Closing Protection Gaps

Handbook

on Protection of Palestinian Refugees

in States Signatories to the 1951 Refugee Convention

بديل
المركز الفلسطيني
لمصادر حقوق المواطنة واللاجئين

BADIL
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for Palestinian Residency & Refugee Rights

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Preface

The status and protection of Palestinians have been a matter of controversy since 1949-50, when the UN Third Committee first considered the scope of the Statute then being drafted for the High Commissioner for Refugees. Arab States, in particular, were concerned that Palestinians, to whom the United Nations owed a special responsibility, should not be subsumed and lost in the more general regime 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 would have predicted that, over 65 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 would be needed.

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 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 does not leave one fully confident in the good faith interpretation and implementation of international obligations.

Still, certain principles were always clear. The *travaux préparatoires* ("*preparatory works*") of paragraph 7(c) of the UNHCR Statute and Article 1D of the 1951 Refugee Convention confirm the intention of participating states *not* to exclude Palestine refugees. What was important to all participants was *continuity of protection*, and 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, the wording of the UNHCR Statute and the 1951 Convention is far from clear.

The UNHCR Statute limits the High Commissioner's competence in regard only to a person "who continues to receive [...] protection or assistance" (UNHCR Statute, paragraph 7(c)). By contrast, 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 only until such time as protection or assistance shall have ceased "for any reason," without their position having been definitively settled in accordance with the relevant General Assembly resolutions. In those circumstances, these persons "shall *ipso facto* be entitled to the benefits of this Convention" / "*bénéficieront de plein droit du régime de cette Convention*."

The purpose of Article 1D was thus to provide a non-permanent bar to Convention protection; at the time of drafting, it was thought 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, should there be no settlement, then it was essential to avoid any lacuna in the provision of international protection.

The refugee character of the protected constituency was never in dispute. Hence, in the absence of 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 accordingly and automatically fall within the 1951 Convention.

Clearly, the expectations of the international community in 1949-1951 have failed to materialize in many ways. The "problem" is unresolved, and institutional measures taken to promote a solution (such as the United Nations Conciliation Commission) have been frustrated in their work. Over the years, the international dimensions to the Palestinian issue have 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, or were obliged to move again because of violence and armed conflict.

When their legal status was at issue, when they were expelled from their country of residence, or sought asylum elsewhere for compelling reasons, so the problems of interpretation and application emerged; sense had to be made of rather incomplete and often unclear texts. In a number of jurisdictions, decision-makers appear to have relied on the textual inconsistency highlighted above, to the prejudice of Palestinian refugees. In particular, instead of applying the 1951 Convention automatically to Palestinians outside UNRWA's area of operations and no longer enjoying protection or assistance, many states 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.

In Europe, at least, certain problematic interpretations of Article 1D of the 1951 Convention, adopted by national courts have been laid to rest in two important judgments of the Court of Justice of the European Union (the *Bolbol* and *El Kott* cases).

Applying Article 1D with due regard to historical context, the Court rightly stressed the importance of ensuring continuity of protection for Palestinian refugees. It rejected the view that only Palestinians receiving protection or assistance in 1951 came within Article 1D's contingent inclusion provisions, and that the reference to cessation of protection and assistance implied nothing less than the winding up of

UNRWA. Nevertheless, in *Bolbol* (2010), the Court limited the class of Palestinians entitled to invoke the protection of the 1951 Convention under Article 1D to those who have actually availed themselves of UNRWA assistance, while those who were merely "eligible" fell outside. This ruling was mitigated somewhat by the Court also finding that evidence of registration for assistance was enough.

In *El Kott* (2012), the Court was faced with the question of what it means for protection or assistance to have ceased "for any reason." It rejected the argument that simple residence outside UNRWA's area of operations was enough, or that UNRWA itself would have to come to an end. Instead, and in-between, the Court imposed the requirement that protection or assistance to an "eligible" Palestinian refugee would need to have ceased for a reason beyond the control and independently of the volition of the individual concerned, for example, when he or she was forced to leave UNRWA's area of operations because their personal safety was at risk.

The Court then emphasized – and here it reflected the European Union's predisposition for procedures, rather than the non-specific terms of the 1951 Convention – that Palestinians did not enjoy an unconditional right to refugee status and the benefits of the Convention. Rather, they needed still to submit an application for refugee status, which the national authorities should consider with regard, not to whether the applicant had a well-founded fear of persecution, but to whether (a) he or she had actually sought assistance from UNRWA, (b) that assistance had ceased for reasons beyond the applicant's control or volition, and (c) the applicant might otherwise be denied protection, for example, by reference to Articles 1C, 1E or 1F of the Convention. If the applicant were able to return to that area of UNRWA's operations where he or she was formerly resident, then refugee status would cease.

On the plus side, the Court underlined that the words of Article 1D entailed entitlement "as of right" to the benefits of the Convention (or, perhaps more accurately, the benefits of the European Union's Qualification Directive, which is based on the Convention). If there is one clear phrase in Article 1D, 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*."

"Ipso facto" means "by that very fact," "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 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* should be especially recalled, and given life and meaning.

Despite the welcome clarifications by the CJEU, the regime of protection for Palestinian refugees remains incomplete. Within its area of operations, UNRWA's

assistance role has necessarily translated from time to time into a protection one, but without the clarity of a specific mandate from the international community. Outside that area, "continuity of protection" still cannot be assured, as distinctions are drawn between Palestinians who have actually availed themselves of UNRWA assistance, and those who are merely eligible; and between those who leave UNRWA's area of operations for reasons of personal safety, and those who, having left for any number of reasons, are now effectively barred from returning through denial of the necessary permission or documentation. The realm of the unprotected may have shrunk because of these judgments, but many displaced Palestinians will not satisfy the criteria now read into Article 1D; clearly, there is still work to be done.

The second edition of 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 the 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" which have emerged in national practice, and makes practical, rule-based suggestions for bridging those gaps. It remains essential reading and an important 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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May 2014

Introduction

Since the first edition of the *BADIL Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, published in August 2005, much has changed for Palestinians in the Arab world and in the diaspora beyond the Arab states. Unfortunately, most of the changes have been negative as, sixty-six years after the 1947-49 *Nakba,* expulsion, dispossession and persecution of Palestinians both from their homeland in today's Israel/Palestine by the Israeli state and from their states of refuge continues until today. The promise of the Arab Spring, both for citizens of the states involved and for Palestinian refugees has ushered in a new era of repression of rights and freedoms, and has had particularly negative consequences for the Palestinians in those countries.[1] The Syrian civil war has brought about particularly violent repression of Palestinian refugees-- the siege and starvation of the refugees in Yarmouk Camp is only one example—in the one Arab state in which Palestinians historically received the best treatment and protection in the region.[2] Palestinians fleeing the violence in Syria face barriers that Syrian nationals do not encounter in seeking refuge in neighboring states: Jordan and Lebanon have officially closed their borders to them and refuse to grant them even temporary legal status; Egypt, which has also closed its doors to Palestinians from Syria, recognizes neither UNRWA nor UNHCR mandates towards them, and has been detaining, deporting, and forcing Palestinian refugees from Syria into risky coping mechanisms.[3] The phenomenon of Palestinians ex-Syria who have fallen prey to smuggling rings that sell them 'passage' on unsafe boats has led to many deaths at sea, including women and children, and is a direct result of Egypt's refusal to recognize them as refugees and grant them refugee protection.[4]

Meanwhile, in their country of origin, an increasingly right-wing Israeli government

[1] For discussions on the impact of the Arab Spring in Egypt on Palestinians, see Abdalhadi Alijla, "Why Palestinians Are Aggrieved by the Arab Spring," *Your Middle East*, January 10, 2014, http://www.yourmiddleeast.com/opinion/why-palestinians-are-aggrieved-by-the-arab-spring_20733; on the impact on Palestinian refugees fleeing Syria's conflict, see Rima Rassi, "Struggling to Cope: The Syrian Refugee Crisis and Its Impact on Lebanon," in *Understanding Today's Middle East: Peoples & Places of the Arab Spring*, by Denis Sullivan and Sarah Tobin, 2014, 58–66, http://www.bu.edu/smscinst/files/2014/09/WEBPUBBCARS_UnderstandingTodaysMiddleEast_ArabSpring_Sept2014.pdf.

[2] UN News Centre, "Syria: Besieged Palestinians in Refugee Camp 'Will Likely Go Hungry,' UN Agency Warns," July 6, 2014, http://www.un.org/apps/news/story.asp?NewsID=48209#.VJCvEIrF_dc; Harriet Sherwood, "Queue for Food in Syria's Yarmouk Camp Shows Desperation of Refugees," *The Guardian*, February 26, 2014, http://www.theguardian.com/world/2014/feb/26/queue-food-syria-yarmouk-camp-desperation-refugees.

[3] For a detailed discussion on the particular legal status of Palestinian refugees in Lebanon and Jordan, see Susan M. Akram et al., *Protecting Syrian Refugees: Laws, Policies, and Global Responsibility Sharing* (International Human Rights Clinic - Boston University School of Law, July 2014), http://www.bu.edu/law/central/jd/programs/clinics/international-human-rights/documents/FINALFullReport.pdf.

[4] See, e.g., Renee Lewis, "Palestinian Migrants Fleeing Gaza Strip Drown in Mediterranean Sea," *Al Jazeera America*, September 14, 2014, http://america.aljazeera.com/articles/2014/9/14/gaza-migrants-boat.html; Céline Lebrun, "Death at Sea: The via Dolorosa of Palestinian Refugees," *Mada Masr*, October 31, 2013, http://www.madamasr.com/opinion/politics/death-sea-dolorosa-palestinian-refugees.

has stepped-up the repression and dispossession of Palestinians who are citizens of the Israeli state and those residing in the occupied West Bank and Gaza. Israeli house demolitions, settlement expansion, theft of water and denial of access to resources for Palestinian livelihood including to their own agricultural lands, has increased exponentially in the last few years, not only in the West Bank, but also in East Jerusalem, particularly since the construction of Israel's Wall inside Palestinian areas.[5]

Israel's euphemistically-named Operation Cast Lead and Operation Protective Edge, under the pretense of defending against Hamas rockets, have taken thousands of Palestinian civilian lives and maimed thousands more, with Palestinian children comprising the highest proportion of casualties.[6] Mention is rarely made in the Western press about the seven-plus year complete siege of Gaza that has created an ongoing humanitarian emergency as vital food, infrastructure and other materials necessary for basic survival needs are denied the 1.7 million Palestinians trapped in the Gaza strip.[7] BADIL's phrase, the *Ongoing Nakba*, encapsulates the current realities for Palestinian refugees throughout the region and the endless cycle of forced displacement of the Palestinian people going into a seventh decade.[8]

Law is at the heart of the Palestinian refugee condition: from the 1923 Treaty of Lausanne that placed Palestine under British Mandate and League of Nations supervision, to the UNGA Partition Resolution recommending the division of historic Palestine into a 'Jewish' and an 'Arab' state, to the original framework that set Palestinian refugees apart from other refugees during the drafting of the 1951 Refugee Convention and its companion agencies and instruments. Today, the legacy of those legal decisions at the international level resonates in every individual decision about the status of a Palestinian seeking refugee or asylum status anywhere in the world.

[5] UN Office of the High Commissioner for Human Rights, "Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in This Context, Ms. Raquel Rolnik," 2012, http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11815; BADIL Resource Center for Palestinian Residency and Refugee Rights, *BADIL's Written Report in Response to Israel's Fourth Periodic Report to the UN Human Rights Committee*, September 2014, (CCPR/C/ISR/4), http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ISR/INT_CCPR_CSS_ISR_18329_E.pdf; The Civic Coalition for Palestinian Rights in Jerusalem (CCPRJ), The Coalition for Jerusalem (CFJ), and The Society of St. Yves, Catholic Center for Human Rights (St. Yves), *"De-Palestinization" and Forcible Transfer of Palestinians: A Situation of Systematic Breaches of State Obligations under the ICCPR*, 2014, http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ISR/INT_CCPR_CSS_ISR_18169_E.pdf.

[6] On Operation Cast Lead and estimated number of casualties, see Amnesty International, *Operation Cast Lead: 22 Days of Death and Destruction*, January 2009, http://www.amnesty.org/en/library/asset/MDE15/015/2009/en/8f299083-9a74-4853-860f-0563725e633a/mde150152009en.pdf; OCHA - Occupied Palestinian Territories, *Gaza Emergency Situation Report (as of 4 September 2014, 0800 Hrs)*, September 4, 2014, http://www.ochaopt.org/documents/ocha_opt_sitrep_04_09_2014.pdf.

[7] For a recent summary of the effects of the blockade and recommendations, see Oxfam International, *Cease Failure: Rethinking Seven Years of Failed Policies in Gaza*, August 27, 2014, http://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp-cease-failure-gaza-failing-policies-270814-en.pdf.

[8] BADIL Resource Center for Palestinian Residency and Refugee Rights, *Survey of Palestinian Refugees and Internally Displaced Persons, 2010-2012*, vol. VII (Bethlehem, Palestine, 2012), xxi–xxvi.

The positive developments since the 2005 *Handbook* have all been at the legal level, as state policies have changed at a painfully slow pace, and only in response to clear and unambiguous legal obligation. The momentous vote by the UNGA on 29 November 2012, recognizing Palestine as a non-member State, has been followed by individual states granting diplomatic recognition to Palestine and creating bilateral diplomatic relationships with the Palestinian authority. Today, 135 of the 193 member states of the UN have recognized Palestine as a state represented by the Palestine Liberation Organization (PLO) at the international level.[9] However, the state recognition at the UNGA remains only formal recognition; the real test of meaningful statehood will be based on steps taken on a bilateral level between the PLO/PA and individual states. This is so for a number of reasons. First, the request for recognition came from a PA whose authority to represent the 'Palestinian people' is both weak and long-since expired—weak because it represents no more than the 30% or so of the Palestinian population who reside in the Occupied Territories and not the entire diaspora Palestinian population, and expired because the current PA administration's mandate ended in January 2009 when new elections were to have been called for a new leadership, but have not been held. Second, although recognition is formally with the PLO, which does represent the entire Palestinian population worldwide, it has been made on the basis of Palestine as an "independent, sovereign, democratic, contiguous and viable State of Palestine […] on the basis of the pre-1967 borders."[10] The so-called 'two-state solution' on the basis of the 1967 borders fails to address the legitimate rights of millions of Palestinian refugee in the Arab world but also scattered worldwide, including the displaced and stateless within the borders of Israel and East Jerusalem whose status has become more precarious and vulnerable with the expansion of right-wing parties and settler movements in Israel. The statehood recognition also does not address how territorial integrity, sovereignty and viability of a Palestinian state in the 1967 borders is to be achieved in a prolonged occupation with Israeli settlement expansion and Palestinian dispossession continuing indefinitely. Third, UN recognition cannot address how territorial integrity and democracy are to be achieved for Palestinians when the PA itself is divided, with separate Fatah administration in the West Bank and Hamas administration in Gaza. Fourth, and finally, statehood recognition that calls for these criteria to be met for Palestine but not for Israel is a non-starter, when power resides with a non-democratic Israeli state that remains committed to an apartheid vision of a greater Israel with superior rights to Jews and no rights for Palestinians-- whether within or outside the 1967 borders.

This leads to the heart of the issue for Palestinian refugees: their status as Palestinian nationals, and, as an entire population, their presumptive rights to citizenship within both Israel and Palestine wherever they now reside. Palestinian nationality is

[9] Permanent Observer Mission of the State of Palestine to the United Nations, "Diplomatic Relations," accessed February 4, 2015, http://palestineun.org/about-palestine/diplomatic-relations/.

[10] UN General Assembly, "Resolution 67/19 - Status of Palestine in the United Nations," December 4, 2012, UN Doc. A/RES/67/19, http://unispal.un.org/UNISPAL.NSF/0/19862D03C564FA2C85257ACB004EE69B.

summarily covered in Chapter One, it is not addressed in detail in this *Handbook*. Palestinian Nationality/citizenship is the heart of the issue for refugees, however, as it is the basis for their connection to the territory of Israel/Palestine on which their rights to return, to restitution of their properties and to compensation for all of their losses are grounded. Palestinians as a people were recognized as the 'Nationals' of the territory of Mandate Palestine in 1924 as an international matter, and this status was codified by the 1925 British Citizenship Orders. Israel formally repealed Palestinian nationality in its 1952 Nationality (Citizenship) Law as a domestic matter, but this act fundamentally violated international law on state succession, which both requires granting all habitual residents of territory the citizenship of a successor state and categorically prohibits discriminatory denationalization on the basis of race, religion, ethnic or national status. Palestinian nationals recognized as such under the terms of the 1924 Treaty of Lausanne and the subsequent British Mandate Citizenship laws remain as an international legal matter nationals of the territory of Palestine, regardless of its current territorial configuration. They, and their descendants, lay claims to their rights in and to their original homes and lands on the basis of this unbroken territorial connection regardless of the length or breadth of the diaspora. For this reason, Palestinian statehood can only be meaningful if it addresses the status of Palestinians as nationals of the entire territory. This requires urgent efforts to turn the recognition that states have afforded Palestine into action for a sanctions regime, in the same way as South Africa and Namibia were successful in achieving.[11] As the International Court of Justice has called for in the context of declaring the Israeli Wall and its regime illegal, it is critical to demand that the community of states shoulder their *erga omnes* obligations to bring about viable statehood for Palestinian, including legitimate rights for the refugees. The advocacy necessary for this to come about has not been taken up by the Palestinian leadership; it is up to civil society to make the promise of statehood a reality using the legal tools and mechanisms that have only become more robust as lawyers and activists have used and tested them.

The adoption of the 2011 Directive on Standards of Protection for Refugees and Stateless Persons by the European Council that incorporated Article 1D of the Refugee Convention was the foundation for two groundbreaking cases decided by the European Court of Justice, *Bolbol* and *El Kott* on Palestinian asylum claims.[12] Relying on a series of UNHCR interpretations of the meaning and application of Article 1D that, in turn, were brought about by persistent advocacy by BADIL and other Palestinian refugee experts, the ECJ has undertaken a careful and considered

[11] For a comparison of Namibia's successful use of international legal strategies to bring an end to apartheid and achieve independence with the situations of Palestine, Western Sahara and Tibet, *see* Susan Akram, *Still Waiting for Tomorrow: The Law and Politics of Unresolved Refugee Crises*, ed. Tom Syring (Newcastle upon Tyne: Cambridge Scholars Publishing, 2014).

[12] *See* Court of Justice of the European Union, "Bolbol v. Bevándorlási És Állampolgársági Hivatal," June 17, 2010, C-31/09, http://www.refworld.org/docid/4c1f62d42.html; Court of Justice of the European Union, "Mostafa Abed El Karem El Kott and Others v. Bevándorlási És Állampolgársági Hivatal," December 19, 2012, C-364/11, http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=50d2d7b42.

analysis finally addressing the key inconsistencies and ambiguities in state practice on 1D. *El Kott* is a sea change for the European approach to determining Palestinian asylum claims, but much remains to be done to ensure state consistency and compliance with both the language of the ECJ's decision and the main purpose of Article 1D: ensuring continuity of assistance *and* protection to Palestinian refugees until the durable solution of Resolution 194, Para. 11 is implemented for all Palestinians.

It is in this context that the revised edition of the BADIL *Handbook* plays a critical role. From the original 23 countries profiled in the first edition, the authors and contributors of the *Handbook* have expanded the legal mapping to 30 countries, covering Europe, the Americas, Africa and Oceania. Although the data on Palestinian refugees and asylum seekers and jurisprudence applying the Refugee Convention are more complete for some countries than others, the profiles provide substantial detailed information on how Palestinian refugee claims are treated in practice. The preliminary data available from caselaw post-*El Kott*, however, reflects the sustained effort practitioners and Palestinian legal experts must make to ensure adherence to the language and purpose of both the ECJ decision and Article 1D. Already there are inconsistencies in interpretation and application of *El Kott* and between UNHCR's interpretation and the ECJ. As noted later in the *Handbook*, the *El Kott* decision has brought European countries' jurisprudence more in line with UNHCR's most recent interpretation of 1D in its 2013 Note. Even countries outside the EU have been applying the criteria found in UNHCR's Note and *El Kott* to interpret Palestinian claims under 1D.

As the *Handbook* concludes at the end of the mapping of national practice, there remains great inconsistency in domestic jurisprudence: there are at least 11 different analyses apparent in the different practices adopted by the countries surveyed. The issue is not simply one of harmonizing state practice: there remains a significant difference in BADIL's interpretation based on expert scholarship and UNHCR and the ECJ approach to 1D. The main difference is in the assessment of what is meant by 'protection' and 'assistance' in the two sentences of Article 1D, and when such 'protection and assistance' has ceased such that Palestinian refugees no longer benefit from the special regime established for them. The key role of the UNCCP and its termination has not been adequately considered by either UNHCR or any judicial authority with regard to what international protection obligations are owed Palestinian refugees. The *Handbook* aims to parse out these ambiguities and point out the errors in existing interpretations and state practice. Until this issue is properly analyzed and corrected, Palestinian refugees will continue to receive lesser protection than they were guaranteed by the international community in the critical period of 1948-1951 when the instruments designed to ensure continuity of protection for them were debated and drafted.

The *Handbook* has five chapters. The first chapter gives an overview of the historical and legal underpinnings of the Palestinian refugee problem. Chapter Two discusses the legal and institutional framework established by the United Nations

to provide protection and assistance to Palestinian refugees, and the reasons for creating separate agencies with different mandates towards the Palestinian refugee population. It examines the key instruments, provisions and UN Resolutions underlying the legal framework—in particular, the Refugee Convention and its Article 1D, the 'exclusion clauses' found in the 1954 Convention on Stateless Persons and the UNHCR Statute, and UNGA Resolution 194. Chapter Three analyzes state practice in thirty countries in Europe, the Americas, Oceania and Africa to examine their treatment of Palestinian asylum claims. Chapter Four summarizes and assesses the consequences of the different state approaches to refugee claims by Palestinians, and compares their approaches to UNHCR and other expert interpretations of the relevant legal provisions. Chapter Five sets out BADIL's concerns about inaccurate state interpretations of the provisions and inconsistent responses to the urgent protection needs of Palestinian refugees, and provides recommendations for bridging the ongoing protection gaps for Palestinian refugees.

The key conclusions drawn in the *Handbook* from the review of these states' practices are that still very few states have come close to the interpretation of Article 1D as set out in the *El Kott* decision and recommended by UNHCR. The *Handbook* concludes, however, that states have expanded the use of complementary protection to fill the legal gaps in protection left by their ambiguous legal status, and have extended more effective—though still incomplete and non-permanent--protection for Palestinian asylum-seekers and refugees. The *Handbook* calls for greater compliance with *El Kott* and more precise application of the guidelines set out by UNHCR in interpreting *El Kott*. The *Handbook* points out the weaknesses and inconsistencies in the ECJ and UNHCR's interpretations of 1D in light of other expert research and opinion, and it recommends extending complementary protection and extraterritorial application of refugee status to address the complex nationality/stateless status of Palestinians that severely complicates their claims as asylum-seekers and refugees.

Thirty non-Arab state parties to the 1951 Refugee Convention or 1967 Protocol are covered in the *Handbook*. Of these, caselaw was available for analysis in 21, while the African and Latin American countries' jurisprudence was either not reported or not available to access to the *Handbook* contributors. The countries covered are:

Europe: Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, the Netherlands, Norway, Poland, Spain, Sweden, Switzerland and the United Kingdom.

The Americas: Brazil, Chile, Ecuador, Mexico, Peru, Canada and the United States

Oceania: Australia and New Zealand

Africa: Côte d'Ivoire, Kenya, Nigeria and South Africa.

Chapter One

The Palestinian Refugee Problem: An Overview

The Palestinian Refugee Problem: An Overview

1. Palestine and Palestinians

Geopolitically and historically, Palestine is one of the Arab territories detached from the Ottoman Empire after the First World War. The total area of historical/ Mandate Palestine, which consists of what is known today as Israel and occupied Palestinian territory (oPt), is 27,009 km2. Generally, Palestinians are the habitual residents of Palestine, of whom two thirds are displaced. Article 5 of the Palestinian National Charter stipulates "[t]he Palestinians are those Arab nationals who, until 1947, normally resided in Palestine regardless of whether they were evicted from it, or have stayed there. Anyone born, after that date, of a Palestinian father[13] – whether inside Palestine or outside it – is also a Palestinian."[14] This article still governs the self-identity of Palestinians. The term "displaced Palestinians" refers to two main groups: first, Palestinians who were displaced from their places of origin in British Mandate Palestine, including their descendants; and second, displaced Palestinians who are still living in Mandate Palestine (Israel and oPt).

In the period from the British occupation of Palestine (December 1917), through the adoption of the Palestine Mandate by the League of Nations on 24 July1922 and the ratification of the Treaty of Peace (Treaty of Lausanne of August 1923), to the enactment of the Palestinian Citizenship Order in 1925, the international status of Palestine and its inhabitants' nationality and citizenship have undergone several stages of *de facto* and *de jure* changes. Those changes are still relevant and have current legal and political significance. They constitute the roots of the current complexity of the Palestinian-Israeli conflict and crucially affect the ongoing Palestinian plight, in particular the predicament of Palestinian refugees.

Citizenship and nationality are not precisely the same concepts as a legal matter. Nationality is a human right defined under international law; citizenship is a matter of domestic law, on which international law does not have much to say unless citizenship provisions violate one of the core obligations of states under international law. The legal distinction between these two concepts is critical to understanding how nationality and citizenship particularly affect Palestinian refugees, and for this study. However, nationality in this context "must be distinguished from nationality

[13] According to Article 12 of the Palestine Constitution (draft, available at http://www.palestinianbasiclaw.org/basic-law/2003-permanent-constitution-draft) and article 1/11 of Palestinian Nationality Law (unpublished draft) both Palestinian fathers and mothers can pass their nationality/citizenship to their descendants.

[14] "Palestine National Charter of 1968," *Permanent Observer Mission of the State of Palestine to the United Nations*, accessed September 23, 2014, http://www.un.int/wcm/content/site/palestine/pid/12362, Article 5; see also BADIL, "One People United: A Deterritorialized Palestinian Identity - BADIL Survey of Palestinian Youth on Identity and Social Ties - 2012" (BADIL Resource Center for Palestinian Residency and Refugee Rights, 2013), 43, http://www.BADIL.org/en/press-releases/144-2013/3654-press-eng-1.

as a historical-biological term denoting membership of a nation,"[15] which we will here identify as "nationhood." Nationhood corresponds to the "belief of belonging together" that creates cohesion among members of a nation and that comes "accompanied by a strong solidarity among its members."[16] Nationhood concerns "people" as *ethnos*, that is, a *nation* that is entitled to the right to self-determination; as opposed to "people" as *demos*, that is, a totality of citizens that is entitled to a constituent power.[17] However, it is beyond the scope of this *Handbook* to address the scholarly debates concerning Palestinian nationality and citizenship;[18]rather, we will limit our analysis to legal provisions regarding Palestinian citizenship and nationality to the extent that they relate to the status of Palestinians.

During the First World War, Allied forces under British command occupied Palestine in December 1917, which was then one of several Arab territories that formed part of the Ottoman Empire. A year later, in November 1918, France and Great Britain signed the Anglo-French Declaration, which affirmed that their goal was "the complete and final liberation of the peoples who have for so long been oppressed by the Turks, and the setting up of national governments and administrations deriving their authority from the free exercise of the initiative and choice of the indigenous populations."[19]

Member states of the League of Nations decided to establish a temporary "Mandate System" in accordance with the Covenant of the League of Nations to facilitate the independence of these territories. Article 22 of the Covenant of the League of Nations stipulates that "[c]ertain communities formerly belonging to the Turkish Empire [including Palestine] have reached a stage of development where their existence as *independent nations* can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone [emphasis added]."[20]

On 24 July 1922, the League of Nations adopted the Mandate for Palestine and entrusted the temporary administration ("Mandate") of Palestine to Great Britain.[21] While the Mandate did not come into force until 29 September 1923, the British-run Government of Palestine concluded bilateral agreements on Palestine's borders with the neighboring countries (Syria, Lebanon, Trans-Jordan and Egypt). Accordingly, on

[15] Paul Weis, *Nationality and Statelessness in International Law* (Leyden: Sijthoff & Noordhoff, 1979), Chapter One.

[16] Asem Khalil, "Palestinian Nationality and Citizenship: Current Challenges and Future Perspectives," *European University Institute Robert Schuman Centre for Advanced Studies* CARIM Research Report 2007/7 (2007): 1.

[17] See ibid., 2.

[18] See, e.g., Mutaz M. Qafisheh, *The International Law Foundations of Palestinian Nationality: A Legal Examination of Nationality in Palestine under Britain's Rule* (Leiden/Boston: Martinus Nijhoff Publishers, 2008); and Weis, *Nationality and Statelessness in International Law*, Chapter One.

[19] "Anglo-French Declaration," November 7, 1918, http://en.wikisource.org/wiki/Anglo-French_Declaration.

[20] Covenant of the League of Nations, 28 June 1919, reprinted in *A Survey of Palestine, Prepared in December 1945 and January 1946 for the Information of the Anglo-American Committee of Inquiry, Vol. I* (Washington, DC: Institute for Palestine Studies, 1991), 2–3.

[21] The Mandate for Palestine, 24 July 1922, reprinted in ibid., 4–11.

the date of the adoption of the Mandate, Palestine was recognized as a distinct political entity at the international level. However, from an international law perspective, the final status of Palestine, the territory detached from Turkey (formerly, the Ottoman Empire), was settled by the Treaty of Peace (Treaty of Lausanne of 1923) which was agreed upon by the Allied Powers and Turkey. Article 16 of Treaty of Lausanne reads:

> Turkey hereby renounces all rights and title what so ever over or respecting the territories situated outside the frontiers laid down in the present Treaty and the islands other than those over which her sovereignty is recognized by the said Treaty, the future of these territories and islands being settled or to be settled by the parties concerned.[22]

Also, Article 27 reads:

> No power or jurisdiction in political, legislative or administrative matters shall be exercised outside Turkish territory by the Turkish Government or authorities, for any reason whatsoever, over the nationals of a territory placed under the sovereignty or protectorate of the other Powers signatory of the present Treaty, or over the nationals of a territory detached from Turkey.
>
> It is understood that the spiritual attributions of the Moslem religious authorities are in no way infringed.[23]

Despite the *de facto* changes witnessed from 1917 until the Treaty of Lausanne (1923), Palestine's habitual inhabitants legally remained Ottoman citizens in accordance with 1869 Ottoman Nationality Law, though Ottoman nationality was ineffective. The treaty of Lausanne, which came into force on 6 August 1923 "transformed the *de facto* status of, and practice relating to, Palestinian nationality into *de jure* existence from an international law angle."[24] Article 30 of the Treaty of Lausanne reads:

> Turkish subjects habitually resident in territory which in accordance with the provisions of the present Treaty is detached from Turkey will become ipso facto, in the conditions laid down by the local law, nationals of the State to which such territory is transferred.[25]

By the enactment of the Palestinian Citizenship Order of 1925, which came into force on 1 August 1925, the nationality of Palestine's inhabitants was legally established at the domestic level. According to Article 1 of the Palestinian Citizenship Order *"Turkish subjects habitually resident in the territory of Palestine upon the 1st day of August, 1925 shall become Palestinian citizens."* Several amendments to the Citizenship Order were passed in subsequent years. In 1944, all amendments were incorporated into the Palestinian Citizenship Order under the name *"Consolidated*

[22] "Treaty of Peace with Turkey, Signed at Lausanne," July 24, 1923, http://sam.baskent.edu.tr/belge/Lausanne_ENG.pdf, Article 16.

[23] Ibid., Article 27.

[24] Qafisheh, *The International Law Foundations of Palestinian Nationality: A Legal Examination of Nationality in Palestine under Britain's Rule*, 73.

[25] "Treaty of Peace with Turkey, Signed at Lausanne," Article 30.

Palestinian Citizenship Orders, 1925-1941."[26] Thus, by the end of the British Mandate (1917 – 1948), Palestinian nationality was well-established at both domestic and international levels.

The UN General Assembly Resolution 181 (II) of 29 November 1947 recommended the partition of Palestine.[27] This resolution proposed two states (Jewish and Arab) in historic Mandate Palestine. It set off a series of events that led, among other things, to the mass displacement of Palestinians from their homeland, the first Israeli-Arab war, the establishment of the State of Israel and the failure to establish the Arab/ Palestine State pursuant to the UNGA partition plan of 1947. These geopolitical changes resulted in, and are still causing *de facto* and *de jure* alteration of the status of Palestine and Palestinian nationality.

The effects of subsequent developments - including the failure to implement UNGA Resolution 194 of 1948, the annexation of the West Bank by Jordan in 1949, the Administration of the Gaza Strip by Egypt in 1949, the enforcement of the Israeli Law of Return (1950) and Israeli Nationality Law (1952) and its subsequent amendments, the occupation of the rest of Mandate Palestine as a consequence of the 1967 War (Israeli occupation of the West Bank, including East Jerusalem, and the Gaza Strip) and the establishment of the Palestinian Authority in 1994 - have been shaping the legal status of Palestinians either who were displaced from their places of origin across international borders (refugees vis-à-vis Israel) or who remained inside Israel and the oPt.[28]

Article 5 of the "Articles on Nationality of Natural Persons in Relation to the Succession of States" states that "persons concerned having their habitual residence in the territory affected by the succession of States are presumed to acquire the nationality of the successor State on the date of such succession."[29] The Articles on Nationality incorporate the customary international law principles on nationality and state succession. Under these binding principles, since its establishment, Israel, as the succeeding state, has had the obligation to confer its nationality to Palestinians displaced from their homes of origin (the citizens/habitual residents of the predecessor state). On the contrary, Israel has consistently refused their right to readmission, and has made such persons stateless refugees to the present day. As long as the Israeli Nationality Law denies Palestinians

[26] Cited in Qafisheh, *The International Law Foundations of Palestinian Nationality: A Legal Examination of Nationality in Palestine under Britain's Rule*, 75.

[27] UN General Assembly, "Resolution 181(II) - Future Government of Palestine," November 29, 1947, UN Doc. A/RES/181(II)[A-B], http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/181(II)&Lang=E&Area=RESOLUTION.

[28] Qafisheh, *The International Law Foundations of Palestinian Nationality: A Legal Examination of Nationality in Palestine under Britain's Rule*, 76–77.

[29] UN General Assembly, "Resolution 55/153 - Nationality of Natural Persons in Relation to the Succession of States [Annex]," January 30, 2001, UN Doc. A/RES/55/153, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/55/153, Article 5. Article 14 of the same document reads: "1. The status of persons concerned as habitual residents shall not be affected by the succession of States. 2. A State concerned shall take all necessary measures to allow persons concerned [i.e., habitual residents] who, because of events connected with the succession of States, were forced to leave their habitual residence on its territory to *return thereto* [emphasis added]." Ibid., Article 14.

who were displaced during the *Nakba* years (1947-1948), their right to nationality and citizenship of a successor state, it persists in violating international law. Thus, Israel, which illegally revoked the Palestinian Citizenship Orders in its Nationality Law (1952) has denied the nationality of these Palestinians, as established by the Lausanne Treaty, a state of illegality that continues today (see Section 4, *Stateless Persons and the Statelessness Conventions*). In other words, Palestinians have been made *de facto* stateless persons within the meaning of the International Convention on the Reduction of Statelessness of 1961. Moreover, the conferment of Jordanian nationality to Palestinians residents of the West Bank and East Jerusalem by the Jordanian nationality law of 1954 has no effect in international law, as the annexation of the West Bank in 1949 was illegal. Moreover, as a matter of international legal consensus, since the Israeli occupation in 1967 and continuing today, the status of Palestinians who remained in the oPt, including those residing in Jerusalem, has not been resolved.[30] Palestinians in the oPt are obliged to hold Israeli identification cards, while the Palestinian passport issued by the Palestinian Authority is no more than a symbolic travel document; its issuance is dependent on Israeli pre-approval, and its validity is dependent on the inclusion of an Israeli identification card number. In the face of this complex reality, whether the UN General Assembly's recognition of Palestinian statehood on 29 November 2012 and its granting Observer Status to the State of Palestine makes a material difference to the stateless status of Palestinians remains to be determined.[31]

2. Forced Displacement of Palestinians

Palestinian refugees[32] constitute one of the largest and longest-standing unresolved refugee groups in the world today.[33] At the beginning of the 20th century, most Palestinians lived inside the borders of Palestine. This area is now divided into the State of Israel, the West Bank, including East Jerusalem, and the Gaza Strip. The latter areas were occupied by Israel in 1967 and are known as the occupied Palestinian territory (oPt).

Palestinian refugees are defined as refugees *vis-à-vis* the State of Israel.[34]

[30] Qafisheh, *The International Law Foundations of Palestinian Nationality: A Legal Examination of Nationality in Palestine under Britain's Rule*, 212–217.

[31] UN General Assembly, "Res. 67/19."

[32] "Palestinian refugee" is the common term used to designate all those Palestinians who have become and continue to be externally displaced. The term refers to the following three groups: (i) 1948 refugees under UNGA Resolution 194(III) ("Palestine Refugees" in UNRWA terminology, including both registered and non-registered refugees); (ii) 1967 refugees under UNSC Resolution 237 ("Displaced Persons" in UN terminology and used by UNRWA with particular reference to UNGA Resolution 2252); and (iii) Palestinians who are neither 1948 nor 1967 refugees who are unable or unwilling to return to Israel or the oPt owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion. For more details on such categorization, refer to Section 3. Palestinians who fall under the scope of Article 1D *Palestinians who fall under the scope of Article 1D*.

[33] Palestinian registered refugees make up almost a third of the global refugee population (5 million out of 16.7 million as of 2013); see UNHCR, "Global Trends 2013 - War's Human Cost," June 2014, 2, http://www.unhcr.org/5399a14f9.html.

[34] BADIL Resource Center for Palestinian Residency and Refugee Rights, *Survey, 2010-2012*, VII:xxi–xxii.

Approximately two thirds of the Palestinian people are forcibly displaced persons. BADIL's *Survey of Palestinian Refugees and Internally Displaced Persons 2010-2012* (BADIL *Survey 2010-2012*) estimates that there are at least 7.4 million Palestinian refugees[35] and internally displaced persons, representing 66 percent of the global population of 11.2 million Palestinians. The global Palestinian population includes 5,030,049 Palestine refugees registered with the United Nations Relief and Works Agency (UNRWA),[36] an estimated one million non-registered 1948 refugees, one million 1967 refugees (1967 displaced persons)[37] and an unknown number of refugees who are neither 1948 nor 1967 refugees–primarily displaced outside of the West Bank, East Jerusalem and the Gaza Strip since 1967. About 7 percent of the displaced Palestinians (approximately 530,000) are internally displaced within Israel and the oPt. This figure does not include the Palestinians (approximately 100,000)[38] recently displaced during and as a result of the Israeli attack on the Gaza Strip in July-August 2014.[39]

Most Palestinians were displaced in five major waves from Palestine:

1. 1922-1948: Around 150,000 Palestinians were displaced within and beyond the borders of the country during the British Mandate (1922–1948). Thousands of Palestinians who were abroad at the time were not able to acquire citizenship under the 1925 *Palestine Citizenship Order*.[40] Several tens of thousands fled

[35] Ibid.,VII:xv. According to the *Survey of Palestinian Refugees and internally displaced Persons, 2013-2014*(forthcoming), displaced Palestinians constitute 7.8 million of the global population of 11.8 million Palestinians. There is no single authoritative source for the global Palestinian refugee population. The estimates provided here include Palestinians and their descendants whose country of origin is Palestine and who were displaced outside the borders of Israel and the occupied Palestinian territory 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 detailed information, including sources and method of calculation of data, see Ibid., VII:24–27, Appendix 1.1.

