

UNHCR Guidelines on International Protection

Call for comments on: **Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees**

UNHCR issues its Guidelines on International Protection pursuant to its mandate, as contained in the Office's Statute, in conjunction with Article 35 of the 1951 Convention relating to the Status of Refugees and Article II of its 1967 Protocol.

UNHCR Guidelines provide legal interpretative guidance for governments, legal practitioners, decision makers and the judiciary, as well as UNHCR staff carrying out mandate refugee status determination or advising governments on their own procedures.

UNHCR is committed to a broad consultation process in the issuance of its Guidelines on International Protection. Comments will be carefully reviewed to inform our own deliberations, alongside other consultation processes and other relevant instructive sources. All stakeholders, including States, other UN and regional human rights mechanisms, UN organisations or specialised agencies, National Human Rights Institutions, Non-Governmental Organisations (NGOs), research institutions, and academics are invited to provide their comments in writing to HQPPLAGL@unhcr.org; Subject: Guidelines on International Protection: Applicability of Article 1D.

Submissions should be submitted in English or French in WORD format.

Comments must be submitted by **25 September 2017**. To facilitate the work of UNHCR, this deadline will be strictly applied.



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GUIDELINES ON INTERNATIONAL PROTECTION No 13

Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees

UNHCR issues these Guidelines pursuant to its mandate, as contained in the Office's *Statute*, in conjunction with Article 35 of the 1951 *Convention relating to the Status of Refugees* and Article II of its 1967 Protocol. These Guidelines complement the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention* (1979, reissued, Geneva, 2011) and other Guidelines on International Protection. They replace the *Revised Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees*, October 2009, the *Note on UNHCR's Interpretation of Article 1D of the 1951 Convention relating to the Status of Refugees and Article 12(1)(a) of the EU Qualification Directive in the context of Palestinian refugees seeking international protection*, May 2013, and other previous relevant guidance.

These Guidelines, having benefited from broad public consultation, are intended to provide legal interpretative guidance for governments, legal practitioners, decision-makers and the judiciary, as well as UNHCR staff carrying out mandate refugee status determination under its mandate.

These Guidelines have been prepared in close cooperation with the United Nations Relief and Works Agency for Palestine Refugees in the Near East ("UNRWA").

UNHCR's *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection* are available at: <http://www.refworld.org/docid/4f33c8d92.html>.

Calls for public consultation on future guidelines will be posted at: <http://www.unhcr.org/544f59896.html>.

I. INTRODUCTION

1. Article 1D of the 1951 Convention relating to the Status of Refugees (“1951 Convention”)¹, acknowledges that certain categories of refugees may benefit from separate arrangements for their protection or assistance by organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees (“UNHCR”). At present, Article 1D applies to Palestinian refugees, for whom the United Nations Relief and Works Agency for Palestine Refugees in the Near East (“UNRWA”)² was established in order to respond to their situation.³

2. Article 1D of the 1951 Convention 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.

¹ 1951 *Convention relating to the Status of Refugees* (28 July 1951) 189 UNTS 137 (1951 Convention), <http://www.refworld.org/docid/3be01b964.html>, and its Protocol Relating to the Status of Refugees (31 January 1967) 606 UNTS 267 (1967 Protocol), <http://www.refworld.org/docid/3ae6b3ae4.html>.

² UN General Assembly Resolution 302 (IV), *Assistance to Palestine Refugees*, 8 December 1949, A/RES/302, created UNRWA, which has responsibilities to provide assistance and protection to Palestinian refugees. The United Nations Conciliation Commission for Palestine (“UNCCP”) was established by GA Resolution 194 (III), *Palestine - Progress Report of the United Nations Mediator*, 11 December 1948, A/RES/194, to *inter alia* “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 [or her], with the appropriate organs and agencies of the United Nations.” (para. 11). By 1951, the UNCCP had informed the General Assembly, and began noting on an annual basis, that it was unable to find a means of achieving progress in the implementation of paragraph 11 of Resolution 194 (III). See, UNCCP, *Progress Report of the United Nations Conciliation Commission for Palestine*, UN Doc. A/1985, 20 November 1951 at paras 79 and 80 for first report, and more recently, Report of the UNCCP, 3 September 2013, A/68/335, Annex; UN General Assembly resolution 69/86 of 5 December 2014.

³ The role of UNRWA is also acknowledged by courts: see, for example, *Bolbol v. Bevándorlási és Állampolgársági Hivatal*, C-31/09, Court of Justice of the European Union (“CJEU”), 17 June 2010, para. 44, <http://www.refworld.org/docid/4c1f62d42.html> (“*Bolbol*”): “It is not in dispute that UNRWA constitutes one of the organs or agencies of the United Nations other than UNHCR which are referred to in Article 12(1)(a) of the Directive and in Article 1D of the Geneva Convention ...”. See also, *AD (Palestine)*, (“*AD Palestine*”) [2015] NZIPT 800693-695, New Zealand: Immigration and Protection Tribunal, 23 December 2015, paras 101-116, <http://www.refworld.org/docid/56b1bcc24.html>.

3. Article 1D of the 1951 Convention is often characterised as an “exclusion clause”, whereas it has both exclusionary and inclusionary aspects⁴ and its two paragraphs are to be read sequentially. In other words, one must first come within the scope of the first paragraph before coming within the second paragraph. Paragraph 1 generally excludes from the protection of the 1951 Convention those Palestinian refugees who are receiving protection or assistance from UNRWA, while paragraph 2 of Article 1D operates to include those very same Palestinian refugees when that protection or assistance has ceased. Once the protection or assistance has ceased (see section II E below), they are entitled *ipso facto* to the benefits of the 1951 Convention. As refugees already recognised by the international community, no separate or additional assessment under Article 1A is required to qualify for Convention protection. Claimants need only demonstrate that they fall within the terms of Article 1D.
4. All States parties to the 1951 Convention and/or 1967 Protocol should ensure that Article 1D is fully incorporated in national law and practice.⁵
5. These Guidelines address the interpretation of Article 1D of the 1951 Convention in respect of Palestinian refugees applying for protection under the 1951 Convention *outside* of UNRWA’s areas of operation. They provide UNHCR’s substantive interpretation of Article 1D (Part II), and also address a number of procedural and evidentiary matters (Part III), drawing on State practice, international jurisprudence, as well as the views of leading jurists and academic experts.

II. ANALYSIS

A. Object and purpose

6. In interpreting Article 1D, it is appropriate to have regard to its object and purpose and context, including through recourse to the *travaux préparatoires* of the 1951 Convention and to other contemporaneous international instruments intended to address the questions of protection and institutional responsibility for Palestinian refugees. A broad contextual interpretation, based on the wording and the intention, is warranted. By applying such, it is clear that Article 1D of the 1951 Convention has two related purposes which guide its interpretation and application.

