum-seekers may be granted a residence permit if they are recognized as refugees under Section 7.1 of the Aliens Act.⁴⁵⁸ If such persons have obtained protection in another country, a residence permit can be refused (Section 7.3).

Conditions for complementary forms of protection are set out in Section 7.2 of the Aliens Act. This provision covers cases where Denmark, as a state, is obliged to grant protection in order to comply with the international conventions it has ratified, including the Convention against Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment (CAT) (so-called “B– status”). Conditions for residence permits on humanitarian grounds are set out in Section 9b of the Aliens Act. Such permits are rarely granted.

3.1 Article 1D in Refugee Status Determination

Article 1D has not played a role in the determination of refugee status because it is considered not to be applicable to Palestinian asylum-seekers as long as UNRWA continues its functions.

In 1990, the Danish Refugee Board referred to and debated Article 1D in the context of its review of asylum claims submitted by a number of Palestinian refugees from Lebanon. In the period 1985–1989, i.e., during the civil war in Lebanon, the Danish Immigration Service had granted Palestinian asylum-seekers from Lebanon asylum without examining their individual claims. In early 1990, the Immigration Service reverted to an individual screening of Palestinian asylum-seekers and rejected some of their claims. Following these negative decisions, several Palestinians appealed to the Danish Refugee Board. On 6 April 1990, the Board issued an initial decision in these cases. Subsequently, the Board reopened these cases and made a new decision on 13 September 1990.⁴⁵⁹

In the second decision, the majority of the Refugee Board concluded that Article 1D, second paragraph, was not applicable to the case of these Palestinian refugees.⁴⁶⁰ The Board here referred to the opinion of the Danish Ministry of Foreign Affairs of 24 March 1988, which concluded that with regard to Palestinian refugees

registered with UNRWA, the “automatic Convention entitlement” set out in Article 1D, second paragraph, would not be applicable unless UNRWA ceases its functions.⁴⁶¹ A Palestinian refugee who leaves UNRWA’s area of operation is therefore not entitled to be recognized as a refugee under Article 1D.⁴⁶² In such a case, the authorities should assess whether the asylum-seeker fulfils the other conditions for recognition of refugee status under Article 1A of the 1951 Refugee Convention.⁴⁶³ The Ministry based this interpretation on the history of Article 1D, including the close link between the establishment of UNRWA and the drafting of the 1951 Refugee Convention, and noted that it was clear that the provision referred only to the situation in which the international community would decide to terminate UNRWA’s services.

Based on this interpretation of Article 1D, the majority of the Refugee Board then concluded that particular Palestinian asylum-seekers should be recognized as refugees under Section 7.1 of the Aliens Act, unless specific reasons justified another conclusion, as they could not return to their original home country (Palestine).⁴⁶⁴ The Board then concluded that Lebanon, in principle, could be considered a country of first asylum, and should be examined as such on an individual basis. The Board found that the asylum-seekers in these cases had lived in Lebanon since they were born, or had close ties with Lebanon. They were therefore not entitled to a residence permit (Section 7.3).⁴⁶⁵

In a next step, the Danish Ombudsman was requested to verify the practice of the Refugee Board following its decision of 13 September 1990. In the final report of 25 February 1992, the Ombudsman referred to the interpretation of Article 1D which had been adopted by the Refugee Board, and noted that the status of Palestinian refugees from Lebanon related to the circumstances under which the state of Israel was established in 1948, and not to the refugees’ actual situation in Lebanon. Recognition of refugee status is thus not related to a fear of persecution in Lebanon.⁴⁶⁶ The Ombudsman did not examine the interpretation of Article 1D, but focused on different issues related to the discussion of whether a country is a “home country” or a “country of first asylum” (see below).

In another case regarding Palestinian refugees from Syria, the Ombudsman was requested to examine the interpretation of Article 1D.⁴⁶⁷ The Ombudsman agreed with the conclusion of the Refugee Board, noting that Article 1D, second paragraph, refers only to the situation in which UNRWA ceases its functions, and not to a situation in which a Palestinian registered with UNRWA leaves UNRWA’s area of operations. Such a person does not *ipso facto* fall within the scope of the 1951 Refugee Convention. The Ombudsman based his conclusion on the language of Article 1D, second paragraph, and the *travaux préparatoires*.⁴⁶⁸

The view expressed by the Refugee Board and the Ombudsman has since been upheld in cases involving stateless Palestinians. In each case, the authorities assess whether the asylum-seeker has gained a connection to a country other than Palestine that would justify consideration of this country as his or her new home country. If such a connection has not been established, the authorities will assess whether the asylum-seeker has a first country of asylum as stipulated in Section 7.3 of the Aliens Act.

As Lebanon cannot be considered a new home country for Palestinian refugees, their status as refugees is recognized in light of the circumstances in their original home country, i.e., the circumstances under which the state of Israel was established in 1948, and not in relation to their actual situation in Lebanon.⁴⁶⁹ Palestinians from Lebanon are therefore recognized as refugees (Section 7.1), and the essential question in cases involving these refugees is whether the applicant can obtain the necessary protection in Lebanon. If the Danish authorities find that Lebanon cannot offer the Palestinian necessary protection, Denmark is obliged to grant protection and a residence permit to her/him.

3.2 Palestinians arriving from Lebanon

In practice, the Danish Refugee Board has applied three criteria in order to establish whether the necessary level of protection is available in Lebanon:⁴⁷⁰

1. It should be feasible for the Palestinian refugee to return in a legal manner to Lebanon.
2. Her/his future continuing stay in Lebanon should be legal.
3. There are prospects that the refugee is able to “continue living in peace in such a way that his or her personal integrity is protected.”

The third criterion does not necessarily imply that the refugee obtains the same social status as Lebanese citizens. In practice, frequently-used indicators are the length of time the applicant had previously stayed in Lebanon and whether she/he has relatives there.

The Refugee Board has stated that the threshold for establishing that Lebanon cannot offer adequate protection and serve as a country of first asylum is, in principle, lower than the threshold for establishing persecution under Article 1A of the 1951 Refugee Convention.⁴⁷¹ Moreover, the burden of proof to establish “necessary protection” lies with the Danish authorities, whereas the burden of proof in cases examined under Article 1A lies with the applicant.⁴⁷² When examining whether an applicant can obtain protection in Lebanon,

the Danish authorities do not consider UNRWA as able to offer any kind of protection other than humanitarian assistance.⁴⁷³

3.3 Palestinians arriving from Syria, Jordan and the occupied Palestinian territory

Danish authorities have concluded that Palestinians living in Syria, Jordan, the West Bank and the Gaza Strip have obtained a new home country against which their asylum claim will be assessed in accordance with Sections 7.1 and 7.2 of the Aliens Act. In relation to the Convention, the asylum claims are therefore examined under Article 1A(2) against the country in which they formerly lived.

4. Refugee Determination Process: Outcome

Both Convention and “B-status” (complementary form of protection) refugees are issued with a renewable two-year residence permit.⁴⁷⁴ Normally, they may apply for a permanent residence permit only after seven years of residence. The granting of this permit is no longer automatic, but conditional on various requirements, including the completion of an “integration programme.” Refugees who do not meet these requirements will have their temporary residence permit renewed and may apply for a permanent permit at a later stage. The Danish Immigration Service will decide where the refugee with a temporary residence permit is to live in Denmark.

Aliens who are granted protection on humanitarian grounds will be issued with a renewable, one-year residence permit.⁴⁷⁵

Jurisprudence Sample Cases

Palestinians from Lebanon

In a 6 March 2003 decision, the Refugee Board concluded that the applicant, a stateless Palestinian from Lebanon, would not be able to obtain the necessary protection if returned to Lebanon, due to his conflict with the organization *Al Tawhid*⁴⁷⁶ over a broken weapons deal. Another 2 May 2002 decision involved a stateless Palestinian who had worked with Syrian Intelligence in Lebanon, to whom he reported regarding security in Al-Baddawi refugee camp. One day he was requested by the Agency to place a bag with explosives in front of someone’s door. He refused to do so and fled to Denmark. The Refugee Board concluded that due to his bad relations with the Palestinian Fatah Movement and the Syrian Intelligence Agency in Lebanon, he would be unable to enjoy the necessary protection in Lebanon. In

February 2004, a stateless male Palestinian who claimed to have been a victim of sexual assaults was not granted asylum.

Asylum was rejected in a case involving an asylum-seeker who had been enrolled in the PFPL-General Command.⁴⁷⁷ His duties consisted mainly of guarding the organization's headquarters. He had received military training in Libya, Syria and Lebanon. He claimed that in 2002, he was asked by the organization to carry out a suicide attack against Israeli settlers living in South Lebanon and received US\$10,000 in advance for the operation, which he then decided not to carry out. The Refugee Board concluded that essential parts of his explanation were not credible and that he could still obtain necessary protection in Lebanon, where he had been born, grown up and lived until his departure, and where some of his closest relatives still lived. In a 26 February 2003 decision, the Refugee Board concluded that asylum could not be based on the general circumstances under which Palestinians live in Lebanon.⁴⁷⁸

Palestinians from the West Bank

The Refugee Board concluded, in a 30 January 2003 decision, that an asylum-seeker from the West Bank was at risk of persecution from both Palestinian authorities and the local community if he was returned, because he was suspected of collaborating with Israel. Similarly, in a February 2004 decision, the Refugee Board concluded that it could not dismiss the likelihood of the asylum-seeker, if returned, being faced with degrading treatment by Hamas or the Islamic Jihad, as referred to in Section 7.2, and that it would be difficult for the applicant to obtain the protection of the local authorities. The Board therefore granted him "B-status" (a complementary form of protection). In a 26 May 2003 decision, the Board also granted "B-status" to a Palestinian from the West Bank who had been a collaborator with Israel. In a 12 February 2003 decision, the Board concluded that an asylum-seeker who had been subjected to torture by Palestinian authorities and was being sought by both the Palestinian and Israeli authorities at the time that he fled the West Bank was entitled to protection under the same provision. Similarly, in August 2003, an applicant who had been suspected of collaborating with Israel and received death threats was also granted "B-status".⁴⁷⁹

The Refugee Board did not find asylum-seekers' explanations credible in the cases of 8 and 9 May 2003. The case of 8 May involved a Palestinian who claimed to have been a member of Force 17. The Danish authorities did not believe him. The case of 9 May involved a Palestinian who had thrown stones at Israeli soldiers in Hebron and who was put in jail by Palestinian security forces. The Danish authorities did not believe him. In a 27 January 2003 decision, a case involving a Palestinian whose house had been damaged during an Israeli attack, the Board concluded that several houses in that area had been damaged and that the asylum-seeker and his family had not been individually targeted. The Board noted that asylum could not be granted on the basis of general circumstances in the West Bank.

Palestinians from the Gaza Strip

Palestinians from the Gaza Strip have been granted complementary forms of protection in the Board's decisions of 2 October 2001 and 10 August 2001. In the former decision, following a shooting incident, the applicant had suffered mental disturbance that impeded a normal examination of his case.⁴⁸⁰ In light of the applicant's relationship to *Hamas*, the Refugee Board granted him asylum. In the 10 August 2001 decision, the Board concluded that, due to the current circumstances in the Gaza Strip, the asylum-seeker could not obtain protection vis-à-vis Hamas from the Palestinian authorities.

Palestinians from the Gaza Strip were denied asylum by the Refugee Board in its decisions of April 2003, and of 3 and 14 December 2001. In the former decision, The decision involved a stateless male Palestinian from the Gaza Strip who arrived in Denmark in June 2001. In 1967, he was deported from the Gaza Strip but returned in 1996/1997. He was an active member of Fatah until 1996/1997. Between March and June 2000, he stayed in Jordan to seek medical assistance. He claimed that he could not return to the Gaza Strip due to the political situation in the area, including the *intifada*. The Refugee Board noted that granting of asylum could not be based on the general situation in the area. The Board concluded that the applicant was not faced with a risk of persecution. The Board noted that the general circumstances in the Gaza Strip did not warrant sufficient basis for the granting of asylum. The application was rejected. The decision of 3 December 2001 involved a stateless male Palestinian from the Gaza Strip and his Tunisian wife. Their claim was assessed both in relation to the Gaza Strip and Tunisia, where they had lived for some years. The male applicant had criticized the Palestinian Authority for being corrupt. The Refugee Board rejected their application in relation to both countries. Lastly, the 14 December 2001 decision involved an applicant who claimed that his father had asked him to leave the Gaza Strip following a visit to a mosque where people had been asked to join the Islamic Jihad and Hamas. He was not granted asylum.

Palestinians from Syria

With regard to Palestinians from Syria, and in its decisions of May 2003,⁴⁸¹ 6 March 2003,⁴⁸² 30 January 2003,⁴⁸³ 29 October 2002, 24 September 2002⁴⁸⁴ and 25 June 2002, the Refugee Board upheld the negative decisions by the Immigration Service. The 29 October 2002 case concerned a female applicant who had referred to family problems in relation to her marriage and separation. The Refugee Board noted that such problems were not relevant for an asylum case. The 25 June 2002 case involved an applicant who lived in Lebanon for some time during 1997–1999, because he feared other Palestinians and the Syrian authorities, given his support of the pro-Arafat faction of the DFLP.⁴⁸⁵ In December 1999, following his return to Syria, someone tried to kill him. During an arrest in 2000, he was assaulted by the Syrian authorities. The Refugee Board did not accept that those assaults amounted to torture. The Refugee Board also concluded that Palestinian supporters of Arafat were now able to live to a large extent without interference by the Syrian authorities. His claim was therefore rejected.

Palestinians from Jordan

With regard to Jordan, negative decisions were reached by the Refugee Board in its decisions of 28 January 2003, 3 December 2001,⁴⁸⁶ and 29 November 2001.⁴⁸⁷ The 28 January 2003 case involved an applicant who claimed that some fundamentalist organizations had threatened him for trading with Israel. He suspected that these organizations burnt down his shop in May 2001. He mentioned this to the police, who did not believe him. They then searched his house and started looking for him. The Refugee Board concluded that the applicant could obtain due process and protection from the fundamentalist organizations in Jordan. His claim was therefore rejected.

5. Return – Deportation

If an asylum applicant receives a final rejection, she/he must leave Denmark. If a rejected asylum-seeker will not leave Denmark voluntarily, it is the responsibility of the police to ensure the applicant's departure.

If an asylum-seeker cannot be removed or deported through no fault of her/his own – usually because her/his country of origin refuses to re-admit her/him or because of disturbances there – and the removal has been impossible for at least eighteen months, she/he may be granted a temporary residence permit in accordance with Section 9.c of the Aliens Act. After seven years, the alien can apply for a permanent residence permit. Such persons enjoy almost the same rights as persons granted asylum, including the right to work. However, they are not entitled to Danish travel documents.

Asylum-seekers who were rejected asylum based on a first country of asylum assessment, and who cannot be deported, will be recognized as refugees (or as persons in need of complementary protection) and granted residence permits on the basis of Sections 7.1 or 7.2 of the Aliens Act. This can apply, for example, to Palestinian refugees arriving from Lebanon who cannot return there in a legal manner and thus lack the necessary level of protection.

6. Temporary Protection

There is no special temporary protection regime for Palestinians in Denmark.

7. Protection under the Statelessness Conventions

Denmark is party to the 1954 Stateless Convention and the 1961 Stateless Convention. BADIL is not aware of decisions in Denmark involving Palestinians seeking protection under these conventions.

8. Reference to Relevant Jurisprudence

Decisions by the Danish Refugee Board are published in Danish in the Board's annual reports and/or on its website: <http://www.fln.dk>. See, for example, the following decision in the sample cases:

<i>Gaza</i>	April 2003; 3 December 2002; 14 December 2001; 2 October 2001; and 10 August 2001.
<i>Jordan</i>	January 2003; 3 December 2001; and 29 November 2001.
<i>Lebanon</i>	February 2004 (2004/2); 21 October 2003; 6 March 2003; 26 February 2003; and 2 May 2002.
<i>Syria</i>	May 2003; 6 March 2003; 30 January 2003; 29 October 2002; 24 September 2002; and 25 June 2002.
<i>West Bank</i>	February 2004 (2004/3); August 2003; 26 May 2003; 9 May 2003; 8 May 2003; 12 February 2003; and 30 and 27 January 2003.

9. Links

Danish Refugee Council: <http://www.flygtning.dk>

Danish Immigration Service: <http://www.udlst.dk>

Danish Refugee Board: <http://www.fln.dk>

FINLAND⁴⁸⁸

1. Statistical Data

According to unofficial sources, some 1,000 Palestinians, mainly from the West Bank, are living in Finland today.⁴⁸⁹

Registration by the Directorate of Immigration does not provide a specific category for Palestinians or stateless persons. Asylum-seekers without citizenship, including stateless Palestinian refugees, are registered in one of the following three categories: 1) without citizenship; 2) citizenship lacking; or 3) citizenship unknown. Information about how the Directorate makes the distinction between these categories could not be obtained. According to the Finnish Refugee Advice Center, the first two categories consist mainly of Palestinian refugees arriving from Lebanon.

The statistics of the Directorate of Immigration for 2003 show thirty-eight asylum-seekers registered in the first category, eleven in the second category and six in the third category.⁴⁹⁰

2. Status of Palestinians upon Entry into Finland

As in the case of other asylum-seekers, Palestinians in Finland may submit an application for asylum to the Directorate of Immigration. During the asylum process, asylum-seekers may be issued ID-cards by the police or the frontier guard. They do not enjoy any legal status. They are entitled to work after three months in Finland. They may live in a reception center or in private accommodation, as they wish.

3. Refugee Determination Process: Refugee Status and Complementary Forms of Protection

In general, asylum-seekers may be granted refugee status in accordance with Section 87(1) of the recent Aliens Act of 30 April 2004, which stipulates:

Aliens residing in the country are granted asylum if they reside outside their home country or country of permanent residence owing to a well-founded fear of being persecuted for reasons of ethnic origin, religion, nationality, membership in a particular social group or political opinion and if they, because of this fear, are unwilling to avail themselves of the protection of that country.⁴⁹¹

Residence permits may also be granted based on the need for protection, as in Section 88(1) of the Aliens Act, which stipulates:

Aliens residing in the country are issued with a residence permit on the basis of a need for protection if the requirements for granting asylum under section 87 are not met but the aliens are in their home country or country of permanent residence under the threat of death penalty, torture or other inhuman treatment or treatment violating human dignity, or if they cannot return there because of an armed conflict or environmental disaster.⁴⁹²

Section 49 of the Aliens Act, moreover, provides that residence permits may be granted to aliens who have entered the country without residence permits, if the requirements for issuing such residence permits abroad (i.e., the conditions applied for aliens who have not entered Finland) are met and if refusing such permits would be “manifestly unreasonable.”

3.1 Article 1D in Refugee Status Determination

Section 87(3) of the Aliens Act stipulates that:

Asylum is not granted to persons who are eligible for protection or help from bodies or offices of the United Nations other than the United Nations High Commissioner for Refugees (UNHCR). Once such protection or help has ceased without final regulation of the status of the person in accordance with the valid resolutions adopted by the United Nations General Assembly, the person is entitled to refugee status. If the person has voluntarily relinquished the protection mentioned above by leaving the safe area for reasons other than those related to a need for protection, his or her right of residence is examined under this Act.⁴⁹³

Thus, the Aliens Act of 30 April 2004 clearly provides that Palestinian refugees may be recognized as refugees under Article 1D without having to fulfil the criteria of Article 1A(2) of the 1951 Refugee Convention. However, refugees who have “voluntarily relinquished” the assistance provided by UNRWA are not entitled to such recognition. Their claims are to be examined under the criteria of Section 87(1) i.e., the criteria of Article 1A(2). Future access to, and scope of protection for Palestinian refugees in Finland will therefore depend mainly on the specific meaning to be given to the term “voluntarily relinquished” by the Finnish authorities.⁴⁹⁴

Jurisprudence Lead-Case on Article 1D

*Decision by the Supreme Administrative Court, 31 October 2002*⁴⁹⁵

This case involved a stateless Palestinian refugee from Lebanon who had been living in Nahr al-Bared refugee camp⁴⁹⁶ and receiving assistance from UNRWA. He left Lebanon on a refugee travel document issued by the Lebanese authorities, and sought asylum in Finland in April 1999. He claimed to have been threatened by several rival political groups and organizations in the refugee camp. He also argued that standards of living were poor and that there were housing problems in the camp.

The Directorate of Immigration and the Helsinki Administrative Court denied his request for a residence permit. The asylum-seeker then appealed against the decision by the Administrative Court to the Finnish Supreme Administrative Court.

Referring to the wording of Article 1D, the Administrative Court stated that parties to the 1951 Refugee Convention have applied the provision in different ways. It referred to UNHCR's Handbook, paragraph 143, and the 2002 UNHCR Note⁴⁹⁷ and stated:

[I]f a refugee has left UNRWA's jurisdiction, e.g., for the lack of education or job opportunities or other related reasons of personal convenience, he cannot receive in the country of asylum the rights of the 1951 Geneva Convention nor *ipso facto* refugee status.

The Court further referred to the 1996 Joint Position by the Council of the European Union, in particular point 12, stipulating that:

Any person who deliberately removes himself from the protection and assistance referred to in Article 1D of the Geneva Convention is no longer automatically covered by that Convention. In such cases, refugee status is in principle to be determined in accordance with Article 1A.⁴⁹⁸

The Court concluded that Article 1D was applicable in the case because the appellant was a stateless Palestinian registered with UNRWA in Lebanon. The Court then analysed whether the applicant could return to Lebanon, stating that:

According to the information available there are no legal obstacles to A's return. Upon return to Lebanon he can benefit further from the possibilities of resorting to the assistance of UNRWA. Therefore it does not follow from the rules of Article 1D that A would in this respect directly, pursuant to Article 1D, enjoy the benefits of the 1951 Geneva Convention.

The Supreme Administrative Court further elaborated these arguments, stating that no facts were presented in the case relating to the appellant's security or basic livelihood, or that prevented his return to Lebanon. The Court then concluded:

Based on the above mentioned reasons A does not have *ipso facto* a right to the benefits granted in the 1951 Geneva Convention. A must therefore not be granted refugee status pursuant to Article 1D of the Convention, which rule is included in Section 30 of the Aliens Act. Regarding Article 1D, A is, therefore, not within the scope of the application of the 1951 Geneva Convention.

The Court then examined whether the applicant fulfilled the criteria set out in Article 1A(2) of the 1951 Convention and concluded that he did not have a well-founded fear of persecution for one of the reasons identified by the Convention. The Court also concluded that the applicant was not in need of protection pursuant to Section 31 of the Aliens Act,⁴⁹⁹ stating that:

The fact that according to the available information Palestinian refugees' rights to, for example, practice certain professions, are restricted cannot yield the interpretation that A would be in need of international protection pursuant to the mentioned provision.⁵⁰⁰

The Court finally concluded that the applicant could be returned to Lebanon.

4. Refugee Determination Process: Outcome

Persons recognized as refugees are entitled to the benefits of the 1951 Refugee Convention, including travel documents. They are granted permanent residence permits. Persons granted residence permits based on the need for protection (Section 88 (1)), are entitled to almost the same rights as recognized refugees, including family reunification and social benefits. They are granted alien passports instead of refugee travel documents.

Persons granted residence permits pursuant to Section 49 of the Aliens Act are not recognized as refugees and their status is a normal immigration status. They are granted temporary residence permits, which are renewable and become permanent after two years of staying in Finland. Such persons are entitled to work and to the same social benefits as refugees. Their right to family reunification, however, is conditional upon their having independent financial resources and the ability to support the family members coming to Finland.

Jurisprudence Sample Cases

In addition to the 31 October 2002 case heard by the Supreme Administrative Court,⁵⁰¹ there is a more recent 15 September 2004 decision by the Helsinki Administrative Court, in which a Palestinian refugee from the Gaza Strip was recognized as a refugee under Article 1D.⁵⁰² The refugee was registered with UNRWA in the Gaza Strip, travelled to Romania for educational purposes, and then arrived to Finland, where he sought asylum. The Court concluded that due to the current situation in the Gaza Strip in terms of safety and human rights, the applicant could not be returned to the area. Article 1D was therefore applicable. The term “voluntarily relinquished” was not mentioned in this case.

Earlier on, the Helsinki Administrative Court granted refugee status to a Palestinian from Lebanon. The Court stated that a Palestinian refugee who was in need of protection because he could not live safely in Lebanon and because he was not protected by UNRWA was entitled to recognition under the 1951 Refugee Convention.⁵⁰³ The Directorate of Immigration had granted this person a residence permit based on the need for protection. The Court referred to Article 1D.

Some Palestinian families have been granted residence permits under Section 49 (formerly Section 20) of the Aliens Act, including a single father with two children who had lived in Finland for two and a half years, during which time the children had been in municipal day care.⁵⁰⁴ In the period 1999–2001, some Palestinian families were granted residence permits due to the fact that their children, who were born in Finland, had acquired Finnish citizenship through birth under the Finnish Citizenship Act, Section 9.⁵⁰⁵

5. Return – Deportation

As in the case of other rejected asylum-seekers, Palestinians whose claims for asylum are rejected and who are not entitled to residence permits are asked to leave the country. If they do not leave voluntarily, they will be subject to a deportation procedure. Detention is used in preparation for the expulsion of rejected asylum-seekers.

Rejected Palestinian asylum-seekers who cannot be returned, for example, due to the lack of travel documents or re-entry permits, may under certain conditions receive residence permits under Section 49 of the Aliens Act.

6. Temporary Protection

No special temporary protection regime has been established for Palestinians.

7. Protection under the Statelessness Conventions

Finland is party to the 1954 Stateless Convention only. No information could be obtained regarding practice involving stateless Palestinians.

8. Reference to Relevant Jurisprudence

The lead-case on Article 1D is the decision by the Supreme Administrative Court of 31 October 2002 (2002:69) (*Annual Year Book publication* No. KHO:2002:69, Case No. 2770, Diary No. 1866/3/02). This and other cases published in the *Annual Year Book* are available on <http://www.finlex.fi/oikeus/index.html>. The English translation of the lead-case is published on the BADIL website.

Decisions by the Directorate of Immigration and the Helsinki Administrative Court are not published.

9. Links

Finnish Refugee Advice Center: <http://www.pakolaisneuvonta>.

FRANCE⁵⁰⁶

1. Statistical Data

According to sources, between 1,500 and 3,000 Palestinians live in France today.⁵⁰⁷

Palestinian asylum-seekers are registered as “*d’origine Palestinienne*,” unless they are citizens of a country, for example, Palestinian refugees who have obtained Jordanian or Israeli citizenship.

In the period 1999–2002, 111 Palestinian refugees submitted asylum claims to OFPRA (*Office français de protection des réfugiés et apatrides*).⁵⁰⁸ In 2000, OFPRA decided sixteen cases, recognizing the claims of six, and rejecting the claims of ten. In 2001, OFPRA decided twenty-nine cases, recognizing the claims of five, and rejecting twenty-four.⁵⁰⁹

2. Status of Palestinians upon Entry into France

As in the case of other asylum-seekers, Palestinians in France may submit applications for asylum to OFPRA. During the asylum process, they are provided with three-month residence permits, which are renewable until the final decision is made. They are not entitled to work. Asylum-seekers are not confined to a specific location. Asylum-seekers are entitled to certain social and medical services and financial assistance. Their children have access to public education.

3. Refugee Determination Process: Refugee Status and Complementary Forms of Protection

Asylum-seekers who fulfil the criteria of Article 1A(2) of the 1951 Refugee Convention are granted asylum in France in accordance with the Law No. 52-983 of 25 July 1952, which was amended by the Law of 10 December 2003 regarding the right to asylum (Asylum Law). This law is applied in accordance with Decree No. 2004-814 of 14 August 2004.

Asylum-seekers who do not fulfil those criteria may be granted a subsidiary form of protection introduced by the recent amendment to the Asylum Law in order to replace the earlier concept of “territorial asylum.”⁵¹⁰ Applicants for a subsidiary form of protection must prove fear of one of the following threats:

- Death penalty
- Torture, inhuman or bad treatment (Article 3 of ECHR);
- Serious, direct and individual threat against the life or person of a civilian due to generalized violence resulting from a situation of internal or international armed conflict.

3.1 Article 1D in Refugee Status Determination

Article 1D was referred to and debated by the *Commission des Recours des Réfugiés* (CRR) in its decision of 25 July 1996, DAMASI.⁵¹¹ The case involved a stateless Palestinian refugee from the Gaza Strip who had been working in Israel since he was seventeen years old, including during the first *intifada*. He returned to the Gaza Strip every three months and claimed that, while there, he had discovered that someone had written a slogan calling for a general strike on the walls of his house. He removed the slogan because he was afraid that Israeli security forces would question him about this matter. Subsequently, some Palestinians attempted to assassinate him. He suspected that the perpetrators were militants fighting in the *intifada* and that they had also painted the slogan on the walls. He then left for Israel, where he stayed with his employer for one year. Subsequently, he moved to France where he worked for a friend of his Israeli employer. He applied for asylum claiming that he could not return to Israel or to the Gaza Strip, where he was suspected of being a collaborator with Israel.

CRR noted his case and concluded that:

... malgré les changements politiques intervenus sur le territoire dont est originaire l'intéressé, les activités d'assistance [de l'UNRWA] n'ont pas cessé au sens des stipulations précitées de l'article 1er, D, deuxième alinéa de la Convention de Genève; que l'assistance qui est assurée par cette agence des Nations Unies à l'égard des réfugiés relevant de son mandat s'exerce dans les limites de la zone d'activité qui est fixée par son statut; que le requérant, dès lors qu'il se trouve en dehors de cette zone, doit être regardé comme ne bénéficiant pas actuellement de l'assistance de l'UNRWA au sens des stipulations du premier alinéa dudit article 1er, D de la Convention de Genève; qu'il suit de là qu'il y a lieu d'apprécier s'il est fondé à se prévaloir de la qualité de réfugié au sens de cette même convention.

Thus, CRR concluded that Article 1D, second paragraph, was not applicable because UNRWA assistance had not ceased. UNRWA continues to provide assistance to Palestinian refugees following “the political changes” in the Gaza Strip (i.e., the Oslo Accords and the establishment of the Palestinian Authority). The CRR also

concluded that, because the Palestinian asylum-seeker who had left the Gaza Strip did not, at present, receive UNRWA's assistance ("*ne bénéficiant pas actuellement de l'assistance de l'UNRWA*") in the sense of Article 1D, first paragraph, he was not excluded from applying for asylum under Article 1A(2) of the 1951 Refugee Convention.

This interpretation of Article 1D has since been upheld in cases involving Palestinian refugees (see examples below).

4. Refugee Determination Process: Outcome

Asylum-seekers who are recognized as refugees are issued residence cards which are renewable and valid for ten years. They are entitled to the benefits of the 1951 Refugee Convention, including the right to work and family reunification.

Asylum-seekers who are granted subsidiary forms of protection are issued temporary residence permit cards valid for one year, and renewable as long as there is a need for protection.

Jurisprudence Sample Cases

Palestinians from the Gaza Strip

CRR concluded in its decision of 25 July 1996, *Damasi* (247249) (see above) that it was not relevant that the applicant could not return to Israel because his place of "former habitual residence" (Article 1A(2) of the 1951 Refugee Convention) was not Israel, but the Gaza Strip. With regard to the applicant's fear of persecution due to his status as a suspected collaborator with Israel, CRR concluded that this fear was not linked to any political opinion or any of the other reasons mentioned in Article 1A(2) of the 1951 Refugee Convention. His asylum claim was therefore rejected.

The CRR decision of 17 July 2000, *Baha Mo Alaqad* (351732), involved a Palestinian from the Gaza Strip, who stated that he was a member of the Palestinian Fatah Movement and thus prevented from entering Israel. He was detained by the Israeli authorities on several occasions, including the period of 29 October–24 December 1990, when he was allegedly tortured. In 1995, he became a bodyguard of Palestinian President Yasser Arafat. CRR dismissed his asylum claim on the grounds that the claimant had failed to produce evidence of persecution by the Palestinian Authority :

...l'intéressé n'invoque aucune crainte de persécution à l'égard de l'autorité palestinienne qui administre désormais le territoire où il avait sa résidence habituelle.

The CRR decision of 14 November 2001, *Chawoki* (382197), involved a Palestinian refugee from the Gaza Strip. His parents were killed during the 1967 Arab-Israeli war. The applicant then lived with his uncle, until he was killed in the 1973 October War. The applicant then moved to Lebanon and received assistance from UNRWA. In 1983, he moved on to Syria for educational reasons. In 1996, he was detained by the Syrian authorities for six months and allegedly tortured. He then moved to Europe. Based on DAMASI, CRR concluded that the claimant was entitled to apply for asylum under the 1951 Refugee Convention, because the exclusion clause of Article 1D, first paragraph, did not apply:

...que le requérant, dès lors qu'il se trouve en dehors de cette zone, doit être regardé comme ne bénéficiant pas actuellement de l'assistance de l'UNRWA au sens des stipulations du premier alinéa du dit article 1er, D de la Convention de Genève; qu'il suit de là qu'il y a lieu d'apprécier s'il est fondé à se prévaloir de la qualité de réfugié au sens de cette même convention.

CRR then ruled that the applicant was not faced with a fear of persecution for one of the reasons mentioned in Article 1A(2) of the 1951 Refugee Convention. His asylum claim was therefore rejected.

Palestinians from the West Bank

The CRR decision of 22 October 2003, *Saad Aldiene* (4390099), involved a Palestinian from Nablus in the West Bank, a member of a known merchant family. He claimed to have repeatedly refused to join Hamas and to have been threatened on several occasions by the organization, which claimed that he was a collaborator with Israel. On 8 December 2001, he escaped an attempt by Hamas to kill him. CRR dismissed his claim for asylum, noting that he had provided credible evidence neither of attempts to actually solicit protection by the Palestinian Authority, nor of his allegation that Hamas represented an organized power and *de facto* authority:

... qu'en outre, le requérant, qui se borne à invoquer l'incapacité de ladite Autorité [Palestinienne] à le protéger du Hamas, n'a nullement sollicité la protection de celle-ci et ne justifie pas de circonstances de nature à rendre vaine une telle demande; qu'enfin, aucun élément du dossier ne permet de considérer, contrairement aux allégations de l'intéressé, que le mouvement Hamas exerce actuellement un pouvoir organisé qui permettrait de le regarder comme une autorité de fait.

Palestinians from Jordan

In the decision of 6 February 2001, *Bader* (359001), CRR refused to grant asylum on grounds of homosexuality to a Palestinian who had Jordanian citizenship.

Palestinians from Kuwait

The CRR decision of 24 June 1998, *Ahmed* (320971), involved a Palestinian who was born

in Kuwait, and had lived there since 1967, while holding Jordanian travel documents. At the end of the Iraqi invasion of Kuwait, he was detained twice by the Kuwaiti authorities, for membership to Palestinian organizations. He claimed that he was subjected to serious maltreatment while in detention, and to restrictions to freedom following his release. CRR concluded that he could not enjoy the protection of the Jordanian authorities, who had refused to renew his passport since 1989, and that he was at risk of persecution if he returned to Kuwait. He was therefore granted a residence permit.

5. Return – Deportation

If an asylum applicant receives a final negative decision, she/he is requested to leave France. If a rejected asylum-seeker does not leave France voluntarily, it is the responsibility of the police to ensure the person's departure.

Rejected asylum-seekers who cannot be returned/deported and who do not qualify for the subsidiary form of protection, may be allowed to stay in France, but without any legal status (i.e., "tolerated" to remain in the territory).⁵¹²

No information could be obtained about what has happened to the rejected Palestinian asylum-seekers in the 34 cases that have been dismissed since 1999.

6. Temporary Protection

There is no special temporary protection regime for Palestinians in France.

7. Protection under the Statelessness Conventions

France is party to the 1954 Stateless Convention. France has also signed, but not yet ratified, the 1961 Stateless Convention.

Some Palestinians have been recognized as stateless persons under the 1954 Statelessness Convention and granted ten-year residence permits after three years of residence in France.⁵¹³ They are granted travel documents with no restrictions, and enjoy the same benefits as persons who have been granted residence permits under the Asylum Law.

8. Reference to Relevant Jurisprudence

Decisions by OFPRA do not reflect applicants' nationalities. Decisions issued by CRR are published and do include applicants' nationalities. Decisions referred to in the text are listed below (copies are on file with the author).

25 July 1996 *Damasi*
24 June 1998 *Ahmed*
17 July 2000 *Baha Mo Alaqad*
6 February 2001 *Bader*
14 November 2001 *Chawoki*
22 October 2003 *Saad Aldiene*

9. Links

France *Terre d'Asile*: <http://www.france-terre-asile.org>

UNHCR: <http://www.hcrfrance.org>

OFPRA: <http://www.ofpra.gouv.fr>

CIMADE: <http://www.cimade.org>

Groupe d'Information et de Soutien des Immigrés: <http://www.gisti.org>

Association nationale d'assistance aux frontières pour les étrangers: <http://www.anafe.org>

GERMANY⁵¹⁴

1. Statistical Data

Official sources estimate the number of Palestinian in Germany around 100,000, the majority of whom arrived from Lebanon between 1980 and the mid-1990s. The largest Palestinian community is found in Berlin, with some 17,000 members. Unofficial sources estimate that the Palestinian community numbers 140,000 persons.⁵¹⁵

Palestinians seeking protection in Germany are registered by the German authorities under one of the following three categories: a) national of a specific country; b) “stateless”; or, c) “unclear nationality.”

As of December 2002, there were 17,203 “stateless” persons and 50,454 persons with “unclear nationality” living in Germany.⁵¹⁶ Many of these, if not the majority, were Palestinians.⁵¹⁷

2. Status of Palestinians upon Entry into Germany⁵¹⁸

As in the case of other asylum-seekers, Palestinians in Germany may apply for asylum to a local office of the Federal Office for Recognition of Foreign Refugees. They are provided with permission to stay in Germany for the duration of the application procedure (*Aufenthalts gestattetung*).⁵¹⁹ They are not permitted to travel outside their district of assigned residence without special permission.

Since the chances of final recognition of refugee status by the German authorities are low, many Palestinians who have arrived since the 1990s decide not to apply for asylum in order to avoid being assigned to a specific district.⁵²⁰ If they are caught staying illegally in Germany, they are deported to their country of origin. If such deportation proves impossible, they are granted a toleration permit or “exceptional leave” (*Duldung*) to stay in Germany until the deportation order can be carried out (see below).

3. Refugee Determination Process: Refugee Status

In general, applications for asylum are considered by the Federal Office for the Recognition of Foreign Refugees on the basis of the Aliens Act of 9 July 1990⁵²¹ (German Aliens Act), the Asylum Procedure Act of 16 July 1982⁵²² and Article 16(a) “Asylum” of the German Constitution, stipulating that persons persecuted

on political grounds are entitled to asylum.⁵²³ Refugee status may be granted under either Article 16(a) of the Constitution or Article 51(1) of the German Aliens Act (equivalent to Article 33 of the 1951 Refugee Convention).

3.1 Article 1D in Refugee Status Determination

In Germany, Article 1D has been applied in numerous cases involving Palestinian asylum applications, including appeals submitted to the highest level, i.e. the Federal Administrative Court. This Court's interpretation of Article 1D is elaborated and detailed, especially in its decision in the lead-case of 4 June 1991 (see below).

In summary, the Federal Administrative Court ruled that Article 1D applies to Palestinian refugees if UNRWA "assistance or protection" has "ceased." If this is the case, the inclusion clause in Article 1D, second paragraph, is applicable and the refugee is entitled to the status and benefits of the 1951 Refugee Convention. Therefore, the central issue in German jurisprudence on Article 1D has been to determine whether UNRWA assistance or protection has "ceased." The motive of a Palestinian refugee for departing from UNRWA's area of operation and her/his subsequent behaviour have been found decisive in this context, in addition to external factors beyond her/his control.

UNRWA protection or assistance was found to have "ceased" if a Palestinian refugee can prove that she/he has not "voluntarily relinquished" such protection or assistance, i.e., if:

- a) UNRWA has ceased to exist;
- b) UNRWA has permanently stopped its operations in the refugee's country of former habitual residence;
- c) The refugee in question is permanently removed from UNRWA's area; or,
- d) Following the refugee's departure with a valid re-entry permit, she/he is unexpectedly and permanently denied re-entry to the area, and the impossibility of return was not foreseeable for the refugee at the time of departure from the area.

Subsequent jurisprudence shows that it is extremely difficult for Palestinian refugees to establish that UNRWA protection or assistance has "ceased" in their case. This is because the Federal Court has used an increasingly wide interpretation of what constitutes "voluntary relinquishment" of UNRWA's assistance or protection, and has ruled on this basis that the inclusion clause, Article 1D, does not apply (see below).

Jurisprudence Lead Case on Article 1D

*Decision by the Federal Administrative Court, 4 June 1991 (1C 42/88)*⁵²⁴

In this lead-case, a Palestinian refugee from the Gaza Strip, who was registered with UNRWA, had requested travel documents from the German authorities. He based his claim on Article 28 of the 1951 Refugee Convention according to which a person who is a refugee and who is lawfully staying in a country is entitled to travel documents. As the Palestinian was lawfully staying in Germany, the only issue was whether he should be recognized as a refugee.

The Court found that the applicant was prevented from returning to the Gaza Strip as a result of the 1967 war, which began while he was living in Saudi Arabia, and the subsequent Israeli occupation of the Gaza Strip. The Court also found that UNRWA assistance or protection had “ceased” in his case, because he could not return to the Gaza Strip for reasons beyond his control. The Court ruled therefore that the inclusion clause, Article 1D had been triggered, and the refugee was entitled to the status and benefits of the 1951 Convention, including travel documents.

The Federal Administrative Court’s precedent-setting ruling was based on the following arguments and conclusions:

Article 1D, second paragraph, contains an independent inclusion clause:

Article 1D contains in paragraph 1 an exclusion clause and in paragraph 2 an inclusion clause in relation to the 1951 Convention. Paragraph 2 does not merely regulate the duration of exclusion from refugee status according to paragraph 1, but independently and by itself determines refugee status of specific persons based on the specified conditions.⁵²⁵

Therefore, a Palestinian refugee may qualify as a refugee under Article 1D, second paragraph, independently of Article 1A(2) of the 1951 Convention (“*selbständig*”). Article 1D is thus, in itself (“*originär*”), an inclusion clause under which Palestinian refugees may be recognized as refugees. Palestinian refugees who fulfil the criteria of Article 1D may therefore qualify as refugees irrespective of whether they would also fulfil the criteria set out by Article 1A.

This important conclusion was justified by three main arguments: the *ipso facto* language of Article 1D, second paragraph; the structure of Article 1; and, the objective and purpose of Article 1D:

1. The Court stated that the ordinary meaning of “*ipso facto* entitled to the benefits of the Convention” is that the only condition for entitlement to the benefits of the 1951 Convention is that UNRWA’s protection or assistance, as referred to in paragraph 1 of Article 1D, “has ceased.”⁵²⁶ No other conditions, including

those listed in Article 1A, may, therefore, be required from a Palestinian refugee seeking recognition of refugee status.

2. Article 1 is structured to include different categories of refugees (i.e., statutory refugees, refugees under Article 1A(2) and Article 1D refugees). Each of these categories is defined by specific characteristics related to one category only and not used to define the other categories. For example, the characteristics of Article 1A(2) refugees are used to define neither Article 1A(1) refugees, nor Article 1D refugees.

This structure of Article 1 does therefore not require, as a pre-condition to a successful claim for refugee status under Article 1D, that the criteria in Article 1A(2) be fulfilled. The Court added that if it had been the intention of the drafters to require Article 1A(2) criteria to be fulfilled, this would have been expressed as clearly in Article 1D as in Article 1B (“... in article 1, section A, ...”) and in Article (“... to any person falling under the terms of section A ...”).⁵²⁷

3. Finally, the objective and purpose of Article 1D was, in the view of the Court, to ensure, for humanitarian reasons, the protection and assistance to Palestinian refugees, irrespective of whether they were political refugees in the sense of Article 1A(2).⁵²⁸

The Court then concluded that beneficiaries under Article 1D are those Palestinian refugees who fall under UNRWA's mandate at the time that the German authorities make the decision about recognition of her/his refugee status, irrespective of whether they actually receive UNRWA assistance or protection.

The Court rejected the argument that beneficiaries should be only those refugees who are *de facto* receiving UNRWA assistance. That would, in the view of the Court, give Palestinian refugees the option to decide themselves whether to enjoy UNRWA assistance or the benefits of the 1951 Refugee Convention by either rejecting or accepting UNRWA assistance. Such an interpretation would not be in line with one of the purposes of Article 1D, i.e., to guarantee that Palestinian refugees are mainly the responsibility of UNRWA.⁵²⁹

The Court also dismissed the argument that Article 1D applies only to persons who, on the day of the signing of the 1951 Refugee Convention (i.e., “at present”), received assistance or protection from UNRWA. The Court stated that such an interpretation would not be in accordance with the purpose of Article 1D and would lead to the unintended result that persons who have suffered the same refugee experience, but have received protection or assistance after the deadline, for example, later-born descendants, would receive different treatment under the 1951 Convention.⁵³⁰

Finally, the Federal Court discussed the criteria to be applied for determination of entitlement to the benefits of the 1951 Refugee Convention of individual Palestinian refugees falling under UNRWA's mandate. Here the Court's reasoning was guided by

the aim to ensure that Palestinian refugees would – first and foremost – remain the responsibility of UNRWA and, secondly, that the humanitarian purpose of Article 1D would be achieved (i.e., that, pending a solution to the Israeli-Arab conflict, Palestinian refugees would be entitled to assistance or protection by either UNRWA or the parties to the 1951 Refugee Convention in accordance with their obligations under the Convention.).⁵³¹

Therefore, the Court felt strongly that refugees should not have the option of voluntarily relinquishing UNRWA's assistance or protection regime in order to replace it with the benefits of the 1951 Convention. Only factors beyond an individual's control may trigger the inclusion clause of Article 1D and hence remove her/him from UNRWA's mandate, under the mandate of the parties to the 1951 Refugee Convention and UNHCR.⁵³²

Along these lines, the Court concluded firstly, that – based on the ordinary meaning of “for any reason” and the humanitarian purpose of Article 1D – reasons for the cessation of protection or assistance could be related to events affecting the whole category of Palestinian refugees (for example, if UNRWA ceased to function or host countries prohibited UNRWA's activities on their territory), or to events affecting a specific individual.⁵³³

Secondly, the Court concluded that the inclusion clause would not be triggered if a Palestinian refugee had left UNRWA's area of operations voluntarily, thereby *voluntarily relinquishing* UNRWA's assistance (“*freiwilligen Aufgabe der UNRWA-Betreuung*”):⁵³⁴

The purpose of Article 1D would be missed if the persons concerned could choose to request either specifically protection or assistance according to paragraph 1, or generally the privileges of the 1951 Convention according to paragraph 2.⁵³⁵

UNRWA assistance can, for example, still be provided to a Palestinian refugee if she/he is permitted to return to her/his former country of residence and UNRWA is operating in this area.

At the same time, the Court conceded that there may be cases of Palestinian refugees whose intention was to return to UNRWA's area of operations, but who were unable to do so because the country of former habitual residence did not permit her/his return. In such cases, the Court found that it was crucial to consider the weight of each of the causal factors, i.e., the refugee's behaviour and the country's rejection of return.⁵³⁶ Leaving UNRWA's area of operations and requiring the benefits of the 1951 Convention with the intention of improving one's economic or personal situation would be seen as “voluntary relinquishment of UNRWA's assistance” in this context. The same would apply to a refugee who, by leaving UNRWA's area of operations, deliberately took the risk of losing UNRWA's assistance.⁵³⁷

However, if a refugee from UNRWA's area of operations loses the possibility of returning there for reasons she/he could not expect (for example, due to political developments), then she/he is not to be considered as having “voluntarily relinquished” UNRWA's

assistance, even if she/he had voluntarily left UNRWA's area of operations. In accordance with the humanitarian purpose of the Convention, such a refugee is *ipso facto* entitled to the benefits of the 1951 Refugee Convention. This would apply, for example, to the case of a refugee who held a valid travel document or permission to return prior to departure from UNRWA's area of operations, and whose permission to return was subsequently removed. In such a case, the person has no influence over whether UNRWA assistance or protection can once again become available, as it was taken from her/him.⁵³⁸

The Federal Court thus focused on the refugee's motive for leaving UNRWA's area of operations and her/his subsequent behaviour. If access to UNRWA assistance was removed for reasons beyond her/his control, the inclusion clause in Article 1D would "kick in" and she/he would be entitled to the benefits of the 1951 Refugee Convention. However, if the refugee's initial or subsequent intention was to replace UNRWA's assistance with the benefits of the Geneva Convention, this would be seen as "voluntary relinquishment" of UNRWA assistance, and the inclusion clause would not be triggered.

Additional Jurisprudence with regard to Article 1D

Case of 21 January 1992 (1C 21/87)

This case involved a Palestinian who had left Lebanon in 1978 with a Lebanese travel document valid until June 1991. The Federal Administrative Court, drawing on the June 1991 case, again examined whether the inclusion clause, Article 1D, was applicable. The Court stated that the clause was applicable, for example, if the person in question was permanently removed from the area of UNRWA operations or, following his voluntary departure with a valid re-entry permit, was unexpectedly and permanently denied re-entry to the area.⁵³⁹ On the other hand, UNRWA assistance or protection had not "ceased" (i.e., the inclusion clause would not be applicable) simply because of the fact that protection of a refugee from danger during a civil war could not be guaranteed by UNRWA.⁵⁴⁰ Leaving UNRWA's area of operations due to fear of political persecution would not "trigger" the inclusion clause because – in the view of the Court – the refugee would still have "voluntarily relinquished" UNRWA's assistance. The reasons that caused the refugee to leave the area and to "voluntarily relinquish" UNRWA's assistance would not be relevant in this context:

[E]ven if it cannot be reasonably expected in a specific case that he remain in the area of UNRWA operations, such case does not constitute the termination of UNRWA activity, neither does the person's departure constitute the cessation of UNRWA services. The general and particular circumstances of an individual in his host state may make his departure from the country appear not only understandable, but in some cases even necessary. To the extent that UNRWA continues to operate in the respective country, however, this must not automatically entail responsibility of Convention States for the person concerned.⁵⁴¹

Thus, the Federal Court adopted in this case a very wide interpretation of the term “voluntarily relinquished.” It extended the application of this term to include Palestinian refugees who left UNRWA’s area of operations due to fear of political persecution, although departure for such reason may not seem “voluntary” in the ordinary meaning of that term. The Court then ruled that in such cases the inclusion clause of Article 1D does not apply. The particular person, however, may still be recognized as a refugee under Article 1A(2).⁵⁴²

The Court, moreover, re-affirmed its June 1991 decision by stating that a person from UNRWA’s area of operations wishing to qualify for protection under Article 1D of the 1951 Refugee Convention:

[M]ust obtain the identification documents necessary for his trip in accordance with the regulations of the host state and pay attention to the period of their validity. Based on the criteria laid out here, UNRWA protection or assistance does not cease according to the Convention, if the person disregards the existing requirements for whatever reason. It is then no longer relevant, if the host state later delays, obstructs, or even explicitly denies his return. This because such measures of the host state are not decisive for the judgment about whether UNRWA protection or assistance has ceased on the basis of the behavior of the person concerned.⁵⁴³

The Court concluded that in this specific case, the applicant had not made use of the possibility of returning to Lebanon before his travel document had expired. By not exploiting this option, the claimant had taken the risk that he would no longer be able to re-avail himself of UNRWA assistance. The Court also ruled that the claimant’s pending request for asylum based upon danger to life and person caused by the civil war in Lebanon was a separate matter and irrelevant for determining whether UNRWA protection or assistance had ceased due to his failure to return to Lebanon in time.⁵⁴⁴

4. Refugee Determination Process: Outcome

Under the new German immigration law (2005), persons who are recognized as refugees on the basis of Article 16(a) of the German Constitution and persons who are recognized as refugees under the 1951 Refugee Convention or Article 51(1) of the German Aliens Act are treated equally.⁵⁴⁵ Persons belonging to either group of recognized refugees are issued permission to stay for three years, followed by a review of their case by the Federal Office for Migration and Refugees (BAMF). Both groups of recognized refugees are entitled to work, and family reunification is granted to their spouses and minor children. Permission for unlimited and unconditional residence is granted after a positive review.

Due to the Federal Court’s restrictive interpretation of Article 1D outlined above, few Palestinians have been recognized as refugees on the basis of Article 1D. Most

Palestinians have the chance to be recognized as refugees only under Article 1A(2) of the 1951 Refugee Convention, i.e., if they can show a danger of persecution in their country of habitual residence.

However, the prospect of Palestinians being recognized as refugees under Article 1A(2) is limited – on the one hand by the fact that the Federal Court has ruled that denial of re-entry into the former host country does not necessarily constitute grounds for asylum in Germany; and on the other, by its restrictive interpretation of the term “country of former habitual residence.”⁵⁴⁶ The Court has ruled that a state ceases to be the “country of former habitual residence” if the applicant is expelled from that country or denied re-entry to that country for reasons related to general population policies and not for reasons related specifically to that person.⁵⁴⁷ Lebanon, for example, may deny return to a Palestinian individual on the basis of a general policy towards Palestinians as a group, without targeting the specific individual. In such a case, there is no longer a “country of former habitual residence” against which individual persecution can be assessed, and the person can therefore not qualify as a refugee under Article 1A(2) of the 1951 Refugee Convention.

Jurisprudence with regard to Article 1A(2)

The case of 12 February 1985 (9C 45/84) involved a stateless Palestinian born in Haifa and raised in a refugee camp in Lebanon. He left Lebanon and sought asylum in Germany. He had not returned to Lebanon within the time-limit stated on his re-entry visa and was unable to obtain an extension. The Federal Administrative Court noted that due to his long period of stay in Lebanon and the fact that his travel documents were issued by that state, Lebanon was his “country of former habitual residence.” The Court then concluded that the applicant was not denied re-entry on an asylum-related ground. As he could not prove other Convention-related reasons for asylum, this was denied to him.

The Federal Administrative Court has rejected other cases involving stateless Palestinians who could not return to their former place of residence, noting that the denial of return was not based on asylum-related grounds. See, for example, the case of 24 October 1995 (9C 75/95) in which the Court noted:

Nach dem Sachverhalt schliesse die Einreiseverweigerung nicht an individuell vom Kläger zu 1 begangene Handlungen an, sondern verfolge allgemeine bevölkerungspolitische Ziele, die dadurch verwirklicht würden, dass Staatenlosen für die Rückkehr in den Libanon ein gültiges Laissez-Passer abgefordert werde.

Jurisprudence with regard to the term “country of former habitual residence”

Federal Administrative Court’s decision of 15 October 1985 (9C 30/85)

In this case, involving a Palestinian refugee from Lebanon, the Court concluded that if a country in which a stateless person has lived expels that person or denies her/him re-entry on grounds that are not asylum-related, that country will no longer constitute her/his country of former habitual residence. Such a person should be dealt with under the provisions of the Statelessness Convention, even if she/he might face a risk of persecution if returned:

Während ein Staat seine Eigenschaft als Land des gewöhnlichen Aufenthalts nicht allein dadurch einbüsst, dass der Staatenlose ihn verlässt und in der Bundesrepublik Deutschland Asyl beantragt ..., tritt eine Änderung der rechtlichen Situation jedoch dann ein, wenn er den Staatenlosen – aus im asylrechtlichen Sinne nichtpolitischen Gründen – ausweist oder ihm die Wiedereinreise verweigert, nachdem er das Land verlassen hat. Er löst damit seine Beziehungen zu dem Staatenlosen und hört auf, für ihn Land des gewöhnlichen Aufenthalts zu sein. Er steht dem Staatenlosen nunmehr in gleicher Weise gegenüber wie jeder andere auswärtige Staat. Die Frage, ob dem Staatenlosen auf seinem Territorium politische Verfolgung droht, wird unter asylrechtlichen Gesichtspunkten gegenstandslos. Sie stellt sich ebensowenig, wie sie sich in bezug auf sonstige Staaten stellt. Daraus ergibt sich, dass 1. Staatenlose, die in eine solche Situation geraten sind, können als Asylberechtigte nicht anerkannt werden. Ihr Status muss aufgrund des Gesetzes vom 12. April zu dem Übereinkommen von 28. September 1954 über die Rechtsstellung der Staatenlosen ... geregelt werden.

Federal Administrative Court’s decision of 24 October 1995 (9C 75/95)⁵⁴⁸

The Court stated again that denial of return which is related to a general policy is not relevant for an asylum claim submitted by a Palestinian, and that with regard to stateless persons, there may be non-asylum-related reasons for a denial of return. Moreover, the Court ruled that the claim for asylum based on danger to the person in Lebanon could no longer be considered, because Lebanon was no longer the country of former habitual residence:

Eine Asylberechtigung der Kläger wegen einer Gefährdung im Libanon kommt sonach nicht mehr in Betracht, weil für sie als Staatenlose der Libanon nicht mehr das Land ihres gewöhnlichen Aufenthalts ist.

5. Return – Deportation

The situation of rejected asylum-seekers depends upon the question of whether there are factual or legal obstacles to the removal of the person. If there are no obstacles to the departure or deportation of the rejected asylum-seeker, she/he will be ordered to leave Germany. If the person faces a risk of torture, the death penalty or a specific threat to life or physical integrity as a result of deportation, she/he will not be forcibly removed. If such a person cannot be removed to a safe third country (for example, if all countries of former residence deny re-entry), a residence permit will be issued to the person (Immigration Law: Law of Residence (*AufenthG*), paragraph 60 and paragraph 25/3). If the authorities deem that removal to a safe third country is possible, or if the person has failed to co-operate with asylum or immigration authorities as required (e.g., by providing false information about his or her identity), she/he will not be issued a residence permit, but only a so-called tolerance permit or “exceptional leave” (“*Duldung*”), (Immigration Law: Law of Residence, paragraph 60a). Recent law reform provides an option for granting (temporary) residence to persons who have stayed in Germany with a tolerance permit for at least eighteen months. The above provisions are new (Immigration Law: Law of Residence, paragraphs 25a and b) and optional, i.e., at the discretion of the authorities in charge. They were adopted as part of recent reform of the German immigration law, and it remains to be seen whether they can resolve the problems of persons who have lived in Germany with tolerance permits for many years, as described below.

The tolerance permit (“exceptional leave”) does not convey legal status; it only means that Germany temporarily agrees not to implement a deportation order which, nevertheless, remains valid. The holder of such a permit is, therefore, still under an obligation to leave Germany. The permit is generally granted for a period of three (or six) months and allows the holder to stay within a specific region. Legalization of stay in Germany for holders of tolerance permits is possible under certain circumstances, but this is left to the discretion of the authorities. In many cases, the authorities have dismissed legalization of stay even after years of residence in Germany, on the grounds that the applicant had not taken sufficient action to overcome the impediments to her/his departure.⁵⁴⁹

The holder of a tolerance permit does not enjoy the same rights as refugees. Family reunification is not possible, for example, and the authorities will not issue any travel documents except for a paper confirming that the person has been issued a tolerance permit. Holders of tolerance permits may be issued work permits after a waiting period of varying duration, if they can prove that there is no German or more privileged alien available for the position.⁵⁵⁰

Many stateless Palestinians have been issued tolerance permits at the end of a negative asylum process, because forced return has regularly been obstructed by their “country of former habitual residence,” which would not allow re-entry.⁵⁵¹ Ironically, the same tolerance permits are issued to Palestinians who never bother to apply for asylum, stay in the country illegally, are caught by the authorities, and cannot be deported subsequently.

Palestinians, rejected asylum-seekers and illegal aliens thus represent one of the three most vulnerable groups of aliens in Germany living there for prolonged periods of time without proper legal status. By August 2002, some 7,000 Palestinians with tolerance permits had lived in Germany for nine years; another 2,000 had lived there for twelve years,⁵⁵² denied most of the rights granted to recognized refugees.⁵⁵³ Palestinians may thus benefit from the recent law reform which provides an option for granting them (temporary) residence. It is, however, still too early to gauge whether the new law will have a positive effect on their situation.⁵⁵⁴

6. Temporary Protection

Kosovo Albanians have been granted temporary protection in Germany. A similar protection regime has never been considered for Palestinians.

7. Protection under the Statelessness Conventions

Germany is party to the 1954 Stateless Convention and the 1961 Stateless Convention.

Germany does not have a specific procedure for determining whether statelessness exists and, therefore, the authorities do not consider statelessness in making their decisions. However, Germany does have a procedure by which a person can apply for a 1954 Convention Travel Document, thereby requiring relevant authorities to examine the question of whether a person is stateless. This matter may also arise when an applicant requests a residence permit.⁵⁵⁵ Local authorities make determinations on residence permits and 1954 Travel Documents.

German courts have referred cases of Palestinian asylum-seekers who could not establish entitlement to the benefits of the 1951 Refugee Convention for determination under the 1954 Stateless Convention.⁵⁵⁶

The Federal Administrative Court has concluded that Palestinians who have not acquired the nationality of a third state are stateless in the sense of Article 1, first paragraph, of the 1954 Stateless Convention:

Similarly, they have incorporated in the Stateless Convention a provision to the same effect ... as the special arrangement in Art. 1D, which is primarily of concern to the Palestinian refugees protected by UNRWA. Such a provision would not have been necessary, if the Palestinians were not stateless in the sense of article 1, paragraph 1, of the Stateless Convention.⁵⁵⁷

German courts have ruled that individual entitlement to the benefits of the 1954 Stateless Convention is conditioned upon fulfilment of the same restrictive criteria as discussed in relation to Article 1D, i.e., UNRWA assistance or protection must have “ceased” (Article 1(2) of the 1954 Stateless Convention) without the stateless person having “voluntarily relinquished” such assistance or protection. If the stateless Palestinian does not fulfil these criteria, she/he will be excluded from the scope of the 1954 Stateless Convention.

Jurisprudence regarding the 1954 Stateless Convention

Case of 21 January 1992 (1C 18/90)

In this case, the Federal Administrative Court, drawing on the lead-case of 4 June 1991 (Article 1D), concluded that a female Palestinian from Lebanon had left that country voluntarily and that she should have taken the necessary care to ensure that she could return to Lebanon before her travel documents expired in October 1988. She was therefore excluded from the scope of the 1954 Stateless Convention.⁵⁵⁸

Access to some of the benefits of the 1954 Stateless Convention are only available for stateless persons who are lawfully staying in the country. Article 28 of the 1954 Stateless Convention, for example, stipulates that contracting states are obliged to issue travel documents to stateless persons who are *lawfully* staying in their territory, whereas they *may* issue such documents to other stateless persons (See further chapter 4).

Several German court cases have clarified that the term “lawfully staying” requires a residence permit.⁵⁵⁹ The German authorities have argued that a person holding a tolerance permit (“exceptional leave”) is not lawfully staying in the country and, hence, not entitled to the above-mentioned benefits. The Federal Administrative Court, in a 23 February 1993 decision, concluded that such a permit could, under certain circumstances, be considered as a lawful stay in Germany.⁵⁶⁰

A number of stateless Palestinians have obtained stateless passports because they could show that their country of former habitual residence refused to grant re-entry and that this was not foreseeable when they left.

8. Reference to Relevant Jurisprudence⁵⁶¹

German Federal Administrative Court regarding:

Refugee recognition under Article 1D

Decision of 3 November 1989 (VG 10 A 4.88)

Decision of 16 October 1990 (1C 15/88)

Decision of 4 June 1991 (1C 42/88)

Decision of 21 January 1992 (1C 21/87)

Refugee recognition under Article 1A(2) and “country of former habitual residence”

Decision of 12 February 1985 (9 C 45/84)

Decision of 15 October 1985 (9 C 30/85)

Decision of 21 January 1992 (1C 49/88)

Decision of 2 June 1992 (1C 14/90)

Decision of 30 November 1994 (9B 635/94)

Decision of 24 October 1995 (9C 75/95)

Decisions regarding recognition of statelessness:

Federal Administrative Court, 23 February 1993 (1C 45/90)

Federal Administrative Court, 21 January 1992 (1C 18/90)

Federal Administrative Court, 21 January 1992 (1C 17/90)

Administrative Appeal Court in Badenwürttemberg, 20 March 1991 (InfAusIr 7-8/91, page 226)

Administrative Appeal Court in Berlin, 22 January 1991 (InfAusIr 7-8/91, page 238)

9. Links

UNHCR: <http://www.unhcr.de>

Refugee Council Berlin: <http://www.fluechtlingsrat-berlin.de>

HUNGARY⁵⁶²

1. Statistical Data

There is no estimates of the total number of Palestinians living in Hungary today.

Hungary has no definite policy on registration of asylum claims lodged by Palestinians. Asylum-seekers referring to their Palestinian origin, background or nationality can therefore figure in three different categories in the statistics of the Office of Immigration and Nationality (OIN):

- a) “Palestinian nationality” Asylum-seekers included in this category are most likely those holding a document which proves their Palestinian “nationality” (e.g., travel document issued by the Palestinian Authority).
- b) “Stateless persons” This category has a specific sub-category for Palestinian stateless persons.
- c) “Unknown nationality” Asylum-seekers included in this category are most likely those who could not substantiate their Palestinian nationality or background, and the authorities were not in a position to determine their nationality.

Moreover, Palestinians who have obtained a citizenship in a new country (for example, Jordan) will most likely figure as asylum-seekers from that country.

Due to the unsettled political and legal situation of Palestinians, there is no clear and general strategy on the use of the above categories. The choice seems to be made on a case-by-case basis, depending on the officer in charge.

As statistics concerning Palestinians are rather unclear, no official figure on the total number of Palestinian asylum-seekers in Hungary is available. In the year 2003, however, there were at least twenty-three claims submitted by persons who alleged to be of Palestinian origin. Five of these were recognized as refugees, while three were granted subsidiary protection. The remaining fifteen claims were rejected on grounds of lack of credibility (see below).