[36] UNRWA, *In Figures - As of January 2014*, In Figures, January 2014, 1.

[37] Some 200,000 Palestinian refugees were displaced for a second time during the 1967 war, and another 60,000 Palestinians were abroad at the time of the war and are not included in the estimate of 1,022,546 persons. See: BADIL Resource Center for Palestinian Residency and Refugee Rights, *Survey, 2010-2012*, VII:24–27, Appendix 1.1.

[38] The number of Palestinians internally displaced was over 500,000 at the height of the hostilities. As of November 2014, approximately 100,000 remained displaced. See OCHA - Occupied Paalestinian Territories, *Gaza Strip: Humanitarian Dashboard (November 2014)*, December 2, 2014, 1, http://www.ochaopt.org/documents/humanitarian_dashboard_november_2014_02_dec_2014.pdf.

[39] Similarly, during the Israeli "Operation Cast Lead" in Gaza (from 27 December 2008 to 18 January 2009), over 500,000 Palestinians were displaced from their homes at some point in the conflict. Again, in November 2012, Israel's "Operation Pillar of Defense lead to the displacement of 14,200 people in Gaza. See OCHA - Occupied Palestinian Territories, *The Humanitarian Monitor: January 2009*, February 2009, 3, http://www.ochaopt.org/documents/ocha_opt_humanitarian_monitor_2009_01_15_english.pdf and OCHA - Occupied Palestinian Territories, *Gaza Initial Rapid Assessment*, November 24, 2012, 5, http://www.ochaopt.org/documents/gaza_initial_rapid_assessment_report_nov_2012_eng.pdf, respectively.

[40] *Palestine Royal Commission Report* (London: HMSO, 1937), 331.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).

the country during the Palestinian 1936-1939 Revolt.[41] Others were displaced inside Palestine as a result of punitive house demolitions and the sale of land to colonization associations affiliated with the Zionist movement.[42]

2. 1948: The United Nations General Assembly recommendation (Resolution 181(II)) to partition Palestine into two states in 1947 and the subsequent 1948 War led to a second and massive wave of displacement known as the *Nakba* (Catastrophe). An estimated 750,000–900,000 Palestinians were displaced, comprising 55 to 66% of the Palestinian population at the time.[43] Most of them fled as a direct result of military hostilities and expulsion. The large majority of these 1948 Palestinian refugees found shelter across ceasefire lines in close proximity to their homes, i.e., in the West Bank, the Gaza Strip, Jordan, Syria, Lebanon, or Egypt, hoping to return after the cessation of hostilities. A small number fled to more distant Arab or other countries.
3. 1949-1966: The roughly 150,000 Palestinians who remained in the areas of Palestine that became part of the State of Israel in 1948, including between 47,000 and 75,000 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 Naqab desert (in Hebrew, Negev); the "Little Triangle" (area ceded to Israel under the 1949 armistice agreement with Jordan); and from villages partially emptied during the 1948 War.[44] From 1949 until 1966, at least 30,000 Palestinians were expelled from Israel, comprising about 15 percent of the total Palestinian population of the State.[45]
4. 1967: A fourth wave of displacement took place during the 1967 War, when Israel occupied the West Bank, including East Jerusalem, and the Gaza Strip, as well as the Egyptian Sinai Peninsula and the Syrian Golan Heights. An estimated 350,000–400,000 Palestinians were displaced, half of them for a second time. Again, most became refugees as a direct result of military hostilities and expulsion. Some 95 percent of these 1967 Palestinian refugees (often called 1967displaced 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 were prevented from returning.

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41 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), 66. Based on an average family of six persons, an estimated 30,000 Palestinians were affected.

42 From 1936 to 1939, 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, D.C: Institute for Palestine Studies and Oxford University Press, 1999), 2. See also Charles Kamen, *Little Common Ground: Arab Agriculture and Jewish Settlement in Palestine 1920-1948* (Pittsburgh: University of Pittsburgh Press, 1991), 191.

43 BADIL Resource Center for Palestinian Residency and Refugee Rights, *Survey, 2010-2012*, VII:xxii–xxiii.

44 Areej Sabbagh-Khoury, "The Internally Displaced Palestinians in Israel," *Al-Majdal Quarterly Magazine of BADIL*, no. 51 (Winter 2012), http://BADIL.org/en/al-majdal/item/1873-art6. See also BADIL Resource Center for Palestinian Residency and Refugee Rights, *Survey, 2010-2012*, VII:xxi–xxvi.

45 About 195,000 Palestinians lived in Israel at the time. See Israel Central Bureau of Statistics, "The Population by Religion and Population Group, Table 2.1," in *Statistical Abstract of Israel*, 2001, http://www.cbs.gov.il/archive/shnaton52/st02_01.pdf.

5. 1968-present: Since 1967, Palestinians continue to be displaced both within and outside of Israel and the oPt due to policies and practices targeting the Palestinian people with forced population transfer.[46] The policies and practices include revocation of residency rights,[47] destruction of farmland and land confiscation,[48] demolition of homes,[49] harassment by non-state actors,[50] Israeli military assault,[51] and construction of settlements and the Annexation Wall.[52] BADIL estimates that by 2011, 30,316 people had been displaced specifically due to the construction of the Wall.[53]

[46] For an introduction to these policies and practices of forced population transfer, see BADIL Resource Center for Residency and Refugee Rights, *Forced Population Transfer: The Case of Palestine - Introduction* (Bethlehem, Palestine, March 2014).

[47] Israel has revoked the residency status of more than 250,000 Palestinians. See BADIL Resource Center for Palestinian Residency and Refugee Rights, *Forced Population Transfer: The Case of Palestine - Denial of Residency*, April 2014, 18, http://BADIL.org/phocadownload/BADIL_docs/publications/wp16-Residency.pdf.

[48] Israel expropriated over a million dunums of land for exclusive Jewish-Israeli use following both the 1948 and 1967 wars. Today, Palestinians have the potential for full land rights only in Area A of the West Bank and Gaza Strip, a miniscule portion of Palestine that is already overpopulated. See BADIL Resource Center for Palestinian Residency and Refugee Rights, "Chapter One: Land Confiscation," in *Israeli Land Grab and Forced Population Transfer of Palestinians, A Handbook for Vulnerable Individuals and Communities* (Bethlehem, Palestine: BADIL Resource Center for Palestinian Residency and Refugee Rights, 2013), http://www.BADIL.org/en/BADIL-news/1454-story-3.

[49] Since 1967, Israel has demolished nearly 30,000 Palestinian homes in the occupied Palestinian territory alone. See BADIL Resource Center for Palestinian Residency and Refugee Rights, "Chapter Three: Planning, Building Permits and Home Demolitions," in *Israeli Land Grab and Forced Population Transfer of Palestinians, A Handbook for Vulnerable Individuals and Communities* (Bethlehem, Palestine: BADIL Resource Center for Palestinian Residency and Refugee Rights, 2013), http://www.BADIL.org/en/BADIL-news/1454-story-3.

[50] BADIL Resource Center for Palestinian Residency and Refugee Rights, *Survey, 2010-2012*, VII:27. See also Valentina Azarov, "Institutionalised Impunity: Israel's Failure to Combat Settler Violence in the Occupied Palestinian Territory" (Al-Haq, 2013), http://www.alhaq.org/publications/publications-index/item/institutionalised-impunity-israel-s-failure-to-combat-settler-violence-in-the-occupied-palestinian-territory?category_id=11.

[51] BADIL Resource Center for Palestinian Residency and Refugee Rights, *Survey, 2010-2012*, VII:27. Also see "Fact Sheet: Operation Cast Lead" (IMEU, January 4, 2012), http://imeu.net/news/article0021968.shtml and Yael Stein, "Human Rights Violations during Operation Pillar of Defense 14-21 November 2012" (Btselem: The Israeli Organization for Human Rights in the Occupied Territories, May 2013), http://www.btselem.org/download/201305_pillar_of_defense_operation_eng.pdf.

[52] Since the resumption of US-led negotiations on 19 July 2013, between 29 July and 31 December 2013, while negotiations were ongoing, there was a 43 percent increase in house demolitions and a 74 percent increase in people displaced by demolitions as compared to the same period in 2012: Al-Haq, Law in the Service of Man et al., "Joint Written Statement" (Human Rights Council 25th Session, February 17, 2014), http://www.BADIL.org/phocadownload/legal-advocacy/un-human-rights-council/2014/HRC_25_PHROC_Written%20Submission.pdf. In addition to facilitating de-facto annexation of 9.4 percent of the West Bank and severely restricting Palestinians' access to their properties and livelihoods, the Annexation Wall causes innumerable suffering for Palestinians, particularly those in living in the 'seam zone'. See BADIL Resource Center for Palestinian Residency and Refugee Rights, *Israeli Land Grab and Forced Population Transfer of Palestinians, A Handbook for Vulnerable Individuals and Communities* (Bethlehem, Palestine: BADIL Resource Center for Palestinian Residency and Refugee Rights, 2013), 58–61, http://www.BADIL.org/en/documents/category/35-publications?download=1045%3ABADIL-handbook.

[53] BADIL Resource Center for Palestinian Residency and Refugee Rights, *Survey, 2010-2012*, VII:27.

Secondary Forced Displacement in Host Countries:

Palestinian refugees and displaced persons frequently face additional forced displacement within and from their Arab host countries (first country of refuge), most recently in Syria, Iraq and Lebanon. The major causes of such secondary Palestinian displacement inside and outside the Arab world are the political and socio-economic changes, instability, and crises, as well as international and non-international armed conflicts; the following are a few critical examples:

- Mid-1950s: Palestinian oil industry workers were expelled from the Gulf States;[54]
- 1970: Numerous Palestinian refugee families were expelled from Jordan as part of the expulsion of the nascent Palestinian resistance movement (the Palestinian Liberation Organization) in the events termed "Black September." Most of them settled in Lebanon;[55]
- 1976–1991: During the civil war in Lebanon, more than 100,000 Palestinians were forced to leave the country;[56]
- 1990–1991 Gulf war: More than 400,000 Palestinians were expelled from Kuwait in response to the Palestine Liberation Organization's political support for Iraq;[57]
- 1995: Libya expelled some 30,000 Palestinians from its territory (some were subsequently re-admitted);[58]
- 2003–2011: Several thousand Palestinian refugees were displaced, and many more remain threatened, in the context of the US-led war against and occupation of Iraq;[59]
- 2006-2010: Internal displacement of Palestinian refugees inside Lebanon as a consequence of the 33-days-war between the Israeli army and Hezbollah and the siege and bombardment of the Palestinian Nahr el-Bared camp by the Lebanese army;[60]

[54] Laurie A. Brand, *Palestinians in the Arab World: Institution Building and the Search for a State* (New York: Columbia University Press, 1988), 126–127: "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."

[55] Lex Takkenberg, *The Status of Palestinian Refugees in International Law* (Oxford : New York: Oxford University Press, 1998), 17.

[56] Ibid., 18.

[57] Ibid.

[58] Ibid.

[59] UNHCR estimates that by December 2015, 12,400 Palestinians will remain at risk in Iraq. See UNHCR, "2014 UNHCR Country Operations Profile - Iraq," *UNHCR: The UN Refugee Agency*, 2014, http://www.unhcr.org/pages/49e486426.html.

[60] See IDMC, "No New Displacement but Causes of Past Conflicts Unresolved," *Internal Displacement Monitoring Center*, December 2010, http://www.internal-displacement.org/middle-east-and-north-africa/lebanon/2010/no-new-displacement-but-causes-of-past-conflicts-unresolved/ and Noura Erakat, "Palestinian Refugees and the Syrian Uprising: Filling the Protection Gap During Secondary Forced Displacement," *Oxford Journal of International Refugee Law*, Forthcoming, 24–25.

- 2011-present: More than 270,000 (about one-half) of the Palestinian refugees registered with UNRWA in Syria, have been internally displaced due to civil war, and more than 75,000 have sought refuge in third countries (Jordan, Egypt, Gaza, Libya, Turkey and East Asia). Those displaced within Syria and other countries remain in need of assistance and are at risk of further displacement.[61] UNRWA's resources are limited and insufficient to adequately assist all Palestinians within its mandate areas.[62]

Palestinian Refugees from Syria

Despite the neutrality adopted by Palestinian refugees in relation to the Syrian civil war, in mid-August 2011, the Syrian Army invaded the Palestinian refugee camp of al-Ramel, in the southern part of the city of Latakia, which forced the displacement of about 5,000 Palestinians.[63] On 16 December 2012, a Syrian jet bombed Yarmouk Camp – the biggest Palestinian refugee camp in Syria – in what the government later claimed was an error, killing tens of civilians.[64] The mass displacement that followed reduced Yarmouk's original population of 160,000 to about 30,000 inhabitants.[65] Also, in April 2013, 6,000 Palestinian residents of Ein el Tal Camp were forcedly displaced in a single day, "following months of sporadic armed engagements."[66]

For those refugees fleeing to Syria's neighboring countries, Turkey could not be reached by land by most Palestinian refugees, who were located in the south of Syria. Iraq presented a dangerous option, given that Palestinians had been "recently driven out [of the country], having paid the price for the alleged generosity of Saddam Hussein."[67] As a result, most Palestinian refugees from Syria have sought refuge in Jordan and Lebanon.

In Lebanon, more than 53,070 Palestinian refugees from Syria were registered with UNRWA as of April 2014. As the Lebanese government remains reluctant to authorize the establishment of new refugee camps, such refugees face difficulties in finding adequate housing, and rental prices remain prohibitively high.[68] In addition, on 8 May 2014, the Lebanese Minister of Interior announced new, restrictive regulations for the entry of Palestinian refugees from Syria in the country.[69] As a consequence, many Palestinians enter and remain in Lebanon illegally, having their freedom of movement limited because of fear of being discovered and deported – which traps them in their neighborhoods or the camps where they reside – or because they lack documentation – which "hamper[s] their movements at checkpoints and entry and exit to some Palestinian camps which require valid residency permits to enter."[70] Consequently, although URNWA provides services to Palestinian refugees from Syria

[61] UNRWA, "Syria Regional Crisis Response Update 75," May 25, 2014, 75, http://www.unrwa.org/newsroom/emergency-reports/syria-regional-crisis-response-update-75.

[62] UNRWA, "Choices Made, Choices Denied," accessed October 24, 2014, http://www.unrwa.org/newsroom/official-statements/choices-made-choices-denied; BADIL Resource Center for Palestinian Residency and Refugee Rights, *Survey, 2010-2012*, Chapter Three, especially p. 73-74.

[63] Nidal Bitari, "Yarmuk Refugee Camp and the Syrian Uprising: A View from Within," *Journal of Palestine Studies* 43, no. 1 (2013): 69.

[64] Ibid., 73.

[65] Gavin David White, "Conflict in Syria Compounds Vulnerability of Palestine Refugees," *Forced Migration Review*, no. 44 (September 2013): 79.

[66] Ibid.

[67] Omar S. Dahi, "Syria in Fragments: The Politics of the Refugee Crisis," *Dissent* 61, no. 1 (2014): 46.

[68] UNRWA, "PRS in Lebanon," April 2014, http://www.unrwa.org/prs-lebanon.

[69] Amnesty International, *Denied Refuge: Palestinians from Syria Seeking Safety in Lebanon*, July 1, 2014, 13, http://www.amnesty.org/en/library/asset/MDE18/002/2014/en/902e1caa-9690-453e-a756-5f10d7f39fce/mde180022014en.pdf.

[70] ACAPS and MapAction, *Quarterly Regional Analysis for Syria (RAS) Report, Part II - Host Countries*, Syria Needs Assessment (SNAP), April 2014, 9.

regardless of their legal status in Lebanon,[71] the restrictions on their freedom of movement limit the ability of many Palestinian refugees from Syria to access humanitarian assistance.[72] Specifically, their illegal status affects their ability to access hospitals contracted by UNRWA and run by the Lebanese government or private enterprises.[73] Furthermore, due to their lack of proper documentation, their access to other services and justice is restricted.[74]

In Jordan, more than 13,836 Palestinian refugees from Syria had sought support from UNRWA as of April 2014. These refugees have critical needs for shelter, food and essential non-food items.[75] In April 2012, Jordan adopted a no-entry policy that has subjected hundreds of Palestinian refugees from Syria to *refoulement* – i.e., return at the border.[76] Moreover, dozens of Palestinian refugees from Syria have been forcibly returned to Syria from Jordan.[77] Similar to the situation in Lebanon, Palestinian refugees from Syria continue to enter Jordan through unofficial border crossings, at times relying on smugglers,[78] remaining in the country illegally and living in hiding for fear of being arrested or returned to Syria.[79] Generally they "do not come forward for assistance until several months after their arrival, when they have exhausted their resources and coping mechanisms."[80] Since April 2012, the Jordanian government has been forcibly transferring Palestinian refugees from Syria who enter the country illegally to Cyber City,[81] a "closed facility near the border where their movements are severely restricted."[82] The facility, also referred to as a "refugee camp,"[83] housed approximately 190 Palestinians as of mid-2014.[84] Despite the small number of persons affected, the conditions at Cyber City, which amount to arbitrary detention, constitute a serious violation of human rights, particularly the right to freedom of movement.

[71] "Questionnaire Answered Collaboratively by Members of UNRWA's Lebanon Field Office," July 16, 2014.

[72] Interview with Lama Fakih, Syria and Lebanon researcher at Human Rights Watch, July 7, 2014.

[73] "Questionnaire Answered Collaboratively by Members of UNRWA's Lebanon Field Office."

[74] ACAPS and MapAction, *Quarterly Regional Analysis for Syria (RAS) Report, Part II - Host Countries*, April 2014, 1.

[75] UNRWA, "PRS in Jordan," accessed July 4, 2014, http://www.unrwa.org/prs-jordan.

[76] ACAPS and MapAction, *Quarterly Regional Analysis for Syria (RAS) Report, Part II - Host Countries*, Syria Needs Assessment (SNAP), July 2014, 22.

[77] Human Rights Watch, "Jordan: Obama Should Press King on Asylum Seeker Pushbacks," March 21, 2013, http://www.hrw.org/news/2013/03/21/jordan-obama-should-press-king-asylum-seeker-pushbacks.

[78] Human Rights Watch, *Not Welcome: Jordan's Treatment of Palestinians Escaping Syria*, August 2014, 15, http://www.hrw.org/sites/default/files/reports/jordan0814_ForUPload_0.pdf.Human Rights Watch has also documented how Palestinians circumvent Jordan's ban on their entry. Ibid., 15–17.

[79] ACAPS and MapAction, *Quarterly Regional Analysis for Syria (RAS) Report, Part II - Host Countries*, April 2014, 18.

[80] Ibid.

[81] Human Rights Watch, "Jordan: Bias at the Syrian Border," July 4, 2012, http://www.hrw.org/news/2012/07/04/jordan-bias-syrian-border.

[82] UNRWA, *Syria Crisis Response Annual Report - 2013*, 2014, 11.

[83] UNHCR, "Jordan - Irbid Governorate - Cyber City Refugee Camp," *Syria Regional Refugee Response - Inter-Agency Information Sharing Portal*, accessed July 11, 2014, http://data.unhcr.org/syrianrefugees/settlement.php?id=208&country=107&region=74.

[84] Together with about 200 Syrian refugees (UNRWA, *Syria Regional Crisis Response: January-December 2014 – Mid-Year Review*, 2014, 22, http://www.unrwa.org/sites/default/files/syria_regional_crisis_response_midyear_review_2014.pdf.).

3. Palestinians who fall under the scope of Article 1D

The authoritative interpretation of the United Nations of the class of persons for whom the United Nations Conciliation Commission for Palestine ("UNCCP") was mandated to provide international protection is found in a series of interpretive papers by the UN Secretariat and Notes by the Legal Advisor to the UNCCP. The Note by the Legal Advisor issued in April, 1951, on the definition of refugee relevant to Resolution 194, reads:

> It follows from the foregoing remarks that the term "refugee" appearing in paragraph 11 of the resolution of 11 December 1948 can be defined as follows:
>
> Article 1
>
> Are to be considered as refugees under paragraph 11 of the General Assembly resolution of 11 December 1948 persons of Arab origin who, after 29 November 1947, left [the] territory at present under the control of the Israel authorities and who were Palestinian citizens at that date.
>
> Are also to be considered as refugees under the said paragraph stateless persons of Arab origin who after 29 November 1947 left the aforementioned territory where they had been settled up to that date.
>
> Article 2
>
> The following shall be considered as covered by the provisions of Article 1 above:
>
> 1. Persons of Arab origin who left the said territory after 6 August 1924 and before 29 November 1947 and who at that latter date were Palestinian citizens;
> 2. Persons of Arab origin who left the territory in question before 6 August 1924 and who, having opted for Palestinian citizenship, retained that citizenship up to 29 November 1947.[85]

For the purpose of this *Handbook*, Palestinian refugees and displaced persons who fall into the scope of article 1D can be grouped in two main categories:

1. Palestinians who are "Palestine refugees"[86] in the sense of UN General Assembly Resolution 194(III),[87] of 11 December 1948, and as reinforced

[85] UNCCP, "Definition of a 'Refugee' Under Paragraph 11 of the General Assembly Resolution of 11 December 1948," April 9, 1951, UN Doc. A/AC.25/W/61, http://unispal.un.org/UNISPAL.NSF/0/418E7BC6931616B485256CAF00647CC7.

[86] UNRWA registers and delivers assistance to 1948 Palestinian refugees in line with its working definition of a "Palestine refugee." The eligibility rules issued in 1993 define a "Palestine refugee" as "[a]ny 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." BADIL, *Survey of Palestinian Refugees and Internally Displaced Persons, 2008-2009* (Bethlehem, Palestine: BADIL Resource Center for Palestinian Residency and Refugee Rights, 2009), 156–157.

[87] UN General Assembly, "Resolution 194(III) - Palestine: Progress Report of the United Nations Mediator," December 11, 1948, para. 11, UN Doc. A/RES/194(III), http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/194(III)&Lang=E&Area=RESOLUTION.

by Resolution 302 (IV),[88] as well as their descendants.[89] Those refugees, currently estimated to number more than 6 million persons, are composed of two sub-groups:

a. Registered Palestine Refugees: The overwhelming majority, some 5 million as of 1 January 2014, 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, although some have left UNRWA's area of operations and taken up residence elsewhere. In those cases, Palestinians cannot access individual services, but they retain their refugee status with UNRWA;

b. Non-registered Palestine Refugees: A further one million refugees were also displaced in 1948, but did not register for assistance with UNRWA;[90]

Notably, these two groups of Palestine refugees constitute the main group of Palestinians eligible to be *registered* in UNRWA's Registration System and obtain an UNRWA Registration Card. Along with them, some other Palestinians who do not meet UNRWA's Palestine refugee criteria can also be registered for UNRWA services,[91] such as: (i) "Jerusalem Poor and Gaza Poor" and their descendants through the male line;[92] (ii) "Frontier Villagers" and their descendants through the male line; (iii) "Compromise Cases;" (iv) "MNR [married to non-refugee] Family Members," i.e., husbands and children of Registered refugee women;[93] (v) "Non-Refugee Wives;" and (vi) "Kafalah Children," i.e., "children who are receiving from a Registered Refugee or Other Registered Person parental care according to the terms of Islamic Kafalah practice."[94]

2. Displaced persons: Palestinians who do not fall under the first category

88 UN General Assembly, "Resolution 302(IV) - Assistance to Palestine Refugees," December 8, 1949, UN Doc. A/RES/302(IV), http://unispal.un.org/UNISPAL.NSF/0/AF5F909791DE7FB0852560E500687282, Preamble.

89 The UN General Assembly concern with the descendants of Palestine refugees and of Palestinian "displaced persons" (see item 2 above) was stated in its Res. 37/120 I, of 16 December 1982. See UN General Assembly, "Resolution 37/120 - United Nations Relief and Works Agency for Palestine Refugees in the Near East," December 16, 1982, UN Doc. A/RES/37/120 [A-K], http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/37/120&Lang=E&Area=RESOLUTION I, para. 2. This understanding also has been laid out in UNHCR's Notes of interpretation of Article 1D, most recently in 2013. 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, footnote 10.

90 See BADIL Resource Center for Palestinian Residency and Refugee Rights, *Survey, 2010-2012*, VII:24–27 Appendix 1.1.

91 Those persons, however, "are not counted as part of the official Registered Refugee population of the Agency." UNRWA, "Consolidated Eligibility and Registration Instructions (CERI)," 2009, 4, http://www.unrwa.org/sites/default/files/2010011995652.pdf.

92 Ibid.

93 Ibid., 5.

94 Ibid., 6.

above and who are considered "displaced persons" in accordance with UNSC Resolution 237 of June 1967 and UN General Assembly Resolution 2252 (ES-V), of 4 July 1967.[95]This category comprises those displaced for the first time from their homes in the context of the 1967 War, as well as their descendants. As UNHCR explains, "two groups of Palestinian 'displaced persons' have been displaced from the Palestinian territory occupied by Israel since 1967: (i) Palestinians originating from that territory; and (ii) "Palestine refugees" who had taken refuge in that territory prior to 1967," and who experienced secondary displacement after the 1967 war.[96] Palestinians under this category now amount to 1,022,546 refugees.

An estimated 350,000–400,000 Palestinians were displaced, half for a second time, in 1967 and were never registered with UNRWA, because they do not meet the Agency's Palestine refugee criteria, nor do they fall within any of the categories listed in the last paragraph of item 1. Nonetheless, these persons are eligible to receive UNRWA services without being registered in UNRWA's Registration System, and UNRWA's program do keep due records of these persons, referring to them as "non-registered persons."[97]

Other non-registered persons who are eligible to benefit from UNRWA's programs are: (i) those identified as eligible by UNRWA's Commissioner-General for humanitarian and other policy reasons related to URNWA's mandate;[98] (ii) beneficiaries of UNRWA's Emergency Programs; (iii) those who meet the Microfinance and Microenterprise Department's (MMD) financial and lending criteria; (iv) UNRWA Staff Members (in accordance with UNRWA's Eligibility and registration instructions[99]); and (v) those who live in refugee camps and communities, thus benefiting from UNRWA services such as sanitation and environmental health services.[100]

The majority of the 1967 Palestinian refugees continue to reside in the countries to which they fled in 1967, mostly to Jordan, with smaller numbers in Syria, Lebanon and Egypt.

UNRWA has registered 1948 Refugees since 1950 and claims to have recorded more than 75 percent of this group of refugees.[101] UNRWA registration data is not statistically accurate, however, as reporting is voluntary. UNRWA has never carried out a comprehensive census of all Palestinian refugees under its mandate.

UNRWA registers Palestinian refugees as part of its relief and social services

[95] UN General Assembly, "Resolution 2252 (ES-V) - Humanitarian Assistance," July 4, 1967, UN Doc.A/RES/2252 (ES-V), http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/2252%20(ES-V).

[96] UNHCR, "2013 Note," footnote 8.

[97] UNRWA, "Consolidated Eligibility and Registration Instructions (CERI)," 2009, 6–7.

[98] Ibid., 7.

[99] UNRWA, "Consolidated Eligibility and Registration Instructions (CERI)," 2009, Section V.

[100] Ibid., 8.

[101] See *Annual Growth rate of registered Palestine refugees and female percentage, 1953–2000*, available at:http://www.palestineremembered.com/download/RefugeesStats.pdf.

program.[102] The eligibility and registration program maintains historical records of refugees to determine registration and eligibility for UNRWA services. Registration cards are updated regularly, mainly with information regarding births, marriages and deaths.

In general, UNRWA registration records do not include:

1. Refugees displaced in 1948, who:
   a. Failed to meet UNRWA's definition of "Palestine Refugee;"
   b. Were outside the areas of UNRWA operation (and have not filed for registration under UNRWA's 1993 revised eligibility criteria);
   c. Were dropped from the records owing to financial constraints limiting the number of relief recipients;
   d. Are descendants of refugee mothers and non-refugee fathers;
   e. Had an independent income or property (and have not filed for registration under UNRWA's 1993 revised eligibility criteria);
   f. Improved their economic situation to the extent that they no longer met eligibility criteria (prior to the 1993 revision of eligibility criteria);
   g. Refused to register for reasons of pride.
2. Palestinians displaced for the first time in 1967;
3. Palestinians who are not 1948 or 1967 refugees, and are unable (due to revocation of residency, deportation, etc.) or unwilling (owing to a well-founded fear of persecution) to return to the oPt;
4. Palestinians registered in UNHCR records who have never been registered with UNRWA or were dropped from the Agency records;
5. IDPs in Israel and the oPt.

According to UNHCR, Palestinians who are neither "Palestine refugees" nor Palestinian "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 territory occupied by Israel since 1967 and are unable or, owing to such fear, are unwilling to return there, qualify as refugees under Article 1A(2) of the 1951 Convention."[103] Such persons do not fall within the scope of other UN "organs or agencies" such as UNRWA and

[102] Original registration was carried out by the International Committee of the Red Cross, the League of Red Crescent Societies and (in the Gaza Strip) by the American Friends Service Committee (AFSC). During 1950–51, UNRWA carried out a census in all areas of operations, excluding the Gaza Strip, where it relied on AFSC records. UNRWA registration includes an individual registration number, a family registration number, and a family code that links the computerized demographic data in the family registration number sheet with the non-computerized data in the family files. The latter includes birth, marriage, and death certificates and a limited number of property deeds. For more information, see Salīm Tamārī and Elia T. Zureik, *Reinterpreting the Historical Record: The Uses of Palestinian Refugee Archives for Social Science Research and Policy Analysis* (Jerusalem: Institute for Jerusalem Studies, 2001).

[103] UNHCR, "Revised Note on the Applicability of Article 1D of the 1951 Convention Relating to the Status of Refugees to Palestinian Refugees," October 2009, para. 5, http://www.refworld.org/docid/4add77d42.html.

presumably UNCCP, and therefore, they are not covered by Article 1D and must apply for refugee status "in the normal way under the 1951 Convention via Article 1A(2)."[104] The population of such displaced Palestinians is unknown. These persons now reside abroad and, owing to a fear of persecution, are unable or unwilling to return to the occupied Palestinian territory or Israel.

The number of Palestinians displaced from and within the occupied Palestinian territory since 1967, including those displaced for the first time, is difficult to determine given the lack of a registration system and continual displacement over four decades of military occupation.

More than 519,000 Palestinians are internally displaced persons today.[105]However, such persons are not within the scope of this *Handbook* as they do not qualify as refugees and, thus, do not fall under UNRWA's mandate nor the 1951 Convention.[106] Some of these internally displaced persons were displaced in 1948 or 1967; others have been forced to move for the first time between or since.

4. Stateless Persons and the Statelessness Conventions

Palestinian nationality dates to the Lausanne Treaty, which, as seen above, incorporated the Ottoman nationality law applying to Palestinians. This international legal recognition of Palestinian nationality (for the first time) was then incorporated as a matter of domestic law in the territory in 1925 through the British Mandate Citizenship Orders. From that time on, Palestinians had a defined nationality as a matter of international law, and this nationality continued – and was recognized as such, including by Israeli, British and other courts – until Israel's Nationality Law in 1952. Under the terms of that law, Israel expressly repealed Palestinian nationality:

> The Palestinian Citizenship Orders, 1925-1942 are repealed with effect from the day of the establishment of the State [of Israel].[107]

[104] UNHCR, "2013 Note," 3.

[105] BADIL Resource Center for Palestinian Residency and Refugee Rights, *Survey, 2010-2012*, VII:xv. According to BADIL's Survey of 2013-2014 (unpublished yet) Palestinian IDPs number is about 570,000. This figure does not include those displaced in the recent war waged on Gaza Strip in July-August 2014).

[106] Palestinian internally displaced persons 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 1967 War, and 1967 displaced persons at a later stage, including during the second intifada. See Terry Rempel, *Internally Displaced Palestinians, International Protection and Durable Solutions*, Information and Discussion Brief (Bethlehem: BADIL Resource Center for Palestinian Residency and Refugee Rights, 2002). See also www.badil.org and BADIL Resource Center for Palestinian Residency and Refugee Rights, *Survey, 2010-2012*. See also IDMC, "No End to Internal Displacement," *Internal Displacement Monitoring Center*, July 5, 2011, http://www.internal-displacement.org/middle-east-and-north-africa/palestine/2011/no-end-to-internal-displacement/ and IDMC, "Palestine: Internal Displacement in Brief," *Internal Displacement Monitoring Center*, December 31, 2013, http://www.internal-displacement.org/middle-east-and-north-africa/palestine/summary/.

[107] The State of Israel, *Nationality Law*, 1952, http://www.israellawresourcecenter.org/israellaws/fulltext/nationalitylaw.htm, Article 18(a).

However, under customary international law of state succession, quite entrenched by 1952,[108] a successor state could not discriminate against particular national/ethnic groups in conferring nationality in the new state, and was obliged to grant all habitual residents of the successor territory the citizenship of the successor state, as mentioned above.[109]Thus, Israel's Nationality Law violated international law at the time it was passed, and Palestinian Nationality as established by the Lausanne Treaty continues to this day. What becomes relevant, then, is not the definition of *de jure* statelessness under the 1954 *Convention Relating to the Status of Stateless Persons* (1954 Stateless Persons Convention), but the broader definition of *de facto* statelessness under the *1961 Convention on the Reduction of Statelessness* (1961 Statelessness Convention).[110]

Refugees and stateless persons lack the protection of their country either as a matter of law or as a matter of fact. The 1951 *Convention Relating to the Status of Refugees* (1951 Refugee Convention) and the 1954 *Convention Relating to the Status of Stateless Persons* (1954 Stateless Persons 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 1954 Stateless Persons Convention

The history of the 1954 Stateless Persons Convention dates back to 1947, when the Working Party on an International Convention on Human Rights, created by the UN Commission on Human Rights, presented a report recommending, *inter alia*, the drafting of a resolution on stateless persons.[111] The Commission furthered the proposal by asking the United Nations to "make recommendations to Member States with a view to concluding conventions on nationality."[112] The question was considered by the UN Economic and Social Council (ECOSOC), which, in March 1948, asked the Secretary-General, in consultation with specialized agencies, to carry out a study on stateless persons.[113]

[108] See, e.g., Ian Brownlie, *The Rule of Law in International Affairs: International Law at the Fiftieth Anniversary of the United Nations* (MartinusNijhoff Publishers, 1998), 54–55.

[109] For details, see Gail Boling, *The 1948 Palestinian Refugees and the Individual Right of Return: An International Law Analysis* (Bethlehem, Palestine: BADIL Resource Center for Palestinian Residency and Refugee Rights, 2007), http://www.BADIL.org/en/documents/category/35-publications?download=101%3Aindividualror-en.

[110] Most of this argument is made by Qafisheh, *The International Law Foundations of Palestinian Nationality: A Legal Examination of Nationality in Palestine under Britain's Rule*. It should be noted that Israel is a state Party to the 1954 Stateless Persons Convention and that it has signed, but not ratified, the 1961 Statelessness Convention.

[111] UN Economic and Social Council, "Commission on Human Rights, Second Session: Report of the Working Party on an International Convention on Human Rights," December 11, 1947, para. 15, UN Doc. E/CNA/56, http://www.un.org/ga/search/view_doc.asp?symbol=E/CN.4/56.

[112] UN Economic and Social Council, "Report of the Commission on Human Rights, Second Session," December 17, 1947, para.46(1)(a), UN Doc. E/600, http://www.un.org/en/ga/search/view_doc.asp?symbol=E/600.

[113] UN Economic and Social Council, "Resolution 116D: Stateless Persons," March 2, 1948, UN Doc. E/RES/116(VI), http://www.un.org/ga/search/view_doc.asp?symbol=E/RES/116(VI); see also UN Economic and Social Council, "A Study of Statelessness" (UN Ad Hoc Committee on Refugees and Stateless Persons, August 1, 1949), E/1112; E/1112/Add.1, http://www.refworld.org/pdfid/3ae68c2d0.pdf.

In 1949, ECOSOC considered the study and created an *ad hoc* Committee entrusted with considering the "desirability of preparing a revised and consolidated convention relating to the international status of refugees and stateless persons and [...] draft[ing] the text of such a convention."[114] The Committee's reports[115] included drafts of a convention on refugees and a protocol on stateless persons; however, the UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, which met from 2 to 25 July 1951, decided, "[w]ith respect to the draft Protocol relating to the Status of Stateless Persons," "not to take a decision on the subject at the present Conference and refers the draft Protocol back to the appropriate organs of the United Nations for further study,"[116] given the disagreement on definitions of stateless persons, displaced persons and refugees, which made it difficult to incorporate all categories in a single treaty.

The signing of the Refugee Convention in 1951 created a scenario that constrained and obliged the Committee on Statelessness and Related Problems to develop a separate treaty for stateless persons – ultimately, the 1954 Stateless Persons Convention– consistent with the definition of refugees present in the 1951 Convention, which also covered refugees who were stateless.

The 1951 Refugee Convention, as well as the 1967 *Protocol Relating to the Status of Refugees* (1967 Refugee Protocol), have been widely endorsed by states around the world. The 1951 Refugee Convention established important minimum standards for protection in states Parties to the Convention, which may be extended by higher standards in regional instruments or national regulations and practice. UNHCR holds a supervisory responsibility over the Refugee Convention and Protocol, both under its Statute and under the 1951 Convention. As of 20 May 2014, 145 States were Party to the 1951 Refugee Convention, 146 to the 1967 Protocol and 148 to one or both instruments.[117]

Although the 1954 Stateless Persons Convention is significant in terms of the rights it affords to stateless persons, unfortunately its reach is limited in several respects. First, it has been ratified by few states (80 as of 5 May 2014, including only three Arab states – Algeria, Libya and Tunisia).[118] Second, many states that have acceded to the Convention have not established any procedure for examining an applicant's claim of statelessness (see the country profiles in Chapter Three of this

[114] UN Economic and Social Council, "Resolution 248 B (IX) of 8 August 1949," August 8, 1949, E/RES/248(IX), http://www.un.org/ga/search/view_doc.asp?symbol=E/RES/248(IX), item (a).

[115] UN Economic and Social Council, "Report of the Ad Hoc Committee on Refugees and Stateless Persons, Lake Success, New York, 16 January to 16 February 1950," February 16, 1950, E/1618, http://www.un.org/ga/search/view_doc.asp?symbol=E/1618; UN Economic and Social Council, "Report of the Ad Hoc Committee on Refugees and Stateless Persons, Second Session, 14 August to 25 August 1950," August 25, 1950, E/1850, http://www.un.org/ga/search/view_doc.asp?symbol=E/1850.

[116] UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, "Final Act and Convention Relating to the Status of Refugees" (UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, July 25, 1951), para. III, UN Doc. A/CONF.2/108/Rev.1, http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=40a8a7394.