⁴ “As the French representative put it, the proposed text provided for ‘deferred inclusion’ rather than exclusion of these refugees.” Lex Takkenberg, *The Status of Palestinian Refugees in International Law*, (Oxford: Oxford University Press, 1998), p. 66. See also, Guy Goodwin-Gill and Jane McAdam, who state that Article 1D “should be seen not so much as an ‘exclusion’ clause,” but rather as a “contingent inclusion clause”. *The Refugee in International Law*, (Oxford: Oxford University Press, 3rd edn., 2007), p. 153; and Atle Grahl-Madsen, who refers to it as a “suspensive clause”, *The Status of Refugee in International Law*, Volume I Refugee Character, A.W. Sijthoff-Leyden, 1966, p. 263.

⁵ It should be noted that national laws may provide for more favourable treatment than under international law, as expressly recognized by the drafters of the 1951 Convention, who expressed the hope that “*the Convention ... will have value as an example exceeding its contractual scope and that all nations will be guided by it in granting so far as possible to persons in their territory as refugees and who would not be covered by the terms of the Convention, the treatment for which it provides*” (Recommendation E of the Final Act of the Conference of Plenipotentiaries).

The first purpose is to ensure the continuity of the status of Palestinian refugees as refugees belonging to a specific class,⁶ and their protection and associated rights, until their position has been definitively settled in accordance with the relevant resolutions of the United Nations General Assembly.⁷ This purpose is also reflected in the discussions regarding the drafting of the Statute of the Office of the United Nations High Commissioner for Refugees, in which emphasized that Palestinian refugees should “continue to be granted a separate and special status.”⁸ It was also recognized as essential that the continuity of protection be ensured⁹ for Palestinians as a *sui generis* class of refugees under the 1951 Convention.

7. The second purpose of Article 1D is to avoid duplicating and overlapping competencies between UNHCR and UNRWA. The responsibilities of the two agencies are intended to be complementary.¹⁰ In this regard, it should be noted that UNRWA’s areas of operation are limited to Jordan, Lebanon, the Syrian Arab Republic, the West Bank (including East Jerusalem) and Gaza.¹¹ The mandate of UNHCR is, on the other hand, global.¹²

⁶ “The Article aims, fundamentally, to ensure continued protection of Palestinians as persons whose *refugee character had already been established*”. *AD (Palestine)*, para.159. Lex Takkenberg notes that Article 1D was “intended for an existing category of refugees in respect of which the General Assembly had already taken certain action.” Lex Takkenberg, *The Status of Palestinian Refugees in International Law*, Oxford, 1998, p.97.

⁷ See also, *Mostafa Abed El Karem El Kott and Others v. Bevándorlási és Állampolgársági Hivatal*, C-364/11, European Union: Court of Justice of the European Union, 19 December 2012, (“*El Kott*”), http://www.refworld.org/cases_ECJ_50d2d7b42.html, para 62, where the CJEU affirmed that the objective of Article 1D was to “ensure that Palestinian refugees continue to receive protection, as Palestinian refugees, until their position has been definitely settled ...”.

⁸ GAOR, Fifth Session, 328th Meeting, 27 November 1950, paras 52, 55 (Mr. Baroody, Saudi Arabia) cited in UNHCR intervention before the Court of Appeal of England and Wales in the case of Amer Mohammed El-Ali (Appellant) v. Secretary of State for the Home Department (Respondent), 26 June 2002, C/2002/0751, <http://www.refworld.org/docid/3d1c73c04.html> (“*UNHCR intervention in El-Ali*”).

⁹ GAOR, Fifth Session, 344th Meeting, 11 December 1950, paras. 24-5 (Mr. Baroody, Saudi Arabia). GAOR, Fifth Session, 344th Meeting, 11 December 1950, para. 28 (Mr. Lesage, Canada); GAOR, Fifth Session, 344th Meeting, 11 December 1950, para. 29-30 (Mr. Davin New Zealand); GAOR, Fifth Session, 344th Meeting, 11 December 1950, para. 39 (Mr. Noriega Mexico); GAOR, Fifth Session, 344th Meeting, 11 December 1950, para. 42 (Mr. Raafat, Egypt) [Authorities Vol. 1, Tab 29/218-223 at 219-220]. Cited in *UNHCR intervention in El-Ali*.

¹⁰ See G. Goodwin Gill and J. McAdam, *The Refugee in International Law* (Oxford University Press, 2007, 3rd ed.), p. 152. The importance of this complementarity is reflected in the current practice of the two agencies. Since 2005, UNHCR and UNRWA have held annual high-level meetings in order to address issues of common concern; and since 2010, a joint working group has also been established which remains in regular contact and meets twice per year.

¹¹ See for example, General Assembly Resolution 58/95 of 17 December 2003 and, more recently, UNGA Resolution 71/91, *Assistance to Palestine refugees: Resolution adopted by the General Assembly*, 22 December 2016, A/RES/71/91: <http://www.refworld.org/docid/586cbe334.html>.

¹² *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V), available at: <http://www.refworld.org/docid/3ae6b3628.html>. However, it should be noted that Article 7(c) of the Statute of the Office of UNHCR states that “the competence of the High Commissioner ... shall not extend to a person: ... c) who continues to receive from other organs

B. Sequential reading

8. The two paragraphs in Article 1D operate sequentially. This means that decision-makers need to assess (i) whether the applicant falls within the class of Palestinians excluded from the 1951 Convention protection by Article 1D because he or she is receiving or eligible to receive the protection or assistance of UNRWA; and if so, (ii) whether such an applicant is nonetheless included under the second paragraph owing to the cessation of that protection or assistance.

C. *Ratione personae*: Personal scope of Article 1D

9. The following groups of persons fall within the personal scope of Article 1D:

Palestine refugees: Persons who are “Palestine refugees”¹³ within the sense of UN General Assembly Resolution 194 (III) of 11 December 1948¹⁴ and subsequent UN General Assembly Resolutions and who, as a result of the 1948 Arab-Israeli conflict, were displaced from that part of Mandate Palestine which became Israel, and who have been unable to return there.

Displaced persons: Persons 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, as a result of the 1967 conflict and subsequent hostilities, have been displaced from the Palestinian territory occupied by Israel since 1967 and have been unable to return there.¹⁵

Descendants: “Descendants” refers to all persons born to Palestine refugees or displaced persons, as defined above. Based on principles of gender equality and

or agencies of the United Nations protection or assistance”. See also on the issue of UNHCR’s Mandate, UNHCR, *Note on the Mandate of the High Commissioner for Refugees and his Office*, October 2013, <http://www.refworld.org/docid/5268c9474.html>.

¹³ The term “Palestine refugees” has never been expressly defined by the General Assembly. However, for early work on interpreting the term, see 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. UNRWA’s operational definition for registration of the term “Palestine refugee” has evolved over the years but since 1984 has been: “persons 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.”

¹⁴ The UN General Assembly resolved in para. 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”.