2. Status of Palestinians upon Entry into Hungary

As in the case of other asylum-seekers, Palestinians in Hungary may submit an application for asylum to the Office of Immigration and Nationality (OIN). They are then considered asylum-seekers whose legal status is regulated by Sections 15 and 16 of the Act CXXXIX of 1997 on Asylum (Asylum Act). They are provided with an identity

document which proves the lawfulness of their stay in Hungary and are entitled to accommodation and care. They are obliged to stay and live in a reception center or any other place of accommodation designated by the OIN. In the first year after submitting their asylum claim, they may engage in employment only at the reception center. After the first year, they may engage in employment according to general rules.

3. Refugee Determination Process: Refugee Status and Complementary Forms of Protection

In general, Section 3 of the Asylum Act sets out the general provision for recognition of refugee status:

(1) With the exception of those defined in Section 4, the refugee authority shall, on application, recognize a foreigner as a refugee who verifies or substantiates that the provisions of the Geneva Convention shall apply to him in accordance with 1, Section A and Section B, Subsection (1) paragraph b) of the Geneva Convention, and 1 Subsections (2) and (3) of the Protocol⁵⁶³

(5) In the absence of reasons for exclusion defined in Section 4 Subsection (1) a person, in respect of whom the Minister of the Interior exercises equitable treatment exceptionally, on humanitarian grounds, shall also be recognized as a refugee.

Asylum-seekers who are not recognized as refugees may be granted a complementary form of protection under Section 43(1) of the Act XXXIX of 2001 on the entry and stay of foreigners (Aliens Act).⁵⁶⁴

3.1 Article 1D in Refugee Status Determination

Prior to 2001, asylum claims submitted by Palestinians were not given special consideration under Article 1D, 1951 Refugee Convention. They were assessed by the authorities under the Hungarian Asylum Act on the same basis as claims submitted by other asylum-seekers.

In 2001, UNHCR Branch Office in Hungary submitted an “expert’s opinion” in a Palestinian asylum case and referred to the special considerations that should be given to Palestinian asylum claims in accordance with Article 1D. This position was reinforced in another individual case in 2002, in which UNHCR intervened upon the request of the Hungarian Helsinki Committee and emphasized the legal principles of Article 1D. Application of these principles was largely supported by the October 2002 UNHCR Note on the Applicability of Article 1D of the 1951

Convention relating to the Status of Refugees to Palestinian Refugees, which has been translated into the Hungarian language and widely distributed among eligibility officers, judges and legal counsels active in the field.

Since then, the special character of Palestinian asylum claims has been increasingly recognized within the Hungarian asylum system.

4. Refugee Determination Process: Outcome

As in the case of other asylum-seekers, Palestinians recognized as refugees are granted permanent residence permits in Hungary and entitled to the benefits of the 1951 Refugee Convention, including work permits and some financial support. Refugees are entitled to family reunification under the same strict conditions applicable to Hungarian nationals and foreigners holding a permanent residence permit.⁵⁶⁵

Palestinians who are granted subsidiary protection, i.e., “persons authorized to stay” (*befogadott* status), are granted temporary residence permits (generally valid for one year, but sometimes for a shorter period), which will be regularly prolonged by OIN. They have the right to apply for permanent residence permits three years after entry to Hungary (Section 18(1) of the Aliens Act). When such a person is granted a permanent residence permit, she/he is entitled to stay in Hungary for an unlimited period, to leave and to return. She/he has the right to work and to family reunification under the same conditions as refugees (see above).

Jurisprudence Sample Cases

All five decisions taken by OIN in 2003, in which Palestinians were recognized as refugees, were made generally in accordance with the proper interpretation of Article 1D, as recommended in the 2002 UNHCR Note.⁵⁶⁶ In three other cases involving Palestinian claimants arriving from UNRWA’s area of operations, however, Article 1D was not applied by OIN. They were all denied refugee status on the basis of the criteria set out in Article 1A(2) (lack of well-founded fear of persecution) and rather granted subsidiary protection with reference to the prohibition of return of these persons to their “country of former habitual residence” (Section 43(1) Aliens Act).

The criteria for distinction between the above-mentioned two types of cases appear to be unclear, and decisions on whether to apply Article 1D seem to have been taken on a case-by-base basis.

In 2003, fifteen asylum-seekers who claimed to be of Palestinian origin were denied refugee status and subsidiary protection by OIN. Their cases were rejected on grounds of lack of credibility with regard to the alleged nationality.

5. Return – Deportation

Rejected asylum-seekers who enter the country illegally and who fail to leave the country can be deported.

In 2003, the majority of the fifteen cases of Palestinians who were denied refugee status and subsidiary protection, involved persons who had previously been issued expulsion orders (generally to Egypt) by the Alien Policing Department of OIN. Their expulsion was only suspended for the duration of the refugee status determination procedure. No information is available about steps subsequently taken by the authorities in order to forcibly return these asylum-seekers.

There is no information available on how deportation is carried out in practice. However, it seems that no Palestinians have been deported from Hungary to the Gaza Strip or the West Bank.

6. Temporary Protection

The Hungarian Asylum Act contains provisions regarding “temporarily protected persons” (*menedékes*). This status has not been granted to Palestinians or to any other asylum-seekers in recent years.

7. Protection under the Statelessness Conventions

Hungary is party to the 1954 Stateless Convention but not to the 1961 Statelessness Convention. As only a short period of time has passed since Hungary’s accession to the 1954 Stateless Convention (November 2001), practical aspects and rules concerning the implementation of the Convention have not yet been elaborated. It is therefore likely that no determination of stateless status has been conducted so far with regard to Palestinians.

8. Reference to Relevant Jurisprudence

There are only administrative decisions in relevant asylum cases. They are not publicly available.

9. Links

Hungarian Helsinki Committee: <http://www.helsinki.hu>

IRELAND⁵⁶⁷

1. Statistical Data

According to unofficial sources, some hundreds of Palestinians are living in either Dublin or Belfast today, however, no comprehensive data on the number of Palestinians in Ireland are available.⁵⁶⁸

In general, persons who claim to be Palestinians are registered as “Palestinians” by the Irish authorities, while their previous country of residence is registered separately.

Approximately 40 Palestinians have been granted refugee status in Ireland since the adoption of the Refugee Act of 1996 as amended (Refugee Act)^{569, 570}.

2. Status of Palestinians upon Entry into Ireland

As in the case of other asylum-seekers, Palestinians who are in Ireland may submit an application for asylum to the Office of the Refugee Applications Commissioner in Dublin. They are provided with identity cards that include their photograph, name, nationality and Department of Justice, Equality and Law Reform reference number. They are then channeled to various locations throughout Ireland, where they are assigned to a particular hostel. If they choose to live outside the hostel, they may do so at their own expense, and without the allowance that would otherwise be provided.

3. Refugee Determination Process: Refugee Status and Complementary Forms of Protection

In general, applications for asylum are considered by the Office of the Refugee Applications Commissioner at first instance and, if they are refused, on appeal by the Refugee Appeals Tribunal, on the basis of the Refugee Act. According to Section 2 of the Refugee Act, a refugee means:

A person 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, is outside the country of his or her nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of his or her former habitual residence, is unable or, owing to such fear, is unwilling to return to it, but

4. does not include a person who is receiving from organs or agencies of the United Nations (other than the High Commissioner) protection or assistance;
5. does not include a person who is recognised 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...⁵⁷¹.

Asylum-seekers who are not recognised as refugees may be granted leave to remain at the discretion of the Minister for Justice, Equality and Law Reform who takes into account criteria listed in Section 3 of the Immigration Act, including humanitarian considerations.

3.1 Article 1D in Refugee Status Determination

Section 2(a) of the Refugee Act contains an explicit exclusion provision based on Article 1D, first paragraph. The full text of the 1951 Refugee Convention, including Article 1D, first and second paragraphs, is, however, set out in the Third Schedule of the Refugee Act. At the same time, it is explained in Section 1 of the Refugee Act that the text of the Convention is included in the Schedule for “convenience of reference.” Given this situation, the question arises as to whether Article 1D has been incorporated into Irish law *in toto*.

A particular member of the Refugee Appeals Tribunal has heard the majority of cases involving Palestinian applicants. In the decisions where judicial review proceedings have been instituted, this member has stated that the Refugee Act has incorporated fully the provisions of the 1951 Refugee Convention into Irish Law.⁵⁷²

Judicial review proceedings were instituted in a number of cases, and were subsequently settled (see below, Np. 657 JR). The central legal question in these cases was whether Article 1D has been incorporated into Irish law *in toto*. If the Court had ruled on this question of principle, the Court’s decision would have been precedent-setting. However, the cases were settled and the grounds of leave granted by the High Court in the case below have therefore limited judicial value.

Jurisprudence Sample Cases

S. vs. the Refugee Appeals Tribunal and the Minister for Justice Equality and Law Reform 2003 (Np. 657 JR):

This case involved a Palestinian who came to Ireland in 1999 to seek asylum on grounds of political opinion and membership of a particular social group. The member of the Refugee Appeals Tribunal referred to above had ruled earlier in this case that the 1951 Refugee Convention, including Article 1D, is fully incorporated into Irish law by the Refugee Act.

When assessing the appeal under Article 1D, the Appeals Tribunal noted that the applicant “no longer enjoys the protection or assistance of UNRWA”. The Tribunal then examined whether the appellant was unwilling to return to UNRWA’s area of operations because of threats to physical safety or for other serious protection-related reasons.⁵⁷³ It concluded that the applicant had not established serious protection-related grounds which prevented his return to UNRWA’s area of operation. The Tribunal then proceeded to examine whether the criteria set out in Section 2 of the Refugee Act (i.e., the criteria set out in Article 1A(2) of the 1951 Refugee Convention) would apply to the case and concluded that the applicant did not satisfy these criteria.⁵⁷⁴

The decision is rather unclear, and it is difficult to understand how the Tribunal applied Article 1D, in particular because the Tribunal also applied the criteria set out in Article 1A(2) of the 1951 Refugee Convention. It appears, however, that the Tribunal held that the applicant fell within the second paragraph of Article 1D (i.e., he no longer enjoyed the “protection or assistance” of UNRWA) and then assessed whether the applicant could be returned to UNRWA’s area of operations.

The claimant argued in his appeal to the High Court that Article 1D has not been incorporated *in toto* into Irish law, because incorporation of an international convention into Irish law requires an Act of the Parliament. He argued that the only provision to have been given the force of law is the provision contained in Section 2 of the Refugee Act. Article 1D, second paragraph, is not part of this provision. It was therefore wrong to conclude that Article 1D of the 1951 Refugee Convention has been incorporated *in toto* into Irish law.

Based on the above, the claimant concluded that the member of the Refugee Appeals Tribunal had committed an error of law, and that the correct approach would have been to establish, on factual basis, whether the claimant was a person receiving from organs or agencies of the United Nations protection or assistance (Section 2(a) of the Refugee Act). If this was the case, he could not be a refugee under the provisions of Section 2 of the Refugee Act. If, based on the facts, he was not receiving such protection or assistance, the member of the Refugee Tribunal should have proceeded to examine whether he satisfied any of the conditions for refugee status under the terms of Section 2 of the Refugee Act.

On 13 February 2004, the Irish High Court (Justice Herbert J.) accepted the appeal and granted leave to apply on the grounds that:

- (1) The Tribunal Member erred in law in applying the provisions of Article 1(d) of the Geneva Convention to the applicant's claim and in that regard failing to properly apply the provisions of Section 2 of the Refugee Act 1996 as amended to the applicant's claim.
- (2) The Tribunal Member's decision to refuse the applicant's claim for asylum was vitiated by unreasonableness and/or irrationality in all the circumstances.

The substantive appeal was settled in November 2004. The decision of the Refugee Appeals Tribunal was quashed and the appellant was afforded a new hearing before a different tribunal member. Five other cases "tracking" the case were settled on a similar basis. Given the fact that a settlement was reached, the grounds of leave granted by the High Court have limited jurisprudential value. The applicant, S, was subsequently granted refugee status.

4. Refugee Determination Process: Outcome

As in the case of other asylum-seekers, Palestinians who are recognized as refugees on the basis of Section 2 of the Refugee Act are granted rights almost identical to the rights of an Irish citizen, including the right to remain and to work. Refugee status may be revoked under certain circumstances. In practice, however, this is rarely applied.

Asylum-seekers who are granted leave to remain are normally conferred with the same rights as refugees under Section 3 of the Refugee Act.

5. Return – Deportation

Following a final negative decision, a rejected asylum-seeker is informed that a deportation order may be issued and given 15 working days to set out reasons why she/he should be permitted to remain in Ireland. In determining whether to grant temporary leave to remain, the Minister for Justice, Equality and Law Reform takes into account a number of criteria, including humanitarian considerations (Section 3 of the Immigration Act 1999). The Minister may, moreover, use his discretion to permit a person to remain under Section 17(6) of the Refugee Act.

Persons granted temporary leave to remain are given temporary residence permits which may be renewed depending on the circumstances existing at the time. They are granted the right to reside and work in Ireland for the duration of the permit. After five years of residence under this status, they may apply for naturalization.

According to the Department of Justice, Equality and Law Reform, no Palestinians have been granted “temporary leave to remain” since November 1999.⁵⁷⁵ Many rejected asylum-seekers have been waiting for several years for a response to their application for temporary leave to remain. In the meantime, they cannot work or travel outside Ireland (except with the permission of the Minister for Justice, Equality and Law Reform).

6. Temporary Protection

Section 24 of the Irish Refugee Act provides for temporary protection or resettlement for “programme refugees”. This provision has not been applied to Palestinians.

7. Protection under the Statelessness Conventions

Ireland has acceded to both, the 1954 Stateless Convention and the 1961 Statelessness Convention, and has ratified the former but not the latter. BADIL is not aware of any practice regarding Palestinian refugees.

8. Reference to Relevant Jurisprudence

Both the Office of the Refugee Applications Commissioner and The Refugee Appeals Tribunal issue its decisions to the applicant and his/her legal representative. The legislative framework was amended with effect from September 2003 to allow the Refugee Appeals Tribunal to publish certain decisions, however to date, no decision has been published under this framework.

Since January 2003, the Refugee Appeals Tribunal has issued positive decisions to the applicants and their legal representatives, whereas prior to that date, only negative decisions were issued.

9. Links

Irish Government Resource: www.gov.ie
Refugee Legal Service: www.legalaidboard.ie

ITALY⁵⁷⁶

1. Statistical Data

There is no estimate as to the total number of Palestinians currently living in Italy.

According to the Italian Council for Refugees (CIR), all Palestinian asylum-seekers are registered as “Palestinians” in official statistics.

According to the Eligibility Central Commission, 243 Palestinians applied for asylum in 2003. In 2002, 278 asylum applications were submitted by Palestinians, of which twenty were accepted and 169 rejected.⁵⁷⁷

2. Status of Palestinians upon Entry into Italy

As in the case of other asylum-seekers, Palestinians in Italy may submit an application for asylum to the Central Commission for the Recognition of Refugee Status. During the asylum process, the asylum-seeker is granted a three-month residence permit, renewable in general every three months, pending a decision by the Commission.⁵⁷⁸ It is unclear whether asylum-seekers may work during the asylum process. The law neither mentions the possibility of asylum-seekers working, nor excludes it – which creates problems for asylum-seekers.⁵⁷⁹

3. Refugee Determination Process: Refugee Status and Complementary Forms of Protection

The right to asylum is set out in the Italian Constitution Article 10, paragraph 3 which provides that:

The alien debarred in his own country the effective exercise of the democratic liberties guaranteed by the Italian Constitution has the right of asylum in the territory of the Republic on conditions laid down by law.

Refugee status may be granted to persons who fulfil the criteria set out in Article 1A(2) of the 1951 Refugee Convention. A complementary form of protection on humanitarian grounds in accordance with Article 5, paragraph 6 of the Italian Law No. 286 of 25 July 1998⁵⁸⁰ may be granted if the criteria set out in Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms are fulfilled (Article 5, paragraph 6 and Article 19, first paragraph of the Italian Law No. 286).⁵⁸¹

3.1 Article 1D in Refugee Status Determination

The exclusion clause (first paragraph) of Article 1D has not been applied to cases involving Palestinian refugees because the latter do not enjoy any form of protection in their countries of former habitual residence. As the arguments in positive decisions are not published, it is unclear whether the inclusion clause (second paragraph) of Article 1D is applied. Asylum claims submitted by Palestinians are considered under the criteria set out in Article 1A(2) of the 1951 Refugee Convention.

4. Refugee Determination Process: Outcome

Palestinians not recognized as refugees are generally granted a residence permit on humanitarian grounds or stay in the country irregularly (see below).

Persons who are granted refugee status are entitled to a two-year renewable residence permit. After five years of legal residence in Italy, they are entitled to a “residence card,” which is renewable and valid for ten years. This card allows the holder to leave and return to Italy without a visa. Recognized refugees are entitled to the benefits of the 1951 Refugee Convention, including a travel document, family reunification, the right to work and certain social services.

Persons who have been granted residence permits on humanitarian grounds are issued one-year residence permits which are renewable as long as there is a need for protection. These persons are not entitled to the same rights as recognized refugees. Their status is similar to the position of any other immigrant who enters Italy legally.

5. Return – Deportation

If an asylum-seeker receives a final rejection, she/he must leave Italy. If a rejected asylum-seeker does not leave Italy voluntarily, it is the responsibility of the police to ensure the person’s departure.

Palestinians are generally not subjected to forcible return (deportation) to their former place of residence.⁵⁸² Many of them are granted residence permits on humanitarian grounds if, for example, returning them to their country of origin would violate the principle of *non-refoulement*.⁵⁸³

Other Palestinians live irregularly in Italy where they are tolerated by the authorities.⁵⁸⁴

Jurisprudence Sample Case

A case in 2000 involved a Palestinian asylum-seeker who was born in a refugee camp in Damascus. At the age of fifteen, he committed a serious crime in Italy. He was detained by the Italian authorities for fifteen years. The authorities then decided to expel him to Syria, but the expulsion failed. The Italian Council for Refugees intervened in the case and argued that the asylum-seeker should be granted a residence permit on humanitarian grounds, because if he was returned to Syria, he would risk facing the death penalty and because he would otherwise be obliged to live illegally in Italy. The Commission eventually granted him such a permit.

6. Temporary Protection

There is no special temporary protection regime for Palestinians in Italy.

7. Protection under the Statelessness Conventions

Italy is party to the 1954 Stateless Convention but not to the 1961 Stateless Convention. The provisions of the 1954 Stateless Convention, however, have not yet been incorporated into domestic legislation. Arguments and procedures for recognition of status and benefits under the Stateless Convention are therefore drawn by analogy from relevant cases and general immigration laws.⁵⁸⁵

According to the Italian Council for Refugees, Palestinians in Italy rarely seek protection under the 1954 Stateless Convention.

8. Reference to Relevant Jurisprudence

BADIL is not aware of published decisions relevant to the interpretation of Article 1D.

9. Links

Italian Council for Refugees: <http://www.cir-onlus.org>

THE NETHERLANDS⁵⁸⁶

1. Statistical Data

The Dutch Ministry of Interior estimates that between 6,000 to 8,000 Palestinians currently live in the Netherlands while unofficial sources estimate the number to be between 8,000 to 10,000.⁵⁸⁷

Palestinians are registered as “stateless” in the Netherlands. They are not distinguishable as a separate group from other stateless persons, and official statistics pertaining to Palestinian asylum-seekers are therefore not available.

2. Status of Palestinians upon Entry into the Netherlands

As in the case of other asylum-seekers, Palestinians in the Netherlands may submit an application for asylum to an Application Center. The Immigration and Naturalization Service (“*Immigratie en Naturalisatie Dienst*” (IND)) under the Ministry of Justice is responsible for the assessment of all requests for asylum. During the asylum procedure, the asylum-seekers are required to stay at one of the centers. They are provided with identity documents which are valid only for identification purposes, and not for travel purposes.

3. Refugee Determination Process: Asylum-Permit

A new Aliens Act came into force on 1 April 2001, providing for one status of admission in the Netherlands on asylum-related grounds (the so-called asylum permit).⁵⁸⁸ The permit may be issued to an alien (Section 29 of the Aliens Act) who:

1. is a refugee under the terms of the Convention;
2. makes a plausible case that he has good reasons for believing that if he is expelled he will run a real risk of being subjected to torture or to inhuman or degrading treatment or punishment;
3. cannot, for pressing reasons of a humanitarian nature connected with the reasons for his departure from the country of origin, reasonably be expected, in the opinion of the Minister, to return to his country of origin;
4. and for whom return to the country of origin would, in the opinion of the Minister, constitute an exceptional hardship in connection with the overall situation there.⁵⁸⁹

3.1 Article 1D in Refugee Status Determination

Article 1D of the 1951 Refugee Convention is directly applicable to the Dutch legal system. However, Palestinian asylum-seekers have not derived any rights from Article 1D due to the authorities' restrictive interpretation of the provision.

The Minister of Alien Affairs and Integration has issued guidelines regarding recognition of Palestinian refugees, Sub-chapter 2.2 (Exclusion Grounds of the 1951 Refugee Convention) of Aliens Circular C1/4.2.2 (Admission Grounds).⁵⁹⁰

Sub-chapter 2.2 states that:

Based on Article 1D, the Refugee Convention is not applicable to persons enjoying protection or assistance of UN organs or institutions other than UNHCR. In case this protection or assistance has ceased for any reason, these persons will *de jure* fall under the Refugee Convention.

This provision is applicable to stateless Palestinians falling under the mandate of UNRWA (United Nations Relief and Works Agency for Palestine Refugees in the Near East). These areas are located in Jordan, Lebanon, Syria and the territories occupied by Israel. The Refugee Convention is therefore not applicable to them. Considering the wordings of article 29 sub 1 under a, of the Aliens Law, these persons are not eligible for an asylum-based residence on the basis of this provision.

Whenever a Palestinian is no longer present in the mandate area of UNRWA, the exclusion clause of article Article 1D of the Refugee Convention ceases to be applicable and the Refugee Convention is again applicable. This however does not mean that a residence permit should automatically be granted. After all, the concerned person is expected to return to this mandate area for the purpose of reinvoking the protection of UNRWA. This will only be different if the alien can make plausible that he cannot return to the UNRWA area because he has a well-founded fear of persecution within the UNRWA mandate area, and cannot invoke UNRWA protection against that. In that circumstance, the alien can be granted a temporary residence permit for asylum under article 29, first paragraph, under a, Aliens Law. In case a residence permit is not granted under this provision, there will be an examination under the other admission grounds of article 29 Aliens Law and the ex-officio admission grounds. The C-part of this Aliens circular will therefore remain applicable.⁵⁹¹

The third paragraph of the above-mentioned Sub-chapter 2.2 replaced the previous third paragraph by Circular TBV 2003/11 of 24 April 2003.⁵⁹² The Minister of Alien Affairs and Integration introduced the amendment by stating that the previous sub-chapter regarding stateless Palestinians who originally fell under the mandate of UNRWA, but had subsequently moved outside UNRWA's area of operations, was not sufficiently clear and therefore could lead to misunderstandings. The Minister also noted that the amendment did not reflect an amendment in policy, but a clarification only.

The amendment provides that the exclusion clause in the first paragraph of Article 1D is not applicable for Palestinian asylum-seekers who have left UNRWA's area of operations, irrespective of whether they have left the area voluntarily or otherwise. They are therefore entitled to seek asylum under the 1951 Refugee Convention.⁵⁹³

The amendment also provides that their asylum claims will be assessed both in relation to the normal criteria under Article 1A(2) (i.e., is the asylum-seeker facing a well-founded fear of persecution within the UNRWA area?), and in relation to whether the Palestinian refugee can invoke UNRWA protection in that area.

This interpretation of Article 1D implies that the second paragraph of Article 1D (the inclusion clause) does not play a role in cases involving Palestinian refugees as they have the right to seek asylum under the normal criteria (Section 29 of the Aliens Act). A Palestinian refugee, moreover, must also establish that she/he cannot obtain protection from UNRWA.

Jurisprudence regarding UNRWA's Mandate

Official guidelines regarding Palestinian refugees are based on the assumption that UNRWA provides protection to refugees registered with the organization. The basis for this conclusion is unclear, but it seems that the Dutch authorities take the view that the wording of Article 1D ("protection or assistance") indicates that the organization referred to in Article 1D provides both protection and assistance.⁵⁹⁴ In other words, when such an agency of the United Nations exists, then that agency will, according to the definition, provide both assistance and protection.

In most cases, Dutch courts have simply stated – without discussion – that UNRWA provides protection. However, in a decision of 2 April 2003, the Court of Appeal (Amsterdam District Court/Rechtbank, AWB/03/17365, AWB 03/17366) assessed for the first time, as far as BADIL is aware, the extent of protection provided by UNRWA. The case involved a Palestinian from the Gaza Strip who left Gaza in 2003 because of the dire circumstances during the *intifada*. The claimant noted that he had witnessed the murder of innocent civilians and the demolition of houses. One of the arguments

advanced by the defendants (the Dutch authorities) was that UNRWA was created to protect the Palestinians. The claimant referred to an e-mail by UNRWA of 9 February 2003 in which the Agency stated that it was attempting to provide humanitarian assistance, but that it could not provide physical protection against the violence in the OPT. The Court concluded that:

[T]he defendant [the State] cannot simply point to the fact that UNRWA was created in order to protect the Palestinians ... It is relevant ... that an international organization like UNRWA is active in the Gaza Strip, however, its significance can only be taken into consideration, if it is known what UNRWA is able to do to protect Palestinians ... The Court, however, is unable to discern from the decision, which is the subject of the appeal, what significance has been accorded to UNRWA's role, or how this organization has contributed to the security of Palestinians in the occupied territories. On the basis of information provided by the applicant, the defendant has not shown sufficiently that UNRWA, in addition to providing humanitarian assistance, is effectively in a position to provide protection to Palestinians in the territories occupied by Israel.⁵⁹⁵

Thus, the Court concluded that the authorities should re-decide the case because they had failed to prove that UNRWA could actually provide protection to the claimant.⁵⁹⁶

4. Refugee Determination Process: Outcome

As in the case of other asylum-seekers, Palestinians who are recognized as refugees are granted a temporary asylum residence permit valid for three years. During this period, the permit can be withdrawn if the grounds which justified it being granted have ceased to exist, or for public order reasons, or if the asylum-seeker has given false information related to the asylum request. After three years, the permit can be converted into a residence permit valid for an indefinite time (“indefinite asylum residence permit”).

Asylum-seekers granted asylum permits on other grounds are entitled to the same rights as recognized refugees, including social and economic rights, and benefits.

Jurisprudence Sample Case

According to the records of the Dutch Refugee Council, in the last four-year period, Palestinians have rarely been granted asylum permits.

In the above-mentioned decision of 2 April 2003, the state argued that the claimant had left because of the general situation in the Gaza Strip and that he was not individually targeted. The Court accepted the argument that the general situation in the Gaza Strip

was insufficient grounds for refugee status, but concluded that the authorities should re-decide the case because they had failed to prove that UNRWA could actually provide protection to the applicant.

5. Return – Deportation

A negative decision automatically means that the asylum-seeker must leave the country. If asylum-seekers who have received a negative decision fail to leave the country, they can be deported.

As expulsion is optional, the authorities have the option of suspending expulsions of rejected asylum-seekers, if enforced removal to the country of origin would bring unusual hardship to the alien in connection with the general situation in the country, or if it is impossible to obtain a travel document to the country of former residence and the asylum-seeker proves that she/he has seriously tried to obtain such a document.

In such cases, a temporary regular residence permit might be granted (in the latter case, “permission to stay for the reason that he/she cannot return to his country of former habitual residence of reasons not his/her fault”). Such a permit is valid for a year and renewable if the obstacles to expulsion still exist. After five years of continuous residence in the country, the holder of such a residence permit will be entitled to a residence permit for an indefinite period. The holders of such permits do not enjoy the same rights as recognized refugees. Family reunion, for example, is not permitted. Work is allowed under special circumstances.

6. Temporary Protection

No special temporary protection regime has been established with regard to Palestinians.

7. Protection under the Statelessness Conventions

The Netherlands is party to the 1954 Stateless Convention and the 1961 Stateless Convention. However, no specific practice has been developed based on these Conventions, including vis-à-vis stateless Palestinians.

Stateless persons who have not obtained permission to stay in the Netherlands because of asylum reasons can apply for regular residence permits in the Netherlands. They are entitled to such permits if they can prove that they are stateless and that the authorities in their country of former habitual residence will not issue travel

documents to enable their return. However, it is very difficult to obtain such permits because the Dutch authorities take the view that there is no state in the world that will not allow a return of its inhabitants.

8. Reference to Relevant Jurisprudence

Decisions from 2003 and 2002 involving Palestinian asylum-seekers include:

Date	Name	Summary
20 October 2003	Decision by the Rechtbank (District Court) in Amsterdam: AWB 03/52839, 03/52838	The Court concluded that there had been no deterioration in the West Bank (since an earlier decision in a similar case of 23 June 2003) to the extent that the defendant would be helped by a policy of "group protection." However, appeal was granted because of deficiencies in the motivation of the original decision. ⁵⁹⁷
2 April 2003	Decisions by the District Court in Amsterdam: AWB 03/17365, 03/17366	This case assessed for the first time, as far as BADIL is aware, the extent of protection provided by UNRWA. See summary of the case, see section 3.1 above. ⁵⁹⁸
19 February 2003	Decision by the District Court in Zwolle:AWB 03/5389	The decision involved a Palestinian refugee from Jenin. Although the Court ruled that the 1951 Refugee Convention was not applicable to the applicant, who was registered with UNRWA and could therefore enjoy its assistance, it noted that this fact alone was not sufficient for the state to withhold asylum on the basis of Section 29, para. 1, under d) of the Aliens Act (see Section 3 above). In deciding whether or not asylum should be granted on the basis of this provision, the state is bound to take into consideration indicators such as the nature of the violence in the country of origin, especially the extent of the violations of human rights and humanitarian law, the extent of arbitrariness, the extent to which violence occurs and the geographical distribution of this violence. As it had not taken these indicators into consideration, it was not appropriate for the Court to base its rejection on the fact that it had not appeared that UNRWA was no longer active in areas under the control of the Palestinian Authority. The Court therefore granted the appeal. ⁵⁹⁹

8 October 2002	Decision by the District Court in Assen:AWB 02/50016 BEPTDN A S7 EN 02/50021 BEPTDN S7	The case related to a Palestinian family from the Gaza Strip, who were denied asylum by the authorities. The Court upheld the decision, noting that the applicants could not simply refer to the general situation in the area, and that there were no grounds for the alleged risk of persecution. ⁶⁰⁰
6 August 1987	<i>A.A. Y v. State Secretary for Justice</i>	The Court concluded that because the applicant had left Lebanon and was no longer protected by UNRWA, the 1951 Refugee Convention no longer applied. ⁶⁰¹

9. Links

Dutch Refugee Council: <http://www.vluchtelingenwerk.nl>

The Immigration and Naturalization Service: <http://www.ind.nl>

Dutch Courts: <http://www.rechtspraak.nl>

NORWAY⁶⁰²

1. Statistical Data

According to unofficial sources, some 3,000 Palestinians are living in Norway today.⁶⁰³

Palestinian asylum-seekers are registered in official statistics as stateless persons.⁶⁰⁴

2. Status of Palestinians upon Entry into Norway

As in the case of other asylum-seekers, Palestinians in Norway may submit an application for asylum to the Directorate of Immigration (UDI). During the asylum process, the asylum-seeker may stay at a reception center or a private residence. The asylum-seeker is entitled to a temporary work permit during the asylum process. However, such a permit will not be granted in cases where the Norwegian authorities are uncertain of the asylum-seeker's identity.

3. Refugee Determination Process: Refugee Status and Complementary Forms of Protection

Refugee status may be granted in accordance with Article 17 of the Norwegian Act No. 64 of 24 June 1988, regarding the entry of foreigners into the Kingdom of Norway and their presence in the realm (the Aliens Act) which stipulates that refugees who are in Norway or on the Norwegian border are entitled to asylum in the kingdom upon application.

There are two forms of complementary protection: A residence permit may be granted on protection grounds, in accordance with Article 8(2) of the Aliens Act, if it is not safe to return an asylum-seeker to her/his country of origin. This could, for example, be due to general unrest that might put the asylum-seeker's life at risk, or because there is a risk of torture or other inhuman treatment. A residence permit may also be granted on humanitarian grounds, in accordance with Article 8(2) of the Aliens Act, if strong humanitarian considerations arise as a result of the particular situation of the asylum-seeker, such as serious health conditions or the situation of minors. The latter circumstances are often considered together with conditions in the country of origin, for example, in the aftermath of a war or hostilities.

3.1 Article 1D in Refugee Status Determination

Article 1D has been applied in cases involving Palestinian refugees from the OPT who are registered with UNRWA and whose registration is confirmed by UNRWA.⁶⁰⁵

Such refugees are recognized as refugees under Article 1D and they are not required to fulfil the criteria set out in Article 1A(2) of the 1951 Refugee Convention. The authorities consider that these refugees are, generally, in need of protection. The authorities have concluded that because the West Bank and the Gaza Strip are not states, and because the Palestinian Authority is not able to protect the Palestinians living in the area, the “protection” referred to in Article 1D has “ceased.”⁶⁰⁶

As the authorities do not consider the situation as being the same in Lebanon, Syria, Jordan or other countries, Palestinian refugees arriving in Norway from these countries have to fulfil the criteria set out in Article 1A(2) of the 1951 Refugee Convention against their “new” home countries.⁶⁰⁷

4. Refugee Determination Process: Outcome

Both recognized refugees and persons who have been granted protection on humanitarian grounds are issued one-year residence permits which are renewable three times. After three years of residence, they may apply for permanent residence permits. Such permits may be granted if the conditions for granting the temporary permit continue to exist; the three-year stay in Norway was coherent; and there are no grounds for expulsion.

Recognized refugees are entitled to family reunification, travel documents, work permits, education and all welfare benefits. There is little difference between the rights afforded to refugees and to persons who have been granted a complementary form of protection.⁶⁰⁸

Jurisprudence Sample Cases

Specific case law was not available. However, according to the Directorate of Immigration:

- In general, all Palestinians from the West Bank or the Gaza Strip who can establish that they are from the area will be granted residence permits. Palestinians who can establish that they are registered with UNRWA will be granted such permits under Article 1D, whereas others will be granted permits on humanitarian grounds.
- Palestinian refugees from Lebanon and Syria will most likely not be granted residence permits because they cannot establish “a fear of persecution.” Palestinians from Syria often claim to have problems with the Syrian authorities due to allegations of illegal political activities, for example, activities related to pro-Arafat groups. Palestinians from Lebanon often refer to the dire living circumstances in the country and claim that due to participation in some political faction, they have

been threatened by other political factions. Some asylum-seekers have claimed to have personal problems, for example, problems related to family issues. Others have claimed that they were not allowed to end their participation in certain political groups (for example, PFLP or Hizbollah⁶⁰⁹), and that they were forced to continue carrying out activities for these groups.

- There are few examples of Palestinians from other countries seeking asylum in Norway. In those few cases, the asylum-seekers have generally claimed that Palestinians do not enjoy basic human rights in their country of residence.

5. Return – Deportation

If an asylum applicant receives a final rejection, she/he must leave Norway. If such a person does not leave Norway voluntarily, it is the responsibility of the police to ensure her/his departure.

Palestinians from the Gaza Strip and the West Bank (see point 3.1) and currently also Palestinians from Iraq are not subjected to forcible return (deportation), whereas Palestinians from other countries might be deported. As noted above, the police are responsible for such deportation. Some difficulties have been reported with regard to deportation to Lebanon.⁶¹⁰

6. Temporary Protection

No special temporary protection regime has been established with regard to Palestinians.

7. Protection under the Statelessness Conventions

Norway is party to the 1954 Stateless Convention and the 1961 Stateless Convention. No information could be obtained regarding decisions in Norway involving Palestinians seeking protection under these Conventions.

8. Reference to Relevant Jurisprudence

Decisions from the public administration are not made public.

9. Links

NOAS: <http://www.noas.org>

POLAND⁶¹¹

1. Statistical Data

According to unofficial sources, some 1,000 Palestinians are currently living in Poland, most of whom came to study in Poland. They arrived mostly from countries in the Middle East such as Jordan, Syria, Lebanon and the OPT.⁶¹² The majority of Palestinians living in Poland have entered the country on student visas and are holders of temporary residence permits. After graduating from their studies, such persons often wish to stay in Poland and legalize their status by obtaining new temporary residence cards. They consider applying for asylum only if they are refused such cards.⁶¹³

Palestinian asylum-seekers who do not hold the passports or travel documents of other Arab countries and those arriving from Palestine are registered in official statistics as “stateless persons of Palestinian nationality.” Palestinian asylum-seekers holding other Arab passports or travel documents are registered as originating from the respective country.

In 2003, a total of 112 stateless persons applied for temporary residence cards or permanent residence permits, only twelve of which were based on claims on asylum-related grounds.⁶¹⁴ The majority of these applications were submitted by Palestinians.

As these figures indicate, only a small number of Palestinians who seek residence permits in Poland apply for refugee status. This may be explained by the lengthy and often unsuccessful asylum procedure combined with a general reluctance among Palestinians to consider themselves “asylum-seekers.”⁶¹⁵

2. Status of Palestinians upon Entry into Poland

As in the case of other asylum-seekers, Palestinians in Poland may submit an application for asylum to the Office for Repatriation and Aliens in Warsaw. During the asylum process, the asylum-seekers are provided with visas. Those who do not have sufficient financial resources can be accommodated in centers for asylum-seekers. In some circumstances, the authorities may decide to place an asylum-seeker in a detention center.

3. Refugee Determination Process: Refugee Status and Complementary Form of Protection

The Polish Constitution provides that:

Foreigners shall have the right of asylum in the Republic of Poland in

accordance with the principles specified by statute. (Section 56.1)

Foreigners who, in the Republic of Poland, seek protection from oppression, may be granted the status of a refugee in accordance with international agreements to which the Republic of Poland is a party. (Section 56.2)

The Act on Providing Protection to Aliens (Aliens Law) adds that:

Refugee status in the Republic of Poland is granted to an alien who fulfils the criteria for recognition as described in the Geneva Convention and the New York protocol... (Section 13)

A foreigner may be granted asylum on the territory of the Republic of Poland upon his/her application if it is necessary in order to secure protection to him/her, and there are important reasons why this is in the interest of the Republic of Poland (Section 90).

The Aliens Law (Section 97) also provides for humanitarian protection i.e., humanitarian temporary residence permits are granted to persons who fall outside the scope of the 1951 Convention but within, for example, the Torture Convention. Such persons are granted so-called “tolerated status.” This provision is increasingly being applied to Palestinians.⁶¹⁶

3.1 Article 1D in Refugee Status Determination

Article 1D of the 1951 Refugee Convention has been considered by the Polish authorities, who have concluded that 1948 Palestine refugees and their descendants who receive assistance from UNRWA fall within the scope of Article 1D. Palestinians displaced in the 1967 Israeli-Arab war are not included in the scope of Article 1D.

The High Administrative Court has interpreted the meaning of Article 1D as below.

Article 1D, first paragraph (V SA 334/02):⁶¹⁷ the Court concluded that Palestinian refugees who have resided outside UNRWA’s area of operations, including in Poland, for a number of years do not fall within the scope of the first paragraph of Article 1D. The Court argued that UNRWA’s area of operations is geographically limited and persons who have not lived in that area for a number of years lose the characteristics of an UNRWA recipient. The exclusion clause in Article 1D, first paragraph, is therefore not applicable to them. Their claims will be considered under the general criteria of Article 1A(2) of the 1951 Convention.

Article 1D, second paragraph (V SA 1673/01): the Court concluded that there is a nexus between Article 1D, first and second paragraphs, meaning that the benefits under the second paragraph are available only to Palestinian refugees falling within the scope of the first paragraph. The Court moreover concluded that UNRWA assistance can “cease” only as a result of “objective causes,” such as a ban on the Agency’s operation or lack of funds. If a person leaves UNRWA’s area of operation, she/he does so for “subjective” reasons that cannot trigger the application of the inclusion clause, second paragraph of Article 1D.⁶¹⁸ This interpretation of “if such assistance or protection has ceased for any reason” was based on the Court’s understanding that (in the case of Palestinian refugees) UNRWA assistance should be given priority over protection under Article 1A(2) i.e., UNHCR’s mandate and national protection.

As a result of the restrictive interpretation by the High Administrative Court, Article 1D appears to be irrelevant for Palestinian refugee status determination in Poland: UNRWA assistance has not ceased, and the inclusion clause (second paragraph) cannot possibly be triggered even for Palestinian refugees falling under the scope of the first paragraph (i.e., refugees who have not stayed outside UNRWA’s area of operations for a number of years).⁶¹⁹

4. Refugee Determination Process: Outcome

As in the case of other asylum-seekers, Palestinians who are recognized as refugees are granted temporary residence permits. Temporary residence permits are granted for a maximum of two years, but can be renewed. After five years, they are granted permission to settle (permanent residence).

Some Palestinians have been recognized as refugees. Since cases decided by the Office for Repatriation and Aliens in the first instance are issued without justification, it is impossible to assess the grounds on which refugee status was granted in these cases.⁶²⁰ In other cases, Palestinians have not been recognized as refugees.⁶²¹

In a number of cases involving Palestinians who did not qualify for refugee status, the Office for Repatriation and Aliens and/or the Refugee Council decided to grant humanitarian protection, the so-called “tolerated status.”⁶²² This status, a form of subsidiary protection, has been available since 1 September 2003, in particular for Palestinians from the Gaza Strip and the West Bank, who are not being deported. A one-year temporary residence permit is granted. The permit can be renewed if the circumstances which hindered deportation continue to prevail. The holder of such a permit can work legally and apply for family reunification after three years.

5. Return – Deportation

Rejected asylum-seekers, including Palestinians, are asked to leave the country. If they do not leave voluntarily, they become subject to a deportation procedure.

Currently, Palestinians from the West Bank and Gaza Strip are not subjected to forcible return (deportation). Palestinians from other Arab countries are deported if they do not leave voluntarily. However, no information is available regarding implementation of such deportations or the number of cases involved.

6. Temporary Protection

The Aliens Act provides for temporary protection of aliens who arrive in great numbers under certain circumstances (Section 106). Palestinians have not been granted this type of temporary protection.

7. Protection under the Statelessness Conventions

Poland is not party to the 1954 Stateless Convention or the 1961 Statelessness Conventions.

While Palestinians are treated as stateless persons under Polish law, unless they are holders of passports of some other Arab country (for example, Jordan, Syria or Egypt), no legal implications follow from this status.

However, children born to stateless parents living in Poland are granted Polish citizenship, even if their parents have only temporary residence permits.

8. Reference to Relevant Jurisprudence

No complete collection of decisions in asylum cases is available in English. All decisions referred to in this text are available in Polish only.⁶²³

9. Links

Halina Niec Human Rights Association: <http://www.niecassociation.org>

Office for Repatriation and Aliens: <http://www.uric.gov.pl>

Refugee Council: Aleja Roz 2, 00-556 Warsaw, Poland

High Administrative Court: <http://www.nsa.gov.pl>

SPAIN⁶²⁴

1. Statistical Data

There is currently no sources providing estimates on the number of Palestinians living in Spain.

Palestinian asylum-seekers are registered in official statistics in the category “stateless persons.” Since other stateless persons are also included in this category, official statistics regarding the number of Palestinians among them are inconclusive and do not provide information about the number of Palestinian applicants and/or Palestinians who have received either a positive or a negative decision.⁶²⁵

2. Status of Palestinians on Entry into Spain

As in the case of other asylum-seekers, Palestinians who are in Spain⁶²⁶ may submit an application for asylum to the Office for Asylum and Refuge (“*Oficina de Asilo y Refugio*” (OAR)).

During the admissibility procedure, the asylum-seeker is provided with a duly stamped receipt of her/his request for asylum. This receipt attached to her/his passport enables her/him to remain in Spain for a term no longer than 60 days, during which a decision on admissibility will be made.⁶²⁷ Asylum-seekers are not entitled to work in this period. They are not confined to a specific area of Spain.

In cases involving Palestinian refugees, the main reasons for inadmissibility have been: a) lack of credibility regarding the claimed Palestinian origin;⁶²⁸ and b) availability of protection in another country.⁶²⁹

If the request for asylum is admitted to the regular status determination procedure, OAR will examine the merits of the case. During this procedure, the asylum-seeker is provided with a document protecting against *refoulement* and enabling her/him to remain in Spain.⁶³⁰ At this stage, an asylum-seeker may benefit from social, educational and health-related services,⁶³¹ and may be granted authorization to work in Spain.⁶³²

3. Refugee Determination Process: Refugee Status and Complementary Forms of Protection

In general, refugee status may be granted to persons on the basis of Article 2(1) of the Asylum Law,⁶³³ stipulating that:

The right to asylum recognized in article 13.4 of the Constitution is defined as the protection provided to those aliens whose status as refugees is recognized. This protection consists of neither returning nor expelling the individual under the terms of Article 33(1) of the Convention on the Status of Refugees, signed in Geneva on 28 July 1951. This protection also consists of the adoption of the following measures during the time in which the circumstances motivating the request for asylum persist:

- a) Authorization to reside in Spain;
- b) Issuance of necessary travel documents and identification;
- c) Authorization to work, by taking employment and/or engaging in business activity;
- d) Any other measures mentioned in the international Conventions on refugees to which Spain is a signatory.

Refugee status is defined in Article 3(1) of the Asylum Law:

Refugee status will be recognized for, and therefore asylum will be granted to, any alien who fulfils the requirements provided for in the International Instruments ratified by Spain, especially those mentioned in the Convention on the Status of Refugees signed in Geneva on 28 July 1951 and in the Protocol on the Status of Refugees, signed in New York on 31 January 1967.

Asylum-seekers who are not recognized as refugees may be granted a complementary form of protection to remain in Spain on humanitarian grounds, or for reasons of public interest in accordance with Article 17(2) of the Asylum Law, which stipulates that this form of protection is especially applicable to:

Individuals, who as a result of grave conflicts or serious disturbances of a political, ethnic or religious nature, have been forced to abandon their country, but who do not fulfil the requirements mentioned in number 1 of article 3 of this Law.

3.1 Article 1D in Refugee Status Determination

There is no pattern in the implementation of Article 1D. Each case involving a Palestinian is reviewed on the basis of its merits in relation the criteria set out in Article 1A(2) of the 1951 Refugee Convention. The authorities will also examine why the applicant left their country of former residence.

4. Refugee Determination Process: Outcome

Some Palestinians have been granted refugee status. They enjoy the benefits set out in Article 2(1) of the Asylum Act. They are entitled to the same social and educational services as Spanish nationals. After five years in Spain, they may obtain Spanish citizenship.

Some Palestinians have been granted the complementary form of protection on humanitarian grounds, including Palestinians from the OPT during the second *intifada*, whose claims have been found credible. They have been granted temporary residence permits valid for one year and renewable annually for as long as the original reasons for needing protection persist, as well as work permits for the same period. They may apply for permanent residence permits after five years of residence. With regard to family reunification, such persons are subject to the general rules for family reunification under the provisions of the Aliens Act,⁶³⁴ which are more onerous than those applicable to recognized refugees. They are entitled to the same social rights as recognized refugees. After ten years of legal residence, they may apply for Spanish citizenship.

5. Return – Deportation

Palestinians whose claims for asylum have been rejected and who are not granted protection on humanitarian grounds will be asked to leave the country within a short period of time. Once this period has expired, the person is subject to the initiation of expulsion from Spanish national territory (Article 31 of the Asylum Law). The authorities may detain a foreigner in order to ensure the enforcement of a deportation order issued against her/him (Section 61(e) of the Aliens Act). Such detention must be authorized and controlled by a judge, and can never exceed 40 days.

Currently, all Palestinians who are not recognized as refugees or granted protection on humanitarian grounds are subject to forcible return, unless they meet the requirements for an aliens' residence or work permit.

Rejected asylum-seekers who cannot be returned to their country of former residence may invoke Article 17(3) of the Asylum Law, which stipulates:

The removal or expulsion of the person concerned shall in no case result in the violation of Article 33(1) of the Geneva Convention relating to the Status of Refugees, or lead to the removal to a third state in which he/she will lack effective protection against *refoulement* to the persecuting country, in accordance with the above-mentioned Convention.

This provision has been applied by the Spanish authorities to rejected asylum-seekers who do not meet the conditions for humanitarian or displaced persons status,⁶³⁵ but who cannot be returned to their country of origin or former residence due to conflicts. Such persons are protected against expulsion, but not granted residence permits. Thus, they remain in Spain without legal status until they leave the country voluntarily or obtain a residence permit by other means (such as regularization, marriage, work permit, etc.).⁶³⁶

6. Temporary Protection

The First Additional Provision of the Asylum Law includes special consideration of displaced individuals. It has never been applied to Palestinians.⁶³⁷

7. Protection under the Stateless Conventions

Spain became party to the 1954 Stateless Convention on 12 May 1997. Relevant Spanish legislation was enacted on 20 July 2001,⁶³⁸ including a procedure for the recognition of stateless persons. As of October 2004, two Palestinians have been recognized as stateless persons.⁶³⁹

8. Reference to Relevant Jurisprudence

Decisions by OAR are not made public for reasons of confidentiality. Decisions by the courts in appeal cases are public. However, BADIL is not aware of court cases relevant to the interpretation of Article 1D.

9. Links

Ministry of Interior (legislation): <http://www.mir.es>

UNHCR: <http://www.acnur.org>

REICAZ Zaragoza Bar Association: <http://www.extranjeria.info>

UNHCR: <http://www.unhcr.ch>

SWEDEN⁶⁴⁰

1. Statistical Data

While official Swedish figures are not available, the Palestinian General Delegation in Sweden estimates that approximately 50,000 Palestinians were living in Sweden in February 2004 while community estimates vary around 40,000. Many of them arrived from Lebanon in the 1980s and 1990s, fleeing civil war there.⁶⁴¹

Palestinians who claim to be stateless Palestinians are registered as “stateless persons” by the Swedish Migration Board (*Migrationsverket*).⁶⁴² In this case, their country of former habitual residence does not appear in the statistics. Palestinians who have obtained new citizenship (for example, in Jordan) are registered as citizens of that country.

As the category “stateless persons” also includes others who are stateless, official statistical data does not show the exact number of Palestinians who have applied for residence permits in Sweden, and been issued either positive or negative decisions. However, as most stateless persons have been Palestinians, the approximate numbers can be deduced from this data:⁶⁴³

Year	# of Applications submitted by stateless persons	Recognized as refugees and granted residence permit	Granted residence permit based on need of protection on other grounds	Granted residence permit on humanitarian grounds	Rejected
2003	1,787	8	32	492	461*
2002	859	9	11 ⁶⁴⁴	198	Not available

* Note: the difference between the total number of applications and cases recognized or rejected in 2002 is explained by cases that were still pending at the end of 2003 (794 cases).

2. Status of Palestinians upon Entry into Sweden

As in the case of other asylum-seekers, Palestinians in Sweden may submit an application for asylum to the Swedish Migration Board. During the asylum process, asylum-seekers can choose whether they wish to live with friends or relatives or at one of the Migration Board’s reception centers. All asylum-seekers are required to take part in some form of organized activity, such as learning Swedish or English, training in computers and handicrafts, or helping fellow country-members to settle in Sweden. Asylum-seekers are allowed to hold a regular job if the Migration Board’s handling time is expected to be longer than four months.

3. Refugee Determination Process: Refugee Status and Complementary Forms of Protection

In general, “asylum” is defined in the Swedish Aliens Act⁶⁴⁵ as the awarding of a residence permit to a Convention Refugee (Chapter 3, Sections 1 and 2). Stateless persons are explicitly referred to in the Aliens Act as follows:

[a] stateless person who for the same reason is outside the country of his former habitual residence and who is unable or, owing to such fear, is unwilling to return to that country, shall also be deemed a refugee (Chapter 3, Section 2).

In addition, three categories of persons in need of protection on other grounds are entitled to a residence permit (Chapter 3, Section 3 of the Aliens Act):

1. Aliens who have a well-founded fear of being punished by death penalty or corporal punishment or being subjected to torture or other kinds of inhuman or degrading treatment or punishment;
2. Aliens who need protection due to external or internal armed conflict or are unable to return to their country of origin because of a natural catastrophe;
3. Aliens who have a well-founded fear of persecution for reasons of their gender or homosexuality.

The authorities may also decide to grant a residence permit on humanitarian grounds (Chapter 2, Section 4, paragraph 5 of the Aliens Act), or on political-humanitarian grounds (Chapter 2, Section 4, paragraph 5 of the Aliens Act and reports 1996/97:25 and 1996/96:SfU5).⁶⁴⁶

The credibility of the alleged nationality is always assessed by the authorities. Recently, there have been several cases in which Palestinians arriving from Amman alleged to be stateless Palestinians from the West Bank and the Gaza Strip, but they had no documents to prove this.⁶⁴⁷

3.1 Article 1D in Refugee Status Determination

Article 1D, second paragraph, has not been applied by the Swedish authorities in order to recognize Palestinians *ipso facto* as refugees. The Swedish authorities have rather concluded that UNRWA assistance has not “ceased” (Article 1D, second paragraph) – and Article 1D is therefore not applicable – as long as a Palestinian asylum-seeker has not obtained a permanent residence permit in Sweden. Article

1D only becomes applicable once the asylum-seeker is granted a permanent residence permit.

Based on this interpretation, Article 1D does not play a role in refugee status determination. It does, however, play a role at a later stage, i.e., in the process of determining the scope of benefits following the granting of a residence permit. Thus, for example, applicability of Article 1D entitles a Palestinian refugee who has been granted a permanent residence permit to the benefits of the 1951 Refugee Convention, including travel documents, to which she/he might otherwise not be entitled.⁶⁴⁸

4. Refugee Determination Process: Outcome

Those few Palestinians who fulfil the criteria of Chapter 3, Sections 2 or 3 of the Aliens Act are issued a permanent residence permit valid for three years at a time and renewable without re-examination for as long as the holder resides in Sweden. Persons, including Palestinians, who are granted a residence permit in Sweden are generally granted a *permanent* residence permit.⁶⁴⁹

Some Palestinians have been granted a permanent residence permit on humanitarian grounds.⁶⁵⁰ These have included Palestinian refugees from Lebanon who arrived during the civil war and, until recently, Palestinians who fled the West Bank and Gaza Strip during the second *intifada*.

Recognized refugees and persons in need of protection are generally also entitled to travel documents and other benefits of the 1951 Refugee Convention. Aliens granted residence permits on (political)-humanitarian grounds are generally not entitled to all the benefits of this Convention; for example, they are not entitled to travel documents.

Jurisprudence Sample Cases

Swedish authorities have generally held the view that Palestinian asylum-seekers do not fall within the scope of Chapter 3, Section 2 of the Aliens Act (i.e., Article 1A(2) of the 1951 Refugee Convention).⁶⁵¹ They have also often concluded that Palestinians were not in need of protection on other grounds, including protection "...due to external or internal armed conflict..." (Chapter 3, Section 3 (2) of the Aliens Act). As a result, only few Palestinians have recently obtained protection in Sweden under these provisions.

Some Palestinians have obtained recognized status under Chapter 2, Section 4(5) of the Aliens Act on humanitarian grounds, among them Palestinian refugees who had arrived

from Lebanon during the civil war. Palestinians from the West Bank and the Gaza Strip were until recently granted permanent residence permits on political-humanitarian grounds.

The Swedish Aliens Appeals Board concluded, for example, in its decision of 19 December 2002 that the current *intifada* in the Gaza Strip and the West Bank does not constitute an “armed conflict.” The case *Udlänningsnämnden* (UN), 19 December 2002) involved a Palestinian from Gaza who claimed to have provided information to the Israelis. The Board concluded that the general situation in the OPT was characterized by violence and war-like circumstances, lack of control by the Palestinian Authority, severe restrictions on peoples’ freedom of movement, and unfavourable living conditions. The Board concluded, however, that despite these circumstances, the situation could not be characterized as an “armed conflict” under Chapter 3, Section 3 of the Aliens Act. The asylum-seeker was therefore not in need of protection on other grounds. At the same time, however, the Board decided that the circumstances in the Gaza Strip were so harsh that the asylum-seeker should be granted a residence permit on (political)-humanitarian grounds (Chapter 2, Section 4 (5) of the Aliens Act).

In late 2004, however, Swedish asylum authorities changed their practice, and decided that permission to stay on political-humanitarian grounds would no longer be issued to all Palestinians arriving from the West Bank and Gaza Strip. Rather, applications would be processed on a case-by-case basis. Decisions to return applicants to these areas were taken particularly in cases where claims were based solely on the general situation of violence there.

4.1 Article 1D in Determination of Entitlement to Travel Documents

In Sweden, Article 1D comes into play after a Palestinian has been granted a permanent residence permit to stay in Sweden. If Article 1D is found to apply, i.e., if the Palestinian is registered or eligible to be registered with UNRWA, or if she/he holds a Syrian or Lebanese travel document, she/he is entitled to travel documents and other benefits of the 1951 Refugee Convention.

If the Palestinian is recognized as a refugee or as a person in need of protection, she/he is entitled to the benefits of the 1951 Refugee Convention even if Article 1D is not applicable. However, a Palestinian who has been granted a permanent residence permit on (political)-humanitarian grounds is not entitled to travel documents if Article 1D does not apply. Applicability of Article 1D thus ensures entitlement to travel documents for Palestinians who were granted residence permits on (political)-humanitarian grounds and who otherwise would not be entitled to such documents.

Palestinians who were granted temporary residence permits are not entitled to travel documents on the basis of Article 1D of the 1951 Refugee Convention.⁶⁵²

Jurisprudence regarding travel documents⁶⁵³

Article 1D was applied by the Aliens Appeals Board in its decision (UN 17 November 2003) involving a Palestinian refugee from Lebanon who was registered with UNRWA and who had received UNRWA assistance. The Swedish authorities had granted him a permanent residence permit on humanitarian grounds. The Board then concluded that because he was granted the right to stay in Sweden, UNRWA's assistance had "ceased" in accordance with Article 1D, second sentence: "[w]hen such protection or assistance has ceased for any reason ... these persons shall *ipso facto* be entitled to the benefits of this Convention". As travel documents are one of the benefits provided for by the 1951 Refugee Convention, he was entitled to such documents without additional examination of his case.

A UN 17 June 2004 decision involved a Palestinian refugee who was born in Saudi Arabia and who lived there until he came to Sweden. The Migration Board granted him a permanent residence permit on humanitarian grounds. His grandfather and his father were registered with UNRWA and had moved to Saudi Arabia in 1950. The Aliens Appeals Board referred to the 2002 UNHCR Note, in particular to UNHCR's opinion that, in addition to Palestinian refugees who are registered with UNRWA, refugees who are eligible to be registered with UNRWA also fall within the scope of Article 1D, even if they have never resided inside UNRWA's area of operations. The Board then concluded that the applicant was a refugee within the meaning of General Assembly Resolution 194(III) who did not have the right to return to his family's home country. Moreover, the Board noted that before he came to Sweden, he had held the right to register with UNRWA, but following the granting of a residence permit in Sweden, that registration option had ceased. The Board then concluded that on the basis of Article 1D and the 2002 UNHCR Note, he was entitled to 1951 Convention travel documents.

5. Return – Deportation

A final decision rejecting an application for asylum is always accompanied by a deportation order. If a rejected asylum-seeker will not leave Sweden voluntarily, it is the responsibility of the Migration Board and, if necessary, the police to ensure the applicant's departure.

If it proves impossible to return or deport a rejected asylum-seeker, she/he may submit a new application for a residence permit to the Appeal Board based on the argument that it is impossible to return to the country of former habitual residence ("*verkställighetshinder*"). If the Appeals Board concludes that it is impossible to execute the deportation order, the person may be granted a residence permit on humanitarian grounds.⁶⁵⁴ After four years, the decision of the Appeals Board is no longer valid. If the asylum-seeker is still in Sweden at that time, she/he may submit a new asylum application to the Migrations Board. Palestinians who do not fulfil the criteria set out in Chapter 3 of the Aliens Act, and are not granted residence

permits on humanitarian grounds, are generally forcibly returned to their country of former habitual residence, if the deportation order can be executed.

Rejected Palestinian asylum-seekers from the Gulf States face increasing difficulty from the Migration Board and the Appeals Board in obtaining permission to stay in Sweden. Many of these persons, or their fathers, were born in the Gaza Strip and moved with their families to the Gulf as a result of the Israeli-Arab wars of 1948 and 1967. Others left the Gaza Strip in search of work in the Gulf States. Most of them hold Egyptian travel documents, which do not entitle them to enter Egypt. In the Gulf States they lived under so-called “sponsorship,” which made it possible for them to live and work there for as long as they had an employer. Under current regulations, such Palestinians are not allowed to return to Saudi Arabia, the United Arab Emirates or other Gulf States if they have stayed longer than six months in Sweden, unless they re-apply for a residence permit. A residence permit, however, can only be issued via a new sponsor or employer. As it is almost impossible to find new work or an employer in the country of former residence while living in Sweden, these Palestinians are unable to obtain residence permits to return to their country of former habitual residence. Likewise, they are not able to return to the Gaza Strip, or to enter Egypt.

Generally in these cases, the Swedish Migration Board examines the applications for residence permits in Sweden against the situation in their country of former residence in the Gulf (not against the situation in the Gaza Strip), rejects the applications and requests them to return to the country where they lived before arriving in Sweden. According to the Migration Board and the Appeals Board, neither the general situation of Palestinians in the Gulf States, nor the difficulties in returning there justify the granting of residence permits in Sweden. Moreover, the authorities hold that these Palestinians have to assist in the effort to return them by: a) contacting their old employer; b) contacting their embassy to get a new passport; and c) finding a new job in order to be entitled to new work and re-entry permits.

As a result, these Palestinians often stay in Sweden for many years without any legal status or rights.⁶⁵⁵ They may submit new applications to the Appeals Board claiming that the deportation order cannot be executed. The Appeals Board, however, has commonly ruled in such cases that it is not permanently impossible to return these people, and that they have to continue to apply for jobs in their country of former habitual residence.

Some of the Palestinians who are caught in this state of legal limbo for years may be (descendants of) 1948 refugees. If Article 1D, second sentence, was applied as

recommended by UNHCR during refugee status determination, their problem would be solved and they would be entitled to refugee status and permanent residence permits in Sweden.

Return-Deportation: Swedish Case at the ECHR

In September 2004, the Swedish Refugee Ombudsman (*Medborgarnas flyktombudsman*) submitted a complaint to the European Court of Human Rights in Strasbourg regarding the case of a stateless Palestinian from Saudi Arabia who had lived for four years in Sweden without legal status.⁶⁵⁶ The Palestinian was born in Egypt and lived there for only three months before moving to Saudi Arabia. In Sweden, he married a 22-year-old Russian woman. At the time of the application, the couple had two children: a one-year-old son and a newborn baby girl. The wife's earlier application for asylum in Finland had been rejected. The Swedish authorities (Migration Board and Appeals Board) decided to return her to Russia via Finland, and to send the son to Finland, despite the parents' wish to keep him with his father in Sweden. The Palestinian father was requested to return to Saudi Arabia. It subsequently became possible to deport the mother and her son, but turned out to be impossible to return the father because he had been away from Saudi Arabia for more than six months. The Ombudsman, in his complaint to the ECHR, presented the following facts and arguments:⁶⁵⁷

In the last seven years, no stateless Palestinian who has been in Sweden longer than six months has been able to return to a Gulf state.

It was known that return was impossible and that denial of a residence permit would mean the asylum-seeker would be forced to live without any legal status for years.

The Ambassador of Saudi Arabia to Sweden had confirmed that it was impossible for a non-Saudi to return to Saudi Arabia if he had been away for more than six months.

The four years of waiting have been devastating for the family (the mother, for example, was hospitalized at a psychiatric hospital).

The family would be split between three different countries if the deportation orders were carried out: Sweden (father), Finland (one-year old son), and Russia (mother and newborn baby). This would be a violation of the right to respect for the family (8 of the European Convention on Human Rights (ECHR).

Sweden was the only place where they could live together as a family.

The father had made every attempt to return to Saudi Arabia, including contacting his former sponsor, but without success.

The father had sought asylum in Sweden the day he arrived (31 July 2000), but the Migration Board had not made a decision until two years later.

The unity of the family is a core principle within Swedish and international asylum law. The authorities had acted in violation of:

- Article 3 of ECHR: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."
- Article 8 of ECHR: "Everyone has the right to respect for his private and family life, his home and his correspondence."

6. Temporary Protection

From 15 April 1999 to 1 May 2000, a temporary protection regime was in place for Kosovo Albanians. There is no special temporary protection regime for Palestinians.

7. Protection under the Statelessness Conventions

Sweden is party to the 1954 Stateless Convention and the 1961 Stateless Convention.

The 1954 Stateless Convention has been applied with regard to travel documents for persons who have obtained residence permits in Sweden. Until May 2004, the Migration Board upheld that Palestinians who were not registered with UNRWA did not qualify for travel documents under the 1954 Convention. Palestinians from the West Bank and Gaza Strip were rather requested to apply for Palestinian passports from the Palestinian General Delegation in Stockholm. The Swedish authorities' decisions regarding Palestinians with Swedish residence permits and not in possession of documents showing UNRWA registration, did not show a clear pattern: some were granted 1954 Convention travel documents whereas others were not.

In its decision of 10 May 2004, however, the Appeals Board concluded that a Palestinian family who was granted a permanent residence permit in Sweden, but not registered or entitled to be registered with UNRWA, was entitled to 1954 Convention travel documents. This ruling is not yet implemented systematically, and eligible Palestinians are still refused 1954 Convention travel documents.

Moreover, Swedish law provides that stateless persons who have lawfully stayed in Sweden for four years can apply for Swedish citizenship. Stateless Palestinians with Palestinian passports who have lawfully stayed in Sweden for four years, however, cannot apply for Swedish citizenship, because the Migration Board holds that this document does not prove their identity, because Palestine is not a state.