[117] UNTC, "Status of Treaties: Convention Relating to the Status of Refugees," accessed July 15, 2014, https://treaties.un.org/pages/ViewDetailsII.aspx?&src=UNTSONLINE&mtdsg_no=V~2&chapter=5&Temp=mtdsg2&lang=en; UNTC, "Status of Treaties: Protocol Relating to the Status of Refugees," accessed July 15, 2014, https://treaties.un.org/pages/ShowMTDSGDetails.aspx?src=UNTSONLINE&tabid=2&mtdsg_no=V-5&chapter=5&lang=en#Participants.

[118] UNTC, "Status of Treaties: Convention Relating to the Status of Stateless Persons," accessed July 15, 2014, https://treaties.un.org/pages/ViewDetailsII.aspx?&src=TREATY&mtdsg_no=V~3&chapter=5&Temp=mtdsg2&lang=en.

Handbook, *Survey of Protection Provided to Palestinian Refugees at the National Level*).[119]

The *1961 Convention on the Reduction of Statelessness* (1961 Statelessness 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 5 May 2014, the 1961 Statelessness Convention had been endorsed by 55 states.[120]

The 1954 Stateless Persons 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 drafting process in 1954.[121] The 1961 Statelessness 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).[122]

UNHCR is charged with this responsibility under Article 11.[123] Until the early 1990s, UNHCR did little in terms of its mandate under the 1954 Stateless Persons Convention, but it has since carried out a global campaign to promote state accession to the international refugee instruments, as well as the two conventions on statelessness.[124] 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.

[119] UNHCR, "The 1954 Convention Relating to the Status of Stateless Persons: Implementation within the European Union Member States and Recommendations for Harmonisation," October 2003, para. 51, http://www.refworld.org/docid/415c3cfb4.html. See also UNHCR, "State Action on Statelessness," n.d., http://www.unhcr.org/pages/4ff2bdff6.html#Maps.

[120] UNHCR, "State Action on Statelessness." See also UNTC, "Status of Treaties: Convention on the Reduction of Statelessness," accessed July 15, 2014, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5&lang=en.

[121] Carol A. Batchelor, "Stateless Persons: Some Gaps in International Protection," *International Journal of Refugee Law* 7, no. 2 (1995): 245–247.

[122] Ibid., 252, for the history of Article 11.

[123] UN General Assembly, "Resolution 3274(XXIX) - Question of the Establishment, in Accordance with the Convention on the Reduction of Statelessness, of a Body to Which Persons Claiming the Benefit of the Convention May Apply," December 10, 1974, UN Doc. A/RES/3274(XXIX), http://www.unhcr.org/3dc8dca44.html. In November 1976, the General Assembly reviewed the provisionally allocated duties, and UNHCR was requested to continue to perform these functions without time limit (UN General Assembly, "Resolution 31/26 - Question of the Establishment, in Accordance with the Convention on the Reduction of Statelessness, of a Body to Which Persons Claiming the Benefit of the Convention May Apply," November 30, 1976, 36, UN Doc. A/RES/31/26, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/31/36&Lang=E&Area=RESOLUTION.).

[124] Magnus Engstrom and Naoko Obi, "Evaluation of UNHCR's Role and Activities in Relation to Statelessness," *UNHCR*, July 2001, http://www.unhcr.org/3b67d0fa7.html. See also UNHCR, "Global Appeal 2014-2015 - Addressing Statelessness," December 2013, http://www.unhcr.org/528a0a1316.html; and UNHCR, "Global Report 2012 - Addressing Statelessness," June 2013, http://www.unhcr.org/51b1d61db.html.

UNHCR's efforts focus on providing technical and advisory services to states and on encouraging states to find equitable solutions.[125]

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

A "stateless person" is defined by the 1954 Stateless Persons Convention as:

> a person who is not considered as a national by any State under the operation of its law.[126]

The 1954 Stateless Persons Convention 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. The 1961 Stateless Persons Convention, however, recognizes that *de facto* stateless persons, i.e., persons who do not enjoy effective protection by their home country, are also in need of assistance and protection, even though they are still legal or formal holders of a nationality.

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 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.[127]

De facto stateless persons were not included within the scope of the 1954 Stateless Persons Convention. The drafters of the Convention assumed that this group would automatically qualify as refugees protected under the 1951 Refugee Convention because they were not granted effective protection by their home country.[128] 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,

[125] UNHCR, "UNHCR's Activities in the Field of Statelessness: Progress Report," June 3, 2003, para. 7, http://www.unhcr.org/3edf598a4.html. See also UNHCR, "UNHCR's Activities in the Field of Statelessness: Progress Report," June 30, 2005, http://www.unhcr.org/42a553922.html; UNHCR, "State Action on Statelessness;" and UNHCR, "Stateless - UNHCR Actions," accessed May 7, 2014, http://www.unhcr.org/pages/49c3646c16a.html.

[126] UNHCR, "The 1954 Convention Relating to the Status of Stateless Persons," Article 1(1). The definition is considered customary international law, thus it is also binding on states not party to the 1954 Stateless Convention.

[127] UN Economic and Social Council, "A Study of Statelessness," 8–9.

[128] Batchelor, "Stateless Persons," 248.

considers sympathetically the possibility of according to that person the treatment which the Convention accords to stateless persons.[129]

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.[130] The Convention's Final Act includes a recommendation similar to, but broader than, the recommendation included in the 1954 Stateless Persons Convention.[131]

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

The 1954 Stateless Persons Convention offers stateless persons the most basic guarantees necessary to conduct a stable life. The standard of treatment prescribed for stateless persons is similar to the one 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 one accorded to refugees, who are entitled to most-favored-nation treatment.[132]

The 1961 Statelessness Convention includes provisions on the acquisition of nationality (Articles 1–4),such as "[a] contracting state shall grant its nationality to a person born in its territory who would otherwise be stateless" (Article 1); on loss, renunciation or deprivation of nationality (Articles 5–9), such as "[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).[133]

Persons (including stateless Palestinian 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, are eligible for the protection of the 1954 Stateless Persons Convention, as long as they are not "at present receiving [protection or assistance] from organs

[129] United Nations, "Final Act of the United Nations Conference on the Status of Stateless Persons" (Treaty Series, vol. 360, p. 117, September 28, 1954), Treaty No. 1:5158, full text available at http://www.ehu.es/ceinik/tratados/16TRATADOSSOBREREFUGIADOS/161RefugiadosApatridasyAsilo/TR1615ING.pdf, item 3.

[130] Batchelor, "Stateless Persons," 250.

[131] Ibid., 258.

[132] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, I (Bethlehem, Palestine: BADIL Resource Center for Palestinian Residency and Refugee Rights, 2005), 121, http://www.BADIL.org/en/lawyers-resources/itemlist/category/206-2005handbook.

[133] Ibid., 122.

or agencies of the United Nations other than the United Nations High Commissioner for Refugees."[134]

5. The Framework for Durable Solutions[135]

Given the massive scope and collective character of Palestinian displacement prior, during and immediately after the 1948 War, the United Nations called for a durable solution for 1948 Palestinian refugees as *a group*, affirmed their rights to return, restitution of properties and compensation, and established voluntary repatriation as the primary durable solution for Palestinian refugees. United Nations General Assembly Resolution 194(III), paragraph 11, of 11 December 1948 reads:

> *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[.][136]

Those paragraphs set forth a clear hierarchy of solutions for Palestinian refugees. The primary durable solution for Palestinian refugees is return, housing and property restitution, and compensation for loss of or damage to property. United Nations General Assembly Resolution 194(III) does not "resolve" that Palestinian refugees should be resettled. Rather, refugees who choose not to exercise the rights set forth in paragraph 11(a) may opt for local integration in the host state or resettlement in third countries, as well as housing and property restitution, and compensation as delineated in paragraph 11(b). Thus, the main consideration in the integration or

[134] UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 1954, http://www.unhcr.org/3bbb25729.html, Article 1(2)(i). Paragraph (2)(i) of Article 1 of the 1954 Stateless Persons Convention includes, in one single paragraph, the exclusion and inclusion clauses present in Article 1D of the 1951 Refugee Convention. It excludes persons who are receiving protection and assistance from UN agencies other than UNHCR but only "as long as they are receiving such protection or assistance," which can be understood as having the same meaning as the second paragraph of Article 1D, which entitles those persons to the benefits of the convention "[w]hen such protection or assistance has ceased for any reason."

[135] BADIL Resource Center for Residency and Refugee Rights, *Survey of Palestinian Refugees and Internally Displaced Persons 2003* (Bethlehem: BADIL Resource Center for Palestinian Residency and Refugee Rights, 2004), chap. 6, http://www.BADIL.org/en/documents/category/35-publications?download=137%3Asurvey03.

[136] UN General Assembly, "Res. 194(III)," para. 11.United Nations General Assembly Resolution 194(III) is annually affirmed by the United Nations since 1948. For example, see UN General Assembly, "Res. 67/19," 19.

resettlement of Palestinian refugees is the *choice* of the refugee not to return to his or her place of origin.[137]

All Palestinian refugees, whether they still live in their first country of refuge or have moved to another country, hold the right to voluntarily choose to return to their place of origin in what became Israel, and to housing and property restitution, and/or compensation for loss of or damage to property. Thus, all Palestinian refugees, including those who have obtained citizenship of any state, should be included in the final durable solution to the Arab-Israeli conflict.

United Nations General Assembly Resolution 194(III) affirms the above rights and the principle of individual refugee choice.[138] By 1948, voluntariness was already an established principle of refugee law and practice.[139] This framework is consistent with the options set forth in international refugee law – i.e., voluntary repatriation, voluntary local integration, or 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. Most importantly, of the three durable solutions, return – i.e., voluntary repatriation – is the only one that is a human right and obligatory on the state of origin. The right of return is a customary norm of international human rights law and is explicitly affirmed in many instruments as a human right. The Universal Declaration of Human Rights stipulates: "[e]veryone has the right to leave any country, including his own, and to return to his country."[140] Article 12(4) of the *International Covenant on Civil and Political Rights* (ICCPR) reads: "[n]o one shall be arbitrarily deprived of the right to enter his own country."[141] Denial of return, nationality and residence – among other rights – on discriminatory grounds, such as race, religion or ethnic origin, is arbitrary and expressly prohibited under international human rights law.[142] Following the wording "return to *his country*," the return of Palestinian refugee must be accompanied by Israel's recognition of nationality to such persons, a measure

[137] See Boling, *The 1948 Palestinian Refugees and the Individual Right of Return: An International Law Analysis*, Section 2. See also UNCCP, "Analysis of Paragraph 11 of the General Assembly's Resolution of 11 December 1948," May 15, 1950, UN Doc. A/AC.25/W/45, http://unispal.un.org/UNISPAL.NSF/0/94F1C22721945319852573CB00541447.

[138] It is important to note that UNGA Resolution 194(III) has a character unique from all other UN resolutions: the fact that it has been reaffirmed by the General Assembly every year and that it represents the overwhelming majority view of the UN member states constitutes "strong evidence of its authority as customary international law on the Palestinian refugee question." See Susan M. Akram, *Reinterpreting Palestinian Refugee Rights under International Law, and a Framework for Durable Solutions*, Information and Discussion Brief (Bethlehem: BADIL Resource Center for Palestinian Residency and Refugee Rights, February 2000), 5, http://www.BADIL.org/en/documents/category/51-bulletins-briefs?download=552%3Abrief-no.1-reinterpreting-palestinian-refugee-rights-under-international-law-and-a-framework-for-durable-solutions&start=50&ei=XmNLVNH-McidPd2_gIAM&usg=AFQjCNHaTYDPAXJavE00Ld5OE9pA6i_HTg&bvm=bv.77880786,d.ZWU.

[139] UNCCP, "Analysis of Paragraph 11 of the General Assembly's Resolution of 11 December 1948."

[140] UN General Assembly, "Universal Declaration of Human Rights" (UN General Assembly, December 10, 1948), http://www.un.org/en/documents/udhr/index.shtml#a16, Article 13(2).

[141] UN General Assembly, "International Covenant on Civil and Political Rights," December 16, 1966, A/RES/2200(XXI)[A-C], Article 12(4).

[142] United Nations, *International Convention on the Elimination of All Forms of Racial Discrimination*, 1965, http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx, Article 5(d).

that should have been adopted in 1948, pursuant to the law of state succession, as explained above.

The history of the drafting processes of the UNHCR statute, the 1951 Convention, and the 1954 Stateless Persons Convention, during which the issue of Palestinian refugees was extensively discussed, demonstrates that UN Delegates then intended to create a special regime for Palestinian refugees. That regime consisted of the United Nations Conciliation Commission for Palestine's (UNCCP) protection mandate and the United Nations Relief and Works Agency for Palestine Refugees in the Near East's (UNRWA) assistance mandate,[143] as will be explained below.

The drafters believed that, because of the uniqueness of the Palestinian case, Palestinian refugees would get less protection than deserved, were they to be included in the system of the 1951 Convention alongside other refugees.[144] That uniqueness derived from a consensus among UN delegates that the wholesale persecution suffered by Palestinian refugees rendered them the undoubted status of refugees under Article 1 of the 1951 Convention.[145] In addition, it was also a unique case because "the obstacle to their repatriation was not dissatisfaction with their homeland [as required by Article 1], but the fact that a Member of the United Nations [i.e., Israel] was preventing their return;"[146] consequently, "the UN body itself bore heavy responsibility for their plight."[147]

In that context, Article 1D of the 1951 Refugee Convention served, on the one hand, to institutionalize two separate regimes – i.e., one for Palestinian refugees and another one for refugees in general – by asserting that the 1951 Refugee 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."[148] At the same time, the second paragraph of Article 1D established an inclusion clause the purpose of which is "to ensure the continuity of protection"[149] of Palestinian refugees by bringing them under the scope of the Convention whenever "such protection or assistance has ceased for any reason"[150] – to serve as a safety net that would afford them adequate protection at all times and in changing circumstances.

For a thorough analysis of the drafting history of Article 1D, refer to the 2005 edition of this *Handbook*.[151] The role of Article 1D in relation to Palestinian refugees will be further addressed in Chapter Two.

[143] Susan M. Akram, "Temporary Protection Status and Its Applicability to the Palestinian Case," *BADIL Information & Discussion Briefs*, no. 4 (June 2000): 4; Susan M. Akram, "Palestinian Refugees and their Legal Status: Rights, Politics, and Implications for a Just Solution," *Journal of Palestine Studies* 31, no. 3 (April 2002): 39–40, doi:10.1525/jps.2002.31.3.36; Susan Akram and Terry Rempel, "Temporary Protection as an Instrument for Implementing the Right of Return for Palestinian Refugees," *Boston University International Law Journal* 22, no. 1 (2004): 14.

[144] Akram, "Temporary Protection Status and Its Applicability to the Palestinian Case," 4; Akram and Rempel, "Temporary Protection as an Instrument for Implementing the Right of Return for Palestinian Refugees," 14.

[145] Akram, "Palestinian Refugees and Their Legal Status," 40.

[146] "Remarks of the Lebanese Representative," UN GAOR, 3d Comm., 5th Sess., 328th mtg., para. 47, UN Doc, *apud* ibid.

[147] Ibid. The Egyptian position stated at the twentieth meeting of the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons also illustrates such understanding: "[n]o 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. […] 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." UN General Assembly, "Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Summary Record of the Twentieth Meeting, 26 November 1951," November 26, 1951, UN Doc. A/CONF.2/SR.20, http://www.refworld.org/docid/3ae68cde4.html.

[148] UN General Assembly, "Convention Relating to the Status of Refugees," July 28, 1951, Article 1D.

[149] UNHCR, "2013 Note," 2.

[150] UN General Assembly, "Convention Relating to the Status of Refugees," Article 1D.

[151] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 77–83.

Following subsequent hostilities and crises that produced further Palestinian displacement, the United Nations issued resolutions affirming the right of Palestinian refugees to a just solution based on return. Thus, for example, following the 1967 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.[152]

Since 1948, the United Nations framework for a durable solution for the Palestinian refugee question has been welcomed and supported by Palestinian refugees who maintain their demand to return to homes and properties now located in Israel, to receive restitution for their lost properties and to receive adequate and fair compensation.

More than six decades after the first mass displacement, no such durable solution for Palestinian refugees has been achieved, despite the political negotiations between Israel and the Palestine Liberation Organization and other efforts. Consecutive Israeli governments have refused to re-admit a population that is not Jewish and not Israeli according to Israeli law, perceiving the population to be a demographic and political threat. Simultaneously, Western states have continued to fail to enforce international law and United Nations resolutions in the face of Israel's objections.[153]

6. United Nations Organizations Mandated to Provide Protection and/or Assistance to Palestinian Refugees (UNCCP, UNRWA and UNHCR)

Palestinian refugees are distinct from other refugees in their entitlement to protection and assistance from three United Nations organizations: UNCCP, UNRWA and UNHCR. Two of these agencies providing protection and assistance to Palestinian refugees and searching for durable solutions, UNCCP and UNRWA, existed at the time of the drafting of the 1951 Refugee Convention. UNHCR was mandated to serve as an alternative – i.e., a safety net to ensure continuity of protection for Palestinian refugees – if protection or assistance provided by UNCCP and UNRWA should "cease for any reason."[154]

Palestinian refugees are distinct from other refugees in two ways:

[152] 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 UN General Assembly, "Res. 2252 (ES-V)," para. 1(d).

[153] For further details, see BADIL, *Survey of Palestinian Refugees and Internally Displaced Persons, 2008-2009*, Chapter Five and 2010-2012Chapter Two.

[154] UN General Assembly, "Convention Relating to the Status of Refugees," Article 1D; UN General Assembly, "Resolution 428(V), Annex - Statute of the Office of the United Nations High Commissioner for Refugees," December 14, 1950, para. 7(c), UN Doc. A/RES/428(V).

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 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.

Since the demise of the UNCCP some 40 years ago (further explained below), however, only two United Nations agencies (UNRWA and UNHCR)have been providing Palestinian refugees with protection and assistance. The mandates of UNRWA and UNHCR are geographically separated so that Palestinian refugees fall under UNRWA's mandate when living in UNRWA's area of operations– i.e., Lebanon, Jordan, Syria, Gaza Strip and West Bank– and under UNHCR's mandate when living in countries outside that area.

However, UNRWA's lack of a specific protection mandate results in a protection gap for Palestinian refugees living in UNRWA's area of operations. Moreover, the search for durable solutions for *all* Palestinian refugees remains unresolved, while there is no international agency actively pursuing that quest. These questions, however, while being matters of ongoing concern and debate among Palestinian refugees, United Nations agencies and academia, are beyond the scope of this *Handbook* and will not be further addressed.[155]

Palestinian asylum claims in states that are signatories to the 1951 Refugee Convention raise two major issues:

- UNRWA's mandate of humanitarian assistance has never included an explicit authorization of international protection. Despite various measures that have incorporated aspects of international protection in the field – many commended as such by the General Assembly – UNRWA's mandate does not include intervention for durable solutions for Palestinian refugees. Thus, UNRWA cannot provide full international protection for Palestinian refugees in Arab host states, nor in the occupied Palestinian territory;
- UNRWA's registration and services are tied to recognition of certain categories of 'Palestinian refugees' and 'displaced persons', but are not available to the entire population of Palestinian refugees covered by UNGA Res. 194. While registration with UNRWA can serve as an indicator of refugee status under Article 1D of the 1951 Refugee Convention, such registration does not imply that the person enjoys protection in their first country of refuge.

[155] For more information, 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 also BADIL Resource Center for Palestinian Residency and Refugee Rights, *Survey, 2010-2012*, vol. VII, chap. 2.

6.1. The United Nations Conciliation Commission for Palestine (UNCCP)

The UNCCP was established by United Nations General Assembly Resolution 194(III), paragraph 2, in December 1948 based on a recommendation by the United Nations Mediator on Palestine, Count Folke Bernadotte.[156] The three members of the UNCCP appointed by the General Assembly were, and still are, the United States, France and Turkey.

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;[157]
- 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;[158]
- 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.[159]

While affirming the right of Palestinian refugees to return to their homes,[160] 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.[161]

In 1950, the General Assembly specifically requested that the UNCCP protect the rights, properties and interests of the refugees.[162]

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[156] United Nations, *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, (September 16, 1948), http://unispal.un.org/UNISPAL.NSF/0/AB14D4AAFC4E1BB985256204004F55FA.

[157] UN General Assembly, "Res. 194(III)," para. 6.

[158] Ibid., para. 8.

[159] Ibid., para. 10.

[160] Ibid., para. 11.

[161] Ibid.

[162] UN General Assembly, "Resolution 394(V) - Palestine: Progress Report of the United Nations Conciliation Commission for Palestine; Repatriation or Resettlement of Palestine Refugees and Payment of Compensation due to Them," December 14, 1950, para. 2(c), UN Doc. A/AC.25/W.82/Rev.1, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/394(V)&Lang=E&Area=RESOLUTION.

The UNCCP was thus established with a dual mandate. First, as suggested by its name, the Commission was to seek conciliation between the parties to find, in accordance with UNGA Resolution 194(III), a permanent solution to all outstanding problems of the Arab-Israeli conflict, including the Palestinian refugee problem. Second, it was to provide protection to the refugees by safeguarding their right to return and other related rights, including their right to restitution of the refugees' property.[163]

The UNCCP tried to persuade Israel to permit the return of certain categories of refugees (i.e., citrus grove owners and laborers) – without prejudicing the right of all refugees to return to their original homes – based on humanitarian considerations. The UNCCP also attempted to reunite separated Palestinian families, such as dependents of breadwinners who had remained in the territory that 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 laborers, 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 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,[164] intervention with relevant authorities, and actual documentation of Palestinian property inside the borders of the new State of Israel.[165]

In 1950, the Commission established a sub-office ("Refugee Office") to identify Arab property ownership inside Israel and examine various interim measures through which refugees could derive income from their properties. A global and individual identification of Palestinian property was conducted based on British mandate records.[166] In the early 1960s, the identification was completed: 430,000 records

[163] Susan M. 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).See also Terry Rempel, *The United Nations Conciliation Commission for Palestine, Protection, and Durable Solution for Palestinian Refugees* (Bethlehem: BADIL Resource Center for Palestinian Residency and Refugee Rights, June 5, 2000), 3, Brief No. 5.

[164] 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).

[165] Salman Abu Sitta, "The Palestinian Nakba 1948, The Register of Depopulated Localities in Palestine" (Palestinian Return Center London, 2001); Terry Rempel, "Housing and Property Restitution: The Palestinian Refugee Case," in *Returning Home: Housing and Property Restitution Rights of Refugees and Displaced Persons.*, ed. Scott Leckie (New York: Transnational Publishers, 2003), 296.

[166] Michael R. Fischbach, *Records of Dispossession: Palestinian Refugee Property and the Arab-Israeli Conflict* (New York: Columbia University Press, 2003).

documenting around 1.5 million individual holdings.[167] 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 another 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, provided that Israel gave refugees the choice to return.[168]

In addition, the UNCCP established the Economic Survey Mission to "examine the economic situation of the countries" affected by the conflict, and recommend to UNCCP an integrated program 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.[169]

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:

- Intervention 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.

However, UNCCP's efforts were to be thwarted by a mismatch between a global consensus which pledged full repatriation, and Israel's refusal to offer, initially, no

[167] 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," April 28, 1964, UN Doc.A/AC.25/W/84, http://unispal.un.org/unispal.nsf/0/e11790721615c5aa052565f600543580?OpenDocument.See Also Fischbach, *Records of Dispossession*, and Sami Hadawi, *Palestinian Rights And Losses In 1948*, First Edition (London: Saqi Books, 2001). Estimates of the value of these properties as of 1998 range from US$23-150 billion. BADIL, *Survey of Palestinian Refugees and Internally Displaced Persons, 2008-2009*, 11.

[168] 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 Resettlement," October 2, 1961, para. 31, UN Doc. A/AC.25/W/82/Rev.1.

[169] UNCCP, "Fourth Progress Report (For the Period 9 June to 15 September Inclusive)," September 22, 1948, UN Doc.A/992, Annex 1.

more than a restricted repatriation and, later, no repatriation at all.[170] In response to that 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 intervenor with Israel (or other states) to protect refugees' rights and interests."[171] The result was that, by 1952,[172] UNCCP's activities were restricted to "gathering information on refugee property in Israel and investigating the possibilities of compensation."[173] Accordingly, by the early 1950s UNCCP reached the conclusion that it was unable to fulfill its mandate.[174] The ability of UNCCP to protect and promote the legal rights of Palestinian refugees was compromised by its mandated requirement to merge refugee protection with the broader task of Arab-Israeli conciliation, combined with a lack of international political will. The rights affirmed in United Nations General Assembly Resolution 194(III) were often deferred in light of what the Commission came to view as the "practicalities on the ground," i.e., Israel's opposition to the return of Palestinian refugees.[175] Parallel UNCCP efforts toward resettling these refugees also failed, as Arab host states and the refugees themselves were opposed to any form of resettlement which did not include the option to return.[176]

There is some debate concerning whether UN Resolution 394(V),[177] of 14 December 1950, reduced or actually expanded UNCCP's mandate.[178] The Resolution reads:

> [The General Assembly:]
> 2. Directs the United Nations Conciliation Commission for Palestine to establish an office which, under the direction of the Commission, shall:
> (a) Make such arrangements as it may consider necessary for the assessment and payment of compensation in pursuance of paragraph 11 of General Assembly resolution 194 (III);
> (b) Work out such arrangements as may be practicable for the implementation

[170] Susan M. Akram and Terry Rempel, "Recommendations for Durable Solutions for Palestinians Refugees: A Challenge to the Oslo Framework," *The Palestine Yearbook of International Law Online* 11, no. 1 (2001): 20.

[171] Akram, "Palestinian Refugees and Their Legal Status," 42.

[172] The year of 1952 is emblematic because it was in that year that UNCCP's "budget was limited solely to maintaining a record-keeping office in New York." Ibid., 51, fn. 35.

[173] Ibid., 42.

[174] The UNCCP wrote that "the present unwillingness of the parties fully to implement the UNGA resolutions under which the Commission is operating, as well as the changes which have occurred in Palestine during the past three years, have made it impossible for the Commission to carry out its mandate," UNCCP, "Progress Report of the United Nations Conciliation Commission for Palestine," November 20, 1951, para. 79 and 87, UN Doc.A/1985. See Harish Parvathaneni, "UNRWA's Role in Protecting Palestine Refugees," in *Rights in Principle - Rights in Practice: Revisiting the Role of International Law in Crafting Durable Solutions for Palestinian Refugees*, by Terry Rempel (BADIL Resource Center for Palestinian Residency and Refugee Rights, 2009), 15.

[175] Rempel, *The United Nations Conciliation Commission for Palestine, Protection, and Durable Solution for Palestinian Refugees*, 4.

[176] UNCCP, "Historical Survey of Efforts of the UNCCP," para. 31.

[177] UN General Assembly, "Resolution 394(V)," para. 2.

[178] Akram and Rempel, "Recommendations for Durable Solutions for Palestinians Refugees: A Challenge to the Oslo Framework," p. 21, footnote 86.

of the other objectives of paragraph 11 of the said resolution;
(c) Continue consultations with the parties concerned regarding measures for the protection of the rights, property and interests of the refugees;

It seems, however, that UNCCP's own interpretation of such resolution reduced the scope of the agency's activities from "general discussions," such as the efforts toward a durable solution, to "practical measures."[179]Thus, as of the mid-1950s, the Commission limited its activities primarily to property identification and documentation,[180] and ceased to provide protection and to actively search for a durable solution.[181] Funding of the UNCCP was brought into line with this limited mandate.

Since 1964, the Commission's annual reports to the General Assembly have noted a lack of progress on its aims, 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.[182] As a result, the UNCCP became practically defunct some 50 years ago. Although, the UNCCP still has an office attached to the UNSG in New York, it does not play any meaningful protection role, its mandate and historical role are largely unknown. The UNCCP publishes an annual, one-page report stating "it has nothing new to report."[183]

At the time of the drafting of the 1951 Refugee Convention, the UNCCP was already 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 United Nations agency ("organs or agencies of the United Nations") and the use of the term "protection" as a reference to UNCCP's protection mandate as opposed to UNRWA's assistance mandate. Strikingly, academic analysis

[179] UNCCP, "Historical Survey of Efforts of the UNCCP," para. 53: "the General Assembly resolution of 14 December 1950 marked a new phase in the Commission's work, a phase in which it must progress from *general discussions* to the seeking, and in certain cases, the putting into operation, of *practical measures* towards a liquidation of the refugee problem [emphasis added]." Even prior to that, in its Fourteenth Progress Report, the UNCCP asserted that it had "been guided by the terms of General Assembly resolution 512 (VI) of 26 January 1952, which expressed the view that the Governments concerned had the primary responsibility for reaching a settlement of their outstanding differences" (UNCCP, "Fourteenth Progress Report of the United Nations Conciliation Commission for Palestine," March 3, 1955, para. 1, UN Doc. A/2897, http://unispal.un.org/UNISPAL.NSF/0/7168EDBD1912F7BD85256102006039A6), seemingly moving away from the pursuit of a durable solution.

[180] Akram, "Palestinian Refugees and their Legal Status," 42.Property-related activities were part of UNCCP's mandate as established by resolution 394(V): "[the UNCCP shall] [c]ontinue consultations with the parties concerned regarding measures for the protection of the rights, *property* and interests of the refugees [emphasis added]" (UN General Assembly, "Resolution 394(V)," para. 2(c)).

[181] UNCCP, "Fourteenth Progress Report of the United Nations Conciliation Commission for Palestine."

[182] UNCCP, *Report of the United Nations Conciliation Commission for Palestine*, August 31, 2004, A/59/260, Annex.

[183] UNCCP, *Report of the United Nations Conciliation Commission for Palestine*, September 3, 2013, A/68/335, Annex.

largely fails to refer to the mandate and historical protection role of the UNCCP.[184] This absence is reflected in national jurisprudence on Palestinian asylum cases.

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

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"[185] 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."[186]

Palestine Refugees

UNRWA's definition of *Palestine refugees* encompasses Palestinians who fulfill 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).[187]

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;[188]

[184] Most academics have not referred to the UNCCP in their interpretation of Article 1D. James C. Hathaway, *The Law of Refugee Status* (Butterworths, 1991), 205–209; Atle Grahl-Madsen, *The Status of Refugees in International Law: Refugee Character* (A. W. Sijthoff, 1966), 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*, 24ff: although early UNCCP protection activities are mentioned, these are not reflected in his interpretation of Article 1D. Guy Goodwin-Gill, on the other hand, has referred to UNCCP's protection mandate: see Guy Goodwin-Gill and Jane McAdam, *The Refugee in International Law*, 3 edition (Oxford ; New York: Oxford University Press, 2007), 221: "At the time, both protection and assistance for Palestinian refugees fell within institutional arrangements that included UNCCP and UNRWA;" and Ibid., 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)."

[185] UN General Assembly, "Resolution 302(IV) - Assistance to Palestine Refugees," December 8, 1949, para.7(a), UN Doc. A/RES/302(IV), http://unispal.un.org/UNISPAL.NSF/0/AF5F909791DE7FB8525560E500687282.

[186] Ibid., para. 5.

[187] UNRWA, "Consolidated Eligibility and Registration Instructions (CERI)," January 1, 2009, 4, http://unispal.un.org/UNISPAL.NSF/0/699C38781966419F8525773F00490262. See also United Nations Relief and Work Agency for Palestine Refugees, *UNRWA: A Brief History, 1950-1982* (UN, 1983): "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."

[188] UNRWA, "Consolidated Eligibility and Registration Instructions (CERI)," January 1, 2009, 4, point 3.12.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 the pre-1948 British Mandate. The Instructions are being revised to correct this definition as this *Handbook* goes to press.

- "normal place of residence" indicates that the refugees were residing in that territory for the indicated two-year period immediately preceding 15 May 1948;[189]
- "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;[190]
- 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.[191]

UNRWA is the lead international agency mandated to assist Palestine refugees in five geographical areas of operations (Syria, Lebanon, Jordan, the West Bank and the Gaza Strip) with humanitarian assistance in the form of education, health and relief and social services.[192] The Agency does not hold an explicit mandate to protect or promote durable solutions for Palestine refugees. In principle, primary responsibility for protection of the Palestinian refugees in the Agency's area of operations lies with the Arab host governments in Lebanon, Syria and Jordan, and with Israel as the Occupying Power in the occupied Palestinian territory.[193]

UNRWA was established in 1949 to complement the work of the UNCCP by providing relief to Palestinian refugees.[194] Based on the expectation that the plight of the refugees would soon be resolved in accordance with the framework set forth in United Nations General Assembly Resolution 194(III), UNRWA was accorded a short-term mandate,[195] which has been extended on a regular basis by the United Nations General Assembly due to the lack of durable solutions for Palestinian

[189] Ibid.

[190] 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 Ibid., footnote 2. 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).

[191] Ibid. This definition excludes Palestinians who emigrated and took up permanent residence in other countries prior to the start of the 1948 conflict.

[192] 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 BADIL Resource Center for Palestinian Residency and Refugee Rights, *Survey, 2010-2012*, vol. VII, chap. 2 and 3.

[193] With regard to protection in the oPt, the Norwegian authorities, for example, had 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 were therefore entitled to recognition of refugee status under Article 1(D). See BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 206–207. Since 2009, however, Norwegian practice toward Palestinian refugees has changed (see Norway's profile in Chapter Three, Section 4).

[194] UN General Assembly, "Res. 302(IV)," para. 7.

[195] All relief and works operations were to be terminated by the middle of 1951 (ibid., para. 6).

refugees.[196] 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.[197]

UNRWA maintains that, as a humanitarian and human development agency, its role is "to highlight the urgent need for that solution and to help ensure that in its elaboration the rights and interests of the refugees are safeguarded."[198] The Agency also acknowledges that "a just and durable solution is the key to the enjoyment of national protection and the realization of other rights,"[199] although responsibility for the Palestinian refugee question lies with the parties to the conflict and other political actors.[200]

Without an explicit protection mandate, UNRWA provides limited protection while promoting its identity as "a major provider of public services."[201] UNRWA updates the only existing database of 1948 Palestinian refugees and issues registration cards based on those records. Although unsystematic, partial and not statistically valid, UNRWA's database includes invaluable information about 5 million refugees and their families. The Agency's general assistance and emergency response during humanitarian crises guarantee basic economic and social rights. Limited protection is also provided through monitoring, reporting and intervention, sometimes in cooperation with UNHCR.[202]

From 1968 onwards, UNRWA's mandate was expanded to include the provision

[196] See, for example, UN General Assembly, "Resolution 59/118 - Persons Displaced as a Result of the June 1967 and Subsequent Hostilities," December 10, 2004, para. 3, UN Doc. A/RES/59/118: "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." The current mandate was renewed until 30 June 2014; see http://www.unrwa.org/who-we-are.

[197] Ibid., para. 1: "*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."

[198] Nicholas Morris, *What Protection Means for UNRWA in Concept and Practice*, Consultant's Report (U.N. Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), March 31, 2008), para. 3.2.

[199] Ibid., para. 4.1.

[200] UNRWA and UNHCR, "The United Nations and Palestinian Refugees," January 2007, 5, http://www.unrwa.org/userfiles/2010011791015.pdf.

[201] UNRWA, "Programme Budget 2014-2015," August 2013, para.5.3, http://www.unrwa.org/sites/default/files/2014-2015_programme_budget_blue_book.pdf.

[202] In 1991, following the expulsion of the Palestinian from Kuwait, the then Commissioner-General of UNRWA affirmed during a meeting with the donors that the Agency had a responsibility towards Palestinians being "persecuted, hounded, and expelled by the Kuwaiti government for supposed support of the Iraqi occupation." Although UNRWA's mandate is limited to its five areas of operation, the Commissioner General made it clear that he favored a pragmatic approach: "I consider that the responsibility of UNRWA extends to Palestinians in all parts of the Middle East [including Kuwait]. If ambivalence is allowed to persist in this respect, this can only delay ad hoc UN protection and humanitarian activities." As a result, UNRWA sent a special mission to Kuwait from July to September 1992 to assess the situation of the remaining Palestinians in Kuwait (UN doc. A/48/13, 7). The mission operated in close cooperation with UNHCR, yet the effects of this mission were limited. Takkenberg, *The Status of Palestinian Refugees in International Law*, 300–301.

of humanitarian assistance, on an emergency basis, also to persons displaced as a result of the 1967 War and subsequent hostilities.[203] UNRWA's role was again expanded following the massacre in the Palestinian refugee camps of Sabra and Shatila in September 1982.[204] A United Nations resolution entitled "Protection of Palestine Refugees" stipulated that UNRWA, in consultation with the United Nations Security-General, should "undertake effective measures to guarantee the safety and security and the legal and human rights of the Palestine refugees in the occupied [Lebanese] territories."[205] Similar resolutions in 1983, 1988 and 1993 reiterated the need for UNRWA to continue its efforts in preserving the security and human rights of the Palestinian refugees in territory under Israeli occupation since 1967.[206]

During the first *Intifada* (1987–1993), UNRWA protection activities increased following United Nations Security Council Resolution 605, which called upon the United Nations Secretary-General to present the Security Council with "recommendations on ways and means for ensuring the safety and protection of the Palestinian civilians under Israeli occupation."[207]The Secretary-General provided a report to the Security Council which outlined four principal means by which the protection of the Palestinian people could be secured (Goulding Report)[208]:

- Physical protection;
- Legal protection;
- Protection by way of general assistance; and,
- Protection by publicity.

UNRWA was requested by the United Nations Security-General to enhance its "general assistance" capacity, which encompassed "help individuals or groups of individuals to resist violations of their rights (e.g. land confiscations) and to cope with the day-to-day difficulties of life under occupation, such as security restrictions, curfews, harassment, bureaucratic difficulties and so on,"[209] and thus established the

[203] The UNRWA Commissioner-General at the time, Lawrence Michelmore, approached the United Nations Under-Secretary-General seeking international protection for Palestinian refugees in the oPt, but the initiative failed to attract sufficient support at the United Nations based on the view that Israel would oppose a protection initiative. UN General Assembly, "Res. 2252 (ES-V)."

[204] 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.

[205] UN General Assembly, "Res. 37/120," sec. J, para. 1.

[206] See UN General Assembly, "Resolution 38/83(I) - Protection of Palestine Refugees," December 15, 1983, UN Doc. A/RES/38/83 A-K; UN General Assembly, "Resolution 48/40.United Nations Relief and Works Agency for Palestine Refugees in the Near East: Assistance to Palestine Refugees," December 10, 1993, UN Doc.A/RES/48/40A-J.

[207] UN Security Council, "Resolution 605 - Territories Occupied by Israel," December 22, 1987, para.6, UN Doc. S/RES/605 (1987).

[208] UN Secretary-General, *Report Submitted to the Security Council by the Secretary-General in Accordance with Resolution 605 (1987) (Goulding Report)*, January 21, 1988, para.28, UN Doc. S/19443.

[209] Ibid., para. 28(c).