¹⁵ UN General Assembly Resolution 2452 (XXIII) A of 19 December 1968 called for the return of the “displaced persons”, as reiterated by subsequent UN General Assembly resolutions on an annual basis. See, also, *Bolbol*, para. 47: “[...] it cannot be maintained, as an argument against including persons displaced following the 1967 hostilities within the scope of Article 1D of the Geneva Convention, that only those Palestinians who became refugees as a result of the 1948 conflict who were receiving protection or assistance from UNRWA at the time when the original version of the Geneva Convention was concluded in 1951 are covered by Article 1D of that convention [-]”.

non-discrimination on the basis of sex, these descendants, whether or not they are descended through the male or female line, would be considered to fall within the purview of Article 1D.¹⁶

10. **UNRWA’s “areas of operation”**: UNRWA has competence in five geographical areas or fields of operation: Jordan, Lebanon, the Syrian Arab Republic, the West Bank (including East Jerusalem) and Gaza. Taken together, these territories constitute UNRWA’s areas of operation, in which it provides protection¹⁷ or assistance to a population of over five million Palestinian refugees registered with the Agency.¹⁸
11. For the purposes of these Guidelines, the term “Palestinian refugees” is used to encompass “Palestine refugees”, “displaced persons” and “descendants” or one or more of these groups, whose position has not been definitively settled in accordance with relevant resolutions of the UN General Assembly.
12. Not all Palestinians fall within the class of Palestinian refugees to which Article 1D applies (as outlined above in paragraph 9). For such cases, they are to be assessed in the same manner as other claimants for refugee status, under Article 1A(2).

D. “Exclusion clause” of Article 1D: Palestinian refugees receiving or eligible to receive the protection or assistance of UNRWA

13. The object and purpose of the 1951 Convention and of its provisions relating to Palestinians require that the words “at present receiving” in the first paragraph of Article 1D are understood to mean (i) “persons who were and/or are now receiving”

¹⁶ UNRWA’s *Consolidated Eligibility and Registration Instructions*, 1 January 2009, (“UNRWA’s CERI (2009)”), <http://www.refworld.org/docid/520cc3634.html>, at Part III(A)(1), p. 3, provide that “Palestine Refugees, and descendants of Palestine refugee males, including legally adopted children, are eligible to register for UNRWA services.” Descendants of women who are Registered Refugees and are (or were) married to husbands who are not registered refugees are not considered to meet UNRWA’s Palestine refugee criteria, but they (including legally adopted children) “are eligible to register to receive UNRWA services”. Part II(A)(2). Including descendants of a Palestine refugee woman and a non-refugee male within the first paragraph of Article 1D of the 1951 Convention is compatible with the principle of non-discrimination on the basis of sex and avoids serious consequences for family unity. Further, the approach adopted in these Guidelines, which recognises descendants of Palestinian refugees, is consistent with UNHCR’s general approach to protracted refugee situations in which children born to refugees in exile are registered as refugees until a durable solution has been found.

¹⁷ It is important to note that UNRWA has always had a protection mandate. “Indeed, considering that the IASC definition of protection extends to activities aimed at obtaining full respect for the individual’s economic and social rights, the Agency’s long-standing mandate to provide education, health, and relief services can be seen as having had a protection aspect since the beginning.” See, Lance Bartholomeusz, ‘The Mandate of UNRWA at 60’ (2009) 28 *Refugee Survey Quarterly* 452, at 467. Nevertheless, the protection function has grown over time and has significantly increased since 2010 with the adoption of a protection policy and the development of protection tools and standards. See UNRWA, *Protecting Palestine Refugees*, 2015, <http://www.refworld.org/docid/5703647f4.html> and <https://www.unrwa.org/what-we-do/protection>.

¹⁸ For latest UNRWA figures, see: <http://www.unrwa.org/>.

protection or assistance, or (ii) who are eligible for such protection or assistance. Those Palestinians who are eligible are described at paragraph 9. By capturing both those actually receiving, as well as those eligible to receive the protection or assistance of UNRWA within Article 1D, the continuing refugee character of Palestinian refugees is acknowledged, as is their entitlement to protection.

14. It would be incompatible, in UNHCR's view, with the object and purpose of Article 1D to remove from its protection those Palestinian refugees who have not accessed UNRWA protection or assistance, despite being eligible, but are nonetheless in need of 1951 Convention protection under the second paragraph in Article 1D. Such a narrow interpretation of the first paragraph of Article 1D would actually result in the denial of protection for many Palestinian refugees, *whose refugee character is already established*, creating gaps in the protection regime.¹⁹ Similarly situated persons who were displaced as a result of the same conflict would be subject to different treatment depending on whether they availed themselves of assistance or not. However, upon leaving UNRWA's area of operation for reasons beyond their control, one would be examined under Article 1D while the other would be examined under Article 1A(2). Such an interpretation is "clearly unreasonable and in conflict with the intentions of the drafters."²⁰ The express intention of the drafters was to provide a separate regime for an entire class of persons already receiving specific benefits from UNRWA. Thus, Article 1D is clearly intended to cover all Palestinian refugees "falling under the mandate of UNRWA, regardless of when, or whether, they are actually registered with that agency, or actually receiving assistance."²¹
15. Likewise, the justification for a narrow interpretation on the basis that Article 1D is an exclusion clause, is incorrect as it would ignore the inclusionary aspect of Article 1D as a "contingent inclusion clause."²² Moreover, interpreting Article 1D in a way which would not cover those Palestinian refugees who are eligible for UNRWA's protection or assistance would lead to the duplication of mandates in respect of the same refugee population between UNHCR and UNRWA. The provision ought to

¹⁹ See, UNHCR, *Note on UNHCR's Interpretation of Article 1D of the 1951 Convention relating to the Status of Refugees and Article 12(1)(a) of the EU Qualification Directive in the context of Palestinian refugees seeking international protection*, May 2013, <http://www.refworld.org/docid/518cb8c84.html>; see also, *UNHCR Revised Statement on Article 1D of the 1951 Convention in relation to Bolbol v. Bevándorlási és Állampolgársági Hivatal pending before the Court of Justice of the European Union*, October 2009, <http://www.refworld.org/docid/4add79a82.html>.

²⁰ Brenda Goddard, 'UNHCR and the International Protection of Palestinian Refugees', *Refugee Survey Quarterly*, Vol. 28, Nos. 2&3, 475 at 493.

²¹ Guy Goodwin Gill and Susan M. Akram, 'Brief Amicus Curiae', *Palestine Yearbook of International Law*, 2000/2001, Vol. XI, 185, at p. 236. This interpretation is distinct from the position taken by the CJEU in *Bolbol*, where only those who had "actually availed" themselves of that protection or assistance were considered to fall within the first paragraph of Article 1D, based on a "clear reading" of Article 1D (para. 51). In contrast, in *AD (Palestine)*, the scope of Article 1D was found to encompass persons "who have not in fact availed themselves of protection and assistance which they are otherwise eligible to receive." para. 160. See also, paragraphs 150-153 for a discussion of the difficulties of the "actually availed" approach.