8. Reference to Relevant Jurisprudence

Decisions by the Swedish Aliens Appeals Board (UN)) are published in Swedish and are available at: <http://www.un.se>. Examples of this jurisprudence are listed below:

Date	Title	Summary
20 March 1992	UN 47-92	A Palestinian refugee from Lebanon who was registered with UNRWA was granted a permanent residence permit on humanitarian grounds because he had been living in Sweden for a long time. He was also entitled to a Convention travel document on the basis of Article 1D, applicable once the permanent residence permit was granted
14 December 1992	UN 50-92	A Palestinian refugee from Lebanon was granted a temporary residence permit in Sweden due to his family links to Sweden (his wife was Swedish and they had a child together). He was not entitled to a Convention travel document.
23 November 2000	UN 00/08442	A stateless Palestinian from Saudi Arabia who had received a negative decision by the Migrations Board, which was upheld by the Appeals Board, was granted a residence permit on humanitarian grounds because it was impossible for the Swedish authorities to return him to Saudi Arabia.
19 December 2002	UN	A Palestinian from Gaza who was not registered with UNRWA was granted a permanent residence permit on political-humanitarian grounds.
17 November 2003	UN	A Palestinian from Lebanon who was registered with UNRWA was granted a permanent residence permit on humanitarian grounds. He was entitled to a Convention travel document on the basis of Article 1D, which became applicable when the permanent residence permit was granted (see also Section 4).
10 May 2004	UN	A Palestinian family was granted 1954 Convention travel documents.
17 June 2004	UN	A Palestinian refugee was granted a permanent residence permit on humanitarian grounds. As his father and grandfather were registered with UNRWA, he fell within the scope of Article 1D, as he was entitled to register with UNRWA, although he was not registered. He was therefore entitled to a travel document (see also Section 4).
19 July 2004	UN	A Palestinian woman and her child who alleged to be from the West Bank were denied a residence permit. UN concluded that Jordan was their country of former habitual residence.

9. Links

Swedish Refugee Aid: <http://www.swera.se>

Swedish Migration Board: <http://www.migrationsverket.se> (also in English)

Swedish Aliens Appeals Board: <http://www.un.se> (also in English)

Medborgarnas Flyktingsombudsman ("Swedish Refugee Ombudsman"):

<http://www.mfo.nu>

SWITZERLAND⁶⁵⁸

1. Statistical Data

There are no sources providing estimates as to the number of Palestinians living in Switzerland today.

Palestinian asylum-seekers who claim to come from Palestine are registered in official statistics under the category of “nationality and continent unknown” (“*Staat und Kontinent unbekannt*”/“*nationalité inconnue*”). This category is used because these asylum-seekers come from an area that is not recognized by the Swiss government.⁶⁵⁹ Other Palestinians are categorized by the nationality of the country in which they last resided before arriving in Switzerland (for example, Jordan or Syria).

Forty-two Palestinian refugees were recognized as refugees in Switzerland between 1998 and 2003.⁶⁶⁰

2. Status of Palestinians upon Entry into Switzerland

As in the case of other asylum-seekers, Palestinians in Switzerland may submit their applications for asylum to one of the reception centers of the Federal Office for Refugees. They are provided with an “*N-permit*” for asylum applicants, which is valid for the duration of the asylum procedure. They are allocated to a Canton and accommodated in a collective center.

3. Refugee Determination Process: Refugee Status

Applications for asylum are considered by the Federal Office for Refugees, and by the Swiss Asylum Appeal Commission at appeal level, on the basis of the revised Asylum Law of 26 June 1998 (Swiss Asylum Law). Article 3 of the Swiss Asylum Law provides:

1. Refugees are considered to be any persons who, in their country of nationality or country of former residence, are exposed to or have a well-founded fear of being exposed to serious prejudices for reasons of race, religion, nationality, membership of a particular social group or political opinion.
2. Regarded as serious prejudices are in particular threats to life, physical integrity or freedom, as well as measures that amount to an unbearable

psychological pressure. Reasons for fleeing specific to women must be taken into consideration.

Asylum-seekers who do not fulfil the above-mentioned criteria are also not entitled to apply for any complementary form of protection.

3.1 Article 1D in Refugee Status Determination

There is no reference to Article 1D of the 1951 Refugee Convention in the Swiss Asylum Law. However, the 1951 Refugee Convention, which entered into force in Switzerland on 21 April 1951, is directly applicable in Swiss law, like other international treaties to which Switzerland is party. Its provisions, including Article 1D, may therefore be taken into consideration in asylum cases.

In practice, asylum cases involving Palestinians are dealt with by the Swiss authorities solely on the basis of Article 3 of the Swiss Asylum Law and without any assessment of Article 1D. What is relevant for the authorities, therefore, is whether Palestinian asylum-seekers are at risk of being persecuted in their former country of residence. BADIL is not aware of any cases in which Article 1D of the 1951 Convention was considered by the authorities.

4. Refugee Determination Process: Outcome

Asylum-seekers who are recognized as refugees on the basis of Article 3 of the Swiss Asylum Law are entitled to stay in Switzerland (Article 2 of the Swiss Asylum Law). Recognized refugees who are granted asylum will be issued with a residence permit (B-permit) valid for one year and renewable on a yearly basis. After five years, refugees are entitled to a settlement permit (C-permit), valid for 10 years and renewable.

Jurisprudence

Some Palestinians have been granted refugee status in Switzerland on the basis of Article 3 of the Swiss Asylum Law. However, many applications for asylum submitted by Palestinians have been rejected by the authorities on the basis that there was no well-founded fear of persecution in the applicant's country of former residence.

5. Return – Deportation

Following a final negative decision, the applicant is required to leave Switzerland voluntarily (Article 44 of the Swiss Asylum Law). Failure to leave the country voluntarily within the specified time normally results in the enforcement of an expulsion order by the police.

The Federal Office for Refugees undergoes a single analysis of each asylum application. If there are no asylum grounds and the asylum application is rejected, the Federal Office will analyse whether return is admissible, reasonable and technically possible. If these three conditions are fulfilled, return will be executed. Return deportation is usually carried out.⁶⁶¹

Provisional admission (“*admission provisoire*”) may be granted if the enforcement of the expulsion order is deemed technically impossible (“*Unmöglichkeit*”), is not allowed under international law (“*Unzulässigkeit*”) or is not “reasonable” (“*Unzumutbarkeit*”) (Article 44 of the Swiss Asylum Law).⁶⁶²

Rejected Palestinian asylum-seekers have been granted provisional admission on the basis that expulsion was technically impossible. In the case 2002/17 of 19 August 2002, for example, the Asylum Appeal Commission granted a female Palestinian from Lebanon⁶⁶³ provisional admission because she did not possess any travel documents and the Lebanese authorities would most likely not allow her to return to Lebanon. The Commission stated that if an expulsion order remains impossible to carry out for one year after an expulsion decision was made, and that situation is expected to continue for an unknown period, provisional admission should be granted.⁶⁶⁴

Palestinians (and others) granted provisional admission, are denied many of the rights granted to recognized refugees. They are entitled to an F-permit valid for one year, and their situation will be re-examined every 12 months. The permit is withdrawn if the situation in the country of nationality or of former residence improves. The F-permit does not hold any status under international law and it does not provide the right to residence in Switzerland. Rather, the permit represents an alternative to an unenforceable expulsion order. In principle, the F-status can last indefinitely, along with its restrictions (for example, the affected person’s place of residence is restricted, travel abroad is impossible, access to work is seriously limited and family reunification is very difficult). Social benefits, however, are equivalent to those of asylum-seekers.

6. Temporary protection

In accordance with Article 4 of the Swiss Asylum Law (“*Octroi de la protection provisoire*”), temporary protection can be provided to people in need of protection for as long as they are exposed to a serious general danger, in particular during war or civil war, as well as in situations of generalized violence. This provision has not been applied to Palestinians.

7. Protection under the Statelessness Conventions

Switzerland is party to the 1954 Stateless Convention, but not to the 1961 Stateless Convention. Persons recognized as stateless persons by the Swiss government have the right to obtain travel documents for stateless persons. They are also entitled to the same welfare assistance as recognized refugees. However, they will continue to hold the N or F permits that they held before applying for the recognition of stateless status. Since Switzerland ratified the 1954 Stateless Convention in 1972, only a small number of applicants have been recognized as stateless persons (less than 80 persons).⁶⁶⁵ BADIL is not aware of decisions involving stateless Palestinians.

8. Reference to Relevant Jurisprudence

Decisions by the Federal Office for Refugees are not published. Decisions by the Swiss Asylum Appeal Commission are available in French, Italian or German (often with a summary in English) on the Commission's web site <http://www.ark-cra.ch>.

One relevant case by the Swiss Asylum Appeal Commission is its decision 2002-17 of 19 August 2002 regarding provisional admission (see above).

9. Links

The Federal Office for Refugee: <http://www.bff.admin.ch>

The Swiss Asylum Appeal Commission: <http://www.ark-cra.ch>

Organization suisse d'aide aux réfugiés: <http://www.sfh-osar.ch>

THE UNITED KINGDOM⁶⁶⁶

1. Statistical Data

According to unofficial sources, some 15,000 Palestinians are currently living in the United Kingdom. Some of them arrived before or just after 1948, others came as students while others arrived in the 1980s from Lebanon.⁶⁶⁷

No information is available regarding the way in which Palestinian asylum-seekers are registered in the United Kingdom and statistical data on Palestinian asylum applications (submitted, granted or rejected) could not be obtained.

2. Status of Palestinians upon Entry into the United Kingdom

As in the case of other asylum-seekers, Palestinians in the United Kingdom may submit an application for asylum to the Immigration and Nationality Directorate of the Home Office (IND). They are provided with an Application Registration Card containing their personal details.⁶⁶⁸ Those who cannot support themselves may be eligible to help from the National Asylum Support Service (NASS), which provides subsistence payments and accommodation on a no-choice basis in parts of the United Kingdom. Asylum-seekers wishing to take up employment may only do so under certain circumstances.

3. Refugee Determination Process: Refugee Status

The criteria for granting refugee status are set out in paragraph 334 of the Immigration Rules (HC 395):

An asylum applicant will be granted asylum in the United Kingdom if the Secretary of State is satisfied that:

- (i) he is in the United Kingdom or has arrived at a port of entry in the United Kingdom; and
- (ii) he is a refugee, as defined by the Convention and Protocol; and
- (iii) refusing his application would result in his being required to go (whether immediately or after the time limit of an existing leave to enter or remain), in breach of the Convention and Protocol, to a country in which his life or freedom would be threatened on account of his race, religion, nationality, political opinion or membership of a particular social group.

3.1 Article 1D in Refugee Status Determination

In September 2000, lawyers representing a Palestinian asylum-seeker raised the question of how asylum claims of UNRWA-assisted Palestinians should be treated. IND decided that it was appropriate to undertake a major review of all Palestinian applications and put a hold on pending cases. The outcome of this review, including the court judgments in some pending cases involving Article 1D, took two years and the processing of Palestinian asylum cases was fully resumed only on 2 September 2002.

Since then, Palestinian asylum applications are examined by the authorities in accordance with an Asylum Policy Instruction: “Applications for Asylum from UNRWA-assisted Palestinians: Article 1D of the Refugee Convention,” issued by the IND.⁶⁶⁹ The Instruction is based on the precedent-setting decision of the Court of Appeals in the cases El-Ali and Daraz issued in July 2002 (see box below).

The IND’s Instruction regarding Applications for Asylum from UNRWA-Assisted Palestinians: Article 1D of the 1951 Refugee Convention, confirms the conclusion set out in the Court of Appeals’ judgment in El-Ali and Daraz. Article 1D is relevant only to a person who was receiving protection or assistance from UNRWA on the date on which the 1951 Convention was signed, i.e., 28 July 1951. It is not relevant to anyone else, including the descendants of persons who were receiving such protection or assistance on that date.

Palestinians to whom Article 1D is *not* applicable are therefore:

- people who were born *after* 28 July 1951; and
- people born on or before 28 July 1951 but *not UNRWA-assisted on that date*.

Asylum claims of applicants to whom Article 1D does not apply are considered under the criteria set out in Article 1A(2) of the 1951 Convention, i.e., the fear of being persecuted is assessed against the applicant’s country of former habitual residence.

Article 1D of the 1951 Convention is applicable only to Palestinians:

- born on or before 28 July 1951, *and*
- in receipt of protection or assistance from UNRWA on that date.⁶⁷⁰

Palestinians to whom Article 1D applies are excluded from the scope of the 1951 Refugee Convention for as long as UNRWA continues to operate. According to the particular interpretation adopted by the IND, this also means that asylum

applications by such persons will be rejected under Article 1D, even if the grounds contained in Article 1A(2) exist.

The IND Instruction notes, however, that consideration should commonly be given to whether the applicant qualifies for Humanitarian Protection or Discretionary Leave (see below) and explains that someone with a well-founded fear of persecution who was excluded from access to protection by Article 1D would almost certainly qualify for leave to remain under the Humanitarian Protection provisions.

Based on this Instruction, refugee status for most Palestinians applicants, i.e., persons born after 28 July 1951, is determined under Article 1A(2) of the 1951 Refugee Convention. Article 1D is likely to apply to a small number only, i.e., those born on or before 28 July 1951. If such persons received UNRWA assistance on that date, they are excluded from protection in the UK, unless they can prove a well-founded fear of persecution in their country of former habitual residence. In such a case, they may be granted protection on humanitarian grounds.

Jurisprudence

The case of Amer Mohammed El-Ali v. The Secretary of State for the Home Department and Daraz v. The Secretary of State for the Home Department
26 July 2002 [2002] EWCA Civ 1103; [2003] 1WLR 95

This precedent-setting case was heard by the Court of Appeal (Lord Justice Laws, Lord Justice May, Lord Phillips MR); UNHCR participated as intervener.

The case involved a Palestinian refugee, Mr El-Ali, who was born in Kuwait in 1977, and had lived most of his life in the Ein el-Hilweh refugee camp in Lebanon.⁶⁷¹ His parents came from a village near Tiberius (now in northern Israel) and had become refugees in 1948. Mr. El-Ali was therefore entitled to UNRWA assistance. He arrived in the UK in 1998 having apparently travelled on a false Jordanian passport, which he destroyed en route. He had on one occasion been detained and investigated by the Lebanese authorities.

The case involved another Palestinian refugee, Mr Daraz, who had lived in the El-Bass refugee camp⁶⁷² in Lebanon until he left for the UK in 1998. He was registered with UNRWA, and he sought asylum in the UK, claiming to have left Lebanon for fear of persecution by members of Hizbollah.

Both had lost their cases at first instance, and both acknowledged that they did not fulfil the criteria of Article 1A(2) of the 1951 Convention.⁶⁷³ In their submissions to the Appeals Tribunal, both had presented the same argument based on Article 1D:

The Appellant submits that Article 1D is to be given its full literal meaning and

that, as a result, he is entitled to enter and remain in the United Kingdom as a refugee. While he was in Lebanon he was able to claim protection or assistance from UNRWA, and so the Refugee Convention did not apply to him. Now that he has left Lebanon that protection or assistance has ceased, and so “*ipso facto*” he has become, he says, entitled to the benefits of the Refugee Convention.⁶⁷⁴

Lord Justice Laws noted in his decision that the background, including the political and historical genesis of UNRWA, was “unusually important” when interpreting Article 1D.⁶⁷⁵ He referred to UNRWA’s role as primarily that of giving aid and assistance, whereas UNCCP was distinctly charged with a measure of protection.⁶⁷⁶ He also noted that:

... Palestinian refugees – and there is no doubt but that the displaced Palestinians were considered at all relevant stages to be refugees – were regarded, in and out of the United Nations, as belonging to a special category.⁶⁷⁷

With reference to a coincidental “fit” between Arab states’ preoccupation with repatriation as the solution to the refugee problem and some Western delegates’ determination to avert the prospect of Palestinian claims to refugee status, Lord Justice Laws concluded that:

It is not hard to see that this uneasy and ironic conformity between the stance of the Arab States and the anxieties of the Europeans drove towards a disposition in the Convention, in 1951, of the plight and the claims of the Palestinian refugees which would be quite different from the notion of protection in any of the Signatory States obliged to harbour a refugee who fled to its borders. This notion is the paradigm of the Convention’s aims: applied to the Palestinians in 1951, however, it might have been the engine of a diaspora which would be condemned by the Arabs and feared or resented or at least not welcomed by the Europeans, or by some of them.⁶⁷⁸

Turning to the interpretation of Article 1D, Lord Justice Laws noted that each of the three key phrases of Article 1D bears one of the two following meanings, giving rise to eight possible interpretations of Article 1D (from A-A-A to B-B-B):

“at present” in the first paragraph can mean:

- A) that the “persons” referred to in the first sentence are *only* those Palestinians who as of 28 July 1951, when the Convention was adopted, were registered to receive protection or assistance from UNRWA;
- (B) to include any Palestinian who is receiving UNRWA assistance at the time when the application of Article 1D comes to be considered in any individual case.

“such protection or assistance *has ceased for any reason*,” in the second paragraph:

A) contemplates the happening of a single overall event, namely the cesser or withdrawal of its agencies' support by the United Nations; as for example might have happened if it had become clear that the Palestinians could return in peace and security to their homelands, and in consequences the operations of (in this case) UNRWA were wound up; or perhaps if that were done for some other reason of international politics

B) contemplates the happening of individual or particular events: thus if an individual Palestinian leaves the territory where he is registered with UNRWA and/or receiving assistance from UNRWA, the relevant protection or assistance ceases in his case; he is accordingly and without more taken out of the scope of the first sentence of Article 1D and finds himself within the second.⁶⁷⁹

“be entitled to the benefits of this Convention,” in the second paragraph, can mean:

A) that any such person merely becomes entitled to *apply* to a State Party for refugee status under Article 1A(2), and must demonstrate that Article 1A(2) applies to him.

B) that any such person shall be accepted as a refugee (by any State Party where he claims asylum) without having to demonstrate that he falls within Article 1A(2). Subject to a separate point about the effect of the *non-refoulement* clause (Article 33) he is then entitled to all the material benefits of the Convention including and in particular those flowing from the provisions in Articles 3ff.⁶⁸⁰

Lord Justice Laws concluded that the appellants, supported by UNHCR and Professor Goodwin-Gill, had argued for B-B-B, whereas the Secretary of State had argued for A-A-A and the Appeals Tribunal ruled in favor of A-B-B. Lord Justice Laws then ruled that the correct interpretation was A-A-B for the reasons set out below:

“[A]t present” – the term cannot have a “continuative” effect, i.e., include all Palestinian refugees receiving assistance from UNRWA.

The first argument is based on the ordinary meaning of the language:

I consider this approach to the scope of Article 1D [the view that descendants of 1948 refugees also fall within Article 1D] to be erroneous. First, because of the language: the phrase “persons who are at present receiving [assistance]” no longer means what it says; it includes also persons who later receive such assistance. Under the suggested interpretation, “at present” does not refer to a specific date (28 July 1951 or otherwise) as setting the time when the membership of the class described in the first sentence is fixed (which is surely the ordinary sense of the words used) but merely to a start-date, a *terminus a quo*, for the identification of the class whose membership may, however, be swelled by new entrants thereafter. I think this is a very considerable distortion of the ‘s language. I notice that Professor Goodwin-Gill, at paragraph 15 of his helpful supplemental submissions, acknowledges that if a “continuative”

approach (including therefore the approach I am presently considering) is to be accepted, the words “persons at present receiving” have to be taken as if they read “persons who were and/or are now receiving”. I cannot think that is a legitimate exercise. It is to substitute what is really an entirely different provision.⁶⁸¹

A second argument is based on the definition of a “refugee” in Article 1A(2):

[U]ntil 1967 a refugee within the meaning of Article 1A(2) was so only by reference to “events occurring before 1 January 1951”: thus until 1967 the Palestinians intended to be excluded from the Convention by the first sentence of Article 1D can only have been persons whose putative claims to refugee status rested on such events. Article 1D was not amended by the 1967 Protocol, and I do not think it can have been amended by implication. This is a point which was addressed by Professor Goodwin-Gill... [H]e submits ... that the “equal status” to be enjoyed by all refugees irrespective of the 1 January 1951 dateline, aspired to in the third preamble to the 1967 Protocol, “could not be achieved if the category of refugees falling within Article 1D were subject to the 1 January 1951 or any other deadline.” But if those intended to be covered by the first sentence of Article 1D include Palestinians not within the original July 1951 group, then the class of “refugees covered by the definition in the Convention irrespective of the dateline 1 January 1951” (the words of the third preamble to the 1967 Protocol) is made smaller, not bigger; to express the same point differently, the more tightly defined the group of persons to which the first sentence of Article 1D applies, the larger will be the numbers of those entitled to apply to State Parties under Article 1A(2).⁶⁸²

Lord Justice Laws also argued that because the 1951 Refugee Convention entitled persons to “a highly preferential and special treatment,” it was reasonable to assume that the drafters had wished to limit the scope of Article 1D to Palestinians who received assistance from UNRWA on 28 July 1951:

It appears to me on the whole to be unlikely that arrangements of that kind were intended to apply to others, including others not yet born, who had not suffered that experience and had not, accordingly, been taken under the aegis of UNRWA at the time the Convention was signed; although of course I recognize (as I have already stated: paragraph 14) that the Convention’s drafters did not envisage just how long the difficulties of the displaced Palestinians would remain unresolved.⁶⁸³

“Such protection or assistance has ceased for any reason” – Lord Justice Laws concluded that only the cessation of UNRWA assistance would trigger the application of the second sentence of Article 1D:

It was the drafters’ intention, effected in the words used, that the second

sentence would bite on the happening of a particular overall event: the cessation of UNRWA assistance. They did not contemplate that Article 1D would apply piecemeal and haphazardly, its scope marked off by reference to the persons who at any given moment were or were not within the UNRWA territories receiving assistance ... whether or not in any given case an individual might have a good reason (a “protection-related reason”) for leaving the territory where he is registered.⁶⁸⁴

“*Ipsa facto*” – Lord Justice Laws concluded that these words mean that the benefits of the Convention are conferred on the refugee automatically:

In my judgment this result is inescapable, given the language which the drafters chose to use. The phrase “*ipsa facto*” in the English text is mirrored in the French by “*de plein droit*” and it is suggested that this points even more strongly than does the Latinism to an intention, once the second sentence bites, to confer on all its beneficiaries the substantive rights which the Convention guarantees automatically, with nothing else to be established.⁶⁸⁵

The two other judges of the Court of Appeal, Lord Justice May and Lord Phillips MR, agreed with Lord Justice Laws’ interpretation of Article 1D.⁶⁸⁶ As the two appellants were born in 1977 and 1973 respectively, they had not received protection or assistance from UNRWA on the date on which the 1951 Convention was signed. They therefore did not fall within the scope of Article 1D. Thus, their appeal was dismissed.

In the case of *Issam El-Issa v. the Secretary of State for the Home Department*, 4 February 2002 (CC/21836/200), the Immigration Appeals Tribunal adopted another interpretation of Article 1D, one which was consistent with the alternative interpretation of Article 1D presented in Chapter Three of this Handbook. Issam El-Issa concerned a Palestinian who was born in 1978 and lived most of his life in a refugee camp in Lebanon. In 1997, he arrived in the UK seeking asylum. He claimed that he was at risk of persecution from the Syrian Ba’ath Party, Hizbollah and the Lebanese authorities. He had been a member of Hizbollah. In 1996, he shot two members of the Ba’ath Party. As he then felt under pressure from Hizbollah to carry out more missions, he left Lebanon and arrived in the UK. He claimed that the Ba’ath Party was looking for him because he had shot two of its members. He also feared that the Lebanese authorities were looking for him because the family of the man killed had apparently passed his name on to the authorities. Finally, he also feared that Hizbollah was after him because he left the organization without carrying out the requested missions. Judge Flynn concluded that:

In my view the debate about whether a Palestinian is outside UNRWA’s area of operation is misplaced (unless a claim is based on a lack of shelter and basic necessities). Even if they are inside UNRWA’s area of operation it is clear that they are still unprotected. Provided with the basic necessities of life they may be – but unprotected they remain (except by non-state agents). It is thus for this reason that I agree with the professors’ [Susan Akram and Guy Goodwin-

Gill] interpretation of Article 1D. It must mean that a Palestinian is entitled to the benefits of the Convention whether or not there are individual protection needs. I do not find, as I have indicated above, that I believe that this appellant has a well-founded fear of persecution for a Convention reason. Following my reasoning in the above paragraph, I do find, however, that he is a Palestinian, he is outside UNRWA's area of operation, he is unprotected by the simple fact of being a Palestinian who has been living in Lebanon (under UNRWA or not), and that, under Article 1D and for the reasons cogently put forward by the professors, he is *ipso facto* entitled to the benefits of the Convention. I realize that a decision based on such reasoning may be criticized on the basis that it could lead to an open door to any Palestinian who can get to any country that has signed the Convention. The answer to that must be for the international community to provide some protection for Palestinian refugees in the countries in which they are living.

BADIL is not aware of any decision in which Article 1D has been implemented in line with Judge Flynn's reasoning, and his decision was overturned by the Court of Appeal's decision regarding Mr El-Ali (see above).

4. Refugee Determination Process: Outcome

Refugee status is normally granted by way of grant of indefinite leave to remain (permanent residence). Recognized refugees can apply for a 1951 Refugee Convention travel document and for family reunion.

Asylum-seekers who are not recognized as refugees may be granted Humanitarian Protection,⁶⁸⁷ which is granted to anyone who is unable to demonstrate a claim for asylum but who would, if returned to his or her former place of residence, face a serious risk to life or person arising from the death penalty, unlawful killing or torture, inhuman or degrading treatment or punishment. Asylum-seekers who are granted Humanitarian Protection have the right to residence in the UK for up to three years. In this initial three-year period, they have the same social and economic rights and benefits as refugees granted permanent residence. If it is decided after three years that further protection is needed, permanent residence is usually granted. If protection is no longer needed and a stay in the UK cannot be justified based on other grounds, the person is expected to leave the country.

5. Return – Deportation

A final negative decision automatically means that the asylum-seeker must leave the United Kingdom.

If asylum-seekers fail to leave the country within twenty-eight days, they may be detained and deported. However, they may be granted Discretionary Leave under limited circumstances, including in cases where removal would be a breach of the UK's obligations under the ECHR (for example, Article 8 stipulating the right to private and family life), or in cases that raise exceptionally compelling issues. Practical barriers to removal do not constitute grounds for granting Discretionary Leave.⁶⁸⁸

Persons granted Discretionary Leave have full access to employment and benefits. A person who was excluded from asylum and/or Humanitarian Protection but granted Discretionary Leave is entitled to apply for Indefinite Leave to Remain only after ten years.⁶⁸⁹

A person who no longer qualifies for Discretionary Leave is expected to depart from the UK.

Palestinians arriving to the UK from countries within UNRWA's area of operations are treated as removable. If they receive negative decisions, they will be removed as and when conditions permit. Palestinians from the OPT may be returned via an adjacent country.

6. Temporary Protection

There is no temporary protection programme in place for Palestinians.

7. Protection under the Statelessness Conventions

The United Kingdom is a party to the 1954 Stateless Convention and the 1961 Stateless Conventions. No information could be obtained regarding decisions in the UK involving stateless Palestinians seeking protection under the 1954 Stateless Convention.

The IND Instruction regarding Article 1D (see Section 3.1 above) provides that Article 1(2)(ii) of the 1954 Stateless Convention should be interpreted as meaning that a person who was receiving protection or assistance from UNRWA on 28 September 1954 (the date the Convention was signed) is excluded from the scope of the Convention, even if she/he otherwise meets the definition of statelessness set out in the 1954 Convention. An official Asylum Policy Instruction on statelessness is in preparation, but not yet available.

8. Reference to Relevant Jurisprudence

Decisions by the Court of Appeal:

Date	Name	Summary
4 April 2003	<i>Krayem v. The Secretary of State for the Home Department</i> (C1/2002/2311)	The Court of Appeal concluded that the tribunal's decision was not adequately reasoned. The Court therefore allowed the appeal and remitted the matter to a differently constituted tribunal. The case involved a Palestinian refugee from Lebanon who was born in Kuwait.
26 July 2002	<i>Amer Mohammed El-Ali v. The Secretary of State for the Home Department and Mr Daraz v. The Secretary of State for the Home Department</i> 2000 [EWCA] Civ 1103; [2003] 1 WLR 95	See Section 3.1 above
26 April 1988	<i>Alsawaf v. The Secretary of State of the Home Department</i> [1998] Imm. AR 410	The case involved a Palestinian from the Gaza Strip who was the holder of an Egyptian travel document. The decision related to a deportation order to Egypt. The Court of Appeal dismissed his appeal.
23 March 1988	<i>NSH" v. The Secretary of State for the Home Department</i>	The decision involved a Palestinian who was a student in the UK. He was married to a British citizen. While on a visit in Lebanon, his application for indefinite leave was refused on grounds of national security. He was subsequently granted temporary admission and allowed to re-enter the UK. His application for asylum was then refused. The Court of Appeal dismissed his appeal.

Decisions by the Immigration Appeal Tribunal:

Date	Name	Summary
4 February 2002	<i>Isam El-Issa v. Secretary of State for the Home Department</i> (CC/21836/2000)	See Section 3.1 above

9. Links

Refugee Council: <http://www.refugeecouncil.org.uk>

Immigration and Nationality Directorate of the Home Office:

<http://www.ind.homeoffice.gov.uk>

Immigration Appeal Tribunal: <http://www.iaa.gov.uk>

CANADA⁶⁹⁰

1. Statistical Data

According to the General Delegation of Palestine in Canada, between 42,000 to 50,000 Palestinians are living in Canada today, most having arrived in the 1980s and 1990s.⁶⁹¹

In official statistics, Palestinians seeking asylum in Canada are registered by the country in which they resided before coming to Canada. In the case of Lebanon, for example, this category would include both Palestinians and Lebanese nationals seeking asylum. It is, therefore, not possible to obtain the total number of Palestinian refugees in Canada from official statistics.

2. Status of Palestinians upon Entry into Canada

Like other asylum-seekers, Palestinians who are physically present in Canada may submit a claim for refugee status to an immigration officer of the Immigration department, i.e., to Citizenship and Immigration Canada (CIC). The officer will determine whether the claim is eligible for referral to the Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB).

Asylum-seekers are entitled to a so-called “refugee claimant in Canada” permit. They are eligible to apply for a work permit and receive social support (in some provinces of Canada at least), legal aid and minimal emergency health care. They are not confined to specific locations.

3. Refugee Determination Process: Refugee Status and Complementary Forms of Protection

Claims for refugee status are considered by RPD⁶⁹² under the Immigration and Refugee Protection Act (IRPA), which entered into force in June 2002. Article 95 of IRPA provides that refugee protection is conferred on persons who have been determined to be Convention refugees or “persons in need of protection”.

A Convention refugee is defined in Article 96 IRPA along the lines of Article 1A(2) of the 1951 Refugee Convention. A stateless person is defined in Article 97, along similar lines, as a person who is:

outside the country of the person’s former habitual residence and is unable or, by reason of that fear, is unwilling to return to that country.

Persons in need of protection are defined as individuals whose removal to their country or countries of nationality, or, if they do not have a country of nationality, to their country of former habitual residence, would subject them personally to a danger of torture, a risk to their life, or a risk of other cruel and unusual treatment.

3.1 Article 1D in Refugee Status Determination

The 1951 Refugee Convention is only partially incorporated into Canadian law. IRPA, Article 98, refers to Articles 1E and 1F of the 1951 Refugee Convention and Article 108 incorporates Article 1C of the Convention. There is no reference to Article 1D in domestic law.

The Federal Court examined Article 1D in its decision of 4 January 1994 (El-Bahisi) involving a Palestinian refugee from the Gaza Strip. It concluded that:

With regard to refugees from Palestine, it will be noted that UNRWA operates only in certain areas of the Middle East, and it is only there that its protection or assistance are given. Thus, a refugee from Palestine who finds himself outside that area does not enjoy the assistance mentioned and may be considered for determination of his refugee status under the criteria of the 1951 Convention. It should be normally sufficient to establish that the circumstances which originally made him qualify for protection or assistance from UNRWA still persist and that he has neither ceased to be a refugee under one of the cessation clauses nor is excluded from the application of the Convention under one of the exclusion clauses.⁶⁹³

The Federal Court thus interpreted Article 1D as an exclusion clause which applies only in the areas where UNRWA operates. Palestinian refugees present in Canada are therefore entitled to apply for protection under Canadian law (IRPA). Canadian courts have not interpreted Article 1D, second paragraph, as an independent inclusion clause, and the provision is not applicable in Canada.

3.2 UNRWA Registration and CFHR in Refugee Status Determination

In practice, claims for refugee status submitted by Palestinian asylum-seekers have been considered by the authorities on the basis of Articles 96 and 97 of IRPA. What is relevant for the authorities is whether Palestinian asylum-seekers can demonstrate a well-founded fear of persecution in their country of former habitual residence (CFHR) under one of the five Convention grounds, or whether they are in need of protection for the reasons enumerated in Article 97 of IRPA.

In this context, substantive legal debate has been conducted and case law developed with regard to two issues: the significance of UNRWA registration for Palestinian protection claims; and the status of the country/countries of former habitual residence (CFHR/s) in asylum claims of stateless Palestinians (see box below).

Jurisprudence in Palestinian Refugee Status Determination

Registration with UNRWA is cogent but not determinative

In the case of the *El-Bahisi* case (see above), the Federal Court concluded, based on the language of UNHCR Handbook, paragraph 143, that:

it should normally be sufficient to establish that the circumstances which originally made him qualify for protection or assistance from UNRWA still persist.

The Court thus noted that the fact of previous recognition which made the applicant qualify for protection from UNRWA, is cogent, though not determinative for the refugee determination process (paragraph 7 of the judgment). In other words, previous recognition as a refugee by UNRWA is relevant to a person's status under the Convention (paragraph 4 of the judgment). As IRB had failed to consider the UNRWA registration document in the *El-Bahisi* case, the Court ruled that this matter should have been addressed.

The Federal Court and IRB have followed the ruling in the *El-Bahisi* case in subsequent cases, and have concluded that UNRWA registration cards may be cogent for a refugee determination process without, however, representing determinative evidence of refugee status.

The IRB decision of 12 April 2000 (T98-10030) involved a stateless Palestinian who was born in Egypt and had lived in the United Arab Emirates where his parents were residents. IRB stated that his UNRWA registration card was issued with respect to his grandfather's flight in 1948 and ruled that the document did not constitute sufficient evidence for concluding that he was a Convention refugee. This position has been confirmed by the Federal Court in its decisions of 23 January 2003 (*Kukhon*)⁶⁹⁴ and 10 July 2003 (*Abu-Fahra*).⁶⁹⁵

The Relationship between Stateless Claimants and the Country of Former Habitual Residence

The definition of the term "country of former habitual residence" (CFHR) has been a central issue of debate in Canadian jurisprudence regarding asylum claims of stateless persons. Initially, some members of IRB adopted a restrictive approach limiting the term to countries to which claimants could return.⁶⁹⁶ As most Palestinian asylum-seekers are stateless persons and many cannot return to their CFHRs, this restrictive approach resulted in the rejection of numerous claims on the ground that there was no CFHR against which a claim could be made.⁶⁹⁷

IRB argued in essence that a state could only be regarded as a CFHR if the claimant was legally able to return there, because if there was no return opinion, there was no country from which protection needed to be granted. This position resulted in the absurd situation that stateless Palestinians who were unable to return to their CFHRs risked having their applications for asylum rejected on the sole ground that there was no CFHR against which a claim could be made.

This legal debate was ended by the decision of the Federal Court in the *Maarouf* case on 13 December 1993.⁶⁹⁸ The case involved a stateless Palestinian who was born in Lebanon in 1969. In 1974, he and his family moved to Kuwait, where they lived until 1987, when they returned to Lebanon. He claimed that while in Lebanon, he was detained and beaten by Syrian authorities on the grounds of the political opinion that he, as a Palestinian, was perceived to hold. Following these events, he went to the United States and subsequently applied for refugee status in Canada. Judge Justice Cullen, writing for the Federal Court, concluded in this case that:

[A] stateless claimant does not have to be legally able to return to a country of former habitual residence, as denial of a right of return may in itself constitute an act of persecution by the state. The claimant must, however, have established a significant period of *de facto* residence in the country in question.⁶⁹⁹

Judge Justice Cullen moreover observed (paragraph 172):

The rationale underlying international refugee protection is as the Supreme Court of Canada stated in *Ward v. A.G. Canada* (Mr. Justice La Forest, at p. 752) to serve “as “surrogate” shelter coming into play upon the failure of national support.”⁷⁰⁰ ...For a stateless person, that is a person without a country of nationality, to come within this definition two factors must be established. First, the country of the person’s former habitual residence must be identified. Second, the claimant must be outside the country of his or her former habitual residence or unable to return to that country by reason of a well-founded fear of persecution for one or more reasons cited in the definition.

Another legal debate revolved around the question which country or countries should serve as reference in the assessment of (fear of) persecution: one country, several or all countries in which an asylum-seeker had formerly resided? Some IRB members argued that where there was more than one CFHR, the claimant was required to demonstrate a well-founded fear of persecution against *all* of these countries. The Federal Court considered this matter in the case *Marwan Youssef Thabet v. The Minister of Citizenship and Immigration*. The Trial Division of the Federal Court concluded on 20 December 1995 that the *last* CFHR should be used as reference. The Federal Appeal Court, however, concluded on 11 May 1998 (answering a question raised by the Trial Division) that a stateless individual should demonstrate a well-founded fear of persecution against *any one* – and not necessarily the last – of his CFHRs. In addition, the claimant must demonstrate that she/he is unable or unwilling to return to any of the other CFHRs:

In order to be found to be a Convention refugee, a stateless person must show that, on a balance of probabilities he or she would suffer persecution in any country of former habitual residence and that he or she cannot return to any of his or her other countries of former habitual residence.⁷⁰¹

This rule has been named “any-country-plus-the-Ward-factor-test” in reference to the Supreme Court’s decision in the case of Ward (see above and Section 8).

The IRB applied this test in its decision of 6 September 2001 (AAO-01454) involving a stateless Palestinian born in Lebanon who had subsequently lived in Kuwait and the United Arab Emirates (UAE). IRB found that Lebanon was a CFHR because the claimant was born there and had lived there for nineteen years until he moved to Kuwait. He had maintained ties to Lebanon while in Kuwait, including annual family visits, his marriage and the birth of his first child in Lebanon. Kuwait was also considered a CFHR because the claimant had worked there for ten years, his wife had given birth to their second child there, and the family as a unit had resided together in Kuwait. The UAE was also a CFHR because once the claimant moved there, his ties to Lebanon weakened. For example, he brought his parents to the UAE to live with him and they lived and died there. One of his children was also born in the UAE. IRB concluded that the claimant had a well-founded fear of persecution in Lebanon. The next question was whether he could return to Kuwait or the UAE. As the claimant could not return to any of these countries, IRB concluded that they were not relevant to the refugee claim.⁷⁰²

Decisions are generally similar in the cases of Palestinian asylum-seekers arriving in Canada from Arab Gulf States, where temporary residence permits are granted based on employment contracts and usually expire six months after departure. If they leave their country of residence, they are required by law to return every six months.⁷⁰³ Decisions of the IRB and the Federal Court in such cases have been based on the ruling in *Altawil v. MCI*, of 25 July 1996.

Jurisprudence

***Altawil v. MCI* (Federal Court, 25 July 1996)**

The case involved a stateless Palestinian who had been resident in Qatar and left temporarily in order to attend university in Afghanistan. Due to the war in Afghanistan, he was unable to return to Qatar in time to submit his biannual report. His residency status therefore expired, and he was denied re-entry. He came to Canada and claimed refugee status. IRB rejected his claim because denial of his re-entry was a matter of general application of the law and not a result of a (well-founded fear of) persecution. IRB noted that:

The Federal Court upheld the decision, stating that the law that prevented the applicant from returning to Qatar was not persecutory in nature. Judge Simpson noted that:

While it is clear that a denial of a right of return may, in itself, constitute an act

of persecution by a state, it seems to me that there must be something in the real circumstances which suggests persecutorial intent or conduct. Absent such evidence, I am not prepared to conclude that the law, which is one of general application, is persecutorial in effect, based only on a notion of imputed Qatari citizenship for the applicant.⁷⁰⁴

The result is that there are Palestinians who cannot prove a well-founded fear of persecution in any CFHR, but who, through no fault of their own, have no country to which they can legally return.

In a current case, Edward C. Corrigan, lawyer and solicitor, is arguing for the applicant that in such a case, the country of original persecution should be considered as causing the refugee status, by denying the right to return. His argument covers Palestinians who are denied the right of return to their homes in the part of Palestine which became the State of Israel in 1948, and Palestinians who are denied a right to return to the Gaza Strip or the West Bank if that was the original home of the claimants. He argues that the ethnic cleansing of Palestinians in the 1948 Israeli-Arab war falls under grounds set out in the 1951 Refugee Convention, namely persecution on the basis of nationality, religion, race, political opinion, and particular social group, namely Palestinians, who fled or were expelled and denied a right to return to their homes. He also refers to the *Maarouf* case⁷⁰⁵ in which the Federal Court concluded that the denial of the right of return could be an act of persecution.

The case argued by Corrigan involves a male stateless Palestinian who is holder of a valid Egyptian travel document. He has never lived in Palestine, but is identified on his travel document as a Palestinian from Gaza due to his parentage. He was born in Saudi Arabia where his father stayed on a work permit. However, his father has since died and he has no further ties to the country. He went to the United States in 1990 to study and has lived there ever since. His Palestinian wife is a citizen of Jordan, but has never lived there. In 1984, she left Kuwait and went to the US. They have three minor children born in the US. The RPD did not find the applicants to be refugees. On 10 November 2004, the Federal Court upheld RPD's decision with regard to the wife and the three children. With regard to the male applicant, however, the Federal Court set aside RPD's decision and referred the matter back to RPD for re-determination based on the following questions: a) Is Gaza a "Country of former Habitual Residence" in respect of the applicant? If the answer is "yes": b) Has the applicant established his claim against Gaza?

In line with arguments and case law described above, some Palestinian asylum-seekers have been recognized as refugees by IRB, among them Palestinians from:⁷⁰⁶

Lebanon (MAI-03477, AAO-01454, MAO-08431, T92-06689,⁷⁰⁷ M91-00965); Syria (A99-00575); East Jerusalem/OPT (T97-02794, T97-02809, T95-05057, T90-06713); and Jordan (A98-00140).

Other Palestinian claims were rejected by IRB for various reasons, including:

- Lack of well-founded fear of persecution vis-à-vis Lebanon (V98-02496); Syria (U92-02950); OPT (TAO-03217);⁷⁰⁸ and Gulf States (T98-10030,⁷⁰⁹ T96-04918⁷¹⁰ and *Altawil v. MCI* of 25 July 1996);
- Availability of protection elsewhere: Syria (A99-00575);
- Lack of credibility: OPT (T98-05623).⁷¹¹

4. Refugee Determination Process: Outcome

Refugee protection is conferred on asylum-seekers who are determined to be Convention refugees or persons in need of protection. Convention refugees have the right to remain in Canada and apply for “landing” (permanent residence of the refugee and his or her dependants). Persons in need of protection will be entitled to the same rights.

5. Return – Deportation

Following a final negative decision, rejected asylum-seekers are required to leave Canada voluntarily within the prescribed period. Failure to leave the country voluntarily normally results in the enforcement of a deportation order by CIC. Persons who fear they will be at risk if they return to their country of origin or CFHR can apply for a Pre-Removal Risk Assessment.⁷¹² They have the right to remain in Canada during this assessment, which is focused on determining whether there is a risk of persecution or torture and whether there is a risk to life or risk of cruel and unusual treatment or punishment. Most people who are found to be at risk may apply for a permanent residence permit. Individuals can also make an application to remain in Canada on humanitarian and compassionate grounds (IRPA, section 25(1)). Some cases have been successfully resolved under this provision.

As many Palestinians who have received a final negative decision cannot return to their CFHR (or any of their CFHRs), removal of Palestinians is often impossible.

Since late 2003, many Palestinians from refugee camps in Lebanon and the OPT have been facing deportation from Montreal.⁷¹³ While some of them are older men and women, including entire families, the great majority are young men of 20 to 35 years of age. By February 2004, deportation procedures were launched against at least forty Palestinian refugees and at least fourteen were deported from Canada in 2003–2004.⁷¹⁴ Most of these Palestinian refugees had first come from Lebanon to the United States on student visas and then applied for refugee status in Canada.

A smaller number of Palestinian refugees from the OPT and from Lebanon had arrived directly in Canada on student visas and visitor visas in order to claim refugee status, and some had entered Canada with false documentation.⁷¹⁵ Human rights activists in Canada, including the Coalition Against the Deportation of Palestinian Refugees, have sought to protect Palestinians against these deportations.⁷¹⁶

6. Temporary Protection

Canada has not adopted any temporary protection scheme with regard to Palestinians.

7. Protection under the Statelessness Conventions

Canada has not signed the 1954 or the 1961 Statelessness Conventions. Stateless persons are, therefore, not entitled to claim protection under those Conventions.⁷¹⁷

8. Reference to Relevant Jurisprudence

Supreme Court

“Ward-Factor Test” (see 3.2 above)

Decision of 30 June 1993, P.F. Ward v. the Attorney General of Canada (UNHCR, IRB and the Canadian Council for Refugees were interveners).

The appellant was a resident of Northern Ireland and a member of a paramilitary group (INLA) dedicated to the political union of Ulster and the Irish Republic. He sought asylum in Canada on grounds of fear of persecution by his group after having facilitated the escape of hostages.

One of the issues before the Supreme Court was whether the appellant, who had dual nationality (Northern Ireland and British citizenship), must establish lack of protection in all states of citizenship. The Supreme Court concluded that:

In considering the claim of a refugee who enjoys nationality in more than one country, the Board must investigate whether the claimant is unable or unwilling to avail him- or herself of the protection of each and every country of nationality [reference to Article 1(A)(2) of the 1951 Refugee Convention]. As described above, the rationale underlying international refugee protection

is to serve as “surrogate” shelter coming into play only upon failure of national support. When available, home state protection is a claimant’s sole option. The fact that this Convention provision was not specifically copied into the Act [Immigration Act] does not render it irrelevant. The assessment of Convention refugee status most consistent with this theme requires consideration of the availability of protection in all countries of citizenship.

Federal Court of Canada

Applications for Judicial Review was allowed; decisions therefore set aside and referred back to IRB for re-determination

Date	Name	Summary
10 July 2003	<i>Abu-Fahra v. MCI</i> ⁷¹⁸	Two Palestinian brothers from the OPT came to Canada via Jordan, where they had gone for educational purposes. They held Jordanian passports, were registered with UNRWA and submitted documents indicating this registration to IRB. They expressed fears of harassment to the point of persecution by the Israeli authorities and fears of exploitation by radical Palestinian groups if they returned to the OPT. IRB concluded that they were not Convention refugees. The Federal Court noted the failure by IRB to specifically consider their UNRWA registration documents: “While the tribunal need not mention all of the documentary evidence submitted, it is my opinion that it should consider material evidence or evidence which specifically relates to the applicant’s particular claim, especially when the document mentions the applicant by name and it recognizes him as a refugee. In addition, according to the Handbook on Procedures and Criteria for Determining Refugee Status ... previous recognition as a refugee by the UNRWA is relevant to a person’s status under the Convention.” Reference was made to the case of El-Bahisi.
26 June 2002	<i>Shoka v. MCI</i>	A stateless Palestinian from the West Bank based his claim on his political opinion and membership in a particular social group i.e., persons alleged to have collaborated with Israel. He was arrested by the Israeli authorities and claimed that following his release, he was required to report to them on a regular basis. As a result, the Palestinian authorities believed that he was a collaborator with Israel. IRB concluded that he was not a Convention Refugee. The Federal Court ordered a review, because the decision was made in error with findings based solely on speculation.
23 January 2003	<i>Kukhon v. MCI</i>	Two Palestinian refugees from Nablus (father and daughter), both registered with UNRWA, came to Canada in 2001. They claimed that they feared constant shelling and bombing attacks by Israeli armed forces, referring to an incident in April 2001 in which the parents had to remain in a police station for protection from shelling.

22 April 2002	<i>Shalhoub v. MCI</i>	<p>The daughter also claimed that she had difficulty getting to work. IRB concluded that they were not refugees. The Federal Court concluded that IRB had failed to specifically consider the existence of UNRWA documents. Reference was made to El-Bahisi and subsequent decisions.</p> <p>This case relates to a Pre-Removal Risk Assessment. An 18-year old Palestinian from Nablus came to Canada on a student visa and made a claim for refugee status in October 2000. He withdrew his claim in March 2002 and was supposed to leave Canada on 15 April 2002. However, due to the situation in the West Bank in April 2002 when villages and towns, including Nablus and Jenin (where he would have stayed upon return), were attacked by Israeli armed forces, the applicant submitted a motion for stay in Canada. Judge Madam Justice Dawson concluded that, if returned, the applicant would face a serious risk of irreparable harm. He was therefore granted a motion to stay.</p>
17 August 2000	<i>El-Bekai v. MCI</i>	<p>A stateless Palestinian from a refugee camp in Lebanon and teacher in an UNRWA school fled the country and arrived in Canada, where he sought asylum based on a claim of well-founded fear of persecution by the Syrian Intelligence Service. IRB found that the applicant was not politically active in Lebanon and did not believe he had been arrested and tortured. They therefore rejected his claim. The Federal Court concluded that the decision should be set aside for three reasons, including a misinterpretation of the meaning of political opinion.</p>
9 August 1998	<i>Elbarbari v. MCI</i>	<p>Stateless Palestinians whose CFHRs were Iraq, Egypt and the United States, and who had no right of return to any of these countries, were determined by IRB not to be Convention refugees. Based on its decision in Thabet, the Federal Court concluded that IRB had failed to address the issue of a well-founded fear of persecution in Iraq.</p>
12 December 1997	<i>Sbitty v. MCI</i>	<p>This case involved a Palestinian born in Israel, who had lived in an Arab quarter of Haifa. He was Catholic and had Israeli citizenship. He was involved in skirmishes with the Israeli police and Jews in Haifa in 1993. During detention, he was beaten. A year later, Israeli security services made him to understand that if he refused to collaborate, life would be hard for him. He was arrested several times. IRB concluded that the applicant was non-credible and that he was not a Convention Refugee. The Federal Court ruled that IRB had committed errors of law by concluding that the applicant had an internal flight alternative and that he would enjoy the protection of the state of Israel.</p>
10 January 1996	<i>Nizar v. MIC</i>	<p>A Palestinian coming from Israel was denied refugee status by IRB. The Federal Court concluded that the Board was incorrect in stating that it need not assess the risk of persecution from the hands of the applicant's fellow Palestinians because there was no state complicity. The Court noted that the decision in the case of</p>

		<p>Thabet was significant because it clearly sets out that a symmetry was intended, by the 1951 Refugee Convention and the Immigration Act, between the position of a person who is a national and leaves the country of nationality, and a person who is stateless and leaves the CFHR. In both cases, actions of the state, which de facto condone or ignore persecutory action, or failure to prevent such action, are relevant. The Court also noted that states normally apply their criminal law or other protective laws to all persons physically present in the state, irrespective of whether they are nationals of the country. The Court therefore concluded that it was relevant for a stateless person to demonstrate that de facto protection by a CFHR is not likely. The effectiveness or ineffectiveness, willingness or unwillingness of the state to protect the resident is relevant.</p>
10 November 1995	<i>Tarakhan v. MCI</i>	<p>A Palestinian refugee from Jordan who had received assistance from UNRWA came to Canada in 1990. He alleged that he feared persecution because of his Catholic religion and his membership in a particular social group, i.e., stateless Palestinians. IRB rejected his refugee claim. The Federal Court concluded that IRB had committed an error by imposing on the applicant the burden of proving that the Jordanian authorities were unable or unwilling to protect him. That obligation does not exist for stateless persons who need only to show that they are unable or, by reason of that fear, unwilling to return to that country.</p>
27 September 1994	<i>Khatib v. MCI</i>	<p>A Palestinian refugee from Lebanon was denied refugee status by IRB. The Federal Court concluded that IRB had committed errors.</p>
30 June 1994	<i>Moussa v. Secretary of State of Canada</i>	<p>A Palestinian refugee from Lebanon had spent months in military prisons in Syria, where he was tortured several times. He arrived in Greece in 1990 and was recognized there as a refugee by the United Nations. After his marriage to a British national, he purchased a Saudi passport and came to Canada. He claimed fear of returning to Lebanon. IRB rejected his claim for lack of credibility. The Federal Court ruled that IRB had made errors.</p>
31 January 1994	<i>Abdel-Khalik v. MEI</i> ¹⁹	<p>A stateless Palestinian born in the UAE and having lived most of her life there, went to the United States where her mother and siblings had taken up residence. She held an Egyptian travel document. She claimed that following the Gulf War, Palestinians were not allowed back into the UAE, even with a sponsor. IRB rejected her refugee claim. The Federal Court noted that IRB “did not seem to distinguish between a valid travel document and a right to reside permanently, indefinitely or temporarily within a country. The evidence indicates that three countries issue travel documents to Palestinians: Egypt, Jordan and Israel. Having a valid travel document, as with a valid passport, does not mean however that one is entitled to enter</p>

4 January 1994	<i>El-Bahisi v. MEI</i>	<p>countries without the permission of that country. What is more it appears that the holder of a travel document of the type in issue does not necessarily have the right to enter the country which issued the document. The evidence is clear, for example, that a Palestinian holder of an Egyptian travel document does not have the right to reside in Egypt. The evidence discloses that Palestinians who attempted to travel through Egypt to Gaza in early 1992 were required to have both a valid Egyptian travel document and a valid Israeli residence permit. Without such valid documentation, Egypt would deny the individual's entry to Egypt." The Federal Court concluded that IRB had not properly understood the evidence.</p> <p>A Palestinian refugee from a refugee camp in the Gaza Strip had received assistance from UNRWA. He came to Canada as a student and, following a short period in Gaza, he returned to Canada and claimed refugee status. IRB rejected his application, noting that there was no well-founded fear of persecution should he return to Gaza. The Federal Court noted some errors, one of which was IRB's failure to consider his UNRWA registration: "While the tribunal need not mention all of the documentary evidence submitted, it is my opinion that it should consider material evidence or evidence which specifically relates to the applicant's particular claim, especially when the document mentions the applicant by name and it recognizes him as a refugee. In addition, according to the Handbook on Procedures and Criteria for Determining Refugee Status (Office of the United Nations High Commissioner for Refugees, 1989) previous recognition as a refugee by the UNRWA is relevant to a person's status under the Convention: [text of paragraph 143 of the Handbook]. The Supreme Court of Canada commented on the persuasiveness of this Handbook in <i>Ward v. M.E.I.</i>, [1993] 2 S.C.R. 689 at 713 to 714. While not formally binding on signatory states, the Handbook has been endorsed by the states which are members of the Executive Committee of the UNHCR, including Canada, and has been relied on by the courts of signatory states. This being the case, the fact of previous recognition which made the Applicant qualify for protection from the UNRWA is cogent, though admittedly not determinative, and should have been addressed in the Board's decision."</p>
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Application for Judicial Review was dismissed

Date	Name	Summary
10 September 2003	<i>Kadoura v. Canada</i>	A stateless Palestinian born in the UAE to parents who had previously lived in a refugee camp in Lebanon went to Canada to pursue studies in 1999, and claimed that he would be persecuted if he were to return to the UAE. He also claimed that it was impossible for him to return to the UAE. IRB had decided that the UAE was his CFHR (and ruled out Lebanon

		because he had never lived there), and that the applicant did not leave the country because of persecution. Moreover, the Board concluded that UAE law regarding residence permits did not breach any of the applicant's rights and did not constitute persecution. The Federal Court upheld the IRB decision.
8 September 2003	<i>Ali Khalifeh v. MCI</i>	A stateless Palestinian from Jericho who commuted between Jericho and Jerusalem for reasons of work, claimed that he was harassed at Israeli checkpoints, which made him feel persecuted. IRB concluded that he was not a Convention refugee. The Federal Court dismissed the application for judicial review.
14 November 2002	<i>Qasem v. MCI</i>	A Palestinian from the Gaza Strip came to Canada in 1999. Prior to his arrival, he had secretly married a woman – a marriage of which her father did not approve. Subsequently, his wife was killed by a cousin who had wanted to marry her, in order to avenge his honour and that of her family. The man was afraid of the revenge of his cousin's family, including accusations of providing information to the Israeli Intelligence Service. IRB decided that the applicant's version of the evidence was not plausible. The Federal Court concluded that IRB gave thorough reasons to support its findings regarding credibility and plausibility. The application for judicial review was therefore dismissed.
27 April 2001	<i>EI Ali v. MCI</i>	A female Palestinian from Lebanon was denied refugee status. The Federal Court upheld the IRB decision.
6 December 2000	<i>Ajjour v. MCI</i>	Palestinians from Lebanon were not recognized as refugees by IRB. The Federal Court dismissed the application for judicial review.
29 March 1999	<i>Latif Abu Said v. MCI</i>	A Palestinian woman from Lebanon came to Canada with her four children in 1995, and applied for refugee status. She claimed her husband had become a fundamentalist and was violent and aggressive towards her and the children. On several occasions, he had tried to impose the rituals of the Muslim religion on them and had tried to marry off his eldest daughter to a fundamentalist sheikh. The applicant took refuge at her parents' home and then left the country. She and her children were granted refugee status. Later on, her husband's position changed and the MCI applied for cessation of refugee status. IRB allowed the Minister's application. The Federal Court upheld the IRB decision.
10 March 1999	<i>Elastal v. MCI</i>	A Palestinian from the Gaza Strip had worked in Egypt illegally from 1991–1995. Fearful of being caught and returned to Gaza, he obtained travel documents enabling him to enter the United States illegally. He came to Canada in 1996. He claimed fear of persecution from Hamas since 1991, when Hamas had sent him letters requesting that he meet them. He declined the invitations and finally, when he believed that his life was in danger, he traveled to Egypt.

19 June 1998	<i>Daghmash v. MCI</i>	<p>IRB concluded that Gaza, Egypt and the US were CFHRs. With regard to the last CFHR (the US), IRB concluded that the fear of deportation from that country did not amount to a fear of persecution because nations have the sovereign right to determine who may remain inside their territory. IRB also stated that the applicant's lack of a right of return to the US could not be considered to be an act of persecution because he had never had any right to return to that country (one cannot have what one never had ab initio). IRB decided that there was no serious likelihood that he would be persecuted by Hamas for refusing to join. The Federal Court ruled that the negative decision by the IRB was supportable.</p> <p>A stateless Palestinian born and raised in Saudi Arabia was denied refugee status. IRB concluded that the post-Gulf War treatment of Palestinians was not persecution and that they were treated as other foreigners in Saudi Arabia. The tribunal concluded that the treatment of stateless Palestinians was not persecution because "states do not owe the same duties to stateless residents that they do to citizens." The tribunal also concluded that the applicant no longer had the right to return to, reside and work in Saudi Arabia because his lapsed sponsorship had not been replaced. The tribunal noted that this denial of the right of residence and of employment was not "directly related to his Palestinian nationality but rather to the termination of his sponsorship and his apparent inability to find a new sponsor." The Federal Court agreed and affirmed that the applicant might well have good grounds for humanitarian and compassionate considerations.</p>
11 May 1998	<i>Thabet</i>	<p>A stateless Palestinian born in Kuwait was living there on a residency permit sponsored by his father, a Palestinian refugee, who had a work permit for 18 years. He entered the US to attend university and resided there for the next 11 years. During the Gulf War, while living in Louisiana, the applicant experienced harassment because of his Palestinian origin. Upon rejection of his request for asylum in the US, he came to Canada in 1994. IRB concluded that he did not fear persecution in any place in the US other than in Louisiana and that he did not fear persecution in Kuwait. IRB accepted that, at the time, Kuwait refused to admit stateless Palestinians. The Trial Division of the Federal Court dismissed the application for judicial review, stating that the term "CFHR" referred to the applicant's last CFHR, i.e., the US. The Trial Division, however, addressed this question to the Federal Appeal Court: "Whether a stateless person who has habitually resided in more than one country prior to making a refugee claim must establish his or her claim by reference to all such countries or by reference to some only, and if by reference to some only, by reference to which?" The Federal Court concluded that the test to be applied is "a variation of the 'any country</p>

		<p>solution,' that is any country plus the Ward factor. Where a claimant has been resident in more than one country, it is not necessary to prove that there was persecution at the hands of all those countries; but it is necessary to demonstrate that one country was guilty of persecution and that the claimant is unable or unwilling to return to any of the states where he formerly habitually resided." The Federal Court noted that "stateless people should be treated as analogously as possible with those who have more than one nationality. Canada has no obligation to receive refugees if an alternate and viable haven is available elsewhere."</p>
12 December 1997	<i>Ahmad v. MCI</i>	<p>The applicants were Palestinians from the West Bank. IRB rejected their refugee claim on credibility grounds. The Federal Court upheld the decision.</p>
25 July 1996	<i>Altawil v. MCI</i>	<p>A stateless Palestinian who had been residing in Qatar and had left temporarily in order to attend university in Afghanistan was unable to return to Qatar in time to report to the authorities due to the war in Afghanistan (in order to be able to return to Qatar, non-citizens residing outside the country were required by law to return to Qatar every six months and to report to the authorities). As he had breached the law, his residency status expired, and he was denied re-entry. He came to Canada and claimed refugee status. IRB rejected his claim because he had been denied re-entry due to a law of general application and not due to a well-founded fear of persecution. IRB noted that "[i]t is unfortunate that the claimant, a stateless Palestinian, has nowhere to go and live a normal, productive life. He is in front of this the panel, seeking protection as a Convention Refugee, but he does not need protection. We have found that he does not have a well-founded fear of persecution. He needs a place to live. He has no place to go legally, not even Qatar, his former country of former habitual residence. He is a prime example of a decent, well educated, stateless person, deserving of a country to live in, but this does not make him a Convention refugee." The Federal Court upheld the decision, stating that the law which prevented the applicant from returning to Qatar was not persecutory in nature. Judge Simpson noted that "[w]hile it is clear that a denial of a right of return may, in itself, constitute an act of persecution by a state, it seems to me that there must be something in the real circumstances which suggests persecutorial intent or conduct. Absent such evidence, I am not prepared to conclude that the Law, which is one of general application, is persecutorial in effect, based only on a notion of imputed Qatari citizenship for the Applicant." (Paragraph 11)</p>

Immigration and Refugee Board (IRB)

Recognized as Convention refugees

Date	Name	Summary
17 June 2004	TA4-00833	<p>A Palestinian from Ramallah moved to the United States with his mother in 1989. His mother took him to the US because she feared for his safety as a young male Palestinian in Ramallah. Subsequently, the mother returned to the West Bank and left the claimant in the US with his uncle. IRB noted that "the claimant is only 31 years old and that the majority of those involved with different groups fighting in Ramallah are within that age range. Country documents show that unemployment among those that are not educated as the claimant is high and that those that are unemployed often become targets for recruitment by different militias." IRB also noted that "if the claimant were to return to Ramallah, given that the claimant has been used to working in order to support his family, his alternative source of employment would be to cross the border to go to Israel. Considering the perception in the area about Palestinians who work for or work in Israel, the claimant would be considered a collaborator, which according to the perception in the area would be punishable by torture or death." IRB then concluded that the claimant was entitled to refugee protection pursuant to Sections 96 and 97 IRPA.</p>
14 January 2004	TA2-26512	<p>The case involved a Palestinian living in Israel and married to an Israeli woman. They were forced to live separately due to restrictive Israeli laws regarding Israelis marrying Palestinians. IRB noted the systematic discrimination against Arabs within Israel and concluded that the claimant was a member of a particular social group, i.e., a young educated Palestinian, and that he had a well-founded fear of persecution based on cumulative grounds.</p>
30 May 2003	TA1-19457 TA1-19458 TA1-19459 TA1-19460 TA1-19461	<p>A Palestinian family from the West Bank (father, mother and three children) claimed to have a well-founded fear of persecution based on their nationality and religion (Christian) if they were to return to the OPT. The male claimant left the OPT for Kuwait in 1978, married a Palestinian Christian and had his first daughter there. He returned to the OPT in 1991 after the first Gulf War, as did many other Palestinians. The male claimant stated that he worked in Israel and as a result had to face harassment and humiliation at the hands of Israeli security guards at numerous checkpoints on a daily basis. In 2001, they arrived in Canada seeking protection. The male claimant alleged that the frequent curfews and closures prevented him from travelling to Israel and seriously hampered his ability to earn a living. He also alleged that Israeli Defence Forces frequently swept through the town using indiscriminate force. He also stated that his children suffered from psychological trauma due</p>

		<p>to the frequent incursions by the Israeli Army. He alleged that the education of his children was seriously disrupted, and that he particularly feared for the safety of his young sons. IRB noted that their Jordanian passports were merely travel documents. IRB then noted that: "There are allegations of increased repression, disproportionate military force being used and collective punishment, such as severe restrictions on travel and collective intimidation being used against Palestinian civilian non-combatants. There are many reports of the Israeli government detaining Palestinians without charge, repeated preventative security sweeps, ill-treatment of Palestinians at security checkpoints, and the closure of schools and curfews that have a devastating impact on the economy and education of Palestinians." According to IRB, this goes beyond the general consequences of civil war. IRB then concluded that the documentary evidence supported the claimant's core allegations of harsh treatment by Israeli forces of non-combatant Palestinians in the OPT, and that the claimants would face serious harm amounting to persecution if they were to return to the OPT.</p>
27 March 2003	TA1-16279	<p>The case involved a stateless male Palestinian from the West Bank. He came to Canada to study English in 2000. He claimed that the events that took place after his departure from his home country, combined with the incidents of arrest and detention that he had experienced as a very young man, made it impossible for him to return. He submitted a medical certificate to prove the torture that he had endured as an eighteen-year-old man. IRB concluded that he was a refugee sur place.</p>
27 January 2003	TA1-03134	<p>The case involved a male stateless Palestinian from the Gaza Strip. IRB concluded that the claimant's lifelong experiences of living under occupation, such as physical beatings, harassment, threat and intimidation, demolition of his house and occupation of his land, daily humiliating and degrading treatments at checkpoints, certainly qualified as persecution.</p>
26 November 2002	TA1-17368 TA1-17369 TA1-17370 TA1-17371	<p>The case involved a stateless male Palestinian refugee from the Gaza Strip, his wife and their two minor children, registered with UNRWA. He claimed a well-founded fear of persecution on the basis of his young age, sex, Palestinian ethnicity and perceived political opinion as a political activist. His wife and their two children based their claims on the fact that they were members of a particular social group, i.e., the family of the male claimant. He claimed that he was involved in a peaceful political demonstration against the Israeli occupation in 1993 and that the Israeli authorities took him into custody. He was subjected to serious mistreatment by the authorities on a prolonged basis to get him to confess membership to Hamas. He was subsequently sentenced to more than two years in</p>

		<p>an administrative detention facility, first in Gaza, and then in a tent prison in the Negev desert. He also claimed that he and his family were not able to move elsewhere in either Gaza or the West Bank due to both Israeli travel controls and his economic situation. Because of his background as an alleged member of Hamas and detainee, as well as his residing in close proximity to a Jewish settlement, he believed that the Israelis were suspicious of him, and that he could be detained and tortured at anytime if he were to return to the OPT. IRB concluded that when the claimant's past experience with Israeli and Palestinian authorities was considered in light of the documentary evidence about the treatment afforded to persons similarly situated to him, there was sufficient credible evidence that he would face a reasonable chance of future arbitrary detentions and beatings and other serious abuses of his basic human rights because of his membership in a particular social group of young Palestinians males. His wife and children also faced a reasonable chance of serious violation of their basic human rights because of their close family association and identification with the male claimant.</p>
21 March 2002	MAI-03477	<p>A stateless Palestinian from El Badawi refugee camp in Lebanon, registered with UNRWA, had tried to enrol in a public university in Beirut, but was barred because of the quota on Palestinian students. He had also failed to find work because of his Palestinian nationality. When he finally managed to enrol for study in Tripoli, he was subjected to pressure from Palestinian organizations in the camp that targeted young students to recruit other students. The claimant did not want to belong to any of these organizations, but feared that he would be forced to join one sooner or later. He obtained a student visa from the US, where he arrived in 2000. In 2001, he came to Canada. IRB found that the claimant was a Convention refugee.</p>
6 September 2001	AAO-01454	<p>A stateless Palestinian from a refugee camp in Lebanon, whose wife was a citizen of Lebanon, attended a UNRWA vocational training center for two years. He then moved to Kuwait, where he worked for some years. Subsequently, he lived and worked for ten years in the UAE. His employment entitled him to a residence permit allowing his entire family (including two sons) to live legally in the UAE. They travelled to Canada after his employer started dismissing employees, because he knew that as a Palestinian refugee, he would not find another sponsor and his temporary residency would not be valid without work. Based on the decision in Thabet, IRB concluded that Lebanon, Kuwait and the UAE were CFHRs. Noting that there is systematic and persistent discrimination against Palestinians in Lebanon, IRB examined whether the acts of discrimination amounted to persecution in themselves or on cumulative grounds. IRB referred to the UNHCR Handbook which states that acts of discrimination</p>

6 September 2001	MAO-08431	<p>amount to persecution if those acts lead to “consequences of a substantially prejudicial nature,” such as serious restrictions on the claimant’s right to earn a livelihood and his access to normally available education (paragraphs 53–55). IRB concluded that he had a well-founded fear of persecution in Lebanon due to his Palestinian nationality. Based on Thabet, IRB considered whether the claimant could return to Kuwait or the UAE. IRB concluded that he could not return to either of those countries. IRB decided to grant Convention refugee status to one of the claimant’s sons, but not to his wife.</p> <p>A stateless Palestinian from the Ein El Helwe refugee camp in Lebanon was subjected to pressure to join the PLO, but refused to do so. He was unable to find employment and went to university in the US. He feared that, if he returned to Lebanon, he would be forced to join a Palestinian organization in the camp and that his basic rights would be denied. His argument that he would not get protection from the Lebanese authorities because they would not enter the camp was supported by documentary evidence, which indicated that following an agreement between the Lebanese and Palestinian authorities, Lebanese armed forces do not enter Palestinian refugee camps. IRB concluded that he had a well-founded fear of persecution based on his membership in a particular social group.</p>
14 March 2001	A99-00575	<p>Three minor stateless Palestinian claimants, who were determined to be deemed Convention refugees by IRB, claimed refugee status in Canada. Two were born in France and one in the US. IRB concluded that they had a well-founded fear of persecution in Syria on the grounds of family membership and their young ages. IRB then concluded that the two who were born in France could not avail themselves of protection in France, whereas the third could avail himself of protection in the US, because the latter had ample provisions in laws and regulations to afford her the protection she required if she were to be returned there.</p>
21 July 1999	T97-02794	<p>A stateless Palestinian born in the East Jerusalem suburb of al-Ram, held an identity card which identified him as a Jerusalem resident and a permanent resident of Israel. The ID card was confiscated by Israeli police, and in order to get it back he had to establish that he was a resident of Jerusalem. This proved to be impossible since the Israeli authorities refused to recognize his residence in al-Ram, located outside Israel’s municipal borders, as constituting residence in Jerusalem. Without identity or residence documents, the claimant was unable to work, travel or transit through other areas of Israel or the West Bank and lost his social entitlements as an Israeli resident. IRB concluded that the claimant’s ID card was initially confiscated as a result of his perceived political opinions and that it was not returned to him on the basis of relatively recent changes in Israeli law, which have a persecutory application to persons in the claimant’s circumstances.</p>

14 October 1998	T97-02809	A stateless Palestinian from the OPT was found to have a well-founded fear of persecution in the OPT because of his past history with Israeli intelligence and his refusal to join the Palestinian authority intelligence. Jordan was also a CFHR. IRB noted, however, that while the claimant could technically return to Jordan (he held a five-year Jordanian passport), returnability has no meaning if a claimant is unable to stay in the country she/he returns due to his record with Jordanian intelligence. IRB referred to the Thabet case.
3 August 1998	A98-00140	A Palestinian born in Kuwait came to Jordan to study. He was subjected to interrogation by the Jordanian Intelligence Services with regard to his father's activities within the Palestinian Democratic Front. The claimant came to Canada to study after repeated harassment in Jordan. Upon completion of his studies, he sought to return to Kuwait, but was unable to do so following the Gulf War. He then returned to Jordan, where he was again subjected to rough and persistent interrogation. IRB concluded that the claimant would face harassment amounting to persecution if he went back to Jordan.
17 March 1997	T95-05057	A Palestinian from the West Bank came to Canada, and the Israeli authorities in Canada repeatedly refused to renew his Israeli travel document. IRB concluded that the claimant would be very outspoken if returned to the West Bank, that he would be perceived by the Israelis as a potential troublemaker, and that they had, for this reason, refused to renew his travel document. IRB noted that while the jurisprudence does not say that a denial of a right of return is an act of persecution, it does say that such a denial can be considered persecutory. IRB then concluded that in this case, the denial of the claimant's right to return, combined with all other problems encountered by the claimant under the Israeli occupation, constituted persecution on a cumulative basis. IRB also concluded that the claimant did not have an internal flight alternative in areas of the West Bank now under the control of the Palestinian authority, because Israel was denying him access to the West Bank.
1 December 1994	T92-06689	A stateless Palestinian born in Lebanon moved to Kuwait at the age of five and remained there for 13 years. He left Kuwait prior to the Gulf War to attend university in the United States. Following the Gulf War, Kuwaiti authorities would not allow him to return to Kuwait. Lebanon and Kuwait were his CFHRs. IRB concluded that the denial of the claimant's right of return to Kuwait after he had lived there for 13 years was part of a pattern of persecution against Palestinians. He was therefore a refugee sur place. He also had a well-founded fear of persecution in relation to Lebanon.