Refugee Affairs Officer Program in the occupied Palestinian territory to provide protection through monitoring, reporting, and a limited degree of intervention with the Israeli authorities on the ground.[210] The Refugee Affairs Officer Program was eventually phased out. Although the Refugee Affairs Officer Program by then "constitute[d] the most expansive protection mechanism ever instituted by UNRWA[,] it was unable to bridge the protection gap in relation to Palestine refugees in the OPT."[211]

During the second *Intifada* of the early 2000s, UNRWA introduced an Operational Support Officers Program to facilitate its emergency activities. Far more limited than the protection-related activities of the Refugee Affairs Officer Program, the goal of the Operation Support Officers Program is "to assist in alleviating the adverse effects that the restrictions imposed by Israeli authorities [are] having upon the Agency's provision of humanitarian services."[212] The Operation Support Officers Program provides a measure of protection to the extent that it has assisted in the delivery of essential humanitarian aid to the refugees.[213]

Encouraged by its first donor conference in 2004, UNRWA has included a rights-based approach to its operations. UNRWA appointed a senior protection and policy advisor to study ways in which it could increase its protection work for Palestinian refugees, in particular refugee children, based on the *Convention on the Rights of the Child*.[214] UNRWA has expressed its intention to continue developing a "protection strategy which focuses on clarifying the actions, rights and legal precepts that are germane to UNRWA's mandate and to the Agency's specific operational context […] to maximize the points of intersection between the human development and human rights paradigm."[215]

In short, some of UNRWA's general assistance activities may be considered types

[210] The activities under the Refugee Affairs Officer Program are described in UNRWA's annual reports for the period. See UN General Assembly, *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, Supplement No. 13*, General Assembly Official Records: Forty-Third Session, (September 16, 1988), para. 52, UN Doc.A/43/13. See also UN General Assembly, *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, Supplement No. 13*, General Assembly Official Records: Forty-Sixth Session, (October 9, 1991), para. 99, UN Doc.A/46/13.

[211] Refugee Affairs Officer Program Guidelines, 3rd ed., 15 March 1989, p.2 cited in Parvathaneni, "UNRWA's Role in Protecting Palestine Refugees," 17–18.

[212] UN General Assembly, *Report of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, 1 July 2000-30 June 2001, Supplement No. 13*, General Assembly Official Records: Fifty-Sixth Session, (October 18, 2001), para. 150, UN Doc. A/56/13 (SUPP).

[213] UN General Assembly, *Report of the Commissioner-General of the United Nations Relief and Works Agency for the Palestine Refugees in the Near East, 1 Jan - 31 Dec 2011*, General Assembly Official Records: Sixty-Seventh Session, (August 28, 2012), para. 41, UN Doc.A/67/13.

[214] UN General Assembly, "Resolution 60/102 - Operations of the United Nations Relief and Works Agency for Palestine Refugees in the Near East," January 16, 2006, para. 6, UN Doc.A/RES/60/102.

[215] UNRWA, "Programme Budget 2008-2009," July 2007.

of protection because they relate to securing the basic rights of the refugees.[216] At its core, UNRWA's mandate continues to provide essential humanitarian services until there is a just solution to the refugee problem.[217] UNRWA's minimal protection role does not include the full panoply of international protection. The task of seeking full protection, including the implementation of durable solutions commonly afforded to refugees, was initially mandated to the UNCCP.[218]

6.3. The United Nations High Commissioner for Refugees (UNHCR)

UNHCR's core obligation is to provide international protection to and search for durable solutions for refugees worldwide. Under its Statute and subsequent General Assembly and ECOSOC resolutions, and consistent with the 1951 Refugee Convention, UNHCR's responsibilities relate primarily to several groups of people known collectively as "persons of concern to UNHCR." UNHCR's mandate is not limited to refugees under the 1951 *Refugee Convention* and its 1967 *Protocol*, but also covers refugees defined in the *Cartagena Declaration* and *OAU Convention*,[219] returnees, stateless persons and internally displaced persons.[220]

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. Paragraph 7(c) of UNHCR's Statute provides that the competence of the High Commissioner for

[216] Note 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). Parvathaneni, "UNRWA's Role in Protecting Palestine Refugees." See also UN General Assembly, *Report of the Commissioner-General of the United Nations Relief and Works Agency for the Palestine Refugees in the Near East, 1 Jan - 31 Dec 2011*.

[217] Peter Hansen, "Commissioner-General of UNRWA, Address to the American University of Cairo: From Humanitarian Crisis to Human Development - The Evolution of UNRWA's Mandate to the Palestine Refugees" (UNRWA, September 21, 2003), http://unispal.un.org/UNISPAL.NSF/0/3C891069FF7A368985256DC8007058DD.

[218] BADIL Resource Center for Palestinian Residency and Refugee Rights, *Survey, 2010-2012*, vol. VII, chap. 2.

[219] Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, "Cartagena Declaration on Refugees," November 22, 1984, OAS Doc. OEA/Ser.L/II.66, Doc. 10, Rev. 1, at 190-193, http://www.unhcr.org/45dc19084.html.

[220] Kate Jastram and Marilyn Achiron, *Refugee Protection: A Guide to International Refugee Law (Handbook for Parliamentarians)* (Geneva, Switzerland: UNHCR, 2001), 23, http://www.unhcr.org/3d4aba564.html.

Refugees shall not apply to a person "who continues to receive from other organs or agencies of the United Nations protection or assistance."[221] The first sentence of Article 1D of the 1951 Refugee Convention reads along similar lines, but 1D incorporates a second sentence that does not appear in the UNHCR statute. Article 1D states:

> 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.[222]

As indicated by the second paragraph of Article 1D, Palestinian refugees falling within its scope 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."[223]

UNHCR has interpreted the above provisions to mean that: a) Palestinian refugees *receiving* or *entitled* to receive assistance from UNRWA fall within UNHCR's regime whenever such "protection or assistance" has ceased due to "any objective reason outside the control of the person concerned such that the person is unable to (re-)avail themselves of the protection or assistance of UNRWA;"[224] 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.[225] For a detailed analysis of UNHCR's interpretation of Article 1D, refer to section 2.1 of Chapter Two, p. 26.

UNHCR is mandated to carry out activities as outlined in its Statute in order to ensure that refugees receive the protection to which they are entitled under international law, including:

- Promoting, through special agreements with governments, the execution of any measures calculated to improve the situation of refugees and to reduce the number requiring protection; and,

[221] UN General Assembly, "Statute of the UNHCR."

[222] UN General Assembly, "Convention Relating to the Status of Refugees," Article 1(D).

[223] Ibid., Article 1D.

[224] UNHCR, "2013 Note," 4.

[225] By referring to the "Palestinian refugees who fall within the scope of Article 1D"who fall under UNHCR's mandate, we mean those Palestinians who are brought under UNHCR's mandate by the inclusion clause in Article 1D – i.e., those who remain Article 1D refugees. Evidently, Palestinians who present a well-founded fear of persecution can also fall under the protection of UNHCR, under Article 1A(2); however, the following criteria do not concern such persons, but only those Palestinians refugees who are brought under UNHCR's regime by Article 1D, para. 2.

- Assisting governmental and private efforts to promote voluntary repatriation or assimilation of refugees within new national communities.[226]

UNHCR maintains offices in Egypt, Jordan, Lebanon and Syria, and within the Agency's competence are Palestinians who are neither 1948 nor 1967 refugees and who are recognized as Convention refugees under Article 1A(2) on grounds of a well-founded fear of persecution.[227]

UNHCR extends a minimal level of protection to Palestinians within and outside of UNRWA's area of operations[228] that includes assistance with travel documents, renewal of UNRWA registration cards, facilitation of interim solutions for Palestinian refugees in cases of forced departure from Arab host countries, legal aid for stranded Palestinian refugees seeking asylum and advice to states on the interpretation and application of the Refugee Convention.[229]At the end of 2012, UNHCR included 97,317 Palestinian refugees within its mandate.[230] The Agency was thus providing assistance and protection to approximately 1.3% of the worldwide Palestinian refugee population.

[226] UN General Assembly, "Statute of the UNHCR," para. 8.

[227] UNHCR, "2009 Revised Note;" see also UNHCR, "2013 Note," 3.

[228] Abbas Shiblak, "The Palestinian Refugee Issue: A Palestinian Perspective" (Chatham House: The Royal Institute of International Affairs, February 2009), http://www.chathamhouse.org/publications/papers/view/108973.

[229] UNHCR has also intervened on behalf of Palestinians following the Palestine Liberation Organization's expulsion from Lebanon in 1982, for example, when the agency intervened with the Lebanese authorities on behalf of Palestinian refugees who were experiencing difficulty in obtaining the renewal of Lebanese travel documents. In the 1990–1991 Gulf War, UNHCR extended its protection and assistance to several hundred thousand Palestinian refugees in the Gulf countries, who were subject to detention and expulsion. Between 1995 and 1997, UNHCR (jointly with UNRWA) provided assistance to Palestinian refugees stranded on the Libyan-Egyptian border after their expulsion from Libya, and intervened for a satisfactory solution. As a result of the U.S.-led war and occupation of Iraq, UNHCR secured protection under the Refugee Convention for small numbers of Palestinian refugees in the United States, European (Iceland, Norway, Sweden) and Latin American countries (Brazil, Chile). During the 2008/2009 Israeli military assault on the Gaza Strip, "Operation Cast Lead," UNHCR called for strict adherence to humanitarian principles, including respect for the universal rights of those fleeing war to seek safety in other states.

[230] UNHCR, *Displacement: The New 21st Century Challenge*, UNHCR Global Trends, June 2013, 44, http://www.unhcr.org/51bacb0f9.html.

Chapter Two

The 1951 Refugee Convention and Article 1D

The 1951 Refugee Convention and Article 1D

The 1951 Refugee Convention recognizes the special circumstances and status of Palestinian refugees *as a group* through a particular provision (Article 1D) for determination of Convention status and entitlement to Convention benefits. 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. First, a special protection and assistance regime composed of UNCCP, UNRWA and UNHCR was established. Second, a different and separate analysis based on Article 1D applies in the determination of the status of Palestinians as refugees.

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. First, 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)). After World War II, the British government relinquished its mandate over Palestine in favor of UN administration of the territory. On 29 November 1947 the United Nations adopted Resolution 181(II), which would partition Mandate Palestine into two states: one with a majority Arab population and another with a majority Jewish population, with Jerusalem as an international zone under international supervision.[231]Fighting erupted between the Arab population and Zionist militia only days after the adoption of the Partition Plan. The Jewish - Zionist colonists began acquiring territory that had been delineated as part of the Arab State under the Partition Plan. On 14 May 1948, the British officially left Palestine, and the Zionist leaders of the Jewish-Zionist colonists declared the creation of the State of Israel.[232] More fighting ensued, and the newly created state acquired further territory which had been designated for the Arabs under the Partition Plan. In 1949 both parties signed the Armistice agreement, and fighting ceased. The 1949 Armistice Agreement established "The Green Line," allotting far more land to the State of Israel than was contemplated in the Partition Plan.[233]Second, there was a general consensus among the drafters that Palestinian refugees *as a group* were genuine refugees in need of assistance and protection, and did

[231] BADIL Resource Center for Palestinian Residency and Refugee Rights, *Survey, 2010-2012*, VII:xxii.
[232] Ibid., VII:xxii–xxiii.
[233] Ibid., VII:xxiii.

not fit under the individualized criteria of refugee in the Refugee Convention.[234] Third, at a time when the international community was engaged in efforts to resolve a multitude of refugee problems in post-World War II Europe on the basis of resettlement in third states, 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 United Nations General Assembly Resolution 194(III) (1948) would dwindle and Palestinians would fall into the general resettlement-focused regime of the Refugee Convention.

The General Assembly initiated the drafting of the 1951 Refugee Convention 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 for consideration, recommending that the principle of the refugees' early return to their countries of origin be taken into consideration.[235]

Debate in the early drafting stages of the 1951 Refugee Convention 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 United Nations attention. In the final stages, however, the discussion focused on ensuring continuity of protection so that these refugees would retain their refugee status in the event that protection under the special United Nations regime ceased, in order to foreclose the possibility that Palestinian refugees would become permanently excluded from the scope of the Convention. The objective of the inclusion clause in Article 1D(2) was thus to ensure continuity of protection for Palestinian refugees (i.e., "[…] how their protection was to be ensured").[236]

[234] The magnitude of the problem was highlighted by the representative of Saudi Arabia (Mr. Baroody) 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."

[235] UN General Assembly, "Resolution 8(I): Question of Refugees," February 12, 1946, para. c(iii), UN Doc. A/RES/8(I): "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 Alex Takkenberg and Christopher C. Tahbaz, *Travaux Preparatoires: The Collected Travaux Preparatoires of the 1951 Geneva Convention Relating to the Status of Refugees* (Dutch Refugee Council, 1989), vols. I, II, III, IV.

[236] For an elaboration on the objectives of the amendment, including extending the Convention's scope of protection or assistance to Palestinians and the United Nations' role in creating the Palestinian refugee problem, see UN General Assembly, "Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Summary Record of the Second Meeting, 2 July 1951," July 20, 1951, 22, UN Doc. A/CONF.2/SR.2; UN General Assembly, "Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Summary Record of the Third Meeting, 3 July 1951," November 19, 1951, 10, UN Doc.A/CONF.2/SR.3; UN General Assembly, "Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Summary Record of the Twenty-Ninth Meeting, 19 July 1951," November 28, 1951, 6, UN Doc. A/CONF.2/SR.29. See also BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 75–83.

Consequently, Article 1D was adopted in its entirety by sixteen votes to none, with three abstentions.[237]

Article 1D of the 1951 Refugee Convention references relevant United Nations General Assembly resolutions. Resolutions related to the hostilities of 1948 are relevant for determining *the group* of Palestinians qualifying as refugees *vis-à-vis* Israel (the refugee-generating state/persecuting state), and provides for their entitlement to protection under the Convention until their situation is resolved in accordance with these resolutions if the special UNCCP/UNRWA regime should fail them.[238] It is thus the purpose of Article 1D to ensure continuity of protection for Palestinian refugees 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.

1. Standards and Benefits of the 1951 Refugee Convention

The 1951 Refugee Convention prescribes certain standards of treatment and benefits to be granted to refugees.[239] 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-favored-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: 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); labor legislation and social security (Article 24(1)); and fiscal charges (Article 29).The 1951 Refugee Convention specifies benefits and standards of refugee protection in Articles 3-5, 7-8, 10-24, and 26-34.

1.1. Non-refoulement

The 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

[237] UN General Assembly, "Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Summary Record of the Thirty-Fourth Meeting, 25 July 1951," November 30, 1951, 12, UN Doc. A/CONF.2/SR.34.

[238] While at the time of drafting the 1951 Refugee Convention, United Nations General Assembly Resolution 194(III) (1948) represented the major relevant United Nations resolution, the plural chosen in the language "relevant UN resolutions" clearly implies that the drafters intended to make reference also to other relevant United Nations resolutions (e.g., United Nations General Assembly Resolution 181(II)) and Armistice agreements. Also, it implies the drafter's expectation of passing resolutions on Palestine refugees' status and durable solutions in the future. Thus, the plural language used at the time established a wide space to include future relevant resolutions dealing with unexpected evolution of the unresolved problem of Palestine refugees, such as United Nations Security Council Resolution 237 (1967).

[239] Note that states might have made reservations to these standards.

in which their lives or freedoms may be threatened. No reservations are permitted to Article 33 of the 1951 Convention, which prescribes *non-refoulement*, but the principle is broader than Article 33. *Non-refoulement* also is prohibited under other human rights law, including Article 3 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[240] and Article 7 of the International Covenant on Civil and Political Rights,[241] as well as customary international law.[242]

Persons meeting the refugee definition, whether under Article 1A(1), Article 1A(2) or Article 1D(2), as well as others whose return to their country of origin would violate international law, are entitled to this fundamental right of *non-refoulement*. 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 fulfill the refugee definition.[243]

1.1.1. 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 and Jane McAdam explain 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

[240] UN General Assembly, "Resolution 39/46 - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [Annex]," December 10, 1984, UN Doc. A/RES/39/46, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/39/46, Article 3.

[241] UN General Assembly, "International Covenant on Civil and Political Rights," Article 7.

[242] See, e.g., UNHCR, "The Principle of Non-Refoulement as a Norm of Customary International Law. Response to the Questions Posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in Cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93," January 31, 1994, http://www.refworld.org/docid/437b6db64.html; and UNHCR, "UNHCR Note on the Principle of Non-Refoulement," November 1997, http://www.refworld.org/docid/438c6d972.html. See also Goodwin-Gill and McAdam, *The Refugee in International Law*, 285–286, 302–303, 345–354, rejecting the arguments of James Hathaway that non-refoulement does not constitute customary international law. In addition, UNHCR has argued that the principle of non-refoulement has been progressively acquiring the character of peremptory law (*jus cogens*), i.e., a norm from which no derogation is permitted. See, e.g., UNHCR, "Executive Committee Conclusion No. 25 (XXXIII) - General Conclusion on International Protection," October 20, 1982, para. b, http://www.unhcr.org/3ae68c434c.html; and UNHCR, "Note on International Protection (submitted by the High Commissioner)," August 3, 1987, para. 21 and 23, A/AC.96/694, http://www.unhcr.org/3ae68c0314.html.

[243] Goodwin-Gill and McAdam, *The Refugee in International Law*, 232–267. See also UNHCR, "Executive Committee Conclusion No. 6 (XXVIII) – Non-Refoulement," October 12, 1977, http://www.unhcr.org/3ae68c43ac.html; UNHCR, "Executive Committee Note on Non-Refoulement (Submitted by the High Commissioner) - Twenty-Eighth Session, Sub-Committee of the Whole on International Protection," August 23, 1977, http://www.unhcr.org/3ae68ccd10.html.

> 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.'[244]

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 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. 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.[245]

1.1.2. Return – Deportation

Return to the country of origin is regulated by the principle of *non-refoulement* in Article 33 of the 1951 Refugee Convention. Expulsion to another country of a refugee "lawfully in [the] territory" of a particular state is regulated by Article 32

[244] Goodwin-Gill and McAdam, *The Refugee in International Law*, 343–344.

[245] Akram and Rempel, "Temporary Protection as an Instrument for Implementing the Right of Return for Palestinian Refugees," 161.

of the 1951 Refugee Convention, which stipulates that national security and public order are the only permissible grounds for forced removal of such persons. UNHCR's 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.[246]

UNHCR's 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.[247]

1.2. Asylum

Everyone has the right to seek 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. Thus, the power to grant residence, whether through asylum or citizenship, remains the core prerogative of the sovereign state.

At the same time, access to a residence permit is of great importance for refugees, in particular for stateless refugees. 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.[248]

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. UNHCR's Executive Committee expressed concern that some asylum seekers encounter serious difficulties in finding a country willing to grant them even temporary refuge, and noted that

[246] UNHCR, "Executive Committee Conclusion No. 7 (XXVIII) – Expulsion," October 12, 1977, http://www.unhcr.org/3ae68c4320.html.

[247] Ibid. This recommendation is in accordance with international provisions related to detention, as laid out in the International Covenant on Civil and Political Rights (art. 9) and the Universal Declaration of Human Rights (art. 9).

[248] UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, "Final Act and Convention Relating to the Status of Refugees," Article 4(d).The United Nations General Assembly has also recommended international co-operation regarding granting of asylum; see UN General Assembly, "Resolution 2312(XXII) - Declaration on Territorial Asylum," December 14, 1967, UN Doc. A/RES/2312(XXII), Article 2(2).

refusal of permanent or temporary asylum has led, in a number of cases, to serious consequences for the persons concerned.[249]

1.3. Effective Protection

The term "effective protection" is not an established principle of refugee law. It refers, however, to the obligation embodied in the Refugee Convention 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 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 on whether they should be granted asylum or returned/removed to the "first country of asylum" or to a "safe" third country. This issue will be further explored in the Chapter Five, *The Interpretation and Application of Article 1D: a critical approach*.

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

- 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 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;
- 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;

[249] UNHCR, "Executive Committee Conclusion No. 5 (XXVIII) – Asylum," October 12, 1977, http://www.unhcr.org/3ae68c4388.html.

- The third state takes account of any special vulnerabilities of the person concerned and maintains the privacy interests of the person and their family;
- If the person is recognized as a refugee, effective protection will remain available until a durable solution can be found.[250]

If one of the above criteria is not fulfilled, the asylum seeker or refugee should be considered as not enjoying effective protection in the country concerned and should therefore not be returned. This applies, for example, to persons who are denied re-entry to their country of former habitual residence.[251]

1.4. Detention

States' competence to detain non-nationals pending their removal from, or pending decisions regarding their entry to state territory,[252] 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.[253] Guy Goodwin-Gill and Jane McAdam describe 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.[254]

Detention of asylum seekers should normally be avoided in view of the hardship it involves.[255] If detention is considered necessary, UNHCR's 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.[256]

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[250] UNHCR, "Summary Conclusions on the Concept of 'Effective Protection' in the Context of Secondary Movements of Refugees and Asylum-Seekers (Lisbon Expert Roundtable, 9-10 December 2002)," February 2003, para. 15, http://www.refworld.org/docid/3fe9981e4.html.

[251] Stateless Palestinians from the Gulf States are often denied re-entry to their country of former habitual residence. See BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 18–19 and 27–28.

[252] Goodwin-Gill and McAdam, *The Refugee in International Law*, 462–466.

[253] See UN General Assembly, "Universal Declaration of Human Rights," Article 9; UN General Assembly, "International Covenant on Civil and Political Rights," Article 9.

[254] Goodwin-Gill and McAdam, *The Refugee in International Law*, 463.

[255] UNHCR, "Executive Committee Conclusion No. 44 (XXXVII) – Detention of Refugees and Asylum-Seekers," October 13, 1986, para. (b), http://www.unhcr.org/3ae68c43c0.html.

[256] Ibid.

2. Interpretations of Article 1D of the 1951 Refugee Convention

2.1. UNHCR's Interpretation of Article 1D of the 1951 Refugee Convention

UNHCR is responsible for providing international protection to refugees and is the guardian of the 1951 Refugee Convention.[257]. One type of protection that falls under the competence of UNHCR is supervising the application of international conventions providing for the protection of refugees by, for example, issuing guidelines on the application of certain provisions of the 1951 Refugee Convention.[258]

UNHCR has issued three Notes that provide guidelines for the interpretation of Article 1D.[259] In October 2002, the Agency issued its "Note on Article 1D of the 1951 Convention" (hereinafter 2002 UNHCR Note),[260] which, in October 2009, was replaced by "Revised Note on Article 1D of the 1951 Convention" (hereinafter 2009 UNHCR Revised Note).[261] Most recently, in May 2013, UNHCR issued its "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[262] in the context of Palestinian refugees seeking international protection" (hereinafter 2013 UNHCR Note).[263] Guidelines concerning Article 1D can also be found in UNHCR's Statements – most notably, the "Revised Statement on Article 1D of the 1951 Convention" of October 2009 (hereinafter 2009 UNHCR Statement)[264] – and interventions before courts – most notably, "UNHCR's Oral Intervention at the Court of Justice of the European Union" of 2012 (hereinafter 2012 UNHCR Intervention),[265] regarding the *El Kott* case (see below, section 2.2.6). Because the 2013 UNHCR Note constitutes the most recent guidelines concerning the interpretation of Article 1D, it is the main source of the analysis presented in this section; references to older position documents by UNHCR will be made either comparatively or complementarily.

[257] UN General Assembly, "Convention Relating to the Status of Refugees," Article 35.

[258] UN General Assembly, "Statute of the UNHCR," Article 8(a).

[259] UNHCR's Notes are reproduced as Appendices. For a critique of the critique of the interpretation of Article 1D adopted by the UNHCR in its 1979 Handbook on Procedures and Criteria for Determining Refugee Status, see Takkenberg, *The Status of Palestinian Refugees in International Law*, 92–93.

[260] UNHCR, "Note on the Applicability of Article 1D of the 1951 Convention Relating to the Status of Refugees to Palestinian Refugees," October 2002, http://www.refworld.org/docid/3da192be4.html.

[261] UNHCR, "2009 Revised Note."

[262] I.e., "Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (Recast)."

[263] UNHCR, "2013 Note."

[264] 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.

[265] UNHCR, "UNHCR's Oral Intervention at the Court of Justice of the European Union, Hearing of the Case of El Kott and Others v. Hungary (C-364/11)," May 15, 2012, http://www.refworld.org/docid/4fbd1e112.html.

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."[266] As such, UNHCR guidelines facilitate implementation in good faith of the 1951 Refugee Convention and the 1967 Protocol by states signatories to these instruments.

In the introductions to the Notes, 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 at all times.[267] Taken together, the Notes clarify UNHCR's position on (i) scope and beneficiaries of Article 1D; (ii) the application of Article 1D; and (iii) registration with UNRWA. The first two positions 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 (first paragraph) and an inclusion clause (second paragraph);
- 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).

The following sections detail UNHCR policy on the scope, and exclusion and inclusion clauses of Article 1D of the 1951 Convention.

2.1.1. Scope

The scope of Article 1D includes the two groups of 1948 Palestine refugees and 1967 displaced persons.[268] The 2013 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 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[.][269]

United Nations General Assembly Resolution 194 (III) refers to both Palestinians who left Israel, and those who were forcibly displaced within Israel.[270] Both are

[266] See UNHCR, "2002 Note," para. 14. See also UNHCR, "2009 Revised Statement," 4, footnote 26.: "UNHCR's revised Note on Article 1D of October 2009 [… is] intended to provide guidance for governments, legal practitioners, decision-makers and the judiciary, as well as UNHCR staff."

[267] UNHCR, "2013 Note," 2, item 1; UNHCR, "2009 Revised Note," para. 2, last sentence; UNHCR, "2002 Note," para. 2, last sentence.

[268] The categories are based on the 1967 expansion of UNRWA's mandate 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.

[269] UNHCR, "2013 Note," 2, item 2(a).

[270] UNHCR supports this view; see UNHCR, "2002 Note," endnote 2.

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.[271]

The 2013 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 displaced from the Palestinian territory occupied by Israel since 1967.[272]

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

Descendants of beneficiaries also fall under the scope of Article 1D. Thus, for example, a Palestinian boy born in Gaza in 2014 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 a refugee, according to the principle of family unity.[273] UNRWA has adopted a similar approach when providing assistance to descendants of Palestine refugees.[274]

The applicability of UNRWA's mandate – 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, however, decided not to register with the Agency, although they are eligible for registration. The 2013 UNHCR Note specifically criticizes the understanding of the CJEU, featured in its *Bolbol* decision, that only Palestinians who had "actually availed" themselves of the protection or assistance of UNRWA would be considered to fall under Article 1D. In the Note, UNHCR takes a different position, "based on the dual purposes of Article 1D to avoid overlapping competencies and to ensure the continuity of protection and assistance to Palestinian refugees." By supporting the understanding that Article 1D applies both to Palestinians who were *eligible* as well as those

[271] Note, however, that the borders of the state of Israel vis-à-vis the Palestinian West Bank and Gaza Strip remain undefined.

[272] UNHCR, "2013 Note," 3, item 2(b).

[273] UNHCR, "Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees," January 1992, para. 184, http://www.unhcr.org.hk/files/useful_resources/Important_documents/Handbook_on_Procedures_and_Criteria_for_RSD.pdf.

[274] Only descendants of males are considered Palestine Refugees, and are therefore counted as registered refugees under UNRWA's mandate. Descendants of refugee females (even if their husbands are not refugees) are, however, eligible to receive UNRWA services and assistance (UNRWA, "Consolidated Eligibility and Registration Instructions (CERI)," 2009, 5).

who were *receiving* protection or assistance, "their continuing refugee character is acknowledged."[275]

Application

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 the two categories included within Article 1D, i.e. 1948 Palestine refugees or 1967 displaced persons. If not, Article 1D is not applicable. However, such a person might still qualify as a refugee under Article 1A(2).[276] The 2013 Note reads:

> Palestinians who were not actually receiving or eligible to receive the protection or assistance of UNRWA as per the first paragraph of Article 1D may nevertheless qualify as refugees if they fulfill the criteria of Article 1A(2) of the 1951 Convention. Such persons are entitled to apply for refugee status in the normal way under the 1951 Convention via Article 1A(2).[277]

If the person in question falls within the scope of Article 1D, the next step is to determine whether the first or second paragraph of Article 1D applies to his or her case (*section b,* below). Once it is determined whether the person falls under the second paragraph, 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.

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 cessation or exclusion clauses in Articles 1C, 1E and 1F. Considering the serious consequences of exclusion for the person concerned, interpretation of these articles must be restrictive.

In this context, BADIL emphasizes 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 United Nations General Assembly Resolution 194 or United Nations Security Council Resolution 237, and is thus entitled to durable solutions based on the rights of return, housing and property restitution, and compensation.[278]

In its 2009 Revised Note, UNHCR states that "persons falling within Articles 1C, 1E or 1F of the 1951 Convention do not fall within the scope of Article 1D,"[279] and the same logic appears in the 2013 Note.[280] Article 1C's caput states that

[275] UNHCR, "2013 Note," 4.
[276] Ibid., 3.
[277] Ibid.
[278] UNHCR also stressed this point: Ibid., 6.
[279] UNHCR, "2009 Revised Note," para. 4.
[280] UNHCR, "2013 Note."

"[t]his Convention shall cease to apply to any person falling under the terms of section A if […]." Consequently, a literal interpretation of Article 1C would render it inapplicable to Article 1D Palestinian refugees, since they constitute a special group whose refugee status was attributed by relevant UN resolutions – namely, UN General Assembly Resolutions 194 (III), of 1948, and 2252 (ES-V), of 1967, as acknowledged in paragraph 10 and 11 of the Draft – and not "under the terms of section A." Nevertheless, such literal reading does not correspond to the reality of numerous Palestinian refugees who, having acquired the nationality of their country of asylum and falling under that country's protection, no longer need the protection of the 1951 Convention. Still, the acquisition of a new nationality does not nullify Palestinian refugees' right to return to their homes – a right asserted both in Resolution 194 (III)[281] and in Resolution 2252 (ES-V)[282] – as well as their right to reparations.[283]

According to Article 1E, the 1951 Refugee Convention shall not apply to a person recognized by 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. Whether or not a Palestinian refugee has obtained that status must be assessed on a case-by-case basis. One factor that should be taken into consideration is that Palestinians are generally not protected against expulsion from the Arab countries in which they have taken up residence.

If a Palestinian refugee falls within the scope of Article 1F of the 1951 Convention, he or she is considered not to be deserving of international protection, and the provisions of the Convention shall not apply to him or her.[284]

2.1.2. Exclusion Clause (first paragraph) and Inclusion Clause (second paragraph) of Article 1D

A Palestinian refugee falling within the scope of Article 1D, and to whom 1E and 1F do not apply, may fall within the ambit of either the first paragraph ('exclusion clause') or the second paragraph ('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 states signatories to the 1951 Refugee Convention.

Paragraphs 7 and 8 of the 2009 UNHCR Revised Note deal with this question from a geographical perspective, i.e., in terms of residing within or outside UNRWA's area of operations:

(7): If the person concerned is inside UNRWA's area of operations, he or she

[281] UN General Assembly, "Res. 194(III)," para. 11.

[282] UN General Assembly, "Res. 2252 (ES-V)," para. 1(d).

[283] UN General Assembly, "Res. 194(III)," para. 11.

[284] UNHCR, "Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention Relating to the Status of Refugees," September 4, 2003, HCR/GIP/03/05.

should be considered as "at present receiving from organs or agencies other than [UNHCR] protection and assistance" within the meaning of paragraph 1 of Article 1D, and hence is excluded from the benefits of the 1951 Convention.

(8): If, however, the person is outside UNRWA's area of operations, he or she is not "at present receiving from organs or agencies other than [UNHCR] protection and assistance" within the meaning of paragraph 1 of Article 1D, and therefore "such protection or assistance has ceased" within the meaning of paragraph 2 of Article 1D. The person is "*ipso facto* entitled to the benefits of the [1951] Convention," providing of course that Article 1C, 1E and 1F of the 1951 Convention do not apply. This would be the case even if the person has never resided inside UNRWA's area of operations.

Such a purely geographical understanding is made even clearer in 2009 UNHCR Statement, which asserted that:

> [I]n moving from inside to outside the UNRWA area of operations and then back again, the person concerned moves back and forth between paragraphs 1 and 2 of Article 1D.[285]

Nevertheless, the 2013 UNHCR Note presented an interpretation whose phrasing focuses on the cessation of UNRWA's activities. Notably, the Note asserts that:

> the phrase 'ceased for any reason' in the second paragraph of Article 1D of the 1951 Convention […] include[s] the following: (i) the termination of UNRWA as an agency; (ii) the discontinuation of UNRWA's activities; or (iii) any objective reason outside the control of the person concerned such that the person is unable to (re-)avail themselves of the protection or assistance of UNRWA.[286]

Even though the 2013 UNHCR Note also mentions the impossibility of returning to URNWA's area of operations as a scenario in which the person concerned falls under the *inclusion* clause of Article 1D,[287] it does not follow, as one might infer, that the opposite, i.e., residing inside UNRWA's area of operations equates, in itself, to falling under the *exclusion* clause: even those residing in that area are still potentially subject to "(i) the termination of UNRWA as an agency" and"(ii) the discontinuation of UNRWA's activities." Therefore, by focusing on UNRWA *activities* instead of its area of operations, UNHCR changes its previous interpretation of Article 1D, which gave rise to a purely geographical understanding of how the first and second paragraphs operate.

It should be noted that the 2013 Note's focus on the cessation of URNWA's activities, rather than on the geographical location of a Palestinian refugee, is in accordance with its emphasis on the applicability of Article 1D also to those

[285] UNHCR, "2009 Revised Statement," 8. This concept is also included in UNHCR, "2002 Note," para. 8.

[286] UNHCR, "2013 Note," 4.

[287] Ibid., 5.

Palestinians who are *eligible* to receive UNRWA's services.[288] Even though UNHCR's 2002 Note also mentioned Palestinians eligible for URNWA's services,[289] this issue was completely absent from the 2009 UNHCR Note. The 2013 Note, thus, brings back specific references to the eligibility to receive UNRWA's services. UNHCR position that Palestinians only eligible to UNRWA's assistance contrasts not only with the *Bolbol* decision, mentioned in the 2013 UNHCR Note itself, but also with the *El Kott* decision (see section 2.1.4 below).

The importance of widening the scope of Article 1D to those who are eligible for UNRWA's services is that individuals who have never actually enjoyed such services, or who have never been registered with UNRWA, can still apply for refugee status under the inclusion clause of Article 1D. This is made clear also in the careful phrasing of situation (iii), cited above: "any objective reason outside the control of the person concerned such that the person is unable to *(re-)avail* themselves of the protection or assistance of UNRWA [emphasis added]."[290] By choosing the term "(re-)avail," the 2013 UNHCR Note puts under the umbrella of the inclusion clause of Article 1D both Palestinians *registered* with UNRWA who are unable to re-avail themselves of its services and Palestinians *eligible* for such services who are unable to access them (i.e., for the first time).

2.1.3. Objective reasons outside the control of the person concerned

Most notably, the 2013 UNHCR Note establishes a framework for assessing the objective reasons "why the applicant is unable to return or re-avail himself or herself of the protection or assistance of UNRWA," which correspond to the third situation in which UNRWA's activities have "ceased for any reason," as outlined above.[291] This framework consists of two main sets of objective reasons, as shown below:

- Threats to life, physical security or freedom, or other serious protection-related reasons.
  - Examples would include situations such as armed conflict or other situations of violence, civil unrest and general insecurity, or events seriously disturbing public order.
  - It would also include more individualized threats or protection risks such as sexual and gender-based violence, human trafficking and exploitation, torture, inhuman or degrading treatment or punishment, or arbitrary arrest or detention.
- Practical, legal and safety barriers to return.
  - Practical barriers would include being unable to access the territory because of border closures, road blocks or closed transport routes.
  - Legal barriers would include absence of documentation to travel to, or

[288] Ibid., 4.
[289] UNHCR, "2002 Note," para. 6.
[290] UNHCR, "2013 Note," 4.
[291] Ibid.

transit, or to re-enter and reside, or where the authorities in the receiving country refuse his or her re-admission or the renewal of his or her travel documents.

- Safety barriers would include dangers *en route* such as mine fields, factional fighting, shifting war fronts, banditry or the threat of other forms of harassment, violence or exploitation.[292]

The Note highlights, however, that the meaning of "ceased for any reason" should not be construed restrictively, and that the "objective reasons" that might impede an individual from (re-)availing himself or herself of UNRWA's services are not limited to the examples above.[293]

2.1.4. UNHCR'2 2013 Note and the *El Kott* decision

The most recent regional jurisprudence regarding Article 1D is provided by the Court of Justice of the European Union, in its decision regarding the *El Kott* case (see section 2.2.6 below). UNHCR provided legal advice on the issues arising in the case through its 2012 Intervention,[294] and the 2013 UNHCR Note, largely based on that intervention, generally endorses the *El Kott* decision.

Both the 2013 UNHCR Note and the *El Kott* decision present similar interpretations, that the term "ceased for any reason" is not restricted to "the abolition of that agency or an event which makes it generally impossible for it to carry out its mission."[295] A third possibility involves what UNHCR refers to as "any objective reason outside the control of the person concerned such that the person is unable to (re)avail themselves of the protection or assistance of UNRWA,"[296] and which is also covered by *El Kott* decision as reasons "beyond his [or her] control and independent of his [or her] volition."[297]

Notwithstanding, in contrast to the guidelines in the 2013 UNHCR Note, the *El Kott* decision establishes that:

> […] the cessation of protection or assistance from organs or agencies of the United Nations other than the HCR 'for any reason' includes the situation in which a person who, *after actually availing himself of such protection or assistance*, ceases to receive it for a reason beyond his control and independent of his volition [emphasis added].[298]

[292] Ibid., 5.

[293] Ibid., 4.

[294] UNHCR, "UNHCR's Oral Intervention at the Court of Justice of the European Union, Hearing of the Case of El Kott and Others v. Hungary (C-364/11)."

[295] Court of Justice of the European Union, "El Kott," para. 58. In the 2013 UNHCR Note, those possibilities are described as "(i) the termination of UNRWA as an agency" and "(ii) the discontinuation of UNRWA's activities" (UNHCR, "2013 Note," 4).

[296] UNHCR, "2013 Note," 4.

[297] Court of Justice of the European Union, "El Kott," 65, also mentioned in para. 61, 64, 74 and 82(1).

[298] Ibid., para. 65.

As extensively explained above, the 2013 UNHCR Note supports a broader scope of Article 1D, encompassing also those Palestinians who are *eligible* for such protection or assistance. Nonetheless, it should be noted that neither UNHCR nor the CJEU mention UNCCP when referring to protection offered by UN agencies other than UNHCR. This issue, of great importance to this *Handbook*, will be addressed in Chapter Five, *The Interpretation and Application of Article 1D: a critical approach*.

In addition, it should be noted that, while the *El Kott* decision refers to reasons beyond one's control and independent of one's volition, it does not provide a practical framework for assessing such reasons. In contrast, the 2013 UNHCR Note offers two sets of objective reasons, concerning protection-related issues and practical barriers to return, as seen above.

2.1.5. Further screening

Article 1D establishes that persons falling under its second paragraph – i.e., the inclusion clause – should be *automatically* granted refugee status, without further screening under Article 1A(2) criteria. While UNHCR does endorse this understanding,[299] according to its 2013 Note, Palestinians should still be subject to some further screening, in order to assess the "objective reason" why they fled their countries of habitual residence.

In some cases, such screening does amount to Article 1A(2) criteria; nonetheless, even when it does not, it still contradicts the *ipso facto* mechanism of the second paragraph of Article 1D, which was set to ensure the continuity of protection, since it assesses reasons for leaving rather than evaluating whether protection standards were met in the previous country of asylum. For a more detailed discussion of this issue and practical mechanisms that could serve the purpose of continuity of protection, refer to Chapter Five, Section 2.