²² See footnote 3.

be interpreted in a way that reflects the complementary mandates of the two agencies, both within and outside UNRWA's areas of operation.²³ Lastly, it would also be incorrect to read Article 1D as applying only to those persons who were Palestinian refugees in 1951. This would run contrary to the intentions of the Convention's drafters, who sought to ensure continuity of status for the specific class of persons addressed in Article 1D until their position was definitively settled; a need which continues not only for those who were Palestinian refugees in 1951, but also their descendants.²⁴ Moreover, it disregards the critical change effected by the 1967 Protocol, which removed the temporal limitation on the 1951 Convention, with the aim, as expressed in the Preamble, of ensuring "equal status" for "all refugees covered by the definition in the Convention irrespective of the dateline 1 January 1951."²⁵

E. "Inclusion clause" of Article 1D: the protection or assistance has ceased for any reason

16. Palestinian refugees (see paragraph 9) benefit from 1951 Convention protection under Article 1D when the protection or assistance of UNRWA has ceased. Read in light of its ordinary meaning, considered in context and with due regard to the object and purpose of the 1951 Convention,²⁶ the phrase "ceased for any reason" is not to be construed restrictively. As noted in jurisprudence, exclusion from the 1951 Convention of Palestinian refugees by way of Article 1D "was intended to be conditional and temporary, not absolute and permanent."²⁷
17. The application of the second paragraph of Article 1D is not, however, unlimited. Protection under the 1951 Convention does not extend to those applicants who, being outside an UNRWA area of operation, refuse to (re-)avail themselves of the protection or assistance of UNRWA for reasons of personal convenience.²⁸ That said, the reason why they left an UNRWA area of operation (for example, for work or study purposes, or for protection reasons) is not of itself determinative. What is

²³ *AD (Palestine)*, para. 159.

²⁴ The "historical" argument that Article 1D is limited only to those persons who were Palestinian refugees in 1951, accepted by the United Kingdom Court of Appeal in *Amer Mohammed El-Ali v. The Secretary of State for the Home Department and Daraz v. The Secretary of State for the Home Department (The United Nations High Commissioner for Refugees, Intervener)*, United Kingdom: Court of Appeal (England and Wales), 26 July 2002, <http://www.refworld.org/docid/3f278a3a4.html>, [2002] EWCA Civ 1103, was rejected by the CJEU in *Bolbol*, para. 48; see also *El Kott*, para. 47. See, also, rejection by Advocate General Sharpston, paras. 51-55 of her Opinion in *El Kott*, delivered on 13 September 2012, <http://www.refworld.org/pdfid/50632cc52.pdf>.

²⁵ Preamble, third paragraph, 1967 Protocol relating to the Status of Refugees.

²⁶ Article 31 of the *Vienna Convention on the Law of Treaties*, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331, <http://www.refworld.org/docid/3ae6b3a10.html>.

²⁷ *AD (Palestine)*, para. 99f.

²⁸ UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees, 14 December 1950, A/RES/428(V), <http://www.refworld.org/docid/3ae6b3628.html> para. 6(ii)(e) and (f). See also, *El Kott*, paras. 49-51 and 59-63.

pivotal is whether the protection or assistance of UNRWA has ceased owing to one or more of the “objective reasons” set out in paragraph 20 below (see also paragraph 25ff on *sur place* claims).

18. The inclusion assessment needs to be carried out not only having regard to UNRWA’s mandate and operations, but also to the circumstances of the individual and to relevant and up-to-date country of origin information (COI).

Objective reasons bringing the applicant within the second paragraph of Article 1D

19. While the drafters of the 1951 Convention envisaged primarily the application of the second paragraph in the event of the termination of UNRWA’s mandate, the phrase “for any reason” indicates that reasons other than the cessation of UNRWA’s mandate are also valid. The *travaux préparatoires* of the 1951 Convention confirm this interpretation.²⁹ Importantly, where the drafters intended to limit the scope of provisions in other parts of the Convention, they did so explicitly and outlined the possible exceptions.³⁰

20. Objective reasons,³¹ which bring an applicant within the second paragraph of Article 1D, include:

(i) Termination of the mandate of UNRWA

(ii) Discontinuation of UNRWA’s protection or assistance

- a. The discontinuation of UNRWA’s protection or assistance would need to be determined to have occurred as a matter of fact, on an area of operation or country-wide basis. This might occur if, notwithstanding the continued existence of the agency, it were to become impossible for UNRWA to carry out its mission.³² Evidence of this circumstance may be established, for example, by a resolution of the United Nations General Assembly, annual reports of UNRWA, statements by UNRWA that it has

²⁹ See for example the statement of the Egyptian delegate at the Third Committee of the General Assembly (Fifth Session, 344th Meeting, 11 December 1950, paragraph 13) and at the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons (20th meeting: UN doc. A/CONF.2/SR.20, pp. 8-9). See also the views of the French delegate at the Conference (Summary of the 2nd Meeting: UN doc. A/CONF.2/SR.2, p. 27).

³⁰ For example, the drafters of the 1951 Convention set out, in a clearly limited fashion, the list of grounds on which refugee status may be considered to have ceased under Article 1C of the 1951 Convention. See, *El Kott*, para. 57.

³¹ Before the CJEU, such “objective reasons” were considered to be “reasons beyond the person’s control” (i.e. independent of their volition), see *El Kott*, para. 58. UNHCR considers that there is no significant difference between objective reasons and reasons beyond the person’s control, except as noted in paragraph 25 in relation to *sur place* claims, where the CJEU’s judgment needs to be read with particular care as it did not apply to *sur place* claims.

³² *El Kott*, para. 56. Furthermore, the suspension of non-core services for a short period of time would not suffice.

discontinued its activities, or other evidence brought forward by the applicant.³³

- b. “Protection or assistance” are alternatives: an applicant is not required to establish that both the protection *and* the assistance of UNRWA have ceased. In relation to the discontinuation of assistance, however, the applicant would need to establish that the assistance commensurate with UNRWA’s mandate has ceased.³⁴

(iii) Real risk of a threat to the applicant’s life, physical integrity, security or liberty or other serious protection-related reasons

- c. Palestinian refugees – as refugees already recognized by the international community via various UN General Assembly resolutions – are not required to establish individually that their treatment constitutes persecution within the meaning of Article 1A(2) of the 1951 Convention or fulfils the other elements of the refugee definition in that paragraph, in order to benefit from Article 1D.³⁵ That said, a Palestinian refugee at risk of persecution in the sense of Article 1A(2) would clearly fall within the second paragraph of Article 1D.
- d. Beyond this, there is a range of threats that may compel a Palestinian to leave UNRWA’s area of operation, with the result that UNRWA’s protection and assistance would cease for him or her. Both group-based and individualised threats would qualify as circumstances beyond the applicant’s control. Examples of group-based threats would include armed conflict or other situations of violence, such as civil unrest, widespread insecurity or events seriously disturbing public order. Threats of a more individualised nature, which could also compel a Palestinian to leave an UNRWA area for reasons beyond his or her control, would include sexual or gender-based violence, torture, inhuman or degrading treatment or punishment, human trafficking and exploitation, forced recruitment, severe discrimination, or arbitrary arrest or detention.