1 July 1992	M91-00965	A Palestinian couple had lived in Kuwait since 1967. They were forced to leave in 1990 following the invasion by Iraq. She was born in the West Bank and had a Jordanian passport, whereas he had a Lebanese travel document. She could return to Jordan, but her husband and their three children could not. Her refugee claim was denied. Her husband was considered to be a Convention refugee in relation to Lebanon.
1 December 1991	T90-06713	In 1986, a Palestinian from a refugee camp in the Gaza Strip came to Canada to study. Although the claimant did not leave because of a fear, he said that he was fearful of returning due to events which had occurred since his departure (the first intifada). His claim was considered against Israel, and IRB concluded that "Palestinian residents of the West Bank and the Gaza Strip may be the targets of differential treatment by the state of Israel on the basis of their nationality and on the basis of their political opinion, whether actual or perceived."

Not recognized as Convention refugees

Date	Name	Summary
23 August 2001	TAO-03217	These Palestinians were born in Kuwait and, following the Gulf War, moved to a refugee camp in Tulkarem (West Bank) and then fled to Canada, arriving there in January 2000. They claimed to have been threatened with death by Hamas because they declined to get involved in the intifada. IRB concluded that there was no credible evidence of well-founded fear of persecution by Palestinians should they return to the refugee camp.
25 July 2004	TA3-08530	The case involved a young Palestinian male from Ramallah who carried an Israeli passport. He came to Canada in 2003. IRB noted that although there was no doubt that certain policies of the Israeli government had resulted in discrimination against the claimant by virtue of his being a Palestinian-Arab Muslim citizen of Israel, the claimant had failed to establish, on the facts of his particular claim, that he was a victim of cumulative discrimination that amounted to persecution.
19 April 2004	TA3-10895 TA3-10896 TA3-10897 TA3-10898 TA3-10899	The case involved a female Palestinian who was a citizen of Jordan, her husband who was a stateless Palestinian born in Saudi Arabia and their three minor children who were all citizens of the US. The parents were married in the US. IRB noted that the family was in a difficult humanitarian position: the basis of their claim was that the husband was stateless and the wife would not sponsor her husband and children to return to Jordan, where they had never lived and had very little connection. There was no country to which all five members of the family could return to live. IRB noted, with regard to the male

		<p>claimant, that he had no right to return to Egypt because his status there had been linked to his father's work permit and his father had since died. Although he was carrying an Egyptian travel document, he had no right to live in Egypt. IRB then noted that the claimant had not left any country of former habitual residence for any Convention ground and that he was therefore not a refugee. The female claimant and the children were also denied protection. IRB finally noted: "[T]his family's problems are related to Immigration matters, not to any Convention ground, as they have not claimed to fear persecution in any country. They lived in the United States for 14 years, yet did not make any serious attempts to regularize their status there, even after the birth of their three children." This case was appealed at the Federal Court, which ruled on 10 November 2004 that the claim submitted by the male claimant should be re-determined by IRB in respect of the questions whether Gaza was a country of former habitual residence and, if so, whether the claimant had established his claim against Gaza (see Section 3 above).</p>
27 February 2004	TA3-13963	A young Palestinian Arab male, who was a citizen of Israel, was denied refugee protection.
12 April 2000	T98-10030	A Palestinian was born in Egypt to Palestinian parents who were residents of the UAE. They returned there with him after his birth. He later arrived in Canada to study. He had an Egyptian travel document for Palestinians, which had expired and was unable to obtain a visa to return to the UAE or Egypt. (He had not applied for a visa to return to the UAE, as he saw no point in doing so.) His grandfather and his father were registered with UNRWA. Based on the criteria set out in the Maarouf case, IRB concluded that the UAE was his only CFHR. The claimant referred to different examples of discrimination. The main issue was whether the denial of the right of return was persecutory. IRB noted that for this denial to be the basis of a claim, the refusal must be based on Convention grounds, and not simply related to immigration laws of general application. IRB referred to the Altawil case (see above) and concluded that the denial of the right of return was related to immigration laws of general application. IRB also concluded that the UNRWA registration document, which was issued with respect to the claimant's grandfather's flight in 1948 and on which his father and uncles were listed, was not sufficient evidence for concluding that the claimant was a Convention refugee.
5 January 2000	T98-05623	A Palestinian from the Gaza Strip sought protection in Canada. IRB concluded that the entire basis of the claim had been fabricated.
9 June 1999	V98-02496	The claimant, of Moslem religion, claimed that she defied her fundamentalist father by coming to Canada to join her Christian boyfriend and that she feared returning to Lebanon because her father might kill her to preserve family honour. IRB concluded that an unmarried woman with children would be treated as a prostitute

		<p>in Lebanon, but that her life would not be in danger. She would be shunned by her family and she might face discrimination as a single woman potentially in conflict with her family, but that discrimination would not amount to persecution.</p>
<p>24 November 1997</p>	<p>T96-04918</p>	<p>A Palestinian from Saudi Arabia sought protection in Canada. IRB concluded that there was no evidence that Palestinians were subjected to ethnic persecution in Saudi Arabia. While the claimant's legal status in Saudi Arabia had expired and he no longer had the right to return there, the denial of this right did not amount to persecution because the claimant had lost the right to return, not as a result of his Palestinian origin, but rather because his sponsorship had expired and not been renewed.</p>
<p>1 January 1993</p>	<p>U92-02950</p>	<p>A Palestinian refugee, his wife and their three minor children sought protection in Canada. He was born in Gaza in 1937, but moved to Syria with his parents and siblings in 1948. From 1967–1990, he resided in Kuwait. He claimed to fear persecution in Israel and Kuwait on the grounds of political opinion and membership in a particular social group. The wife was born in Syria. IRB determined that Syria was their CFHR. Since all of the claimants faced, at worst, a mere possibility of persecution in Syria, they were determined not to be Convention refugees.</p>
<p>1 February 1992</p>	<p>U91-03767</p>	<p>A Palestinian who was born in Egypt in 1967, moved to Kuwait and resided there until 1985. Professor Hathaway's approach to CFHR was applied, and IRB concluded that the claimant had no CFHR because he could not be returned to Kuwait or to Egypt, and there was therefore no country against which to assess persecution.</p>

9. Links

Coalition Against the Deportation of Palestinian Refugees: <http://refugees.resist.ca>

Decisions by IRB and the Federal Court: <http://www.irb-cisr.gc.ca>

Immigration and Refugee Board: <http://www.cisr.gc.ca>

THE UNITED STATES⁷²⁰

1. Statistical Data

The US census data estimates the total number of Palestinians in the US as 72,112.⁷²¹ However, the Arab American Action Network (AAAN) estimates that around 80,000 Palestinians are living in Chicago alone. Other local estimates puts the number of Palestinians in Jacksonville, Florida at over 10,000 and at more than 15,000 in Detroit. Hence, according to unofficial estimates, between 216,000 and 250,000 Palestinians⁷²² are currently living in the United States, 186,000 of whom are 1948 or 1967 refugees.⁷²³

Most Palestinians have arrived to the US from the Gulf States and Lebanon. Relatively few have come from the West Bank and the Gaza Strip. Many Palestinians have entered as students (F-1 status), as visitors (B-1 and B-2 status) or as exchange visitors (J-1 status).⁷²⁴

Palestinians are registered by the US authorities by place of birth, for example, Kuwait, Saudi Arabia, Jordan or Lebanon.⁷²⁵ In asylum cases, the origin of the travel document will be considered when determining the place of birth or the place to which a person may be deported.

2. Status of Palestinians upon Entry into the United States

As in the case of other asylum-seekers, Palestinians who are in the US⁷²⁶ may submit an “affirmative” application for asylum to the regional Bureau of Citizenship and Immigration Service (BCIS).⁷²⁷ Once an affirmative asylum receipt is issued, the asylum-seeker’s stay in the US is legal for the period of the asylum process, although no non-immigrant or immigrant status is granted at this stage. During the asylum process, asylum-seekers are entitled to travel within the US.

Asylum-seekers are entitled to work only if their asylum application remains un-adjudicated for at least 180 days, counted from the date the asylum receipt is filed. The count is interrupted whenever the authorities find that a delay in the adjudication process is caused by the applicant her/himself. Thus, asylum-seekers may remain ineligible to apply for work authorization for several years because the authorities may argue that a case has not remained un-adjudicated for 180 days.

3. Refugee Determination Process: Refugee Status

The US is party to the 1967 Protocol, but not the 1951 Refugee Convention.

In general, a claim for refugee status will be examined under the Immigration

and Nationality Act (INA) [8 USC, section 1101]. The INA has incorporated some provisions of the 1951 Refugee Convention into domestic law, including Article 1A(2) of the 1951 Convention, which is incorporated into INA Paragraph 101(a)(42). Article 1D, however, is not among these provisions.

Paragraph 101(a)(42) of the INA provides that,

[t]he term “refugee” means:

(A) any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.⁷²⁸

The General Counsel of the Immigration and Naturalization Service (INS) has concluded in a non-binding 1995 Legal Opinion that denial of re-entry to an alien may constitute “persecution” (see 3.2 below).

3.1 Article 1D in Refugee Status Determination

Contradictory arguments can be made regarding the question as to whether or not Article 1D has been incorporated into US law. On the one hand, it may be argued negatively: i.e., that Article 1D is not incorporated into US law, because Article 1D is not one of the provisions of the 1951 Convention to be incorporated into domestic law by INA. On the other hand, a positive argument can be made that Article 1D was incorporated into domestic law when the US signed the 1967 Protocol. In any case, Article 1D has not yet been applied to Palestinian asylum cases in the US.

The General Counsel of the Immigration and Naturalization Service (INS) presented its view on Article 1D in a letter to the UNHCR, Washington DC, dated 29 July 1993. In this letter, the General Counsel referred to UNHCR’s opinion, stating that:

We understand it to be your position that the United States must consider any Palestinian to be a refugee, provided that the person, or his or her forebear, was registered with UNRWA and is now outside the area in which UNRWA operates. A finding that the person is not eligible for protection as a refugee would be warranted only if one of the other cessation or exclusion clauses in the Convention applies. This position appears to be

based upon the idea that a showing that a person is eligible for assistance from UNRWA somehow equates to a showing that the person is a refugee under the Convention (and thus under United States law).

The General Counsel proceeded stating that:

It is not clear, however, why an asylum adjudicator could regard every person who qualifies as a “Palestinian refugee” as having similarly qualified as a refugee under United States law. A person is eligible for a grant of asylum in the United States only if he or she falls within the statutory definition of a “refugee”.

So the fact that an alien, or his or her forebear, was displaced by the 1948 Israeli-Arab war does not, by itself, establish that the alien qualifies as a refugee under United States law. We do not suggest that displaced persons cannot be refugees under our statute. We maintain, however, that refugee status is not established simply because an alien is a displaced person. Article 1D would then seem to mean, not that Palestinian refugees are refugees in the sense defined by Convention and United States law, but only that they are not precluded from claiming that status.

The General Counsel thus concluded that Palestinians must fulfil the criteria set out in Article 1A(2) of the 1951 Convention (INA Paragraph 101(a)(42)), in order to qualify for asylum. Article 1D was interpreted to mean that Palestinian refugees are not precluded from applying for asylum under the INA.

3. 2 Article 1A(2) in Palestinian Refugee Status Determination

Given the non-application of Article 1D to Palestinian asylum cases in the US, assessment of persecution or a well-founded fear of persecution is the core element in Palestinian refugee status determination. In US case law, persecution has been defined as:

The infliction of suffering or harm, under government sanction, upon persons who differ in a way regarded as offensive (e.g., race, religion, political opinion, etc.), in a manner condemned by civilized governments. The harm or suffering need not be physical, but may take other forms, such as the deliberate imposition of severe economic disadvantages or the deprivation of liberty, food, housing, employment or other essentials of life.⁷²⁹

In the aftermath of the 1991 Gulf War, a number of asylum claims were filed in the US by stateless Palestinians who had last resided in Arab Gulf States, but who failed to demonstrate past persecution and/or could not establish a well-founded fear of persecution, and had either been expelled from or were denied permission to return to the country of their last residence. These cases, together with efforts by lawyers and UNHCR, gave rise to an in-depth examination of the meaning of persecution in the context of expulsion of and denial of re-entry to persons, including stateless persons. This INS examination resulted in a non-binding INS Legal Opinion concluding that denial of re-entry to an alien, including a stateless person, by his/her country of former habitual residence may constitute “persecution.”

**INS Legal Opinion:
Denial of re-entry to aliens, including stateless persons,
may constitute “persecution”**

In June 1992, a Supervisory Asylum Officer at the INS Asylum Office in Houston, Texas, requested a legal opinion from the General Counsel to assist her office in adjudicating a number of asylum claims filed by Palestinians who last resided in Saudi Arabia, Qatar or the United Arab Emirates. None could establish a well-founded fear of persecution. Following the Gulf War, these Palestinians were either expelled from or denied permission to return to the country of their last residence. In some cases, the governments in question seized their assets. The Officer asked the question:

Does a sovereign nation engage in persecution by expelling or denying entry to aliens and seizing alien assets during a war or national emergency, so that the aliens subjected to these actions qualify as refugees?

The General Counsel responded by means of a Legal Opinion dated 19 August 1992.⁷³⁰ This Opinion stated that deliberate imposition of severe economic hardship, which deprives a person of all means of earning a livelihood, can constitute persecution. In this case, however, the General Counsel concluded that there was no persecution. The General Counsel based his conclusion on the fact that most of the Palestinians concerned were not considered citizens of the Arab countries in which they had lived. They were, therefore, aliens in those countries. The General Counsel noted that:

It is the sovereign prerogative of each independent nation to determine whether and under what circumstances aliens may enter and remain in the nation’s territory. The sovereign may validly exercise its power to exclude aliens at any time when, in the judgement of the government, the interests of the country require it.

The General Counsel added that sovereign power is most felt in times of war or national emergency, and that the expulsion of these Palestinians by the governments of the Gulf States in question appears to be a classic case of a sovereign nation’s exercise of such power. The General Counsel thought that in this context, it was worth remembering that

the PLO and the Palestinian National Council, the Palestinian parliament in exile, had allied themselves with Iraq during the first Gulf War. The General Counsel added that:

This conclusion does not mean that no Palestinian Arab expelled from or denied permission to return to Egypt, the United Arab Emirates, or Qatar can be found to be a refugee. In a given case, such an alien may be able to show that he or she has been subjected to actions which do not constitute a legitimate exercise of a sovereign's power to expel or exclude aliens, especially alien enemies.

Following efforts by practitioners of the Middle East Asylum Project⁷³¹ and UNHCR, the General Counsel modified its stand in a second Legal Opinion dated 27 October 1995.⁷³² It concluded in its 1995 Legal Opinion that – without prejudice to states' freedom to exercise sovereign powers – the circumstances and consequences of sovereign state action against individuals living in their territory may entail the kind of harm that can qualify as persecution under the 1951 Convention and US immigration law. The General Counsel affirmed that this may apply to both the case of expulsion, and the case of denial of re-entry to persons. The General Counsel moreover stated explicitly that these considerations may apply also to stateless persons, underlining that although stateless persons do not have a state against which they can claim the right to stay or re-enter, they do enjoy some protection from expulsion and denial of re-entry to their country of former residence.

In its 1995 Legal Opinion, the General Counsel argued:

The 1992 opinion reasons that these state actions [to expel or exclude from re-entry a person who is not a citizen of that state or to seize the assets of an enemy alien during a war or national emergency] *per se* do not constitute persecution. These general propositions remain undisturbed by this opinion. The 1992 opinion is superseded, however, to the extent that it implies that the governments in question legitimately viewed such applicants as enemy aliens merely because of their Palestinian national origin and that any expulsion, denial of re-entry or confiscation of property was therefore a legitimate exercise of sovereign power that could not result in persecution. The opinion concludes that, in some circumstances, depending on the status of the applicant in the state, the consequences of the state actions for the applicant, and the way in which the state took its actions, a stateless Palestinian who applies for asylum based on expulsion, denial of re-entry, or confiscation of his property by his country of last habitual residence may establish persecution.

With regard to the denial by states of re-entry, the General Counsel elaborated:

Essentially the same considerations arise in the case of a person who is denied re-entry to a country that had earlier granted her/him the right to reside there. When such a person's physical absence from the country in question involves no intent to relinquish her/his residence there and no violation of the conditions placed on that residence, arbitrary denial of re-entry may violate basic human

rights. A state may violate these principles by expelling or denying re-entry to such a person without identifying reasons specific to the individual for the expulsion and without allowing the person an opportunity to challenge those reasons. Whether such a violation is so serious a deprivation of a basic human right as to constitute persecution in the context of an asylum application depends upon the situation of the particular applicant.

With regard to stateless persons, the General Counsel concluded that:

In the case of a stateless person who has no right to pursue legal residence in any other country, such an expulsion or denial of re-entry may well entail the kind of harm that could qualify as persecution.

Thus the General Counsel first made a parallel between the case of expulsion and the case of denial of re-entry, and then noted that stateless persons do enjoy some protection from expulsion and denial of re-entry to their country of former residence. This is because the act of expulsion or denial of re-entry may qualify as persecution under the 1951 Convention if reasons specific to the individual are not identified, and if the person is not allowed an opportunity to challenge those reasons.

If an asylum applicant has experienced violations of basic human rights that are serious enough to constitute persecution, she/he will still have to establish that this persecution was inflicted on account of one of the protected reasons (Article 1A(2) of the 1951 Convention). In this context, the General Counsel found that serious violations of the following basic human rights may constitute persecution:

- the right to be free from arbitrary arrest and detention;
- the right to be free from arbitrary interference with family and home;
- the right to state protection of the family as a unit.

The General Counsel concluded that:

Whether and how seriously expulsion of, or denial of re-entry to an alien may affect these rights, can only be determined by examining the facts of each claim. Expulsion of a person who, through long-term residence in the country, has established family, home, business and property there will have more severe consequences than expulsion of a short-term resident with fewer ties in the country.

The following indicators may help determine whether an asylum applicant's basic human rights were violated:⁷³³

- arbitrary interference with a person's privacy, family, home or correspondence;
- deprivation of virtually all means of earning a livelihood;

- relegation to substandard dwellings;
- expulsion from institutions of higher learning;
- enforced social or civil inactivity;
- passport denial;
- constant surveillance;
- pressure to become an informer.

In addition to the above-mentioned rights, an alien who is living legally in a country also has the right to be accorded a minimum level of basic due process rights in connection with expulsion.⁷³⁴

In summary, and based on the 1995 INS Legal Opinion, an asylum applicant who has experienced violations of basic human rights that are serious enough to constitute persecution may qualify for refugee status, if she/he can establish that this persecution was inflicted for one of the protected reasons (Article 1A(2) of the 1951 Convention). “Nationality” is one of these reasons.⁷³⁵ US Courts, however, are not bound by the INS General Counsel’s opinion.⁷³⁶

Palestinian asylum-seekers have been recognized as refugees in the US, including most of those Palestinians who fled to the US from Kuwait following the Gulf War.

Many stateless Palestinians who arrived in the US in the context of the 1991 Gulf War claimed well-founded fear of persecution in Kuwait based on their national origin. Most of them had US-born children (see below for further discussion) and were generally granted refugee status. Very few were denied refugee status; these were subsequently granted Deferred Enforced Deportation status, which was regularly renewed.

However, with the exception of Palestinian asylum-seekers who arrived from Arab Gulf states (especially Kuwait) in the context of the 1991 Gulf War, Palestinian asylum-seekers arriving from countries outside UNRWA’s area of operations are generally not recognized as Convention refugees. As they often cannot be returned to their countries of former residence, many of them continue to live in the US with no lawful immigration status and/or with a final order of removal and are subject to forcible return at any time when removal becomes possible (see below).

According to practitioners, Palestinians who are denied refugee status tend to fall within three categories:

- Palestinians from Jordan who enjoy effective protection from the Jordanian authorities;
- Palestinians who have firmly resettled in a “safe third country”;

- Palestinians from Arab Gulf States who arrived in the US as students and whose student residence permits have expired.

Other final negative decisions in Palestinian asylum cases have involved credibility issues⁷³⁷ and claims based on general discrimination.⁷³⁸

4. Refugee Determination Process: Outcome

As in the case of other asylum-seekers, Palestinians who are recognized as refugees cannot be removed and may be granted asylum. However, the granting of asylum is at the discretion of the Attorney General (INA paragraph 208(b)).

The concept of “firm resettlement” is applied in asylum decisions. This means that an asylum-seeker who is recognized as a refugee in the US but has obtained lawful status in another country is not entitled to asylum in the US because she/he has “firmly resettled in a safe third country.”

As in the case of other persons granted asylum, Palestinians are issued with temporary residence permits (I-94) by the local Immigration and Nationalization Service. This permit is valid for one year and is renewable. Such persons are authorized to work as of the date of granting of asylum.

Such persons may then apply for permanent residence permits one year after granting of asylum (INA paragraph 209, 8 U.S.C. 1159(a)). The US government is authorized to grant lawful permanent residence to 10,000 recognized refugees annually. A waiting list has been created for this purpose, because more than 10,000 applications are received each year. As a result of mismanagement, however, the government has not granted permanent residence to the full quota of 10,000 recognized refugees every year. Over time, approximately 22,000 permanent residence numbers for recognized refugees have gone unused and the waiting list has grown accordingly. On 12 February 2004, a Federal District Court ordered the Citizenship and Immigration Service (CIS) to grant lawful permanent residence to the approximate 22,000 recognized refugees who should have been granted residence permits as part of the annual quota. CIS was also ordered to provide all recognized refugees with work permits valid for as long as the holder is an recognized refugees.⁷³⁹ Once permanent residence has been granted to these 22,000 recognized refugees, the more than 100,000 additional recognized refugees on the waiting list will be required to wait for approximately thirteen years for permanent residence.⁷⁴⁰

Recognized refugees and recognized refugees who were issued permanent residence permits can apply for citizenship after five years. In the case of aliens who entered

the US as Convention refugees, permanent residence grants are backdated to the year of entry, whereas in the case of aliens whose refugee and asylum status were determined in the US, permanent residency grants are backdated only one year from the day when the permanent residence permit was granted.

Palestinians whose claims for asylum are rejected are returned to their country of former residence. A removal order can be cancelled if the applicant has been living for ten or more years in the US and has a “qualifying” relative, such as a spouse, parent or child, who is a citizen or lawful permanent resident of the US and who will suffer extreme and unusual hardship as a result of the deportation. Some 4,000 such cancellations can be granted annually.

5. Return – Deportation

Currently, Palestinians arriving to the US from Egypt, Jordan, Syria, Lebanon, the West Bank and the Gaza Strip are subject to deportation and return to those countries.⁷⁴¹ INS has confirmed that it began returning Palestinians with valid travel documents “to Palestine” in mid-November 2002. Palestinians from Iraq are not removed.

Many human rights activists and practitioners point out that deportations were increased following 11 September 2001, and that several Palestinians have been deported, including Palestinians with long-standing deportation orders pending.⁷⁴² According to INS, however, these removals do not reflect a change in policy, but are the result of newly resolved “logistical issues” flowing from the level of conflict in the region, which had previously prevented the removals.⁷⁴³

Return of Palestinians to Arab Gulf States is often impossible. Palestinians who cannot be returned are forced to live in the US with a final order of removal and are subject to forcible return to the Gulf States at any time. They may be held in custody for an indefinite period of time until removal becomes possible. Stateless Palestinians are often worse off than other rejected asylum-seekers because they have nowhere to go.

Jurisprudence Sample Cases

Detained on Secret Evidence and Deported to an Unknown Place

Mazen Al-Najjar was born in Gaza in 1957 and lived with his family in Saudi Arabia for thirteen years. He studied in Egypt and then worked in the United Arab Emirates. He entered the US for purposes of study in 1981, and took up work as an engineering instructor at the University of South Florida.⁷⁴⁴

INS deportation proceedings against him were initiated in 1985, followed by a deportation hearing in 1996, a deportation decision in 1997, and a period where he was held in jail based on classified evidence. He was released from jail for a short period (December 2000–September 2001) for lack of criminal charges against him. He was re-arrested in September 2001, this time based on asylum-related grounds, which were upheld by an appeals court. He was deported to Lebanon, where he arrived on 31 August 2002. However, the following day, Lebanon revoked his visa and deported him to an unknown country.⁷⁴⁵

Returned to Detention in Jordan

In August 2003, some twenty-two Middle Eastern failed asylum-seekers were deported from the US, including nine Palestinians who were to be shipped to the West Bank (overland via Jordan) and to Gaza (overland via Egypt). One of the Palestinians was 54-year-old Munir Lami, who had lived in the US for sixteen years and raised nine children and eight grandchildren there. He is blind and diabetic. He had served time in prison for welfare fraud and a visa violation, but was released in July 2003 for lack of sufficient documentation to deport him.⁷⁴⁶ Upon arriving in Jordan, he was imprisoned for several days without the knowledge of his family. Mr Katelle, of Families For Freedom in New York, stated:

What we have seen over the past year is the INS ... openly flout[ing] the Supreme Court decision and the face of the Supreme Court.⁷⁴⁷ It has really put pressure on consulates around the world and on countries around the world to take back stateless folks, take back people that they refused to take back in the past. The Lami case is another situation where there is a person released because he couldn't be deported, and Supreme Court has said that trying to keep him in custody is unconstitutional. And then they go ahead and put pressure on the Jordanian government, on the Egyptian government, on the Israeli government to find other ways to take them back to the country.⁷⁴⁸

The Coalition for Human Rights of Immigrants (CHRI) noted that:

Palestinians should not be deported to a country which is under illegal occupation by a foreign power (Israel). Israel has admitted that it tortures Palestinians. It is illegal under international law to deport someone to a country where they face torture. Palestinian refugees are not safe in Jordan either: Mr Munir Lami, who was deported on the August 19 flight, is now in jail in Jordan. Many Jordanian and Egyptian detainees also fear for their safety if deported.⁷⁴⁹

Detained, Scheduled for Deportation but No-where to Go: A Palestinian Refugee from the Gaza Strip

Another case involved a Palestinian (X) from the Khan Younis refugee camp in the Gaza Strip. When he was two years old, he and his family moved to Kuwait and settled there. They never became citizens of Kuwait and were not entitled to Kuwaiti passports. When X reached the age of eighteen, he required a permit for work which he could not obtain

because he was Palestinian. As a Palestinian, his options for tertiary education were also severely restricted. Due to these restrictions, he left Kuwait and came to the US as a student in 1981, in order to attend college. He travelled to the US on an Egyptian travel document. X attended college until 1986 and remained to work in the US thereafter. In 1996, an Immigration Judge decided that X was deportable because he had been convicted of two crimes involving moral turpitude. He had been sentenced to a jail term of 46 months and served 40 months before being released on probation. He fulfilled his terms of probation and later applied for asylum from both Kuwait and Gaza.

An Immigration Judge dismissed his asylum claim because he had not proved well-founded fear of persecution in Kuwait.⁷⁵⁰ The appeal was rejected by the Board of Immigration Appeals in May 2001, after the case had been pending for years. During the period of his appeal and afterwards, X lived a peaceful life with his wife, running his own tree-trimming business. In June 2002 (exact date unknown), X was arrested in order to enforce the final deportation order as part of a policy that focused on individuals from Arab countries. However, X was a stateless person and the Immigration and Naturalization Service were unable to obtain travel documents for him. X was finally released after having spent almost one year in prison, and after the FBI had tried several times to induce him to provide information about other persons of their concern. X has strong ties to the US, including his wife, family and friends. He has lived in the US for almost twenty-one years.⁷⁵¹

Palestinians who came to the US during the 1991 Gulf War

Following the August 1990 Iraqi invasion of Kuwait, several hundred Palestinians and other Arab nationals were airlifted from Kuwait to the US by the US authorities. These were persons who enjoyed the (secret) protection of the US, or were parents of children who were US citizens. Most of them were highly educated, middle-class, or even members of the wealthy elite in Kuwait, including businessmen, engineers, accountants, lawyers and doctors. Their US-citizen children had often been born while their parents attended school or conferences in the US. At the same time, they were stateless and many of them had never become eligible for Kuwaiti citizenship. Instead, they held temporary “documents of convenience” issued by Egypt, Syria, Jordan and Lebanon. Such documents were often issued in Kuwait by Arab states as a gesture of sympathy towards the Palestinian people, regardless of whether individuals had ever actually been to the issuing country.⁷⁵² Following their airlift to the US, Kuwait refused to allow these Palestinians to return, and they were permitted to remain and work in the US until 1 January 1996, based on a presidential directive.⁷⁵³

One of these Palestinians was Dr Iyad Al-Shurafa, a Palestinian refugee who had suffered forced displacement several times his life.⁷⁵⁴ He held Jordanian travel documents issued in Kuwait which did not entitle him to residence anywhere. Due to the US citizenship of his second son, Dr Al-Shurafa and his family were able to come to the US during the 1991 Gulf War. Like most Palestinians arriving from Kuwait, he and his family were eventually granted refugee status and protection in the US.

6. Temporary Protection

No temporary protection has been granted to Palestinians, who have never been designated under the Temporary Protection Status programme in the US. With regard to the Palestinians who were airlifted from Kuwait, the US Department of Justice concluded that these stateless Palestinians could not be granted temporary protected status (TPS) because the TPS provisions (Section 244A of the INA providing the Attorney General with discretionary authority to grant TPS) specify that an “alien” must be a national of a designated country. Aliens who were nationals of Kuwait, however, were granted TPS.⁷⁵⁵

7. Protection under the Stateless Conventions

The US is party to neither the 1954 Stateless Convention, nor the 1961 Statelessness Convention.

Palestinians are recognized as stateless persons in the US,⁷⁵⁶ but this recognition in itself affords them no protection. They can get asylum if they are able to establish a fear of persecution in the country of last habitual residence: i.e., a stateless person is considered to have the same relationship vis-à-vis her/his country of last habitual residence as an alien national vis-à-vis her/his country of nationality. However, Palestinians are in a worse position than citizens of a state, because, they have often nowhere to go if they are denied asylum, and thus remain in an “immigration limbo.”

The issue of statelessness in US immigration policy was examined by Brian F. Chase, who concluded that “the rights of stateless individuals hinge on the whims of the Executive branch, which is subject to political pressures both at home and abroad.”⁷⁵⁷

Jurisprudence regarding statelessness

*Faddoul v. Immigration and Naturalization Service (INS)*⁷⁵⁸

The case involved a Palestinian refugee who was born and raised in Saudi Arabia. In 1948, his parents had fled from an area of Palestine which then became Israel, first to Lebanon and then to Saudi Arabia. Faddoul held Lebanese travel documents; he was not eligible for Saudi citizenship, which is granted solely on the basis of ancestry. He first came to the US in 1979 and returned to Saudi Arabia periodically in order to renew this Saudi re-entry visa. In 1984, Faddoul entered the US as a non-immigrant student to study aviation and electronics. He married a US citizen and stopped attending classes in May 1985. As he planned to apply for permanent legal status in the US, he stopped returning

to Saudi Arabia and allowed his re-entry visa to expire. The failure of his marriage, however, precluded his plans to apply for permanent residence, and the Immigration and Naturalization Service instituted deportation proceedings against him. In August 1987, Faddoul was declared deportable for failure to comply with the conditions of his non-immigrant status. His request for permission to apply for a withholding of deportation or asylum was denied, but he was granted time for voluntary departure before December 1987. However, due to a fire at the detention center, which destroyed all his immigration papers, Faddoul got a second hearing of his case.⁷⁵⁹ The second hearing commenced in June 1989. Again, the judge found him deportable, but allowed him to submit an application for asylum or withholding of deportation. Faddoul claimed in his application, that (assuming Saudi Arabia permitted him to return) he would face persecution because the government severely restricted the rights of Palestinians. He claimed, moreover, that Saudi Arabia was likely to prohibit his return, because his re-entry visa had expired and he could no longer receive derivative sponsorship due to his age. The immigration judge denied Faddoul's request for asylum and withholding of deportation, concluding that the discriminatory treatment which Palestinians, as non-Saudis, receive in Saudi Arabia did not constitute persecution. Faddoul was granted voluntary departure for a period of six months – after which time he would be deported to Honduras, as per his request, or to Saudi Arabia or Lebanon if his admission to Honduras was refused. The Board of Immigration Appeals affirmed the decision, and the case went to the Court of Appeals.

The Court of Appeals confirmed that the granting of asylum is discretionary, whereas the withholding of deportation is not discretionary. To be eligible for withholding of deportation, the alien must demonstrate a “clear probability” of persecution upon return. This standard contains no subjective component but requires a higher objective likelihood of persecution than the “well-founded fear” standard. Once the alien establishes such a clear probability, the immigration judge must withhold deportation of the alien for so long as the threat of persecution persists.

With regard to persecution based on the denial of certain rights to Palestinians in the Gulf States, the Court of Appeals concluded that there was no indication that the Saudi government had ever arrested, detained, interrogated or physically harmed Faddoul in any way. Moreover, the government had never harmed any of his family members residing in Saudi Arabia. The Court also noted that, while Saudi Arabia obviously denied Palestinians certain rights enjoyed by Saudi citizens, the government did not single out Palestinians for discriminatory treatment.

With regard to Faddoul's claim that he was unable to return to Saudi Arabia because that country denied him the re-entry privileges afforded Saudi citizens, and that he was unable to return to any other country because he was stateless, the Court concluded that statelessness alone does not warrant asylum. The Court noted that:

Faddoul's inability to obtain a re-entry visa is due in part to his decision to allow his visa to expire. Thus it is relevant to an asylum eligibility determination whether an applicant has attempted to comply with all the conditions that the host state has placed upon his residence and re-entry.

In this case, the finding that Faddoul had voluntarily allowed his residence permit in Saudi Arabia expire was crucial for the decision. This element distinguished the case from other cases involving Palestinians from Kuwait (in addition to the factor of political oppression there).

8. Reference to Relevant Jurisprudence

Administrative Decisions by the BCIS and immigration judges are not published. Unpublished decisions by the Board of Immigration Appeals are not available either, whereas published decisions by the Bureau of Immigration and Asylum (BIA) are available at: <http://www.uscis.gov>.

Fifth Circuit

Date	Name	Summary
25 October 1994	<i>Elias Joseph v. INS</i>	N/A
5 November 2004	<i>Yousef Mohammed Alami v. Aschroft</i> 112 Fed.Appx.362, 2004 WL 2491666of	The case involved a Palestinian from the West Bank who alleged that the Israeli authorities had a pattern and practice of persecuting Palestinian Muslims in the West Bank. The Court supported the Immigration Judge's conclusion that "the violence against Palestinians was part of ongoing civil strife", which did not warrant asylum.

Sixth Circuit

Date	Name	Summary
2004	<i>Fanhoun v. Ashcroft</i> 109 Fed. Appx. 46, 2004 WL 1982344	The Court upheld the denial of a Palestinian asylum claim based on fear of persecution in Jordan. The claimant had referred to his inability to find work.
8 January 2004	<i>Bassam Garadah v. John Aschroft</i> 86 Fed. Appx.76, 2004 WL 68532	Asylum denied to a Palestinian claiming persecution in Kuwait. He claimed that he suffered harassment from Kuwaiti soldiers and the Kuwaiti government because he was a Palestinian and due to the past discrimination of his father and brother.

Seventh Circuit

Date	Name	Summary
19 March 2004	<i>Said v. Ashroft</i> 93 Fed. Appx. 83, 2004 WL 604227 (unpublished)	Denial of asylum to a Palestinian from the West Bank was affirmed by the Court. The claimant had been a leader in a local mosque and singer of liturgical songs. He claimed fear of persecution by other Palestinians for publicly expressing the view that Palestinians and Israelis could co-exist.

Eight Circuit

Date	Name	Summary
22 January 2004	<i>Elfarrar v. Aschcroft</i> 88 Fed. Appx. 141, C.A.8, 2004	<p>A Palestinian woman from Saudi Arabia was denied asylum. The Court of Appeals held that allegations of discrimination, harassment, and denial of educational and employment opportunity in Saudi Arabia on account of an alien's Palestinian origin did not amount to persecution: "Elfarrar argues that as a stateless Palestinian living in Saudi Arabia, she suffered discrimination, harassment, and denial of educational and employment opportunity on account of her Palestinian origin, and that she will suffer this treatment again if removed from the United States. She argues that this treatment amounts to a denial of her basic human rights so severe as to constitute persecution. She also asserts that because she is Palestinian and does not have a valid re-entry permit or a valid sponsor in Saudi Arabia, she will not be allowed to enter the country. We conclude that the denial of asylum and withholding of removal is supported by substantial evidence. Even assuming that Elfarrar's fears are objectively and subjectively reasonable, the harms that she describes do not amount to persecution under the Immigration and Nationality Act. 'Persecution is the infliction or threat of death, torture, or injury to one's person or freedom, on account of race, religion, nationality, membership in a particular social group, or political opinion.' <i>Regaldado-Garcia v. I.N.S.</i> 305 F.3d 784, 787 (eighth Cir.2002). Elfarrar does not allege harm that meets this definition. She alleges no threats, torture, physical injury, arrests, or detention. She does allege a great deal of discrimination and numerous restrictions on her educational and employment opportunities. However, we have held that being denied the right to pursue the educational goals of one's choice and having economic or professional hardship is not persecution. <i>Feleke v. I.N.S.</i>, 118 F. third 594, 598 (eighth Cir. 1997); <i>Nyonzele v. I.N.S.</i>, 83 F. 3d 975, 983 (eighth Cir. 1996). Also see <i>Ahmed v. Ashcroft</i>, 341 F.3d 214, 217 (third Cir. 2003) (holding that 'widespread legal and economic discrimination against [stateless] Palestinians' in Saudi Arabia does not amount to persecution); <i>Najjar v. Ashcroft</i>, 257 F.3d 1262, 1291 (11th Cir. 2001) (holding that stateless Palestinians were not persecuted by being denied citizenship and entry privileges by Saudi Arabia); <i>Faddoul v. I.N.S.</i>, 37 F.3d 185, 188-91 (5th Cir.1994) (holding that a Palestinian born in Saudi Arabia did not suffer persecution where government denied him citizenship and discriminated against him). ...Because Elfarrar cannot meet the standard for asylum, the IJ correctly denied her request for withholding of removal."</p>

Ninth Circuit

Date	Name	Summary
1 September 2004	<i>Eyad Gamal El Bitar v. Ashcroft</i> 109 Fed. Appx 179, 2004 WL 2030106	The case involved a stateless Palestinian from Saudi Arabia. The Court held that his discriminatory treatment in Saudi Arabia did not amount to persecution and that his statelessness did not entitle him to asylum.
2 June 2004	<i>Joseph Elian v. Ashcroft</i> 03 Fed. Appx. 78, 2004 WL 1208869	The case involved a Palestinian from the West Bank. The Court found that threats alone do not constitute persecution. The Court found no evidence to support the allegation of persecution in Jordan on the basis that the applicant was a Christian Palestinian.
6 May 2004	<i>Baballah v. Ashcroft</i> 367 F.3d 1067	The case involved a Palestinian who was an Israeli national, his wife and their oldest child. His parents were the only Jew and Muslim to marry in his home town. As a result of their mixed marriage, the applicant suffered repeated instances of discrimination when seeking work as a young man. Although he had studied to be an accountant, bank officials refused to hire him on uncovering his background. Despairing of finding other employment, he went to work for his family as a fisherman. During the ten years that he worked as a fisherman, he was the victim of incessant threats and acts of violence by the Israeli Marines. These events made it impossible for the appellant to earn a living. Subsequently, his fishing boat was destroyed by Israeli Marines. The Immigration Judge had concluded that the evidence had not shown that the applicant would be unable to support his family if required to return to Israel. She questioned whether the violence and other acts directed at the applicant were based upon protected ground. The Court concluded, however, that the applicant suffered persecution in the past and that he had demonstrated a genuine and well-founded fear of future persecution should he return to Israel. He and his family were therefore eligible for asylum.
7 January 2004	<i>El-Himri v. Ashcroft</i> , 87 Fed. Appx. 30, C.A.9, 2004	A Palestinian from East Jerusalem was denied asylum and ordered to be deported to Jordan.
1 May 2000	<i>Raja Darwish, Bader Raja and Asma Abdulmotty El Ghussein v. INS</i> 2000 US App. Lexis 8868	
30 September 1997	<i>Mohammad Issa Alshibat v. INS</i> US App. Lexis 27125	

Date	Name	Summary
29 March 1996	<i>Bashar Abdulrahim Bader v. INS</i> 1996, US App. Lexis 7661	A Palestinian who was a Jordanian citizen was found not to have a well-founded fear of persecution by the Jordanian authorities. The applicant's fear of involuntary conscription into the Jordanian military could not support his claim for asylum.
	<i>Hajeissa v. INS</i> 59 F.3d 175, 1995 WL 369510	A Palestinian from Syria was denied asylum (his claim was related to desertion from military service).
21 February 1991	<i>Mohammad Ebrahim Suradi v. INS</i> 1992 US App. Lexis 2596	A Palestinian who was a Jordanian citizen had been arrested and detained by the Jordanian authorities. He alleged to have been beaten during the detention. The Court agreed to the appellant's claim that BIA had erred by concluding that his testimony lacked credibility. The Court therefore remanded the case to BIA for further proceedings.
12 June 1991 ⁷⁶⁰		The case involved a Palestinian who was a Jordanian citizen. The Court agreed to the appellant's claim that BIA had erred by concluding that his testimony lacked credibility. The Court therefore remanded the case to BIA for further proceedings.

Tenth Circuit

Date	Name	Summary
3 September 1997	<i>Amin Maloukh v. INS</i> 1997 US App. Lexis 23129	The case involved a Palestinian who lived in Israel until he entered the US on a student visa. He alleged, among other things, past persecution and a well-founded fear of persecution by Hamas. The Court rejected his claim.

Eleventh Circuit

Date	Name	Summary
	<i>Najjar v. Ashcroft</i> 257 F.3d 1262, 1291	(see section 5, above)

Decisions by Immigration Judges

Date	Name	Summary
21 October 2002		A female health care worker from the West Bank was denied an application for asylum, a request for withholding deportation and a petition for protection under the Convention Against Torture. The Judge found that there was a delay in filing her application, and that the delay in filing from the time of the changes in conditions in the West Bank was not reasonable. The Judge further ruled that he would have denied the asylum application even if it had been filed in time, because employment is not an immutable characteristic and the Respondent could change her employment and avoid persecution in the future. The case was appealed to the BIA, which summarily affirmed the decision without opinion on 6 May 2004. This decision will be appealed to the 5 th Circuit Court of Appeals.
4 May 2004		The Judge (Immigration Judge Cary Copeland) denied adjustment of status, based on misrepresentation and denial of a 212(i) waiver, to a Palestinian born in Lebanon who entered the US in 1988 at the age of eleven or twelve. The applicant had graduated from Texas Wesleyan Law School. He has a US-citizen wife and US-citizen father and siblings. The applicant was alleged to have failed to include a 1994 arrest ⁷⁶¹ on his 1996 application for adjustment of status. His offence had been categorized as a Class B misdemeanour, i.e., a small crime which carries no deportation consequences.

9. Links

US Citizenship and Immigration Services: <http://www.uscis.gov>

AUSTRALIA⁷⁶²

1. Statistical Data

According to unofficial community estimates from 20,000 to 30,000 Palestinians are living in Australia today.⁷⁶³

The only official figure available is related to the number of Palestinians who arrived in Australia by boat in 2001, i.e., some 159 Palestinians (3.8% of the total number of boat arrivals).⁷⁶⁴

No information is available regarding the way Palestinian asylum-seekers are registered in Australia.

2. Status of Palestinians upon Entry into Australia

As in the case of other asylum-seekers, Palestinians who enter Australia legally and then apply for asylum are provided with a Bridging Visa that allows them to legally remain in Australia while their application for refugee status is being considered. If their application was made within 45 days of arrival, they are also entitled to: a) apply for a work permit; and b) receive Medicare assistance.

If a Palestinian or any other asylum-seeker enters Australia without a valid visa or passport, she/he will be detained in one of the five immigration detention centers for the duration of the determination process. Persons who enter illegally are not eligible for permanent residence, but can only be granted a three-year Temporary Protection Visa (see below).

Most refugees come to Australia under the Refugee and Special Humanitarian Programme. They are selected overseas, usually after referral from UNHCR, and enter Australia with a visa that entitles them to permanent residency.

3. Refugee Determination Process: Protection Visa

In general, applications for refugee status are considered by the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA), and by the Refugee Review Tribunal (RRT) at the appeal level,⁷⁶⁵ on the basis of the Migration Act of 1958, as amended. The Migration Act refers to persons towards whom Australia has “protection obligations,” including refugees as defined under Article 1 of the 1951 Refugee Convention. If a person is found to be a

refugee, Australia is considered to have “protection obligations” and will grant a protection visa.

3.1 Article 1D in Refugee Status Determination

Australian courts have consistently rejected that Article 1D, second paragraph, contains an inclusion clause which would automatically confer refugee status upon Palestinian refugees.⁷⁶⁶

This interpretation of Article 1D is supported, in the view of some Federal Court judges, by the language of Article 33 of the 1951 Refugee Convention (protection against *refoulement*), which refers to the term “refugee” in both the first and second paragraphs and to the word “benefits” in the second paragraph: “[t]he benefits of the present provision may not, however, be claimed by a refugee ...”⁷⁶⁷ Thus, the benefits in Article 33 are available only to those persons who are refugees and not to anyone else.⁷⁶⁸

The interpretation of the scope of the exclusion clause in Article 1D, first paragraph, has, however, been a source of ongoing debate. In the past, i.e., before the Federal Court’s decision in *Wabq* (see below), Article 1D, first paragraph (exclusion clause), was interpreted by both the Tribunal and the Federal Court as a reference to *individual* persons. The central issue was, therefore, whether an *individual* was actually receiving (or entitled to receive) protection or assistance from UNRWA.⁷⁶⁹

Jurisprudence

Wabq v. Minister for Immigration and Multicultural and Indigenous Affairs⁷⁷⁰

A new and alternative interpretation of Article 1D was applied by all three members of the Full Federal Court (Judge Hill, Judge Tamberlin and Judge Moore), whereby Article 1D referred to the “class of persons” receiving “assistance or protection” from UNRWA. This position was based on the language of Article 1D, i.e., the plural term “persons” in the first and second paragraphs, and on the argument that it would be inappropriate to speak of an individual’s situation being “definitively settled in accordance with the relevant General Assembly Resolutions” (second paragraph). The term, “persons,” must therefore refer to a group.⁷⁷¹ This means that when applying Article 1D, it is not relevant whether a particular person is actually receiving assistance or protection. It is sufficient to know whether that person is within the class of persons to which the first paragraph of the applies, i.e., the class of persons who are at present receiving assistance or protection from an agency of the United Nations.⁷⁷²

If a person is within that class of persons, the question arises as to whether the second

paragraph of Article 1D is applicable so that the exclusion clause (first paragraph) no longer applies. The three judges agreed that “protection” in the second paragraph was a reference to UNCCP. Judge Tamberlin stated that, at the time of drafting the 1951 Refugee Convention, the position was that UNRWA was providing assistance and UNCCP was charged with the function of providing protection to persons in the sense of the repatriation of Palestinians and the protection of their property rights.⁷⁷³ The references in the 1951 Convention to “organs or agencies” of the United Nations in plural and the language “for any reason” must be interpreted in this way.⁷⁷⁴

The three judges expressed different views regarding how to determine “when such assistance or protection has ceased,” although they agreed that the question should be sent back to the Refugee Review Tribunal to establish the facts of this issue.

On the one hand, Judge Hill concluded that the question was whether UNCCP provided protection at the time of the ratification of the 1951 Refugee Convention. If UNCCP had provided protection at that time, then that protection had ceased. On the other hand, if there had been no agency that had provided protection, then there would have been no agency that had “ceased” to do so. The consequence would be that the exclusion clause in the first paragraph was applicable unless UNRWA ceased to provide assistance or there was a final solution to the Israeli-Arab conflict.⁷⁷⁵

Judges Tamberlin and Moore disagreed and stated that the question to be answered was not whether UNCCP had, in fact, provided protection, but whether the protection provided by UNCCP had ceased. Judge Moore argued that:

The framers of the Convention proceeded on the basis that protection (as part of the composite expression protection or assistance) was being provided in 1951 ... and it was on that footing that the complementary provisions in the first and second paragraph of Article 1D were adopted.⁷⁷⁶

Although the question raised was sent back to the Tribunal, Judge Tamberlin concluded that:

The documents relating to UNCCP ... strongly indicate that since 1951, protection has ceased to be available because UNCCP has been unable to perform its mandate. Accordingly, if protection has ceased, the respondent would be entitled to the benefit of the Convention, that is to say, to have his application for refugee status determined according to the Convention definition in Article 1A.⁷⁷⁷

In January 2003, the Refugee Review Tribunal in Melbourne made the findings referred to it by the Federal Court. While this decision has not been made public, BADIL was informed that it was in favor of Wabq. It may thus be assumed that the Tribunal agreed with Federal Judges Tamberlin and Moore and concluded that UNCCP protection had ceased. Wabq would therefore not be excluded from the 1951 Refugee Convention and his claim would be determined according to the standards of Article 1A(2).⁷⁷⁸

This “class of person” approach to interpreting Article 1D has been followed by the Refugee Review Tribunal in subsequent cases. In its decision of 25 July 2003 (V00/11443), for example, the Tribunal concluded that:

The relevant factual issue in relation to the first paragraph is whether the applicant belongs to the relevant class of persons. In the case of a stateless Palestinian applicant, if Palestinians as a group were as at 28 July 1951 receiving protection or assistance then the first paragraph applies... If a person falls within the terms of the first paragraph, it is then necessary to consider if the second paragraph applies. The Full Court in *Wabq* held that the second paragraph is also concerned with a class of persons rather than individuals and that it is sufficient if either protection or assistance has ceased for any reason in respect of the class (without their position being definitively settled) for the second paragraph to apply. ...Independent evidence before me indicates that whether or not UNRWA ever did provide protection to Palestinians, it does not do so now. UNRWA provides assistance to Palestinians primarily in the areas of health, education, social and emergency aid. ...Since the independent evidence shows that the class of persons to which the applicant belongs does not enjoy protection from a relevant UN body, I find that the applicant is not excluded from the Convention.⁷⁷⁹

The effect of this jurisprudence is that the exclusionary effect of Article 1D, first paragraph, is to all intents and purposes nullified in respect of refugees who belong to the class of Palestinians who are receiving assistance from UNRWA. Since UNCCP is no longer providing them with protection, such Palestinians are not excluded from the right to apply for refugee status under Article 1A(2) of the 1951 Refugee Convention.

Australian courts have not explicitly debated how to define the class of Palestinians to whom the above applies. All asylum-seekers involved in the decisions cited above were Palestinian refugees registered with UNRWA. In light of the detailed reasoning by the three judges in *Wabq*, it may be concluded that the class of persons concerned are Palestinian refugees who fall under UNRWA’s mandate.⁷⁸⁰

Jurisprudence Sample cases

Since the 2002 Federal Court decision in *Wabq*, asylum cases involving stateless Palestinians have been decided along the lines of that ruling.

Decisions of the Refugee Review Board have no binding or precedent-setting value. Board members issue decisions based on the facts and merits of each case. Some Palestinians have been granted protection visas because they fulfilled the criteria under Article 1A(2) of the 1951 Convention. Other Palestinians have not satisfied the criteria for protection visas, i.e., by being persons to whom Australia has protection obligations under the 1951 Convention.⁷⁸¹

West Bank and Gaza Strip: General Violence resulting from the Israeli Occupation and Directed against Palestinians as a Group May Constitute Persecution

Recently however, the Refugee Review Tribunal has also granted protection visas to Palestinians on the basis of the general circumstances in the OPT. Palestinians in the Gaza Strip and the West Bank have been considered as being subjected to extreme hardship that amounted to “serious harm” as described in Section 91 R(2)d, e and f of the Australian Migration Act, and the outcome of the current Israeli policy towards Palestinians as a group was, therefore, seen as persecution (see below).

In the case of a Palestinian from the West Bank who claimed fear of persecution from Hamas because, by coming to Australia, he had dodged an invitation from the group to volunteer for military operations, the Refugee Review Tribunal noted in its decision of 7 April 2004⁷⁸² that the applicant was not excluded from applying for protection under the 1951 Refugee Convention, as he fell within the class of persons who do not enjoy protection from a relevant UN body. Tribunal Member Kelleghan then concluded that the applicant had fabricated the claim that Hamas represented a threat to his person in order to file for asylum. Nevertheless, Kelleghan proceeded to consider the situation the applicant was likely to face if he were to be returned to his hometown:

The applicant's evidence shows that as a Palestinian living in the Occupied Territories he is fearful of the future for Palestinians such as himself in relation to Israeli policy and the collapse of the Palestinian Authority. He had no realistic protection against harm over these factors and was wide open to such harm as occurred when, recently, Israeli forces raided his home and arrested one relative for no reason known to the applicant.

... It follows from the above that I do not consider it to be persecution the mere fact that Palestinians are selected by Israeli authorities to be interrogated, searched, and detained to investigate possible threats to the general Israeli community. Since the violence feared by Israelis emanates from a certain race, Palestinians, the discrimination shown by Israeli security forces in targeting

Palestinians in the manner described above is logical and reasonable.

Nevertheless, the law states that if measures not intended to be persecutory in nature nevertheless have the effect of causing persecution then the protection of the Convention may be invoked. For the reasons given below, I find that this is at the very least the applicant's situation. He faces serious hardship, discrimination and harm for being a Palestinian living in the Occupied Territories subject to Israeli security practices, and not by reason of anything he himself has done by engaging in certain behaviour or placing himself in a particular situation.

More disturbingly, the overwhelming independent evidence before me suggests that Israeli actions against Palestinians are of a dimension different to simple counter-terrorism. The actions are part of a systematic campaign of severe harassment, harm and discrimination directed at Palestinians, and they transgress the limits of what could be termed legitimate actions aimed at safeguarding national security...

While as I stated earlier I do not consider detention in itself to be persecution in the pursuit of national security, Israeli detention policy amounts to an abuse of human rights that cannot be excused by security needs... I find that Israel's aggressiveness in responding to Palestinian attacks goes far beyond pure security needs... I consider that the circumstances detailed above and below make it almost impossible for Palestinians in Gaza and the West Bank to make a livelihood...

On the basis of those facts and arguments, Kelleghan concluded:

I find that the applicant lacks protection against this persecution ...

I find that his race and his membership of a targeted group of male Palestinians cumulatively give him a well-founded fear of persecution if he were to return to the West Bank.

Another case involved a Palestinian refugee from Gaza who was registered with UNRWA. He entered Australia on a valid visa claiming that he had been employed in a particular position (the details of this position had been deleted from the decision) due to which he and others were reviled as traitors by other Palestinians. He also claimed that the Palestinian Authority wanted to arrest him because he was thought to have been supplying the Israelis with information about Palestinian activists. In its decision of 20 February 2002, the Refugee Review Tribunal rejected the applicant's claims of persecution by the Palestinian Authority or others.⁷⁸³ However, the Tribunal accepted the applicant's alternative argument for refugee status, i.e., "the future for Palestinians such as himself in relation to Israeli policy".⁷⁸⁴

Independent evidence above shows that Palestinians as a group are targeted by Israeli authorities, that they face discrimination, harassment and harm of a high

level, that such treatment is significantly beyond what is required of legitimate Israeli precautions and systematically targets the innocent as well as the guilty, that such targeting results in serious and systematic harm to Palestinians as a group against which they are helpless.⁷⁸⁵

Thus, in the view of the Tribunal, Palestinians in the Gaza Strip and the West Bank were subject to extreme hardship that amounted to “serious harm” as described in Section 91 R (2)d, e and f of the Australian Migration Act (i.e., “significant economic hardship that threatens the person’s capacity to subsist” (d); “denial of access to basic services, where the denial threatens the person’s capacity to subsist” (e); and “denial of capacity to earn a livelihood of any kind, where the denial threatens the person’s capacity to subsist” (f)). The outcome of the current Israeli policy towards Palestinians could, therefore, be seen as persecution of Palestinians.⁷⁸⁶

Applying those arguments to the particular case, the Tribunal concluded that the applicant was entitled to a protection visa because:

his race and his membership of a targeted group of male Palestinians cumulatively give him a well-founded fear of persecution if he were to return to Gaza.⁷⁸⁷

Lebanon

A case before the Refugee Review Tribunal of 12 March 2004⁷⁸⁸ involved a Palestinian who was born in Kuwait. His family had left Kuwait in the late 1980s and moved to Lebanon. He claimed that he was wanted by Hamas and that the Lebanese government would not protect him. The Tribunal noted that the applicant’s situation in Lebanon was effected by general discrimination against Palestinians and, specifically, by a 2001 legislation which prevented him and his siblings from inheriting their mother’s home, thereby forcing them to reside in a refugee camp. The Tribunal also noted that the applicant would be unable to relocate and so remove himself from the situation he claimed to fear, i.e., pressure amounting to persecution from Hamas. The Tribunal concluded that the applicant faced a real chance of persecution for reasons of his political opinion and/or ethnicity should he return to Lebanon, and that the Lebanese government was unable or unwilling to protect him.

4. Refugee Determination Process: Outcome

If an application for refugee status is accepted, DIMIA may grant the asylum-seeker either a permanent protection visa (PPV) or a temporary protection visa (TPV).

Protection visas are issued to: a) non-citizens in Australia regarding whom the Minister is satisfied Australia has protection obligations under the 1951 Refugee Convention; and b) non-citizens in Australia who are the spouses or dependents of non-citizens who fulfil (a) and hold protection visas.

Refugees recognized under Article 1 of the 1951 Refugee Convention are entitled to protection visas under Section 36 of the Migration Act. There are two sub-categories of protection visas: PPV and TPV. The criteria for entitlement are the same for both types of visa, except that PPV may not be granted to persons who entered Australia illegally or who applied for asylum while staying illegally in Australia. PPV is granted only to persons who arrived legally and who applied while still having legal status.

TPV and PPV give rise to very different entitlements. TPV holders, for example, have no right to family reunion and no automatic right of return to Australia if they leave the country. Moreover, TPV holders are not granted social security benefits, including Medicare, and they cannot sponsor relatives coming to visit in Australia.

Asylum-seekers whose application is finally rejected may apply for residence permits on humanitarian grounds. The Department of Immigration will review their claims and consider whether there are compelling humanitarian reasons against their return to the countries of origin or previous residence. If such reasons exist, the Minister of Immigration may grant residency on humanitarian grounds (section 417 of the Migration Act). However, the Minister is not compelled to intervene and only intervenes in a small number of cases each year.⁷⁸⁹ The reasons for the Minister's intervention must be brought before Parliament within six months of granting permits.