2.1.6. Non-Refoulement and Returnabilities

Palestinians recognized as refugees, as well as those seeking asylum, are minimally entitled to protection against *refoulement*, i.e., against being returned to a country where their life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion (see section *1.1 Non-refoulement*).

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 are seriously undermined. Nevertheless, under certain exceptional circumstances, national authorities might be permitted to return a Palestinian refugee to a country of previous residence where

[299] UNHCR, "2013 Note," 5; and, especially, UNHCR, "UNHCR's Oral Intervention at the Court of Justice of the European Union, Hearing of the Case of El Kott and Others v. Hungary (C-364/11)," 13.

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 operations, the 1951 Refugee Convention will cease to apply in accordance with the first paragraph of Article 1D. While the 1951 Refugee Convention does not address the issue of "returnability" of refugees, guidance has been developed by UNHCR.[300]

The 2009 Revised Note clarified that until return takes place through a safe third country assessment, the asylum seeker will be entitled to protection granted on the basis of Article 1D. A person returning to UNRWA'S area of operations "remains entitled to the benefits of the 1951 Convention until such return takes place."[301]

In other words, a Palestinian asylum seeker is recognized as a refugee based on Article 1D, but if deemed returnable, then he or she would still benefit from the protection granted by the 1951 Refugee Convention until the return. However, benefiting from this clarification would require that host countries apply Article 1D properly in the first place.

2.2. European Union Interpretations

2.2.1. Reception Conditions

The European Union requires that all asylum seekers be given adequate opportunity to present their protection claims; to that end, they must be provided with basic necessities. The European Council issued a directive in 2003 outlining the minimum standards required for the reception of asylum seekers in the European Union.[302] Member states were required to transpose the directive into national law by 6 February 2005. The 2003 directive has since been amended, and member states now must transpose the amended directive into national legislation by July 2015.[303]

Asylum seekers must be notified not only of any laws with which they must comply, but also of their rights and benefits during the asylum process. Additionally, applicants must be furnished with documents certifying their status as asylum seekers or stating that they are permitted to stay in the member state while their applications are pending. The document must be valid for as long as the applicant is authorized to remain in the territory of the member state. The member state may also provide the asylum seeker with a travel document when international travel is required for humanitarian reasons.[304]

[300] See also UNHCR, "2002 Note," para. 8 and 9.

[301] UNHCR, "2009 Revised Note," para. 10.

[302] Council of the European Union, "Council Directive 2003/9/EC of 27 January 2003 Laying Down Minimum Standards for the Reception of Asylum Seekers," February 6, 2003, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:031:0018:0025:EN:PDF.

[303] Council of the European Union, "Directive 2013/33/EU of the European Parliament and of the Council of June 26 2013 Laying down Standards for the Reception of Applicants for International Protection (recast)," June 29, 2013, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013L0033.

[304] Council of the European Union, "Council Directive 2003/9/EC," chap. 2, Articles 5-6.

Generally, member states must allow freedom of movement for asylum seekers within their territory. If necessary, however, member states may confine applicants to a particular location in accordance with national law.[305]Member states are required to meet and maintain minimum reception conditions to guarantee the health and subsistence of asylum seekers. In particular, this refers to housing, food, and clothing, which may be provided in kind or by means of a financial allowance,[306] necessary health care,[307] and access to education for minor children.[308]

Though the directive establishes minimum requirements, member states are free to exceed the minimum standards in their national legislation.

2.2.2. Adjudication of Claims

The European Union acknowledges the need for assessment of asylum seekers' applications by only one state within the EU. The Dublin III Regulation, which entered into force on 1 January 2014, sets forth the criteria for determining which member state should examine an asylum application.[309]

According to the Dublin III Regulation, the process for determining which state will evaluate the application begins as soon as an applicant lodges an asylum claim with a member state. In determining which member state bears responsibility for assessing the asylum application, the following criteria will be evaluated, in the order listed below:

- *Family Unity*.
  - The Dublin III Regulation articulates a strong concern for the "best interests of the child"[310] and "respect for family life."[311] Families should be kept together or reunited to the extent possible throughout the asylum process.[312]
  - Unaccompanied minors will have their claims evaluated by the member state where they have a legally present family member. When the minor has no such family member, the claim will be evaluated by the state in which the minor lodges the application.[313] If the minor has lodged applications in multiple member states with no legally present family member, the

[305] Ibid., Article 7.

[306] Ibid., Article 13.

[307] Ibid., Article 15.

[308] Ibid., Article 10.

[309] Council of the European Union, "Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in One of the Member States by a Third-Country National or a Stateless Person (recast)," June 26, 2013, http://www.refworld.org/docid/51d298f04.html.

[310] Ibid., para. 13, Preamble.

[311] Ibid., para. 14, Preamble.

[312] Ibid., Preamble.

[313] Ibid., chap. 3, Article 8(1).

responsible Member State will be the "Member State in which that minor is present."[314]

- If an asylum seeker has a family member who is a refugee in a member state, the asylum seeker will have their claim evaluated by that state if the persons concerned so desire.[315]
- If an asylum seeker has a family member whose application has not yet been decided upon in the first instance in a member state, the asylum seeker will have their claim evaluated by that state if the persons concerned so desire.[316]
- If a number of family members simultaneously submit applications for asylum, the responsible Member state should consider their applications together.[317]
- Dependents will be kept with their providers, so long as these individuals are able to care for dependent persons, and express this wish in writing.[318]
- In cases involving dependency, the responsible member state is the one where the provider is a resident, unless the dependent is too ill to move.[319]

• *Residence Permits and Visas*.

- If an asylum seeker has a valid residence document, the member state that issued the document will evaluate his or her claim.[320]
- If an asylum seeker has a valid visa, the member state that issued the visa will evaluate his or her claim. However, if the visa was issued while acting for or on the authorization of another member state, then the member state on whose authority the visa was conferred will evaluate the claim.[321]
- If an asylum seeker has multiple valid residence documents or visas, then responsibility for evaluating the claim will fall to member states in the following order:
  - The member state that issued the residence document with the longest period of residency. If the periods of residency are equal, then the member state that issued the document with the latest expiration date.
  - The member state that issued the visa with the latest expiration date, if the visas are of the same type.
  - The member state that issued the visa with the longest period of validity if the visas are of different types. If the periods of validity are equal, then the member state that issued the visa with the latest expiration date.[322]

[314] Court of Justice of the European Union, "Case C-648/11," 2013, para. 66, http://curia.europa.eu/juris/document/document.jsf;jsessionid=9ea7d0f130d5e41a6dbe80144323bfade42a3870807b.e34KaxiLc3eQc40LaxqMbN4OaxmPe0?text=&docid=138088&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=22978.

[315] Council of the European Union, "Regulation (EU) No 604/2013," chap. 3, Article 9.

[316] Ibid., Article 10.

[317] Ibid., Article 11.

[318] Ibid., chap. 4, Article 16(1).

[319] Ibid., Article 16(2).

[320] Ibid., chap. 3, Article 12(1).

[321] Ibid., Article 12(2).

[322] Ibid., Article 12(3).

- If the asylum seeker only has one or more residence documents that expired less than two years ago, or one or more visas that expired less than six months ago, then the previous items regarding residence documents and visas will apply so long as the asylum seeker has not left the territory of the member states.[323]
- If the asylum seeker has one or more residence documents or visas that expired more than two years ago or six months ago, respectively, then the claim will be evaluated by the member state in which the application was lodged.[324]

- *Irregular entry*.
  - If an asylum seeker entered a member state irregularly from a third party state, that member state will evaluate the application. This responsibility continues for 12 months after entry into the state.[325]
  - If a member state can no longer be held accountable according to the previous provision and the asylum seeker, at the time of application, has previously been living continuously for at least five months in a member state, then the latter member state will evaluate the claim. If the applicant has been living for at least five months in multiple member states, then the member state where the applicant lived most recently will evaluate the claim.[326]
- *Legal entry*.
  - If the asylum seeker enters a member state that has waived his or her visa requirement, that member state will evaluate the application.[327]
  - If the asylum seeker lodges an application in another member state, which has also waived the visa requirement, then the member state in which the application was lodged will evaluate the claim.[328]
- *International transit areas*.
  - If an asylum seeker lodges the application in an international transit area of an airport of a member state, then that member state will evaluate the application.[329]

Where no member state can be deemed responsible for evaluating an asylum seeker's claim based on the above criteria, then the first member state where the applicant lodged their claim will be responsible.[330]

The Regulation sets forth a number of new priorities in response to criticisms

[323] Ibid., Article 12(4).
[324] Ibid.
[325] Ibid., Article 13(1).
[326] Ibid., Article 13(2).
[327] Ibid., Article 14(1).
[328] Ibid., Article 14(2).
[329] Ibid., Article 15.
[330] Ibid., 2, Article 3(2).

of the Dublin II regulation. The provisions detail various rights for asylum seekers, such as:

- *Right to personal interview.*
  - Asylum seekers are entitled to a personal interview to help determine the member state responsible for processing an applicant's claim.[331]
  - Member states are not required to conduct this interview if the "applicant has absconded" or the applicant has already provided the relevant information to the responsible member state.[332]
  - This interview must be conducted in a language in which the applicant is able to communicate, and an interpreter will be provided if necessary.[333]
- *Right to information.*
  - Member states are under a clear obligation to inform the asylum seeker of the Dublin III Procedure.[334]
  - Asylum seekers are entitled to receive a timely written summary of the personal interview from the Member State which conducted the interview.[335]
- *Creation of appeals process*.
  - Applicants are entitled to appeal an unfavorable transfer decision before a court or tribunal subject to the terms of the Dublin III Regulation.[336] This right to appeal shall extend for a reasonable period of time.[337]
  - Applicants have the right to remain, for a "reasonable period of time," in the member state during the appeals process.[338]
  - Applicants have the right to free legal assistance if they are unable to afford such assistance.[339] Free legal assistance includes, at a minimum, "the preparation of the required procedural documents" as well as representation during the appeal.[340] However, member states may refuse to provide free assistance if the claim has "no tangible prospect of success," so long as this determination is not made in an arbitrary manner.[341]

All EU member states adhere to and apply the Dublin Regulation, along with Norway, Iceland, Switzerland, and Liechtenstein.[342]

[331] Ibid., chap. 2, Article 5(1).
[332] Ibid., Article 5(2).
[333] Ibid., Article 5(4).
[334] Ibid., Article 4.
[335] Ibid., Article5(5).
[336] Ibid., chap. 4, Article 27(1).
[337] Ibid., Article 27(2).
[338] Ibid., Article 27(3).
[339] Ibid., Article 27(6).
[340] Ibid.
[341] Ibid.
[342] European Court of Human Rights, Press Unit, Factsheet – "Dublin" cases, July 2014 http://www.echr.coe.int/Documents/FS_Dublin_ENG.pdf, fn 1.

2.2.3. Refugee Status Determination Process: Refugee Status

Standards for qualifying for refugee status are enumerated in Directive 2011/95/EU of 2011, which amends and replaces Directive 2004/83/EC of 2004. The main objective of the directive is "on the one hand, to ensure that Member States apply common criteria for the identification of persons genuinely in need of international protection, and, on the other hand, to ensure that a minimum level of benefits is available for those persons in all Member States."[343]

Directive 2011/95/EU defines a refugee as follows:

> [R]efugee' means a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply[.][344]

Article 12 is the exclusion clause, which defines the conditions under which an individual may be excluded from refugee status. Most importantly for the purposes of this *Handbook*, article 12(1)(a) states that an individual is excluded from refugee status if:

> […]he or she falls within the scope of Article 1(D) of the Geneva Convention, relating to protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees. When such protection or assistance has ceased for any reason, without the position of such persons being definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, those persons shall *ipso facto* be entitled to the benefits of this Directive[.][345]

2.2.4. Subsidiary Protection

Under Article 18 of the Qualification Directive,[346] persons in need of international protection who do not qualify for refugee status may nonetheless have a right to subsidiary protection in Member States if they would face a real risk of "serious harm" upon return to their country of origin or former habitual residence, such as the death penalty (Article 15 (a)), torture or inhuman or degrading treatment or punishment

[343] Council of the European Union, "Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on Standards for the Qualification of Third-Country Nationals or Stateless Persons as Beneficiaries of International Protection, for a Uniform Status for Refugees or for Persons Eligible for Subsidiary Protection, and for the Content of the Protection Granted (recast)," December 13, 2011, para. 12, http://www.refworld.org/pdfid/4f197df02.pdf, Preamble.

[344] Ibid., chap. 1, Article 2(d).

[345] Ibid., chap. 3, Article 12(1)(a).

[346] Council of the European Union, "Directive 2011/95/EU," Article 18.

(Article 15 (b)) or (for civilians) a serious and individual threat to life due to international or internal armed conflict (Article 15 (c)).[347] Beneficiaries of subsidiary protection are entitled to residence permits lasting at least one year, and in some cases, travel documents, as well as other benefits.[348]

Article 78 of the Treaty on the Functioning of the European Union also requires that the EU implement a policy for asylum as well as subsidiary protection and temporary protection which ensures that Member States will observe the principle of *non-refoulement*.[349]

2.2.5. Bolbol v. Bevándorlási és Állampolgársági Hivatal (Office of Immigration and Nationality) (Case C-31/09)

Ms. Bolbol, a stateless person of Palestinian origin, left the Gaza Strip for Hungary in January 2007. She obtained a residence permit but also applied for asylum on the grounds that she was a Palestinian residing outside the area of UNRWA operations and was fleeing unsafe conditions in the Gaza Strip due to the conflict between Fatah and Hamas. Her application for asylum was denied on the grounds that "the second subparagraph of Article 1D of the Geneva Convention does not require unconditional recognition as a refugee but defines the category of persons to whom the provisions of the Geneva Convention apply."[350] Ms. Bolbol appealed the denial of asylum. Three questions came before the Court of Justice of the European Union (CJEU) in this case, decided on 17 June 2010.

The CJEU was asked, for the purposes of Article 12(1)(a) of Directive 2004/83/EC, to address the following:

1. "Must someone be regarded as a person receiving the protection and assistance of a United Nations agency merely by virtue of the fact that he is entitled to assistance or protection or is it also necessary for him actually to avail himself of that protection or assistance?"
2. "Does cessation of the agency's protection or assistance mean residence outside the agency's area of operations, cessation of the agency and cessation of the possibility of receiving the agency's protection or assistance or, possibly, an objective obstacle such that the person entitled thereto is unable to avail himself of that protection or assistance?"
3. "Do the benefits of the directive mean recognition as a refugee, or either of the two forms of protection covered by the directive (recognition as a refugee and the grant of subsidiary protection), according to the choice made

[347] Ibid., Article 15.

[348] See ibid., Article 24-25; see also European Agency for Fundamental Rights. and Council of Europe, *Handbook on European Law Relating to Asylum, Borders and Immigration*, June 2013, http://fra.europa.eu/sites/default/files/handbook-law-asylum-migration-borders_en.pdf, at 2.2 and 3.1.1.

[349] European Agency for Fundamental Rights. and Council of Europe, *Handbook on European Law Relating to Asylum, Borders and Immigration* at 3.1.

[350] Court of Justice of the European Union, "Bolbol," para. 29.

by the Member State, or, possibly, [does it mean] neither automatically but merely [lead to] inclusion [of the person concerned within] the scope *ratione personae* of the Directive?"[351]

The Court first observed that the 1951 Refugee Convention is the cornerstone of international refugee law, and that Directive 2004/83/EC was intended to guide EU member states in the application of the Refugee Convention. Thus, "[t]he provisions of the Directive must for that reason be interpreted in the light of its general scheme and purpose, while respecting the Geneva Convention."[352]

Concerning the first question, the Court held that only those who have *actually* availed themselves of UNRWA assistance fall within the scope of the exclusion clause of the Refugee Convention. Thus, "for the purposes of the first sentence of Article 12(1)(a) of Directive 2004/83, a person receives protection or assistance from an agency of the United Nations other than UNHCR, when that person has actually availed himself of that protection or assistance."[353] The Court noted that registration with UNRWA is sufficient to establish that an individual received assistance, but acknowledged that it is possible to receive assistance from UNRWA without such registration. In that instance, an applicant must be allowed to produce other evidence of assistance from UNRWA. Ms. Bolbol, a Palestinian who had never registered with UNRWA, nor appeared eligible for UNRWA registration, was not covered by Article 1D or the EU Directive.

The Court also made clear that "persons who have not actually availed themselves of protection or assistance from UNRWA, prior to their application for refugee status, may, in any event, have that application examined pursuant to Article 2(c) of the Directive,"[354] which is the provision that defines the term refugee.

In light of its finding on the first question and the circumstances of the individual case, the Court did not address the second and third questions.

2.2.6. El Karem El Kott et al v. Bevándorlási és Állampolgársági Hivatal (Office of Immigration and Nationality) (Case C-364/11)

In the December 19, 2012 *El Kott* decision, the CJEU addressed the case of three stateless men of Palestinian origin denied asylum in Hungary. Mr. Abed El Karem El Kott fled harsh conditions at the Ein El-Hilweh UNRWA refugee camp in Lebanon following the burning of his house. His asylum application in Hungary was denied, but Hungary did not order his return pursuant to the principle of *non-refoulement*. Similarly, Mr. A Radi left the Nahr el Bared UNRWA refugee camp in Lebanon after his home was destroyed and went to stay with an acquaintance in Tripoli, Lebanon. After Lebanese soldiers insulted, mistreated, arrested, tortured, and humiliated him,

[351] Ibid., para. 35.
[352] Ibid., para. 38.
[353] Ibid., para. 53.
[354] Ibid., para. 54.

Mr. A Radi left Lebanon for Hungary, where his application for asylum was denied but like Mr. El Kott, Hungary did not order his return. Mr. Kamel Ismail lived in the Ein El-Hilweh UNRWA refugee camp in Lebanon, but left after militants, who wanted to use the roof of his house, threatened him. Mr. Kamel Ismail went to Beirut but still did not feel safe, and subsequently fled to Hungary. He had a certificate from the Palestinian People's Committee stating that he and his family left the UNRWA camp for safety reasons, along with photographs of his vandalized house. Hungary denied his asylum application, but he and his family members were granted subsidiary protection. All three men appealed the denial of asylum in Hungary.

The CJEU was asked to address two questions with regard to Article 12(1)(a) of Directive 2004/83:

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

2. "Does cessation of the agency's protection or assistance mean residence outside the agency's area of operations, cessation of the agency and cessation of the possibility of receiving the agency's protection or assistance or, possibly, an involuntary obstacle caused by legitimate or objective reasons such that the person entitled thereto is unable to avail himself of that protection or assistance?"[355]

Question 2

The Court answered the second question first, and began by interpreting Article 1D of the 1951 Refugee Convention, to which Directive 2004/83 refers. The Court found that, because Article 1D "simply excludes from the scope of the convention persons who 'are at present receiving' protection or assistance," mere absence or voluntary departure from UNRWA's area of operations is not enough to indicate cessation of such protection or assistance.[356]

Thus, the Court held that applicants are excluded from refugee status, not only when they are "currently availing themselves of assistance provided by UNRWA[,] but also those […] who in fact availed themselves of such assistance shortly before submitting an application for asylum in a Member State, provided, however, that that assistance has not ceased within the meaning of the second sentence of Article 12(1)(a) of the Directive."[357]

The Court then went on to address the conditions under which it may be decided that UNRWA assistance has ceased. The Court found that neither a mere absence from

[355] Court of Justice of the European Union, "El Kott," para. 41.
[356] Ibid., para. 49.
[357] Ibid., para. 52.

UNRWA's area of operations nor a voluntary decision to leave qualify as cessation of assistance. However, if the person was forced to leave, it may lead to a finding that assistance has ceased. In so deciding, the Court stated that this interpretation is consistent with the purpose of Article 12(1)(a) of the Directive, "which is *inter alia* to ensure that Palestinian refugees continue to receive protection by affording them effective protection or assistance and not simply by guaranteeing the existence of a body or agency whose task is to provide such assistance or protection."[358]

Although the Court found that being forced to leave UNRWA's area of operations is enough to assume cessation of assistance, it left it to the discretion of national authorities to decide whether an applicant's departure was for reasons beyond his or her control.[359] Nonetheless, the Court stated that "a Palestinian refugee must be regarded as having been forced to leave UNRWA's area of operations if his personal safety is at serious risk and if it is impossible for that agency to guarantee that his living conditions in that area will be commensurate with the mission entrusted to that agency."[360]

Question 1

The Court then addressed the first question, and began by noting that unlike the 1951 Refugee Convention, the Directive actually governs both refugee status and subsidiary protection status.[361] Thus, "the words 'be entitled to the benefits of [the] Directive' in the second sentence of Article 12(1)(a) […] must be understood as referring to refugee status, since that provision was based on Article 1D of the Geneva Convention and the directive must be interpreted in the light of that provision."[362]

The Court observed that it would be redundant to state that the applicants concerned would *ipso facto* be entitled to the benefits of the Directive, "if its only purpose was to point out that the persons who are no longer excluded from refugee status […] may rely on the directive to ensure that their application for refugee status will be considered in accordance with Article 2(c) of the directive."[363]

Even so, the Court found that "the fact that the persons concerned are *ipso facto* entitled to the benefits of Directive 2004/83 within the meaning of Article 12(1)(a) does not […] entail an unconditional right to refugee status."[364]In such a case, the applicant "is not necessarily required to show that he has a well-founded fear of being persecuted within the meaning of Article 2(c) of the directive, but must nevertheless submit […] an application for refugee status, which must be examined

[358] Ibid., para. 60.
[359] Ibid., para. 61.
[360] Ibid., para. 63.
[361] Ibid., para. 66.
[362] Ibid., para. 67.
[363] Ibid., para. 73.
[364] Ibid., para. 75.

by the competent authorities of the Member State responsible. In carrying out that examination, those authorities must verify not only that the applicant actually sought assistance from UNRWA, and that the assistance has ceased but also that the applicant is not caught by any of the grounds for exclusion laid down in Article 12(1)(b) or (2) and (3) of the directive."[365]

2.2.7. The Temporary Protection Directive

In 2001, the European Council issued a Temporary Protection Directive (2001/55/EC), the purpose of which is to provide a framework and minimum standards for responses to the mass displacement of persons who are unable to return to their country of origin.[366] The Directive applies to displaced persons already in Europe and contains provisions which permit the entry of displaced persons into Europe: Article 2(d) refers to a spontaneous movement of a large number of people from a particular country or region *or* an assisted evacuation into Europe; and Article 8(3) observes that states should facilitate the entry of eligible persons into their territory. UNHCR also issued guidelines on temporary protection and stay in February 2014.[367] In theory, the Temporary Protection Directive could be used to benefit Palestinians, but it has never been activated for Palestinians or any other group.[368]

2.3. 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. [369]

[365] Ibid., para. 76.

[366] Council of the European Union, "Council Directive 2001/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts Between Member States in Receiving Such Persons and Bearing the Consequences Thereof," August 7, 2001, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:212:0012:0023:EN:PDF.

[367] UNHCR, "Guidelines on Temporary Protection or Stay Arrangements," February 2014, http://www.refworld.org/pdfid/52fba2404.pdf.

[368] Akram, "Temporary Protection Status and Its Applicability to the Palestinian Case."

[369] 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. Parliamentary Assembly of the Council of Europe, "Recommendation 1612 (2003): The Situation of Palestinian Refugees," June 25, 2003, para. 9, http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta03/EREC1612.htm.

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

1. [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;
2. 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.
3. to include the information on Palestinian origin in the statistics concerning asylum-seekers and refugees;
4. 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.[370]

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

2.4. 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.[371]

ECRE's interpretation addresses solely the issue of Article 1D as an exclusion clause (first paragraph of Article 1D) and does not discuss the issue of automatic inclusion (second paragraph).

[370] Ibid., para. 10.

[371] European Council on Refugees and Exiles (ECRE), "Position on the Interpretation of Article 1 of the Refugee Convention," September 2000, para. 68, http://www.ecre.org/component/downloads/downloads/136.html. See also Committee of Ministers of the Council of Europe, "Situation of Palestinian Refugees Parliamentary Assembly Recommendation 1612 (2003) - Reply Adopted by the Committee of Ministers on 4 December 2003 at the 864th Meeting of the Ministers' Deputies," December 4, 2003, https://wcd.coe.int/ViewDoc.jsp?id=96945&Site=COE.

2.5. Current Opinion among Scholars

Based on the above interpretation of the drafting history of Article 1D, scholars generally agree that Palestinian refugees who meet the requirements for inclusion under Article 1D(2) do not need to undergo additional determination of refugee status in order to qualify for protection under the 1951 Refugee Convention (i.e, they do not need to demonstrate that they have a well-founded fear of persecution for a Convention reason).[372]

Alternative Interpretation of Article 1D

Susan Akram developed an alternative to the UNHCR interpretation of Article 1D.[373] Her legal interpretation agrees with UNHCR that the inclusion clause (second paragraph) in Article 1D entitles Palestinian refugees to status and benefits under the 1951 Refugee Convention without having to fulfil the individualized criteria set out in Article 1A(2). Akram's interpretation, however, reaches a different conclusion regarding the event that triggers the applicability of the inclusion clause. They argue that the end of effective protection, through the cessation of UNCCP's protection activities in 1952, is the single crucial event that triggers the inclusion clause for Palestinian refugees.

In contrast, UNHCR considers cessation of UNRWA assistance as the event that triggers the inclusion clause. Akram and Rempel ask:

> 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[.][374]

[372] See Takkenberg, *The Status of Palestinian Refugees in International Law*, 123; Goodwin-Gill and McAdam, *The Refugee in International Law*, 92; Grahl-Madsen, *The Status of Refugees in International Law*, 141; Akram and Rempel, "Temporary Protection as an Instrument for Implementing the Right of Return for Palestinian Refugees," 81. An exception can be found in Hathaway, *The Law of Refugee Status*, 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."

[373] Akram and Rempel, "Recommendations for Durable Solutions for Palestinians Refugees: A Challenge to the Oslo Framework."

[374] Ibid., 30.

Akram and Rempel add:

> 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.[375]

In short, Akram and Rempel argue that the drafters of the 1951 Refugee Convention intended the word "protection" in Article 1D to refer to UNCCP and, hence, the language "protection or assistance" in Article 1D refers to UNCCP as providing protection and UNRWA as providing assistance.

This interpretation is based on several arguments. First, 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 United Nations organ or agency which provided 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). Second, 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. Both agencies, the UNCCP and UNRWA, were established to provide separate, yet complementary services to Palestine Refugees. Third, 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.[376]

Moreover, 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 for Palestinian refugees. Since UNCCP ceased to provide effective protection in 1952, this cessation of protection is the single crucial event that triggered the

[375] Ibid., 67.

[376] The emphasis on protection is visible in the speech of Mr. Mostafa Bey, the then-UN representative of Egypt, the very country which suggested to amend the 1951 Convention by adding a second paragraph (the inclusion clause) to Article 1D: "Introducing his amendment (A/CONF.2/13) [the inclusion clause], [Mr. Bey] said that 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 refugee would be to create a class of human beings who would enjoy *no protection at all* [emphasis added].[…] The limiting clause [the exclusion clause] contained in paragraph C [later, paragraph D] 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 [emphasis added]. However, *when that aid came to an end the question would arise of how their continued protection was to be ensured* [emphasis added]. It would only be natural to extend the benefits of the Convention to them; hence the introduction of the Egyptian amendment. UN General Assembly, "Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Summary Record of the Nineteenth Meeting, 26 November 1951," November 26, 1951, http://www.unhcr.org/3ae68cda4.html.

inclusion clause for all 1948 Palestinian refugees.[377] Thus, the inclusion clause of Article 1D is applicable to all asylum cases involving 1948 Palestinian refugees provided that Articles 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 [emphasis added].[378]

Beneficiaries and Scope

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

- All 1948 Palestinian refugees under United Nations General Assembly Resolution 194(III) (1948), and their descendants;
- Palestinian refugees (displaced persons) who no longer benefit from UNRWA assistance under United Nations General Assembly Resolution 2252 (ES-V) and subsequent United Nations General Assembly resolutions, and their descendants.[379]

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 – should fall *ipso facto* under the scope of the 1951 Refugee Convention. All 1967 Palestinian refugees, and their descendants, are similarly entitled to protection under the 1951 Refugee Convention according to UNRWA Consolidated Eligibility and Registration Instructions and UN General Assembly Resolution 2252.[380]

[377] Note that UNCCP did not cease existing in 1952; rather, that year marked the end of UNCCP's protection activities, and a sole focus on registration of property. For details, refer to section 6.1 of Chapter One, especially footnotes 154 and 161.

[378] Akram and Rempel, "Recommendations for Durable Solutions for Palestinians Refugees: A Challenge to the Oslo Framework," 66.

[379] Akram and Rempel's analysis focuses on the status of 1948 Palestinian refugees under the 1951 Refugee Convention. While substantial analysis regarding the status of 1967 Palestinian refugees has not been developed, the conclusion that the inclusion clause of Article 1D, second paragraph, 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 include 1967 refugees who left UNRWA's area of operations, while the status of those remaining in UNRWA's area of operations would remain unclear.

[380] UNRWA Consolidated Eligibility and Registration Instructions (2009) pg. 7 states that 1967 refugees should be considered beneficiaries similar to 1948 refugees. Consequently UNRWA practice is to treat them similarly.

Chapter Three

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" presenting protection mechanisms currently available for Palestinian refugees worldwide under domestic law and jurisprudence of state signatories to the 1951 Refugee Convention and/or the Statelessness Conventions. As will become clear, national interpretations and applications of Article 1D of the 1951 Geneva Convention vary considerably.

The use of the term "Palestinian *asylum seeker*" reflects the reality in which Palestinian requests for asylum are processed in the countries surveyed. As will be demonstrated, Palestinian *refugees*, in the sense outlined in Chapters One and Two, often arrive in those countries as *asylum seekers*, with their refugee status put in question by national refugee status determination processes. Even where Palestinians are granted refugee status under Article 1D, this is generally not done "automatically" (as it should be under the "ipso facto" provision of the second paragraph of Article 1D), insofar as the reasons for leaving their country of habitual residence are investigated and, as this survey will show, often play a decisive role in their final status.

This Survey includes information on thirty non-Arab countries signatories to the 1951 Refugee Convention.[381] It was conducted during 2013 and 2014 by BADIL, with the help of numerous lawyers and practitioners (see list of contributors below).

Despite considerable efforts to gather complete relevant information from the countries included, time constraints and the varying quality and quantity of available information allowed for only partial achievement of this goal. Notably, comparatively little information could be gathered about Latin American countries, and, as relatively few Palestinian refugees have sought refuge in Africa, information is given about only four countries which host relatively higher numbers of Palestinian refugees (Côte d'Ivoire, Kenya, Nigeria and South Africa).

This Survey provides information essential to the main purpose of this *Handbook* since its first edition, namely, examining if, and how, international protection standards available for Palestinian refugees are implemented by national authorities,

[381] 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 BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 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. Israel, as the country of origin and country causing displacement and persecution of Palestinian refugees, was also not included.

with special attention to national interpretations and applications, if any, of Article 1D of the 1951 Convention. For countries of the European Union, the examination of national practices regarding Article 1D takes into account compliance with regional jurisprudence (notably, the *Bolbol* and *El Kott* decisions) and with UNHCR guidelines (most recently, its "Note on the 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," of May 2013).

The country profiles are divided in the following sections:

1. *Statistical data*;
2. *Refugee Status Determination: The Process*, which includes, when applicable and available, information on assistance provided to asylum seekers while they await a final decision regarding their status in the country;
3. *Refugee Status Determination: The Legal Framework*, which addresses the legal framework under which asylum claims are assessed;
4. *Refugee Status Determination: Article 1D*;
5. *Refugee Status Determination Process: Outcome*, which may include information on (i) the protection and assistance given to Palestinians who are granted refugee status; (ii) options for appealing a negative decision; (iii) other forms of protection, such as subsidiary protection; (iv) return and/or deportation;
6. *Protection under the Statelessness Conventions*
7. *Reference to Additional Relevant Jurisprudence* (when applicable), i.e., jurisprudence complementary to the one which is examined in section 4;

7.(8.) Links

In contrast to the 2005 edition of the *Handbook*, the country profiles of this edition do not feature the category "Temporary Protection." Temporary Protection in this context refers to a specific status granted to Palestinians *as a group* for a limited (but renewable) duration. Although this kind of protection in theory constitutes a legally viable option for Palestinian refugees (see Chapter Two, Section 1.1.1., *Non-refoulement through Time and Temporary Protection*), none of the countries surveyed have implemented temporary protection policies specifically for Palestinians, according to the information available. As far as BADIL is aware, the United States is the only country currently offering temporary protection to Palestinians, and even there, the protection is designated with respect to Syria rather than Palestine or Israel. Since 2012, the US has offered Temporary Protected Status to certain eligible persons who have fled Syria and arrived in the US, including eligible stateless persons who formerly resided in Syria.

Major findings and conclusions from the data presented in this chapter can be found in Chapter Four, the *Summary of Findings*.

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Statistics

Eurostat data do not have a category for Palestinian asylum seekers. However, Eurostat data do record the figures for asylum claims by stateless persons. Although many of the stateless persons recorded may not be Palestinian, the figures nevertheless are useful in providing an overall picture of the treatment of asylum applications by stateless persons in Europe.[382] For example, in the first quarter of 2014, there were 2625 first instance decisions on applications for asylum by stateless persons in the EU. Of these, 565 were granted refugee status; 1735 were granted subsidiary protection, 60 were granted other humanitarian status, and 265 were rejected. The approval rate of 90% in Q1 2014 is quite high.[383] This approval rate is a significant improvement over the first quarter of 2013, in which there were 830 first instance decisions on asylum applications by stateless persons.[384] Of these, 205 were granted refugee status, 305 subsidiary protection, and 25 other humanitarian status, with 295 rejections, for an approval rate of 64%.[385] The figures for the first quarter of 2012 are even lower – of 540 total decisions on asylum applications by stateless persons, 210 were granted refugee status, 80 subsidiary protection, and 20 other humanitarian status, with 240 rejections, and an approval rate of 57%.[386] Although no firm conclusions can be drawn about *Palestinian* asylum claims based on this data, the figures do show that from 2012 to 2014, there has been a significant rise in the number of asylum applications by stateless persons and simultaneously, significant improvement in the approval rate in first instance decisions on asylum applications by stateless persons. Considering other factors (such as the parallel increase in the number of Syrian asylum applications in Europe and the worsening situation of Palestinians in Syria and neighboring countries from 2012 to 2014), it seems likely that among these stateless persons, there are significant numbers of Palestinians, and the overall approval rate of decisions on their asylum applications has improved. This is corroborated to some extent by data from some individual countries. In the UK, for example, the approval rate for initial decisions on Palestinian asylum claims

[382] For 2012-2013, reference is to the EU27 (data for the Netherlands was not available); for 2014, reference is to the EU28.

[383] Alexandros Bitoulas, *Asylum Applicants and First Instance Decisions on Asylum Applications: First Quarter 2014*, Data in Focus (Eurostat, July 8, 2014), 13, http://ec.europa.eu/eurostat/documents/4168041/5949065/KS-QA-14-008-EN.PDF/0d3226e6-db27-4a4c-952f-8c73fd4bfdd3, Table 11.

[384] Alexandros Bitoulas, *Asylum Applicants and First Instance Decisions on Asylum Applications: First Quarter 2013*, Data in Focus (Eurostat, August 2, 2013), 13, http://ec.europa.eu/eurostat/documents/4168041/5948661/KS-QA-13-009-EN.PDF/b9151bbc-c608-4206-9185-611fac555c8f?version=1.0, Table 11.

[385] Ibid., Table 11.

[386] Alexandros Bitoulas, *Asylum Applicants and First Instance Decisions on Asylum Applications: First Quarter 2012*, Data in Focus (Eurostat, August 1, 2012), 13, http://ec.europa.eu/eurostat/documents/4168041/5948229/KS-QA-12-008-EN.PDF/d02e7377-6de0-458d-bb3d-2cf315154669?version=1.0, Table 11.

improved significantly from 2011 (18%) and 2012 (22%) to 2013 (49%: 51 approvals of 105 decisions). It may not be the case, however, that approval rates for Palestinian asylum claims have improved in all European countries.

Some statistics for Palestinian asylum claims in European countries are available in UNHCR's database and/or individual country statistical reports, and, where available, are provided below in individual country profiles. However, there clearly is a need for European countries collectively to improve the way they record and publish data on asylum applications by Palestinians, both in terms of numbers and in terms of the outcomes of applications and appeals, so that a more accurate and comprehensive view of the situation of Palestinian refugees in Europe can be established.

Useful links for Europe

- Common European Asylum System: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm
- European Asylum Support Office: http://easo.europa.eu/
- Asylum Information Database: http://www.asylumineurope.org
- European Council on Refugees and Exiles: http://www.ecre.org
- European Database of Asylum Law: http://www.asylumlawdatabase.eu/en
- European Country of Origin Information Network (ECOI): http://www.ecoi.net
- European Network on Statelessness: http://www.statelessness.eu
- Frontex: http://frontex.europa.eu/
- Eur-lex: http://eur-lex.europa.eu/browse/summaries.html
- Eurostat: http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home/
- Handbook on European Law relating to Asylum, Borders and Immigration (2014 edition): http://www.echr.coe.int/documents/handbook_asylum_eng.pdf

AUSTRIA[387]

1. Statistical Data

UNHCR's website does not provide statistics on the number of Palestinian asylum seekers or refugees in Austria. Statistics regarding asylum seekers in Austria are available in German on the Ministry of Interior's website; however, the data are not disaggregated by Palestinian origin – data on Palestinians is included in the 'stateless' category. Between 2009 and 2013 the following numbers of stateless persons were granted refugee protection in Austria: 2013: 32; 2012: 48; 2011: 83; 2010: 49; 2009: 34.[388]

2. Refugee Status Determination: The Process

As is the case for other asylum seekers, Palestinians in Austria may submit an application for asylum to the Federal Aliens and Asylum Office ("Bundesamt für Fremden und Asylwesen").[389] Asylum seekers may file applications at a reception center ("*Erstaufnahmestelle*"); public security service agents interview the applicants within 48 and 72 hours of arrival.[390] Subsequent asylum interviews will be conducted by an official from the Federal Aliens and Asylum Office.[391]

The Federal Asylum Office has six months from the date of initial filing to decide whether to grant refugee status to an asylum seeker.[392] The asylum seeker will be given a residence entitlement card until an enforceable decision is rendered.[393]

Moreover, while a case is pending, asylum seekers are entitled to a refugee advisor who will assist him or her in filing paperwork and translating documents.[394] A person in whom the asylum seeker has confided may join him or her throughout the proceedings.[395] The asylum seeker will be able to seek medical attention or examination at the initial reception center.[396] During the asylum process, the Federal Government will grant welfare support.[397]

[387] Professors Ulrike Brandl and Phillip Czech of the University of Salzburg reviewed and contributed to this section.

[388] Austria's Federal Ministry of the Interior, "Asylum Statistics," accessed November 13, 2014, http://www.bmi.gv.at/cms/BMI_Asylwesen/statistik/start.aspx.