³³ A comparison can be made with the UNCCP, which continues to exist but reports annually to the General Assembly that it is not able to carry out its mandate: see above footnote 1.

³⁴ “Given the long-standing and continuing reality of funding deficits, should UNRWA continue to exist but in fact be unable to provide effective protection or assistance due to a lack of funding, there is no reason in principle why this should also not qualify as a cessation of activities under Article 1D, which expressly contemplates cessation ‘for any reason’ as activating the inclusion clause”. *AD (Palestine)*, para. 172. See also, El Kott, paras 63, 65.

³⁵ See for example the Belgian Conseil du contentieux des étrangers, (Council of Alien Law Litigation) decision, 30 April 2015, A144563, which states that the recognition of the refugee status is not based on the existence of a real risk to personal safety, but is automatically granted based on Article 1D given that the person concerned is already a refugee and has demonstrated that he or she can no longer benefit from UNRWA assistance. *Arrêt No. 144 563*, Belgium: Conseil du Contentieux des Etrangers, 30 April 2015, http://www.refworld.org/cases,BEL_CCE,5963b1794.html.

- e. Where any of these above-mentioned threats emanate from the host State, recognition under Article 1D would be required. Similarly, where the host State is unable or unwilling to provide protection against threats emanating from non-State actors, recognition under Article 1D would also apply. A case-by-case assessment is necessary to determine the application of Article 1D in these cases.³⁶

(iv) Practical, legal and/or safety barriers preventing an applicant from re-availing him/herself of the protection or assistance of UNRWA and returning to the host country or territory with which s/he is connected

- f. Practical barriers include being unable to access the area of operation/host country with which s/he is connected, for example, because of border closures.
- g. Legal barriers would include absence of documentation allowing the individual to travel to, or transit through, or re-enter and reside in the relevant UNRWA area of operation. Where the authorities in the host country refuse readmission or the renewal of travel or other requisite documents, the inclusion paragraph of Article 1D would be satisfied. An applicant would not, however, benefit from protection under Article 1D if he or she were to seek to frustrate his or her readmission and stay by refusing to co-operate, for example, in acquiring documents.³⁷
- h. Barriers relating to safety or personal security, preventing return could include dangers *en route* such as minefields, factional fighting, shifting war fronts or the threat of other forms of harassment, violence or exploitation, preventing the applicant from being able to return safely. Up-to-date information on the realistic prospect of being able to re-avail oneself of the protection or assistance is required. The likelihood of return cannot be assessed in the abstract.
- i. Although Article 1D focuses on the cessation of the protection or assistance of UNRWA, the situation in the State in whose jurisdiction UNRWA is operating will not only be relevant, but may be determinative of the need for 1951 Convention protection. For example, the State or host authorities – not UNRWA – will control whether a Palestinian refugee will be permitted to re-enter their territory and re-establish him/herself there, including whether he or she is able to obtain the necessary legal documentation of a right to stay in the State or territory.³⁸ The risk facing the applicant may arise, for example, from the host State

³⁶ The provision of services by UNRWA is not relevant for this assessment. Non-state actors, including international organisations, do not have the attributes of a State, and are not in a position to provide protection and enforce the rule of law in the same fashion as a State.

³⁷ Article 2 of the 1951 Convention notes that every refugee has duties to the country in which he or she finds himself or herself, which require in particular that he or she conform to its laws and regulations as well as to measures taken for the maintenance of public order.

or authorities directly. These assessments are to be based on reliable and up-to-date information, and special care needs to be exercised where the situation is fluid or unclear.³⁹ In addition, the question of whether the applicant is no longer in need of protection because she or he has taken up residence in and possesses the rights attached to nationality of another country may need also to be considered (see section H below on Article 1E of the 1951 Convention).

21. The circumstances listed above are alternative, not conjunctive, such that depending on the case at hand, one or more of the aforementioned circumstances may be present, bringing the applicant within the scope of paragraph 2 of Article 1D.⁴⁰ The evidentiary aspects of establishing the above-mentioned circumstances are dealt with in Part III.

Last place of habitual residence

22. Consistent with general principles of international refugee law, the assessment as to whether the protection or assistance of UNRWA has ceased (per paragraph 20 above) is to be made vis-à-vis the UNRWA area of operation where the applicant had his or her last place of habitual residence.⁴¹ The assessment is not to be made against each of UNRWA's areas of operation. This is supported by the language of the CJEU in *El Kott* which repeatedly uses the expression "area of operation" in the singular when referring to the scope of the assessment to be carried out.⁴² In refugee claims generally, the relevant assessment is whether an individual can (re-)avail him/herself of the protection of his or her country of origin. The assessment is not whether he or she can be returned to *any* State. Similarly, in Article 1D cases,

³⁸ For example, in relation to the occupied West Bank, the position of the Israeli authorities will be determinative. Likewise, for passage across the border to Gaza from Egypt, permission from Egypt is likely to be required, and at times, the border is closed.

³⁹ See, for example, UNHCR, *International Protection Considerations with regard to people fleeing the Syrian Arab Republic, Update IV*, November 2015, <http://www.refworld.org/docid/5641ef894.html> and UNHCR, *Position on Deportations to Gaza*, February 2015, <http://www.refworld.org/docid/5448f2bea.html>

⁴⁰ While the inclusionary aspects of Article 1D will be established where an applicant has been forced to leave UNRWA's area of operation where his/her personal safety is at serious risk and if it is impossible for UNRWA to guarantee his/her living conditions in accordance with that organization's mission, the applicant is not required to establish both. In *El Kott*, the CJEU accepted, in the context of the facts before it, that such circumstances "will" fall within the second paragraph of Article 1D (para. 65). The CJEU did not however exhaust other circumstances in which such protection or assistance would be considered ceased, as this will depend on the case at hand. An interpretation that requires both would lead to perverse results. For example, if an applicant's personal safety is at serious risk, the assistance provided by UNRWA in the form of cash or food rations would be irrelevant to their need for protection.

⁴¹ See also, *El Kott*, para. 77: "... the person concerned ceases to be a refugee if he is able to return to the UNRWA area of operations in which he was formerly habitually resident because the circumstances which led to that person qualifying as a refugee no longer exist".

⁴² *El Kott*, paras 49, 50, 55, 58, 61, 62, 63, 64, 65.

decision-makers should not assess the lawfulness of return in relation to an UNRWA area of operation to which the individual has no previous connection. That would impose unreasonable and insurmountable obstacles on applicants, and ignore the general workings of the State-based system of international relations and State sovereignty. “Habitual residence”, for the purpose of these Guidelines, refers to lawful and secure residency status in the State/territory. It does not cover temporary or short-term stay, mere transit or visit (see also Part III below).⁴³

Personal circumstances of applicant

23. Each claim must be determined on its individual merits, enabling consideration of factors that are specific to the applicant.⁴⁴ These personal circumstances may include age, sex, gender, sexual orientation and gender identity, health, disability, civil status, family situation and relationships, social or other vulnerabilities, ethnic, cultural or religious considerations, political and social links and compatibility, language abilities, and any past experiences of serious harm and its psychological effects.