5. Return – Deportation

As in the case of other rejected asylum-seekers, Palestinians refused protection visas are expected to leave Australia and to return to their country of former habitual residence. They may be granted temporary bridging visas to remain until they can lawfully leave.

If rejected asylum-seekers fail to make their own travel arrangements within the prescribed period of time, deportation orders will be issued and the Government will organize their removal after liaising with the respective authorities in the countries of origin or former habitual residence. Sometimes rejected asylum-seekers can be kept in detention for long periods of time until permission to return is granted. As of June 2004, seven stateless persons were being held in limbo in detention centers with little or no prospect of release.⁷⁹⁰ However in some cases, rejected asylum-seekers are released from detention if there is no real likelihood or prospect for their removal from Australia in the reasonably foreseeable future.

Detention of Rejected Asylum-seekers

On 10 December 2003,⁷⁹¹ the Federal Court upheld its earlier decision of 3 October 2003 to release a Palestinian asylum-seeker from detention. He was from the Gaza Strip and had arrived in Australia in August 2001. Upon his arrival, he was detained and kept in detention for more than two years. In 2002, following the rejection of his application for a protection visa, he requested to be returned to Palestine [1967-OPT]. He sought a Palestinian passport, but was unsuccessful. In October, the Federal Court ordered him released from detention because there was no real likelihood or prospect for his removal from Australia in the reasonably foreseeable future.

A Kuwaiti-born Palestinian asylum-seeker of twenty-five was detained for ten months in the Australian detention center on Manus Island, north of Papua New Guinea. He was the only occupant of the detention center, at a cost of more than US\$200,000 per month.⁷⁹² He had initially arrived in Papua New Guinea and was imprisoned by the authorities. He then came by boat to the Australian mainland and was apprehended by the authorities there. His lawyer argued that he had been within the Australian migration zone when he applied for asylum, whereas DIMIA argued that he did not properly apply for refugee status while on Australian soil because he forgot to ask for a specific form. He was removed from the mainland and sent back to Manus Island.⁷⁹³ On 28 May 2004, following a request by UNHCR, he was released from detention and granted a five-year humanitarian visa.⁷⁹⁴

The High Court of Australia approved in its decision of 6 August 2004, *Al-Katab v. Godwin* [2004] HCA37 the legality of unlimited detention. The case involved a stateless Palestinian who was born in Kuwait. In 2000, he arrived in Australia without a visa. He was taken into immigration detention and then applied for a visa. His application failed. Attempts by the Australian authorities to remove him have failed.”

6. Temporary Protection

Temporary protection schemes (safe haven visas) have been implemented with regard to, for example, Kosovo Albanians. They are of limited duration and the holder is prohibited from applying for a protection visa or any other visa while in Australia. Such schemes have not been implemented with regard to Palestinians.

7. Protection under the Statelessness Conventions

The 1954 Stateless Convention entered into force in Australia on 13 March 1974. The Convention has, however, not been incorporated into domestic law. A stateless person can therefore not seek protection under the Convention.

The issue of statelessness has been dealt with in the context of claims for refugee status. The Federal Court has confirmed that statelessness is not, in itself, sufficient to establish refugee status, nor is the mere inability to return to a country of former habitual residence.⁷⁹⁵

8. Reference to Relevant Jurisprudence

Before 1 June 1999, all Refugee Review Tribunal decisions were published. Since that date, only decisions considered to be of “particular interest” are published.

The website of the Australasian Legal Information Institute (AUSTLII) contains decisions of the Refugee Review Tribunal, as well as decisions by the Australian High Court⁷⁹⁶ and the Federal Court: <http://www.austlii.edu.au/au/cases/cht/rrt>.

Recent RRT decisions in Palestinian asylum claims:

19 July 2004	N04/48145 OPT
29 June 2004	N04/48633 Syria
16 June 2004	N04/48211 OPT
2 June 2004	V02/14363 Lebanon
7 April 2004	N03/47958 West Bank
9 April 2004	N01/41009 Israel
12 March 2004	V03/15685 Lebanon
11 September 2003	N02/44504 Jordan
25 July 2003	V00/11443 Lebanon
26 June 2003	N02/41509 Jordan
20 February 2002	N01/39434 OPT

Recent Federal Court decisions regarding Palestinians:

15 June 2004	<i>VUAX v. MIMIA</i> (FCAFC 158)
10 December 2003	<i>SHMB V. Goodwin</i> (FCA 1444)
27 October 2003	<i>M v. MIMA</i> (FCA 1185)
21 August 2003	<i>Wajb v. MIMI</i> (FCAFC 192)
24 February 2003	<i>Wadj v. MIMIA</i> (FCA 99)
22 November 2002	<i>Wajb v. MIMI</i> (FCA 114)
8 November 2002	<i>Wabq v. MIMI</i> (Full Court) and four similar cases: <i>Wacg, Wach, Waed and Waei v. MIMI</i>

9. Links

Refugee Council of Australia: <http://www.refugeecouncil.org.au>

Refugee Review Tribunal: <http://www.rrt.gov.au>

Department of Immigration and Multicultural and Indigenous Affairs:
<http://www.immi.gov.au>

NEW ZEALAND⁷⁹⁷

1. Statistical Data

Official sources estimate the number of Palestinians living in New Zealand to be 60 persons.⁷⁹⁸

Palestinians seeking asylum in New Zealand are registered as “Palestinians” under the Ethnic Group Classification by the national authorities.

Between 1 July 1996 and 1 September 2004, fourteen asylum claims were submitted by Palestinians. On the first instance level (Refugee Status Branch), three claims were approved, seven declined, two were withdrawn and two cases have not yet been decided.⁷⁹⁹ In the same period, there were four appeals by Palestinians to the Refugee Status Appeals Authority (RSAA). All appeals were unsuccessful, except for one appeal which is still pending.

2. Status of Palestinians upon Entry into New Zealand

As in the case of other asylum-seekers, Palestinians in New Zealand may submit their applications for asylum to the Refugee Status Branch of the New Zealand Immigration Service. During the determination process, they may be detained either in a remand prison or in an open detention center, or they may be granted a temporary residence permit. Work permits are issued at the discretion of the New Zealand Immigration Service and only if relevant policy criteria are satisfied.

3. Refugee Determination Process: Refugee Status and Complementary Forms of Protection

The right to asylum is set out in the Immigration Act 1987 (Part 6A). Sections 129C and 129D of that Act provide that where a person seeks to be recognized as a refugee in New Zealand, that claim must be determined in a manner consistent with New Zealand’s obligations under the 1951 Refugee Convention.

Asylum-seekers who are not recognized as refugees may be granted a complementary form of protection on humanitarian grounds. Section 47 of the Immigration Act requires, however, that the individual establish that there are exceptional circumstances of a humanitarian nature that would make it unjust or unduly harsh for the person to be removed from New Zealand, and that in all circumstances it would not contravene public interest to allow the person to remain in New Zealand.

New Zealand is also party to the Torture Convention, so the *non-refoulement* provision of that Convention applies when a decision is made to remove a person from New Zealand (see Chapter Four).

3.1 Article 1D in Refugee Status Determination

The Australian Refugee Status Appeals Authority (RSAA) has interpreted Article 1D as follows:

Article 1D is a provision to be examined in Palestinian asylum cases in order to determine whether a person is entitled to apply for refugee status under the criteria set out in Article 1A(2) of the 1951 Refugee Convention;

Article 1D, second paragraph, does not provide wholesale entitlement to the benefits of the 1951 Refugee Convention to Palestinians who fall under UNRWA's mandate.

This interpretation was laid out in the principle RSAA decision on Article 1D in case No. 1/92 ReSA of 30 April 1992 (see below) and has been upheld in subsequent decisions by the Refugee Status Branch and RSAA. As a result, Palestinian asylum cases are determined under Article 1A(2), and the provisions of Article 1D are de facto irrelevant in this context.

Jurisprudence **Case No. 1/92 ReSA, 30 April 1992⁸⁰⁰**

The case involved a stateless Palestinian born in 1965, 10km north of East Jerusalem. The area in which the family lived was farmland occupied by Israel in 1967. In 1978, the appellant was sent by his parents to live with his uncle in Morocco, in order to protect him from danger caused by frequent fighting between Israelis and Palestinians in the neighborhood. His two brothers were sent to Tunisia to live with another relative there. The appellant's parents remained in the West Bank, and contact with both them and his brothers was lost. The appellant entered Morocco illegally. With the help of Palestinian organizations there, he obtained a yellow identity card identifying him as a Palestinian living in Morocco. He completed his education and found employment as a tailor, but remained concerned that the Moroccan authorities would return him to Israel if his true identity was discovered. In 1987, he decided to leave Morocco because he had no rights and legal status there. At that time, the appellant travelled to the Atlantic Port of Kenitra and stowed away on board of a ship which arrived at La Rochelle, France, some six days later. For the next two years, he lived and worked in France. In 1991, he went to the Netherlands and sought asylum there. His application was rejected. Following several trips from the Netherlands, and after having been refused entry to Australia, he arrived in New Zealand in 1991. There, he claimed that he could not return to Jerusalem as he feared being killed either by the Israelis or Palestinians.

He feared the latter because he anticipated that he would be mistaken for an Israeli spy because he did not have a Palestinian accent. His accent was Moroccan, and he would be treated with suspicion by both Palestinians and Israelis.

RSAA examined in detail the language of Article 1D and the *travaux préparatoires*. With regard to UNRWA's mandate, RSAA noted:

UNRWA's mandate extends only to assisting Palestinian refugees, not protecting them. Palestinians therefore have the unfortunate distinction of being the only group of refugees in the world who are excluded formally from any international protection.⁸⁰¹

With regard to Article 1D, second paragraph, "if such protection or assistance has ceased for any reason," RSAA concluded that:

In our opinion there are two possible interpretations [of the term "has ceased for any reason"]. First, that the words "has ceased for any reason" apply to any situation in which a person in receipt of UNRWA assistance leaves the area in which UNRWA operates. This interpretation would emphasize the words "any reason." The second interpretation, however, would place emphasis on the words "ceased" in the phrase "when such protection or assistance has ceased for any reason." On this interpretation, if UNRWA continues to operate, the assistance it affords does not cease simply because a particular individual who was previously in receipt of such assistance is no longer in the area of operation. In other words, there is a clear distinction in the meaning of the phrases "at present receiving" and "has ceased." The one is not the antonym of the other. We prefer the second interpretation for the following reasons:

- a) It avoids a manifestly absurd result. Otherwise, an individual who satisfies the UNRWA definition not only receives the benefit of UNRWA while residing in the area of operation, but also the moment he leaves that area and arrives in a Convention country he becomes *ipso facto* entitled to the benefits of the Refugee Convention. Such person is at no stage required to establish a "well-founded fear of persecution." On the other hand, a Palestinian who does not meet the UNRWA definition is not only without assistance while living in, say, the West Bank, but is also required upon arrival in a Convention country to establish a well-founded fear of persecution for a Convention reason.
- b) The interpretation we prefer is supported by Robinson in *Convention Relating to the Status of Refugees – Its History, Contents and Interpretation* (1953) 63. In his view the automatic assimilation in paragraph 2 of Article 1D only applies to persons who first fulfil the conditions prescribed for a person to be recognized as a Convention "refugee."
- c) Although the issue is not specifically addressed in Goodwin-Gill's *The Refugee in International Law* (1983) 57, it is nevertheless implicit in his treatment of the subject that Palestinians outside UNRWA's area of operation only receive the benefit of the Convention if it can be shown that they meet the requirements of the inclusion clause in 1(2): "In

addition, if Palestinians leave UNRWA's area of operation, they *may* well qualify *independently* as refugees within the Statute and the Convention." [emphasis added by the Appeals Authority]

- d) The implicit justification of the wholesale inclusion of Palestinians under the Convention, whether Convention refugees or not, is that this would be consistent with a commitment to a truly universal protection system. See Hathaway, *The Law of Refugee Status* (1991) 209. But the Authority finds difficulty in understanding how this can be justified on the language of Article 1D itself. Furthermore, if the purpose of both paragraphs in Article 1D was to achieve the wholesale inclusion of *all* Palestinians *per se*, it is strange that the specifically avoids this result by restricting its application to only those persons "at present receiving UNRWA assistance" i.e., to "UNRWA Palestinians." Furthermore, it is significant that this interpretation has not found universal acceptance.⁸⁰²

RSAA thus holds that Article 1D is a provision to be examined in order to determine whether a Palestinian asylum-seeker is entitled to apply for Convention refugee status under the criteria of Article 1A(2). Moreover, RSAA distinguished between the meaning of "persons at present receiving protection or assistance" (Article 1D, first paragraph), who would be Palestinian refugees falling under UNRWA's mandate, and the meaning of "if such protection or assistance has ceased for any reason" (Article 1D, second paragraph), which was found to address only the situation where UNRWA ceases to operate. The latter has not occurred and therefore Article 1D, second paragraph, cannot trigger the inclusion under the scope of the 1951 Refugee Convention of Palestinian refugees to whom Article 1D, first paragraph, applies.

An examination of the *ipso facto* language (Article 1D, second paragraph) was found to affirm the above conclusions, and RSAA stated:

In our view a narrow interpretation ... would once again lead to manifestly absurd or unreasonable results and we therefore find that the phrase "the benefits of the Convention" refers to the Convention as a whole and includes each and every one of the articles of the Convention, including Article 1A(2). In the situation envisaged by the second paragraph of Article 1D, therefore, UNRWA Palestinians must qualify for refugee status in the usual way by satisfying the Convention refugee definition.⁸⁰³

Applying its conclusions to the facts of the case, RSAA noted that there was no evidence as to whether the appellant would come under UNRWA's mandate if he were to return to the West Bank, OPT. However, RSAA ruled that, in any case, the appellant would have to satisfy the criteria of Article 1A(2) of the 1951 Refugee Convention. RSAA then considered both options: firstly, that the appellant would be eligible for UNRWA assistance upon his return, and secondly, that he would not.⁸⁰⁴ RSAA ruled that if he was a refugee eligible for UNRWA assistance, Article 1D, second paragraph, would not apply because UNRWA's assistance had not ceased, but was simply temporarily suspended by the appellant's departure from its area of operations.

4. Refugee Determination Process: Outcome

Persons who are recognized as refugees are usually (but not always) granted residence permits.⁸⁰⁵ This permit authorizes the holder to live in New Zealand indefinitely and to work and study there. A Convention travel document can be obtained from the Department of Internal Affairs. Persons granted complementary forms of protection on humanitarian grounds are also usually (but not always) granted residence permits. They are thus entitled to the same rights as all holders of residency permits. However, since they are not Convention refugees, they are not entitled to Convention travel documents.

Jurisprudence

In the above-mentioned case, RSAA examined whether the appellant fulfilled the criteria of Article 1A(2) of the 1951 Refugee Convention in relation to the West Bank. RSAA concluded that there was:

Nothing more than a very remote if not fanciful possibility of his being attacked by fellow Palestinians due to suspicions engendered by his accent and absence from the country.⁸⁰⁶

RSAA also concluded that he was not at risk of persecution from the Israeli authorities because:

On the facts there is nothing in the appellant's individual circumstances or in the law and practice of the Israeli authorities in the West Bank to create any chance of his persecution, let alone a real chance.⁸⁰⁷

5. Return – Deportation

Once a person has been denied refugee status, she/he is required by law to leave New Zealand. Persons failing to do so can be taken into custody and forcibly removed. Return, however, should not be carried out in violation of the provisions of the Torture Convention to which New Zealand is a party.

Rejected asylum-seekers who cannot be returned to their country of nationality or country of former habitual residence may, in some cases, be issued a temporary permit.

No information could be obtained about Palestinians whose asylum claims were finally rejected.

6. Temporary Protection

There is no special temporary protection regime for Palestinians in New Zealand.

7. Protection under the Statelessness Conventions

New Zealand is not party to the 1954 Stateless Convention or the 1961 Statelessness Convention.

In RSAA's decision 1/92 (see above), the authority decided to adopt the definition of a stateless person as set out in the 1954 Stateless Convention:

While New Zealand is not a party to the 1954 Convention Relating to the Status of Stateless Persons we nevertheless intend to adopt this definition [of the term "stateless person"] for the purpose of the present case.⁸⁰⁸

With regard to Palestinians, RSAA added that:

Presumably, the stateless status of Palestinians who do not enjoy Israeli or Jordanian citizenship arises from the fact that there is no Palestinian state.⁸⁰⁹

RSAA then noted that statelessness on its own is not recognized as ground for granting refugee status in New Zealand.⁸¹⁰ Turning to the interpretation of the term "country of former habitual residence," RSAA concluded that if the appellant could not return to any of his countries of former habitual residence, he could not qualify as a refugee because he would not be at risk of persecution by any state.⁸¹¹ RSAA then decided to assume that he could return to the West Bank.

8. Reference to Relevant Jurisprudence

Decisions by RSAA:

No. 1/92 Re SA, 30 April 1992

No. 72635/01, 6 September 2002

9. Links

The New Zealand Refugee Law website: <http://www.refugee.org.nz>

Website of the RSAA: <http://www.nzrefugeeappeals.govt.nz>

CENTRAL AND SOUTH AMERICA⁸¹²

1. Statistical Data

According to unofficial estimates, at least 600,000 Palestinians are living in Central and South America today, especially in Chile (300,000), Brazil (150,000), El Salvador, Honduras and Peru.⁸¹³ The number of Palestinians in El Salvador is estimated to be between 60,000-100,000, and both candidates for the March 2004 presidential elections were descendants of Palestinians who had emigrated from Bethlehem in 1912 and 1914 respectively.⁸¹⁴

The case of Palestinian emigration to Central and South America is special due to its early onset in the late nineteenth century, and its particular demographic composition. Palestinian immigrants to this region were (and continue to be) predominantly members of Christian communities in Palestine, mostly from towns and villages in the central West Bank, such as Bethlehem, Beit Shahrour, Beit Jala and Ramallah. Little information is available about the current size and situation of these large Palestinian exile communities. A brief account of the socio-political history and circumstances of their emigration is presented below, based on one of the rare sources on this topic.⁸¹⁵

The 1948 and 1967 Palestinian refugees appear to make up a very small portion of Palestinians in Central and South America, and asylum law and procedures appear to be rarely used by Palestinians in order to obtain secure legal status there.

BADIL has not been able to obtain information on Palestinian refugees who have sought asylum in Central and South America, except for some cases of persons who have sought asylum in the Andean region (Venezuela, Peru, Columbia and Ecuador) i.e., two cases in Peru and one in Ecuador.⁸¹⁶ In Peru, one case involved four Palestinians who had fled from Jordan in 1999. They were recognized as refugees in 2003 by Peru's Eligibility Commission, which based its decision on an opinion from UNHCR Caracas.⁸¹⁷ The Commission has not yet decided on the second case.

More detailed information was obtained about Palestinian asylum-seekers in Mexico, and a summary of findings is presented in a separate section below.

2. Status of Palestinians upon Entry into States in Central and South America

As most Palestinians do not enter countries of Central and South America in

order to seek asylum, they do not make use of the asylum procedures available there. Instead, Palestinians appear to enter these countries via visitors' visas, which – with the help of extensive family networks available there – are then converted into permanent residency permits according to the immigration law applicable in the respective country.

Historical Overview, Palestinian Emigration to Central and South America⁸¹⁸

Emigration

The first Palestinian immigrants came to Latin and South America in the last quarter of the nineteenth century:⁸¹⁹

Palestinians were “years ahead of Arab immigrants to explore the wilds of America” and ... preceded their Lebanese brethren in emigrating to the New World, although on a smaller scale, and [they] did not settle down in the countries they went to as the Lebanese did. This was confirmed by the elder of the Arab Lebanese community in Brazil in the fifties, Rizq Allah Haddad, as mentioned in the book, “Arab Speakers in South America.” According to him, two brothers from the family Zakhariya from the Tarajmah Quarter in Bethlehem were among the first Arabs who arrived in Brazil in 1874. They sold mother-of-pearl curios such as rosaries, crosses and icons in the main jewellers' streets in the city of Rio.⁸²⁰

International exhibitions held in the US played a pioneering role in attracting Palestinian merchants, including some from Bethlehem. Many visited the Philadelphia Exhibition in 1876, the Chicago Exhibition in 1893 and the St Louis Exhibition in 1904. They brought Holy Land products to the exhibitions. A Mexican merchant, for example, invited a merchant from Bethlehem, Mr Hanna Khalil Morcos, to come to Mexico in order to sell such products. Mr Morcos did so in 1895 and settled in the country. Others followed him.⁸²¹ Other merchants chose to live in Chile, Peru, Bolivia, Colombia and Honduras. Chile became the main center for emigrants from Bethlehem and Beit Jala. The first Palestinian emigrant to enter Chile was the late Jubra'il D'eiq from Bethlehem who came to the country in 1880.⁸²²

Initially slow, emigration accelerated following the outbreak of the First World War:

At the beginning emigration was slow and temporary as the fundamental aim was making a fortune and returning home. Between 1908–1918, however, coups, wars and compulsory military service resulted in a notable rise in the number of emigrants. With the outbreak of the First World War the price of basic goods went up sharply resulting in many shortages. In 1915 and 1916, hundreds of thousands of people were on the verge of death and starvation due to the spread of the typhus epidemic. Collective fleeing from the draft became a familiar phenomenon. Thus the slow and temporary emigration was

transformed gradually into a dangerous social phenomenon in whose bitter reality we are still living.⁸²³

Emigration continued during the British Mandate (1917–1948), when large groups of Palestinians, encouraged by relatives who had already emigrated, travelled to Chile, Colombia, Peru, Honduras and El Salvador.⁸²⁴ The total number of Palestinian immigrants in 1936 was estimated to be 40,000.⁸²⁵

At the same time the names of certain large families in Palestinian cities began to disappear gradually from local registers, resulting from collective emigration and family reunification in the diaspora. Such was the case in Bethlehem.⁸²⁶

Return

As Palestinians left Palestine in order to improve their economic conditions or to flee war, they did not intend to settle in new countries and many desired to return home.⁸²⁷ Following enactment of the new Palestinian Citizenship Orders by the British Mandate between 1925 and 1942, however, returning home became difficult for Palestinians staying in distant Central and South America. Considered Turkish subjects under the new British Orders, these Palestinians had the right to opt for Palestinian citizenship if they had left Palestine after 1924 and fulfilled the conditions specified by the law.⁸²⁸ However, ninety per cent of the Palestinians in Central and South America had left Palestine before 1924...They were thus considered Turks⁸²⁹ by the British authorities and were not entitled to Palestinian citizenship.⁸³⁰ Moreover, information about the new British Citizenship Orders in Central and South America was scarce, sometimes incorrect, and always late.⁸³¹

Efforts by the notables of the Bethlehem region to appeal and lobby the British authorities on behalf of the citizenship rights of their relatives abroad did not reap substantive results, and only 100 of a total of 9,000 applications submitted by emigrants from the area were approved.⁸³²

Return to Palestine remained difficult for Palestinian emigrants after the 1948 Israeli-Arab conflict. The Jordanian Citizenship Law No. 56/1949, enacted in 1950, deprived emigrants of Jordanian citizenship on the basis that they were not in Jordan when the two banks of the River Jordan (West Bank, East Bank/Jordan) were united.⁸³³ Since 1967, return to the Israel-occupied West Bank has been obstructed by Israeli restrictions of movement of Palestinians into the 1967-OPT.

3. Links

UNHCR website which including information on asylum procedures and refugee protection throughout Latin America (only in Spanish):<http://www.acnur.org>

MEXICO⁸³⁴

1. Statistical Data

No data on the number of Palestinians living in Mexico is currently available.

Few Palestinians have applied for refugee status in Mexico. Since the establishment of a national refugee status determination procedure in March 2002, only two Palestinians have requested and been granted asylum. Prior to 2002, six Palestinians were recognized as refugees by UNHCR.

2. Status of Palestinians upon Entry into Mexico

As in the case of other asylum-seekers, Palestinians in Mexico may submit an application for asylum to the Mexican Commission for Refugee Assistance (COMAR). Asylum-seekers are provided with letters issued by COMAR, which guarantees protection from deportation or removal during the asylum procedure. Asylum-seekers are not granted immigration status and do not receive work permits. Asylum-seekers who do not already have an immigration status are required to remain in the location where their claim was filed until a decision is made.

3. Refugee Determination Process: Refugee Status

Mexico ratified the 1951 Refugee Convention and the 1967 Protocol in April 2000. In March 2002, the Mexican government established a refugee determination procedure⁸³⁵ and formally took over the procedure from UNHCR. COMAR, a specialized office within the Ministry of the Interior, is responsible for this procedure. Following an interview with an asylum applicant, COMAR presents a recommendation to an Eligibility Working Group of which UNHCR is an active member. This group then analyses the claim and submits a final recommendation to an inter-ministerial Eligibility Committee, which makes the final decision.

Under current practice, the Mexican government applies the refugee definition of the 1951 Refugee Convention as well as the expanded refugee definition contained in national legislation, which is equivalent to the expanded definition of the Cartagena Declaration. The expanded refugee definition of the Cartagena Declaration provides protection to persons who fulfil the criteria set out in the 1951 Convention and the 1967 Protocol, and in addition to persons “who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other

circumstances which have seriously disturbed public order.”⁸³⁶ The Convention definition is applied on the basis of the Convention’s hierarchy over domestic law.

The Mexican government is studying the current legislative framework to assess needs for reforms with a view to bringing national legislation in line with commitments acquired after acceding to the 1951 Convention and the 1967 Protocol.

3.1 Article 1D in Refugee Status Determination

Article 1D can be applied to asylum cases involving Palestinian refugees. However, the provision was not applied to the two cases decided on so far (see below).

Jurisprudence

Both Palestinians came from the OPT. They fulfilled the criteria for refugee recognition contained in domestic legislation, i.e., the criteria of the Cartagena Declaration. Article 1D was not applied in these two cases. The authorities considered whether the applicants enjoyed effective protection in the OPT and reached the conclusion that this was not the case.

In practice, asylum cases involving Palestinians are examined on the basis of the expanded refugee definition recommended in the Cartagena Declaration, and the Mexican authorities assess whether an individual enjoys effective protection in the area to which she/he has fled. According to UNHCR Mexico, the authorities’ assessment of effective protection is compatible with the UNHCR guidelines on effective protection as referred to in the 2002 UNHCR Note.

Under the new refugee determination procedure, the above two Palestinians have been recognized as refugees by the Mexican government. Prior to 2002, six Palestinians from UNRWA’s area of operations were recognized as refugees by UNCHR.

4. Refugee Determination Process: Outcome

As in the case of other asylum-seekers, Palestinians who are recognized as refugees are granted temporary residence permits for non-immigrants, which are renewable on an annual basis. They can opt for permanent residence and naturalization after a certain period of time.

5. Return – Deportation

Information about law and policies regarding rejected asylum-seekers could not be obtained.

6. Temporary Protection

Information about temporary protection in Mexico is not available.

7. Protection under the Statelessness Conventions

Mexico ratified the 1954 Stateless Convention in April 2000, but is not party to the 1961 Statelessness Convention. No information is available regarding Palestinians who may have applied for protection under the Stateless Convention.

8. Reference to Relevant Jurisprudence

Decisions taken by the Eligibility Working Group and the inter-ministerial Eligibility Committee are not published.

9. Links

UNHCR website which includes information on asylum procedures and refugee protection throughout Latin America (only in Spanish):
<http://www.acnur.org>

NIGERIA⁸³⁷

1. Statistical Data

No statistics on the number of Palestinians living in Nigeria are available.

Few Palestinians in Nigeria have sought asylum. Refugee status was recognized in the case of two Palestinians, and the case of one Palestinian is still pending.⁸³⁸

2. Status of Palestinians upon Entry into Nigeria

As in the case of other asylum-seekers, Palestinian asylum-seekers who wish to enter Nigeria are pre-interviewed. They then meet with the Eligibility Committee, which determines whether to grant them refugee status.⁸³⁹ Asylum-seekers are entitled to work and they are not restricted to a specific area.

3. Refugee Determination Process: Refugee Status

Nigeria has ratified the 1951 Refugee Convention and its 1967 Protocol. It is also party to the 1969 Organization for African Unity Convention Governing Specific Aspects of Refugee Problems in Africa (1969 OAU Convention).

Applications for asylum are treated under the National Commission for Refugees Act No. 52 of 1989 (Refugee Act), which adopts the definition of a refugee as set out in the 1951 Refugee Convention and the “broader” definition set out in the 1969 OAU Convention. The latter extends protection to persons in need of protection because of serious threat to life, liberty or security of persons in their country of origin, as a result of armed conflict or serious public disorder. Article 1(2) on the definition of refugees stipulates:

The term “refugee” shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole country or origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

3.1 Article Article 1D in the Refugee Status Determination

The Refugee Act does not contain a provision similar to Article 1D of the 1951 Refugee Convention. Article 1D is therefore not applied in cases involving

Palestinian asylum-seekers. Such cases are assessed on the basis of the criteria set out in Article 1A(2) of the 1951 Refugee Convention and the “broader” criteria set out in the 1969 OAU Convention.

4. Refugee Determination Process: Outcome

Two Palestinians have been recognized as refugees by the Nigerian authorities.⁸⁴⁰ One case involved a Palestinian who was born in 1921 and who claimed to have lived in Liberia as a refugee for 36 years. He arrived in Nigeria in 1982. The other case involved a Palestinian refugee who was born in 1957 and who arrived in Nigeria in 1990. In 1995, he left Nigeria and moved to Canada to join his brother, who was living there.

Recognized refugees are granted the benefits of the 1951 Refugee Convention, including a refugee identity card, which constitutes a residence permit, and a United Nations Travel Document (UNCTD) when needed. Refugees are entitled to work. Refugee children attending public schools benefit from free primary education.

5. Return – Deportation

No information available.

6. Temporary Protection

No information available.

7. Protection under the Statelessness Conventions

Nigeria is not party to the 1954 Stateless Convention, nor to the 1961 Stateless Convention. There is no official practice with regard to protection of stateless persons.

8. Reference to Relevant Jurisprudence

Decisions of the Nigerian Eligibility Committee are not published and were not accessible. Information was provided by UNHCR Nigeria.

SOUTH AFRICA⁸⁴¹

1. Statistical Data

There are currently no data on the number of Palestinians living in South Africa.

According to government statistics, there are some 27,000 recognized refugees in South Africa. More than 85,000 applications are pending status determination. The majority of refugees are from war-torn African states, with a significant number of asylum-seekers coming from outside Africa, mainly from Asian countries.

Few Palestinians have applied for refugee status in South Africa. According to UNHCR South Africa, ten Palestinians had applied for asylum as of November 2003. Five were granted refugee status while the other five were rejected. Information about how Palestinian asylum-seekers are registered by the South African authorities is not available.

2. Status of Palestinians upon Entry into South Africa

As in the case of other asylum-seekers, Palestinians in South Africa may submit an application for asylum under the Refugee Act No. 130 of 1998 (Refugee Act) to any of the five designated reception centers.

Asylum-seekers are provided temporary permits (commonly known as asylum-seekers' permits). In practice, asylum-seekers can work and undertake studies. There is no restriction on residence.

Asylum-seekers enjoy the rights provided under the Bill of Rights, as provided for under the Constitution of the Republic of South Africa. The principle of *non-refoulement* is generally respected for any person who has lodged an asylum claim under the South African Refugee Act.

3. Refugee Determination Process: Refugee Status

South Africa has ratified the 1951 Refugee Convention and its 1967 Protocol. It is also party to the 1969 Organization for African Unity Convention Governing Specific Aspects of Refugee Problems in Africa (1969 OAU Convention). The Refugee Act adopts the refugee definition as set out in the 1951 Refugee Convention and the "broader" definition set out in the 1969 OAU Convention, which extends protection to persons in need of protection because of serious

threat to life, liberty or security of persons in their country of origin as a result of armed conflict or serious public disorder.

In general, applications for asylum are considered under these definitions.

3.1 Article 1D in Refugee Status Determination

The Refugee Act does not contain a provision similar to Article 1D of the 1951 Refugee Convention. Article 1D is therefore not applied in cases involving Palestinian asylum-seekers. Cases are assessed on the basis of the criteria set out in Article 1A(2) and other criteria set out in the “broader” definition of the 1969 OAU Convention.

The South African authorities also consider whether the asylum-seeker enjoys protection in countries where she/he resided previously (Section 4(d) of the Refugee Act). The practice in cases involving Palestinians is thus to assess whether the individual enjoys effective protection in the area from which she/he fled.

4. Refugee Determination Process: Outcome

Asylum-seekers who are recognized as refugees are granted the benefits of the 1951 Refugee Convention, including travel documents.

Jurisprudence

Five Palestinians have been recognized as refugees by the South African authorities and five Palestinians have been rejected.⁸⁴² BADIL has not been able to obtain details on these cases.

5. Return – Deportation

Asylum-seekers who receive negative decisions are required to leave South Africa voluntarily. If they do not leave voluntarily, they may be arrested and detained and later deported.

No information is available regarding the return or deportation of the five Palestinians who have been rejected.

6. Temporary Protection

No special temporary protection regime has been established with regard to Palestinians.

7. Protection under the Statelessness Conventions

South Africa is not party to the 1954 Stateless Convention or the 1961 Statelessness Convention.

8. Reference to Relevant Jurisprudence

Not available.

9. Links

Department of Home Affairs: <http://www.gov.za>
<http://www.gov.parliament.za>

Endnotes

- ⁴⁰⁹ Arab countries were excluded from this survey because: i) Arab states, in particular those in the Middle East, are directly implicated in the ongoing Israeli-Palestinian/Arab conflict, both as major host countries of Palestinian refugees and as political actors and have, therefore, developed particular regimes and policies vis-à-vis Palestinian refugees (see Chapter One); ii) UNRWA's mandate and operations in many Arab states, UNRWA memoranda of understandings with these states and the relationship between UNRWA and UNHCR in this region would require detailed discussion beyond the scope of this Handbook; and iii) very few Arab states are signatories to the 1951 Refugee Convention.
- ⁴¹⁰ Input is welcome from readers who know of case law relevant to this Handbook. BADIL will continue to follow up on jurisprudence on Palestinian refugees. Please contact legal@badil.org
- ⁴¹¹ The case in Latvia involved a 30-year old Palestinian who became the first refugee to obtain citizenship in Latvia. He was born in Cairo, son of a Palestinian from the West Bank and an Egyptian mother. The family moved to the United Arab Emirates (UAE) when he was five years old. He came to Latvia in 1991 to study medicine and could not return to any of his countries of former residence. He subsequently married a Latvian, claimed refugee status and was granted citizenship. Source: AFP, 1 February 2005. Source regarding Japan: UNHCR Japan.
- ⁴¹² There is very little national case law regarding Palestinian asylum-seekers in East European countries and very little of the case law is accessible. BADIL has been able to obtain information from Czech Republic, Estonia, Hungary and Poland.
- ⁴¹³ They are Cambodia, China, Japan, Philippines and the Republic of Korea.
- ⁴¹⁴ Further information on asylum issues in European countries can be obtained from the European Council on Refugees and Exiles (ECRE) website. See: <http://www.ecre.org> (see, in particular, country documents prepared by ECRE and the Danish Refugee Council regarding Legal and Social Conditions for Asylum-seekers and Refugees).

Austria

- ⁴¹⁵ Major source: *Asylkoordination Österreich* and UNHCR Austria.
- ⁴¹⁶ Information on community estimates is provided by the Oxford University "Civitas-Foundations of Participation" project's database. See: <http://www.civitas-online.org>.
- ⁴¹⁷ The country of origin is given as a person's country of citizenship or the country of former habitual residence in cases involving stateless persons. Source: *Asylumkoordination Österreich*.
- ⁴¹⁸ The most recent amendments came into force on 1 May 2004.
- ⁴¹⁹ Decision 220.450/0-IX/27/00: "Soweit der Rechtsvertreter des Berufungswerbers darauf hinwies, dass Palästinenser, die sich ausserhalb des Mandatsgebietes der UNRWA aufhalten, nach der Position des UNHCR aber auch nach der Ansicht des deutschen Bundesverwaltungsgerichtes sowie der polnischen Überprüfungsinstanz in Asylangelegenheiten prima facie-Flüchtlinge seien, ist ihm zu entgegnen, dass Art. 1 lit. D GFK nicht zu jenen Normen zählt, die aufgrund des Bestimmungen des österreichischen Asylgesetzes anzuwenden sind, weshalb die in den vorgelegten Entscheidungen bzw. dem Positionspapier des UNHCR vertretenen Argumentationslinien auf ein Verfahren nach dem österreichischen Asylgesetz nicht übertragbar sind." BADIL is not aware of other cases in which Article 1D was debated in detail.
- ⁴²⁰ Decision 220.450/0-IX/27/00: "... Überdies ist darauf hinzuweisen, dass sich Art. 1D GFK nach seinem Wortlaut (arg. "derzeit") nur auf Personen erstreckt, die zum Zeitpunkt der Unterzeichnung der GFK am 28.7.1951 von anderen Organen oder Organisationen der Vereinten Nationen des UNHCR oder Hilfe erhalten haben (vgl. Rohrböck, Kommentar zum Asylgesetz, Rz 376)." Dr. Josef Rohrböck provides in his commentary (376): "Dem Wortlaut des Art 1 Abschn D leg cit entsprechend gilt die genannte Bestimmung nur für Personen, die am 28. Juli 1951 von anderen Organen oder Organisationen der VN als dem UNHCR Schutz oder Hilfe erhielten."
- ⁴²¹ Acronym of *Harakat al-Muqawama al-Islamiyya*, "Islamic Resistance Movement." *Hamas* was established in 1987 during the first *intifada* as a wing of the Muslim Brotherhood Society in Palestine.

- ⁴²² Refugee Board decision 210.192/0-IX/25/99.
- ⁴²³ *Ibid.*
- ⁴²⁴ Decision 223.873/0-VII/20-01 by the Review Board.
- ⁴²⁵ See, for example, the Review Board's decisions 228.437/0-VII/23/20, 237.160/0-IV/42/03 and 237.234/0-XII/36/03 regarding asylum-seekers claiming to have come from the Gaza Strip; 234.645/0-III/07/03; and 234.253/0-IX/27/03 regarding asylum-seekers claiming to have come from Ramallah.
- ⁴²⁶ Review Board decision, 26 July 2002, 216.7570/0-VI/17/00.
- ⁴²⁷ Review Board decision, 4 May 2001, 221.736/0 – IX/25/01.
- ⁴²⁸ Article 76 provides: "Alien's passports may, provided that, having regard to the individual concerned, the granting thereof is appropriate in the interests of the Republic, be issued, upon application, for: 1. Persons who are stateless or of indeterminate nationality and who do not possess a valid travel document." Source: UNHCR Austria.
- ⁴²⁹ Source: UNHCR Austria, which referred to reports by Austrian refugee counselling organizations.
- ⁴³⁰ Source: *Asylkoordination Österreich*.
- ⁴³¹ Other decisions mentioned in the text are available on file with the author i.e., decision of 26 July 2002, 216.757/0-VI/17/00 and the decision, 28 February 2002, 220.450/0-IX/27/00 (excerpts).
- ⁴³² An older decision by the Administrative Court is available on file with the author: decision, 29 January 1986 (CAS/AUT/006).

Belgium

- ⁴³³ Major sources: *Overlegcentrum voor Integratie van Vluchtelingen* (OCIV) and Ms Maha Najjar, Lawyer.
- ⁴³⁴ Information on community estimates is provided by the Oxford University "Civitas-Foundations of Participation" project's database. See: <http://www.civitas-online.org>.
- ⁴³⁵ Source: OCIV. Ms Najjar has noted that on some occasions, Palestinians have been registered according to their country of residence before arriving in Belgium, and that those from the West Bank and the Gaza Strip have been registered as "Israeli."
- ⁴³⁶ Source: OCIV.
- ⁴³⁷ *Ibid.*
- ⁴³⁸ This heading applies only to Palestinians already within Belgium territory. Palestinians who arrive at the airport seeking asylum are automatically detained in closed centers during the admissibility phase.
- ⁴³⁹ If the Aliens Office declares the asylum claim inadmissible, the provisional status is changed to an expulsion order. A suspensive appeal against that decision may be submitted to the CGRA. During such an appeal, the expulsion order will be prolonged on a monthly basis until CGRA has reached a decision on the case.
- ⁴⁴⁰ Version of 5 January 2004.
- ⁴⁴¹ See also ECRE "European asylum systems: Legal and Social Conditions for Asylum-seekers and Refugees in Western Europe" country information: Belgium, 2003: "The only refugee status granted in Belgium is Convention status. There is no *de facto* or humanitarian status." See: <http://www.ecre.org>.
- ⁴⁴² As refugee status has a declaratory character, the duration of the asylum procedure will be taken into account in order to calculate the period of two years of legal residence. For example, if the asylum procedure has lasted for two years, the refugee can apply for Belgian citizenship immediately after the refugee status is granted.
- ⁴⁴³ *al-Jabhah al-Sha'abiyah li-Tahrir Filastin*. A secular, Marxist-Leninist, nationalist Palestinian organization, founded after the 1967 Israeli-Arab war.
- ⁴⁴⁴ As with any illegally-residing foreigner, such persons can apply for a so-called regularization of their residence in Belgium based on exceptional humanitarian grounds (Article 9(3) of the Aliens Act).
- ⁴⁴⁵ OCIV provided information on the case of the Palestinian deportees at the ECHR.
- ⁴⁴⁶ This is in application of the Convention on International Civil Aviation (Chicago Convention), 7 December 1944, which obliges airline companies to take illegal residents back to the airport they

- originally left before reaching the airport of the state that they tried to enter illegally.
- ⁴⁴⁷ No one shall be subjected to torture or to inhuman or degrading treatment or punishment.
- ⁴⁴⁸ That is, the right to respect for private and family life.
- ⁴⁴⁹ Source: OCIV.
- ⁴⁵⁰ The Convention of New York is an alternative name for the 1954 Stateless Convention.
- ⁴⁵¹ On file with the author. The Civil Court of Ghent's 24 November 1994 decision regarding the Stateless Convention is on file with the author. Also available at: <http://www.unchr.ch/refworld>.
- ⁴⁵² On file with the author.

Denmark

- ⁴⁵³ Major sources: Danish Refugee Council and Danish Immigration Service.
- ⁴⁵⁴ Source: Information from the Danish Ministry of Integration is provided by the Oxford University "Civitas-Foundations of Participation" project's database. See: <http://www.civitas-online.org>.
- ⁴⁵⁵ Source: Danish Refugee Council "Drømmen om Palæstina," August 2003, p. 59.
- ⁴⁵⁶ *Ibid.* Therefore, approximately one out of three Palestinian asylum-seekers were granted asylum.
- ⁴⁵⁷ Source: Eleventh Report (2002) by the Danish Refugee Board, pp. 311-315.
- ⁴⁵⁸ According to the Danish Ombudsman, the general reference to the 1951 Refugee Convention in Section 7.1 includes a reference to Article 1D. See the Danish Refugee Board Report, 1 April 1989 to 31 December 1991, p. 104.
- ⁴⁵⁹ The decisions have not been made public. However, they are extensively covered in the Refugee Board's Report, 1 April 1989 to 31 December 1991, pp. 32ff.
- ⁴⁶⁰ Danish Refugee Board Report, 1 April 1989 to 31 December 1991, p. 34: "*Flertallet bemærkede herved, at de pågældende ikke kunne anses for omfattet af art. 1D, stk. 2, i Flygtningekonventionen. Der henvises herved til Udenrigsministeriets notat af 24. marts 1988.*"
- ⁴⁶¹ The opinion is published in the report by the Refugee Board, 1 April 1989 to 31 December 1991 p. 323: "*Udenrigsministeriet må herefter være af den opfattelse, at den personkreds, der sigtes til i Flygtningekonventionens art. 1D, stk. 1, jf. stk. 2, og som ved bestemmelsens tilblivelse udover UNRWA-registrerede palæstinensiske flygtninge også omfattende Korea-flygtninge, som udgangspunkt er undtaget fra Flygtningekonventionens anvendelsesområde. Dette må efter Udenrigsministeriets opfattelse gælde for de palæstinensiske flygtninges vedkommende, så længe UNRWA fortsætter det arbejde der var forudsat ved Flygtningekonventionens tilblivelse, til fordel for palæstinensiske flygtninge under institutionens mandat. Personer, der er berettiget til den bistand, og som af organisationen er registreret med henblik herpå, vil således ikke kunne påberåbe sig den automatiske konventionsfordel, der ved art. 1D, stk. 2, er forudsat udløst i den særlige situation, at UNRWA's virksomhed ophører. Bestemmelsens tilblivelseshistorie – herunder den nære sammenhæng mellem UNRWA's etablering og Flygtningekonventionens tilblivelse – viser efter Udenrigsministeriets opfattelse klart, at bestemmelsen alene har den ovenfor beskrevne situation for øje, hvor f.eks. det internationale samfund beslutter, at den bistand, som af UNRWA er ydet siden 1949 til palæstinensiske flygtninge som gruppe, skal bortfalde.*"
- ⁴⁶² The opinion of the Ministry (see the report by the Refugee Board, 1 April 1989 to 31 December 1990, p. 324): "*Det forhold, at bistanden til en palæstinensisk asylansøger eller en anden person, der er registreret i UNRWA, ophører – f.eks. fordi den pågældende rejser uden for UNRWA's mandat område, frasiger sig bistand fra UNRWA eller af egen drift søger bistand eller beskyttelse andetsteds – medfører derfor efter Udenrigsministeriets opfattelse ikke, at konventionens bestemmelser uden videre finder anvendelse på den pågældende, da betingelserne i konventionens art. 1D, stk. 2, jf. stk. 1, af de ovenfor anførte grunde, ikke er opfyldt.*" The Refugee Board also referred to letters by UNHCR of 14 September 1988 and 7 May 1990.
- ⁴⁶³ The opinion of the Ministry (see the report by the Refugee Board, 1 April 1989 to 31 December 1991, p. 324).
- ⁴⁶⁴ See the Refugee Board Report, 1 April 1989 to 31 December 1991, p. 34.
- ⁴⁶⁵ See *ibid.*, p. 35.

- ⁴⁶⁶ See Annex 1 of the report by the Danish Ombudsman of 25 February 1992, i.e., report of 31 August 1991, point III, A: “*De pågældendes status som flygtninge er således relateret til forholdene omkring oprettelsen af staten Israel og ikke til deres aktuelle situation i Libanon. Anerkendelsen af deres status som flygtninge er dermed ikke udtryk for, at Flygtningenævnet finder, at de aktuelt risikerer forfølgelse i Libanon.*” The report is available in Danish. See: <http://www.retsinfo.dk>.
- ⁴⁶⁷ See the Refugee Board Report, 1 April 1989 to 31 December 1991, p. 102.
- ⁴⁶⁸ See *ibid* p. 104 : “*Landsdommer Plessing fandt såvel efter en naturlig sproglig forståelse af art. 1D, stk. 2, som efter de foreliggende oplysninger om forarbejderne til denne bestemmelse, at bestemmelsen alene tog sigte på den situation, der opstår, hvis bistand fra UNRWA – eller et andet FN-organ end UNHCR – af FN bringes til ophør, og ikke den situation, der opstår, når en UNRWA-registreret statsløs palæstinenser forlader et UNRWA-mandat område eller på anden måde frasiger sig UNRWA's bistand. Den pågældende ville derfor ikke “uden videre” være omfattet af konventionen.*”
- ⁴⁶⁹ See *ibid*, p. 39.
- ⁴⁷⁰ See *ibid*. The Danish Refugee Council has confirmed that these three criteria are still being used by the Refugee Board.
- ⁴⁷¹ See *ibid*, p. 40: “... there is a difference between the level of protection and the level of persecution [...] and that the risk of persecution etc. must be less (intense, concrete etc.) when it is an assessment on protection than in an assessment persecution, surely?”
- ⁴⁷² See *ibid*, p. 69. This has also been confirmed by the Danish Ombudsman in his report, 25 February 1992.
- ⁴⁷³ This is in accordance with the opinion of the Danish Ministry of Foreign Affairs, which noted in its opinion of 24 March 1988 (see above in footnotes 461 and 462) that the assistance provided by UNRWA consists mainly of material aid and only limited legal protection.
- ⁴⁷⁴ In practice, the permit may be renewed first for another two years and then for three years. Each decision regarding renewal depends on an assessment of the case.
- ⁴⁷⁵ In practice, the permit may be renewed first for no more than one year, followed by a maximum renewal of two years and then a maximum of three years.
- ⁴⁷⁶ *Jama'at al-Tawhid wal-Jihad*, “Monotheism and Holy War Movement”. The Islamist guerrilla network of Abu Musab al-Zarqawi, a Jordanian-born Islamist militant believed operating against United States-led coalition forces in Iraq.
- ⁴⁷⁷ Refugee Board's decision 19/38 of 21 October 2003.
- ⁴⁷⁸ The decision involved a stateless male Palestinian who claimed to have received threats following his participation in some fights in a refugee camp in 1986. The Refugee Board dismissed his claims for reasons of credibility.
- ⁴⁷⁹ The applicant, a police officer for the Palestinian Authority, was also a member of Fatah. In January 2002, he and four other colleagues were arrested at an Israeli checkpoint and subsequently put in an Israeli prison. He was released five days later. Fatah then suspected that he collaborated with the Israeli authorities and that he had brought the four colleagues with him so that the Israeli authorities could arrest them. He received some death threats. The applicant was granted a complementary form of protection (“B-status”).
- ⁴⁸⁰ His claim was therefore assessed in accordance with *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status*, para. 210, i.e., the burden of proof was lightened.
- ⁴⁸¹ The Refugee Board noted that the applicant had avoided being drafted by the Syrian authorities, but that he was not at risk of disproportional punishment by Danish standards. The Refugee Board also noted that the applicant could seek protection from the Syrian authorities should he face problems with the PFLP in Lebanon, for whom he had carried out some tasks. His claim was therefore rejected.
- ⁴⁸² The applicant claimed that he was treated badly by the Syrian authorities during an arrest in 1995. The Refugee Board noted that the applicant had lived in Syria without any problems since 1995, and that it was unlikely that the 1995 case would be reopened. His claim was therefore rejected.
- ⁴⁸³ The Refugee Board rejected the applicant's explanations regarding problems with the Syrian authorities on the grounds of credibility.
- ⁴⁸⁴ The Refugee Board noted that the applicant had been arrested by the Syrian authorities, but had

subsequently continued to live in Syria without problems. His claim was therefore rejected.

⁴⁸⁵ *al-Jabhah al-Dimuqratiyah Li-Tahrir Filastin*. A Palestinian Marxist-Leninist political and military organization founded in 1969 when it split from the Popular Front for the Liberation of Palestine.

⁴⁸⁶ The claim was rejected on the grounds of credibility.

⁴⁸⁷ The Refugee Board rejected the claim, *inter alia*, because the applicant referred to general circumstances in Jordan.

Finland

⁴⁸⁸ Major source: The Finnish Refugee Advice Center.

⁴⁸⁹ Information on community estimates is provided by the Oxford University "Civitas-Foundations of Participation" project's database. See: <http://www.civitas-online.org>.

⁴⁹⁰ Source: The Finnish Refugee Advice Center. In 2002, the figures were twenty-two (category 1), ten (category 2) and nine (category 3).

⁴⁹¹ Unofficial translation by the Finnish Directorate of Immigration. Section 87(2) of the Aliens Act relates to the exclusion clause in Article 1F of the 1951 Refugee Convention.

⁴⁹² Unofficial translation by the Finnish Directorate of Immigration. Section 88(2) refers to Section 87(2), i.e., the exclusion clause in Article 1F of the 1951 Refugee Convention.

⁴⁹³ Unofficial translation by the Finnish Directorate of Immigration.

⁴⁹⁴ Note the restrictive interpretation of this term adopted by the German authorities (see section on Germany).

⁴⁹⁵ Case No. 2770, *Annual Year Book Publication*, No. KHO 2002:69, Diary No. 1866/3/02. For an official translation of the case, see the BADIL website. The case was translated by Ms Sari Sirva, senior lawyer at the Finnish Refugee Advice Center.

⁴⁹⁶ For further information on the refugee camp. See: <http://www.un.org/unrwa/refugees/lebanon/nahrelbared.html>.

⁴⁹⁷ The Court also referred to an unpublished UNHCR statement of September 2001.

⁴⁹⁸ 96/196/JHA: Joint Position of 4 March 1996, defined by the Council of the European Union on the basis of Article K.3 of the Treaty of the 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. *Official Journal* L 063, 13 March 1996, pp. 0002-0007. Subsequently, the joint position has been superceded by the EU Directive 2004/83/EC, See further Chapter Three.

⁴⁹⁹ Section 88 in the new Aliens Act.

⁵⁰⁰ The Court also concluded that the applicant was not entitled to a residence permit under Section 20 (Section 49 of the new Aliens Act).

⁵⁰¹ At the same time, the Supreme Administrative Court also decided in fourteen other cases involving Palestinian asylum-seekers. All these cases were, however, dismissed and no appeal was allowed.

⁵⁰² Source: The Finnish Refugee Advice Center. The case has not been published.

⁵⁰³ *Ibid.* The decision has not been published.

⁵⁰⁴ *Ibid.*

⁵⁰⁵ *Ibid.*

France

⁵⁰⁶ Major sources: OFPRA, France *Terre d'Asile* and CIMADE.

⁵⁰⁷ Information on community estimates is provided by the Oxford University "Civitas-Foundations of Participation" project's database. See: <http://www.civitas-online.org>.

⁵⁰⁸ Source: OFPRA.

⁵⁰⁹ *Ibid.* Information pertaining to 1999 and 2002 is not published as fewer than five Palestinians were recognized as refugees.

⁵¹⁰ The preamble to the French Constitution also provides for "constitutional asylum," which may be granted to persons "fighting for freedom" who would not fall within the provisions of the 1951 Refugee

Convention. Few people have been granted constitutional asylum, with no Palestinians among them so far.

⁵¹¹ Decisions made by OFPRA in asylum applications can be appealed at the *Commission des Recours des Réfugiés* (CRR).

⁵¹² Source: France *Terre d'Asile*.

⁵¹³ French jurisprudence relevant to Palestinian claims for protection under the 1954 Stateless Convention could not be obtained.

Germnay

⁵¹⁴ Major source: UNHCR Germany and Monika Kadur.

⁵¹⁵ Source: Federal Office for the Recognition of Foreign Refugees, *Analysis on Palestinians in Germany*, December 2003. Official figures are estimates, due to the difficulty of identifying Palestinians in the official statistics. Information on community estimates is provided by the Oxford University "Civitas-Foundations of Participation" project's database. See <http://www.civitas-online.org>.

⁵¹⁶ Source: UNHCR Germany, with reference to governmental statistics.

⁵¹⁷ *Ibid.*

⁵¹⁸ The following applies only to Palestinian asylum-seekers. There are a number of Palestinians who have been granted legal residence in Germany on the basis of provisions applying to all foreigners (e.g., marriage to German nationals or for the purposes of study).

⁵¹⁹ Article 55(1) of the Asylum Procedure Act.

⁵²⁰ Source: UNHCR Germany.

⁵²¹ As amended in November 1997 and July 1999. As of 1 January 2005, the German Aliens Act will be replaced by a Law on the Residence of Aliens. Section 60 of that Law incorporates Article 51(1) of the Aliens Act.

⁵²² As amended in October 1997.

⁵²³ Article 16a was inserted by the 39th Amendment of 28 June 1993. Refugee status under Article 16a will not be granted if the applicant arrived via a third country (in 1993, the third country regulation was introduced to reduce the influx of refugees), even if she/he fulfils all refugee criteria.

⁵²⁴ Article 1D had been interpreted in previous cases, although not as elaborately as in the June 1991 case. See, for example, the case of 3 November 1989 (VG 10 A 4.88) in which the Federal Administrative Court concluded that UNRWA assistance or protection "had ceased" in respect of a Palestinian refugee from Lebanon who was, therefore, entitled to the benefits of the 1951 Convention. The decisive factor was that the Lebanese authorities would not allow the applicant to return to the country and were likely to uphold this position in the foreseeable future. It is unclear whether the applicant tried to have his Lebanese travel document renewed before it expired in October 1982, as the decision states that he did not try to renew it until February 1985. Subsequent case law is more restrictive (e.g., case of 21 January 1992 (1C 21/87)).

⁵²⁵ Translated by BADIL: "Art. 1D GK enthält in Abs. 1 eine Ausschluss- und in Abs. 2 eine Anwendungsklausel bezüglich der Genfer Konvention. Art. 1D Abs. 2 GK erschöpft sich nicht in einer Regelung der Dauer des Ausschlusses von der Flüchtlingseigenschaft nach Abs. 1, sondern legt unter den dort genannten Voraussetzungen selbständig und originär die Flüchtlingseigenschaft bestimmter Personen fest." (Under "Entscheidungsgründe" in the decision, para. II, 2a, second sentence.)

⁵²⁶ "Dafür spricht bereits der Wortlaut der in Abs. 2 vorgesehenen Rechtsfolge, wonach Personen "ipso facto unter die Bestimmungen dieses Abkommens" fallen. Damit wird zum Ausdruck gebracht, dass die Betroffenen allein aufgrund des Wegfalls des in Abs. 1 angesprochenen Schutzes oder Beistandes Flüchtlinge im Sinne der Genfer Konvention sind." (Under "Entscheidungsgründe" in the decision, para. II, 2a, aa first sentence.)

⁵²⁷ "Eine gegenüber Art. 1 A Nr. 2 GK selbständige Umschreibung der Flüchtlingseigenschaft in Art. 1D GK folgt auch aus der Systematik der Gesamtregelung des Art. 1 GK. Die Vorschrift enthält nach ihrer Überschrift eine Definition des für die Anwendbarkeit der Konvention wesentlichen Begriffs "Flüchtling" und sieht verschiedene Tatbestände zur Begründung der Flüchtlingseigenschaft vor. Diese kann sich

- bei sog. Statutären Flüchtlingen (Statusfluechtlingen oder GFK-Fluechtlingen) aus der Anwendung früherer internationaler Vereinbarungen, bei anderen Personen aus der Erfüllung bestimmter abstrakter Merkmale ergeben. Die Flüchtlinge im Sinne des Art. 1A Nr. 2 GK stellen danach nur eine von mehreren in Art. 1 GK erfassten Flüchtlingegruppen dar. Bei dieser Systematik ist nicht anzunehmen, dass für die Umschreibung einer bestimmten, dem Begriff "Flüchtling" zugeordneten Personenkategorie Begriffselemente einer anderen ebenfalls dem Flüchtlingsbegriff zugeordneten Personenkategorie wesentlich sein sollen, d.h. im vorliegenden Fall Art. 1D nur zusammen mit Art. 1A Nr. 2 GK verstanden werden darf. Wenn eine solche Bezugnahme beabsichtigt gewesen wäre, hätte sie deutlich zum Ausdruck gebracht werden müssen, wie dies z.B. in Art. 1B und C, nicht jedoch in Art 1D GK geschehen ist." (Under "Entscheidungsgründe" in the decision, para. II, 2a, bb.)
- ⁵²⁸ "Schliesslich sprechen Sinn und Zweck der Vorschrift für dieses Ergebnis. Von dieser Bestimmung sollen vor allem die durch den arabisch/israelischen Konflikt 1948/9 betroffenen und in der Folgezeit von einer Sonderorganisation der Vereinten Nationen im Nahen Osten betreuten palästinensischen Flüchtlinge erfasst werden. Im Vordergrund der Schutz- und Beistandsgewährung standen dabei humanitäre Erwägungen gegenüber Personen, die infolge dieses Konfliktes ihr Heim und ihren Unterhalt verloren hatten, ohne Rücksicht darauf, ob sie politische Flüchtlinge im Sinne des Art. 1A Nr. 2 GK waren." (Under "Entscheidungsgründe" in the decision, para. II, 2a, cc.)
- ⁵²⁹ Under "Entscheidungsgründe" in the decision, para. II, 2b, cc: "Der Wortlaut des ..."
- ⁵³⁰ *Ibid.*, para. II, 2b, aa: "Mit der Formulierung "zur Zeit" ..."
- ⁵³¹ "Von allem aber ändern die an ein bestimmtes, bei der Ausarbeitung der Genfer Konvention 1951 vorgefundenes Gruppenschicksal und an dessen erhoffte Lösung anknüpfenden Erwägungen nichts daran, dass Art. 1 D GK nach Wortlaut wie nach Sinn und Zweck jedem einzelnen palästinensischen Flüchtling, solange eine endgültige Regelung entsprechend den Entschliessungen der Vereinten Nationen nicht erfolgt ist, Hilfe gewährleisten soll, sei es in Form von Schutz oder Beistand seitens der dazu berufenen Organisation oder Institution der Vereinten Nationen oder durch Gewährung der in der Genfer Konvention festgelegten Vergünstigungen seitens der Vertragsstaaten." (*Ibid.*, para. II, 2b, dd (2).)
- ⁵³² The Court considered only Palestinian refugees who had been living in UNRWA's area of operations and who, therefore, had the possibility, at least in principle, to return to that area.
- ⁵³³ "Die Bestimmungen der Genfer Konvention sind nach Art. 1 D Abs. 2 GK nur anwendbar, wenn der nach Abs. 1 gewährte Schutz "aus irgendeinem Grunde weggefallen" ist (when such protection ... has ceased for any reason/lorsque cette protection ... aura cesse pour une raison quelconque). Diese Formulierung schliesst eine Beschränkung auf bestimmte Gründe für den Wegfall des Schutzes aus. Die im Versagungsbescheid vertretene Auffassung des Beklagten, die Gründe müssten unmittelbar mit der Entstehung des Staates Israel und der dadurch bedingten damaligen Flucht der Palästinenser in Zusammenhang stehen, findet im Vertragstext keine Stütze." (*Ibid.*, para. II, 2b, dd, ff.)
- ⁵³⁴ "Der Schutz oder Beistand der UNRWA ist allerdings nicht schon dann weggefallen, wenn der Betroffene ihn von sich aus aufgegeben hat. Der innere Grund für die Ausschlussklausel des Art. 1 D Abs. 1 GK liegt, wie bereits erwähnt, darin, dass die palästinensischen Flüchtlinge primär auf den UNRWA-Schutz verwiesen werden sollen. Die Bestimmungen der Genfer Konvention sollen nicht schlechthin, sondern gemäss Art. 1 D Abs. 2 GK nur dann anwendbar sein, wenn der Schutz oder Beistand durch die UNRWA nicht mehr geleistet werden kann. Diese Situation besteht aber nicht im Falle einer freiwilligen Aufgabe der UNRWA-Betreuung." (*Ibid.*, para. II, 2b, dd (2) and para. II, 2b, dd (4).)
- ⁵³⁵ "Der Zweck der in Art. 1 D GK getroffenen Regelung würde verfehlt, wenn die Betroffenen wählen könnten, ob sie speziell den Schutz oder Beistand nach Abs. 1 oder allgemein die Vergünstigungen der Genfer Konvention nach Abs. 2 in Anspruch nehmen." (*Ibid.*, para. II, 2b, dd (3).)
- ⁵³⁶ "Da hier sowohl das Verhalten des Betroffenen als auch die Anordnung des früheren Aufnahmestaates den Verlust des UNRWA-Schutzes oder –Beistandes bewirken, kommt es darauf an, welchem dieser auslösenden Faktoren ein ausschlaggebendes Gewicht beizumessen ist." (*Ibid.*, para. II, 2b, dd (3).)
- ⁵³⁷ "Handelt z.B. der Betroffene in der Absicht, mit der Ausreise die UNRWA-Betreuung durch die Inanspruchnahme der Vergünstigungen der Genfer Konvention zu ersetzen, etwa weil er sich davon eine Verbesserung seiner wirtschaftlichen oder persönlichen Situation verspricht, oder nimmt er sonst

mit seiner Ausreise den Verlust der UNRWA-Betreuung in Kauf, dann ist dies ebenfalls als freiwillige Aufgabe zu bewerten mit der Folge, dass der Schutz oder Beistand nicht im Sinne des Art. 1 D Abs. 2 GK weggefallen ist." (Ibid, paragraph II, 2b, dd (4).)

⁵³⁸ "Anders ist es dagegen zu beurteilen, wenn der Betroffene nach freiwilliger Ausreise durch die weitere politische Entwicklung überrascht wird und ihm unvorhergesehen die UNRWA-Betreuung entzogen oder die Rückkehr in deren Schutzbereich vom Aufnahmestaat versagt wird. Das ist insbesondere dann der Fall, wenn dem Betroffenen zunächst mit der Ausstellung eines Reisedokumentes die Rückkehrmöglichkeit in den Tätigkeitsbereich der UNRWA eröffnet worden ist, die staatliche Gewalt im bisherigen Aufnahmestaat ihm aber während der Gültigkeitsdauer des Reisedokumentes und danach gleichwohl die Rückkehr nicht nur vorübergehend verwehrt. In diesem Falle hat der Betroffene ungeachtet der freiwilligen Ausreise aus dem Tätigkeitsgebiet der UNRWA keinen Einfluss auf den Fortbestand des UNRWA-Schutzes oder –Beistandes. Dieser ist dann entzogen worden." (Ibid, para. II, 2b, dd (4).)

⁵³⁹ Second column, No. 3, p. 208: "Mit Rücksicht auf den territorial begrenzten Wirkungsbereich der UNRWA setzen nämlich Schutz und Beistand der UNRWA notwendig voraus, dass nicht nur der Aufnahmestaat die Tätigkeit der UNRWA zulässt, sondern auch die von ihr betreuten Personen sich in dem jeweiligen Staat aufhalten dürfen. Wenn daher der Betroffene aus dem Gebiet, in dem die UNRWA tätig ist, auf Dauer entfernt oder ihm nach zuvor mit Rückkehrberechtigung erfolgter Ausreise unvorhergesehen die Rückkehr in das Tätigkeitsgebiet der UNRWA dauernd verwehrt wird, fällt dessen Schutz oder Beistand durch die UNRWA weg."