[389] Information provided by Ulrike Brandl.

[390] State of Austria, "Federal Act Concerning the Granting of Asylum (2005 Asylum Act - Asylgesetz 2005) [Unofficial Translation. Published in Federal Law Gazette (FLG) I No. 100/2005]," January 1, 2006, http://www.refworld.org/docid/46adc62c2.html, Chapter 4, Section 2, Article 29(2).

[391] Ibid., Chapter 4, Section 1, Article 19(2).

[392] State of Austria, "General Administrative Procedures Act (AVG) No. 195 of 1991," January 1, 1991, http://www.refworld.org/docid/3ae6b5a7e.html, Article 73(1).

[393] State of Austria, "2005 Asylum Act," Chapter 6, Article 51(1).

[394] Ibid., Chapter 8, Section 3, Article 66.

[395] Ibid. Chapter 4, Section 1, Article 19(5).

[396] Ibid. Chapter 4, Section 2, Article 28(4).

[397] State of Austria, "Federal Law Regulating Basic Welfare Support of Asylum-Seekers in Admission Procedures and of Certain Other Aliens (Federal Government Basic Welfare Support Act 2005 - GVG-B 2005)," August 2, 1991, http://www.refworld.org/docid/46adc8c22.html, Article 2.

3. Refugee Status Determination Process: The Legal Framework

The 2005 Federal Act Concerning the Granting of Asylum provides asylum to those individuals who "in the country of origin [would] be at risk of persecution as defined in article 1A(2) of the Geneva Convention on Refugees."[398] The asylum process is divided into two stages: (1) determining the admissibility of the application; and (2) evaluating the merits of the application.[399] In the first stage of the proceedings ("Zulassungsverfahren"), the Aliens and Asylum Office has to determine within 20 days whether the application is inadmissible under the Dublin Regulation or because the applicant comes from a safe third country or an EU member state. This stage of proceedings is conducted at the reception center.[400]

Further information regarding the asylum procedure is available in ECRE/AIDA's National Country Report on Austria.[401]

4. Refugee Status Determination: Article 1D

Article 1D is incorporated into the 2005 Asylum Act, which states: "An alien shall be rendered ineligible for asylum status if and for as long as he enjoys protection pursuant to art. 1, section D, of the Geneva Convention on Refugees."[402]

Four 2013 cases in Austria's Constitutional Court ("*Verfassungsgerichtshof*")[403] annulled the decisions appealed arguing that they had erroneously assessed the cases of Palestinian asylum seekers based on Article 1A(2) criteria. The Court emphasized that the "ipso facto" language of Article 1D, in accordance with the *El Kott* decision, means that the Asylum Court, when assessing cases falling under Article 1D, must consider whether the applicant has left the UNRWA protection area *for reasons beyond the applicant's control and independent of his or her volition*, which includes, but is not limited to, the well-founded fear of persecution criteria of Article 1A(2).

Thus, in theory, a well-founded fear of persecution should not have to be established. However, it remains unclear how Austria's Asylum Court assesses cases falling under Article 1D, since the Constitutional Court has not provided specific guidelines on that matter.

398 State of Austria, "2005 Asylum Act," Chapter 2, Section 1, Article 3(1).

399 European Agency for Fundamental Rights, *Country Factsheet Austria*, September 2010, 4, http://fra.europa.eu/sites/default/files/fra_uploads/1022-asylum_factsheet_Austria_en.pdf.

400 Information provided by Dr. Phillip Czech.

401 Anny Knapp, *National Country Report: Austria* (ECRE/AIDA, May 2014), http://www.asylumineurope.org/sites/default/files/report-download/aida_-_austria_second_update_uploaded_1.pdf.

402 State of Austria, "2005 Asylum Act," Chapter 2, Section 3, Article 6(1).

403 Verfassungsgerichtshof (VfGH) [Constitutional Court of Austria], "Case U674/2012," June 29, 2013, http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vfgh&Dokumentnummer=JFT_20130629_12U00674_00; Verfassungsgerichtshof (VfGH) [Constitutional Court of Austria], "Case U706/2012," June 29, 2013, http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vfgh&Dokumentnummer=JFT_20130629_12U00706_00; Verfassungsgerichtshof (VfGH) [Constitutional Court of Austria], "Case U1053/2012," September 12, 2013, http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vfgh&Dokumentnummer=JFT_20130912_12U01053_00; Verfassungsgerichtshof (VfGH) [Constitutional Court of Austria], "Case U2346/2012," September 12, 2013, http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vfgh&Dokumentnummer=JFT_20130912_12U02346_00.

It should be noted that, in the cases annulled by the Constitutional Court, the Asylum Court also considered whether the applicant was actually unable to return to his or her previous country due to lack of permission of that State. Even though cases U674/2012 and U706/2012 only refer to an impossibility of return *due to a fear of persecution* (which, in practice, constitutes just a rephrasing of the well-founded fear criteria of Article 1A(2)), cases U1053/2012 and U2346/2012 assert that the judicial decisions under review (i.e., the decisions which were appealed and taken to the Constitutional Court) do refer to an impossibility of return *due to lack of permission from the concerned State*,[404] resembling the second set of "objective reasons" laid out in the 2013 UNHCR Note.[405] It remains unclear, however, whether such considerations are still part of Austria's refugee status determination process.

Finally, it is questionable whether the conclusions and reasoning of cases decided prior to the 2013 Constitutional Court decisions interpreting *El Kott* are still valid.

Prior to these decisions, Austria's Article 1D jurisprudence was less clear. The Asylum Court ("Asylgerichtshof") stated in a February 2012 decision that applicants are "ipso facto*"* entitled to the protections established by the Refugee Convention when they leave the area covered by UNRWA's mandate, even if this is done voluntarily, so long as they are unable to return for reasons that are beyond their control. These reasons include persecution within the area covered by the UNRWA mandate.[406] In September 2012, the Asylum Court suggested that persons who have left the area of the UNRWA mandate are eligible for protection under the Refugee Convention if unable to return to their area of prior residence due to a well-founded fear of persecution.[407] In an October 2012 decision, the Court stated that fear is only well-founded if conditions within a country would objectively lead to the conclusion that a petitioner faces a well-founded fear. The Court also determined that a petitioner must face a *significant* risk of persecution in the country of origin, rather than the remote possibility of persecution. The mere possibility of indiscriminate violence in the country of previous residence, according to the Court, is not enough to justify a grant of asylum status.[408] Additionally, the Asylum Court has emphasized that presence outside the area of the UNRWA mandate is not, in itself, enough – a Palestinian must actually be unable to return to the state of prior residence due to the reasons set forth in the refugee definition in Article 1A(2) of the 1951 Convention.[409]

[404] Verfassungsgerichtshof (VfGH) [Constitutional Court of Austria], "Case U1053/2012;" Verfassungsgerichtshof (VfGH) [Constitutional Court of Austria], "Case U2346/2012."

[405] See Chapter 2, Section 2.1.3.

[406] Asylgerichtshof (AsylGH) [Asylum Court of Austria], "Case E3 421668-1/2011-9E," February 29, 2012, http://www.ris.bka.gv.at/JudikaturEntscheidung.wxe?Abfrage=AsylGH&Dokumentnummer=ASYLGHT_20120229_E3_421_668_1_2011_00.

[407] Asylgerichtshof (AsylGH) [Asylum Court of Austria], "Case E7 427609-1/2012/12E," September 27, 2012, http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=AsylGH&Dokumentnummer=ASYLGHT_20120927_E7_427_609_1_2012_00.

[408] Asylgerichtshof (AsylGH) [Asylum Court of Austria], "Case E8 318708-1/2008/17E," October 18, 2012, http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=AsylGH&Dokumentnummer=ASYLGHT_20121018_E8_318_708_1_2008_00.

[409] Asylgerichtshof (AsylGH) [Asylum Court of Austria], "Case E7 427609-1/2012/12E."

A May 2012 ruling discussing the *Bolbol* decision interpreted it to mean that a displaced Palestinian is automatically entitled to refugee status under the Refugee Convention if he or she can no longer avail him or herself of UNRWA protection. However, the Court had not defined the conditions required to demonstrate that an individual could not avail him or herself of UNRWA protection. The Court only stipulated that an asylum seeker may not attain this protection if the reason for leaving the area of UNRWA operations was due to his or her own actions. In such a case, the asylum seeker is only entitled to have his or her case considered individually for refugee status.[410] However, Courts *were* clear in prior decisions that being a Palestinian does not, in itself, justify an automatic grant of refugee status.[411]

In all cases, a credibility assessment is essential in determining an individual's claim to refugee status. In making this credibility assessment, the Court will consider whether or not the asylum seeker's testimony remains consistent throughout the asylum application proceedings. The Court also evaluates whether the asylum seeker's testimony is likely to be true when compared to the known facts regarding the situation in the country of origin.[412] It seems that the Federal Asylum Agency will not conduct an individualized factual inquiry if the political situation in the applicant's home country is such that the applicant's assertions of persecution seem false.[413]

Austrian Courts have a strong policy preference for the "National Alternative Option." When an individual persecuted by a specific group within a country is able to avoid persecution by relocating to an area outside a particular persecutor's "sphere of influence," the asylum seeker will not be granted refugee status in Austria, as an alternative option is available. An asylum seeker must exhaust all other options within his or her home state before he or she is eligible for refugee status in Austria.[414]

Case E8 318708-1/2008/17E, of 18 October 2012[415]

Petitioner in this case was a Palestinian registered with UNRWA, who fled from a refugee camp in Lebanon. Petitioner made a living playing soccer outside the refugee camp and worked as a painter inside the refugee camp. Petitioner participated in the 2006 Lebanon war, and saw his two best friends killed in an air strike. Suffering from anxiety and facing concerns regarding his public renown as a soccer player involved in the Lebanon-Hezbollah conflict, petitioner fled to Austria in 2007. While an Austrian doctor confirmed a diagnosis of moderate depression, and the Court found

[410] Asylgerichtshof (AsylGH) [Asylum Court of Austria], "Case E7 402746-2/2012/7E," November 5, 2012, http://www.ris.bka.gv.at/JudikaturEntscheidung.wxe?Abfrage=AsylGH&Dokumentnummer=ASYLGHT_20121105_E7_402_746_2_2012_00.

[411] Asylgerichtshof (AsylGH) [Asylum Court of Austria], "Case E7 423461-1/2011/5E," May 2, 2012, http://www.ris.bka.gv.at/JudikaturEntscheidung.wxe?Abfrage=AsylGH&Dokumentnummer=ASYLGHT_20120502_E7_423_461_1_2011_00.

[412] Asylgerichtshof (AsylGH) [Asylum Court of Austria], "Case E7 402746-2/2012/7E."

[413] Asylgerichtshof (AsylGH) [Asylum Court of Austria], "Case E7 423461-1/2011/5E."

[414] Asylgerichtshof (AsylGH) [Asylum Court of Austria], "Case E7 402746-2/2012/7E."

[415] Asylgerichtshof (AsylGH) [Asylum Court of Austria], "Case E8 318708-1/2008/17E."

the applicant's story regarding his fear of persecution within the camp credible, the Court noted that the fact that conditions in Lebanon *could* lead to persecution is not in itself sufficient reason to grant asylum status. The Court notes that the refugee camp from which petitioner fled was secure from attack.

Case E7 427609-1/2012/12E, of 27 September 2012[416]

Petitioner was a Palestinian registered with UNRWA who formerly resided at a refugee camp in Lebanon. Petitioner designed and installed kitchens and windows, and also worked in the Security Unit of Fatah in his refugee camp. Petitioner left his family (father and siblings) behind when he fled Lebanon. Petitioner claimed he left Lebanon for three reasons: (1) he suffered from heart disease, and was unable to obtain the necessary medication in Lebanon; (2) on two separate occasions, he received death threats for speaking out against murders of friends who were also in Fatah; and (3) petitioner was unable to find work due to the violent conflict in Syria.

The Court ultimately rejected the applicant's asylum claim. First, a court-sanctioned doctor evaluated the petitioner's heart condition and found that he suffered from high blood pressure rather than a heart disease. The court determined that the applicant would be able to obtain blood pressure medication in an UNRWA camp. The court also found that inconsistencies in the petitioner's story reduced his credibility, and were unable to verify that he actually had a well-founded fear of persecution upon return to Lebanon. Finally, the Court noted its policy that an applicant must face a well-founded fear of persecution throughout the *entire* country of prior residence, rather than only in a specific segment of the country, in order to be eligible for refugee status under the second paragraph of Article 1D of the Refugee Convention. Here, the Court found that the applicant did not face a well-founded fear of persecution everywhere in Lebanon. To support this conclusion, the Court noted that the applicant was safe for the year and a half during which he lived outside the refugee camp. Additionally, the Court noted that Lebanon's policy regarding Palestinian refugees permits them to live outside refugee camps. Therefore, the applicant did not have a well-founded fear of persecution and did not warrant a favorable grant of asylum pursuant to Article 1D.

Case E7 402746-2/2012/7E, 5 November 2012[417]

In this decision, the asylum seeker was a Palestinian registered with UNRWA whose primary place of residence was Lebanon. He fled to Austria due to fear of persecution by Islamic organizations, which allegedly threatened his life. The Court referred to the opinion of the advocate general in the then-pending case of *Bolbol* and stated that persons who no longer take advantage of UNRWA's protection due to their own acts do not automatically qualify as refugees. Nevertheless, they were entitled to an examination of their individual case and could qualify for protection

[416] Asylgerichtshof (AsylGH) [Asylum Court of Austria], "Case E7 427609-1/2012/12E."
[417] Asylgerichtshof (AsylGH) [Asylum Court of Austria], "Case E7 402746-2/2012/7E."

if they fulfilled Article 1A(2) criteria. In the present case, the Court found that the applicant's claims regarding fear of persecution were not credible. To the extent that his fears were credible, the applicant could avoid persecution by seeking a transfer to a refugee camp outside the "sphere of influence" of the Islamic organization he claimed was persecuting him.

The case was ultimately referred back to the authority of first instance to examine whether the applicant was entitled to subsidiary protection for reasons relating to his state of health and a lack of appropriate health care in Lebanon.

Case E3 421668-1/2011-9E, of 29 February 2012[418]

In this case, the asylum seeker was a Palestinian from the Gaza Strip who was registered with UNRWA. The applicant fled to Austria because he feared for his life. The court concluded that the applicant's claim of a well-founded fear of personal persecution was not credible and the request for asylum was denied.

Case E7 423461-1/2011/5E, of 2 May 2012[419]

The applicant in this case was a Palestinian born in Libya and raised with his family in a refugee camp in Lebanon prior to his entry into Austria. The applicant was registered with UNRWA and possessed a Lebanese travel document for Palestinian refugees. He fled to Austria in fear for his life. The Federal Asylum Office determined that the applicant did not provide credible information regarding his reasons for departing Lebanon, nor did he face any credible threats of violence upon return to Lebanon.

The court also determined that because Palestinian refugees in Lebanon were permitted to live outside refugee camps, the applicant had not exhausted his options to seek safety in Lebanon.

5. Refugee Status Determination Process: Outcome

Persons granted refugee status receive permanent residence permits. Those granted subsidiary protection receive one-year, potentially renewable residence permits.[420]

An asylum seeker who has been granted refugee status may receive integration assistance "to bring about his full involvement in the economic, culture and social aspects of life in Austria."[421] Assistance may include language courses, job training, introduction to Austrian society, and information for finding housing, and benefits from the Austrian Fund for Integration of Refugees and Migrants Act.[422]

[418] Asylgerichtshof (AsylGH) [Asylum Court of Austria], "Case E3 421668-1/2011-9E."
[419] Asylgerichtshof (AsylGH) [Asylum Court of Austria], "Case E7 423461-1/2011/5E."
[420] Knapp, *National Country Report: Austria*, 13.
[421] State of Austria, "2005 Asylum Act," Chapter 8, Section 3, Article 68(1).
[422] Ibid., Chapter 8, Section 3, Article 68(2).

The government will also connect refugees with private welfare assistance from humanitarian and religious institutions, where available.[423]

If the application is denied on the merits, Austria must nonetheless grant subsidiary protection status to applicants who face a threat to life or risk of torture, both as defined by the European Convention on Human Rights, upon return to the country of origin.[424]

An asylum seeker has the right to appeal a denial of refugee status.[425] An appeal on the merits[426] must be filed within fourteen days upon receipt of a written decision.[427] Since 1 January 2014, appeals are decided by the Federal Administrative Court (formerly the Asylum Court, now with extended jurisdiction).[428] The Federal Administrative Court will issue a suspension order if deportation would violate Articles 2 or 3 of the Europe Convention on Human Rights (respectively, the right to life and the right to be free from torture or inhuman/degrading treatment). Typically, an appeal on the merits will suspend deportation automatically unless authorities revoke the suspension because the applicant's claim is manifestly unfounded.[429]

Otherwise viable suspensions of deportation may not be allowed if:

- the asylum seeker comes from a safe country of origin;
- the applicant attempted to deceive officials about his or her true identity, nationality or the authenticity of her or her documents;
- the applicant does not face any real danger;
- an enforceable deportation order and enforceable entry ban was issued prior to lodging the asylum request;
- the asylum seeker has not provided reasons for persecution;
- the asylum seeker has lived in Austria more than 3 months prior to filing an asylum application, unless certain conditions apply.[430]

Austria cannot deport an asylum seeker who has filed an asylum application until an enforceable ruling on asylum status is given.[431] If an application has been

[423] Ibid., Chapter 8, Section 3, Article 68(3).

[424] Ibid., Chapter 2, Section 3, Article 8(1).

[425] Ibid., Chapter 4, Section 5, Articles 36-39.

[426] In cases where there is no procedure on the merits, i.e. it is governed by the Dublin Regulation or the application is inadmissible because the applicant comes from a safe third country, the appeal must be filed within 7 days. State of Austria, "Federal Act Concerning the Granting of Asylum (2005 Asylum Act - Asylgesetz 2005) [with Amendments]," January 1, 2006, para. 22(12), http://www.ris.bka.gv.at/Dokumente/Erv/ERV_2005_1_100/ERV_2005_1_100.pdf; European Council on Refugees and Exiles, *"Dublin II Regulation: National Report" : European Network for Technical Cooperation on the Application of the Dublin II Regulation - Austria*, November 25, 2012, 15, http://www.refworld.org/docid/51404bb92.html.

[427] State of Austria, "General Administrative Procedures Act (AVG) No. 195 of 1991," Article 63(5).

[428] Information provided by Ulrike Brandl.

[429] State of Austria, "2005 Asylum Act," Chapter 4, Section 5, Article 38(1).

[430] Ibid., Chapter 4, Section 5, Article 38(1).

[431] Ibid., Chapter 3, Section 1, Article 12(1).

rejected and subsidiary protection is no longer available under Articles 2, 3 or 8 of the European Convention on Human Rights and appeal rights have been exhausted, expulsion procedures will be initiated.[432] An accelerated expulsion order will be put in place if it is deemed in the public interest.[433] If the Agency issues an expulsion order, the asylum seeker must leave Austria immediately.[434]

6. Protection under the Statelessness Conventions

Austria is a party to both the 1954 Stateless Persons and the 1961 Statelessness Conventions.[435] In the case of a stateless asylum seeker, "country of origin" is considered by the court to be the applicant's place of "former habitual residence."[436] UNHCR reported that at the end of 2006, all 501 stateless persons residing in Austria held Austrian residence permits.[437] As of 2013, UNHCR reports the number of stateless individuals in Austria as 588.[438]

Austria also provides Austrian citizenship to stateless individuals who were stateless at birth.[439] In order to obtain citizenship, a stateless person must reside in Austria for ten years and have a certain level of competency in the German language.[440]

7. Links

- Asylkoordination Austria: http://www.asyl.at/
- Federal Act Concerning the Granting of Asylum: http://www.refworld.org/docid/46adc62c2.html
- Netzwerk Asylanwalt (network of asylum lawyers): http://www.asylanwalt.at/ [German]
- Deserteurs- und Flüchtlingsberatung (NGO): http://www.deserteursberatung.at/info/en/
- Caritas Austria (Catholic organization, operates i.a. shelters for asylum seekers and provides legal and social counselling): http://www.caritas.at/hilfe-einrichtungen/fluechtlinge/beratung-und-vertretung/ [German]

[432] Ibid., Chapter 4, Section 1, Article 27.

[433] Ibid., Chapter 4, Section 1, Article 27(3).

[434] Ibid., Chapter 1, Section 5, Article 10(4).

[435] UNTC, "Status of Treaties: Convention Relating to the Status of Stateless Persons;" UNTC, "Status of Treaties: Convention on the Reduction of Statelessness."

[436] Ibid., Chapter 1, Article 2(1)(17).

[437] Katherine Southwick and M. Lynch, *Nationality Rights for All: A Progress Report and Global Survey on Statelessness* (Refugees International, March 11, 2009), 44, http://www.refworld.org/docid/49be193f2.html.

[438] UNHCR, "2014 UNHCR Regional Operations Profile - Northern, Western, Central and Southern Europe - Austria," accessed November 14, 2014, http://www.unhcr.org/pages/49e48e256.html. CHANGE THE TEXT TO "As of January 2014, UNHCR reports the number of stateless individuals in Austria as 604."

[439] Southwick and Lynch, *Nationality Rights for All: A Progress Report and Global Survey on Statelessness*, 44.

[440] Ibid.

- Diakonie Austria (Protestant organization, operates i.a. shelters for asylum seekers and provides legal and social counselling): http://www.diakonie.at/goto/de/taetigkeitsbereiche/migrantinnen-und-fluechtlinge/einrichtungen [German]
- SOS Menschenrechte (NGO): http://www.sos.at/ [German]
- Volkshilfe (NGO, operates shelters for asylum seekers and provides legal and social counselling): http://www.volkshilfe.at/fluechtlingshilfe?referer=%2Fintegration [German]

BELGIUM[441]

1. Statistical Data

UNHCR data show the number of Palestinian refugees and asylum seekers in Belgium.[442]

Palestinian Refugees and Asylum seekers in Belgium[443]

	2009	2010	2011	2012	2013
Refugees	52	122	76	130	125
Asylum seekers	--	--	13	10	6

UNHCR data also show that there were 10 Palestinian asylum applications pending in Belgium at the start of 2013 and 27 new asylum applications submitted by Palestinians throughout the year, with 6 of these rejected and 6 of these cases pending at the end of 2013. The outcome of the other cases is not reported.[444]

2. Refugee Status Determination: The Process

Asylum seekers may file applications at the border, an airport, a penitentiary or a closed reception center. Additionally, an asylum seeker who is already in Belgium must submit an application for asylum at the Immigration Department (*l'Office des étrangers* "OE") in Brussels within eight days of arrival.[445] All applications are first received by the Immigration Department which registers the applicant, determines the language of the proceeding – either French or Dutch (interpreters will be provided to those who speak a foreign language) – and performs a preliminary investigation. During the preliminary examination, the Immigration Department determines whether Belgium is responsible for the examination of the asylum application under the Dublin Regulation or if another EU Member State is responsible. Next, the applicant is interviewed about his or her identity, nationality, and travel.[446] The applicant completes a questionnaire briefly stating the reasons for fleeing his or her

[441] Marjan Claes, lawyer at the Belgian Refugee Aid Committee, and Femke Vogelaar, PhD Student at University of Amsterdam reviewed and contributed to this section.

[442] UNHCR, "UNHCR Population Statistics - Persons of Concern Time Series," accessed August 21, 2014, http://popstats.unhcr.org/PSQ_TMS.aspx.

[443] UNHCR, "UNHCR Population Statistics - Asylum Seekers Status Determination," accessed September 22, 2014, http://popstats.unhcr.org/PSQ_RSD.aspx. However, the number of Palestinian refugees and asylum seekers in Belgium might be higher, since they can be registered with nationality "undetermined" ("onbepaald") (information provided by Marjan Claes).

[444] Ibid.

[445] Though the fact that an asylum applicant applies for asylum after 8 days can never be the sole reason for rejecting the asylum application (EU Asylum Procedures Directive), it can be used as one of many arguments rejecting an asylum applicant. The Commissioner General will argue that the fact that an asylum applicant applied for asylum too late does not support the existence of a well-founded fear of persecution, otherwise the person would have sought protection immediately. Information provided by Femke Vogelaar.

[446] *Ibid.*

country of origin.[447] At this time, applicants may apply to the legal aid bureau for a lawyer free of charge or engage a lawyer at their own expense. However, during the interview with the Immigration Department, lawyers may not be present. In practice, the legal assistance available is often deficient due to asylum seekers being referred to inexperienced lawyers and due to structural flaws in the legal aid system.[448]

If the asylum seeker files an application at the border without the necessary documents to enter Belgium, he or she will be held at the border while awaiting the processing of the application.[449] Asylum seekers who have filed an application inside Belgian territory with the Immigration Department will be assigned to a reception center by Fedasil (Federal Agency for the Reception of Asylum seekers). The asylum seeker will be provided with material assistance in accordance with the Reception Law of 2007, including food, accommodation, clothing, medical/psychological care, legal assistance, language assistance, and a daily allowance.[450] After 4 months in a reception center, asylum seekers can request to move to individual housing provided by social services or an NGO, and they can continue to receive other benefits.[451]

Since January 2010, asylum seekers are allowed to work if they have not received an initial or "first instance" decision within six months. These six months do not include the time for pursuing an appeal.[452] Additionally, asylum seekers in reception centers are allowed to take classes and can earn a small income from jobs within the center.[453]

After the Immigration Department has registered an application and completed the preliminary examination, the case will be transferred to the Office of the Commissioner General for Refugees and Stateless Persons (*Commissariat général aux réfugiés et aux apatrides* "CGRA"), which will examine the merits of the case. At least one interview will be scheduled by the CGRA as part of the refugee status determination. The interview will focus on the reasons for leaving the country of origin. The lawyer is allowed to be present during the CGRA interview, and at the end of the interview, the lawyer is given the opportunity to make comments.[454] At

[447] *Ibid.*

[448] Ruben Wissing, *National Country Report: Belgium* (ECRE/AIDA, June 2014), 76, http://www.asylumineurope.org/sites/default/files/report-download/aida_-_belgium_second_update_uploaded.pdf.

[449] Ibid., 34.

[450] Ibid., 54; see also State of Belgium, "Loi Du 12 Janvier 2007 Sur L'accueil Des Demandeurs D'asile et de Certaines Autres Catégories D'étrangers [French]," January 12, 2007, http://fedasil.be/sites/5042.fedimbo.belgium.be/files/01_loi_du_12_janvier_2007_sur_laccueil_des_demandeurs_dasile_et_dautres_categories_detrangers_0.pdf, Articles 3 and 18.

[451] Ruben Wissing, *National Country Report: Belgium*, 57; State of Belgium, "Loi Du 12 Janvier 2007 Sur L'accueil Des Demandeurs D'asile et de Certaines Autres Catégories D'étrangers [French]," Article 12(1).

[452] Information provided by Femke Vogelaar.

[453] Fedasil, "About the Reception Centres," accessed November 17, 2014, http://fedasil.be/en/content/about-reception-centres-0.

[454] Information provided by Femke Vogelaar.

this time, the CGRA may grant refugee status or subsidiary protection, in accordance with the Aliens Act.[455]

3. Refugee Status Determination Process: The Legal Framework

The Aliens Act was amended in 2006 as part of the introduction of subsidiary protection, and it entered into force in June 2007. Asylum claims are examined on the basis of the criteria set out in Article 48 of the Aliens Act, which directly refers to the Refugee Convention. Article 48/3(1) provides:

> Refugee status is granted to an alien who meets the conditions laid down in Article 1 of the Geneva Convention of July 28, 1951 relating to the Status of Refugees as amended by the New York Protocol of January 31, 1967.[456]

Article 55/2 of the Aliens Act refers directly to Article 1D of the Refugee Convention.

> An alien is excluded from refugee status when Article 1, Section D, E or F of the Geneva Convention is applicable. This is also applicable to people who instigate or otherwise participate in the crimes or acts mentioned in article 1F of the Geneva Convention.[457]

4. Refugee Status Determination: Article 1D

Although article 55/2 of the Aliens Act does not explicitly refer to Article 1D's independent inclusion clause, 1D is generally accepted as part of domestic law.

In a 2009 Annual Report published by the Aliens Litigation Council (*Conseil du Contentieux des Étrangers*, "CCE"),[458] the Council stated that article 55/2 specifically incorporated Article 1D; and that the position of article 55/2 was in line with the October 2009 UNHCR Note. The report explains that:

> The possibility of return is, for this reason, considered an essential part of the consideration for the application of Article 1D of the Geneva Convention. If the country of habitual residence prevents the return, the individual is recognized as a refugee. In this case, there is no further proceeding to examine the claim under Article 1A of the Geneva Convention.[459]

[455] State of Belgium, "Loi Du 15 Décembre 1980 Sur L'accès Au Territoire, Le Séjour, L'établissement et L'éloignement Des Étrangers [French]," December 15, 1980, https://dofi.ibz.be/sites/dvzoe/FR/Documents/19801215_F.pdf, especially Article 48/4.

[456] Ibid., Article 48/3(1), our translation.

[457] Ibid., Article 55/2, our translation.

[458] Conseil du Contentieux des Étrangers, *Rapport Annuel 2009-2010 [French]*, 79, accessed November 17, 2014, http://www.rvv-cce.be/rvv/rapportannuel0910.pdf.

[459] Ibid., 80, our translation.

Case 70268, 21 November 2011[460]

A November 2011 decision reveals some of the court's reasoning in construing Article 1D. Case No. 70 268 involved an asylum seeker classified as "stateless" and of "Palestinian Origin" from the West Bank. The applicant had an UNRWA identification card, and a diploma and certificate from the PLO (Palestinian Liberation Organization) proving that he was from the Balata Camp. On appeal, the applicant argued that his case fell under Article 1D, not Article 1A, and that because he was no longer receiving protection or assistance from UNRWA, he was automatically entitled to refugee status under the second paragraph of Article 1D. Additionally, the applicant argued for protection under the second paragraph of Article 1D because he did not have the necessary documentation to return to the West Bank, and he could not return to the West Bank because of violence there.

The CCE decision discussed the hardship faced by the applicant owing to the lack of opportunity to return to the West Bank. However, the judge dismissed the arguments relating to inability to return to the West Bank, saying that the motivation of the applicant leaving was related to the situation in general and the socio-economic circumstances in particular. The judge stated that these are not elements that establish a well-founded fear of persecution, nor was it established that the applicant could not place himself under the assistance or protection of UNRWA. The CCE found the asylum seeker's argument for inclusion under the second paragraph of Article 1D unpersuasive because:

> Article 1D is not intended to freely grant to Palestinian refugees the right to either protection or assistance from UNRWA or refugee status. The preparatory work shows that it was not the intent of the designers of the Refugee Convention that for Article 1D, § 2 the assistance of UNRWA "ceased to exist" only because an individual has made the decision to leave the UNRWA zone. The inclusion clause, according to the preparatory work launched by the Egyptian representative, is to prevent the exclusion clause from being definitive in nature so the Palestinians would not be left to fend for themselves once the UNRWA operations ceased since UNRWA only had a temporary mandate.

In order for the applicant to fall under the second paragraph, the court concluded:

> With respect to Palestinians, once the area of UNRWA mandate has been abandoned and they therefore are de facto no longer under the protection of this agency, in the first place it shall be examined to what extent, if they were to return again would they receive protection and get assistance from UNRWA. Refugee status can only be granted *ipso facto* where it is established that there are obstacles that prevent the applicant from placing himself under the assistance or protection of UNRWA.

This reasoning implies that, if there are no practical obstacles to return, Palestinian asylum seekers must, in order to qualify under the second paragraph of Article 1D,

[460] Conseil du Contentieux des Étrangers, "Case 70268 [Dutch]," November 21, 2011, 70268, http://www.rvv-cce.be/sites/default/files/arr/A70268.AN.pdf.

establish a well-founded fear in the sense of Article 1A. This was standard case law until the judgment of *El Kott*, but clearly does not comply with the reasoning of *El Kott*.[461]

This case was also reviewed by the Council of State, in which the council applied *El Kott*. It first repeats that the mere fact that the concerned person finds himself outside UNRWA's area of operations or leaves this area voluntarily, is not enough to end the exclusion of 1D (first paragraph). The council goes on, stating that the wording "for any reason" means that the cessation of protection or assistance does not only concern events affecting UNRWA directly, such as the abolition of that agency, but also circumstances beyond the applicant's control and independent of his or her volition, which have forced the person concerned to leave the UNRWA area of operations. To assess whether the exclusion from the Refugee Convention has ended, it must be considered whether the person's personal safety was at serious risk and it was impossible for UNRWA to guarantee that his living conditions in that area would be commensurate with the mission entrusted to UNRWA.

The council stated that the Court concluded that the applicant did not have a well-founded fear of persecution and did not have a real risk of suffering serious harm when returning to UNRWA area of operations (subsidiary protection). Hence the Court had examined whether the applicant's personal safety was at serious risk and whether the applicant could return to the UNRWA area of operations and whether UNRWA was able to guarantee the living conditions commensurate with its mission. The Council further states that a general situation of socio-economic difficulties does not constitute a situation where a person's safety is at serious risk. The Council of State rejected the appeal.[462]

Case 87475, 12 September 2012[463]

In another decision, issued on 12 September 2012, the CCE construed Article 1D in a similar fashion to a 2010 decision,[464] focusing on the possibility of return to an UNRWA area. In this case, an UNRWA-registered Palestinian from the Lebanese Refugee Camp, Nahr al Bared, claimed that after he defected from the PFLP (Popular Front for the Liberation of Palestine – an anti-Fatah political group), he was targeted by the group.

The CGRA had concluded that the applicant should be excluded from the Refugee Convention in accordance with the first paragraph of Article 1D, because he was

[461] Information provided by Marjan Claes.

[462] Conseil d'État, "Case 222652 [Dutch]," February 27, 2013, http://www.raadvst-consetat.be/Arresten/222000/600/222652.pdf.

[463] Conseil du Contentieux des Étrangers, "Case 87475 [Dutch]," September 12, 2012, 87475, http://www.rvv-cce.be/sites/default/files/arr/A87475.AN.pdf.

[464] BADIL Resource Center, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention. Jurisprudence Regarding Article 1D 2005-2010*, Revised Edition (Bethlehem, Palestine, 2011), 27–28, http://www.BADIL.org/phocadownload/BADIL_docs/publications/handbook/update2011/country%20profile/handbook2010.pdf.

unable to show either fear of persecution or inability to return to the country. The CGRA stated:

> Since it appears that you have provided no evidence to show that in Lebanon you will be risking persecution as understood in refugee law, and moreover it is determined that UNRWA registered refugees can return to Lebanon without problems, the CGRA considers that there are no obstacles that prevent you from returning to Lebanon and that you can again enjoy the protection or assistance of UNRWA. In accordance with Article 1D of the Refugee Convention and Article 55/2 of the Aliens Act you should therefore be excluded from refugee status.

On appeal, the CCE determined that inclusion under Article 1D was based on whether return is possible or not and whether a person who is able to return can place himself again under UNRWA assistance or protection. The inclusion is based on the fact that a person cannot return because of fear of persecution or because the country obstructs return, for example because no travel documents are delivered:

> The [Qualification] Directive, in particular Article 12 1(a), and Article 55/2 of the Aliens Act refer therefore explicitly to the application of Article 1D of the Geneva Convention. Article 1D of that Treaty provides that if the protection or assistance from organizations or institutions such as UNRWA for any reason is terminated, the person's assistance and legal protection will fall under the Refugee Convention. The view of UNHCR as set out in the memorandum of October 2009 on the application of Article 1D is that when a person is outside the mandate of the UNRWA area, he or she no longer enjoys the protection or assistance from agencies other than UNHCR and consequently falls under Article 1D, second paragraph, so that person is automatically entitled to the provisions of the Refugee Convention of 1951. This does not prevent the person who returns to the Mandate area of UNRWA from being within the scope of Article 1D, first paragraph. (UNHCR, "Revised Statement on Article 1D of the 1951 Convention", October 2009, p. 8; UNHCR, "Revised Note on the Applicability of Article 1D of the 1951 Convention Relating to the Status of Refugees to Palestinian refugees" October 2009 Section C. 8 and 10). In some cases, there may be reasons why the person cannot be returned or does not want to return to the mandated territory, such as the relevant government's refusal to accept the person's return.
>
> *It is therefore necessary to determine whether a Palestinian refugee, who falls under the care of UNRWA, can effectively re-avail himself of UNRWA's protection. If the country of habitual residence of the Palestinian hampers return, this person should be recognized as a refugee without examination under Article 1A of the Refugee Convention, since he is already a refugee* [emphasis added].[465]

[465] Conseil du Contentieux des Étrangers, "Case 87475 [Dutch]," 6–7.

However, there has been a change in the reasoning of the asylum authorities on the application of the second paragraph of Article 1D after the *El Kott* judgment.

According to the CGRA, two cumulative conditions must be fulfilled in order for the second paragraph of Article 1D to apply. First, the applicant must have fled because his "personal safety was at serious risk." The CGRA considers "Persecution" in the sense of Article 1A(2) Refugee Convention and "serious harm" in the sense of Article 15 of the Qualification Directive as a situation where "personal safety was at serious risk." Socio-economic difficulties are not considered to constitute this kind of situation unless they reach the threshold of persecution or serious harm. Secondly, it must be established that it was impossible for UNRWA to fulfill its mission towards the applicant – that is, UNRWA could not provide any assistance.[466]

The CGRA had stated that in applying *El Kott*, it was not necessary to examine whether return to the UNRWA area of operations is possible.[467] However, this statement was overruled by the Aliens Litigation Council – Case No. 108.154[468] (8 August 2013); Case No. 100.713[469] (10 April 2013); and Case No. 96.372[470] (31 January 2013).

> "The Council points out that the question, if the possibility of return in order to avail himself again of UNRWA assistance is an essential part of article 1 D, was not answered in the jurisprudence of the European Court of Justice, more in particular in the judgment El Kott. The question was treated in the opinion of the advocate general, but was not relevant to answer the questions referred for a preliminary ruling because in the cases that were the object of it, it was not disputed that the departure of the concerned persons is justified because of reasons beyond their control and independent of their volition, which have forced the persons concerned to leave the UNRWA area of operations and in that way prevent them to enjoy the UNRWA delivered assistance."[471]

The Advocate General of the CJEU states in his conclusion in *El Kott* that when it is not possible to return to the area where UNRWA assistance was received, it has to be accepted that the reason why assistance has ceased is beyond the person's control and independent of their volition:

> "*82. Second, it is quite conceivable, as has been pointed out to the Court, that a person in receipt of UNRWA assistance may voluntarily leave the UNRWA area on a temporary basis – for example, in order to visit a relative elsewhere*

[466] Luc Leboeuf, *La Réception de La Directive Qualification En Droit Belge - Rapport Intermédiaire 2013* (Equipe droits européens et migrations (EDEM), 2013), 52, javascript:download_alfresco_doc('3ad9c396-5446-47ec-b63f-8a29348abe43','L.LEBOEUF, La r%C3%A9ception de la directive qualification en droit belge, rapport interm%C3%A9diaire 2013.pdf').

[467] Ibid., 53.

[468] Conseil du Contentieux des Étrangers, "Case 108154 [Dutch]," August 8, 2013, http://www.rvv-cce.be/sites/default/files/arr/A108154.AN.pdf.