Internal relocation

24. The protection or assistance of UNRWA will not be considered to have ceased if an individual is able to access and receive protection or assistance from UNRWA elsewhere in the same UNRWA area of operation. For example, if a camp is destroyed by an armed attack and the protection or assistance of UNRWA is as a matter of fact available elsewhere within another part of that country or territory, and the individual has access to that protection or assistance, then the second paragraph of Article 1D would not be satisfied without additional factors. On the other hand, it cannot be expected that the applicant relocate (or be returned) to a different country or territory where he or she has no previous connection.⁴⁵ As noted at paragraph 20(i) above, the assessment as to the application of the second paragraph of Article 1D is to be carried out vis-à-vis the specific country or territory of UNRWA’s area of operation where the applicant had his or her last place of habitual residence.

Sur place protection needs

25. The recognition of *sur place* claims of Palestinian refugees under Article 1D is in line with general principles of international refugee law applicable to Article 1 of the 1951 Convention that accept *sur place* refugee claims, recognizing that changes

⁴³ For the meaning of “habitual residence”, see UNHCR, ‘*Lawfully Staying*’ - A Note on Interpretation, May 1988, p. 3, <http://www.refworld.org/docid/42ad93304.html>.

⁴⁴ An exception would be in circumstances where UNRWA has ceased to operate as an agency (see paragraph 20(i) above).

⁴⁵ UNHCR, *Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, 23 July 2003, HCR/GIP/03/04, <http://www.refworld.org/docid/3f2791a44.html>.

in the country of origin whilst abroad may make them a refugee.⁴⁶ For example, should the mandate or activities of UNRWA cease as described in paragraph 20 above while the individual is outside UNRWA's area of operation, she or he would qualify for 1951 Convention protection under Article 1D.

26. Although "ceased for any reason" does not generally include reasons of mere personal convenience for refusing to (re-)avail oneself of the protection or assistance of UNRWA, (as noted in paragraph 17 above),⁴⁷ it is not relevant whether the applicant departed in the first place on a voluntary basis from an UNRWA area of operation (for example, for study or work purposes). They are still eligible to benefit from the 1951 Convention under Article 1D should they meet its criteria.⁴⁸ A careful examination of the circumstances in each case would be required.
27. A person may become a refugee *sur place* in a country in which she or he claims asylum, as a result of his or her own actions, such as associating with refugees already recognized, or expressing political views in his or her country of residence or study.⁴⁹ Politically active Palestinian refugees who may attract attention because of their beliefs or activities, and who may even do so at great personal risk to themselves or their families, cannot be required to cease such activities as a precondition for recognition under Article 1D; that would undermine the object and purpose of the 1951 Convention overall.⁵⁰

⁴⁶ UNHCR, *Handbook*, paras. 94-96 on *sur place* claims relating to Article 1A(2) of the 1951 Convention. There is no reason to apply a different approach to Palestinian applicants under Article 1D.

⁴⁷ This interpretation is closely aligned with State practice which has not broadly accepted automatic entitlement to Article 1D by the mere fact of being outside an UNRWA area of operation.

⁴⁸ *El Kott*, para. 59.

⁴⁹ UNHCR, *Handbook*, para. 96.

⁵⁰ By analogy with the general position that one cannot be required to conceal or be discreet about a protected characteristic, see *X, Y, Z v Minister voor Immigratie en Asiel*, C-199/12 - C-201/12, European Union: Court of Justice of the European Union, 7 November 2013, <http://www.refworld.org/docid/527b94b14.html>; UN High Commissioner for Refugees (UNHCR), *UNHCR intervention before the Court of Justice of the European Union in the cases of Minister voor Immigratie en Asiel v. X, Y and Z*, 28 September 2012, C-199/12, C-200/12, C-201/12, <http://www.refworld.org/docid/5065c0bd2.html>; Joined cases of C-71/11 and C-99/11, *Bundesrepublik Deutschland v Y and Z*, Judgment of the Court (Grand Chamber) of 5 September 2012 <http://www.refworld.org/pdfid/505ace862.pdf>; *HJ (Iran) and HT (Cameroon) v. Secretary of State for the Home Department*, [2010] UKSC 31, United Kingdom: Supreme Court, 7 July 2010, <http://www.unhcr.org/refworld/docid/4c3456752.html>; *Appellant S395/2002 v. Minister for Immigration and Multicultural Affairs; Appellant S396/2002 v. Minister for Immigration and Multicultural Affairs*, [2003] HCA 71, Australia: High Court, 9 December 2003, <http://www.refworld.org/docid/3fd9eca84.html>, paras. 78-83; *RT (Zimbabwe) and others v Secretary of State for the Home Department*, [2012] UKSC 38, United Kingdom: Supreme Court, 25 July 2012, <http://www.refworld.org/docid/500fdacb2.html>.

F. Automatic or “*ipso facto*” entitlement to the benefits of the 1951 Convention

28. When it is established that UNRWA’s protection or assistance has ceased for any of the reasons mentioned in paragraph 20, the Palestinian refugee is automatically or “*ipso facto*” entitled to the benefits of the 1951 Convention, provided Articles 1C, 1E or 1F of the 1951 Convention do not apply [see Parts G, H, and I below].⁵¹ Article 1D refers to an “*ipso facto*” entitlement, meaning that persons meeting the criteria of the second paragraph of Article 1D are automatically entitled to the benefits of the Convention. The term “*ipso facto*” would be entirely redundant if the provision merely meant that a Palestinian refugee could apply for international protection in accordance with the general rules and in the same way as all asylum-seekers via Article 1A(2) of the 1951 Convention.⁵²
29. The phrase “benefits of this Convention” in the second paragraph of Article 1D refers to the substantive rights contained in Articles 2 to 34 of the 1951 Convention and which are attached to being a refugee, as defined in Article 1 of the 1951 Convention. The term “benefits” cannot mean simply access to asylum procedures for determining refugee status as Article 1 does not itself contain any benefits – it simply defines who *is* and who *is not* entitled to have access to those benefits.⁵³ This interpretation is also supported by the equally authentic French version of Article 1D, which uses the expression “*bénéficieront de plein droit du régime de cette convention.*” They benefit “as of right” once they fulfil the criteria in Article 1D.⁵⁴
30. Palestinian refugees recognized under Article 1D receive the same rights, benefits and standards of treatment as other refugees recognized under Articles 1A(1) or 1A(2), so there is no more favourable treatment provided to Article 1D refugees than other refugees. They each enjoy the benefits of the Refugee Convention set out in Articles 2 to 34.⁵⁵

G. Applicability of Article 1C

⁵¹ See *UNHCR Written Intervention before the Court of Justice of the European Union in the case of El Kott*, 27 October 2011, para 4.3, C-364/11, <http://www.refworld.org/docid/4eaa95d92.html> and UNHCR, *UNHCR oral intervention before the Court of Justice of the European Union in the case of El Kott and Others v. Hungary*, 15 May 2012, C-364/11, <http://www.refworld.org/docid/4fbd1e112.html>, paras. 10, 12-14. UNHCR’s views were accepted in *El Kott*, paras. 80-81.