⁵⁴⁰ Second column, No. 2, p. 203: "Wegen des auf Versorgung beschränkten Mandats der UNRWA ist deren Schutz oder Beistand nicht schon deshalb weggefallen, weil der Betroffene Zugriffen von dritter Seite oder sonstigen Gefahren ausgesetzt ist. Die Genfer Konvention ist daher nicht schon deshalb auf den Kläger anwendbar, weil dessen Schutz seitens der UNRWA durch die bürgerkriegsähnliche Situation im Libanon nicht oder nur unzureichend gewährleistet ist."

⁵⁴¹ Left column, No. 2, p. 209: "Auch wenn ein Verbleiben im Tätigkeitsgebiet der UNRWA im Einzelfall unzumutbar ist, bedeutet dies nicht, dass die UNRWA ihre Tätigkeit eingestellt hat oder die Ausreise einer Einstellung der Tätigkeit gleichstünde. Die allgemeinen oder besonderen Lebensbedingungen, denen der einzelne in den Aufnahmestaaten ausgesetzt ist, mögen es im Einzelfall nicht nur verständlich, sondern sogar zwingend erscheinen lassen, dass er das Land verlässt. Soweit die UNRWA in dem betreffenden Lnd weiterhin tätig ist, soll aber den Vertragsstaaten nicht schon deswegen die Verantwortung für den Betroffenen zuwachsen."

⁵⁴² Left column, No. 3, p. 209.

⁵⁴³ In InfAusIR 7/92, right column, No. 4, p. 209: "Der Ausländer hat sich, wenn er den Tätigkeitsbereich der UNRWA verlassen will, die für eine Reise nach den jeweiligen Bestimmungen des Aufnahmestaates erforderlichen Ausweispapiere zu beschaffen und deren Gültigkeitsdauer zu beachten. Missachtet er die danach bestehenden Anforderungen aus welchen Gründen auch immer, ist nach den dargelegten Massstäben der Schutz oder Beistand der UNRWA nicht im Sinne der Konvention weggefallen. Es kommt dann auch nicht mehr darauf an, ob der Aufnahmestaat ihm später die Rückreise verzögert, faktisch erschwert oder sogar ausdrücklich versagt. Denn derartigen Massnahmen des Aufnahmestaates kommt für die Beurteilung, ob ein Wegfall des Schutzes oder Beistandes der UNRWA vorliegt, gegenüber dem Verhalten des Betroffenen keine ausschlaggebende Bedeutung zu."

⁵⁴⁴ First column, No. 3, p. 210: "Der Kläger konnte aber bis zum Ablauf der Gültigkeitsdauer seines DDV am 5. Juni 1981 die UNRWA-Betreuung durch Rückkehr in den Libanon wieder erlangen. Von dieser Möglichkeit hat er keinen Gebrauch gemacht. Indem er über diesen Zeitpunkt im Bundesgebiet verblieben ist, hat er den Verlust des Schutzes oder Beistandes der UNRWA in Kauf genommen, ohne dass dieser damit weggefallen ist. Er kann sich demgegenüber nicht darauf berufen, dass er aus Furcht vor Zugriffen einer der Bürgerkriegsparteien über die Gültigkeitsdauer seines DDV hinaus in Deutschland verblieben und dass über seinen Antrag auf Anerkennung als Asylberechtigter noch nicht rechtskräftig entschieden worden ist. Wenn diese Befürchtung den Schutz oder Beistand der UNRWA während seines Aufenthalts im Libanon und mit seiner Ausreise nicht wegfallen liess, kann im Ergebnis nichts anderes gelten, wenn er während des anschliessenden Aufenthalts in der

Bundesrepublik Deutschland seine Rückkehrberechtigung verfallen liess. Sein Asylverfahren ist insofern für den Wegfall des Schutzes oder Beistandes der UNRWA ohne Bedeutung."

- ⁵⁴⁵ Under the new Immigration Law which entered into force on 1 January 2005 and its Addendum (18 March 2005), the status of Convention refugees has been adapted to persons granted asylum under the Constitution in almost all areas. Prior to the passing of this law, status and benefits of these two groups of recognized refugees were not equal.
- ⁵⁴⁶ The term, "country of former habitual residence," is relevant for stateless persons. See Article 1A(2) of the 1951 Refugee Convention providing: "... who, not having a nationality and being outside the country of former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."
- ⁵⁴⁷ Hathaway has advanced a similar argument in *The Law of Refugee Status*, pp. 61-63.
- ⁵⁴⁸ Also see the Federal Administrative Court's decision, 30 November 1994, (9B 635/94).
- ⁵⁴⁹ Source: UNCHR Germany.
- ⁵⁵⁰ Source: Monika Kadur. The procedure is regulated by the regional counties. In some counties, refugees who are tolerated are allowed to work under certain conditions, but in others, they are not allowed to work at all. There exists no common federal procedure. In practice, holders of tolerance permits have almost no chance of entering the labour market, because they are at the very bottom of the job hierarchy.
- ⁵⁵¹ Source: UNHCR Berlin.
- ⁵⁵² Source: Government response of 4 September 2002 to an enquiry by MP Ulla Jelpke and PDS. Available at: <http://dip.bundestag.de/btd/14/099/1409926.pdf>. Tolerance status was also frequent among displaced persons from the former Yugoslavia and among the Turkish community in Germany. Estimates for Palestinians with tolerance permits were calculated based on the accumulative total of relevant listings according to country of origin (Egypt, Jordan, Lebanon, Syria, stateless, nationality unclear, no reference) for 1 July 1993–21 August 2002 (7,657 persons).
- ⁵⁵³ Also see Takkenberg, *The Status of Palestinian Refugees*, p. 190: "Palestinians in Germany have generally also not been recognized as Convention refugees nor have they been granted asylum under the German Constitution. In practice, Palestinians in the Federal Republic of Germany are being "tolerated" that is, their (international) status as refugees was informally acknowledged, so far as they are allowed to remain, although without formal legal status." Also see Goodwin-Gill, *The Refugee in International Law*, p. 245.
- ⁵⁵⁴ Other options currently being explored by the authorities, including negotiations with the Lebanese government over re-admission of Palestinian refugees, suggest that the new German immigration law may offer limited benefits to Palestinian refugees. Source: Monika Kadur and Al Nadi Counselling Center, Berlin.
- ⁵⁵⁵ See also UNHCR, *The 1954 Convention relating to the Status of Stateless Persons: Implementation within the European Union Member States and Recommendations for Harmonisation*, Department of International Protection, October 2003, p. 20.
- ⁵⁵⁶ See, for example, Federal Administrative Court, 15 October 1985 (9C 30/85): "*Ihr Status muss aufgrund des Gesetzes vom 12. April 1979 zu dem Übereinkommen vom 28 September 1954 über die Rechtsstellung der Staatenlosen [...] geregelt werden.*"
- ⁵⁵⁷ Decision, 23 February 1993 (1C 45/90). Translated by Takkenberg in *The Status of Palestinian Refugees*, p. 189.
- ⁵⁵⁸ Also see Federal Administrative Court, 21 January 1992 (1C 17/90).
- ⁵⁵⁹ On 16 July 1996, for example, the Federal Administrative Court affirmed (1C 30.93) that the state is not required to provide the benefits of the 1954 Stateless Convention to persons who, at the time of the decision, are not "lawfully staying" in the country. See also UNHCR, *The 1954 Convention relating to the Status of Stateless Persons: Implementation within the European Union Member States and Recommendations for Harmonisation*, Department of International Protection, October 2003, p. 40.
- ⁵⁶⁰ Moreover, stateless Palestinians may, in future, benefit from the new Immigration Law, which provides an option for granting residence permits to previously "tolerated" persons. If issued such residence permits, they could have access to the benefits of the 1954 Stateless Convention for the first time.

Refugee lawyers in Germany expect, however, that the new Immigration Law will have limited impact on the situation of stateless Palestinians. See also Sections 4 and 5 above.

⁵⁶¹ All cases listed below are referred to in the text. Copies of these cases are on file with the author.

Hungary

⁵⁶² Major sources: Hungarian Helsinki Committee.

⁵⁶³ Subsections 2-4 of Section 3 relate to the asylum-seeker's family.

⁵⁶⁴ The provision guarantees the principle of *non-refoulement* to territories where "there is good reason to suppose that the returned, refused or expelled foreigner would be exposed to torture, inhuman or degrading treatment or the death penalty."

⁵⁶⁵ Section 14(1) of the Aliens Act stipulates that in order to obtain permission for her/his spouse or under-age child to stay, a refugee shall prove that: a) her/his livelihood is assured by her/his own income or property; b) she/he has comprehensive health insurance or the necessary financial coverage to make use of health services; and c) appropriate accommodation for the family is guaranteed.

⁵⁶⁶ Source: UNHCR Hungary. As decisions granting refugee status do not include justifications in Hungary, the relevant background documents are not available to NGOs.

Ireland

⁵⁶⁷ Major sources: Ms. Bernie McGonigle, Lawyer, Refugee Legal Service; Asylum Policy Division within the Department of Justice, Equality and Law Reform; and UNHCR Ireland.

⁵⁶⁸ Information on community estimates is provided by the Oxford University "Civitas-Foundations of Participation" project's database. See: <http://www.civitas-online.org>.

⁵⁶⁹ Amended by Section 11(1) of the Immigration Act 1999, Section 9 of the Illegal Immigrants (Trafficking) Act 2000 (Irish Refugee Act), and Section 7 of the Immigration Act 2003.

⁵⁷⁰ Source: Asylum Policy Division, Department of Justice, Equality and Law Reform.

⁵⁷¹ The rest of Section 2 excludes persons falling under Article 1F of the 1951 Refugee Convention.

⁵⁷² Source: Refugee Legal Service.

⁵⁷³ *Ibid.*

⁵⁷⁴ *Ibid.*

⁵⁷⁵ Source: Asylum Policy Division, Department of Justice, Equality and Law Reform.

Italy

⁵⁷⁶ Major source: Italian Council for Refugees (CIR).

⁵⁷⁷ Source: Ministry of Interior.

⁵⁷⁸ Source: ECRE, "European asylum systems: Legal and Social Conditions for Asylum-seekers and Refugees in Western Europe" country information: Italy, 2003. Available at: <http://www.ecre.org/conditions/2000/italy.shtml>.

⁵⁷⁹ Source: Italian Council for Refugees.

⁵⁸⁰ In a single text, the Legislative Decree No. 286 collected all the provisions in force that related to immigration and legal status of foreigners. There is no comprehensive Asylum Law in Italy. A draft law ("Provisions in Relation to Asylum") is currently under discussion in the Parliament.

⁵⁸¹ Article 3 stipulates that "no one shall be subjected to torture or to inhuman or degrading treatment or punishment."

⁵⁸² Source: Italian Council for Refugees.

⁵⁸³ *Ibid.*

⁵⁸⁴ *Ibid.*

⁵⁸⁵ *Ibid.*

The Netherlands

- ⁵⁸⁶ Major sources: Ms Helma Verouden, Immigration Lawyer, and Dutch Refugee Council.
- ⁵⁸⁷ Information from the Dutch Ministry of Interior and community estimates is provided by the Oxford University "Civitas-Foundations of Participation" project's database. See: <http://www.civitas-online.org>.
- ⁵⁸⁸ In the new Aliens Act, the procedures for asylum-seekers and for "regular aliens" (i.e., aliens applying for permission to stay for reasons that are not asylum-related) are strictly divided.
- ⁵⁸⁹ Section 29 also refers to the rights of family members of aliens who fall within the categories a-d (Section 29, 1, paras. e and f).
- ⁵⁹⁰ A circular consists of non-legislative guidelines regarding the implementation of a discretionary power attributed to the issuing authority.
- ⁵⁹¹ The fourth paragraph of the section deals with Article F. (Unofficial translation by Helma Verouden.)
- ⁵⁹² Interim Message Aliens Circular/TBV 2003/11, 24 April 2003 signed by the Head of Immigration and Naturalization Service on behalf of the Minister of Alien Affairs and Integration, prepared by the Staff Directorate of Policy Implementation, *Official Gazette*, 6 May 2003, No. 86, p. 71.
- ⁵⁹³ This is contrary to previous case law. See, for example, the decision of 6 August 1987 by the then-highest administrative court in the Netherlands, the Judicial Division of the Council of State: "... as long as UNRWA exists as an organization for the provision of protection or assistance to Palestinian refugees, the Convention does not apply to persons who voluntarily relinquish this protection by moving to an area outside the area of protection provided by that organization." Unofficial translation by Lex Takkenberg; see Takkenberg, *The Status of Palestinian Refugees in International Law*, p. 106. See a similar conclusion in the decision, 12 April 2001, District Court sitting in Gravenhage, AWB 01/25868 (available at: <http://www.rechtspraak.nl> as case No. 37. Search under "Palestijnse".)
- ⁵⁹⁴ See the decision by the Judicial Division of the Council of State, previous footnote: "The Division infers from the wording, purpose and history of Article 1D (first and second sentences) that as long as UNRWA exists as an organization for the provision of protection or assistance to Palestinian refugees" Extract in *The Netherlands Yearbook of International Law*, Vol. XX, (1989) p. 313.
- ⁵⁹⁵ AWB/03/17365. Unofficial translation by Lex Takkenberg, para. 11: "*Voorts is de rechtbank van oordeel dat verweerder niet heeft kunnen volstaan met de stelling dat de UNRWA is gecreërd met het oog op de bescherming van de Palestijnen en met de verwijzing naar de eerdergenoemde uitspraak van de Afdeling van 16 december 2002. Weliswaar speelt bij de beoordeling of er sprake is van een situatie als bedoeld in artikel 29, eerste lid, aanhef en ender d, van de Vw 2000, blijkens artikel 3:106, aanhef en onder b, van het Vb 2000 én rol dat een internationale organisatie als de UNRWA in de Gazastrook actief is, doch aan de rol van de UNRWA kan alleen gewicht worden toegekend indien bekend is wat de UNRWA kan doen om Palestijnen te beschermen. In genoemde uitspraak van de Afdeling is ook niet meer overwogen dan dat verweerder gewicht mocht toekennen aan de positie van de UNRWA in de regio. De rechtbank leest echter nergens in de bestreden beschikking welk gewicht daaraan is toegekend of hoe deze organisatie bijdraagt aan de veiligheid van Palestijnen in de bezette gebieden. Gelet op de door verzoeker overgelegde informatie, heeft verweerder onvoldoende gemotiveerd dat de UNRWA daadwerkelijk in staat is om naast humanitaire hulp Palestijnen bescherming te kunnen bieden in de door Israël gebieden.*"
- ⁵⁹⁶ BADIL is not aware of subsequently published decisions examining whether UNRWA is actually able to provide protection to Palestinian refugees arriving from its area of operation.
- ⁵⁹⁷ Available at: <http://www.rechtspraak.nl>, under database "uitspraak" using the search word "Palestijnse" as case No. 10.
- ⁵⁹⁸ *Ibid*, case No. 9.
- ⁵⁹⁹ *Ibid*, case No. 1. Also published in the *Jurisprudence Immigration Law Magazine*, JV 2003 No. 198.
- ⁶⁰⁰ *Ibid*, case No. 19.
- ⁶⁰¹ Extract in the *Netherlands Yearbook of International Law*, Vol. XX (1989), p. 313. A copy of a decision by the District Court of the Hague, 7 September 1991, *H.G.K. v. De Staatssecretaris van Justitie* (copies of an extract from the decision by the Judicial Division of the Council of State, are available

from the author). This conclusion is in line with the decisions mentioned in footnote 589. According to the recent amendment of Circular C1/4, this conclusion would no longer be the correct interpretation of Article 1D.

Norway

⁶⁰² Major sources: NOAS (*Norsk Organisasjon for Asylsøkere*) and Directorate of Immigration.

⁶⁰³ Information on community estimates is provided by the Oxford University "Civitas-Foundations of Participation" project's database. See: <http://www.civitas-online.org>.

⁶⁰⁴ Source: Directorate of Immigration.

⁶⁰⁵ *Ibid.*

⁶⁰⁶ *Ibid.*

⁶⁰⁷ *Ibid.*

⁶⁰⁸ There are a few differences with regard to welfare benefits. For example, refugees are entitled to full retirement pay, whereas retirement pay for persons granted complementary forms of protection is calculated based on the number of years they have lived in Norway. There are also some differences regarding criteria for family reunification.

⁶⁰⁹ "Party of God" is a political and military party in Lebanon founded in 1982 to fight Israel in southern Lebanon.

⁶¹⁰ Source: Directorate of Immigration.

Poland

⁶¹¹ Major source: Ms Katarzyna Zdybska, Halina Niec Human Rights Association.

⁶¹² Estimate of Palestinian community organizations and Halina Niec Human Rights Association and the Oxford University "Civitas-Foundations of Participation" project's database. See: <http://www.civitas-online.org>.

⁶¹³ Aliens who seek to legalize their stay in Poland may obtain residence permits according to Article 53 of the Aliens Act on various grounds, including their previous possession of a work permit.

⁶¹⁴ Source: Office for Repatriation and Aliens. See: <http://www.uric.gov.pl>.

⁶¹⁵ Source: Halina Niec Human Rights Association.

⁶¹⁶ Source: Halina Niec Human Rights Association.

⁶¹⁷ Also see case RdU1443/S/02 before the Refugee Council, upheld by the High Administrative Court in V SA 1673/01.

⁶¹⁸ See DMU II-3062/SU/97 and RdU-341-1/S/01. A different view was expressed by the Refugee Council in the case RdU-547/S/99, in which a Palestinian was granted refugee status automatically based on the second paragraph of Article 1D. However, this interpretation was not followed up in subsequent cases.

⁶¹⁹ It is unclear whether the applicability of the inclusion clause would result in recognition of refugee status, or whether the applicant would also have to fulfil the criteria set out in Article 1A(2).

⁶²⁰ See, for example, DMU-II-1140/SU/2000, in which the Office for Repatriation and Aliens decided to grant refugee status to a Palestinian from Gaza who was registered with UNRWA. The applicant argued that he should be automatically granted asylum on the basis of Article 1D. The applicant could not return to Gaza and regain access to UNRWA's assistance.

⁶²¹ See, for example, DMU-II-3062/SU/97 and DMU II 185/SU/98.

⁶²² See, for example, decisions DP-II-1405/SU/2002, DP-I-1610/2003 and RdU-191-1/S/2004.

⁶²³ Katarzyna Zdybska of Halina Niec Human Rights Association has kindly provided BADIL with input on these decisions. For further details on these cases, please contact Ms Zdybska. Also see Katarzyna Zdybska: "The Status of Palestinian Refugees in the Light of the 1951 Geneva Convention," *International Immigration and Environmental Conference Bulletin*, PWSBiA, Warsaw, 2002.

Spain

- ⁶²⁴ Major source: UNHCR Spain.
- ⁶²⁵ The following official data regarding asylum claims by stateless persons is available (source: *Memorias Anuales de la Oficina de Asilo y Refugio, Boletín Estadístico de Asilo*): in 2003, thirteen stateless persons applied for asylum. The authorities made decisions in twenty-five cases and found that all of them were inadmissible (2003 statistics are provisional and unofficial.) In 2002, 74 stateless persons applied for asylum. The authorities made decisions in 39 cases: one person was granted protection on humanitarian grounds, seven claims were rejected and 31 cases were deemed inadmissible.
- ⁶²⁶ Please note that this heading applies only to Palestinians who are already in Spanish territory. Palestinians who arrive at the airport seeking asylum are subject to the border admissibility procedure.
- ⁶²⁷ Article 13(1) of Royal Decree 203/1995 (10 February) approving the Implementing Regulation of Law 5/1984 (26 March) regulating Refugee Status and the Right to Asylum, as amended by Law 5/1994 (16 May).
- ⁶²⁸ This is in accordance with Article 5.6.d of the Spanish Asylum Law, stipulating that: "The request is based on facts, information or allegations which are openly false, implausible or, because they are no longer valid or significant, do not constitute the basis of a need for protection."
- ⁶²⁹ This is in accordance with Article 5.6.f of the Spanish Asylum Law, stipulating that an asylum application is not admissible, "if the asylum-seeker has been recognized as a refugee and has the right to reside and be granted asylum in another state, or if the asylum-seeker has arrived from another state from which he could have requested protection. In either case, there must be no danger to his life or liberty in the other state, nor may he be exposed to torture or other inhuman or degrading forms of treatment there. In the other country, he must also be effectively protected against *refoulement* to the persecuting country, under the conditions of the Geneva Convention."
- ⁶³⁰ Article 13(2) of Royal Decree 203/1995 (10 February approving the Implementing Regulation of Law 5/1984 (March 26) regulating Refugee Status and the Right to Asylum.
- ⁶³¹ Article 15(1), *ibid.*
- ⁶³² Article 15(2), *ibid.*
- ⁶³³ Law No. 5/1984 (26 March) regulating Refugee Status and the Right to Asylum, as amended by Act No. 9/1994 (the Asylum Law).
- ⁶³⁴ The Organic Law No. 4/2000, (11 January 2000), as amended by Organic Law No. 8/2000, (22 December 2000) and Organic Law 14/2003, (20 November), on Rights and Freedoms of Foreigners in Spain and their Social Integration.
- ⁶³⁵ Under the First Additional Provision regarding groups of displaced individuals.
- ⁶³⁶ See further ECRE, "European asylum systems: Legal and Social Conditions for Asylum-seekers and Refugees in Western Europe," country information: Spain, 2003, p. 3.
- ⁶³⁷ This provision was used, for example, to grant temporary protection to Kosovo Albanians in 1999.
- ⁶³⁸ The Stateless People Regulation, approved by Royal Decree No. 865/2001.
- ⁶³⁹ Source: UNHCR Spain.

Sweden

- ⁶⁴⁰ Major source: Swedish Migration Board.
- ⁶⁴¹ Information on community estimates is provided by the Oxford University "Civitas-Foundations of Participation" project's database. See: <http://www.civitas-online.org>.
- ⁶⁴² In some statistics, the category "stateless/unknown" has been used.
- ⁶⁴³ Source: Swedish Migration Board.
- ⁶⁴⁴ These applicants were granted protection as "*de facto* refugees." This category has since been replaced by the category of "persons in need of protection" (Chapter 3, Section 3 of the Aliens Act).
- ⁶⁴⁵ *Utlänningslag* (UN), 8 June 1989 with subsequent amendments (1989: 529).

- ⁶⁴⁶ The practice to grant a residence permit on political-humanitarian grounds was established by the Aliens Appeals Board in its decision UN 344-97 regarding two Iraqis.
- ⁶⁴⁷ See, for example, the *Udlämningsnämnden* (UN) decision, 9 July 2004 regarding a woman and her child who alleged that they were from the West Bank. The UN concluded that their country of former habitual residence was Jordan and there was no reason to grant them residence permits.
- ⁶⁴⁸ For case law on entitlement to travel documents based on Article 1D, see Section 4 immediately following.
- ⁶⁴⁹ Temporary residence permits may be granted, for example, to persons who have fled from a conflict that is expected to end in the foreseeable future (temporary residence permits have, for example, been granted to persons from Chechnya). Palestinians who are granted residence permits are generally granted permanent residence permits, except for Palestinians who are granted residence permits for family reunification. They may be granted one-year permits, and after a year, their situation will be reassessed (for example, to assess whether the relationship is authentic). See UN 50-92, 14 December 1992.
- ⁶⁵⁰ See, for example, the Aliens Appeals Board decisions UN 47/92 of 20 March 1992 and UN, 17 November 2003. In a decision of 13 May 2003 (upheld by UN in its decision of 17 June 2004), a Palestinian from Saudi Arabia was granted a permanent residence permit on humanitarian grounds.
- ⁶⁵¹ See, for example, the Aliens Appeals Board's decisions: UN 47/92 of 20 March 1992, UN 50-92 of 14 December 1992, UN of 19 December 2002 and UN of 17 November 2003.
- ⁶⁵² See decision UN 50-92, 14 December 1992 by the Aliens Appeals Board.
- ⁶⁵³ For additional case law, see Section 9 below.
- ⁶⁵⁴ See, for example, the decision, 23 November 2000 (UN 00/08442) in which the Appeals Board granted a Palestinian from Saudi Arabia a residence permit on humanitarian grounds because it was impossible to return him to Saudi Arabia.
- ⁶⁵⁵ There are examples of Palestinians who have lived without any legal status for more than six years.
- ⁶⁵⁶ More information on the case is available on the Ombudsman's website. See: <http://www.mfo.nu>.
- ⁶⁵⁷ As of October 2004, ECHR has not yet admitted the case. Meanwhile, the deportation orders are still in place. However, in practice, it is unlikely that the Swedish authorities will return the mother and her children to Russia via Finland. Until the case has been finally decided by ECHR, deportation cannot take place.

Switzerland

- ⁶⁵⁸ Major source: Swiss Federal Office for Refugees.
- ⁶⁵⁹ Source: Swiss Federal Office for Refugees. The term "unknown" is also used when the asylum-seeker's country of origin cannot be determined.
- ⁶⁶⁰ *Ibid.*
- ⁶⁶¹ *Ibid.*
- ⁶⁶² "*Si l'exécution du renvoi n'est pas possible, est illicite ou ne peut être raisonnablement exigée.*" (Article 44 (2))
- ⁶⁶³ She identified herself as Palestinian. The question of whether she was Palestinian or Lebanese was discussed on p. 5 of the judgment.
- ⁶⁶⁴ "*Selon la jurisprudence de la Commission, l'admission provisoire, en raison de l'impossibilité de l'exécution du renvoi, ne saurait être prononcée qu'à la double condition que l'étranger ne puisse pas sur une base volontaire quitter la Suisse et rejoindre son Etat d'origine, de provenance ou un Etat tiers et que simultanément les autorités suisses se trouvent elles-mêmes dans l'impossibilité matérielle de renvoyer l'intéressé, malgré l'usage éventuel de mesures de contrainte... Si l'impossibilité de l'exécution du renvoi dure depuis plus d'une année et que cette situation doit persister durant une période indéterminée, l'admission provisoire doit être ordonnée...*"
- ⁶⁶⁵ Source: Swiss Federal Office for Refugees.

United Kingdom

- ⁶⁶⁶ Major source: The Asylum Policy Unit of the UK Home Office, Richard Lumley, Protection Advisor of the Refugee Council in the United Kingdom and Azeem Suterwalla, Barrister-at-Law.
- ⁶⁶⁷ Information on community estimates is provided by the Oxford University “Civitas-Foundations of Participation” project’s database. See: <http://www.civitas-online.org>.
- ⁶⁶⁸ See Asylum Policy Instruction on “Application Registration Card”. See: <http://www.ind.homeoffice.gov.uk>.
- ⁶⁶⁹ The Instruction is available on IND’s website. See: <http://www.ind.homeoffice.gov.uk>.
- ⁶⁷⁰ The Instruction provides that anyone who is registered with UNRWA on 28 July 1951 will normally be considered to have been in receipt of such protection or assistance, unless the contrary can be shown. There may be some, very rare, cases where a person is not registered with UNRWA but there is evidence that they would nevertheless have been in receipt of UNRWA protection or assistance on 28 July 1951, in which case Article 1D would also apply.
- ⁶⁷¹ The camp is situated near the town of Saida, 45km south of Beirut. UNWRA is providing services to the approximately 44,000 refugees who live in the camp. More information on the camp is available at: <http://www.un.org/unrwa/refugees/lebanon/einelhilweh.html>.
- ⁶⁷² The camp is situated near the city of Tyre in southern Lebanon. UNWRA is providing services to the approximately 10,000 refugees who live in the camp. More information on the camp is available at: <http://www.un.org/unrwa/refugees/lebanon/elbuss.html>.
- ⁶⁷³ Para. 24 of the decision.
- ⁶⁷⁴ Para. 7, *ibid*.
- ⁶⁷⁵ Paras. 9 and 3, *ibid*.
- ⁶⁷⁶ Para. 14, *ibid*.
- ⁶⁷⁷ Para. 15, *ibid*.
- ⁶⁷⁸ Para. 16 of the decision. UNHCR (intervener in the case) had argued that Article 1D contained an *inclusion clause* which regulates the moment at which the 1951 Refugee Convention protection regime substitutes that of other UN agencies (para. 89 of UNHCR’s Skeleton Argument prepared by Guy Goodwin-Gill, hereafter “UNHCR’s Skeleton Argument”). UNHCR, moreover, noted that the representative of the UK had stated during the Conference of Plenipotentiaries that “...the risk that European states might be faced with a vast influx of Arab refugees was too small to be worth taking into account” (see nineteenth meeting, *Travaux Préparatoire*, p. 379). UNHCR then referred to the drafters’ intention to avoid a “lacuna in the provision of international protection”: “The States which participated in the drafting of the various international instruments were equally of the view that the purpose of Article 1D was to provide a non-permanent bar to Convention protection. They expected that the Palestine refugee problem would be resolved on the basis of the principles laid down in UNGA Resolution 194(III) ..., particularly through repatriation and compensation in accordance with paragraph 11, and that protection under the 1951 Convention would ultimately be unnecessary. However, they also sought to anticipate a situation of no settlement, and to avoid a lacuna in the provision of international protection.” (Para. 58 of UNHCR’s Skeleton Argument.)
- ⁶⁷⁹ Para. 25 of the decision.
- ⁶⁸⁰ Para. 26, *ibid*.
- ⁶⁸¹ Para. 33, *ibid*. Also see Judge Lord Phillips MR, paras. 63ff of the decision. UNHCR, on the other hand, argued that the meaning of Article 1D was not “frozen in time”: “UNHCR is also of the view that the meaning of Article 1D was not frozen in time, either at the date of signature or of ratification of the Convention. On the contrary, the temporal, material and personal scope of the provision must be understood in the light of institutional and international developments since 1948.”
- ⁶⁸² Para. 34, *ibid*. UNHCR argued against this interpretation by stating that “equal status” could not be achieved if the category of refugees falling within Article 1D were subject to the 1 January 1951 or any other deadline: “This reasoning is misplaced. The 1967 Protocol only amended that provision of the 1951 Convention in which a dateline was expressly mentioned as a relevant criterion; it did not ‘amend’ Article 1A(1), Article 1D, or Article 1C, or Article 1E, or Article 1F. In addition, the Preamble to the 1967

Protocol clearly identifies that the goal of 'equal status' is to be enjoyed by 'all refugees covered by the definition in the Convention irrespective of the dateline 1 January 1951'..."

⁶⁸³ Para. 36, *ibid.* UNHCR disagreed with Lord Justice Laws' statement that the descendants of Palestinian refugees do not suffer from the same experience. Not only the 1948 refugees, but also their children, are affected by the unresolved conflict and they can all be identified by the events of 1948–49: "The drafters clearly intended to ensure continuity of protection for those affected by a particular situation, so long as that situation remained unresolved and independently of any date." (Para. 76 of UNHCR Skeleton Argument.)

⁶⁸⁴ Para. 47, *ibid.* UNHCR agreed that the second sentence of Article 1D would be triggered by the cessation of UNRWA's service, but argued that there are many circumstances where protection or assistance can come to an end, such as: UNRWA itself has been wound up and no longer exists; military occupation or activities have physically interrupted UNRWA's provision of services; an individual entitled to protection or assistance under UNRWA's mandate has been expelled or refused permission to return to UNRWA's area of operations; an individual entitled to protection or assistance under UNRWA's mandate is effectively unable to avail her/himself of protection or assistance in UNRWA's area of operations. UNHCR noted that the second sentence of Article 1D would not be applicable if the asylum-seeker left UNRWA's area of operations for reasons of personal convenience.

⁶⁸⁵ Para. 49, *ibid.* UNHCR agreed with this conclusion that no determination of a well-founded fear is necessary, noting that: "Moreover, Article 1D is not based as such on a 'well-founded fear of persecution' in the sense of Article 1A(2). It is based on the events of 1948–49, the mandates of UNRWA and UNCCP, the parameters for a final solution laid down in the relevant General Assembly resolutions, and until such time as a definitive settlement is attained." (Para. 73 of the Skeleton Argument.)

⁶⁸⁶ Paras. 53, 75, *ibid.*

⁶⁸⁷ Asylum Policy Instruction on Humanitarian Protection. See: <http://www.ind.homeoffice.gov.uk>.

⁶⁸⁸ See Asylum Policy Instruction on Discretionary Leave: "Discretionary Leave is not to be granted on the basis that, there is, for the time being, no practical way of removing a person e.g., an absence of route or travel document." And: "It [discretionary leave] is intended to be used sparingly." See: <http://www.ind.homeoffice.gov.uk>.

⁶⁸⁹ At that point, she/he may be denied indefinite settlement if the authorities decide that this would be conducive to the public good. Further Discretionary Leave is granted in such cases, and the decision is reviewed every three years. Immigration rules recognize the ties that a person may form with the UK after many years of continuous residence in the country. Therefore, a person who can prove continuous lawful residence of ten years or more, or fourteen years continuous residence irrespective of legality, may be granted settlement if there are no strong countervailing factors (so-called long residence concessions).

Canada

⁶⁹⁰ Major source: Ed Corrigan, Barrister and Solicitor; Immigration and Refugee Board (IRB); and Amnesty International Canada.

⁶⁹¹ Information on community estimates is provided by the Oxford University "Civitas-Foundations of Participation" project's database. See: <http://www.civitas-online.org>.

⁶⁹² The Immigration and Refugee Protection Act (IRPA) provides for a Refugee Appeal Division (RAD). Although IRPA came into force on 28 June 2002, the implementation of the RAD was delayed. There is currently no appeal mechanism. A decision by the Refugee Protection Division may be submitted for judicial review to the Federal Court of Canada.

⁶⁹³ Federal Court of Canada, decision, 25 July 1996, *Altawili v. MCI*, para. 4

⁶⁹⁴ Para. 19 of the judgment.

⁶⁹⁵ Para. 13, *ibid.*

⁶⁹⁶ A similar argument has been advanced by Hathaway, *The Law of Refugee Status*, p. 61.

⁶⁹⁷ See, for example, the decision by IRB, 1 February 1992 (U91-03767): "The panel found that the claimant was stateless and that he had no country of former habitual residence within the meaning of

- the definition of Convention refugee. He was not a Convention refugee.”
- ⁶⁹⁸ *Ayman Maarouf v. The Minister of Employment and Immigration*, (1993), *Immigration Law Reporter*, 23, p.163.
- ⁶⁹⁹ For a discussion of this case and the development of Canadian jurisprudence in respect of the term CFHR, see Edward C. Corrigan, “The Legal Debate in Canada on The Protection of Stateless Individuals Under the 1951 Geneva Convention,” *Immigration Law Reporter*, 23 (third), pp. 196ff; and Ardi Imseis, “Statelessness and Convention Refugee Determination: An Examination of the Palestinian Experience at the Immigration and Refugee Board of Canada,” *UBC Law Review*, 1997, Vol. 31, No.2, pp. 317ff.
- ⁷⁰⁰ Decision of 30 June 1993 (see below, point 8, for a summary of the decision). Also see p. 691 of the decision: “International refugee law was formulated to serve as a back-up to the protection owed a national by his or her state. It was meant to come into play only in situations where that protection is unavailable, and then only in certain situations. The international community intended that persecuted individuals be required to approach their home state for protection before the responsibility of other states becomes engaged.”
- ⁷⁰¹ Para. 30. Also see *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status*, para. 104: “A stateless person may have more than one country of former habitual residence, and he may have a fear of persecution in relation to more than one of them. The definition does not require that he satisfies the criteria in relation to all of them.”
- ⁷⁰² Also see the Federal Court in its decisions of 9 July 1998 (*Elbarbari v. MCI*) and 10 March 1999 (*Elastal v. MCI*) and IRB in its decisions of 14 December 1998 (T97-02809) and 14 March 2001 (A99-00575).
- ⁷⁰³ Also see Country Profile Sweden, where similar cases have been dealt with by the authorities.
- ⁷⁰⁴ Federal Court of Canada, decision of 25 July 1996, *Altawili v. MCI*, para. 11.
- ⁷⁰⁵ Federal Court decision of 13 December 1993.
- ⁷⁰⁶ Listed according to CFHR. For brief descriptions of cases listed here, see Section 8.
- ⁷⁰⁷ Also a well-founded fear of persecution against Kuwait.
- ⁷⁰⁸ Also see the decision upheld by the Federal Court: decision of 10 March 1999 (*Elastal v. MCI*).
- ⁷⁰⁹ Also see the decision upheld by the Federal Court: decision of 10 September 2003 (*Kadoura v. Canada*).
- ⁷¹⁰ Also see decision upheld by the Federal Court: decision of 19 June 1998 (*Daghmarsh v. MCI*).
- ⁷¹¹ Also see decisions upheld by the Federal Court: decision of 14 November 2002 (Qasem v. MCI) and decision of 12 December 1997 (*Ahmad v. MCI*).
- ⁷¹² BADIL is aware of two decisions under the PRRA assessment involving Palestinians. A decision of 28 April 2004 involved a stateless Palestinian refugee from the Gaza Strip who was registered with UNRWA. The Pre-Removal Risk Assessment Office (PRRAO) noted that IRB’s decision of 30 May 2003 was the closest match to the facts of this case and referred to the observation made by IRB in that case regarding the general situation in the 1967-OPT, which went beyond the general consequences of civil war (see summary in Section 8). PRRAO then noted that the nature of the discrimination in 1967-OPT is sufficiently sustained, systematic and severe to constitute persecution. PRRAO then concluded that the applicant had a well-founded fear of persecution in Gaza, noting that if he had been gainfully employed, self-sufficient and not a refugee under the mandate of UNRWA, the result may have been different. As a result of that decision, the applicant had protected person status in Canada and was entitled to apply for Permanent Resident Status. A decision of 20 April 2004 involved a stateless Palestinian born in Kuwait. At the age of eighteen, he went to the US to study. He subsequently left and sought protection in Canada. In 1996, his refugee claim was rejected on the basis that the US was his last country of habitual reference and that he did not have a well-founded fear of persecution in that country. PRRAO noted that subsequent to the IRB’s decision, the Federal Court of Appeal reversed the law on this point requiring that all countries of former habitual residence be assessed (see above) and that his claim against Kuwait was never assessed by IRB, as is now required by Canadian case law. PRRAO then noted that the applicant was outside his country of habitual residence and unable to return because of a state policy of “cleansing” the country of Palestinians. This was due to an imputation of political opinion to Palestinians as a class because

of views adopted by senior Palestinian leadership during the Gulf War. This clearly amounted to persecution under the 1951 Refugee Convention according to PRRAO. The applicant was, therefore, granted protected person status in Canada and was entitled to apply for Permanent Resident Status. The PRRA assessment was previously called a "Post-Determination Refugee Claimants in Canada Class" (PDRCC) assessment. BADIL is aware of one PDRCC assessment involving a Palestinian, i.e., decision by the Federal Court of Canada of 22 April 2002, *Shalhoub v. MCR* (see summary under point 8).

⁷¹³ The Coalition Against the Deportation of Palestinian Refugees, *Stateless & Deported – Palestinian Refugees Facing Deportation from Canada 2003-2004*, Montreal, 2004, section 2.2.2: "There are over 135 Palestinian refugee claimants, the great majority of them residing in the Montreal region. Approximately 90% of the refugee claimants are from the refugee camps in Lebanon."

⁷¹⁴ "Facing deportation" means being rejected by the IRB and applying for judicial review at the Federal Court, or applying for the Pre-removal Risk Assessment, or awaiting removal. Once a decision is rendered by the IRB, the procedures that follow rarely amount to the overturning of the decision (see *ibid*).

⁷¹⁵ *Ibid*, sections 2.3.1 and 2.3.2.

⁷¹⁶ Coalition Against the Deportation of Palestinian Refugees. See <http://refugees.resist.ca>.

⁷¹⁷ In relation to protection of stateless persons under the 1951 Refugee Convention, IRB stated in its decision of 1 January 1992 (M91-01269), which involved a Palestinian who claimed refugee status on the grounds that he had no right to reside anywhere, that a stateless person must also have a well-founded fear of persecution in order to be considered a Convention refugee, and that the absence of the protection of a state seemed to be a necessary but insufficient condition for the granting of Convention refugee status.

⁷¹⁸ Minister of Citizenship and Immigration.

⁷¹⁹ Minister of Employment and Immigration.

United States of America

⁷²⁰ Major sources: Karen H. Pennington, Malea Kiblan, Susan Akram, and Ty S. Wahab Twibell.

⁷²¹ Data gathered by the Oxford University "Civitas-Foundations of Participation" project's database. See: <http://www.civitas-online.org>.

⁷²² According to Micheal Suleiman, Professor at Kansas State University, in "Palestinians: A Preliminary Bibliography".

⁷²³ Source: Salman Abu-Sitta "Palestine 1948 – Commemoration of Al Nakba" (estimate as of 1998). Also see Kathleen Christison "The American Experience: Palestinians in the US," stating that "The *Palestinian Statistical Abstract for 1983* lists 108,045 Palestinians as living in the US, but educated guesses by those active in Arab-American organizations seem to fall in the 200,000-400,000 range. The latter figure is probably high, but a range centering on the 200,000 figure seems reasonable. Whatever the exact number, it is quite small compared with other ethnic minorities."

⁷²⁴ Some may have entered illegally, for example, arriving in Texas from Mexico.

⁷²⁵ Palestinians from Gaza may be listed as "Egyptian," as "Gaza" or as "Palestinian," depending on the document and practice. Palestinians from the West Bank may be listed as Jordanians on some documents. In one case reported to BADIL, the Palestinian asylum-seeker was registered as "Stateless" on his I-94 (showing his asylum status), as "Palestinian" on his visa and "Jordanian" on his work card.

⁷²⁶ This does not apply to persons who are in removal, exclusion or deportation proceedings, i.e., persons who have been issued a *Notice to Appear before an Immigration Judge*.

⁷²⁷ An affirmative procedure includes an interview and is different from a removal procedure in a court. The affirmative application is initially processed at the regional center and then forwarded to the regional asylum office. Once the case is processed at the regional asylum office, an interview is scheduled at a local CIS office.

⁷²⁸ Para. 42(B) gives discretion to the President to include other groups of refugees. This paragraph has

been used for overseas refugees.

⁷²⁹ *Abdel-Masih v. INS*, 73 F.3d 579 (5th Cir. 1996).

⁷³⁰ Published as an appendix to the 69 No. 48 *Interpreter Releases* 1609.

⁷³¹ Started by refugee lawyers, including Malea Kiblan, in response to the influx of Palestinians from Kuwait during the Gulf War. As Palestinian asylum-seekers raise unique issues, the Project prepared and trained other practitioners and asylum officers dealing with Palestinian cases.

⁷³² See the BADIL website for the full text of the Legal Opinion by the United States' General Counsel, 27 October 1995.

⁷³³ *The Basic Law Manual*, Immigration and Naturalization Service, November 1994, p. 25.

⁷³⁴ See Article 13 of the ICCPR, providing that "an alien lawfully in the territory of a State Party to the present Covenant may be expelled there from only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority."

⁷³⁵ *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status*, para. 74, p. 18: "The term "nationality" in this context [of Article 1A(2)] is not to be understood only as "citizenship". It refers also to membership of an ethnic or linguistic group and may occasionally overlap with the term "race." Persecution for reasons of nationality may consist of adverse attitudes and measures directed against a national (ethnic, linguistic) minority and in certain circumstances the fact of belonging to such a minority may in itself give rise to well-founded fear of persecution."

⁷³⁶ BADIL is not aware that the General Counsel's guidelines have been followed in decisions by the courts.

⁷³⁷ See, for example, the case of *Mohammad Issa Alshibat v. INS* (No. 96-70590, 1997, US App. Lexis 27125, of 18 September 1997, San Francisco, California): the Court of Appeals for the Ninth Circuit upheld the Board of Immigration Appeals' decision in which Mr Alshibat was denied asylum because "it has not been demonstrated that the Israeli authorities took their actions to punish him for one of the five grounds specified in the [Immigration and Naturalization] Act, rather than in response to various infractions in which he was involved, including injuring two men in an auto accident, violating curfew, travelling without proper identification, and being accused of theft by an Austrian tourist." The decision of BIA (previous name for INS) was also based on testimony that was found non-credible, an assessment which was upheld by the Court. In other cases, the Court of Appeals for the Ninth Circuit overturned decisions by BIA based on credibility. See, for example, *Mohammad Ibrahim Suradi v. INS* (No. 90-70217, 1992, US App. Lexis 2596, of 6 December 1991) and a case of 12 June 1991 regarding a Palestinian from Jordan.

⁷³⁸ See, for example, the case of *Raja Darwish El Ghussein v. INS* (No. 98-70921, 2000 US App. Lexis 8868 of 1 May 2000, Pasadena, California) involving the El Ghussein family from Gaza, in which the Court concluded that, "[t]he harassment described by the El Ghusseins was general discrimination or alternatively, related to the unstable conditions of the countries in which they had lived. None of their descriptions demonstrate that they or their extended families were particularly singled out for harassment or abuse."

⁷³⁹ The decision has been appealed.

⁷⁴⁰ By February 2004, there were approximately 150,000 recognized refugees on the waiting list.

⁷⁴¹ Those who are returned to the West Bank or the Gaza Strip are often sent there via Jordan or Egypt.

⁷⁴² Also see Richard Hugus. "My country Is At War With Palestine," *ZNet Community*, 20 October 2003. See: <http://www.zmag.org>: "Through the FBI and the Immigration and Naturalization Service, and now with the Department of Homeland Security, the US has used alleged violations of immigration regulations as a pretext for harassing, jailing, and deporting numerous Palestinian activists, particularly since the Bush Administration's two year-old declaration of racism against Arab, Muslim, and South Asian peoples."

⁷⁴³ *Interpreter Release*, 6 January 2003.

⁷⁴⁴ The facts of the case are outlined in decisions by courts, including the following two decisions by the Court

- of Appeals for the Eleventh Circuit: *Al-Najjar v. Ashcroft*, 257 F.3d 1262 (18 July 2001), *Al-Najjar v. Ashcroft*, 273 F.3d.1330 (28 November 2001). Other decisions are referred to in Akram and Rempel, "Temporary Protection as an Instrument for Implementing the Right of Return for Palestinian Refugees," p. 61.
- ⁷⁴⁵ For a more detailed presentation of this case, as well as references to court decisions and press reports, see Chapter One.
- ⁷⁴⁶ Source: Pacifica's "Democracy Now!" 27 August 2003, and Newsletter from the Committee for the Release of Farouk Abdel-Muhti of 21 August 2003.
- ⁷⁴⁷ In June 2001, the Supreme Court ruled that indefinite detention was unconstitutional.
- ⁷⁴⁸ Source: Pacifica's "Democracy Now!" 27 August 2003.
- ⁷⁴⁹ Source: Coalition for the Human Rights of Immigrants.
- ⁷⁵⁰ The judge did not decide on the issue of the applicant's fear of returning to Gaza.
- ⁷⁵¹ Source: Ty S. Wahab Twibell, Attorney-at-Law.
- ⁷⁵² See Chase, "The Problem of Statelessness: The Gulf War, Palestinian Evacuees and United States Immigration Policy," p. 569.
- ⁷⁵³ INS estimates that approximately 550 Palestinians benefited from the directive, whereas the American-Arab Anti-Discrimination Committee believes the number was higher. See 68, No. 44 Interpreter Releases 1649: "President grants Relief for Persian Gulf Evacuees in US".
- ⁷⁵⁴ See Chapter One, Protection Gaps -the Human Cost, for more details and references regarding this case.
- ⁷⁵⁵ Chase, "The Problem of Statelessness: The Gulf War, Palestinian Evacuees and United States Immigration Policy," p. 584.
- ⁷⁵⁶ Regarding the issue of whether a Palestinian from the West Bank was a national of Jordan, see for example, the US Board of Immigration Appeals' unpublished decision that the applicant had established that he was not a national of Jordan due to the following facts: "The respondent's parents had always resided on the West Bank. The respondent's father obtained a Jordanian passport for him while he was a minor so that he could leave the West Bank after it was occupied by Israel. The respondent could only travel by obtaining a passport from the Jordanian government. The fact that the passport was issued did not in itself permit him to reside in Jordan. Those Palestinians who used Jordanian passports to leave the West Bank could get permission to stay in Jordan temporarily, but then would have to leave the country or request permission to remain longer ... The respondent never resided in Jordan, nor does he have any family members who reside in that country. The respondent has had no contact whatsoever with Jordan other than being issued the passport in 1979...considering these facts in their totality, we find that the respondent has adequately established that he is not a national of Jordan."
- ⁷⁵⁷ Chase, "The Problem of Statelessness: The Gulf War, Palestinian Evacuees and United States Immigration Policy," p. 572.
- ⁷⁵⁸ *Faddoul v. Immigration and Naturalization Service*, 37 F.3d 185 (fifth Cir. 1994), of 25 October 1994.
- ⁷⁵⁹ It is not clear from the judgment whether these papers were in the authorities' or Faddoul's possession.
- ⁷⁶⁰ Available on <http://www.unhcr.ch/refworld>.
- ⁷⁶¹ In 1994, when he was learning to drive, he "almost" hit a woman on a bicycle with his car. Several months later, he was taken to the police station and charged with attempted assault with a deadly weapon. Some young men in his neighbourhood had allegedly approached the woman after the incident and told her that they knew who he was. They implied that he was a "dirty Arab" and that they had witnessed him deliberately aiming his car at her.

Australia

- ⁷⁶² Major source: Francesco Motta, Former Legal Adviser to a previous Minister of Immigration.
- ⁷⁶³ Information on community estimates is provided by the Oxford University "Civitas-Foundations of Participation" project's database. See: www.civitas-online.org.
- ⁷⁶⁴ Source: Refugee Council in Australia.
- ⁷⁶⁵ Applicants who have been rejected by the RRT can, in certain circumstances, lodge an appeal to the

Federal Court. The Court is not empowered to look at the merits of the claim (i.e., whether or not they are refugees). The Court's role is to consider whether the determination was conducted in accordance with the law. If the Court finds in favour of the applicant, the case is referred back to the RRT for reconsideration.

⁷⁶⁶ See the cases referred to in the footnotes below, as well as the four cases of 8 November 2002 (*Wacq* [2002 FCAFC 332], *Wach* [2002 FCAFC 338], *Waed* [2002 FCAFC 333] and *Waei* [2002 FCAFC 334] v. *Minister for Immigration and Multicultural and Indigenous Affairs*) and the decision of 22 November 2002 (*Wajb v. Minister for Immigration and Multicultural Affairs* [2002 FCA 1443]).

⁷⁶⁷ See Judge Carr in the Federal Court's decision of 11 January 2002, *Al Khateeb v. MIMI* (paras. 61-63): "I regard as significant the use of the word "refugee" in each of the sub-paragraphs of Article 33 and the use of the word "benefit" in sub-paragraph 2. The reference to "refugee," in my view, picks up and requires the application of the definition of that term in Article 1A(2). In short, I do not think that the second paragraph of Article 1D operates automatically to confer refugee status on the applicant. If it is accepted that the Convention is designed to provide protection only to those who truly require it (as I think it is – see, for example, Hathaway at p. 205), then it would be contrary to that purpose to give automatic refugee status to persons, such as the applicant, who have been found not to have a well-founded fear of persecution. They would be depriving more deserving and, in that sense, more genuine refugees of their place in the queue. The international resources for care of refugees are limited. It is more consistent, in my opinion, to construe the Convention in a manner which will not result in a waste of those resources."

⁷⁶⁸ See Judge Hill, para. 69 in *Wabq v. MIMA*: "It can be accepted that the Latin "*ipso facto*" conveys the meaning "by the very fact." That is the meaning attributed to it in the Shorter Oxford English Dictionary, 3rd edition. But the question is rather what, by the very fact of protection or assistance ceasing, is contemplated to happen. The answer which the second paragraph gives to the question is that the person becomes entitled to "the benefits" of the Convention. It is not that the person is deemed to be a refugee. The benefits of the Convention are those benefits, such as the non-expulsion provisions of Article 32 and the *non-refoulement* provisions of Article 33. But those benefits are available only to those persons who are refugees. They are not available to anyone else. It may be said that one would reach this conclusion anyway as a matter of policy. Not all persons who were even in 1951 within the mandate of assistance to be provided by UNRWA would have had a well-founded fear of persecution for Convention reasons, the criterion which was accepted by the Convention as marking out persons to be refugees. No doubt almost all would have been economically badly off. But not all would qualify as refugees as that word would have been understood by those drafting the Convention."

⁷⁶⁹ The views differed on whether an individual who had left UNRWA's area of operations could be said still to receive (or be entitled to receive) assistance from UNRWA so that the exclusion clause would be applicable. See, for example, Judge Carr in *Al Kateeb v. Minister for Immigration and Multicultural Affairs* (2002 FCA 7) of 11 January 2002 (para. 54) and Judge French in *Minister for Immigration and Multicultural Affairs v. Quiader* (2001 FCA 1458) of 16 October 2001 (para. 33): "In my opinion, Art 1D does not apply, to exclude from the protection of the Convention, a Palestinian, entitled to ["]protection and assistance["] from UNRWA, who is nevertheless at risk of persecution if returned to his home region notwithstanding that it is within the territorial competence of UNRWA."

⁷⁷⁰ Full Federal Court of Australia, *MIMA v. Wabq*, case of 8 November 2002 (FCAFC 329).

⁷⁷¹ Judge Tamberlin, para. 162 in *Wabq*.

⁷⁷² Judge Hill, para. 69 in *Wabq*.

⁷⁷³ Para. 168 in *Wabq*. Also see para. 155: "The work of the UNCCP described above can, in my view, properly be characterized as the taking of steps to provide protection to Palestinians. These steps were designed to implement the objectives set out in the UNCCP mandate of December 1948 and lead me to the conclusion that Palestinians as a group were receiving protection under the mandate of UNCCP as at the date of the Convention." Also see para. 161: "In this case it is important to keep in mind that at the time the Convention was done, there were two UN agencies in existence and the function of 'protection' was given to UNCCP and the function of providing 'assistance' was assigned to UNRWA. This factual context is relevant to the interpretation of Article 1D. There is of course some overlap in the expression 'protection' and the expression 'assistance' in that protection may qualify as a form

of assistance. However, as used in Article 1D the word 'protection' appears to embrace activities or measures extending beyond the social, educational and other types of assistance assigned to UNRWA. This distinct role assigned to UNCCP must be borne in mind in the interpretation of Article 1D."

⁷⁷⁴ Para. 168 of *Wabq*.

⁷⁷⁵ Para. 69(5), *ibid*.

⁷⁷⁶ Para. 108, *ibid*.

⁷⁷⁷ Para. 171, *ibid*.

⁷⁷⁸ The Tribunal had concluded prior to its January 2003 decision that *Wabq* fulfilled the criteria set out in Article 1A. See para. 7 of *Wabq*.

⁷⁷⁹ Refugee Review Tribunal (V00/11443) of 25 July 2003, paras. 5-8 under "Findings and Reasons."

⁷⁸⁰ See, for example, Judge Hill in para. 69 in *Wabq*: "... the Article was not intended to fix the class of persons as those who as at the relevant day when the Convention became operative were living. The words do no more than describe a class or community of persons. So long as such a class of persons continued to exist the provisions of Article 1D would continue to have operation." See, for example, RRT's decision of 7 April 2004, where it was unclear whether the applicant was eligible to be registered with UNRWA.

⁷⁸¹ See, for example, decision of 25 July 2003 by the Refugee Review Tribunal regarding a Palestinian from Lebanon (V00/11443). The Tribunal noted, however, that there were aspects of the applicant's circumstances which might justify consideration of his wish to be able to remain in Australia on compassionate grounds. However, these were not matters which the Tribunal could take into account in determining whether an applicant satisfied the criteria for granting a protection visa. A consideration of his circumstances on other grounds was a matter solely within the Minister's discretion.

⁷⁸² Case N03/47958.

⁷⁸³ Decision of 20 February 2002 (NO1/39434). See 9th para. (not numbered) under "Findings and Reasons" in the decision.

⁷⁸⁴ See 14th para. (not numbered) under "Findings and Reasons" in the decision.

⁷⁸⁵ See 26th para. (not numbered). Also see para. 17.

⁷⁸⁶ See 28th para. (not numbered).

⁷⁸⁷ See last para. under "Findings and Reasons." Also see 33rd para. (not numbered): "As a Palestinian male the applicant would be at particular risk of harm in Israeli security operations which especially target Palestinian males as being likely sources of violence against Israelis..."

⁷⁸⁸ V03/15685.

⁷⁸⁹ The argument is that the decision-makers have, at this stage, already rejected a case under the definition of a refugee in Article 1A(2). The applicant cannot therefore reasonably claim to be unwilling to return to her/his country because of threats to her/his physical safety or freedom for a Convention reason. The Minister has granted humanitarian visas to persons who were in need of protection pursuant to the Torture Convention and the International Covenant on Civil and Political Rights.

⁷⁹⁰ One of these cases involved a rejected asylum-seeker from the Indian-administered Kashmir. He arrived in Australia on a false Indian passport and applied for asylum. Following DIMIA's rejection of his application, he had nowhere to go: he could not be deported to Kashmir because he did not have a passport. More than 50 countries were asked to take him, but none would. By June 2004, he was still being kept in detention, having spent almost five years and nine months in detention centers. Source: "The Australian", 5-6 June 2004.

⁷⁹¹ *SHMB v. Goodwin* (FCA 1444).

⁷⁹² Source: *The 7:30 report*, TV programme, transcript of 11 February 2004.

⁷⁹³ *Ibid*.

⁷⁹⁴ Source: *The Australian*, 1 June 2004.

⁷⁹⁵ See, for example, the decision of 12 April 2000 in *Savvin* (FCA 478) regarding the question of whether a stateless person unable to return to her/his country of former habitual residence is entitled to the status of refugee, or whether there is the additional requirement that the person must have a well-founded fear of being persecuted for one of the Convention reasons.

⁷⁹⁶ BADIL is not aware of any High Court decisions regarding the interpretation of Article 1D.

New Zealand

- ⁷⁹⁷ Major source: Rodger Haines QC, Barrister and Lecturer in immigration law, Faculty of Law, University of Auckland, New Zealand.
- ⁷⁹⁸ Source: Statistics New Zealand, 2001 Census.
- ⁷⁹⁹ Source: New Zealand Immigration Service and Mr Rodger Haines (see footnote 409).
- ⁸⁰⁰ The decision is available on the Case Search page of the New Zealand Refugee Law website. See: <http://www.refugeee.org.nz>.
- ⁸⁰¹ Judgment (section dealing with Article 1D), p. 65.
- ⁸⁰² *Ibid*, p. 70-72.
- ⁸⁰³ *Ibid*, p. 74.
- ⁸⁰⁴ *Ibid*, p. 74.
- ⁸⁰⁵ *The New Zealand Immigration Service Operational Manual*, Refugees, para. C5.60.5 provides that the grant of residence does not automatically follow the recognition of refugee status. There is no exhaustive statement of the circumstances in which a residence permit may be withheld. The examples mentioned refer to cases in which Section 7(1) of the Immigration Act 1987 applies to the claimant and the Minister of Immigration is not prepared to make an exception. Section 7(1) bars the grant of a permit to persons who have committed certain crimes, including persons with serious convictions, persons previously deported from New Zealand and persons who the Minister has reason to believe have engaged in or claimed responsibility for an act of terrorism in New Zealand or outside New Zealand. Another example of where a residence permit may be withheld is where Article 33(2) of the 1951 Refugee Convention applies.
- ⁸⁰⁶ Judgment (section dealing with fear of persecution by Palestinians), p. 94.
- ⁸⁰⁷ Judgment (section dealing with fear of persecution by Israelis), p. 114.
- ⁸⁰⁸ Judgment (section dealing with statelessness), p. 83.
- ⁸⁰⁹ *Ibid*, p. 83.
- ⁸¹⁰ *Ibid*, p. 84. Also see decision by the RSAA No. 72635/01 of 6 September 2002, which is available on the New Zealand Refugee Law website. See: <http://www.refugeee.org.nz>.
- ⁸¹¹ *Ibid*, p. 89. See the similar discussion under Country Profile Canada.

Central and South America

- ⁸¹² A short and very preliminary summary is presented here for a number of reasons: i) the special circumstances of Palestinian emigration to Latin and South America; ii) the comparatively small number of 1948 and 1967 Palestinian refugees among the large Palestinian exile communities there; and iii) the scarcity of available information about modern asylum law as well as relevant jurisprudence and practice in the states of this region.
- ⁸¹³ The number of Palestinians residing in Central and South America is commonly underestimated in available statistics sources. Based on estimates of members of the Palestinian community, 350,000 Palestinians from villages surrounding Bethlehem, particularly Beit Jala and Beit Sahour, are believed to live in Chile. Information on community estimates is provided by the Oxford University "Civitas-Foundations of Participation" project's database. See: <http://www.civitas-online.org>.
- ⁸¹⁴ Source: "Mr Elias Antonio Saca Conzalez won the election," *The Post and Courier*. See: <http://www.charleston.net>.
- ⁸¹⁵ Musallam, *Folded Pages From Local Palestinian History in the 20th Century: Developments in Politics, Society, Press and Thought in Bethlehem in the British Era 1917-1948*.
- ⁸¹⁶ Source: UNHCR Caracas.
- ⁸¹⁷ Musallam, *Folded Pages From Local Palestinian History in the 20th Century: Developments in Politics, Society, Press and Thought in Bethlehem in the British Era 1917-1948*.
- ⁸¹⁸ Based on *ibid*.
- ⁸¹⁹ *Ibid*: "The first death among the emigrants to Latin America, recorded in the registers of the Latin

Parish priest's office in Bethlehem, however, goes back to 7/9/1796.”

⁸²⁰ *Ibid*, p. 43.

⁸²¹ *Ibid*, p. 44.

⁸²² *Ibid*, p. 44.

⁸²³ *Ibid*, p. 45.

⁸²⁴ *Ibid*, p. 45.

⁸²⁵ *Ibid*, p. 46.

⁸²⁶ *Ibid*, p. 46.

⁸²⁷ *Ibid*, p. 47.

⁸²⁸ *A Survey of Palestine*, prepared in December 1945 and January 1946 for the information of the Anglo-American Committee of Inquiry; reprinted by the Institute for Palestine Studies, Washington DC, 1991 (Vol. 1, p. 206). Palestinian nationality was established as of 6 August 1924 in virtue of the provisions of section II of the Treaty of Lausanne and based on the Palestinian Citizenship Orders 1925 to 1941, consolidated and further amended in 1942: “In brief it prescribes that ‘Turkish subjects habitually resident in the Territories of Palestine upon the 1st day of August, 1925, shall become Palestinian citizens.’ The effect of the amendment of 1931 was that Turkish subjects who were habitually resident in Palestine on the 6th August, 1924, but ceased to be so habitually resident before the 1st August, 1925, were deemed to have become Palestinian citizens, unless before the 23rd July, 1931, they had voluntarily acquired another nationality. Further provision was made enabling persons born in Palestine of Turkish nationality, who were abroad on 6th August, 1924, to opt for Palestinian citizenship. The applications were granted provided the applicants were able to establish unbroken personal connection with Palestine and were prepared to give a definite formal assurance of their intention to return to Palestine. The right of option expired on 24th July, 1945. The number of persons who have exercised their right of option is 465 and 87 cases are still under consideration.”

⁸²⁹ In El Salvador, the Palestinian community were commonly known as “Turks” because of the Ottoman passports the first emigrants carried. Source: *The Post and Courier*, <http://www.charleston.net>.

⁸³⁰ Musallam, *Folded Pages From Local Palestinian History in the 20th Century: Developments in Politics, Society, Press and Thought in Bethlehem in the British Era 1917-1948*, p. 47.

⁸³¹ *Ibid*, p. 48: “The British Ambassador in the Mexican capital stated that the British Government ‘had not authorized him to spend three pounds to publish the mentioned Law.’ In October 1927, the British Mandatory Government issued a statement saying, ‘The Palestinian citizenship is given to the emigrants who left the country after 1920 or before this date [October 1927] and returned to the country and resided six months in it.’”

⁸³² *Ibid*, pp. 48-50. Also see *A Survey of Palestine*, p. 206.

⁸³³ *Ibid*, p. 51.

Mexico

⁸³⁴ Major source: UNHCR Mexico.

⁸³⁵ The procedure is *ad hoc* because it is not prescribed by the existing legal framework.

⁸³⁶ Article 3 of the conclusions of the Cartagena Declaration on Refugees adopted at a colloquium held at Cartagena, Colombia from 19-22 November 1984.

Nigeria

⁸³⁷ Major source: UNHCR Nigeria.

⁸³⁸ Source: UNHCR Nigeria

⁸³⁹ The Committee is comprised of officials of the Nigerian Government and UNHCR.

⁸⁴⁰ Source: UNHCR Nigeria.

South Africa

⁸⁴¹ Major source: UNHCR South Africa.

⁸⁴² *Ibid*.



Chapter Six

**Summary of Findings: Protection
Gaps in National Practice**

Summary of Findings: Protection Gaps in National Practice

Introduction

Based on the survey presented in the previous chapter, this chapter will elucidate and summarize the major findings about country-specific interpretation and implementation of international instruments available for the protection of Palestinian refugees.

Two major conclusions are clear:

- i) there is a lack of consensus about the proper interpretation of Article 1D of the 1951 Refugee Convention, resulting in the non-implementation of its provisions and referral of Palestinian refugees to status determination under the criteria of Article 1A(2) of the 1951 Refugee Convention;
- ii) there is frequently a lack of equitable alternatives in the form of complementary forms of protection or protection under the 1954 Stateless Conventions.

The analysis of findings and protection gaps presented here is preliminary, as complete information on key issues of interest was often difficult to obtain.⁸⁴³ In some countries, the small number of asylum cases involving Palestinian refugees prevented decisive conclusions regarding the implementation of Article 1D. Difficulties with obtaining information regarding statelessness were often not related to specific cases involving Palestinians, but rather the result of a general lack of national procedures to identify cases of statelessness (with few exceptions, for example, Germany and Spain). Moreover, information was scarce regarding procedures and practice by states vis-à-vis Palestinians whose asylum requests were finally rejected (i.e., the issue of returnability). A partial explanation may be that the police are in charge of deportation procedures, and that refugee lawyers and practitioners do not necessarily know what ultimately happens to their clients once their claims have been rejected.