[469] Conseil du Contentieux des Étrangers, "Case 100713 [Dutch]," April 10, 2013, http://www.rvv-cce.be/sites/default/files/arr/A100713.AN.pdf.

[470] Conseil du Contentieux des Étrangers, "Case 96372 [Dutch]," January 31, 2013, http://www.rvv-cce.be/sites/default/files/arr/A96372.AN.pdf.

[471] Conseil du Contentieux des Étrangers, "Case 108154 [Dutch]," 9.

– while fully intending to return and genuinely believing that he will be able to do so, but finds that in fact his re-entry into the territory in which he received assistance is blocked. Such a person should, in my view, be considered as prevented from receiving UNRWA assistance for a reason beyond his control or independent of his volition."[472]

UNHCR confirms this position in its "*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*."[473]

The Council approved the interpretation of the Advocate General and took the view that a proper examination of Article 1D of the Refugee Convention requires consideration of the question of whether return to the area of UNRWA assistance is possible or not.

Other decisions of the CCE since the judgment in *El Kott* follow the reasoning of the CJEU. See e.g.: CCE Case No. 96.656[474] (7 February 2013); Case No. 111.106[475] (30 September 2013); and Case No. 116.646[476] (9 January 2014):

The Council observes that the European Court of Justice, following a new request for a preliminary ruling concerning article 12, 1, sub a) of the Qualification Directive, recently has clearly stated that the 1st paragraph of article 1D of the Refugee Convention cannot be interpreted in this way, that the mere fact that a Palestinian refugee finds himself outside UNRWA area of operations or voluntarily has left this area suffices to end the exclusion contained in this clause (CJEU 19 December 2012, C-364/11, El Kott v. Bevándorlási és Államolgársági Hivatal, §49).

> On the other hand an additional examination in the sense of Article 1A of the Refugee Convention is in principle not necessary for asylum seekers originating from this area of operations. The European Court of Justice states that in the first place by carrying out an assessment of the application on an individual basis it needs to be examined if the departure of the person concerned from the area of operations may be justified by reasons beyond his control and independent of his [volition] and thus prevent[ing] him from receiving UNRWA assistance. (HvJ 19 december 2012, C-364/11, El Kott v. Bevándorlásiés Államolgársági Hivatal, § 61). This is the case, as stated by the Court in its decision, when the

[472] Court of Justice of the European Union, "Opinion of Advocate General Sharpston, Delivered N 13 September 2012 - Mostafa Abed El Karem El Kott and Others v. Bevándorlási És Állampolgársági Hivatal (C-364/11)," September 13, 2012, http://curia.europa.eu/juris/document/document.jsf?text=&docid=126801&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=934592.

[473] UNHCR, "2013 Note," 5.

[474] Conseil du Contentieux des Étrangers, "Case 96656 [Dutch]," February 7, 2013, http://www.rvv-cce.be/sites/default/files/arr/A96656.AN.pdf.

[475] Conseil du Contentieux des Étrangers, "Case 111106 [Dutch]," September 30, 2013, http://www.rvv-cce.be/sites/default/files/arr/A111106.AN.pdf.

[476] Conseil du Contentieux des Étrangers, "Case 116646 [French]," January 9, 2013, http://www.rvv-cce.be/sites/default/files/arr/A116646.AN.pdf.

asylum seeker finds himself in a situation where his personal safety is at serious risk and if it is impossible for that agency to guarantee that his living conditions in that area will be commensurate with the mission entrusted to that agency. (HvJ 19 december 2012, C-364/11, El Kott v. Bevándorlási és Államolgársági Hivatal, § 65). In this case the concerned person must automatically be granted refugee status, unless he must be excluded because of the reasons mentioned in article 1E and 1F of the Refugee Convention. (HvJ 19 December 2012, C-364/11, El Kott v. Bevándorlási és Államolgársági Hivatal, § 81).[477]

If this is not the case, the Council examines the possibility of return to the UNRWA area of operations.

There has also been an interesting judgment of the CCE regarding the application of Article 1D in situations where the conditions to grant subsidiary protection are fulfilled. In Case No. 120.586 (13 March 2014), the CGRA refused refugee status and granted subsidiary protection status to a Palestinian refugee registered with UNRWA in Gaza. The Palestinian refugee appealed this decision. The CCE reasoned:

> "The Council states that the conclusion of the disputed decision is not correct. One cannot state that the applicant can return to the UNRWA area of operations without any problems to avail himself of the protection of this organization and subsequently grant him subsidiary protection based on article 48/4, §2, c) of the Aliens Law, which would mean that in Gaza there is a situation of indiscriminate violence due to an international or internal armed conflict."

The Council's position is that it is contradictory to say, on one hand, that a person can return (and therefore is not entitled to recognition under the second paragraph of Article 1D), but to then grant him subsidiary protection, because this implies that the CGRS is of the opinion that the ongoing violence is to such a degree that it would make it improper to force the person to return.[478]

Palestinian refugees registered with UNRWA fleeing the armed conflict in Syria have been ipso facto recognized as refugees in Belgium according to the second paragraph of article 1D. As of October 2014, Palestinians registered with UNRWA in Gaza,[479] but other Palestinians may or may not be recognized as refugees.[480]

5. Refugee Status Determination Process: Outcome

Applicants granted either refugee status or subsidiary protection receive residence permits. If granted refugee status, the residence permit is for an indefinite

[477] Conseil du Contentieux des Étrangers, "Case 96656 [Dutch]," 5, item 2.8.

[478] Information provided by Marjan Claes.

[479] Belgian Refugee Council (CBAR-BCHV), "Verslag van de Contactvergadering [Report of the Contact Meeting]," September 9, 2014, para. 14, http://www.cbar-bchv.be/LinkClick.aspx?fileticket=3fR0nrDe3do%3d&tabid=219&mid=1424&language=nl-NL.

[480] Information provided by Marjan Claes.

period and comes with the right to family reunification with immediate family members, subject to demonstrating ability to support them.[481] If granted subsidiary protection, the residence permit is for one year and is renewable if the circumstances necessitating international protection continue. After the first year, the residence permit will be for two years. After five years of subsidiary protection, the person will normally be granted permanent residence.[482] Following a September 2013 decision of the Constitutional Court, a person who is granted subsidiary protection is eligible for family reunion on the same conditions as a person recognized as a refugee.[483]

Persons granted some form of protection in Belgium may stay at a reception center for 2 months after a positive decision and can request further assistance from social services.[484]

In case of a negative decision, an appeal of the CGRA decision can be lodged with the CCE. Appeals with the CCE should be filed within 30 days of a CGRA decision.[485] The CCE may confirm the CGRA's decision, overturn the decision, or, if the applicant has not presented sufficient elements to decide on the case, the CCE may refer the case back to the CGRA to re-examine the asylum application and make a new decision.[486] Decisions of the CGRA that deny refugee status, but grant subsidiary protection, can be appealed to the CCE. An appeal of such a decision suspends subsidiary protection,[487] and the CCE takes its own decision, which may, in the end, result in refusal to grant subsidiary protection or refugee status.[488] A timely submitted appeal suspends the effects of a negative decision on an asylum application, and no removal action can be taken.[489] In some cases, further appeal to

[481] The Refugee Forum, *International Asylum Systems: Belgium* (University of Ottawa, Human Rights Research and Education Centre, 2010), 1, http://cdp-hrc.uottawa.ca/en/projects/refugee-forum/projects/systems/documents/BelgianAsylumSystem.pdf (last visited on August 26, 2014).

[482] Ibid., 2.

[483] Belgian Refugee Council (CBAR-BCHV), *Family Reunification of Beneficiaries of Subsidiary Protection in Belgium, Addendum to the Brochure "Family Reunification of Refugees Recognized in Belgium,"* June 2014, 1, http://www.cbar-bchv.be/LinkClick.aspx?fileticket=cOxyKWsQG1E%3d&tabid=211&mid=791&language=en-US.

[484] Fedasil, "Reception of Asylum Seekers," accessed November 18, 2014, http://fedasil.be/en/content/reception-asylum-seekers.

[485] Office of the Commissioner General for Refugees and Stateless Persons, "Asylum Procedure - Appeal against the Decision," accessed November 18, 2014, http://www.cgra.be/en/Procedure_d_asile_en_pratique/Recours_contre_la_decision/.

[486] Office of the Commissioner General for Refugees and Stateless Persons, "Asylum Procedure - Final Decision," accessed November 18, 2014, http://www.cgra.be/en/Procedure_d_asile_en_pratique/Decision_finale/.

[487] Office of the Commissioner General for Refugees and Stateless Persons, "Asylum Procedure - Appeal against the Decision."

[488] Office of the Commissioner General for Refugees and Stateless Persons, "Asylum Procedure - Final Decision."

[489] Office of the Commissioner General for Refugees and Stateless Persons, "Asylum Procedure - Appeal against the Decision;" Foreign Affairs, Foreign Trade and Development Cooperation, "Asylum," accessed November 18, 2014, http://diplomatie.belgium.be/en/policy/policy_areas/striving_for_global_solidarity/asylum_and_migration/asylum/.

the Council of State is possible in a "cassation procedure."[490] Important changes to the appeals system were implemented in 2014 after cases before the Constitutional Court and European Court of Human Rights found certain aspects of the appeals procedures to be deficient.[491]

In the case of a final negative decision, an order to leave the territory is issued. If the decision is confirmed by the Council for Alien Disputes, prior to issuance of an order to leave, the person is invited to a return center and encouraged to leave voluntarily. These centers are open (residents are free to come and go), and no residents should be removed prior to the issuance of an order to leave.[492]

If an order to leave has been issued and the person does not leave within the set time period, he or she "may be forcibly deported."[493]

6. Protection under the Statelessness Conventions

Belgium is a party to the 1954 Stateless Persons Convention[494] and acceded to the 1961 Statelessness Convention on 1 July 2014.[495] There is no specific procedure in Belgian law to apply for recognition as a stateless person. However, stateless persons seeking recognition of their status can file "a unilateral petition with the Court of First Instance" for their place of residence. The applicant bears the burden of proving that he or she is stateless. Stateless persons have no right of temporary residence while an application with the Court of First Instance is pending. If recognized as a stateless person, the person must seek to regularize their immigration status through a further application to the relevant government ministry. The Office of the Commissioner General for Refugees and Stateless Persons can issue a certificate acknowledging statelessness, and may be able to issue other documents such as birth, marriage, or death certificates that would normally be issued by the country of nationality.[496] Once recognized as such, stateless persons enjoy the same benefits as third-country nationals in Belgium, which includes permanent residence, social support, work authorization and entitlement to family reunification. Increasing numbers of Palestinians have been granted protection under the 1954 Stateless Persons Convention in recent years.[497]

[490] Foreign Affairs, Foreign Trade and Development Cooperation, "Asylum."

[491] Ruben Wissing, *National Country Report: Belgium*, 10.

[492] Fedasil, "Reception of Asylum Seekers."

[493] Office of the Commissioner General for Refugees and Stateless Persons, "After the Procedure - Stay or Departure," accessed November 18, 2014, http://www.cgra.be/en/Apres_la_procedure/Sejour_ou_depart/.

[494] UNTC, "Status of Treaties: Convention Relating to the Status of Stateless Persons."

[495] UNTC, "Status of Treaties: Convention on the Reduction of Statelessness."

[496] Office of the Commissioner General for Refugees and Stateless Persons, "Vulnerable Groups - Stateless Persons," accessed November 18, 2014, http://www.cgra.be/en/Groupes_vulnerables/Apatrides/.

[497] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 347.

7. Links

- The Office of the Commissioner General for Refugees and Stateless Persons: http://www.cgra.be
- Federal Agency for the Reception of Asylum seekers: http://fedasil.be
- Kingdom of Belgium, Foreign Affairs, Foreign Trade and Development Cooperation: http://diplomatie.belgium.be/en/policy/policy_areas/striving_for_global_solidarity/asylum_and_migration/asylum/
- Belgian Refugee Council: http://www.cbar-bchv.be/en-us/home.aspx
- Jesuit Refugee Service, *Protection Interrupted: The Dublin Regulation's Impact on Asylum seekers' Protection (The DIASP project)*, 4 June 2013 (includes a chapter on Belgium): https://www.jrs.net/assets/Publications/File/protection-Interrupted_JRS-Europe.pdf

CZECH REPUBLIC[498]

1. Statistical Data

The exact number of Palestinians seeking asylum in the Czech Republic is unknown. The Ministry of Interior lists Palestinians who applied for asylum in the Czech Republic as stateless persons (together with other stateless persons). According to the Czech Statistical Office, on 31 December 2012, there were 1346 stateless persons staying in the Czech Republic with a long-stay visa (with stay for over 90 days) or long-stay residence permit (with stay for over 1 year). However, these are not all Palestinian refugees. Also, according to the same statistics, the number of foreigners from the Occupied Palestinian Territories with a long-stay visa or long-stay residence permit in the Czech Republic was 145 on 31 December 2012.[499] UNHCR statistics for the Czech Republic appear to be inaccurate (they show 1 Palestinian refugee in the Czech Republic in 2012, and no data for 2013).

2. Refugee Status Determination: The Process

Asylum seekers in the Czech Republic must express their intention to apply for international protection in the form of a declaration made within the country.[500] The declaration may be made to the Alien Police at any of the following places: Aliens Police Regional Headquarters, a border crossing, a reception center, or a detention center, or the Ministry, if the alien is hospitalized or held in custody.[501] After declaring an intention to seek protection, aliens will be required to go to a reception center within twenty-four hours to file an application for protection.[502] At the reception center, the alien's fingerprints will be taken and he or she will be photographed[503] and required to have a medical check-up.[504] After filing an application, if there are no identity or verification issues, aliens will be permitted to leave the reception center and stay at an "accommodation center."[505] A decision to require an alien to stay at the reception center is appealable.[506]

At the beginning of the refugee status determination procedure, asylum seekers

[498] Beáta Szakácsová, lawyer at the Czech Organization for Refugee Aid, reviewed and contributed to this section.

[499] Information provided by Beáta Szakácsová. Official statistics are available at Czech Statistical Office, "Foreigners by Citizenship," accessed November 18, 2014, http://www.czso.cz/csu/cizinci.nsf/engt/B900334BBE/$File/c01r02.pdf; however, the figures for Palestinians and stateless persons should be treated with caution.

[500] Czech Republic, "Act No. 325/1999 Coll. of 1999 on Asylum and Amendment to Act No. 283/1991 Coll., on the Police of the Czech Republic, as Amended [Asylum Act]," November 11, 1999, http://www.refworld.org/docid/4a7a97bfc33.html, Chapter II, Section 3.

[501] Ibid., Chapter II, Section 3a.

[502] Ibid., Chapter II, Section 4a(1).

[503] Ibid., Chapter II, Section 4c(1).

[504] Ibid., Chapter VII, Section 46(1)(b).

[505] Ibid., Chapter XI, Section 79(2) and (3).

[506] Ibid., Chapter II, Section 46a(3).

stay in one of two closed reception centers in the Czech Republic before they can move to one of the open camps.[507]

Asylum seekers placed in the reception center pay for their accommodation and food in the center if they arrive at the center with more money than the stated minimum living standard. There is a nurse regularly present at the reception center at the airport and a doctor present at the reception center in the territory. Legal aid is available in both centers at least once a week.[508]

After leaving the closed reception center, asylum seekers can decide whether they want to stay in one of the open camps or prefer to find accommodation on their own. Accommodation at the open camp is free if the asylum seeker has less money than the minimum living standard. Asylum seekers staying in the open camp who have less money than the minimum living standard receive cash allowances. Food is not provided in the open camp, and asylum seekers prepare their own food. Asylum seekers are eligible for public insurance and thus have access to medical aid. Lawyers from nongovernmental organizations visit the open camps at least once a week.[509]

Asylum seekers who decide to find accommodation on their own after leaving the reception center are not entitled to cash allowances, and they have to cover all their costs. As they are eligible for public insurance, they do have access to medical aid. If they need legal aid, they can contact nongovernmental organizations providing legal aid to refugees in the Czech Republic. All asylum seekers receive a list of these organizations (with contact information) from the Ministry of Interior when they file their application for international protection.[510]

Asylum seekers can work only if they receive a work permit, which cannot be issued within the first 12 months after filing the application for international protection. After these 12 months, a work permit should be issued upon request by the employer, without considering the impact on the labor market.[511]

A specific procedure applies for asylum seekers who declare their intention to apply for international protection in the transit areas of the international airport in the Czech Republic, who are placed in the reception center at Vaclav Havel Airport. The Ministry of Interior makes a decision on whether the alien is allowed to enter the territory within five days of the application for international protection. Access to the territory is not granted if the identity of the asylum seeker has not been established in a reliable manner, the asylum seeker produced a falsified or altered identity document, or for whom there is a well-founded assumption that he or she could threaten the security of the state, public health or public order. Asylum seekers who are not granted leave to enter the territory must be allowed to access the territory if

[507] Information provided by Beáta Szakácsová.
[508] *Id.*
[509] *Id.*
[510] *Id.*
[511] *Id.*

the Ministry of Interior fails to make a decision on their asylum application within four weeks of the date of the application for international protection. During the first four weeks or until a decision is made by the Ministry of Interior, the asylum seeker must stay at the airport's reception center (for a maximum of 120 days).[512]

The Ministry of the Interior controls the asylum administration process, and after the application is completed, the alien will be interviewed by an officer at the Ministry.[513] During the interview, the applicant has the opportunity to outline the circumstances of his or her situation. In some cases, there may be more than one interview. Before a decision is delivered, the asylum seeker is presented with the country of origin information which will be used for determining his or her application.[514]

Decisions should be given within ninety days of the filing of an application, but the law allows the Ministry of Interior to extend this period appropriately, if with respect to the nature of the matter, a decision cannot be made within 90 days. The Ministry of Interior must notify the asylum seeker about the extension of the period in writing without undue delay.[515]

3. Refugee Status Determination Process: The Legal Framework

Section 12 of the Asylum Act[516] provides asylum status to a foreign national who:

a) has been persecuted for exercising his or her political rights and freedoms, or

b) has a well-founded fear of being persecuted for reasons of race, sex/gender,[517] religion, nationality, membership of a particular social group or for holding certain political opinions in the country of which he or she is a citizen or, in case of a stateless person, in the country of his or her last permanent residence.

Under Section 14, humanitarian asylum may be given in case the Section 12 criteria are not fulfilled but there are humanitarian reasons to provide protection.[518] A separate provision in Section 14a offers subsidiary protection in case of risk of serious harm upon return to the state of origin, in accordance with Article 18 of the Qualification Directive.[519] Serious harm includes: the enforcement of capital punishment; torture or other inhumane or degrading treatment; a serious threat to life or dignity in situations of international or internal armed conflict; and where an international obligation would be breached if the alien were forced to leave the country.[520]

[512] *Id.*
[513] Czech Republic, "Asylum Act," Chapter III, Section 23.
[514] Information provided by Beáta Szakácsová..
[515] *Id.*
[516] Czech Republic, "Asylum Act," Chapter III, Section 12.
[517] Beáta Szakácsová notes that in Czech, the same word is used for 'sex' and 'gender.'
[518] Czech Republic, "Asylum Act," Chapter III, Section 14.
[519] Ibid., Chapter III, Section 14a(1).
[520] Ibid., Chapter III, Section 14a(2).

The Office of Migration uses the European Country of Origin Information Network (ECOI) for country condition resources.[521]

4. Refugee Status Determination: Article 1D[522]

Article 1D of the Refugee Convention is implemented in Article 15, Section 3(a) of the Czech Asylum Act. Under Article 15, asylum cannot be granted if the asylum seeker avails himself or herself of the protection or enjoys support from United Nations bodies other than the Office of the High Commissioner for Refugees; but the provisions of the Asylum Act shall apply to persons to whom, for any reason, such protection or support is not granted and for whom the final decision on their status has not been made pursuant to the provisions of the relevant resolutions made by the United Nations General Assembly.

Despite this provision of Article 15, in general, the Ministry of Interior does not consider the exclusion clause in cases of Palestinian asylum seekers. Palestinians whose applications are approved are usually granted subsidiary protection rather than refugee status, and the appellate bodies' decisions since *El Kott* have not been favorable to Palestinian applicants.

A.F., male, 20 years old, Palestinian refugee born in Syria (6 August 2013)

The asylum seeker was born in Syria. His grandfather arrived in Syria in 1948 and was registered with UNRWA at that time. The asylum seeker had also been registered with UNRWA in Damascus, and submitted an UNRWA record of the registration to the Ministry of Interior during the refugee status determination proceedings. The asylum seeker filed his application on 10 May 2012. He stated in his application that he left Syria because he wanted to study in the Czech Republic as his uncle is a Czech citizen. He further stated that he could not go back to Syria because he feared he could be persecuted because of his father's activities in Syria.

The Ministry of Interior rendered a decision on 7 May 2013, which granted subsidiary protection for 12 months. The decision included no reasoning regarding the application of the exclusion clause, and only mentioned that the UNRWA registration record had been submitted, without any further statement of its significance.

The asylum seeker appealed the decision on subsidiary protection, arguing that he fulfilled the requirements for asylum according to Article 15 §3(a) of the Asylum Act, considering decision C-364/11, *El Kott v. Bevándorlási és Állampolgársági Hivatal* of the Court of Justice of the European Union. The Municipal Court in Prague made its decision on 6 August 2013, finding against the asylum seeker.

The asylum seeker filed an appeal of the Municipal Court's decision to the

[521] "European Country of Origin Information Network," accessed November 18, 2014, http://www.ecoi.net/.

[522] Beáta Szakácsová, *Overview of the RSD Procedure Conducted with Palestinian Asylum seekers in the Czech Republic* (Oct. 31, 2013) (unpublished manuscript) (on file with author).

Supreme Administrative Court (SAC). The Supreme Administrative Court refused the cassation complaint on 19 December 2013 and stated in its decision:

> "With regards to the decision of the Grand Chamber of the Court of Justice from December 19, 2012, Mostafa Abed El Karem El Kott and others against Bevándorlási és Állampolgársági Hivatal, C-364/11, which interprets art. 12 section 1 a) of the directive of the Council 2004/83/ES, it is necessary for the application of art. 15 section 3 a) of the Czech Asylum Act, that protection or assistance provided by the UN for Palestinian refugees in the Middle East has ceased for reasons independent of the will of the applicant for international protection, and the applicant must have actually accessed such protection or assistance previously. The fulfillment of these conditions has to be concretely stated by the applicant for international protection during the administrative procedure."

N.F., male, 44 years old, Palestinian refugee born in Syria (7 May 2013)

The asylum seeker applied for international protection in the Czech Republic. He had been a doctor in Syria and the security forces had started to look for him because he had been treating patients injured during demonstrations against the Syrian president. He had submitted to the Ministry of Interior a record of registration with UNRWA and a statement as to why and how the *El Kott* judgment should apply when making a decision regarding his application.

He filed his application on 10 May 2012 and received a decision on May 7, 2013, granting him subsidiary protection for 12 months. The decision stated that:

> […] *the administrative body states that according to art. 15(3)(a) of the Asylum Act, asylum cannot be granted if the third-country national avails herself/himself of the protection or enjoys the support from United Nations Organization bodies or professional organizations other than the United Nations High Commissioner for Refugees; if for any reasons the protection or support is not granted to persons for whom the final decision on their status has not been made pursuant to the provisions of the relevant resolutions made by the United Nations General Assembly, the provisions of this Act shall apply to her/him. According to the above therefore the administrative body has carefully considered the application of the above-mentioned and after conducting an administrative procedure, concluded that the applicant does not fulfill the requirements for being granted asylum according to article 12(a), (b) of the Asylum Act, which had been duly justified above."*

The asylum seeker appealed against the decision to the Municipal Court, in which he argued that the Ministry of Interior interpreted Article 15(3)(a) wrongly under the *El Kott* decision; that once the Ministry found that he fulfilled the requirements of Article 1D of the Refugee Convention, he should have been automatically granted asylum rather than further subjected to an examination of his application under Article 1A(2).

The Municipal Court in Prague has dismissed the action and has stated in its decision that the asylum seeker has not substantiated that he has ceased to receive protection or assistance from UNRWA. The court has also stated that the asylum seeker has left the area where UNRWA operates voluntarily, and that this cannot be sufficient to show that protection has ceased within the meaning of Article 1D. Furthermore, the court has stated that the asylum seeker has not proven that he has actually been provided with protection or assistance from UNRWA. The Court considered a proof of registration of the asylum seeker with UNRWA insufficient.

The asylum seeker filed a cassation complaint against the decision to the Supreme Administrative Court, which dismissed the complaint on 14 August 2014 and stated that the Ministry of Interior is not obliged to consider the application of Article 12, Sec. 1(a) if the asylum seeker does not state during the procedure that s/he actually accessed the protection or assistance of UNRWA, and that s/he has ceased to access this assistance or protection for reasons independent of his or her volition. The Supreme Administrative Court further stated that registration with UNRWA does not prove that the asylum seeker had in reality accessed the protection of UNRWA; registration with UNRWA is not an indisputable proof of the real protection or assistance received. According to the Court, therefore, the Ministry of Interior was not obliged to consider the application of Article 12 Sec. 1(a) of the Qualification Directive merely because the asylum seeker has presented a proof of his registration with UNRWA.[523]

A. A. Z., male, years old 46, Palestinian refugee from Syria (3 September 2013)

The asylum seeker applied for international protection in the Czech Republic on 13 February 2013. In his application, he stated that he left Syria after he had been detained and repeatedly persecuted both by security forces and by rebel forces. He further stated that there was no future for him and his family in Syria, because Palestinians face hardships in Syria, and therefore he decided to leave for Europe with his family. He submitted a record of registration with UNRWA to the Ministry of Interior, along with a statement about how the *El Kott* judgment should be considered in his application.

He received a decision of the Ministry of Interior on 3 September 2013, granting him subsidiary protection for 12 months. The decision included the following reasoning on the exclusion clause:

> […] *the administrative body states that according to art. 15(3)(a) of the Asylum Act, asylum cannot be granted if the third-country national avails herself/himself of the protection or enjoys support from United Nations Organization bodies or professional organizations other than the United Nations High Commissioner for Refugees; if for any reason that protection or support is no longer available to persons for whom the final decision on their status has*

[523] Information provided by Beáta Szakácsová.

not been made pursuant to the provisions of the relevant resolutions made by the United Nations General Assembly, the provisions of this Act shall apply to her/him. According to the above stated therefore, the administrative body has carefully considered the application of the above-mentioned, and after conducting an administrative procedure had concluded that the applicant does not fulfill the requirements for being granted asylum according to article 12(a), (b) of the Asylum Act, which had been duly justified above."

The asylum seeker has not appealed against the decision of the Ministry of Interior, stating that the most important thing for him was to reunify with his family, and he feared the administrative bodies would refuse his family's application for visas if he filed an appeal.

The asylum seeker's family had applied for a long-term visa for family reunification at the Czech Embassy in Beirut. It was filed by a proxy due to the hardship Palestinian refugees (especially a woman with 3 minor children) faced traveling to Lebanon from Syria. The Czech Act on the Residence of Foreigners states that the Embassy and the Ministry of Interior may waive the obligation to file the application in person in justified cases. The family requested a waiver, as they could not legally travel to Beirut at the time. The Czech Embassy in Beirut informed the asylum seeker that the embassy would not consider the application unless his wife and children filed the application for a long-term visa in person at the Czech Embassy in Beirut.

A.M., male, 24 years old, Palestinian refugee born in Syria (2 October 2013)

The asylum seeker left Syria because he feared that he would have to fulfill compulsory military service. He had been kidnapped by rebels in Syria and threatened because they believed he was supporting the Syrian president. At the same time, he had been threatened by the supporters of the president because he refused to make a speech on air supporting the president. He submitted his ID to the Ministry of Interior, which stated that he had a residence permit in Syria as a Palestinian refugee, and a statement explaining how *El Kott* applied to his case.

He received a decision from the Ministry of Interior on 2 October 2013, granting him subsidiary protection for 24 months, giving the same reasoning as in the above two cases concerning the application of Article 15(3)(a) and Article 12(a)(b) of the Asylum Act.

The asylum seeker appealed the decision to the Regional Court, in which he argued that the Ministry of Interior interpreted Article 15(3)(a) wrongly under *El Kott*, and that he should have automatically been granted asylum under Article 1D. The Regional Court in Hradec Kralove refused the appeal on 6 June 2014, stating that the asylum seeker stated in his application for international protection that the main reasons for which he left his country of origin were to avoid compulsory military service, to continue in his studies, and he feared returning to his country of origin because of compulsory military service and the worsening security

situation in Syria. The Regional Court further stated that the asylum seeker had been referring to himself as a Syrian citizen; he did not state in the beginning of the procedure that he was a Palestinian refugee and had not stated any problems he had had due to his Palestinian descent. The Regional Court also stated that the asylum seeker had not stated that he was under the protection of UNRWA due to his status and that in his case the protection failed or ceased, in a way which would be necessary for the application of Article 12, Sec. 1(a) of the qualification directive. The asylum seeker decided not to file a cassation complaint to the Supreme Administrative Court.[524]

A.B.S.D., male, 36 years old, Palestinian refugee born in Syria (21 August 2014)

The asylum seeker applied for international protection in the Czech Republic, stating that he lived until the beginning of 2013 in the Al-Yarmouk refugee camp in Syria, when he travelled to Lebanon, where he stayed until March 2014. Among other claims, he stated that he left Syria in the beginning of 2013, when the Al-Yarmouk camp was bombed, and he lost everything he had in the camp. The asylum seeker submitted to the Ministry of Interior a statement about how the *El Kott* judgment should be considered in his application.

The asylum seeker received a decision on 21 August 2014, in which the Ministry of Interior stated with respect to Article 1D that the Ministry of interior did not apply Article 15(3)(a) of the Asylum Act (equivalent to Article 12(1)(a) of the Qualification Directive), i.e. the rule that asylum cannot be granted in cases where the asylum seeker avails himself or herself of the protection or enjoys support from United Nations bodies other than the Office of the High Commissioner for Refugee. The Ministry of Interior further stated:

> "Furthermore the administrative body highlights the confusion of the documents, which state that the asylum seeker qualifies to be granted asylum under Art. 15 sec.3 a) of the Asylum Act." The cited provision does not amend the conditions for being granted asylum, but only lists the conditions upon which asylum cannot be granted. The asylum seeker therefore de facto stated by this document that he knows that he cannot be granted asylum. Despite that, the Ministry of Interior considered whether the asylum seeker qualifies for being granted asylum, as obliged by the Asylum Act. For completeness the administrative body adds that although cases of applicants for international protection registered in UNRWA as Palestinian refugees often are brought before it, the cited article of the Asylum Act has so far never been applied, which should be, undoubtedly, very well known by persons providing legal assistance to applicants for international protection."

The asylum seeker has decided to file an action with the Municipal Court in Prague against the decision of the Ministry of Interior.[525]

[524] Ibid.
[525] Ibid.

5. Refugee Status Determination Process: Outcome

Persons recognized as refugees are granted permanent residence in the Czech Republic and provided with a refugee travel document.[526]

Persons granted subsidiary protection are given residence for a minimum of 12 months; this can be renewed if the circumstances under which it was granted continue to persist; on renewal, residence will be granted for a minimum of 24 months. After 5 years of residence with subsidiary protection, permanent residence can be granted.[527]

In general, it is possible to apply for citizenship after 5 years of permanent residence in the Czech Republic, but the Ministry of Interior can make an exception to this length of time for stateless persons or persons who have been granted asylum in the Czech Republic. There is no legal entitlement to be granted Czech citizenship in case of an application, and the decision depends on the Ministry of Interior.[528]

However, Czech citizenship is automatically granted at birth to a child born on the territory of the Czech Republic, if s/he would otherwise become stateless, if both parents are stateless and at least one of them has been granted a residence permit in the Czech Republic for more than 90 days.[529]

After being granted status, refugees and beneficiaries of subsidiary protection can enter into the State Integration Program. They can apply for accommodation in one of the Integration Asylum Centers for up to 18 months. Consequently, they can rent an apartment, where they are entitled to a financial contribution by the state. Beneficiaries of international protection are also entitled to free language courses after entering the State Integration Program. Recognized refugees and beneficiaries of subsidiary protection can work without a work permit, just as Czech citizens do. They can register at the labor office if they are unemployed and the labor office should pay the insurance fee for them. Medical aid and free legal aid are accessible but might be limited to assistance with family reunification and concerning other fundamental rights.[530]

If a negative decision is reached, the applicant has the right to appeal an adverse decision to a regional court. Appeals must include the legal and factual reasons why the decision was unfounded. If the regional court rules against the alien, the asylum seeker can file a cassation complaint to the Supreme Administrative Court. However, the cassation complaint will be considered on the merits only if the significance of the cassation complaint substantially exceeds the asylum seeker's personal interests.[531]

If no appeal is filed, an exit order will be issued and the applicant will be

[526] European Database of Asylum Law, "EDAL Country Overview - Czech Republic," accessed November 18, 2014, http://www.asylumlawdatabase.eu/en/content/edal-country-overview-czech-republic#RS.

[527] Ibid.

[528] Information provided by Beáta Szakácsová.

[529] Ibid.

[530] Ibid.

[531] Ibid.

required to leave the Czech Republic. Appeals generally have suspensive effect, i.e., the contested decision does not have any legal effect while the appeal is pending. However, this is not automatic in certain circumstances such as: if the application has been found inadmissible; if the applicant comes from a safe country and has not sought protection in that country; or if the asylum seeker holds more than one citizenship and failed to avail himself or herself of the protection of any of the countries of which he or she is a citizen, unless the asylum seeker proves that he or she could not avail himself or herself of such protection for reasons for which asylum or subsidiary protection can be granted. In such cases, in order to suspend an exit order pending appeal, the applicant must apply to the regional court.[532] Generally, the asylum seeker is in a position of a beneficiary of subsidiary protection throughout the appeal procedure.[533] Complaints to the Supreme Administrative Court in general have suspensive effect. There is an exception to this rule if the cassation complaint is filed by an asylum seeker staying at one of the reception centers at the time of filing the complaint.[534]

6. Protection under the Statelessness Conventions

The Czech Republic is Party to the 1954 Convention and the 1961 Convention;[535] however, there is no procedure by which stateless persons can obtain a right to residency under these Conventions.[536] Stateless persons are eligible for Czech citizenship in certain circumstances (see Section 5, above).

7. Links

- Ministry of Interior: www.mvcr.cz
- Refugee Facility Administration: www.suz.cz
- Ministry of Labor and Social Affairs: www.mpsv.cz
- Organization for Aid to Refugees: www.opu.cz
- Association for Integration and Migration: www.migrace.com
- Association of Citizens Looking after Emigrants: www.soze.cz
- Counselling Centre for Integration: www.p-p-i.cz
- Caritas Czech Republic: www.charita.cz
- Deaconry of the Evangelical Czech Brothers Church: www.diakonie.cz
- Centre for Integration of Foreigners: www.cicpraha.org

[532] European Database of Asylum Law, "EDAL Country Overview - Czech Republic."

[533] Information provided by Beáta Szakácsová.

[534] Ibid.

[535] UNTC, "Status of Treaties: Convention Relating to the Status of Stateless Persons;" UNTC, "Status of Treaties: Convention on the Reduction of Statelessness."

[536] Ibid.

DENMARK

1. Statistical Data

UNHCR data show the number of Palestinian refugees and asylum seekers in Denmark as follows:

Palestinian Refugees and Asylum seekers in Denmark[537]

	2009	2010	2011	2012	2013
Refugees	485	381	314	269	199
Asylum seekers	--	100	13	24	31

UNHCR data regarding the outcome of asylum applications by Palestinians in Denmark show that there were 24 Palestinian asylum cases pending at the start of the year and 31 such cases pending at the end of 2013, but no further details are provided.

2. Refugee Status Determination: The Process

As is the case for other asylum seekers, Palestinians entering Denmark must submit an application for asylum to the Danish Immigration Service. Applicants who enter the country without proper travel documents are considered "spontaneous asylum seekers." Spontaneous asylum seekers must contact the police when they enter the country. Other applicants may apply for asylum by either contacting the police or going to the Sandholm Center.[538] The National Aliens Division of the police will take the biometrics (fingerprints and photos) for all applicants. The police will also question applicants about their travel route and reasons for their application.[539]

Based on the initial questioning, the Immigration Service will decide whether an applicant will be processed in Denmark (in part to fulfill the obligations of the Dublin Regulation). If an application is found admissible, the application will be evaluated on its merits by the Immigration Service. The asylum seeker will be asked to complete another application form in which he or she can explain in greater detail the reasons why he or she is seeking asylum. The evaluation will also consist of at least one interview. [540]

During the asylum process, the asylum seeker is usually assigned to an accommodation center. Asylum seekers are not entitled to work during the asylum process.[541]

[537] UNHCR, "UNHCR Population Statistics - Persons of Concern Time Series" (last visited Aug. 23, 2014).

[538] New to Denmark [Danish Immigration Service], "Applying for Asylum," accessed November 18, 2014, http://www.nyidanmark.dk/en-us/coming_to_dk/asylum/application_for_asylum/applying_for_asylum.htm.

[539] New to Denmark [Danish Immigration Service], "Application for Asylum," accessed November 18, 2014, http://www.nyidanmark.dk/en-us/coming_to_dk/asylum/application_for_asylum/application_for_asylum.htm.

[540] Ibid.

[541] Ibid.

Denmark provides protection and assistance to asylum seekers whose applications are awaiting approval. Asylum seekers are provided with financial assistance, cash allowances, living accommodations in asylum centers, health care, and access to education during the application process.[542]

3. Refugee Status Determination Process: The Legal Framework

Denmark, although a member of the EU, did not participate in the adoption of Directive on Asylum Procedures 2005/85/EC, and therefore claims it is not bound to implement it.[543]

According to Denmark's 2013 Aliens Consolidation Act, residence permits can be issued to those falling "within the provisions of the Convention relating to the Status of Refugees."[544] However, the Aliens Act does not seem to incorporate the text of the 1951 Convention: Article 1A of the 1951 Convention is only mentioned as the criteria for *non-refoulement*[545] and references to Article 1D (along with Articles 1C, 1E and 1F) are completely absent.

In addition, even though not Party to the Qualification Directive,[546] "Denmark grants residence to asylum seekers who face the death penalty, torture or inhumane or degrading treatment or punishment if they return to their country of origin,"[547] which clearly reflects the criteria for subsidiary protection set by Article 15 of the Directive.

4. Refugee Status Determination: Article 1D

Article 1D plays no role in the determination of status for asylum seekers of Palestinian origin because Danish authorities consider the provision to be inapplicable as long as UNRWA continues its functions.[548]

[542] New to Denmark [Danish Immigration Service], "Conditions for Asylum Seekers," accessed November 18, 2014, http://www.nyidanmark.dk/en-us/coming_to_dk/asylum/conditions_for_asylum_applicants/conditions_for_asylum_applicants.htm.

[543] Council of the European Union, "Council Directive 2005/85/EC of December 1 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status," January 2, 2006, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32005L0085, Preamble, para. 34.

[544] State of Denmark, "Aliens (Consolidation) Act - Consolidation Act No. 863 of 25 June 2013," June 25, 2013, http://www.nyidanmark.dk/NR/rdonlyres/2A42ECC8-1CF5-4A8A-89AC-8D3D75EF3E17/0/aliens_consolidation_act_863_250613.pdf, Article 7(1).