⁵² UNHCR, *Oral intervention before the Court of Justice of the European Union in the case of El Kott*, 15 May 2012, C-364/11, <http://www.refworld.org/docid/4fbd1e112.html>, para. 13.

⁵³ *Ibid.* This view is supported by the use of the term “benefits” elsewhere in the Refugee Convention, for example in Articles 5 and 7, in a context that can only mean the substantive rights conferred by the Refugee Convention. Nor can the term benefits merely refer to *non-refoulement*.

⁵⁴ *El Kott*, paras. 70-71. See also, *AD (Palestine)*.

⁵⁵ See, *UNHCR oral intervention before the CJEU in the case of El Kott and Others v. Hungary*, 15 May 2012, C-364/11, para 16, <http://www.refworld.org/docid/4fbd1e112.html>. The discrimination argument was roundly rejected by the CJEU in *El Kott*, para 78.

31. Under the 1951 Convention it is recognized that refugee status ends under certain conditions, clearly defined in Article 1C.⁵⁶ Article 1C applies in principle to Palestinian refugees benefiting from the 1951 Convention on an individual basis. Although a literal interpretation of Article 1C, which explicitly references only refugees recognised under “Article 1A” of the 1951 Convention, would render it inapplicable to Article 1D Palestinian refugees, such an interpretation no longer corresponds to the reality that a number of Palestinian refugees have acquired the nationality and protection of other countries, such that they no longer need the protection of the 1951 Convention. This interpretation of the 1951 Convention is necessarily without prejudice to the meaning of “the Palestinian people” as used in various UN General Assembly and UN Security Council Resolutions.
32. Despite the decision to accord to Palestine non-member observer State status in the United Nations, by the UN General Assembly in 2012,⁵⁷ Article 1D should continue to be interpreted and applied in the ordinary way, as outlined in these Guidelines and until the situation of Palestinians is definitively settled in accordance with General Assembly resolutions. It is premature to consider ceasing the 1951 Convention refugee status of individual Palestinian refugees on this basis.

H. Applicability of Article 1E

33. The fact that some Palestinian refugees have been living in countries where they exercise rights and obligations ordinarily attached to the possession of nationality may render Article 1E⁵⁸ applicable to their case. In the case of children and other descendants of Palestinian refugees who may be enjoying rights and obligations identical to those of nationals of another country, consideration of the application of Article 1E of the 1951 Convention would be required.⁵⁹
34. Historically, States party to the League of Arab States *Protocol for the Treatment of Palestinians in Arab States* (“Casablanca Protocol”)⁶⁰ have pledged to provide

⁵⁶ UNHCR, “The Cessation Clauses: Guidelines on their Application”, 26 April 1999, available at: <http://www.refworld.org/docid/3c06138c4.html> and UNHCR, *Guidelines on International Protection No. 3: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the “Ceased Circumstances” Clauses)*, (“Guidelines No. 3”), 10 February 2003, HCR/GIP/03/03, <http://www.refworld.org/docid/3e50de6b4.html>.

⁵⁷ UN General Assembly Resolution 67/19, *Status of Palestine in the United Nations*, 29 November 2012, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/67/19.

⁵⁸ “The 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.” Article 1E, 1951 Convention.

⁵⁹ See UNHCR, *Note on the Interpretation of Article 1E of the 1951 Convention relating to the Status of Refugees*, March 2009, <http://www.refworld.org/pdfid/49c3a3d12.pdf>.

⁶⁰ League of Arab States, *Protocol for the Treatment of Palestinians in Arab States* (“Casablanca Protocol”), 11 September 1965, <http://www.refworld.org/docid/460a2b252.html>. The Casablanca Protocol provides for the right of employment on par with citizens, residency rights, travel documents, the right to leave and to return. However, it has not been consistently implemented and was weakened in 1991 with resolution 5093 that allows States to implement the Protocol ‘in accordance

a range of rights on par with their own citizens to Palestinian refugees, but many remain unimplemented in practice. Close scrutiny of the situation on the ground prior to applying Article 1E on the basis of the *Casablanca Protocol* would be required, including the stability of such rights, as well as access to educational and other social rights equivalent to nationals, which are implicit though not explicit in the *Casablanca Protocol*.

I. Applicability of Article 1F

35. Persons with respect to whom there are serious reasons for considering that they have committed acts within the scope of Article 1F of the 1951 Convention⁶¹ are not entitled to international protection as refugees.⁶²

III. PROCEDURAL AND EVIDENTIARY ISSUES

A. Individual assessment

36. Although Article 1D recognizes a specific class of refugees receiving the protection or assistance of a United Nations entity other than UNHCR, the application of Article 1D can and should normally be assessed on an individual basis.⁶³

B. Time of assessment

37. The assessment is whether, at the time the individual claim is considered, the protection or assistance of UNRWA has ceased such that the applicant is unable or unwilling to re-avail him/herself of that protection or assistance for an objective reason beyond his/her control. It is a forward-looking assessment as to risk; however, looking back at the reasons for departure may be relevant.

with the rules and laws in force in each state'. See Brenda Goddard, 'UNHCR and the International Protection of Palestinian Refugees', *Refugee Survey Quarterly*, Vol. 28, Nos. 2&3, 475 at 507.

⁶¹ Article 1F of the 1951 Convention states that the provisions of that 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; and
- (c) He has been guilty of acts contrary to the purposes and principles of the United Nations.

⁶² UNHCR, *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, HCR/GIP/03/05, <http://www.refworld.org/docid/3f5857684.html>. See also, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, <http://www.refworld.org/docid/3f5857d24.html>.

⁶³ A group-based approach, such as the prima facie recognition of refugee status, may be appropriate in certain circumstances: see UNHCR, *Guidelines on International Protection No. 11: Prima Facie Recognition of Refugee Status*, ("Prima Facie Guidelines"), 24 June 2015, HCR/GIP/15/11, <http://www.refworld.org/docid/555c335a4.html>.

C. Burden and standard of proof

38. In refugee claims, including those pursuant to Article 1D, the burden generally rests on the person making the assertion to produce evidence as far as possible to support his or her statements.⁶⁴
39. Article 1D requires an examination of whether (i) the applicant falls within the category of Palestinian refugees who is receiving or eligible to receive the protection or assistance of UNRWA and (ii) the protection or assistance of UNRWA has ceased for any reason. The decision-maker has a duty to inquire as to the situation in the relevant area of UNRWA operation, and its ability to provide the requisite protection or assistance. This needs to be considered in light of the reasons for refusing or being unable to re-avail oneself of the protection or assistance of UNRWA. The relevant standard of proof is whether there is a real risk or reasonable likelihood that the circumstances in paragraph 20 exist. Inquiries also need to be made in relation to the circumstances in the host State, as well as the applicant's individual circumstances (see paragraphs 20(i) and 23). The burden of proof shifts to the decision-making authorities where it is asserted by them that the applicant could relocate internally within the same UNRWA area of operation, or absent other factors, be able to return safely and with appropriate legal documentation per paragraph 20(iv) above.