Irrespective of the above, however, the information that has been obtained is sufficiently detailed to shed some light on the situation of Palestinian refugees

who – as a group and due to their particular status under international refugee law – tend not to “fit” into routine national asylum practice. Findings regarding the non-implementation of existing protection instruments, in particular Article 1D, will be discussed in the first section of this chapter. The combined impact of these “protection gaps” on Palestinian refugees seeking protection in third countries will be briefly outlined in the second section.

1. Summary of Findings

Statistical Data

Information about the total number of Palestinians present in state signatories to the major international Conventions on the protection of refugees and stateless persons, as well as data about those among them who are seeking protection under these instruments, is important for assessing the scope of protection needs, the effectiveness of the current protection regime and its relevance to the Palestinian refugee population.

Scope of the Palestinian exile

Many states surveyed for the purpose of this Handbook do not have official data on the total number of Palestinians present in their territory, and even estimates are difficult to obtain. The only data currently available are partial estimates compiled by official and unofficial Palestinian sources.⁸⁴⁴ The lack of official data on the size of Palestinian exile communities can be partly explained by the lack of a consistent registration policy of states vis-à-vis Palestinian asylum-seekers.⁸⁴⁵

Registration of Palestinian asylum-seekers⁸⁴⁶

In nine countries, Palestinian asylum-seekers are registered with reference to their Palestinian origin: either as “stateless Palestinians” (Denmark, Hungary, Poland and Spain) or as “Palestinians” or under the category “Palestine” (Belgium, France, Ireland, Italy and New Zealand).⁸⁴⁷

In ten countries, information about the Palestinian origin is not included in the official asylum statistics. Instead, various general categories which include other asylum-seekers are used by the national authorities:

- “Stateless persons” (Austria, Finland, Germany, the Netherlands, Norway and Sweden);
- National of a specific place/country:

- by place of birth (United States);⁸⁴⁸
- by the country of last residence (Austria, Canada, Switzerland);
- “Unclear nationality”⁸⁴⁹ (Finland, Germany, Hungary and Switzerland).

Palestinians who have obtained a citizenship in a new country will often be registered as asylum-seekers originating from that country (for example, Jordan).⁸⁵⁰

Clearly there is no consistent method of registration of Palestinian asylum-seekers, with registration differing from one country to the next. In some cases, Palestinians are registered under various categories even within the same country, and the criteria for selection of a specific registration category in these countries seem unclear (for example, Austria, Finland, Germany and Hungary).

The lack of consistency in registration results in a situation where the total number of Palestinian asylum-seekers in a single country is unknown to national asylum authorities in charge; as a result, their particular needs and problems in the asylum process are impossible to identify and assess.

1.1 Status of Palestinians upon Entry into Third Countries

In the countries reviewed, Palestinian asylum-seekers were granted the same legal status as other asylum-seekers. Asylum-seekers generally have the right to stay in the country of asylum during the determination process. The rights attached to such status, however, vary from one country to the next, for example with regard to the granting of work permits. In many countries, asylum-seekers are granted housing and the right to work, at least after some months (for example, Denmark, Finland and Sweden). In Australia, asylum-seekers who have entered the country illegally will be automatically detained.

1.2 Article 1D in Refugee Status Determination

All the countries surveyed, except for the US, are parties to the 1951 Refugee Convention (the US is party to the 1967 Refugee Protocol). Thus, as the provision explicitly designed to cover the specific protection needs of Palestinian refugees, Article 1D of the Convention represents a potential legal framework for the recognition of refugee status of Palestinian asylum-seekers in these countries.

Proper interpretation and application of Article 1D requires that states recognize the refugee status of Palestinian refugees, providing that Article 1C, 1E and 1F do not apply. No additional assessment under Article 1A(2) is required (see Chapter Three). However, scholarly interpretation and the 2002 UNCHR Note published

in this regard have remained largely unheeded by national authorities and courts.

This survey of national practice shows that Article 1D is properly applied in only three of the twenty-three countries reviewed in detail; Finland, Hungary, at least in some cases, and, to some degree, Norway. In all other twenty countries, Article 1D is either not incorporated and/or applied at all, or interpreted and applied in a way that precludes recognition of Palestinian refugees as refugees under this provision.

Another important finding is the diversity of interpretations of Article 1D: in twelve of the countries in which Article 1D is incorporated but not fully implemented, at least eight different interpretations have been adopted to dismiss the applicability of Article 1D.

In summary, national authorities in the twenty countries where Article 1D is not properly applied have adopted at least *three* different approaches to and *eight* different interpretations of Article 1D (see approaches 2 to 4 below). Irrespective of their differences, these approaches and interpretations of Article 1D lead to the same conclusion, i.e., that asylum claims submitted by Palestinian refugees are to be assessed under the criteria set out in Article 1A(2) and/or other criteria, for example, those related to protection on humanitarian grounds.⁸⁵¹ Thus, due to the particular interpretation of Article 1D by national authorities and courts in these countries, Palestinian asylum-seekers have not derived any rights and benefits from Article 1D beyond the “right” to not be excluded from applying for refugee status under Article 1A(2) of the 1951 Refugee Convention.⁸⁵²

The various approaches and interpretations can be summarized as follows:

Approach 1: Proper application: Article 1D can convey refugee status and no additional assessment under Article 1A(2) is required.

Approach 2: No incorporation of Article 1D into national asylum legislation.

Approach 3: No application of Article 1D to national asylum practice.

Approach 4: Non-implementation of Article 1D based on the following erroneous interpretations of the meaning of its exclusion (first paragraph) and inclusion (second paragraph) clauses:

- The inclusion clause is applicable only if Palestinian asylum-seekers have not “voluntarily relinquished” UNRWA assistance;

- The inclusion clause is applicable only if UNRWA ceases its functions;
- The inclusion clause is applicable only if Palestinian asylum-seekers are unable to return to their country of former habitual residence due to a well-founded fear of persecution in that country and cannot invoke UNRWA protection there;
- The inclusion clause is applicable only to Palestinian refugees from the West Bank and Gaza Strip;
- The inclusion clause is applicable only after Palestinian asylum-seekers have obtained a permanent residence permit;
- The exclusion clause is applicable only to Palestinians who were born on or before 28 July 1951 and who were assisted by UNRWA on that date; all others are entitled to apply for asylum under Article 1A(2);
- The exclusion clause is not applicable because UNCCP has ceased its protection activities; Palestinian asylum-seekers are entitled to apply for asylum under Article 1A(2);
- The exclusion clause will become non-applicable when UNRWA ceases its functions. Then Palestinian asylum-seekers will be entitled to apply for asylum under Article 1A(2) of the 1951 Refugee Convention (as they are currently able to).

Approach 1: Proper Application – Article 1D Can Convey Refugee Status and No Additional Assessment under Article 1A(2) is required.

Among the countries surveyed, only three have properly interpreted and applied Article 1D (first and second paragraph), at least in some cases: Finland (in at least one case before the Supreme Administrative Court and two cases before the Helsinki Administrative Court),⁸⁵³ Hungary (in at least five cases in 2003)⁸⁵⁴ and Norway (at least with regard to Palestinian refugees from the West Bank and Gaza Strip). None of the other countries apply Article 1D properly.

The proper alternative interpretation of Article 1D (see Chapter Three) was adopted in one decision by the Immigration Appeals Tribunal in the United Kingdom. Subsequent decisions and guidelines by the Home Office, however, have dismissed that interpretation.⁸⁵⁵

Recognition of refugee status does not prevent national authorities from returning a Palestinian asylum-seeker to her/his country of former residence if return can be carried out in accordance with international human rights standards. In some countries, moreover, refugee status and returnability appear to be assessed jointly, and refugee status is granted only to persons who cannot be returned. In these cases, it is therefore impossible to know whether Palestinian refugees who were considered returnable by the national authorities were recognized as refugees in the process.⁸⁵⁶

Approach 2: No Incorporation of Article 1D into National Legislation

In two countries, Canada and the United States, Article 1D of the 1951 Refugee Convention is not part of national legislation. As signatories to the 1951 Refugee Convention (Canada) and/or the 1967 Refugee Protocol (the United States), these states are acting in contravention of their obligation to ensure in good faith the application of the Convention and/or Protocol to their legislation.

Approach 3: No Application of Article 1D to National Asylum Practice

In three countries (Austria, Belgium and Switzerland), Article 1D is not applied, although it appears that the provision is incorporated into national legislation.

In Austria, for example, the question of whether Article 1D has been incorporated into domestic law remains unclear; in Belgium, Article 1D does not play a role in the refugee determination process, despite the general reference in domestic law to the 1951 Refugee Convention, which presumably includes a reference to Article 1D; and in Switzerland, explicit reference to Article 1D is not found in domestic asylum law, but could be taken into consideration based on the fact that all international treaties to which Switzerland is party are directly applicable in Swiss law.

In four countries (Italy, Mexico, Nigeria and South Africa), asylum claims by Palestinians are considered under the criteria set out in Article 1A(2) of the 1951 Refugee Convention. It is unclear why Palestinian claims are assessed in this way. In Italy, the exclusion clause (first paragraph) of Article 1D is not applied because Palestinian asylum-seekers do not enjoy any form of protection in their countries of former habitual residence. However, as the arguments for positive decisions are never published, it is unclear why these asylum claims are considered under the criteria of Article 1A(2). In Mexico, Nigeria, and South Africa, the small number of Palestinian asylum cases did not permit an assessment of the application of Article 1D by the national authorities.

Approach 4: Non-implementation of Article 1D based on Erroneous Interpretation of the Meaning of its Exclusion (first paragraph) and Inclusion (second paragraph) Clauses

In twelve of the twenty-three countries reviewed, Article 1D is incorporated but interpreted and applied in a way that defeats its purpose as a separate and independent provision for determining the refugee status of Palestinian refugees. Eight different interpretations have been adopted by national authorities in this context, all of them

leading to the conclusion that Palestinian refugee status determination is required under Article 1A(2) or similar provisions under domestic law.

In three of these countries, Spain, Poland and Ireland, the role of Article 1D in the refugee status determination is unclear. In Spain, no pattern could be discerned regarding the application of Article 1D, and each case involving a Palestinian refugee is eventually reviewed on its own merits under the criteria of Article 1A(2). In Poland, the first paragraph of Article 1D has been interpreted by the Polish High Administrative Court as meaning that Palestinian refugees who have resided outside UNRWA's area of operations for a number of years do not fall within the exclusion clause and are to be considered under the general criteria of Article 1A(2) of the 1951 Convention. The meaning of the inclusion clause appears to have remained unclear, but it seems that in any event, the inclusion clause can only be triggered as a result of "objective causes," such as a ban on UNRWA's operations or lack of funds. In Ireland, one member of the Irish Refugee Appeals Tribunal appears to have applied Article 1D to cases involving Palestinian refugees. It is unclear, however, how Article 1D has been applied because the Appeals Tribunal also appears to have applied the criteria set out in Article 1A(2) of the 1951 Refugee Convention.

In general, the eight predominant interpretations of Article 1D can be grouped into two categories:

- a) Interpretations holding that Article 1D, second paragraph, contains an inclusion clause on the basis of which and under certain conditions, Palestinian refugees may be entitled to the status and benefits of the 1951 Refugee Convention;
- b) Interpretations holding that Article 1D does not contain an independent inclusion clause, but rather represents a provision that may exclude Palestinian refugees from the scope of the 1951 Refugee Convention.

a) Article 1D contains an independent but conditioned inclusion clause that may convey status and benefits under the 1951 Refugee Convention

National authorities and courts in at least six countries (Denmark, France, Germany, Netherlands, Norway and Sweden) agree that Article 1D, second paragraph, contains an inclusion clause which means that Palestinian refugees are not required to fulfil the criteria set out in Article 1A(2) in order to qualify as refugees. However, the question of which event triggers the applicability of this inclusion clause has been answered in four different ways:

a-1) The inclusion clause is applicable only if Palestinian asylum-seekers have not “voluntarily relinquished” UNRWA assistance:

Germany: The Federal Administrative Court concluded in its decision of 4 June 1991 that Palestinians who have “voluntarily relinquished” UNRWA’s assistance are not entitled to refugee status under Article 1D of the 1951 Refugee Convention. The term has been interpreted broadly, so that the inclusion clause is only applicable if: a) the asylum-seeker is permanently removed from UNRWA’s area; or b) following the asylum-seeker’s departure with a valid re-entry permit, she/he was unexpectedly and permanently denied re-entry to the area, and the impossibility of return was not foreseeable for the asylum-seeker at the time of departure. Claims submitted by Palestinians who do not fulfil these conditions are assessed under Article 1A(2).⁸⁵⁷

a-2) The inclusion clause is applicable if UNRWA ceases its functions:

Denmark: In its decisions of 3 April and 13 September 1990, the Danish Refugee Appeals Board concluded that Article 1D was not applicable in a case involving a Palestinian refugee from Lebanon, on the basis of a 24 March 1988 note prepared by the Danish Ministry of Foreign Affairs, stating that the inclusion clause is only applicable when UNRWA’s assistance ceases. The conclusion was based on interpretation of the drafting history of Article 1D, including the relationship between the establishment of UNRWA and drafting of the 1951 Refugee Convention. The applicant was not excluded from applying for asylum under the Danish Aliens Act.

France: The *Commission des Recours des Réfugiés* (CRR) concluded in its decision of 25 July 1996 that Article 1D, second paragraph, was not applicable because UNRWA’s assistance had not ceased. The applicant was not excluded from applying for asylum under Article 1A(2) of the 1951 Refugee Convention.

a-3) The inclusion clause is applicable only if Palestinian asylum-seekers are unable to return to their country of former habitual residence due to a well-founded fear of persecution in that country and cannot invoke UNRWA protection there:

Netherlands: In 2003, the Minister of Alien Affairs and Integration issued guidelines regarding recognition of Palestinian refugees, providing that these refugees are expected to return to UNRWA’s area of operations for

the purpose of re-invoking the protection of that Agency (the authorities wrongly assume that UNRWA provides protection). Recognition will be granted only if the applicant can make a plausible argument that she/he cannot return to UNRWA's area of operations because of a well-founded fear of persecution in that area and cannot invoke UNRWA "protection" there.

a-4) The inclusion clause is applicable only to Palestinian asylum-seekers from the West Bank and Gaza Strip where they lack the protection of a state:

Norway: The authorities consider that Palestinian refugees from the West Bank and the Gaza Strip in general are in need of protection. The authorities have concluded that because the West Bank and the Gaza Strip are not states, and because the Palestinian Authority is not able to protect the Palestinians living in that area, the "protection" referred to in Article 1D has "ceased." As the authorities do not consider the situation to be the same in Lebanon, Syria, Jordan or other countries, Palestinian refugees from these countries have to fulfil the criteria set out in Article 1A(2) of the 1951 Refugee Convention against their "new" home countries.

a-5) The inclusion clause is applicable only after Palestinian asylum-seekers have obtained a permanent residence permit:

Sweden: Palestinian asylum-seekers registered with UNRWA cannot justify their claims for asylum under Article 1D because, for as long as they are asylum-seekers, their UNRWA assistance is deemed not to have "ceased." Article 1D becomes applicable only after status determination, when Palestinians falling within the scope of the provision are granted permanent residence permits, which then entitle them to the full scope of benefits of the 1951 Refugee Convention.⁸⁵⁸

b) Article 1D does not contain an independent inclusion clause, but rather represents a provision that might exclude Palestinian refugees from the scope of the 1951 Refugee Convention

National authorities in three countries (Australia, New Zealand and the United Kingdom) have concluded that Article 1D cannot convey the status and the benefits of the 1951 Refugee Convention to Palestinian refugees. Article 1D rather constitutes a provision which might exclude Palestinian refugees from the scope of the 1951 Refugee Convention. Debate has revolved around the scope of exclusion, and various interpretations have been advanced regarding when and to whom it applies:

b-1) The exclusion clause is only applicable to Palestinians born on or before 28 July 1951 and assisted by UNRWA on that date:

UK: Persons to whom Article 1D applies are excluded from the scope of the 1951 Refugee Convention for as long as UNRWA continues to operate and, hence, are excluded from applying for asylum under Article 1A(2) of the Convention. Article 1D is relevant only to Palestinian refugees who were receiving protection or assistance from UNRWA on 28 July 1951, the date when the 1951 Refugee Convention was signed. It is not relevant to their descendants and to all other Palestinians. Palestinians who do not fall within the exclusion clause can apply for asylum under Article 1A(2).⁸⁵⁹

b-2) The exclusion clause is not applicable if UNCCP has ceased its protection activities:

Australia: The Federal Court and the Refugee Review Tribunal have concluded that since UNCCP has ceased its protection activities, the “protection or assistance” referred to in Article 1D, second sentence, has ceased. Palestinian asylum-seekers are therefore entitled to apply for asylum under Article 1A(2) of the 1951 Refugee Convention.⁸⁶⁰

b-3) The exclusion clause will no longer be applicable once UNRWA ceases its function. Palestinian refugees will then be entitled to apply for asylum under the criteria set out in Article 1A(2) of the 1951 Refugee Convention (as they are currently able to):

New Zealand: The Refugee Status Appeals Authority has concluded that the second paragraph of Article 1D only addresses a situation in which UNRWA ceases to operate. As long as UNRWA continues to function, Palestinian refugees must qualify for refugee status by satisfying the refugee definition set out in Article 1A(2) of the Refugee Convention. If UNRWA ceases its functions, Palestinian refugees will, however, still be required to fulfil those criteria.⁸⁶¹

Irrespective of the substantive amount of legal debate and case law on Article 1D documented in these countries, all of the above interpretations render Article 1D *de facto* ineffective in determining the status of Palestinian refugees under the 1951 Refugee Convention.

1.3 Misunderstanding UNRWA's Mandate

National authorities and courts often reach the correct conclusion that UNRWA's mandate is limited to provision of humanitarian assistance. In the Netherlands, however, the possibility for Palestinians being recognized as refugees has been further limited by the authorities' misunderstanding of UNRWA's mandate.⁸⁶² In most cases, the courts have simply assumed and stated without factual examination that UNRWA provides protection. On 2 April 2003, however, the Court of Appeal ruled that the state cannot assume that UNRWA is providing protection. It then requested the state to prove, on a case-by-case basis, whether UNRWA is actually capable of protecting the respective Palestinian asylum-seekers.

1.4 Lack of Attention to UNCCP's Mandate

Although both UNCCP and UNRWA already existed at the time of the drafting of the 1951 Refugee Convention, national authorities and courts in only two countries have referred to the mandate of UNCCP in cases involving Article 1D. The Federal Court in Australia concluded that the reference to "protection" in Article 1D was a reference to UNCCP and that once UNCCP ceased its protection activities, the inclusion clause (interpreted as the right to apply for refugee status under Article 1A(2)) became applicable.

In the United Kingdom, in a decision by the Court of Appeal on 26 July 2002,⁸⁶³ Lord Justice Laws noted that UNRWA's role was primarily that of giving aid and assistance, whereas UNCCP was distinctly charged with providing protection. However, no further reference was made to UNCCP in his examination of the meaning of Article 1D. In an earlier case of February 2002, the Immigration Appeals Tribunal made a reference to UNCCP's protection mandate and concluded that because UNCCP had ceased its protection activities, the inclusion clause was applicable.⁸⁶⁴

1.5 "Country of Former Habitual Residence" as an Obstacle to Access to Protection under the 1951 Refugee Convention

Particular assessments, by few national authorities and courts, of the relationships between stateless asylum-seekers and their former "country of habitual residence" (CFHR), have further limited the possibilities for stateless Palestinian refugees to be recognized as Convention refugees.

In Germany, the Federal Administrative Court has concluded that a state ceases to be the CFHR of a Palestinian who is expelled from or denied re-entry to the

country, unless the latter happened on grounds related specifically to the person and, hence, not as a result of general population policies. For example, if Lebanon denies Palestinians the right to return, this is clearly based upon a general policy towards Palestinians, and not related to the specific circumstances of an individual. If a state ceases to be the CFHR, the asylum-seeker can no longer apply for protection under the 1951 Refugee Convention, because there is no longer a country regarding which persecution can be assessed.

A central legal issue in Canadian jurisprudence has also been the definition of the term CFHR in relation to claims submitted by stateless asylum-seekers, including Palestinians. The debate ended with the Federal Court's decision in the case of *Maarouf* in 1993, in which the Court concluded that a country may be considered the CFHR of a stateless claimant, even if the person cannot legally return to it, because denial of the right of return may, in itself, constitute an act of persecution by the state.⁸⁶⁵

1.6 Complementary Forms of Protection

The grant of complementary forms of protection to asylum-seekers is not an issue specifically related to Palestinian refugees. However, due to the lack of implementation of Article 1D of the 1951 Refugee Convention and the difficulties Palestinian refugees face with fulfilling the criteria set out in Article 1A(2), the availability of such forms of protection becomes important for Palestinian refugees seeking legal status in third countries.

Granting complementary forms of protection depends on the applicant being able to prove a need of protection. In many cases, complementary forms of protection are granted on humanitarian grounds, including if there is a serious risk to life or person arising from the death penalty, unlawful killing or torture, inhuman or degrading treatment or punishment if returned (i.e., Article 3 of the Torture Convention and Article 3 of the European Convention on Human Rights).⁸⁶⁶ In other cases, the granting of complementary forms of protection is at the discretion of a Minister.⁸⁶⁷ The legal status and the rights granted under complementary forms of protection are often similar to those granted to recognized refugees. In countries where Palestinians are granted complementary forms of protection, they are granted formal legal status with defined rights.

In Poland, Spain and Sweden, Palestinians from the 1967-OPT (West Bank and Gaza Strip) might currently be granted residence permits on humanitarian grounds, due to the ongoing conflict there.⁸⁶⁸

However, some countries, in particular Germany and Switzerland, provide a form

of “complementary protection” which is no more than a temporary suspension of a deportation order which, nevertheless, remains valid over time. This practice violates the standards set out in the UNHCR Guidelines on Complementary Forms of Protection (see Chapter Four).

1.7 Lack of Implementation of the 1954 Stateless Convention

The survey of national practice shows that only sixteen of the twenty-three countries examined in detail are parties to the 1954 Stateless Convention.⁸⁶⁹ However, of these, Australia and Italy⁸⁷⁰ have not yet incorporated the Convention into domestic law.

Many countries lack a procedure by which statelessness can be determined. Only Spain has a sub-legislative act defining a procedure by which the designated authority may examine an application for recognition of stateless status.⁸⁷¹ Some other countries have authorities (either administrative or judicial) competent to recognize that an individual is stateless (for example, Belgium and France), or procedures by which a person can apply for a 1954 Convention Travel Document (for example, Germany and Sweden). This matter is not specifically related to Palestinians. However, given the lack of implementation of Article 1D, the 1954 Stateless Convention could resolve the legal void in which stateless Palestinian refugees often find themselves by providing legal status that entitles Palestinians to enjoyment of basic human rights.

National practice adopted to identify and address protection claims of stateless Palestinians varies between countries. One of the findings of this survey is that in some of the countries, no practice has developed with regard to recognition of Palestinians as stateless persons entitled to the benefits of the 1954 Stateless Convention.⁸⁷² This may be explained by the fact that these national authorities examine Palestinians under domestic asylum law, including frameworks for complementary forms of protection (e.g., Denmark and the Netherlands). The problem then arises, however, that granting a legal status within an asylum framework depends on the Palestinian applicant being able to prove a risk of persecution or other need of protection, in particular when the inclusion clause of Article 1D is not applied (see section 3 above).

Only in four countries, i.e., Belgium, France, Germany and Spain, have some Palestinians been recognized as stateless persons and granted the benefits of the 1954 Stateless Convention. As substantive case law from France and Spain was not available, some conclusions can be drawn only regarding Belgium and Germany:

In Belgium, Palestinians have been recognized as stateless persons by regular courts in the first instance. In practice, stateless persons are almost automatically granted permanent residence. They then enjoy the same benefits as third-country nationals in Belgium, including permanent residence, social support, work authorization and entitlement to family reunification.

In Germany, the Federal Administrative Court has concluded that Palestinians who have not acquired the nationality of a third state are stateless in the sense of Article 1, paragraph 1, of the 1954 Stateless Convention. Entitlement to status and benefits under the Convention, however, is conditional upon fulfilment of the same restrictive criteria as applied to entitlement to refugee status under Article 1D; i.e., a stateless applicant must prove that she/he has not “voluntarily relinquished” UNRWA “protection and assistance” (see Approach 4/a-1 above). Moreover, access to many of the benefits of the 1954 Stateless Convention requires that the stateless person is staying in the country lawfully. German authorities and courts have ruled that Palestinians granted a so-called tolerance permit or “exceptional leave” (see below) are not lawfully staying in the country and are thus not entitled to these benefits. Many Palestinians who are holders of such permits have, therefore, been denied the benefits of the Convention. It remains to be seen whether recent law reform can provide them access to the benefits of the Convention.

In Sweden, stateless Palestinians with permanent residence status who do not hold documents showing registration with UNRWA are entitled to 1954 Convention travel documents based on a recent appeal court decision. Practice, however, has remained inconsistent.

1.8 Lack of Adequate Solutions for Rejected Palestinian Asylum-seekers with Nowhere to Go

Like other asylum-seekers, Palestinians with final negative decisions in their asylum applications and who are not granted complementary forms of protection are requested to leave the country of asylum. However, as stateless persons, they often have nowhere to go because no state will allow them to (re-)enter their territory.

They are, therefore, at risk of being caught in a state of legal limbo and forced to live for years in the country of asylum without any legal status that could serve as the platform for access to basic human rights. Procedures for legalization of stay are often lengthy and difficult to access.

No Legal Status

In many countries, rejected asylum-seekers who cannot be returned or removed are entitled to stay, although they do so without legal status:

In Austria, deferral of deportation can be ordered if a deportation cannot be carried out for practical reasons. Persons affected by such orders are not issued travel or identity documents. They are not entitled to work but do have a right to social support.

In Belgium, a so-called “non-removal” clause can be included in negative asylum decisions. Currently, this clause is included in negative decisions involving Palestinians from the 1967-OPT. These Palestinians are entitled to stay in Belgium until the Commissioner-General decides that they can return to the country of former habitual residence. Persons staying in Belgium under the “non-removal” clause are not entitled to work, but do have a right to social support. Like other aliens illegally residing in Belgium, they may apply for regularization of their residence based on exceptional circumstances. There are no clear criteria in terms of years of residence before regularization will be granted.

In France, rejected asylum-seekers who cannot be returned to their CFHR and who do not qualify for subsidiary forms of protection are left without any kind of personal document or residence permit.

In Germany, rejected asylum-seekers who cannot be forcibly removed will be granted a so-called tolerance permit or “exceptional leave” (“*Duldung*”). This permit does not convey legal status. The holder of such a permit is still under an obligation to leave Germany. Legalization of stay in Germany by “tolerated” persons is possible under certain circumstances, but at the discretion of the authorities. In many cases, the authorities have dismissed legalization after years of residence.

In Sweden, rejected Palestinian asylum-seekers who cannot be returned, for example, to Saudi Arabia, may have to live for years in Sweden without legal status. Even if they are able to prove that it is impossible for them to go back, the authorities will not give them permission to stay. Only when the Migration Board concludes that it is impossible to execute the deportation decision, will they be granted permission to stay on humanitarian grounds. They are entitled to re-apply for asylum four years after issuance of a final negative decision.

In Switzerland, “provisional admission” may be granted to rejected asylum-seekers if enforcement of an expulsion order is deemed technically impossible, not allowed under international law, or not reasonable. Such persons do not have a right to stay in Switzerland. Instead, the permits granted to them are substitutes for the unenforceable expulsion order. In principle, rejected asylum-seekers can remain in this situation indefinitely, which involves severe restrictions on the person (for example, place of residence is restricted, travel abroad is impossible, access to work is seriously limited and family reunification is very difficult).

In the United Kingdom, practical barriers to removal do not constitute grounds for granting “Discretionary Leave.” A person who does not qualify for discretionary leave is expected to depart. Palestinians are treated as removable; if a negative asylum decision is issued, they will be removed as and when conditions permit.

In some countries, however, rejected asylum-seekers who cannot be returned may receive legal status, at least after some time, and often in the framework of complementary forms of protection:

In Denmark, for example, if an asylum-seeker cannot be removed or deported through no fault of her/his own (usually because the country of origin or CFHR refuses to re-admit her/him, or because of conflict there), and removal remains impossible for at least eighteen months, she/he may apply for a temporary residence permit. After seven years, the alien can apply for a permanent residence permit. Such persons enjoy almost the same rights as persons granted asylum, including the right to work.

In Finland, rejected Palestinian asylum-seekers who cannot be returned or deported (due to, for example, a lack of travel documents or re-entry permits) may under certain conditions receive temporary residence permits and normal immigration status. They are then entitled to work and to the same social benefits as refugees. Their right to family reunification, however, is conditional upon their own financial resources and their ability to support family members joining them in Finland.

In the Netherlands, a rejected asylum-seeker might obtain a regular temporary residence permit if she/he cannot be returned to her/his country of former habitual residence (for example, if it is impossible to obtain a travel document to that country and the asylum-seeker proves

that she/he has seriously tried to obtain such a document). Such a permit is valid for a year and renewable if the obstacles to expulsion remain. After five years of continuous residence in the country, the holder will be entitled to a residence permit for an indefinite period. She/he does not enjoy the same rights as recognized refugees. Family reunion, for example, is not permitted. Work is only allowed under special conditions.

Detention

In some countries, rejected asylum-seekers might even be detained:

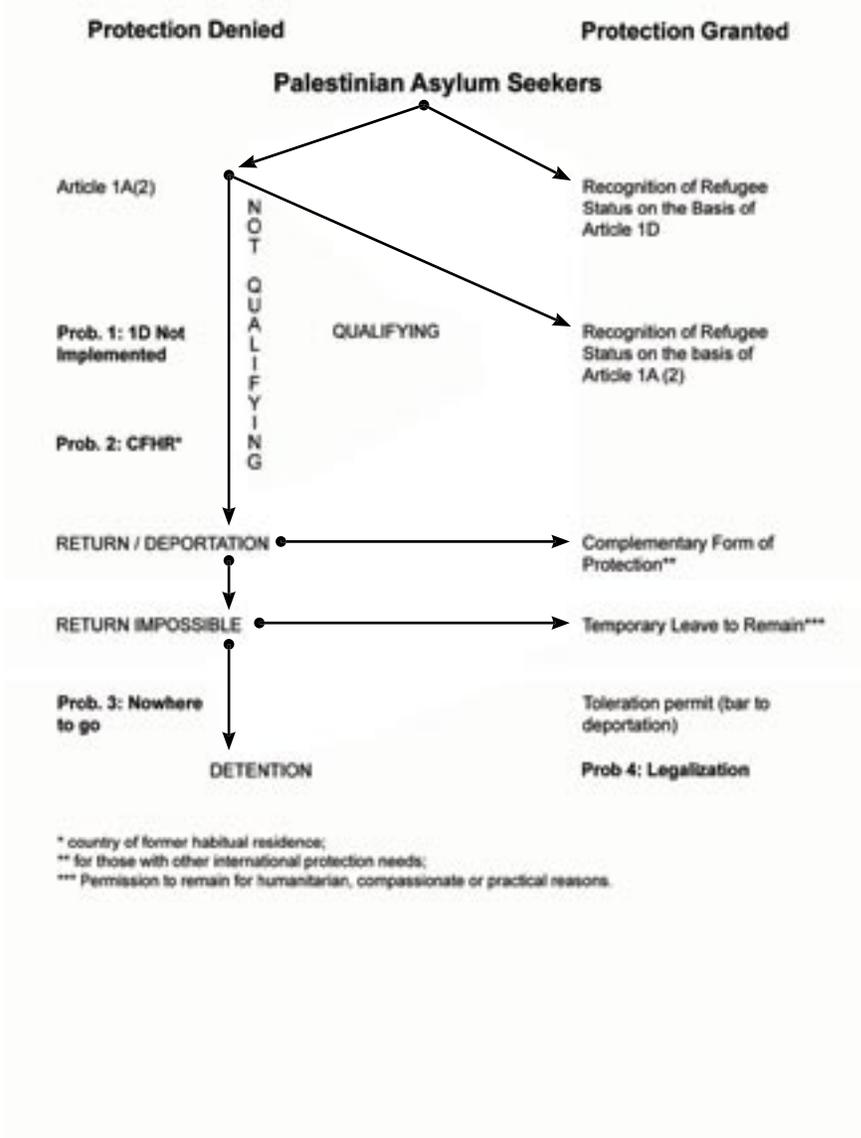
In Australia, for example, rejected asylum-seekers who do not leave voluntarily will be issued deportation orders. Such persons may be kept in detention for long periods of time, until permission to return to a CFHR is finally granted.⁸⁷³

In Spain, authorities may detain a foreigner in order to ensure the enforcement of a deportation order. However, such detention must be authorized and monitored by a judge, and can never exceed 40 days.

In Sweden, rejected asylum-seekers above eighteen years of age may be detained in order to ensure the enforcement of a deportation, and if there is a reason to assume that she/he will escape or hide. Foreigners above the age of eighteen may also be detained while seeking asylum, if their identity is unclear.⁸⁷⁴

In the United States, rejected Palestinian asylum-seekers are returned to their CFHR. A removal order can be cancelled if the applicant has been living in the US for ten or more years and has a “qualifying” relative who is a citizen or a permanent resident of the US, and who will suffer extreme and unusual hardship if she or he is deported. Palestinians who cannot be returned are forced to live in the US with final orders for removal and are subject to forced return. They may be taken into custody at any time and held for an indefinite period until removal becomes possible.

2. The Impact of “Protection Gaps” on Palestinian Refugees Seeking Protection in Third Countries



Problem 1: Non-Implementation of Article 1D

Article 1D under the 1951 Refugee Convention is *the* provision designed to afford protection, when needed, to Palestinian refugees. The criteria of applicability reflects the specific situation of Palestinian refugees *as a group*, being refugees vis-à-vis Israel, and thus, not being required to show a well-founded fear of persecution in any of their current CFHRs. Non-implementation of Article 1D thus deprives Palestinian refugees of the major provision that could ensure their access to protection under the 1951 Refugee Convention.

Problem 2: CFHR

Most Palestinian asylum claims are examined under the criteria of Article 1A(2) or similar criteria of national asylum law. The problem that arises here, however, is that granting asylum under these criteria depends on the applicant's ability to prove a risk of persecution or another need for protection resulting from the situation in her/his CFHR. Stateless Palestinians in Germany, for example, might fail to fulfil these criteria, because as stateless persons they do not have a CFHR against which persecution could be assessed.

Problem 3: Nowhere to Go

Rejected Palestinian asylum-seekers are requested to leave their country of asylum and scheduled for removal by the police. Stateless Palestinian refugees, however, have nowhere to go, and in many cases, governments cannot convince their country of origin (Israel) or their CFHRs to re-admit them.

Problem 4: Legalization of Stay

In many countries, procedures for legalization of stay are lengthy and difficult to access for persons holding a form of toleration permit. Stateless Palestinian refugees thus run a high risk of living for many years without any legal status and access to basic human rights.

UNHCR has identified two groups of beneficiaries who should be granted permission to stay in a country on grounds related to a need for international protection, among them:

Persons who should fall within the terms of the 1951 Convention relating to the Status of Refugees or its 1967 Protocol, but who may not be so recognized by a state as a result of varying interpretations.⁸⁷⁵

Palestinian refugees are included in this group because, while falling within the 1951 Refugee Convention pursuant to Article 1D, they are often not recognized as Convention refugees due to erroneous application of Article 1D by national authorities and courts. They are, therefore, entitled to international protection and to a legal status which allows them to continue their lives in dignity.

The problems of Palestinians seeking recognition of statelessness:

- Lack of accession to the Statelessness Conventions;
- Lack of national frameworks specific to stateless persons;
- Lack of practice with regard to recognition of Palestinians as stateless persons;
- Palestinians who are not lawfully staying in a country are denied access to the benefits of the 1954 Stateless Convention.

Endnotes

- ⁸⁴³ See Chapter Five for the key issues, i.e., 1) Statistical Data; 2) Status of Palestinians upon Entry to a Country; 3) Refugee Determination Process: Refugee Status and Complementary Forms of Protection; 4) Refugee Status Determination Process: Outcome; 5) Return-Deportation; 6) Temporary Protection; 7) Protection under the Statelessness Conventions; and 8) Relevant Jurisprudence.
- ⁸⁴⁴ See, for example, data published by the Palestinian Central Bureau of Statistics (PCBS) (see Chapter One) and updated estimates compiled using the framework of the Civitas Project (see Chapter Five).
- ⁸⁴⁵ Palestinians who move on to third countries may decide not to apply for asylum, but rather seek to obtain residence permits within the general aliens' framework (e.g., for study purposes). BADIL did not examine how this sizeable group of Palestinians is registered in official immigration and alien statistics.
- ⁸⁴⁶ In five of the twenty-three countries researched, no information could be obtained about the official registration policy regarding Palestinian asylum-seekers (Australia, Mexico, Nigeria, South Africa and the United Kingdom).
- ⁸⁴⁷ In Hungary, the category "Palestinian nationality" is also used. Asylum-seekers included in this category are most likely those holding documents which prove their Palestinian "nationality" (e.g., travel documents issued by the Palestinian Authority).
- ⁸⁴⁸ For example, Kuwait, Saudi Arabia or Jordan. Palestinians from the Gaza Strip are listed as "Gaza," "Palestinian" (or, in some states, as "Egyptians"), whereas Palestinians from the West Bank, at least in some states, are listed as "Jordanian."
- ⁸⁴⁹ Only the authorities in Switzerland use the last category clearly for a specific group of Palestinian refugees, i.e., Palestinians from the 1967-OPT, which is not recognized as a state (the category is also used for asylum-seekers whose country of origin cannot be determined). In Hungary, Palestinians are registered in this category when the Palestinian asylum-seekers cannot substantiate their Palestinian nationality or background. In Finland, the category used is "citizenship unknown." It is unclear how this category is being used in Germany.
- ⁸⁵⁰ See, for example, Austria, Denmark, France, Germany, Hungary, Poland and Sweden.
- ⁸⁵¹ As in other asylum cases, cases submitted by Palestinians will be examined in relation to other relevant criteria. For example, in many countries, an asylum-seeker who is not recognized as a refugee may be granted a residence permit if she/he risks the death penalty or being subjected to torture or inhuman or degrading treatment or punishment in case of return to her/his country of origin (as provided in the Torture Convention).
- ⁸⁵² The only Palestinians who are excluded from seeking asylum under the 1951 Refugee Conventions are Palestinians born before or on the 28 July 1951, who are appealing for asylum in the UK.
- ⁸⁵³ In Finland, it appears that future access to, and scope of protection for Palestinian refugees under Article 1D will depend on the specific meaning given by the Finnish authorities to the term "voluntarily relinquished" UNRWA assistance.
- ⁸⁵⁴ In Hungary, however, this application of Article 1D has been inconsistent: three other cases involving Palestinian refugees were assessed in 2003 under Article 1A(2) of the 1951 Refugee Convention.
- ⁸⁵⁵ See *Isam El-Issa v. Secretary of State for the Home Department* (4 February 2002) (Chapter Five, Country Profile United Kingdom).
- ⁸⁵⁶ The distinction is relevant if the rejected asylum-seeker is to be returned to a country party to the 1951 Refugee Convention. If recognized as a "refugee," she/he should be returned with the rights of a refugee and entitled to enjoy such rights in the country to which she/he is returned.
- ⁸⁵⁷ In Finland, it is unclear which specific meaning will be given to the term "voluntarily relinquished" by the Finnish authorities. If a broad interpretation is adopted, Finland may be more in line with German case law in future.
- ⁸⁵⁸ For example, Palestinians who are granted permanent residence permits on humanitarian grounds are entitled to travel documents, one of the benefits of the 1951 Refugee Convention (Article 28), whereas other asylum-seekers granted residence permits on humanitarian grounds are not entitled to travel documents.
- ⁸⁵⁹ This interpretation of Article 1D was adopted by the Supreme Court of Appeal in London on 26 July

- 2002 in the case of *Amer Mohammed El-Ali v. Secretary of State for the Home Department*, and *Daraz v. Secretary of State for the Home Department*, [2002] EWCA Civ 1103, and [2003] 1 WLR 95. (See Chapter Five, Country Profile, United Kingdom.)
- ⁸⁶⁰ See case No. 1/92 Re SA of 30 April 1992 (Chapter Five, Country Profile, New Zealand).
- ⁸⁶¹ See *ibid.*
- ⁸⁶² For more information, please refer to Chapter Five, Country Profile, the Netherlands.
- ⁸⁶³ *Amer Mohammed El-Ali v. Secretary of State for the Home Department*, and *Daraz v. Secretary of State for the Home Department*.
- ⁸⁶⁴ *Isam El-Issa v. Secretary of State for the Home Department*.
- ⁸⁶⁵ For more information, please refer to Chapter Five, Country Profile, Canada.
- ⁸⁶⁶ See, for example, Denmark, Finland, France, Netherlands, Sweden and the United Kingdom.
- ⁸⁶⁷ See, for example, Australia and Spain.
- ⁸⁶⁸ In the case of Sweden, however, the situation of general violence is no longer considered sufficient grounds for a residence permit. In Norway, Palestinians from the 1967-OPT who are not registered with UNRWA are generally granted residence permits on humanitarian grounds. Those registered with UNRWA are granted such permits under Article 1D of the 1951 Refugee Convention.
- ⁸⁶⁹ Australia, Belgium, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Mexico, Netherlands, Norway, Spain, Sweden, Switzerland and the United Kingdom. The following countries are not parties to the Convention: Austria, Canada, Poland, New Zealand, Nigeria, South Africa and the United States.
- ⁸⁷⁰ Italy does not implement the 1954 Stateless Convention in practice, but has a procedure for the recognition of statelessness.
- ⁸⁷¹ See also UNHCR, *The 1954 Convention relating to the Status of Stateless Persons: Implementation within the European Union Member States and Recommendations for Harmonisation*, Department of International Protection, October 2003, p. 16-19: "It is unclear why so many EU member states lack a specific legal framework, including a procedure, by which statelessness can be determined. A possible reason may be that in the majority of these states, stateless persons tend to show up in refugee status procedures and are dealt with in this framework, including the framework for humanitarian or subsidiary protection. Certainly, for stateless persons with claims of persecution, the asylum framework is *the* appropriate channel in which to present themselves to the authorities. Yet, in instances where no laws or specific procedures exist to implement the 1954 Convention, it appears that states are grappling nonetheless with the issue of stateless individuals on their territories and are finding *ad hoc* approaches to addressing it. To some extent, stateless persons may be obliged to channel their applications through the asylum framework specifically because there is no other procedure available. Moreover, without specific procedures aimed at identifying stateless persons, it remains unclear how many cases are left unnoticed and unidentified within the EU. It is, therefore, impossible to determine the magnitude of the problem of statelessness within EU Member States as there is no consistent way of identifying cases."
- ⁸⁷² In some countries (including Finland, Mexico, Norway, Switzerland and the United Kingdom), BADIL was unable to obtain information on the issue of statelessness. It is likely that in some of these countries, no practice has been developed with regard to recognition of Palestinians as stateless persons entitled to the benefits of the 1954 Stateless Convention.
- ⁸⁷³ See Chapter Five, Country Profile, Australia, concerning the detention of a Kuwaiti-born Palestinian asylum-seeker for ten months in the Australian detention center on Manus Island, north of Papua New Guinea.
- ⁸⁷⁴ Aliens Act, ch. 6, para. 2 about detention and supervision.
- ⁸⁷⁵ See "Complementary Forms of Protection: Their Nature and Relationship to the International Refugee Protection Regime." (See Chapter Four for further details.)

7

Chapter Seven

Recommendations: Closing Protection Gaps

Recommendations: Closing Protection Gaps

Based on the analysis and findings presented in this Handbook, BADIL recommends that all national and international parties involved in efforts for the protection of refugees and resolution of the Israeli-Palestinian/Arab conflict in the Middle East undertake the following urgent measures to enhance the protection available for to Palestinian refugees.

1. Recognize the particular status and protection rights, under international refugee and human rights law, of Palestinian refugees as a group who:

- are defined as refugees vis-à-vis Israel, and not on grounds of (a well-founded fear of) persecution by/in their Arab host states (countries of habitual residence);
- have lacked the protection of the international agency especially established for this purpose United Nations Conciliation Commission for Palestine (UNCCP) since its demise in the 1950s;
- currently only receive assistance from the United Nations Relief and Work Agency for Palestine Refugees (UNRWA), an agency with a humanitarian assistance mandate, which cannot provide the full panoply of international protection;
- are mostly stateless persons, whose travel documents issued by Arab host states and the Palestinian Authority often do not protect basic human rights, including the right to residence.

2. Enhance the protection of Palestinian Refugees under the 1951 Refugee Convention by:

- recognizing the role of and incorporating Article 1D:
 - in accordance with their international obligations, states that have not yet done so, are called upon to incorporate Article 1D into national legislation and to apply Article 1D to asylum cases involving Palestinian refugees;
- fully implementing Article 1D, including its inclusion clause (second paragraph):

- national authorities and courts are called upon to adopt the interpretation of Article 1D recommended by United Nations High Commissioner for Refugees (UNHCR) under Article 1D, the status and benefits of the 1951 Refugee Convention to Palestinian refugees;
- the Council of the European Union and other institutions of the EU, including the European Court of Justice, are called upon to adopt a consistent interpretation of Article 1D of the 1951 Refugee Convention (referred to in Article 12 of EC Council Directive 2004/83/EC of 29 April 2004), as recommended by UNHCR and legal scholars.

3. Provide complementary forms of protection and effective protection to Palestinian refugees by:

- complying with relevant UNHCR Standards:
 - states that do not recognize the refugee status of Palestinian refugees under the 1951 Refugee Convention should at least grant them a complementary form of protection that will entitle them to formal legal status and basic human rights;
- abstaining from return/deportation to countries not offering effective protection:
 - no Palestinian refugee must be returned/deported, unless asylum authorities are able to establish that effective protection is guaranteed in the country s/he is to be removed to.

4. Use the 1954 and 1961 Statelessness Conventions as tools for effective protection of stateless Palestinian refugees by:

- implementing the Protection Standards of the Statelessness Conventions:
 - heightened attention should be given to the merits of the statelessness regime by governments and international organizations, including UNHCR;
 - states are called upon to ratify and accede to the 1954 Stateless Convention;
 - states that are already signatories should develop appropriate procedures for the assessment of protection claims under the Convention. Authorities and courts should interpret its provisions (including Article 1(2)) to provide for the inclusion and recognition of stateless Palestinian refugees in line with the proper interpretation of Article 1D, 1951 Refugee Convention, and grant them the benefits of the Convention.

5. Improve the protection of Palestinian refugees in the 1967- OPT and Arab states by:

- ensuring enforcement of international human rights and humanitarian law in the Israeli 1967-occupied West Bank and Gaza Strip, in particular the Fourth Geneva Convention and its provisions regarding protection of civilians under military occupation;⁸⁷⁶
- activating and developing the Regional Protection Regime:⁸⁷⁷
 - Arab States and PLO members of the League of Arab states are called upon to re-activate the protection regime established for Palestinian refugees in the 1965 Casablanca Protocol, and to work towards a regional convention on the rights of refugees;
 - Arab states are called upon to accede to the 1951 Refugee Convention and other relevant international instruments and to intensify consultation and co-operation with UNHCR.

6. Strengthen the role of international organizations and co- operation with civil society by:

- enhancing legal protection of Palestinian refugees through UNHCR:
 - BADIL welcomes UNHCR involvement in enhancing the legal protection of Palestinian refugees, including the 2002 UNHCR Note, and encourages UNHCR to continue its efforts;⁸⁷⁸
- enhancing co-operation:
 - with a sense of urgency, UNHCR, UNRWA and other international agencies should continue the constructive debate about principles and mechanisms that could enhance the scope and quality of international protection for Palestinian refugees;
 - European NGOs, including the European Council on Refugees and Exiles (ECRE), should advocate the proper application of the relevant international Conventions to Palestinian refugees among national authorities and the European Union, and encourage the Council of Europe to follow up on its 2003 recommendations, in particular the organization of an international conference dedicated entirely to the question of Palestinian refugees;
 - maximum consultation and co-operation should be maintained in this process with Palestinian refugees, their community organizations and Palestinian human rights NGOs, so as to ensure constructive participation of the people concerned, as well as appropriate assessment of needs and available options.

7. Build support for rights-based durable solutions for Palestinian refugees:⁸⁷⁹

- solutions built on the principles of international law should provide optimal and durable protection for refugees, including Palestinian refugees;
- while addressing the immediate protection gaps relative to Palestinian refugees, the United Nations, states and international civil society should therefore engage in parallel efforts to ensure that Palestinian refugees have access to durable solutions to their plight, in accordance with international law and UN resolutions, including the right to return voluntarily to their homes of origin in safety and dignity;
- as the causes of protracted refugee situations are political, solutions to the Israeli-Arab conflict must be sought in that arena. UNHCR, although a non-political agency, should be aware of and understand the political forces and opportunities, while using its position as an impartial player to identify and exploit entry-points for solutions. UNHCR can play a key supporting role in addressing the root causes of the Palestinian refugee situation, and the standards of rights-based solutions.

Endnotes

- ⁸⁷⁶ For relevant references, including the International Court of Justice (ICJ) Advisory Opinion, see Chapter One. A set of detailed demands related to ending Israeli human rights violations in the 1967-OPT and military occupation has been raised by Palestinian and international human rights organizations and the PLO. Numerous UN resolutions have been passed and various internationally-sponsored political initiatives launched in this regard. All of these, however, are beyond the scope of this Handbook and are, therefore, not listed here in detail.
- ⁸⁷⁷ For additional details and recommendations regarding the protection of Palestinian refugees in Arab States, see *Summary of Proceedings from the BADIL Expert Seminar entitled "Closing the Gaps: From Protection to Durable Solutions," hosted by the al-Ahram Center for Strategic and Political Studies, Cairo, 5-8 March 2004*. See: <http://www.badil.org>.
- ⁸⁷⁸ See, for example, UNHCR ExCom General Conclusion, International Protection, No.95 (LIV) , 2003, para. r with a reference to the UNHCR review of protracted refugee situations aimed at enabling States and UNHCR to identify and further analyse situations which might benefit from a comprehensive plan of action.
- ⁸⁷⁹ Extensive discussion and presentation of recommendations related to the rights of Palestinian refugees in the context of durable solutions and a permanent settlement of the Israeli-Palestinian/Arab conflict is beyond the scope of this Handbook. For relevant references, see Chapter One.

Appendix 1
United Nations General Assembly
Resolution 194(III) of 11 December 1948

A/RES/194(III)

11 December 1948

Progress Report of the United Nations Mediator and the Right of Refugees to Return to their Homes and Receive Compensation

The General Assembly,

Having considered further the situation in Palestine,

1. Expresses its deep appreciation of the progress achieved through the good offices of the late United Nations Mediator in promoting a peaceful adjustment of the future situation of Palestine, for which cause he sacrificed his life; and.

Extends its thanks to the Acting Mediator and his staff for their continued efforts and devotion to duty in Palestine;

2. Establishes a Conciliation Commission consisting of three States members of the United Nations which shall have the following functions:
 - (a) To assume, in so far as it considers necessary in existing circumstances, the functions given to the United Nations Mediator on Palestine by resolution 186 (S-2) of the General Assembly of 14 May 1948;
 - (b) To carry out the specific functions and directives given to it by the present resolution and such additional functions and directives as may be given to it by the General Assembly or by the Security Council;
 - (c) To undertake, upon the request of the Security Council, any of the functions now assigned to the United Nations Mediator on Palestine or to the United Nations Truce Commission by resolutions of the Security Council; upon such request to the Conciliation Commission by the Security Council with respect to all the remaining functions of the United Nations Mediator on Palestine under Security Council resolutions, the office of the Mediator shall be terminated;

3. Decides that a Committee of the Assembly, consisting of China, France, the Union of Soviet Socialist Republics, the United Kingdom and the United States of America, shall present, before the end of the first part of the present session of the General Assembly, for the approval of the Assembly, a proposal concerning the names of the three States which will constitute the Conciliation Commission;
4. Requests the Commission to begin its functions at once, with a view to the establishment of contact between the parties themselves and the Commission at the earliest possible date;
5. Calls upon the Governments and authorities concerned to extend the scope of the negotiations provided for in the Security Council's resolution of 16 November 1948 1/ and to seek agreement by negotiations conducted either with the Conciliation Commission or directly, with a view to the final settlement of all questions outstanding between them;
6. Instructs the Conciliation Commission to take steps to assist the Governments and authorities concerned to achieve a final settlement of all questions outstanding between them;
7. Resolves that the Holy Places - including Nazareth - religious buildings and sites in Palestine should be protected and free access to them assured, in accordance with existing rights and historical practice; that arrangements to this end should be under effective United Nations supervision; that the United Nations Conciliation Commission, in presenting to the fourth regular session of the General Assembly its detailed proposals for a permanent international regime for the territory of Jerusalem, should include recommendations concerning the Holy Places in that territory; that with regard to the Holy Places in the rest of Palestine the Commission should call upon the political authorities of the areas concerned to give appropriate formal guarantees as to the protection of the Holy Places and access to them; and that these undertakings should be presented to the General Assembly for approval;
8. Resolves that, in view of its association with three world religions, the Jerusalem area, including the present municipality of Jerusalem plus the surrounding villages and towns, the most eastern of which shall be Abu Dis; the most southern, Bethlehem; the most western, Ein Karim (including also the built-up area of Motsa); and the most northern, Shu'fat, should be accorded special and separate treatment from the rest of Palestine and should be placed under effective United Nations control;

Requests the Security Council to take further steps to ensure the demilitarization of Jerusalem at the earliest possible date;

Instructs the Conciliation Commission to present to the fourth regular session of the General Assembly detailed proposals for a permanent international regime for the Jerusalem area which will provide for the maximum local autonomy for distinctive groups consistent with the special international status of the Jerusalem area;

The Conciliation Commission is authorized to appoint a United Nations representative, who shall co-operate with the local authorities with respect to the interim administration of the Jerusalem area;

9. Resolves that, pending agreement on more detailed arrangements among the Governments and authorities concerned, the freest possible access to Jerusalem by road, rail or air should be accorded to all inhabitants of Palestine;

Instructs the Conciliation Commission to report immediately to the Security Council, for appropriate action by that organ, any attempt by any party to impede such access;

10. Instructs the Conciliation Commission to seek arrangements among the Governments and authorities concerned which will facilitate the economic development of the area, including arrangements for access to ports and airfields and the use of transportation and communication facilities;

11. Resolves 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 which, under principles of international law or in equity, should be made good by the Governments or authorities responsible;

Instructs the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation, and to maintain close relations with the Director of the United Nations Relief for Palestine Refugees and, through him, with the appropriate organs and agencies of the United Nations;

12. Authorizes the Conciliation Commission to appoint such subsidiary bodies

and to employ such technical experts, acting under its authority, as it may find necessary for the effective discharge of its functions and responsibilities under the present resolution;

The Conciliation Commission will have its official headquarters at Jerusalem. The authorities responsible for maintaining order in Jerusalem will be responsible for taking all measures necessary to ensure the security of the Commission. The Secretary-General will provide a limited number of guards to the protection of the staff and premises of the Commission;

13. Instructs the Conciliation Commission to render progress reports periodically to the Secretary-General for transmission to the Security Council and to the Members of the United Nations;
14. Calls upon all Governments and authorities concerned to co-operate with the Conciliation Commission and to take all possible steps to assist in the implementation of the present resolution;
15. Requests the Secretary-General to provide the necessary staff and facilities and to make appropriate arrangements to provide the necessary funds required in carrying out the terms of the present resolution.

1/ See Official Records of the Security Council, Third Year, No. 126.

Appendix 2
United Nations General Assembly
Resolution 302 (IV) of 8 December 1949

General Assembly, A/RES/302 (IV)

8 December 1949

302 (IV). Assistance to Palestine Refugees 1/

The General Assembly,

Recalling its resolutions 212(III) 2/ of 19 November 1948 and 194(III) 3/ of 11 December 1948, affirming in particular the provisions of paragraph 11 of the latter resolutions,

Having examined with appreciation the first interim report 4/ of the United Nations Economic Survey Mission for the Middle East and the report 5/ of the Secretary-General on assistance to Palestine refugees,

1. Expresses its appreciation to the Governments which have generously responded to the appeal embodied in its resolution 212 (III), and to the appeal of the Secretary-General, to contribute in kind or in funds to the alleviation of the conditions of starvation and distress among the Palestine refugees;
2. Expresses also its gratitude to the International Committee of the Red Cross, to the League of Red Cross Societies and to the American Friends Service Committee for the contribution they have made to this humanitarian cause by discharging, in the face of great difficulties, the responsibility they voluntarily assumed for the distribution of relief supplies and the general care of the refugees; and welcomes the assurance they have given the Secretary-General that they will continue their co-operation with the United Nations until the end of March 1950 on a mutually acceptable basis;
3. Commends the United Nations International Children's Emergency Fund for the important contribution which it has made towards the United Nations programme of assistance; and commends those specialized agencies which have rendered assistance in their respective fields, in particular the World Health Organization, the United Nations Educational, Scientific and Cultural Organization and the International Refugee Organization;

4. Expresses its thanks to the numerous religious, charitable and humanitarian organizations which have materially assisted in bringing relief to Palestine refugees;
5. Recognizes that, without prejudice to the provisions of paragraph 11 of General Assembly resolution 194(III) of 11 December 1948, continued assistance for the relief of the Palestine refugees is necessary to prevent conditions of starvation and distress among them and to further conditions of peace and stability, and that constructive measures should be undertaken at an early date with a view to the termination of international assistance for relief;
6. Considers that, subject to the provisions of paragraph 9(d) of the present resolution, the equivalent of approximately \$33,700,000 will be required for direct relief and works programmes for the period 1 January to 31 December 1950 of which the equivalent of \$20,200,000 is required for direct relief and \$13,500,000 for works programmes; that the equivalent of approximately \$21,200,000 will be required for works programmes from 1 January to 30 June 1951, all inclusive of administrative expenses; and that direct relief should be terminated not later than 31 December 1950 unless otherwise determined by the General Assembly at its fifth regular session;
7. Establishes the United Nations Relief and Works Agency for Palestine Refugees in the Near East:
 - (a) To carry out in collaboration with local governments the direct relief and works programmes as recommended by the Economic Survey Mission;
 - (b) 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;
8. Establishes an Advisory Commission consisting of representatives of France, Turkey, the United Kingdom of Great Britain and Northern Ireland and the United States of America, with power to add not more than three additional members from contributing Governments, to advise and assist the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East in the execution of the programme; the Director and the Advisory Commission shall consult with each near Eastern Government concerned in the selection, planning and execution of projects;

9. Requests the Secretary-General to appoint the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East in consultation with the Governments represented on the Advisory Commission;
- (a) The Director shall be the chief executive officer of the United Nations Relief and Works Agency for Palestine Refugees in the Near East responsible to the General Assembly for the operation of the programme;
 - (b) The Director shall select and appoint his staff in accordance with general arrangements made in agreement with the Secretary-General, including such of the staff rules and regulations of the United Nations as the Director and the Secretary-General shall agree are applicable, and to the extent possible utilize the facilities and assistance of the Secretary-General;
 - (c) The Director shall, in consultation with the Secretary-General and the Advisory Committee on Administrative and Budgetary Questions, establish financial regulations for the United Nations Relief and Works Agency for Palestine Refugees in the Near East;
 - (d) Subject to the financial regulations established pursuant to clause (c) of the present paragraph, the Director, in consultation with the Advisory Commission, shall apportion available funds between direct relief and works projects in their discretion, in the event that the estimates in paragraph 6 require revision;
10. Requests the Director to convene the Advisory Commission at the earliest practicable date for the purpose of developing plans for the organization and administration of the programme, and of adopting rules of procedure;
11. Continues the United Nations Relief for Palestine Refugees as established under General Assembly resolution 212 (III) until 1 April 1950, or until such date thereafter as the transfer referred to in paragraph 12 is affected, and requests the Secretary-General in consultation with the operating agencies to continue the endeavour to reduce the numbers of rations by progressive stages in the light of the findings and recommendations of the Economic Survey Mission;
12. Instructs the Secretary-General to transfer to the United Nations Relief and Works Agency for Palestine Refugees in the Near East the assets and liabilities of the United Nations Relief for Palestine Refugees by 1 April 1950, or at such date as may be agreed by him and the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East;

13. Urges all Members of the United Nations and non-members to make voluntary contributions in funds or in kind to ensure that the amount of supplies and funds required is obtained for each period of the programme as set out in paragraph 6; contributions in funds may be made in currencies other than the United States dollar in so far as the programme can be carried out in such currencies;
14. Authorizes the Secretary-General, in consultation with the Advisory Committee on Administrative and Budgetary Questions, to advance funds deemed to be available for this purpose and not exceeding \$5,000,000 from the Working Capital Fund to finance operations pursuant to the present resolution, such sum to be repaid not later than 31 December 1950 from the voluntary governmental contributions requested under paragraph 13 above;
15. Authorizes the Secretary-General, in consultation with the Advisory Committee on Administrative and Budgetary Questions, to negotiate with the International Refugee Organization for an interest-free loan in an amount not to exceed the equivalent of \$2,800,000 to finance the programme subject to mutually satisfactory conditions for repayment;
16. Authorizes the Secretary-General to continue the Special Fund established under General Assembly resolution 212 (III) and to make withdrawals therefrom for the operation of the United Nations Relief for Palestine Refugees and, upon the request of the Director, for the operations of the United Nations Relief and Works Agency for Palestine Refugees in the Near East;
17. Calls upon the Governments concerned to accord to the United Nations Relief and Works Agency for Palestine Refugees in the Near East the privileges, immunities, exemptions and facilities which have been granted to the United Nations Relief for Palestine Refugees, together with all other privileges, immunities, exemptions and facilities necessary for the fulfilment of its functions;
18. Urges the United Nations International Children's Emergency Fund, the International Refugee Organization, the World Health Organization, the United Nations Educational, Scientific and Cultural Organization, the Food and Agriculture Organization and other appropriate agencies and private groups and organizations, in consultation with the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, to furnish assistance within the framework of the programme;

19. Requests the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East:

(a) To appoint a representative to attend the meeting of the Technical Assistance Board as observer so that the technical assistance activities of the United Nations Relief and Works Agency for Palestine Refugees in the Near East may be co-ordinated with the technical assistance programmes of the United Nations and specialized agencies referred to in Economic and Social Council resolution 222 (IX) A 6/ of 15 August 1949;

(b) To place at the disposal of the Technical Assistance Board full information concerning any technical assistance work which may be done by the United Nations Relief and Works Agency for Palestine Refugees in the Near East, in order that it may be included in the reports submitted by the Technical Assistance Board to the Technical Assistance committee of the Economic and Social Council;

20. Directs the United Nations Relief and Works Agency for Palestine Refugees in the Near East to consult with the United Nations Conciliation Commission for Palestine in the best interests of their respective tasks, with particular reference to paragraph 11 of General Assembly resolution 194(III) of 11 December 1948;

21. Requests the Director to submit to the General Assembly of the United Nations an annual report on the work of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, including an audit of funds, and invites him to submit to the Secretary-General such other reports as the United Nations Relief and Works Agency for Palestine Refugees in the Near East may wish to bring to the attention of Members of the United Nations, or its appropriate organs;

22. Instructs the United Nations Conciliation Commission for Palestine to transmit the final report of the Economic Survey Mission, with such comments as it may wish to make, to the Secretary-General for transmission to the Members of the United Nations and to the United Nations Relief and Works Agency for Palestine Refugees in the Near East.

1/ See Official Records of the third session of the General Assembly, Part II, Resolutions, page 19.

2/ *Ibid*, Part I, Resolutions, page 66.

3/ *Ibid*, page 21.

4/ See Official Records of the fourth session of the General Assembly, Annex to

the Ad Hoc Political Committee, document A/1106.

5/ *Ibid*, documents A/1060 and A/1060/Add.1.

6/ See *Official Records of the Economic and Social Council, Fourth Year, Ninth Session, Resolutions*, page 4.

Appendix 3
United Nations Security Council Resolution 237 of 14 June 1967 and
United Nations General Assembly Resolution 2252 of 4 July 1967

S/RES/237 (1967)

14 June 1967

The Security Council,

Considering the urgent need to spare the civil populations and the prisoners of the war in the area of conflict in the Middle East additional sufferings,

Considering that essential and inalienable human rights should be respected even during the vicissitudes of war,

Considering that all the obligations of the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949 1/ should be complied with by the parties involved in the conflict,

1. Calls upon the Government of Israel to ensure the safety, welfare and security of the inhabitants of the areas where military operations have taken place and to facilitate the return of those inhabitants who have fled the areas since the outbreak of hostilities;
2. Recommends to the Governments concerned the scrupulous respect of the humanitarian principles governing the treatment of prisoners of war and the protection of civilian persons in time of war contained in the Geneva Conventions of 12 August 1949; 2/
3. Requests the Secretary-General to follow the effective implementation of this resolution and to report to the Security Council.

Adopted unanimously at the 1361st meeting.

A/RES/2252 (ES-V)

4 July 1967

2252 (ES-V). Humanitarian assistance

The General Assembly,

Considering the urgent need to alleviate the suffering inflicted on civilians and on prisoners of war as a result of the recent hostilities in the Middle East,

1. Welcomes with great satisfaction Security Council resolution 237 (1967) of 14 June 1967, whereby the Council:

(a) Considered the urgent need to spare the civil populations and the prisoners of war in the area of conflict in the Middle East additional sufferings;

(b) Considered that essential and inalienable human rights should be respected even during the vicissitudes of war;

(c) Considered that all the obligations of the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949 1/ should be complied with by the parties involved in the conflict;

(d) Called upon the Government of Israel to ensure the safety, welfare and security of the inhabitants of the areas where military operations had taken place and to facilitate the return of those inhabitants who had fled the areas since the outbreak of hostilities;

(e) Recommended to the Governments concerned the scrupulous respect of the humanitarian principles governing the treatment of prisoners of war and the protection of civilian persons in time of war, contained in the Geneva Conventions of 12 August 1949,2/

(f) Requested the Secretary-General to follow the effective implementation of the resolution and to report to the Security Council;

2. Notes with gratitude and satisfaction and endorses the appeal made by the President of the General Assembly on 26 June 1967;3/

3. Notes with gratification the work undertaken by the International Committee of the Red Cross, the league of Red Cross Societies and other voluntary organizations to provide humanitarian assistance to civilians;

4. Notes further with gratification the assistance which the United Nations Children's Fund is providing to women and children in the area;

5. Commends the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East for his efforts to continue the activities of the Agency in the present situation with respect to all persons coming within his mandate;

6. Endorses, bearing in mind the objectives of the above-mentioned Security Council resolution, the efforts of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East 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;

7. Welcomes the close co-operation of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, and of the other organizations concerned, for the purpose of co-ordinating assistance;

8. Calls upon all the member States concerned to facilitate the transport of supplies to all areas in which assistance is being rendered;

9. Appeals to all Governments, as well as organizations and individuals, to make special contributions for the above purposes to the United Nations Relief and Works Agency for Palestine Refugees in the Near East and also to the other intergovernmental and non-governmental organizations concerned;

10. Requests the Secretary-General, in consultation with the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, to report urgently to the General Assembly on the needs arising under paragraphs 5 and 6 above;

11. Further requests the Secretary-General to follow the effective implementation of the present resolution and to report thereon to the General Assembly.

- 1/ United Nations, Treaty Series, vol. 75 (1950), No. 972.
- 2/ United Nations, Treaty Series, vol. 75 (1950), Nos. 970-973.
- 3/ See Official Records of the General Assembly, Fifth Emergency Special Session, Plenary Meetings, 1536th meeting, paras. 29-37.

Appendix 4

Convention relating to the Status of Refugees

Adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries
on the Status of Refugees and Stateless Persons convened under General
Assembly resolution 429 (V) of 14 December 1950

Entry into force: 22 April 1954, in accordance with article 43

Preamble

The High Contracting Parties ,

Considering that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination,

Considering that the United Nations has, on various occasions, manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms,

Considering that it is desirable to revise and consolidate previous international agreements relating to the status of refugees and to extend the scope of and the protection accorded by such instruments by means of a new agreement,

Considering that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation,

Expressing the wish that all States, recognizing the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between States,

Noting that the United Nations High Commissioner for Refugees is charged with the task of supervising international conventions providing for the protection of refugees, and recognizing that the effective co-ordination of measures taken to deal with this problem will depend upon the co-operation of States with the High Commissioner,

Have agreed as follows:

Chapter I

GENERAL PROVISIONS

Article 1. - Definition of the term «refugee»

A. For the purposes of the present Convention, the term «refugee» shall apply to any person who:

- (1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization;

Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section;

- (2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

In the case of a person who has more than one nationality, the term «the country of his nationality» shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

B. (1) For the purposes of this Convention, the words «events occurring before 1 January 1951» in article 1, section A, shall be understood to mean either (a) «events occurring in Europe before 1 January 1951»; or (b) «events occurring in Europe or elsewhere before 1 January 1951»; and each Contracting State shall make a declaration at the

time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.

- (2) Any Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United Nations.

C. This Convention shall cease to apply to any person falling under the terms of section A if:

- (1) He has voluntarily re-availed himself of the protection of the country of his nationality; or
- (2) Having lost his nationality, he has voluntarily reacquired it; or
- (3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or
- (4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or
- (5) He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;

- (6) Being a person who has no nationality he is, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

D. 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.

- E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.
- F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:
- (a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
 - (b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
 - (c) He has been guilty of acts contrary to the purposes and principles of the United Nations.

Article 2. - General obligations

Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

Article 3. - Non-discrimination

The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.

Article 4. - Religion

The Contracting States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.

Article 5. - Rights granted apart from this Convention

Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention.

Article 6. - The term «in the same circumstances»

For the purposes of this Convention, the term «in the same circumstances» implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a refugee, must be fulfilled by him, with the exception of requirements which by their nature a refugee is incapable of fulfilling.

Article 7. - Exemption from reciprocity

1. Except where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.
2. After a period of three years' residence, all refugees shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.
3. Each Contracting State shall continue to accord to refugees the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State.
4. The Contracting States shall consider favourably the possibility of according to refugees, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to paragraphs 2 and 3, and to extending exemption from reciprocity to refugees who do not fulfil the conditions provided for in paragraphs 2 and 3.
5. The provisions of paragraphs 2 and 3 apply both to the rights and benefits referred to in articles 13, 18, 19, 21 and 22 of this Convention and to rights and benefits for which this Convention does not provide.

Article 8. - Exemption from exceptional measures

With regard to exceptional measures which may be taken against the person, property or interests of nationals of a foreign State, the Contracting States shall not apply such measures to a refugee who is formally a national of the said State solely on account of such nationality. Contracting States which, under their legislation, are prevented from applying the general principle expressed in this article, shall, in appropriate cases, grant exemptions in favour of such refugees.

Article 9. - Provisional measures

Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a refugee and that the continuance of such measures is necessary in his case in the interests of national security.

Article 10. - Continuity of residence

1. Where a refugee has been forcibly displaced during the Second World War and removed to the territory of a Contracting State, and is resident there, the period of such enforced sojourn shall be considered to have been lawful residence within that territory.
2. Where a refugee has been forcibly displaced during the Second World War from the territory of a Contracting State and has, prior to the date of entry into force of this Convention, returned there for the purpose of taking up residence, the period of residence before and after such enforced displacement shall be regarded as one uninterrupted period for any purposes for which uninterrupted residence is required.

Article 11. - Refugee seamen

In the case of refugees regularly serving as crew members on board a ship flying the flag of a Contracting State, that State shall give sympathetic consideration to their establishment on its territory and the issue of travel documents to them or their temporary admission to its territory particularly with a view to facilitating their establishment in another country.

Chapter II

JURIDICAL STATUS

Article 12. - Personal status

1. The personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.
2. Rights previously acquired by a refugee and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in

question is one which would have been recognized by the law of that State had he not become a refugee.

Article 13. - Movable and immovable property

The Contracting States shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.

Article 14. - Artistic rights and industrial property

In respect of the protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literary, artistic and scientific works, a refugee shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country. In the territory of any other Contracting States, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has his habitual residence.

Article 15. - Right of association

As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances.

Article 16. - Access to courts

1. A refugee shall have free access to the courts of law on the territory of all Contracting States.
2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance and exemption from *cautio judicatum solvi*.
3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.

Chapter III

GAINFUL EMPLOYMENT

Article 17. - Wage-earning employment

1. The Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.
2. In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or who fulfils one of the following conditions:
 - (a) He has completed three years' residence in the country;
 - (b) He has a spouse possessing the nationality of the country of residence. A refugee may not invoke the benefit of this provision if he has abandoned his spouse;
 - (c) He has one or more children possessing the nationality of the country of residence.
3. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.

Article 18. - Self-employment

The Contracting States shall accord to a refugee lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.

Article 19. - Liberal professions

1. Each Contracting State shall accord to refugees lawfully staying in their territory

who hold diplomas recognized by the competent authorities of that State, and who are desirous of practising a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

2. The Contracting States shall use their best endeavours consistently with their laws and constitutions to secure the settlement of such refugees in the territories, other than the metropolitan territory, for whose international relations they are responsible.

Chapter IV

WELFARE

Article 20. - Rationing

Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, refugees shall be accorded the same treatment as nationals.

Article 21. - Housing

As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

Article 22. - Public education

1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.
2. The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

Article 23. - Public relief

The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

Article 24. - Labour legislation and social security

1. The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters;
 - (a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining;
 - (b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:
 - (i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;
 - (ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.
2. The right to compensation for the death of a refugee resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.
3. The Contracting States shall extend to refugees the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which

apply to nationals of the States signatory to the agreements in question.

4. The Contracting States will give sympathetic consideration to extending to refugees so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and non-contracting States.

Chapter V

ADMINISTRATIVE MEASURES

Article 25. - Administrative assistance

1. When the exercise of a right by a refugee would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting States in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities or by an international authority.
2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities.
3. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities, and shall be given credence in the absence of proof to the contrary.
4. Subject to such exceptional treatment as may be granted to indigent persons, fees may be charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.
5. The provisions of this article shall be without prejudice to articles 27 and 28.

Article 26. - Freedom of movement

Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory subject to any regulations applicable to aliens generally in the same circumstances.

Article 27. - Identity papers

The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document.

Article 28. - Travel documents

1. The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.
2. Travel documents issued to refugees under previous international agreements by Parties thereto shall be recognized and treated by the Contracting States in the same way as if they had been issued pursuant to this article.

Article 29. - Fiscal charges

1. The Contracting States shall not impose upon refugees duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations.
2. Nothing in the above paragraph shall prevent the application to refugees of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents including identity papers.

Article 30. - Transfer of assets

1. A Contracting State shall, in conformity with its laws and regulations, permit refugees to transfer assets which they have brought into its territory, to another country where they have been admitted for the purposes of resettlement.
2. A Contracting State shall give sympathetic consideration to the application of refugees for permission to transfer assets wherever they may be and which are necessary for their resettlement in another country to which they have been admitted.

Article 31. - Refugees unlawfully in the country of refuge

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life

or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

Article 32. - Expulsion

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.
2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.
3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

Article 33. - Prohibition of expulsion or return («refoulement»)

1. No Contracting State shall expel or return (« refouler ») a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

Article 34. - Naturalization

The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

Chapter VI

EXECUTORY AND TRANSITORY PROVISIONS

Article 35. - Co-operation of the national authorities with the United Nations

1. The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.
2. In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the Contracting States undertake to provide them in the appropriate form with information and statistical data requested concerning:
 - (a) The condition of refugees,
 - (b) The implementation of this Convention, and
 - (c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

Article 36. - Information on national legislation

The Contracting States shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of this Convention.

Article 37. - Relation to previous conventions

Without prejudice to article 28, paragraph 2, of this Convention, this Convention replaces, as between Parties to it, the Arrangements of 5 July 1922, 31 May 1924, 12 May 1926,

30 June 1928 and 30 July 1935, the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 and the Agreement of 15 October 1946.

Chapter VII

FINAL CLAUSES

Article 38. - Settlement of disputes

Any dispute between Parties to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

Article 39. - Signature, ratification and accession

1. This Convention shall be opened for signature at Geneva on 28 July 1951 and shall thereafter be deposited with the Secretary-General of the United Nations. It shall be open for signature at the European Office of the United Nations from 28 July to 31 August 1951 and shall be re-opened for signature at the Headquarters of the United Nations from 17 September 1951 to 31 December 1952.
2. This Convention shall be open for signature on behalf of all States Members of the United Nations, and also on behalf of any other State invited to attend the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons or to which an invitation to sign will have been addressed by the General Assembly. It shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. This Convention shall be open from 28 July 1951 for accession by the States referred to in paragraph 2 of this article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 40. - Territorial application clause

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.
3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article 41. - Federal clause

In the case of a Federal or non-unitary State, the following provisions shall apply:

- (a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of parties which are not Federal States;
- (b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the Federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;
- (c) A Federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention showing the extent to which effect has been given to that provision by legislative or other action.

Article 42. - Reservations

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1, 3, 4, 16 (1), 33, 36-46 inclusive.

2. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

Article 43. - Entry into force

1. This Convention shall come into force on the ninetieth day following the day of deposit of the sixth instrument of ratification or accession.
2. For each State ratifying or acceding to the Convention after the deposit of the sixth instrument of ratification or accession, the Convention shall enter into force on the ninetieth day following the date of deposit by such State of its instrument of ratification or accession.

Article 44. - Denunciation

1. Any Contracting State may denounce this Convention at any time by a notification addressed to the Secretary-General of the United Nations.
2. Such denunciation shall take effect for the Contracting State concerned one year from the date upon which it is received by the Secretary-General of the United Nations.
3. Any State which has made a declaration or notification under article 40 may, at any time thereafter, by a notification to the Secretary-General of the United Nations, declare that the Convention shall cease to extend to such territory one year after the date of receipt of the notification by the Secretary-General.

Article 45. - Revision

1. Any Contracting State may request revision of this Convention at any time by a notification addressed to the Secretary-General of the United Nations.
2. The General Assembly of the United Nations shall recommend the steps, if any, to be taken in respect of such request.

Article 46. - Notifications by the Secretary-General of the United Nations

The Secretary-General of the United Nations shall inform all Members of the United Nations and non-member States referred to in article 39:

- (a) Of declarations and notifications in accordance with section B of article 1;
- (b) Of signatures, ratifications and accessions in accordance with article 39;
- (c) Of declarations and notifications in accordance with article 40;
- (d) Of reservations and withdrawals in accordance with article 42;
- (e) Of the date on which this Convention will come into force in accordance with article 43;
- (f) Of denunciations and notifications in accordance with article 44;
- (g) Of requests for revision in accordance with article 45.

In faith whereof the undersigned, duly authorized, have signed this Convention on behalf of their respective Governments.

Done at Geneva, this twenty-eighth day of July, one thousand nine hundred and fifty-one, in a single copy, of which the English and French texts are equally authentic and which shall remain deposited in the archives of the United Nations, and certified true copies of which shall be delivered to all Members of the United Nations and to the non-member States referred to in article 39.

Appendix 5

Convention relating to the Status of Stateless Persons

Adopted on 28 September 1954 by a Conference of Plenipotentiaries convened by Economic and Social Council resolution 526 A (XVII) of 26 April 1954

Entry into force: 6 June 1960, in accordance with article 39

Preamble

The High Contracting Parties,

Considering that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly of the United Nations have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination,

Considering that the United Nations has, on various occasions, manifested its profound concern for stateless persons and endeavoured to assure stateless persons the widest possible exercise of these fundamental rights and freedoms,

Considering that only those stateless persons who are also refugees are covered by the Convention relating to the Status of Refugees of 28 July 1951, and that there are many stateless persons who are not covered by that Convention,

Considering that it is desirable to regulate and improve the status of stateless persons by an international agreement,

Have agreed as follows:

Chapter I

GENERAL PROVISIONS

Article 1. - Definition of the term «stateless person»

1. For the purpose of this Convention, the term «stateless person» means a person who is not considered as a national by any State under the operation of its law.
2. This Convention shall not apply:
 - (i) 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;

- (ii) To persons who are recognized by the competent authorities of the country in which they have taken residence as having the rights and obligations which are attached to the possession of the nationality of that country;
- (iii) To persons with respect to whom there are serious reasons for considering that:
 - (a) They have committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes;
 - (b) They have committed a serious non-political crime outside the country of their residence prior to their admission to that country;
 - (c) They have been guilty of acts contrary to the purposes and principles of the United Nations.

Article 2. - General obligations

Every stateless person has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

Article 3. - Non-discrimination

The Contracting States shall apply the provisions of this Convention to stateless persons without discrimination as to race, religion or country of origin.

Article 4. - Religion

The Contracting States shall accord to stateless persons within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.

Article 5. - Rights granted apart from this Convention

Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to stateless persons apart from this Convention.

Article 6. - The term «in the same circumstances»

For the purpose of this Convention, the term «in the same circumstances» implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a stateless person, must be fulfilled by him, with the exception of requirements which by their nature a stateless person is incapable of fulfilling.

Article 7. - Exemption from reciprocity

1. Except where this Convention contains more favourable provisions, a Contracting State shall accord to stateless persons the same treatment as is accorded to aliens generally.
2. After a period of three years' residence, all stateless persons shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.
3. Each Contracting State shall continue to accord to stateless persons the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State.
4. The Contracting States shall consider favourably the possibility of according to stateless persons, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to paragraphs 2 and 3, and to extending exemption from reciprocity to stateless persons who do not fulfil the conditions provided for in paragraphs 2 and 3.
5. The provisions of paragraphs 2 and 3 apply both to the rights and benefits referred to in articles 13, 18, 19, 21 and 22 of this Convention and to rights and benefits for which this Convention does not provide.

Article 8. - Exemption from exceptional measures

With regard to exceptional measures which may be taken against the person, property or interests of nationals or former nationals of a foreign State, the Contracting States shall not apply such measures to a stateless person solely on account of his having previously possessed the nationality of the foreign State in question. Contracting States which, under their legislation, are prevented from applying the general principle expressed in this article shall, in appropriate cases, grant exemptions in favour of such stateless persons.

Article 9. - Provisional measures

Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a stateless person and that the continuance of such measures is necessary in his case in the interests of national security.

Article 10. - Continuity of residence

1. Where a stateless person has been forcibly displaced during the Second World War and removed to the territory of a Contracting State, and is resident there, the period of such enforced sojourn shall be considered to have been lawful residence within that territory.
2. Where a stateless person has been forcibly displaced during the Second World War from the territory of a Contracting State and has, prior to the date of entry into force of this Convention, returned there for the purpose of taking up residence, the period of residence before and after such enforced displacement shall be regarded as one uninterrupted period for any purposes for which uninterrupted residence is required.

Article 11. - Stateless seamen

In the case of stateless persons regularly serving as crew members on board a ship flying the flag of a Contracting State, that State shall give sympathetic consideration to their establishment on its territory and the issue of travel documents to them or their temporary admission to its territory particularly with a view to facilitating their establishment in another country.

Chapter II

JURIDICAL STATUS

Article 12. - Personal status

1. The personal status of a stateless person shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.
2. Rights previously acquired by a stateless person and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting

State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognized by the law of that State had he not become stateless.

Article 13. - Movable and immovable property

The Contracting States shall accord to a stateless person treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.

Article 14. - Artistic rights and industrial property

In respect of the protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literary, artistic and scientific works, a stateless person shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country. In the territory of any other Contracting State, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has his habitual residence.

Article 15. - Right of association

As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible, and in any event, not less favourable than that accorded to aliens generally in the same circumstances.

Article 16. - Access to courts

1. A stateless person shall have free access to the courts of law on the territory of all Contracting States.
2. A stateless person shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance and exemption from *cautio judicatum solvi* .
3. A stateless person shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.

Chapter III

GAINFUL EMPLOYMENT

Article 17. - Wage-earning employment

1. The Contracting States shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage in wage-earning employment.

2. The Contracting States shall give sympathetic consideration to assimilating the rights of all stateless persons with regard to wage-earning employment to those of nationals, and in particular of those stateless persons who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.

Article 18. - Self-employment

The Contracting States shall accord to a stateless person lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.

Article 19. - Liberal professions

Each Contracting State shall accord to stateless persons lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practising a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

Chapter IV

WELFARE

Article 20. - Rationing

Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, stateless persons shall be accorded the same treatment as nationals.

Article 21. - Housing

As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

Article 22. - Public education

1. The Contracting States shall accord to stateless persons the same treatment as is accorded to nationals with respect to elementary education.
2. The Contracting States shall accord to stateless persons treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

Article 23. - Public relief

The Contracting States shall accord to stateless persons lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

Article 24. - Labour legislation and social security

1. The Contracting States shall accord to stateless persons lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters:
 - (a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities; remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining;
 - (b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family

responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:

- (i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;
 - (ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.
2. The right to compensation for the death of a stateless person resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.
 3. The Contracting States shall extend to stateless persons the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.
 4. The Contracting States will give sympathetic consideration to extending to stateless persons so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and non-contracting States.

Chapter V

ADMINISTRATIVE MEASURES

Article 25. - Administrative assistance

1. When the exercise of a right by a stateless person would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting State in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities.
2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered under their supervision to stateless persons such documents

or certifications as would normally be delivered to aliens by or through their national authorities.

3. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities and shall be given credence in the absence of proof to the contrary.
4. Subject to such exceptional treatment as may be granted to indigent persons, fees may be charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.
5. The provisions of this article shall be without prejudice to articles 27 and 28.

Article 26. - Freedom of movement

Each Contracting State shall accord to stateless persons lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.

Article 27. - Identity papers

The Contracting States shall issue identity papers to any stateless person in their territory who does not possess a valid travel document.

Article 28. - Travel documents

The Contracting States shall issue to stateless persons lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other stateless person in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to stateless persons in their territory who are unable to obtain a travel document from the country of their lawful residence.

Article 29. - Fiscal charges

1. The Contracting States shall not impose upon stateless persons duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations.

2. Nothing in the above paragraph shall prevent the application to stateless persons of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents including identity papers.

Article 30. - Transfer of assets

1. A Contracting State shall, in conformity with its laws and regulations, permit stateless persons to transfer assets which they have brought into its territory, to another country where they have been admitted for the purposes of resettlement.
2. A Contracting State shall give sympathetic consideration to the application of stateless persons for permission to transfer assets wherever they may be and which are necessary for their resettlement in another country to which they have been admitted.

Article 31. - Expulsion

1. The Contracting States shall not expel a stateless person lawfully in their territory save on grounds of national security or public order.
2. The expulsion of such a stateless person shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the stateless person shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.
3. The Contracting States shall allow such a stateless person a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

Article 32. - Naturalization

The Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

Chapter VI

FINAL CLAUSES

Article 33. - Information on national legislation

The Contracting States shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of this Convention.

Article 34. - Settlement of disputes

Any dispute between Parties to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

Article 35. - Signature, ratification and accession

1. This Convention shall be open for signature at the Headquarters of the United Nations until 31 December 1955.
2. It shall be open for signature on behalf of:
 - (a) Any State Member of the United Nations;
 - (b) Any other State invited to attend the United Nations Conference on the Status of Stateless Persons; and
 - (c) Any State to which an invitation to sign or to accede may be addressed by the General Assembly of the United Nations.
3. It shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.
4. It shall be open for accession by the States referred to in paragraph 2 of this article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 36. - Territorial application clause

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international

relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.
3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article 37. - Federal clause

In the case of a Federal or non-unitary State, the following provisions shall apply

- (a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of Parties which are not Federal States;
- (b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the Federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;
- (c) A Federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention showing the extent to which effect has been given to that provision by legislative or other action.

Article 38. - Reservations

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1, 3, 4, 16 (1) and 33 to 42 inclusive.

2. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

Article 39. - Entry into force

1. This Convention shall come into force on the ninetieth day following the day of deposit of the sixth instrument of ratification or accession.
2. For each State ratifying or acceding to the Convention after the deposit of the sixth instrument of ratification or accession, the Convention shall enter into force on the ninetieth day following the date of deposit by such State of its instrument of ratification or accession.

Article 40. - Denunciation

1. Any Contracting State may denounce this Convention at any time by a notification addressed to the Secretary-General of the United Nations.
2. Such denunciation shall take effect for the Contracting State concerned one year from the date upon which it is received by the Secretary-General of the United Nations.
3. Any State which has made a declaration or notification under article 36 may, at any time thereafter, by a notification to the Secretary-General of the United Nations, declare that the Convention shall cease to extend to such territory one year after the date of receipt of the notification by the Secretary-General.

Article 41. - Revision

1. Any Contracting State may request revision of this Convention at any time by a notification addressed to the Secretary-General of the United Nations.
2. The General Assembly of the United Nations shall recommend the steps, if any, to be taken in respect of such request.

Article 42. - Notifications by the Secretary-General of the United Nations

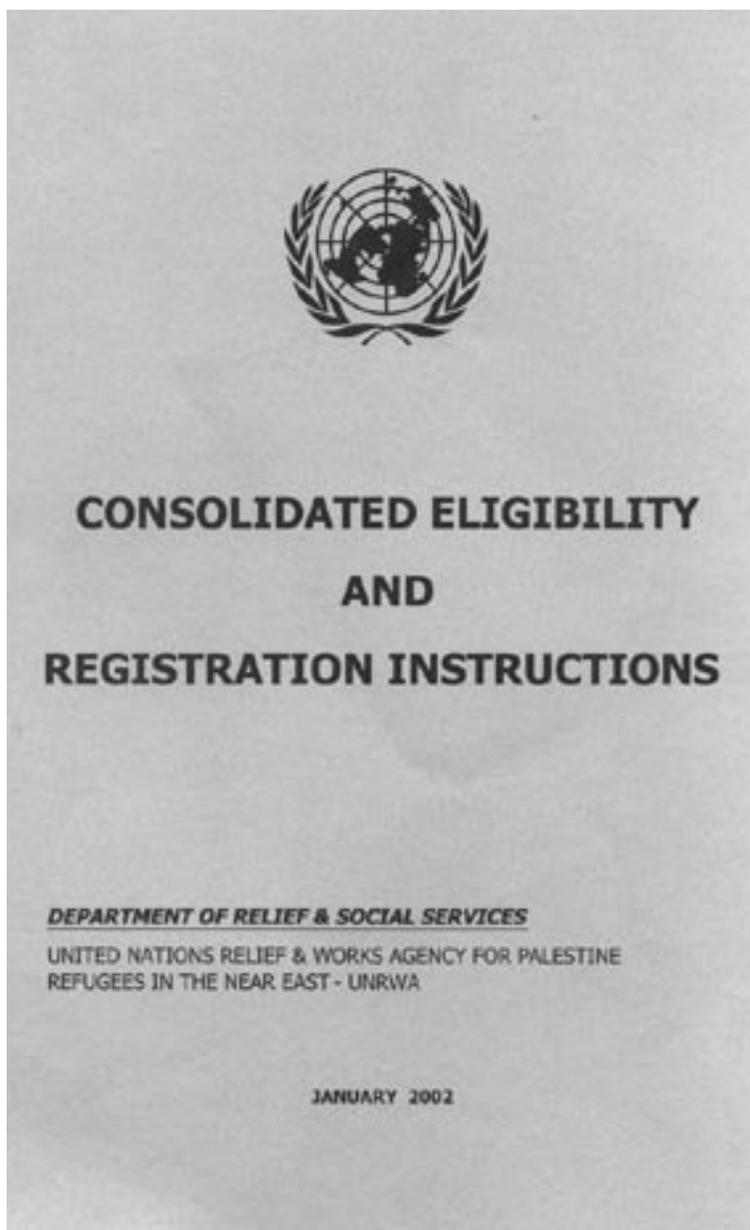
The Secretary-General of the United Nations shall inform all Members of the United Nations and non-member States referred to in article 35:

- (a) Of signatures, ratifications and accessions in accordance with article 35;
- (b) Of declarations and notifications in accordance with article 36;
- (c) Of reservations and withdrawals in accordance with article 38;
- (d) Of the date on which this Convention will come into force in accordance with article 39;
- (e) Of denunciations and notifications in accordance with article 40;
- (f) Of request for revision in accordance with article 41.

In faith whereof the undersigned, duly authorized, have signed this Convention on behalf of their respective Governments.

Done at New York, this twenty-eighth day of September, one thousand nine hundred and fifty-four, in a single copy, of which the English, French and Spanish texts are equally authentic and which shall remain deposited in the archives of the United Nations, and certified true copies of which shall be delivered to all Members of the United Nations and to the non-member States referred to in article 35.

Appendix 6
UNRWA Consolidated Eligibility and
Registration Instructions, January 2002 (excerpts)⁸⁸⁰



⁸⁸⁰ Published with UNRWA's permission.

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**UNITED NATIONS RELIEF AND WORKS AGENCY
FOR PALESTINE REFUGEES IN THE NEAR EAST**

**Consolidated Eligibility and Registration Instructions
(Effective January 2002)**

1. CANCELLATION:

This instruction cancels and supersedes;

- A) The Eligibility for UNRWA Services document dated January 1993.
- B) The Consolidated Registration Instructions, dated January 1993 and all previous issues of the Consolidated Eligibility Instructions.

2. EFFECTIVE DATE:

January 2002

3. DEFINITIONS:

For the purpose of these instructions, the following definitions are assigned to the words or phrases listed hereunder.

- 3.1 **Agency (UNRWA):** Shall mean the United Nations Relief and Works Agency for Palestine Refugees in the Near East.
- 3.2 **Approval:** Shall mean the written approval of the officer specified (which authority shall not be delegated) or, if no officer is specified, the Field Eligibility and Registration Officer (see attachment (1) to Annex I).
- 3.3 **Area:** Shall mean one of the geographical areas into which a Field is divided for UNRWA administrative purposes.
- 3.4 **Area of operations:** Shall mean the UNRWA Area of Operations, i.e. Lebanon, Syria, Jordan, West bank and Gaza Strip.
- 3.5 **Bachelor:** Shall mean any unmarried family member, male or female.
- 3.6 **Descendant:** Shall mean the male and female persons born after 15 May 1948 to registered fathers.

- 3.7 **Family:** Shall normally mean a nuclear family, composed of a man, his wife and their children, exceptionally, other relatives may be registered on the family registration card (extended family), but separate registration cards for each nuclear family are to be encouraged.
- 3.8 **Field:** Shall mean Lebanon, Syria, Jordan, the West Bank and the Gaza Strip.
- 3.9 **Head of family:** Shall mean the person whose name is given as head of family on the registration card.
- 3.10 **Household:** Shall mean a single domestic establishment where all the persons residing therein are benefiting from the facilities of the establishment.
- 3.11 **Palestine refugee:** Shall mean 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 1948 conflict.*
- 3.12 **Palestine** Is defined as the territory that is currently the State of Israel, according to the formal 1949 cease-fire lines.
- 3.13 **Non-refugee:** Shall mean any person not falling within the definition given in 3.11 of these instructions.
- 3.14 **Registered person:** Shall mean Palestine refugees and non-refugees whose names are currently registered in the Agency's records (in the 8-digit registration system).

*

1. **Normal place of residence:** as above, provided that the applicant was residing in Palestine as defined in para 3.12 of this instruction, for the two-year period immediately preceding 15 May 1948.
2. **Who lost both home and livelihood:** applicants should show loss of both to be considered as genuine Palestine refugees. Those who lost their livelihoods and not their homes may not be registered as refugees. (Some who lost their livelihoods were registered in early fifties on UNRWA rolls because of their need for Relief assistance at that time, i.e. Frontier villages, Poor Gaza, Poor Jerusalem, compromise cases in Lebanon).
3. **As a result of 1948 conflict:** this phrase is meant to include persons:
 - who left Palestine before 1948 i.e. after UN resolution 181 of November 1947 (partition of Palestine),
 - who became refugees up till June 1952 when UNRWA completed its census,
 - who were temporarily outside Palestine for one reason or another (work, trade, study, medical treatment) but were unable to return to Palestine as a result of 1948 conflict.

- 3.15 Registration card: Shall mean the standard UNRWA form of registration card which shows the names and other particulars of the head of family and all registered family members.
- 3.16 Special Hardship Case (SHC): Shall mean a family registered as such in accordance with Relief Services Instruction No. 2/2002 or any update or replacement of RSI 2/2002.
- 3.17 Staff members: Shall mean all UNRWA staff members and employees in all categories of employment.
- 3.18 Frontier villagers: Shall mean any person whose normal place of residence was the towns/villages along the front line border between Palestine (as defined in para 3.12) and what is known as the West Bank following the 1949 cease fire lines. While it is clear from the above definition of Frontier Villagers, that these villagers are not true refugees within the UNRWA definition, they nevertheless are entitled to Agency services on an exceptional basis because of suffering and hardship as a result of 1948 conflict.
- 3.19 Compromise case: Shall mean Lebanese who were working in Palestine-but not residing – till 15 May 1948 who suffered loss and possibly hardship as a result of the 1948 conflict.
- 3.20 Jerusalem and Gaza Poor: Shall mean any person whose normal place of residence was East Jerusalem or Gaza city till 15 May 1948 and who lost his work or properties (land, trade, shop) and suffered hardship as a result of the 1948 conflict.
-

4.0 ELIGIBILITY FOR REGISTRATION

4.1 General

4.1.1 All registered Palestine refugee families and persons are now included in UNRWA registration records without specific registration categories.

4.1.2 Within these records, families designated as Special Hardship Cases will form a special class and will have their registration records marked "SHC" as long as they retain this status.

4.1.3 If it is established that a registered family or person is no longer living continuously in the Agency's area of operations for more than one year, this fact should be marked on the registration records of this family or person, by using the symbol 'A' for absence from the Agency's area of operations.

4.1.4 The UNRWA index cards and family files of families and persons who were formerly registered in any of the following categories or classes should be clearly annotated to show their former registration class or category:

- Frontier Villagers in the West Bank regardless of their present locality (FV)
- A family registered as a "Compromise" case in Lebanon (CO)
- Jerusalem and Gaza Poor as long as they are living in their locality (JP,GP)
- UNRWA employee (UN)

4.2 Registration

4.2.1 The following persons and their descendants born after 15 May 1948 are eligible for registration with UNRWA:

4.2.2 Palestine refugees, as defined in 3.11.

4.2.3 The descendants of persons fulfilling the conditions of 3.11.

4.2.4 The descendants of fathers registered with UNRWA as "Gaza Poor" in Gaza, "Jerusalem Poor" in the West Bank, "Frontier Villagers" in the West Bank and in Jordan only.

4.2.5 A registered woman fulfilling the conditions of 3.11 of these instructions but who is married to an unregistered husband (who does not fulfill these conditions) may be transferred out of her original family's registration card into a separate registration card in her own name under the symbol "MNR" i.e. married to a non-registered husband (and not as HOF i.e. Head of Family), or remain registered with her original family's registration card under a MNR relationship.

4.2.6 Children born to women who fulfill the conditions of 3.11 of these instructions but who are married to husbands who do not fulfill these conditions will not be registered.

5.0 PROCEDURES

5.1 The following procedures shall be applied in determining the eligibility of persons for the purpose of registration with UNRWA

5.1.1 Registration Transactions:

Registration transactions are to be effected in accordance with the procedures laid down in the Registration Manual and in 10.1.2 to 10.1.5 of these instructions.

5.1.2 Additions to the Registered Population

Additions to the registered population may be made in respect of the following persons:

5.1.2.1 Descendants, born after 15 May 1948, of registered male refugees may be registered upon the presentation of a Registration Card and an official birth certificate or a temporary "notification of birth document" in Gaza and the West Bank. The names of the parents given on the birth certificate shall be the same as those given on the Registration Card. If the request for registration of a descendant is made more than one year after the birth of the descendant, proof of existence in the form of an identity document or inclusion in an identity document of one of the parents is required.

However, requests for registration of descendants from registered families/persons temporarily living or working outside the Agency's area of operations may be accepted if official birth certificates from the appropriate authorities in their country of residence are produced together with photocopies of the concerned family member's passport/residential documents. The registration records of the family/person should also be annotated to show that the family/person in question is residing outside the Agency's area of operations.

5.1.2.2 New Inscription, Palestine refugees born before 15 May 1948 and their descendants through the male line may be registered if the applicant:

5.1.2.2.1 Meets the requirements laid down in 3.11 of these instructions;

5.1.2.2.2 Submits the application for registration in person to the Agency in any of its five Fields;

5.1.2.2.3 Has been approved for registration by the Commissioner-General, whose authority is currently delegated to the Director of Relief and Social Services.

5.1.2.3 Applications for the registration of Palestine refugees born before 15 May 1948 must be accompanied by documentary evidence of refugee status, particularly in respect of:

5.1.2.3.1 The place of residence in that part of Palestine which is now Israel for the two-year period immediately preceding 15 May 1948;

5.1.2.3.2 The family composition on 15 May 1948. For further details and clarification please see "Annex II & Annex III" to these Instructions relating to new inscription only.

5.1.2.4 **Re-instatement.** persons whose names have been removed from UNRWA registration records may be re-registered with the approval of the Chief, Field Relief & Social Services Programme if s/he is convinced that the removal was made by error. Such persons should apply in person and an investigation should be carried out by Registration staff.

5.1.3 Reduction in the Registered Population

Reduction in the registered population is made by the removal of the name of a registered person from the registration records. Such removals shall be made in the following cases:

5.1.3.1 upon the death of a person who died after the date of registration, on the strength of:

- A death certificate issued by the government authorities or a death notification issued by an UNRWA Medical Officer. However, an official governmental death certificate is preferred.
- Government records of reported deaths.
- A declaration by a family member supported by a written statement from an UNRWA staff member.
- Circumstantial evidence (extreme old age, information from Mukhtars, which establishes a reasonable presumption of death).

5.1.3.2 Children who die before being registered may be registered on the strength of a death certificate and their names removed from the registration records immediately after registration.

5.1.3.3 Names of persons or families who have been falsely registered or whose registration has been duplicated shall be removed from the registration records on the strength of:

5.1.3.3.1 Information given by an UNRWA staff member in writing.

5.1.3.3.2 A voluntary declaration by a member of the family concerned.

5.1.3.3.3 Information given by any other person after the facts have been established by a member of the Registration staff.

5.1.3.3.4 A comparison between UNRWA and/or governmental records revealing an obvious duplication.

5.1.4 Transfer of Refugee Registration

5.1.4.1 The transfer of registration of registered families/ individuals may take place between Fields or between Areas in the same Field with the approval of the Governmental authority in the Field or Area to which the families wish to be transferred and, where required, the approval of the Governmental authority in the Field from which the families wish to be transferred. Such transfer has to be initiated by the receiving Field or Area. The receiving Field or Area must not register the transferee(s) until the transferring Field or Area has completed its part of the transaction.

5.1.4.2 The transfer of registration of registered families/individuals may take place between residential units within an Area with the approval of the Area/Camp Registration Officer and/or the local Governmental authority where required.

5.1.4.3 Registration Officers in the receiving Field or Area for transfers under 9.1.4.1 and 9.1.4.2 of these instructions shall confirm the existence of all registered transferees by seeing the identity documents issued by the Governmental authority in the receiving Field for every transferee. They shall update the registration record as may be necessary in light of the newly submitted documents.

5.1.4.4 A male family member who establishes his own nuclear family should, at his request have a separate registration card for his new family. This is to be encouraged.

5.1.4.5 Up until June 1967 'Frontier Villagers', 'Jerusalem Poor', and 'Gaza Poor' were not permitted to transfer their registration records if they moved out of their specific localities. In that event, they were to be deleted from the registration rolls. However, following the 1967 War, the registration records of many families falling within this category were transferred from West Bank to Jordan and separate registration codes were established for them in Jordan field. For example, many frontier villagers who moved to the Gulf States before the 1967 War later relocated to Jordan following the Gulf Crisis in 1990-1991. As they were forbidden by the Israeli authorities to return to the West Bank, UNRWA allowed the transfer of their records to Jordan.

Accordingly, it has been decided to treat these families similar to other registered refugee families with regard to registration transactions, but in all cases their residential code number as frontier villagers, poor Jerusalem, poor Gaza should be kept for future reference purposes.

5.1.5 Changes to Registration Data

5.1.5.1 UNRWA registration records contain the following data with respect to each registered family and person:

5.1.5.1.1 Family particulars:

5.1.5.1.1.1 Name of head of family (first name, father's name, grandfather's name and family name)

5.1.5.1.1.2 Nationality of origin

5.1.5.1.1.3 Religion

5.1.5.1.1.4 District of origin in Palestine

5.1.5.1.1.5 Field, area and district of residence and whether in camp or out-of-camp resident.

5.1.5.1.2 Individual particulars:

5.1.5.1.2.1 first name

5.1.5.1.2.2 sex

5.1.5.1.2.3 date or year of birth

5.1.5.1.2.4 marital status and relationship to head of family

5.1.5.2 Requests may be accepted for the amendment of the data listed in paragraph 5.1.5.1.1.1 to 5.1.5.1.1.5 and from 5.1.5.1.2.1 to 5.1.5.1.2.4 of these instructions from any registered member of the family concerned. Amendments shall be made only when the requests are validated by official governmental documents.

6. ELIGIBILITY FOR UNRWA SERVICES:

- 6.1 UNRWA services are normally provided to persons or families registered with UNRWA, the non-refugee wives of registered refugees and to adopted children. Registered women who are married to un-registered husbands and their descendants of such marriages are not eligible for UNRWA services. However registered women who become divorced or widowed are eligible for UNRWA services themselves.

Under certain conditions, UNRWA services may exceptionally be provided to un-registered persons and their dependants with the prior approval of the Field Director.

(Unregistered person means non-registered Palestine refugees and non-registered persons living in UNRWA area of operations).

- 6.2 Families and persons meeting the Special Hardship criteria are eligible for and have priority for all UNRWA services.

- 6.3 The provision of UNRWA services is subject to financial limitations and all relevant Instructions, Regulations and Rules.
- 6.4 Persons applying for UNRWA services may be requested to prove their identity by producing a Government-issued identity card and to prove their eligibility by producing an UNRWA Registration Card.
- 6.5 UNRWA services may be provided to persons or families registered with UNRWA and living in a field other than the field in which they are registered, who are unable to transfer their registration records to their present residence, subject to the following:

6.5.1 Relief & Social Services:

UNRWA Relief & Social Services can be provided to all eligible registered Palestine refugees regardless of the location of their residence & registration in the Agency's area of operations subject to full coordination between the two respective Fields to avoid duplication in services.

6.5.2 Education:

UNRWA Education services are provided to all eligible registered Palestine refugees regardless of the location of their residence in the Agency area of operations, unless they lack a residential permit from the government authorities in Jordan & Lebanon Fields.

6.5.3 Health Services:

6.5.3.1 UNRWA primary Health care services including maternal & child health care and family planning, out-patient medical care and dental care may be provided to registered refugee persons living in a field other than the field of their recognized place of residence, subject to confirmation from the recognized field of registration that they are registered and that their entitlement for health services had been suspended in that respective field.

6.5.3.2 Hospital services may be provided to registered refugee persons living in a field other than the field in which they are registered, regardless of the duration of stay in the receiving field, subject to confirmation of their eligibility status and to the prior approval of Chief, Field Health Programme of the recognized field of registration to provide such treatment and charge expenses to the respective field's budget. However, such assistance will be provided within the scope of the hospitalization arrangements maintained in the host fields for registered refugees in that respective field.

6.5.3.3 No assistance should be provided to registered refugees who make their own arrangements for obtaining specialized medical care or hospitalization services outside the Agency run/referral facilities, be it for emergency care or other conditions.

- 6.6 The services covered by this document are listed in paragraphs 7, 8, 9 and 10 of this instruction.

Appendix 7
UNHCR Note on the Applicability of Article 1D of the 1951
Convention relating to the Status of Refugees to
Palestinian refugees (2002 UNHCR Note)



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 (II) 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)
October 2002

Endnotes

¹ A similar provision to Article 10 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/AC.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 Tulkarm." 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/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.

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.

Appendix 8
**UNHCR's Executive Committee: Complementary Forms of
Protection: Their Nature and Relationship to the International
Refugee Protection Regime, 9 June 2000**

EXECUTIVE COMMITTEE OF THE
Distr.
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18th Meeting

**COMPLEMENTARY FORMS OF PROTECTION:
THEIR NATURE AND RELATIONSHIP TO THE INTERNATIONAL
REFUGEE PROTECTION REGIME**

I. INTRODUCTION

1. A number of asylum countries have in place administrative or legislative mechanisms for regularizing the stay of persons who are not formally recognized as refugees, but for whom return is not possible or advisable for a variety of reasons. It is a positive way of responding pragmatically to certain international protection needs.
2. In the absence of any harmonization, individual responses by States have led, however, to a proliferation of statuses granted to a wide range of persons for various reasons. Examples of these different types of status include B-status, subsidiary protection, de facto status and humanitarian status. Varying standards of treatment, with corresponding consequences for the beneficiary, are attached to these statuses.
3. The purpose of this paper is to identify the beneficiaries of these complementary forms of protection; to provide some analysis of the legal framework applicable to them and the nature of protection provided by States; and to suggest the appropriate standards of treatment which, from UNHCR's perspective, should be in place. The paper also relates this discussion to the issue of protection in situations of mass influx.

II. PERMISSION TO STAY: A DIVERSE GROUP OF BENEFICIARIES

4. A review of the categories of persons who benefit from permission to stay for a prolonged period reveals that it is granted by States for a whole range of reasons, of which only some are related to a need for international protection. The reasons can be roughly categorised as follows: a) those which are purely compassionate, or based on practical considerations, and b) those which are related to international protection needs and may thus qualify as complementary forms of protection. The focus, for the purpose of this paper, will be on the latter category.

A. Stay not related to protection needs: compassionate grounds/practical reasons

5. States may decide to allow prolonged stay solely for compassionate reasons, such as age, medical condition, or family connections.^{1/} In cases where removal is not possible, either because transportation is not feasible, or if travel documents are unavailable or cannot be obtained, continued presence may be allowed for practical reasons. The persons concerned are normally not asylum-seekers or, having sought asylum, have had their applications properly rejected and were found not to be in need of international protection. These cases must be clearly distinguished from cases where international protection needs and an obligation to respect the fundamental principle of non-refoulement are present, and which are thus of direct concern to UNHCR. This paper does not cover those persons who have been excluded from refugee status in application of the exclusion clauses contained in the 1951.

B. Stay on account of international protection needs:

6. Various considerations apply to cases where permission to stay is on grounds related to an international protection need. Even within the group of beneficiaries with acknowledged protection needs, there is diversity. In UNHCR's experience, beneficiaries include:

- (a) Persons who should fall within the terms of the 1951 Convention relating to the Status of Refugees or its 1967 Protocol, but who may not be so recognized by a State as a result of varying interpretations;
- (b) Persons who have valid reasons for claiming protection, but who are not necessarily covered by the terms of the 1951 Convention. Underpinning the discussion which follows is UNHCR's understanding that whenever refugees - in the broadest sense of the term - are involved, UNHCR will have an interest and indeed a duty to ensure adequate treatment, as well as

an expertise to contribute to the debate on measures relating to their stay and treatment. Beneficiaries who could meet the 1951 Convention/1967 Protocol criteria

7. Varying interpretations by States of the inclusion criteria set out in Article 1 of the 1951 Convention have resulted in significant differences in recognition rates between States for persons in similar circumstances. Some persons who are recognized as refugees in one State may be denied such status in another. It is important to acknowledge, however, that even in those cases where refugee status is denied, States provide an alternative form of prolonged stay in recognition of the international protection need. 2/
8. At least three groups can be identified on whom divergent views concerning the interpretation of the refugee definition criteria have emerged:
 - (a) One important group consists of those who fear persecution by non-State agents for 1951 Convention reasons. Although in most countries they are recognized as refugees under the Convention, in a few countries they are denied refugee status and provided with an alternative status;
 - (b) Another group comprises refugees who flee persecution in areas of on-going conflict. In a number of countries, they are treated as ‘victims of indiscriminate violence’ and provided with complementary protection. This is the case even when the conflict they flee is rooted in ethnic, religious or political differences which specifically victimize those fleeing. In other States, this may well be the basis for their recognition as Convention refugees;
 - (c) A third group consists of persons who fear or suffer gender-related persecution, and who otherwise fulfil the criteria under the Convention. In a significant number of States, they are provided only a complementary or subsidiary status, often on a legislative basis, instead of being recognized as refugees. In other jurisdictions, such persons are recognized as fulfilling the Convention criteria.
9. It is UNHCR’s understanding, based not least on relevant State practice, that the above categories should be covered by the 1951 Convention and 1967 Protocol. That there is a recognized need for international protection in such cases has been amply demonstrated by the fact that States provide some form of protection. To achieve overall consistency and to ensure a full and inclusive interpretation of the Convention refugee definition, a harmonized approach within the Convention regime is desirable.

Beneficiaries who might not meet the 1951 Convention/1967 Protocol criteria

10. Persons who may not necessarily be 1951 Convention refugees but who nevertheless need international protection are commonly referred to as refugees falling under UNHCR's wider competence. This competence is generally understood also to cover persons outside their countries who are in need of international protection because of a serious threat to life, liberty or security of person in the country of origin, as a result of armed conflict or serious public disorder. 3/ For example, persons fleeing the indiscriminate effects of violence and the accompanying disorder in a conflict situation, with no specific element of persecution, might not fall under a strict interpretation of the 1951 Convention refugee definition, but may still require international protection, and be within UNHCR's competence.
11. The regional refugee instruments in Africa and Latin America 4/ specifically state that refugee protection should also encompass this broader category of refugees. In other regions, in the absence of such instruments, States have provided for prolonged stay under their domestic legislation. As regards this category of refugees, in UNHCR's experience, there is a need for greater harmonization of complementary forms of protection, based on human rights and refugee law standards.

III. STANDARDS OF TREATMENT FOR COMPLEMENTARY FORMS OF PROTECTION

12. In the absence of a harmonized approach, in those States or regions where the international or regional refugee instruments are not applicable, a variety of statuses may bring into play different regimes of rights. In some instances, these rights are much less expansive than in others. The following paragraphs propose standards of treatment consistent with international human rights and refugee law considerations, 5/ which could assist or guide States in their harmonization efforts.
13. Universal human rights principles argue for persons permitted to remain for protection reasons being afforded a status that allows them to continue their lives with human dignity. Given the disruption they have suffered, a suitable degree of certainty and stability is necessary. A mere withholding of deportation is, in UNHCR's view, not sufficient.
14. Beneficiaries of complementary forms of protection should enjoy a formal legal status with defined rights and obligations, and should be issued with documents certifying that status. The status should extend for a period of time which is

long enough to allow the beneficiaries to regain a sense of normalcy in their lives. It should last for as long as protection is required.

15. The status afforded to beneficiaries should provide for the recognition and protection of basic rights as defined in relevant international and regional instruments.^{6/} In some States or regions, domestic or regional human rights provisions may require standards of treatment which are higher than those of other States or regions, but the standards to be respected should not fall below a certain minimal level.

16. In the area of civil and political rights, beneficiaries should, in particular:

- be protected from *refoulement* and expulsion;
- not be subjected to discrimination on the basis of race, religion, political opinion, nationality, country of origin, gender, physical incapacity or any other such basis;
- never be subjected to torture or cruel, inhuman or degrading treatment or punishment;
- enjoy basic freedom of movement, and in any case, not be subject to restrictions to their freedom of movement, other than those which are necessary in the interest of public health and public order;
- have access to the courts of justice and administrative authorities.

17. Their protection should, moreover, include basic social and economic rights comparable to those generally available in the host country, including, in particular:

- access to adequate housing;
- access to assistance or employment;
- access to health care as needed;
- access to primary and secondary education.

18. The importance of putting in place measures which ensure respect for the unity of the refugee family has been highlighted by the Executive Committee on a number of occasions.^{7/} The family is acknowledged in human rights instruments as the natural and fundamental group unit of society: maintaining or reinstating family unity is one of the most important ways in which persons in need of international protection can enjoy the stability they require to continue their lives. Accordingly, any complementary protection regime should build in appropriate provisions for close family members to be reunited, over time, in the host country.

19. Complementary forms of protection, like protection under the 1951 Convention, are not necessarily permanent in nature. The cessation provisions of the Convention envisage an end to refugee status when international protection is no longer necessary. Ending of complementary status should likewise be based on objective criteria set out in writing, preferably in legislation, and should never be arbitrary. On account of its particular expertise, a consultative role should preferably be envisaged for UNHCR, when deciding whether it is appropriate to end complementary protection measures for refugees.

IV. THE SCOPE OF PROTECTION IN SITUATIONS OF MASS INFLUX

20. In both Africa and Latin America, situations of large-scale arrival are broadly provided for in regional refugee instruments. The concept of temporary protection has evolved in Europe and other regions as a provisional protection response to situations of large-scale displacement generated, to a significant extent, by compelling reasons including or akin to those in the refugee definition. The purpose of temporary protection is to ensure immediate access to safety and protection of basic human rights, including protection from *refoulement*, in those countries directly affected by a large-scale influx. Temporary protection may also serve to enhance prospects for a coherent regional response, beyond the immediately affected areas.

21. Temporary protection is an exceptional emergency device to respond to an overwhelming situation, where there are self-evident protection needs, and little or no possibility to determine such needs on an individual basis in the short term. It is distinct from complementary protection, which is a legal status offered after recognition of individual protection needs, and a determination of their nature. Temporary protection, by definition, involves a group assessment of international protection needs based on the circumstances in the country of origin, whereas complementary protection measures apply to individuals whose protection needs have been specifically examined. While both temporary and complementary protection should ensure adequate standards of treatment for the beneficiaries, the provisional nature of temporary protection, and especially its use with large groups, warrants an incremental improvement of standards of treatment over time, should its continuation prove necessary. Complementary protection measures, on the other hand, provide a definitive treatment immediately upon recognition of the individual's protection need.

22. Due to these, and other significant differences in the two concepts, the provisional device of temporary protection should be clearly distinguished from forms of complementary protection provided in individual cases.

V. CONCLUDING OBSERVATIONS

23. While some States have used the mechanism of a broadened definition in a regional instrument to provide for the protection of refugees falling within UNHCR's broader competence, other States have utilised legislative arrangements to grant permission to remain for a prolonged period of time. In the latter case, the proliferation of standards for various categories of beneficiaries has tended to obscure the refugee nature of some of them, and led to confusion over the considerations which should govern their treatment.

24. In these circumstances, harmonizing the standards of treatment of those in need of international protection but not recognized as refugees in asylum States, would be beneficial, and help to ensure that these standards are in accordance with refugee protection principles. The 1951 Convention, though not directly applicable to a number of the beneficiaries, provides a useful guide for this harmonization.

25. The Executive Committee may wish to consider the following elements for conclusions on this subject:

- (a) Complementary forms of protection adopted by States to ensure that persons in need of international protection actually receive it, are a positive way of responding pragmatically to certain international protection needs;
- (b) Beneficiaries of complementary protection should be identified according to their international protection needs, and treated in conformity with those needs and their human rights. The criteria for refugee status in the 1951 Convention should be interpreted in such a manner that individuals who fulfil the criteria are so recognized and protected under that instrument, rather than being treated under complementary protection schemes;
- (c) Measures to provide complementary protection should be implemented in a manner that strengthens, rather than undermines, the existing global refugee protection regime;
- (d) The standards of treatment of beneficiaries of complementary protection should provide for the protection of basic civil, political, social and economic rights. States should, as far as possible, strive to devise harmonized approaches to the treatment provided. They should implement complementary protection measures in such a way as to ensure the highest degree of stability and certainty possible in the circumstances, including through appropriate measures to ensure respect for other important principles, such as the fundamental principle of family unity;

- (e) Temporary protection, which is a specific provisional protection response to situations of mass influx providing immediate emergency protection from refoulement, should be clearly distinguished from complementary forms of protection, which are offered after a status determination, providing a defined status; EC/50/SC/CRP.18 page 6
- (f) The 1951 Convention and its 1967 Protocol form the cornerstone of the international protection of refugees and provide the basic framework for such protection. The standards elaborated in the Convention, together with developments in international human rights law, provide an important guide with respect to the treatment that should be afforded to persons in need of international protection;
- (g) States that have not yet done so should accede to these instruments and to other applicable regional refugee protection instruments, in order to ensure the widest possible, and most closely harmonized, application of the basic principles of refugee protection.
- 1/ This refers to family connections which are unrelated to any protection need. Such family reasons for granting prolonged stay are different from those in the context of family reunification for refugees and their families which fall within the ambit of UNHCR. Convention, but cannot, under relevant human rights law, be returned to a country where they would face a risk of torture.
- 2/ In some cases States have obligations under applicable human rights instruments prohibiting torture, not to return persons to their countries of origin where such a risk is present. The 1984 UN Convention against Torture is the prime universal example, but there are other international, regional and domestic provisions of a similar nature. Persons covered by these provisions may fall into one or the other of the identified protection groups.
- 3/ The competence of the Office has been enlarged by successive General Assembly resolutions since the elaboration of the mandate in the Statute in 1950.
- 4/ The 1969 OAU Convention governing the Specific Aspects of Refugee Problems in Africa and the 1984 Cartagena Declaration on Refugees.
- 5/ Executive Committee Conclusion No. 22 (1981) (A/AC.96/601,para.57(2)), concerning treatment in situations of large-scale influx, offers some helpful guidance, on the basis of the refugee standards in the 1951 Convention, for minimum rights which should be guaranteed under complementary protection.
- 6/ The International Bill of Rights (consisting of the Universal Declaration of Human Rights and the two International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights) sets out fundamental human rights. Regional instruments such as the European Convention for the Protection of Human Rights and Fundamental Freedoms, the African Charter on Human and Peoples Rights and the American Convention on Human Rights (Pact of San Jose) also provide useful guidance regarding fundamental human rights.
- 7/ Most recently in Conclusions No. 85 (1998) (A/AC.96/911,para.21) and 88 (1999) (A/AC/96/928,para.21).

Appendix 9

UNHCR Lisbon Expert Roundtable “Summary Conclusions on the Concept of “Effective Protection” in the Context of Secondary Movements of Refugees and Asylum-Seekers” (December 2002)

Agenda for Protection

Lisbon Expert Roundtable
9 and 10 December 2002
organised by the United Nations High Commissioner for Refugees
and the Migration Policy Institute
hosted by the Luso-American Foundation for Development

Summary Conclusions on the Concept of Effective Protection in the Context
of Secondary Movements of Refugees and Asylum-Seekers

1. The December 2002 Lisbon expert roundtable reviewed the concept of effective protection in the context of secondary movements of asylum-seekers and refugees. The question of what constitutes effective protection in a third country usually arises in the implementation of what is commonly referred to as the concept of first country of asylum, safety elsewhere or the safe third country concept. The discussion was based on a background paper by Prof. Dr Stephen Legomsky, Washington University in St. Louis, United States, entitled *Returning Asylum- Seekers to Third Countries: The Requirements of Effective Protection*. Participants included 30 experts from 18 countries, drawn from governments, NGOs, academia, the judiciary and the legal profession.
2. The roundtable is in direct follow-up of the Agenda for Protection (A/AC.96/965/Add.1 of 26 June 2002), which defines as one of its six goals protecting refugees within broader migration movements. One of the activities foreseen to work towards this goal is: Bearing in mind UNHCR ExCom Conclusion No. 58 (XL) of 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, UNHCR, in co-operation with relevant partners, to analyse the reasons for such movements, and propose strategies to address them in specific situations, predicated on a more precisely articulated understanding of what constitutes effective protection in countries of first asylum, and taking into account international solidarity and burden-sharing.

3. The objective of this roundtable was to identify the principles, grounded in law, around which policy parameters could be built to address issues concerning the secondary movement of asylum-seekers and refugees and which would have a practical value for decision- and policymakers. The principles should be practical and holistic, that is, they should take account of physical, material and legal safety considerations.
4. The following Summary Conclusions do not represent the individual views of each participant or necessarily of UNHCR, but reflect broadly the understandings emerging from the discussion.

Overall context

5. The rationale behind examining effective protection in the context of the return of asylum-seekers and refugees to third countries is fourfold:
 - to enhance international co-operation to share the burdens and responsibilities of admitting and hosting refugees;
 - to strengthen protection capacities in host countries;
 - to foster international solidarity and support for generating solutions;
 - to address issues related to irregular movement, including people smuggling, people trafficking, multiple applications and orbit cases.
6. The causes of secondary movements are manifold and include lack of durable solutions; limited capacity to host refugees and provide effective protection for protracted periods of time; as well as lack of access to legal migration opportunities. It was recommended that such causes required further careful study in relation to specific situations to provide a clearer understanding on which to build comprehensive strategies to reduce such movements.
7. Return to a third country of asylum is only one element in an interrelated comprehensive framework, aimed at reducing (the need for) secondary movement. Other elements of such an integrated framework were identified as including: addressing root causes of forced displacement; strengthening protection capacities in host countries; enabling access to durable solutions, including local integration and enhanced resettlement; concluding responsibility sharing agreements; opening up more channels for regular entry in the context of resettlement, labour migration and, importantly, family reunification; as well as criminal law enforcement measures.
8. Operationalising international solidarity and international co-operation to share the burdens and responsibilities of hosting refugees is crucial to effecting

the return of asylum-seekers and refugees to third countries under certain circumstances. Hosting large numbers of refugees is a major contribution by developing countries, which should be properly recognised when considering the removal of persons who could have sought protection there.

Framework considerations

9. While the 1951 Convention relating to the Status of Refugees and its 1967 Protocol constitute the core framework, other sources of rights and obligations in international law may be relevant for informing the appreciation of whether or not it is permissible to return an asylum-seeker or refugee to a third country. It is important not to exclude any source of law (treaty obligations, customary international obligations, interpretative guidance such as Executive Committee Conclusions) and to appreciate the specific circumstances of a case. An assessment of effective protection requires an individualised case-by-case examination.
10. From the point of view of identifying the elements of effective protection in the context of return to third countries, the distinction between the so-called safe third country and the country of first asylum concepts is not relevant.^{1/} The distinction is, however, relevant when it comes to an appreciation of the links between an asylum-seeker or refugee and the destination country, in which the person is now applying for asylum, or the third country, as well as for procedural issues in destination countries. In addition, readmission obligations are clearer in respect of countries that have already provided effective protection to an individual.
11. There is no obligation under international law for a person to seek international protection at the first effective opportunity. On the other hand, asylum-seekers and refugees do not have an unfettered right to choose the country that will determine their asylum claim in substance and provide asylum. Their intentions, however, ought to be taken into account. ^{2/}
12. States could craft bi- or multilateral arrangements, consistent with international refugee and human rights law standards, according to which asylum-seekers would be encouraged and enabled to seek international protection at the first available opportunity. This could be done by agreeing to mechanisms and criteria to allocate responsibilities for the determination of asylum applications and the provision of effective protection. Such arrangements should take account of meaningful links, such as family connections and other close ties, between an asylum-seeker and a particular country. They should also include procedural safeguards, including for example, a notification to the receiving country that

an asylum application has not been examined on its merits. The effectiveness of such arrangements needs careful assessment and regular review both in terms of their operational efficiency and their resource implications.

13. Besides considerations of burden-sharing with countries hosting large numbers of refugees, several participants questioned the appropriateness, from a protection perspective, of returns outside the context of countries with equivalent asylum systems. In this regard, the wide disparity and poor levels of protection in many countries were noted.
14. Family and other links between a person seeking asylum and the destination country or the third State are important and should be given weight. The protection of the family as the natural and fundamental group unit of society is a widely recognised principle of human rights. Critical factors for the appreciation of effective protection in the context of return to third States
15. The following elements, while not exhaustive, are critical factors for the appreciation of effective protection in the context of return to third countries:
 - a) The person has no well-founded fear of persecution in the third State on any of the 1951 Convention grounds.
 - b) There will be respect for fundamental human rights in the third State in accordance with applicable international standards, including but not limited to the following:
 - there is no real risk that the person would be subjected to torture or to cruel, inhuman or degrading treatment or punishment in the third State;
 - there is no real risk to the life of the person in the third State;
 - there is no real risk that the person would be deprived of his or her liberty in the third State without due process.
 - c) There is no real risk that the person would be sent by the third State to another State in which he or she would not receive effective protection or would be at risk of being sent from there on to any other State where such protection would not be available.

- d) While respecting data protection principles during the notification process, the third State has explicitly agreed to readmit the person as an asylum-seeker or, as the case may be, a refugee.
- e) While accession to international refugee instruments and basic human rights instruments is a critical indicator, the actual practice of States and their compliance with these instruments is key to the assessment of the effectiveness of protection. Where the return of an asylum-seeker to a third State is involved, accession to and compliance with the 1951 Convention and/or 1967 Protocol are essential, unless the destination country can demonstrate that the third State has developed a practice akin to the 1951 Convention and/or its 1967 Protocol.
- f) The third State grants the person access to fair and efficient procedures for the determination of refugee status, which includes as the basis of recognition of refugee status grounds that would be recognised in the destination country. In cases, however, where the third State provides prima facie recognition of refugee status, the examination must establish that the person can avail him- or herself of such recognition and the ensuing protection.
- g) The person has access to means of subsistence sufficient to maintain an adequate standard of living. Following recognition as a refugee, steps are undertaken by the third State to enable the progressive achievement of self-reliance, pending the realisation of durable solutions.
- h) The third State takes account of any special vulnerabilities of the person concerned and maintains the privacy interests of the person and his or her family.
- i) If the person is recognised as a refugee, effective protection will remain available until a durable solution can be found.

Department of International Protection
 Office of the United Nations High Commissioner for Refugees (UNHCR)
 February 2003

- 1/ See, UNHCR, Asylum Processes (Fair and Efficient Asylum Procedures), EC/GC/01/12, 31 May 2001, paragraphs 10-18.
- 2/ Executive Committee Conclusion No. 15 (XXX) 1979, Refugees without an Asylum Country, paragraph (h) (iii).

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Swedish Aliens Appeals Board (UN): <http://www.un.se>
Swedish Ombudsman: Ombudsman's website: <http://www.mfo.nu>
Swedish Migration Board: <http://www.migrationsverket.se> (also in English)
Swedish Refugee Aid: <http://www.swera.se>
Swiss Federal Office for Refugee: <http://www.bff.admin.ch>
The Swiss Asylum Appeal Commission: <http://www.ark-cra.ch>
Organization suisse d'aide aux réfugiés: <http://www.sfh-osar.ch>
UNHCR: <http://www.unhcr.ch>
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UK Immigration Appeal Tribunal: <http://www.iaa.gov.uk>
UNRWA: <http://www.unrwa.org>
US Bureau of Immigration and Asylum (BIA) are available at: <http://www.uscis.gov>
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None of the participants in the drafting sessions then taking place would likely have predicted that, over 50 years later, Palestinians would still be without a solution, or that their entitlement to protection would continue to be disputed, or that a Handbook such as this one would need to be published.

It may be that the primary cause of this necessity is the manifest failure of the international community to reach a lasting political solution to the problem posed by the absence of a Palestinian state. But this is only part of the problem, and the status and protection of Palestinian refugees have also commonly been frustrated by drafting inconsistencies in relevant texts, misinterpretation (at times, seemingly for political reasons), and even by abstruse academic readings. Indeed, a review of state practice today does not necessarily leave one with full confidence in the “good faith” interpretation and implementation of international obligations.

The Handbook provides a history of the circumstances giving rise to the Palestinian exodus, and of the international institutional mechanisms set up to provide protection and assistance. It explains the “protection gaps” that have emerged in national practice, and makes practical, rule-based suggestions for bridging those gaps. It will be an essential reading and resource for everyone engaged in the Palestinian refugee issue, whether on an individual case level, or in promoting the long wished-for political solution.

Prof. Guy S. Goodwin-Gill



**BADIL Resource Center
for Palestinian Residency and Refugee Rights**