UNRWA registration

40. Being registered by UNRWA or possessing UNRWA documentation would serve as conclusive proof of falling within the scope of Article 1D.⁶⁵ In the absence of such documentation or other relevant proof, adjudicators may rely on other means to adduce evidence to this effect, including through, for example, the applicant's own statements, the affidavits of others or the production of other relevant documentation.⁶⁶ Evidence of registration with UNRWA should not, however, be considered as a necessary precondition to recognition.⁶⁷ By definition, a person

⁶⁴ The applicant is required to give a truthful account of facts relevant to his or her claim so far as these are within his or her own knowledge, and insofar as there is information that is available to him or her and which s/he can reasonably be expected to provide to the decision-maker. A decision-maker shares the duty of ascertaining the facts relevant to the determination. UNHCR *Handbook*, paras. 196 -205; UNHCR, *Note on the Burden and Standard of Proof in Refugee Claims*, 16 December 1998, <http://www.refworld.org/docid/3ae6b3338.html>.

⁶⁵ UNRWA, "CERI, January 2009", Section III.A.1, page 3. *Bolbol*, paras. 46 and 52: "While registration with UNRWA is sufficient proof of actually receiving assistance from it, it has been explained in paragraph 45 above that such assistance can be provided even in the absence of such registration, in which case the beneficiary must be permitted to adduce evidence of that assistance by other means."

⁶⁶ Special consideration would need to be given to descendants of Palestinian refugee women married to persons other than Palestine refugees registered with UNRWA, since they are not under UNRWA's CERI, registered as Palestine refugees but may be otherwise be recorded for the purpose of receiving services. See, footnote 12.

⁶⁷ "Registration with UNRWA is of a declaratory nature, confirming rather than establishing that an individual falls under UNRWA's mandate." Lex Takkenberg, *The Status of Palestinian Refugees in*

who did not receive UNRWA protection and assistance, despite being eligible to receive it, may not be registered or have such proof, but may still fall within Article 1D.

41. As regards “displaced persons”, while they are not “registered” in UNRWA’s registration system,⁶⁸ UNRWA keeps records of such persons and UNRWA documentation would also be conclusive, albeit not necessary, proof that they fall within the first paragraph of Article 1D.

Evidence that UNRWA’s mandate has terminated

42. Evidence of the termination of UNRWA’s mandate would generally require a resolution of the United Nations General Assembly.

Evidence that UNRWA’s protection or assistance has been discontinued

43. The discontinuation of UNRWA’s protection or assistance is to be determined as a matter of fact, on an area of operation or country-wide basis. This might occur where, notwithstanding that the agency continued to exist, it has become impossible for UNRWA to carry out its mission.⁶⁹
44. Evidence of this circumstance may be established, for example, by a resolution of the United Nations General Assembly, annual reports of UNRWA or other statements by UNRWA that it has discontinued its activities, or other evidence produced by the applicant.
45. The evidence in relation to the inclusionary part of the assessment may, however, come from a variety of sources. The applicant him/herself may provide evidence that is relevant in his/her own statements. It is not required that the applicant is able to produce a public statement by UNRWA or other documentation published by UNRWA that it has discontinued activities in one of its areas of operation. While such statements would be clear evidence that it had done so, evidence from other sources that UNRWA had discontinued its activities could also be persuasive, not least because there may be many reasons why reliance on such public statements alone would be unfairly prejudicial to the applicant. Further, if such a requirement were to be imposed, it would place an undue burden on UNRWA, one which it may not be able to satisfy in every case, owing to, for example, resources or logistical reasons or those of confidentiality.⁷⁰ Finally, no burden of inquiring of UNRWA

International Law, (Oxford: Oxford University Press, 1998), p. 100.

⁶⁸ UNRWA, “*CERI*, January 2009”, Section III.B, page 6.

⁶⁹ *El Kott*, para. 56. Furthermore, the suspension of non-core services for a short period of time would not suffice.

⁷⁰ Here an analogy can be made with UNHCR’s position regarding information relating to mandate recognition, see submission in *I. A. v. Secretary of State for the Home Department: Case for the Intervener*, 27 October 2013, United Kingdom Supreme Court, UKSC2012/0157, <http://www.refworld.org/docid/52a098e34.html>.

directly should be placed on the applicant, given the risk that s/he may face practical difficulties in doing so.⁷¹ There may also be circumstances relevant to the particular applicant about which UNRWA would not know and could not provide relevant information.

D. Individual Procedures

46. Fair and efficient procedures for the determination of refugee status under the 1951 Convention need to include the coverage of claims relating to Article 1D, with clear identification of the issues relevant to Palestinians.
47. For Palestinians who do not come within the personal scope of Article 1D (see section E), an assessment under Article 1A(2) would then normally proceed.
48. Even though refugee status pursuant to Article 1D is normally carried out in individual procedures, there may be situations in which a whole group of Palestinian refugees may be recognised on a prima facie basis. For example, where the mandate of UNRWA is terminated in one of UNRWA's areas of operation, they would be considered – as a group – not to be receiving the protection or assistance of UNRWA.⁷²
49. Where an applicant raises both a refugee and a statelessness claim, the latter made pursuant to the 1954 *Convention relating to the Status of Stateless Persons*, it is important that each claim is assessed and that both types of status are explicitly recognized.⁷³
50. Best State practice ensures that Palestinian refugees recognised under Article 1D are properly recorded and separately registered in national asylum statistics.

E. Regional refugee instruments

51. Palestinian refugees are, like all other asylum applicants, entitled to apply for refugee status pursuant to any applicable regional refugee instruments should they be in countries in which these apply.⁷⁴

F. Refugee status and subsidiary or complementary protection

⁷¹ Although verification that a person is a registered "Palestine refugee", or is recorded as receiving UNRWA services, can be sought from UNRWA.

⁷² UNHCR, *Prima Facie Guidelines* (*Supra* footnote 48).

⁷³ UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014, <http://www.refworld.org/docid/53b676aa4.html>, para. 78.

⁷⁴ See, Organization of African Unity, *Convention Governing the Specific Aspects of Refugee Problems in Africa*, 10 September 1969, 1001 U.N.T.S. 45, <http://www.refworld.org/docid/3ae6b36018.html>; *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, 22 November 1984, <http://www.refworld.org/docid/3ae6b36ec.html>.

52. Palestinian refugees found not to fall within the scope of Article 1D should be considered under Article 1A. Should they not fall within either provision, they are entitled, like all other asylum applicants, to apply for any national or regional forms of subsidiary or complementary protection; and also to benefit from protection under international human rights law.

G. Palestinian refugee applicants and non-Palestinian spouses and children – derivative status

53. Non-Palestinian-refugee spouses and children of Palestinian refugees, who are not independently entitled to refugee status per Article 1D, would normally acquire derivative status based on the principle of family unity.

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