[545] Ibid., Article 31(2).

[546] Council of the European Union, "Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on Standards for the Qualification of Third-Country Nationals or Stateless Persons as Beneficiaries of International Protection, for a Uniform Status for Refugees or for Persons Eligible for Subsidiary Protection, and for the Content of the Protection Granted (recast)," December 13, 2011, http://www.refworld.org/pdfid/4f197df02.pdf, Preamble, para. 51.

[547] New to Denmark [Danish Immigration Service], "Asylum - FAQ," accessed November 18, 2014, https://www.nyidanmark.dk/en-us/faq/asylum.htm.

[548] See BADIL Resource Center, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention. Jurisprudence Regarding Article 1D 2005-2010*, 154–156.

In a decision issued in March 2010, the Refugee Board denied asylum to a Palestinian from Syria.[549] The applicant had arrived in 2009. The applicant did not have a history of religious or political activity, but he stated that he participated in two meetings of the Gamiat Al-Salam group. While he was in Syria, a young boy died after he was injured on a swing the applicant maintained, and the applicant feared harm from the boy's family. The Refugee Board found that the applicant's family had paid compensation to the boy's family. Further, the boy's family had not threatened the applicant's brother or other family members remaining in Syria. Regarding the applicant's participation in Gamiat Al-Salam, the Board found that since he had not mentioned it on his initial asylum application, it could not be the basis for an asylum claim. Furthermore, the Board found that there was little risk of persecution on the basis of his attendance at the meetings, given how limited his participation was. In making their determination, the Board solely references the Danish Aliens Act §7.

Additionally, the Refugee Board has considered whether Lebanon or Syria are suitable "first countries of asylum," since the original country of Palestinians is Israel or Palestine. In these cases, the first question concerns whether the applicant can receive protection from Lebanese or Syrian authorities, and whether Lebanon or Syria is a suitable "first country of asylum." The standard for determining whether conditions in a country of first asylum are "suitable" is lower than an Article 1A examination, and the burden lies with the state, not the applicant.

In a July 2010 case, the Refugee Board denied the asylum application of a Palestinian from Lebanon, finding that Lebanon was a suitable first country of asylum.[550] The applicant argued that he was involved with Fatah in the 1980s and was detained and tortured by Amal militiamen. In assessing whether Lebanon was a suitable first country of asylum, the Board noted that the applicant did not have any conflict with Lebanese officials. Furthermore, the Board cited that the applicant had recently travelled to Lebanon without any problem.

A January 2010 Board decision upheld the Immigration Service's denial of asylum to a Palestinian from Gaza.[551] The applicant offered evidence that he was afraid of a revenge killing in retaliation for the death of someone his father had killed about nine to ten years previously. The applicant explained that his brother had been shot in 2002 by the family of the victim. The Board noted inconsistencies between the applicant's stories, and that he had been able to reside in Gaza for many years after the incident with his father and brother. The court also took into consideration that the applicant had sought asylum in connection with criminal proceedings for forgery, and came to Denmark nearly two years after leaving Gaza.

[549] Stat.pal. /2010/6. All asylum cases regarding Palestinian applicants are available at the Refugee Board's website (http://www.flygtningenaevnet.dk/da-dk/Praksis [Danish]) upon research per country. The Refugee Board's website does not provide specific links for each case.

[550] Stat.pal. /2010/8.

[551] Sta.pal. /2010/1.

A June 2010 Refugee Board decision concerned a Palestinian from Lebanon.[552] The applicant claims that he was born and raised in Lebanon and that between 2002 and 2005 he was detained and tortured by Lebanese authorities. The Refugee Board found that since he had been released, the applicant's "quarrel" with Lebanese authorities had ended. The Refugee Board found that the applicant was able to register with Lebanese authorities, and thus Lebanon was an appropriate first country of asylum under Aliens Act §7 (3).

In another 2010 case, the Refugee Board denied asylum status to a Palestinian applicant from Lebanon.[553] The applicant alleged that in 2008 a young man was killed in retaliation for the death of his cousin, and that as a result he was targeted as an act of revenge for his death. The applicant further alleged that he was afraid of Hezbollah given that the young man who was killed was associated with Hezbollah. Furthermore, the applicant claimed that he was involved with Hezbollah as a guard and as a participant at a training camp. The Board found that the applicant's story was not credible, and that he would be able to get the necessary protection from Lebanese officials, and that Lebanon is a suitable first country of asylum under the Aliens Act §7 (3).

In a case decided in October 2011, a Palestinian applicant who came to Denmark from Gaza was denied asylum by the Refugee Board.[554] The applicant had alleged that he was sympathetic to Fatah, although he did not work for them directly. He claimed that he was afraid to return to Gaza because Hamas officials had threatened him in 2006 to disclose information about his neighbors, which he eventually did. After that, in 2007, the applicant claimed that he was twice visited by Hamas officials, and on one occasion was interrogated and beaten. The Refugee Board determined that the applicant was not credible, and pointed to "language tests" that indicated the applicant is from Tunisia or Libya, and that the applicant could also speak French. The Board determined the applicant could not prove that he was in fact from Gaza, and denied him asylum status under the Aliens Act §7.

In a January 2012 decision, the Refugee Board granted asylum protection to a Palestinian from Lebanon who claimed to have been targeted by Hezbollah due to his work for Jordanian and U.S. intelligence.[555] The applicant brought medical and psychiatric evidence of abuse and sexual assault. The Board found the applicant credible in light of the corroborating evidence and granted the applicant asylum status under §7(1) of the Alien Act.

5. Refugee Status Determination Process: Outcome

If an asylum seeker is granted status as a refugee, a residence permit will be issued, and services and activities are recommended to help the individual integrate to life in

[552] Stat.pal. /2010/7.
[553] Stat.pal. /2010/12.
[554] Stat.pal. /2012/10.
[555] Stat.pal. /2012/1.

Denmark. The Immigration Service will assign the refugee to a municipality where he or she will live. Once the refugee has been assigned to a municipality, the local council will become the primary service provider for the refugee. The local council may provide Danish language courses, educational and job training opportunities, and housing and financial assistance to the refugee.[556]

Residence permits are granted for 4 years for beneficiaries of refugee status or subsidiary protection.[557] After 5 years of legal residency in Denmark, refugees can apply for permanent residency (other requirements may also apply). [558] Refugees applying for permanent residency after 8 years of legal residency in Denmark fall under a special rule: they must not have a criminal record, must sign a declaration of integration and active citizenship, and must demonstrate a willingness to integrate to life in Denmark. An individual may demonstrate a willingness to integrate to life in Denmark by participating in introduction programs, working, enrolling in educational programs, taking courses, or learning Danish.[559]

An asylum seeker whose application is rejected will be referred to the Refugee Appeals Board. This process occurs automatically, except in "manifestly unfounded" cases, in which the Immigration Service determines the applicant clearly has no basis for seeking asylum. Manifestly unfounded cases are referred to the Danish Refugee Council for review. If the Council agrees with the ruling, that the applicant has no basis for seeking asylum, the applicant must immediately leave Denmark, and cannot appeal the decision. If the Council does not agree, the case is usually sent to the Refugee Appeals Board.[560]

The asylum seeker has the right to remain in Denmark until the three-member Board makes a ruling on the case. If the Refugee Appeals Board does not agree with the Immigration Service's rejection, the applicant will be granted a residence permit.[561]

In rare cases warranted by substantial humanitarian considerations, the Ministry of Justice may grant a temporary residence permit to asylum seekers whose applications have been rejected. [562]

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[556] State of Denmark, "Aliens (Consolidation) Act - Consolidation Act No. 863 of 25 June 2013," Articles 44a-44f.

[557] European Council on Refugees and Exiles (ECRE) and European Legal Network on Asylum (ELENA), *Information Note on Syrian Refugees in Europe*, November 2013, para. 22, www.ecre.org/component/downloads/downloads/824.html.

[558] New to Denmark [Danish Immigration Service], "Permanent Residence," accessed November 19, 2014, http://www.nyidanmark.dk/en-us/coming_to_dk/permanent-residence-permit/permanent-residence-permit.htm.

[559] New to Denmark [Danish Immigration Service], "Refugees in Denmark," accessed November 19, 2014, http://www.nyidanmark.dk/en-us/coming_to_dk/permanent-residence-permit/refugees_lived_in_denmark_longer_eight+years.htm.

[560] Danish Refugee Council, *National Asylum Procedure in Denmark*, Dublin Project, 2010, http://www.dublin-project.eu/fr/content/download/549/4443/version/3/file/Long_Brochure_Denmark.pdf, Item 3(b).

[561] New to Denmark [Danish Immigration Service], "Avenues for Appeal," accessed November 19, 2014, http://www.nyidanmark.dk/en-us/coming_to_dk/asylum/application_for_asylum/appeal.htm.

[562] Ibid.

If the Appeals Board affirms the Immigration Service's denial of an application, the applicant must leave Denmark within seven days. In certain cases, an individual will be expected to depart immediately. Generally, accommodations are made to allow the asylum seeker time to prepare for departure within a set time period. If the applicant does not leave voluntarily, the National Aliens Division will deport him or her. Applicants who do not leave voluntarily risk expulsion and an entry ban, which will prohibit the individual from entering Denmark and all European Union countries for at least two years. In cases of repeat offenders, an entry ban may be extended for up to five years.[563]

If the police unsuccessfully attempt to deport a rejected asylum seeker for a period of at least 18 months, the asylum seeker cooperates with police, and it does not appear that deportation efforts will be successful as travel documents cannot be obtained, Denmark will issue the asylum seeker a 12-month residence permit. This permit may be renewed for as long as the asylum seeker is unable to leave Denmark by his or her own free will.[564]

6. Protection under the Statelessness Conventions

Denmark is a party to the 1954 Stateless Persons and the 1961 Statelessness Conventions.[565] Danish law provides for citizenship for some stateless persons, including children born in Denmark who would otherwise be stateless, as well as stateless persons who have no other remedy for statelessness and who have lived in Denmark for 8 years.[566] In 2011, it was disclosed that the Ministry of Refugee, Immigration and Integration Affairs had improperly refused citizenship applications by Palestinians born in Denmark who would be stateless if not granted Danish citizenship, and steps were taken to rectify this situation.[567]

7. Links

- Danish Immigration Service: http://www.nyidanmark.dk/en-us/
- Danish Refugee Council: http://www.drc.dk/home/
- Danish Red Cross: www.drk.dk/dansk+rode+kors+-+forside
- Refugees Welcome: http://refugeeswelcome.dk/

[563] New to Denmark [Danish Immigration Service], "Application for Asylum."

[564] New to Denmark [Danish Immigration Service], "Hindrances to Deportation," accessed November 19, 2014, http://www.nyidanmark.dk/en-us/coming_to_dk/asylum/application_for_asylum/Hindrances_to_deportation.htm.

[565] UNTC, "Status of Treaties: Convention Relating to the Status of Stateless Persons;" UNTC, "Status of Treaties: Convention on the Reduction of Statelessness."

[566] EUDO Observatory on Citizenship, "Denmark: Modes of Protection against Statelessness," accessed November 19, 2014, http://eudo-citizenship.eu/databases/protection-against-statelessness?p=&application=modesProtectionStatelessness&search=1&modeby=country&country=Denmark.

[567] Wendy Zeldin, "Denmark: Righting of Mistakes in Denial of Citizenship to Eligible Stateless Persons," *Global Legal Monitor, The Law Library of Congress*, Fenruary 2011, http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205402536_text; Laura Bingham, "Something Rotten in Denmark," *Open Society Foundations (OSF)*, March 18, 2011, http://www.opensocietyfoundations.org/voices/something-rotten-denmark.

FINLAND[568]

1. Statistical Data

Statistical data on the number of Palestinian refugees residing in Finland is not available. A total of 9,919 refugees, 1,881 asylum seekers, and 2,017 stateless persons resided in Finland as of January 2013, according to UNHCR estimates.[569] The Finnish Immigration Service provides statistics on asylum seekers and refugees, but does not have a category for Palestinians. Numbers of Palestinians seeking asylum in Finland are likely relatively low, based on the data available regarding applications by stateless persons (although not all these stateless persons were necessarily Palestinian). In 2014 (through October), there were 35 asylum applications by stateless persons;[570] 26 in 2013;[571] 27 in 2012;[572] 34 in 2011;[573] and 52 in 2010.[574]

In 2014 (through October), there were a total of 44 decisions on asylum applications by stateless persons. Of these, 26 were granted refugee status, 1 was granted subsidiary protection, and 3 'other' protection. Of the total, 5 applications were rejected, 6 were transferred under the Dublin Regulation, and 3 cases were annulled.[575]

2. Refugee Status Determination: The Process

As in the case of other asylum seekers, Palestinians in Finland may submit an application for asylum to the Directorate of Immigration or the local police.[576] The Directorate of Immigration will issue asylum seekers a card noting application status, as well as the applicant's name, date of birth, citizenship, and attach a photograph. The card is valid until the authorities issue a final decision on the alien's status, at which time the alien must return the card.[577] An asylum investigation will be

[568] Leena-Kaisa Åberg, special adviser to the Secretary General of the Finnish Red Cross, reviewed and contributed to this section

[569] UNHCR, "2014 UNHCR Regional Operations Profile - Northern, Western, Central and Southern Europe - Finland," accessed November 19, 2014, http://www.unhcr.org/pages/49e48e4f6.html.

[570] Finnish Immigration Service, "Asylum Applicants - From 01/01 to 31/10/2014," November 2014, http://www.migri.fi/download/50513_EN_tp-hakijat_tammi_2014.pdf?ed8622b31fced188.

[571] Finnish Immigration Service, "Asylum Applicants - From 01/01/2013 to 31/12/2013," January 2014, http://www.migri.fi/download/45922_Asylum_applicants.pdf?d5772bb31fced188.

[572] Finnish Immigration Service, "Asylum Applicants - From 01/01/2012 to 31/12/2012," January 2013, http://www.migri.fi/download/39431_EN_tp_hakijat_joulu_2012.pdf?974234b31fced188.

[573] Finnish Immigration Service, "Asylum Applicants - From 01/01/2011 to 31/12/2011," February 2012, http://www.migri.fi/download/31497_EN_tp-hakijat_vuosi_2011.pdf?7f333db31fced188.

[574] Finnish Immigration Service, "Asylum Applicants - From 01/01/2010 to 31/12/2010," February 2011, http://www.migri.fi/download/31497_EN_tp-hakijat_vuosi_2011.pdf?7f333db31fced188.

[575] Finnish Immigration Service, "Decision on Asylum - From 01/01 to 31/10/2014," November 2014, http://www.migri.fi/download/50515_EN_tp-paatokset_tammi_2014.pdf?49aeeeb31fced188.

[576] Information provided by Leena-Kaisa Åberg.

[577] State of Finland, "Aliens Act - Act No. 301/2004 of 2004 (Amendments up to 458/2009 Included)," April 30, 2004, http://www.refworld.org/docid/4b4d93ad2.html, Section 96.

conducted, and the applicant will be interviewed to determine whether grounds exist for granting refugee status.[578]

Reception centers may issue resident cards to asylum seekers. However, neither of these cards is an identity document. For this reason, asylum seekers may have trouble opening bank accounts and undertaking other activities for which an ID card is required. At the beginning of the asylum process, applicants do not enjoy any legal status, but are entitled to work after three months in Finland if they have proper travel documents. If the applicant does not have travel documents, s/he will have to wait six months before working.[579] Asylum seekers may live in a reception center or in private accommodations, as they wish.[580]

3. Refugee Status Determination Process: The Legal Framework

Finland's Aliens Act of 2004 defines a refugee as an alien who meets the requirements of Article 1 of the Refugee Convention.[581] The Finnish Immigration Service is responsible for granting asylum and residence permits.[582]

Asylum seekers must appear in person when making their claims.[583] Asylum seekers may employ counsel, both for filing an application and upon appeal; asylum seekers have a right to legal aid if they cannot afford counsel.[584] If necessary, the Directorate of Immigration must ensure that an alien has access to a translator or interpreter.[585]

1. In order to lawfully enter Finland, an alien must:
2. Possess a valid travel document;
3. Possess a valid visa or residence permit;
4. Possess documents that demonstrate the purpose and duration of their intended stay and evidence of their ability to return to their country of departure or a third country;
5. Have no prior prohibition against entering Finland; and
6. Must not be deemed a danger to the public order, security, health, or international relations of Finland.[586]

Finland adopts the language of Article 1A(2) of the Refugee Convention, and considers those asylum seekers for refugee status who:

[578] Ibid., Section 97.

[579] Information provided by Leena-Kaisa Åberg.

[580] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*.

[581] State of Finland, "Aliens Act - Act No. 301/2004 of 2004 (Amendments up to 458/2009 Included)," Section 87(1).

[582] Ibid., Section 116(1).

[583] Ibid., Section 8.

[584] Ibid. Sections 8 and 9.

[585] Ibid., Section 10.

[586] Ibid., Section 11.

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.[587]

Finland has also adopted exclusionary clauses similar to those in Articles 1E and 1F of the Refugee Convention, and will not grant refugee status to asylum seekers who have either committed or are suspected of committing:

1. a crime against peace, war crime, or crime against humanity;
2. a serious non-political crime outside Finland before entering Finland as refugees; or
3. an act which violates the aims and principles of the United Nations.[588]

4. Refugee Status Determination: Article 1D

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.[589]

Thus, the Aliens Act of 30 April 2004 clearly provides that Palestinian refugees may be recognized as refugees under Article 1D without having to fulfill the criteria of Article 1A(2) of the 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.[590]

In the past fifteen years, Finnish courts have heard approximately ten cases dealing with Stateless Palestinians.[591] Of these cases, only the case below has been published.

[587] Ibid., Section 87(1).

[588] Ibid., Section 87(2).

[589] Ibid., Section 87(3).

[590] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 163.

[591] E-mail from Juha Rautiainen, Judge, Helsinki Administrative Court (Oct. 23, 2013) (on file with BADIL).

Decision by the Supreme Administrative Court, 31 October 2002[592]

This case involved a stateless Palestinian refugee from Lebanon who had been living in Nahr al-Bared refugee camp and receiving assistance from UNRWA. The applicant left Lebanon on a refugee travel document issued by the Lebanese authorities, and sought asylum in Finland in April 1999. The applicant 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 Refugee Convention have applied the provision in different ways. It referred to UNHCR's Handbook, paragraph 143, and the 2002 UNHCR Note 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.[593]

The Court further referred to the 1996 Joint Position by the Council of the European Union, in particular point 12, stipulating that:

> [T]o a person who deliberately withdraws from the protection and assistance laid down in the mentioned Article 1D cannot be applied the provisions of the Convention but in these cases refugee status is determined as a rule pursuant to Article 1A(2).[594]

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 analyzed 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.[595]

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

[592] Supreme Administrative Court of Finland, "Supreme Administrative Court Decision of 31 October 2002," October 31, 2002, KHO:2002:69, http://www.refworld.org/publisher,FIN_SAC,,PSE,4416a6792,0.html.

[593] Ibid., 3.

[594] Ibid.

[595] Ibid.

livelihood, or that prevented his return to Lebanon. The Court concluded:

> Based on the above-mentioned reasons A does not have *ipso facto* right to the benefits granted in the 1951 Geneva Convention. A must therefore not be granted refugee status as ruled in the Convention pursuant to Article 1D, 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.[596]

The Court then examined whether the applicant fulfilled the criteria set out in Article 1A(2) of the Refugee 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, stating that:

> The fact that according to the available information Palestinian refugees' rights to, i.a., practice certain professions, [are restricted] cannot yield the interpretation that A would be in need of international protection pursuant to the mentioned provision.[597]

The Court finally concluded that the applicant could be returned to Lebanon.

5. Refugee Status Determination Process: Outcome

Finnish authorities will grant refugee status to an applicant whose application is determined to be valid. When authorities decide not to grant asylum or residence, they will make an additional decision for deportation or refusal of entry at the same time.[598]

The immigration authorities may grant a residence permit to an asylum seeker who does not face a well-founded fear of persecution as defined in § 87(1) and has not violated any provisions stated in § 87(2), but who cannot return to his or her country of origin due to "a real risk of being subjected to serious harm" or if "he or she is unable, or owing to such risk, unwilling to avail him or herself of the protection of that country" - i.e., reasons also outlined in Article 15 of the Qualification Directive.[599] Asylum seekers who are ineligible to receive refugee status for violating a provision stated in § 87(2), but who are unable to return home due to "threat of the death penalty, torture, persecution, or other treatment violating human dignity," will be awarded a temporary residence permit for up to one year.[600] Alternatively, asylum seekers may be offered subsidiary or humanitarian protection under § 88 or § 52. Protection under § 88 is common in Finland.[601]

[596] Ibid.

[597] Ibid., 4.

[598] State of Finland, "Aliens Act - Act No. 301/2004 of 2004 (Amendments up to 458/2009 Included)," Section 98.

[599] Ibid., Section 88(1).

[600] Ibid., Section 89.

[601] Information provided by Leena-Kaisa Åberg.

Persons granted refugee status or other international protection and persons who are involuntarily stateless may apply for citizenship in Finland if they have resided continuously in Finland for the most recent four years or for a total of six years after reaching the age of 15, with continuous residence in Finland during at least the most recent two years.[602] They must also meet other general requirements for citizenship, including establishment of identity, reaching the age of 18, meeting the "integrity" requirement (not having a criminal record), having met payment obligations (taxes, fines, student loans, etc), having established a means of livelihood, and having sufficient language skills.[603]

If the applicant is dissatisfied with the Finnish Immigration Service's decision concerning asylum, the applicant may appeal the decision to the Helsinki Administrative Court. A further appeal against the decision of the Helsinki Administrative Court may be lodged with the Supreme Administrative Court, if the right of appeal is granted.[604] An applicant who receives a completely negative decision on the application for asylum and whose appeal fails must leave Finland.[605]

Consistently with ECHR Articles 2 and 3, Finnish authorities will not deport an asylum seeker to any area in which he or she "could be subject to the death penalty, torture, persecution, or other treatment violating human dignity or from where he or she could be sent to such an area."[606] Individuals who have not been granted refugee status, but are subject to deportation subsequent to commission of a serious crime, or endangerment of public safety or Finland's national security,[607] may not be deported to their country of prior residence.[608] Additionally, these individuals may only be deported to a State which chooses to accept them.[609]

6. Protection under the Statelessness Conventions

Finland is a party to both the 1954 Stateless Persons and 1961 Statelessness Conventions.[610] However, the Finnish Aliens Act does not discuss stateless persons. Stateless persons are, however, eligible to apply for Finnish citizenship if they meet certain conditions (see Section 5, above).

[602] The Finnish Immigration Service, "Residence Period," accessed November 19, 2014, http://www.migri.fi/finnish_citizenship/applying_for_citizenship/requirements/residence_period.

[603] The Finnish Immigration Service, "Requirements," accessed November 19, 2014, http://www.migri.fi/finnish_citizenship/applying_for_citizenship/requirements.

[604] The Finnish Immigration Service, "Appeal," accessed November 19, 2014, http://www.migri.fi/asylum_in_finland/applying_for_asylum/decision/appeal.

[605] The Finnish Immigration Service, "Refusal of Entry," accessed November 19, 2014, http://www.migri.fi/asylum_in_finland/applying_for_asylum/decision/refusal_of_entry.

[606] State of Finland, "Aliens Act - Act No. 301/2004 of 2004 (Amendments up to 458/2009 Included)," Section 147.

[607] Ibid., Section 149(1).

[608] Ibid., Section 149(4).

[609] Ibid., Section 149(4).

[610] UNTC, "Status of Treaties: Convention Relating to the Status of Stateless Persons;" UNTC, "Status of Treaties: Convention on the Reduction of Statelessness."

7. Links

1. The Finnish Immigration Service: http://www.migri.fi/frontpage
2. Ministry of the Interior: http://www.intermin.fi/en/migration/refugees_and_asylum_seekers
3. Finnish Refugee Council: http://pakolaisapu.fi/en/
4. Finnish Refugee Advice Centre: http://www.pakolaisneuvonta.fi/?lang=eng
5. UNHCR Finland: http://www.unhcr.org/pages/49e48e4f6.html
6. Infopankki: http://www.infopankki.fi/en/moving-to-finland/i-am-/refugee
7. The Palestinian Community of Finland: http://www.palcif.com/index_en.htm

FRANCE[611]

1. Statistical Data

UNCHR data show steadily increasing numbers of Palestinian refugees in France.

Palestinian Refugees and Asylum seekers in France[612]

	2009	2010	2011	2012	2013
Refugees	152	194	218	252	314
Asylum seekers	--	--	--	--	43

In 2013, 66,251 persons submitted applications to the French Office for the Protection of Refugees and Stateless Persons (OFPRA, "*Office Francais de Protection des Refugies et Apatrides*").[613] Out of this figure, 11,371 were granted asylum, out of which 2,282 were granted subsidiary protection, and 40,706 were rejected.[614]

Of this number, 138 of the applicants were Palestinians, including 42 children. Six of these Palestinians were requesting re-examination. Sixty three were granted refugee status or subsidiary protection. No statistics are available regarding whether any of the applicants granted refugee status were accompanied by minors.[615]

2. Refugee Status Determination: The Process

As is the case for other asylum seekers, Palestinians in France must seek a temporary residence permit,[616] **and** submit an application for asylum to OFPRA within 21 days of securing a residence permit.[617]

During the asylum process, applicants are provided with a six-month residence permit, which is renewable every three months until the final decision is made.[618] Centers for Asylum Seekers are set up in various regions, and are responsible for guiding asylum seekers through the application process.[619]

[611] Antoine Decourcelle, Coordinator of Refugee Service, Paris and suburbs, at La Cimade (Comité Inter-Mouvements Auprès des Évacués), reviewed and contributed to this section.

[612] UNHCR, "UNHCR Population Statistics - Persons of Concern Time Series" (last visited Sept. 22, 2014).

[613] OFPRA, *Rapport d'Activité 2013*, February 2014, 92, http://www.ofpra.gouv.fr/documents/OFPRA_BD_28-04-2014.pdf, Annex 1.

[614] Ibid.

[615] Ibid., 94, Annex 3.

[616] Ministère de l'Intérieur, *Guide Du Demandeur d'Asile*, Juin 2013, 7, http://www.immigration.interieur.gouv.fr/content/download/41456/319571/file/Guide_demandeur_asile_12juillet2013.pdf, Item 2.

[617] Ibid., 11, Item 2.3(1).

[618] Ibid., Item 2.3.

[619] Ministère de l'Intérieur, "Les Droits Sociaux Des Demandeurs D'asile," April 24, 2014, http://www.immigration.interieur.gouv.fr/Asile/L-accueil-des-demandeurs-d-asile/Les-droits-sociaux-des-demandeurs-d-asile.

Asylum seekers are entitled to accommodation, emergency care, basic health care, and a temporary allowance (the amount of which will be less if applicant is residing inside a reception center for asylum seekers) during the application review process.[620] Applicants are entitled to education, and are allowed access to the labor market after a waiting period of one year.[621]

Palestinians applying for asylum in France may do so even if they do not possess a passport, visa, or identity document.[622] Applicants must provide the *prefecture* (regional governmental unit) with the address of the place where they are staying. If an applicant does not have access to stable housing, he or she may provide OFPRA the address of an authorized aid organization within the prefecture.[623]

3. Refugee Status Determination Process: The Legal Framework

France has adopted the language of the Refugee Convention in Article L711-1 of its Code of Entry and Residence of Foreigners and the Right of Asylum ("*Code de l'entrée et du séjour des étrangers et du droit d'asile*"), and those asylum seekers who fulfill the criteria of Article 1A(2) of the Refugee Convention are granted asylum in France.[624]

Article L711-1 also extends the status of refugees to all persons falling under UNHCR's mandate.[625] Moreover, Article 712-1 establishes the criteria for granting subsidiary protection, in accordance with Article 15 of the Qualification Directive – i.e., if the person concerned faces serious risk of death penalty, or serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.[626]

4. Refugee Status Determination: Article 1D

Case 543380, A, of 10 November 2005[627]

In this 2005 case, the National Court of Asylum rejected a Palestinian asylum seeker's application for refugee status. The asylum seeker fled due to general insecurity and persecution on the part of the Israeli army, which he claimed infringed his freedom of movement. Notably, the Court rejected the asylum claim on the basis of

[620] Ibid.

[621] Ibid.

[622] State of France, "Code de L'entrée et Du Séjour Des Étrangers et Du Droit D'asile (Version Consolidée Au 15 Novembre 2014)," November 15, 2014, http://codes.droit.org/cod/entree_sejour_etrangers_droit_asile.pdf, Article L211-1.

[623] Ministère de l'Intérieur, *Guide Du Demandeur d'Asile*, 9, Item 2.1(5).

[624] State of France, "Code de L'entrée et Du Séjour Des Étrangers et Du Droit D'asile (Version Consolidée Au 15 Novembre 2014)," Article L711-1.

[625] Ibid.

[626] Ibid., Article L712-1.

[627] Commission des Recours des Réfugiés (CRR), *Contentieux Des Réfugiés: Jurisprudence Du Conseil d'État et de La Commission Des Recours Des Réfugiés, Année 2005* (Cour Nationale du Droit d'Asile (CNDA), Mai 2006), 21, http://www.cnda.fr/content/download/5153/15589/version/1/file/recueil2005_anonymise.pdf.

Article 1A(2) of the Refugee Convention, rather than Article 1D. The Court decided that the applicant could not be granted refugee status in France, because he had not personally been exposed to a serious threat, and therefore could not demonstrate personal fear of persecution within the meaning of the Geneva Convention.

Case 493412, A, of 14 May 2008[628]

On 14 May 2008, the Court granted refugee status to Mohammed Assfour, a Palestinian asylum seeker who was registered with UNRWA in Jordan. Mr. Assfour voluntarily left Jordan for France in 2003. In its decision, the Court declared that Article 1D applies only to asylum seekers actually receiving assistance from UNRWA or other UN agencies. According to the Court, once an asylum seeker leaves the UNRWA area of operations, this protection ceases and the asylum seeker is entitled to protection under the Refugee Convention. While the Court reserved the right to reject an application under Articles 1E and 1F, the Court applied Article 1D and did *not* require Article 1A(2) to apply for a Palestinian asylum seeker to be granted refugee status.

Here, while the circumstances surrounding the Mr. Assfour's departure from Jordan were not enumerated, the court declared that he was no longer under the protection of UNRWA as he was outside of Jordan, and automatically granted him refugee status.

Case 318356, A, of 23 July 2010[629]

In this case, the Office for Refugees claimed that there was an error in the decision of 14 May 2008 regarding Mohammad Assfour's case, and requested a re-evaluation of the decision. Upon evaluation, the Court declared that the previous decision was in error, as it failed to consider whether the asylum seeker left Jordan due to the circumstances detailed in Article 1A(2) of the Refugee Convention.

In so doing, the Court clarified its position regarding Article 1D. While the exclusion clause in Article 1D does not apply to Palestinians who left the area of UNRWA's mandate, the asylum seeker is only entitled to protection under the Refugee Convention if he or she left the UNRWA area due to a well-founded fear of persecution within the meaning of Article 1A(2) of the Refugee Convention.

Here, the Judge did not determine whether Mr. Assfour left Jordan due to a fear of well-founded persecution, as described in Article 1A(2). Rather, the decision simply noted a mistake in the previous decision and, for that reason, nullified the decision of 14 May 2008.

[628] Commission des Recours des Réfugiés (CRR), *Contentieux Des Réfugiés: Jurisprudence Du Conseil d'État et de La Commission Des Recours Des Réfugiés, Année 2008* (Cour Nationale du Droit d'Asile (CNDA), April 5, 2009), 76–77, http://www.cnda.fr/content/download/5122/15496/version/1/file/recueil2008.pdf.

[629] Commission des Recours des Réfugiés (CRR), *Contentieux Des Réfugiés: Jurisprudence Du Conseil d'État et de La Commission Des Recours Des Réfugiés, Année 2010* (Cour Nationale du Droit d'Asile (CNDA), February 1, 2012), 131–132, http://www.cnda.fr/content/download/7969/24037/version/1/file/recueil-2010.pdf.

Cases 04020557 and 04020558, of 23 April 2013[630]

In this case, the National Court of Asylum re-examined Mr. Assfour's case (No. 493412, mentioned above), along with his wife's case (No. 493411).

In line with and referring to the CJEU's decision in *El Kott*, the Court decided that, regarding the "cessation of protection or assistance" provided by a UN agency other than UNHCR, the terms "for any reason" in Article 12(1)(a) of the Qualification Directive (which mirrors Article 1D), includes a situation in which "a person who, after having actually used this protection or that assistance, ceases to receive [such protection or assistance] for any reasons beyond his or her control and independent of his or her volition." In that case, the second sentence of Article 12(1)(a), which mirrors the second paragraph of Article 1D, applies, entitling that person, *ipso facto*, to the benefits of the Directive. The Court also clarified that the sentence in Article 12(1)(a) of the Directive, "these persons shall ipso facto be entitled to the benefits of this Directive" means that the new State of asylum must grant refugee status to those persons.[631]

Finally, noting that Mr. Assfour had been "assaulted on numerous occasions *without being able to count on any protection, either from UNRWA or from the Jordanian authorities* [emphasis added]," [632] the Court granted refugee status to Mr. Assfour and his wife.[633]

5. Refugee Status Determination Process: Outcome

If an asylum seeker is granted refugee status, he or she will be given accommodation, financial assistance, and access to healthcare and education.[634] Refugees are eligible for unique rights in France. While most aliens are restricted from applying for "Active Solidarity Income," supplemental income assistance to bring a family up to the minimum standard of living, refugees may apply for this assistance upon receipt of refugee status.[635] Additionally, a refugee retains his or her refugee status for an indefinite period, during which the refugee has a permit for ten years, which is renewed automatically. Finally, refugees may apply for citizenship without fulfilling the regular five-year rule required of aliens. [636]

If an applicant is denied refugee status, he or she must appeal within one month by means of a letter, written in French, containing new information.[637] An appellant should

[630] Cour nationale du droit d'asile, "Décision No. 04020557 et 04020558," May 24, 2013, http://www.refworld.org/pdfid/521ccfd64.pdf.

[631] Ibid., 3–4.

[632] Ibid., 4.

[633] Ibid., 5, Article 2.

[634] OFPRA, "Protection - Droits et Obligations," accessed November 21, 2014, http://www.ofpra.gouv.fr/?xml_id=65&dtd_id=12.

[635] Ibid.

[636] Ibid.

[637] Ministère de l'Intérieur, *Guide Du Demandeur d'Asile*, 16, Item 3.1.

retain a copy of the appeal to prove that the appeal was filed.[638] Once the National Court of Asylum has received the appeal, a receipt will be mailed to the applicant. Once an applicant receives this receipt, he or she can bring it to the prefecture of residence. This will serve to extend the applicant's temporary permit for three months.[639]

If the National Court of Asylum affirms the denial of refugee status, the applicant can appeal to the State Council, where legal issues (rather than factual issues) will be reviewed. Appealing to the Council does not extend the applicant's residence permit or prevent deportation.[640]

Subsidiary protection will be granted to an individual who does not meet the conditions of a refugee set out in article L711-1 of the Code, but faces the threat of capital punishment, torture, inhuman or degrading treatment, or a direct and personalized threat to his or her life due to widespread violence in his or her country of prior residence.[641] An individual who has (or who France reasonably suspects has) committed any of the crimes set forth in Article 1F of the 1951 Convention will *not* be granted subsidiary protection.[642] Subsidiary protection is valid for one year, and is renewable after that time.[643] If the circumstances causing an individual to seek subsidiary protection no longer exist, subsidiary protection will not be renewed.[644]

In the event that an asylum seeker's application has been definitively rejected, his or her temporary residence permit is invalidated, and the individual must leave France.[645] An individual may apply to the French Office for Immigration and Integration to receive assistance to return to his or her country of prior residence.[646]

6. Protection under the Statelessness Conventions

France is Party to the 1954 Stateless Persons Convention, and has signed, but not yet ratified, the 1961 Statelessness Convention.[647] France is one of the few European countries which has a procedure to establish permission to reside based on statelessness.[648] This procedure was established in 1953, and thus pre-dates the 1954 Convention. Applications are made to OFPRA.[649]

[638] Ibid., 17, Item 3.2.

[639] Ibid., 18, Item 3.2.

[640] Ibid., 22, Item 4.

[641] State of France, "Code de L'entrée et Du Séjour Des Étrangers et Du Droit D'asile (Version Consolidée Au 15 Novembre 2014)," Article L712-1.

[642] Ibid., Article L712-2.

[643] Ibid., Article L712-3.

[644] Ibid.

[645] Ministère de l'Intérieur, *Guide Du Demandeur d'Asile*, 20, Item 3.3.

[646] Ibid.

[647] UNTC, "Status of Treaties: Convention Relating to the Status of Stateless Persons;" UNTC, "Status of Treaties: Convention on the Reduction of Statelessness."

[648] UNHCR, "2014 UNHCR Regional Operations Profile - Northern, Western, Central and Southern Europe - France," accessed November 21, 2014, http://www.unhcr.org/pages/49e48e571e.html.

[649] Gábor Gyulai, "Statelessness in the EU Framework for International Protection," *European Journal of Migration and Law* 14, no. 3 (January 1, 2012): 290, doi:10.1163/15718166-12342008.

French law does not provide detailed rules on the processing of statelessness claims, but OFPRA publishes brief guidance relating to statelessness applications on its website.[650] If an application is approved, the stateless person will be granted a temporary residence permit and permission to work, and after three years with legal residence in France, will be eligible for a residence permit valid for 10 years.[651] Negative decisions can be appealed on legal issues.[652]

Very few statelessness applications are submitted compared to the number of asylum applications. The approval rate of statelessness applications is generally approximately 30 percent.[653]

Persons granted residence permits based on statelessness benefit from:

> […] unrestricted access to the labour market, the possibility of family reunification with preferential conditions, access to health care and social benefits, as well as to all levels of education.[654]

However, negative aspects of France's measures relating to statelessness include:

> […] claims for stateless status can only be submitted to the OFPRA office in Paris, in a written form and in the French language. French law does not recognise the concept of an 'applicant for stateless status'; therefore, those claiming this form of protection (unlike asylum-seekers) are not provided with any temporary residence entitlement and accommodation services while their case is being processed. The claim does not even have a suspensive effect on expulsion measures, meaning that *ad absurdum*, an applicant can be deported or put in immigration detention during the procedure.[655]

With specific regards to Palestinians, the 2005 edition of this *Handbook* asserted that some Palestinians had been recognized as stateless persons in France, and granted ten-year residence permits after three years of residence in the country.[656] More recently, in case 277373 from November 2006, the OFPRA concluded that the exclusion clause in the 1954 Stateless Persons Convention – which, similar to Article 1D, prevents persons receiving protection or assistance from agencies other than UNHCR from enjoying the benefits of the 1954 Convention – does not apply to Palestinians residing outside UNRWA's area of operations, for such persons no

[650] Ibid.; see also OFPRA, "Apatridie - Procédure," accessed November 21, 2014, http://www.ofpra.gouv.fr/index.html?xml_id=186&dtd_id=13.

[651] OFPRA, "Apatridie - Procédure."

[652] Gyulai, "Statelessness in the EU Framework for International Protection," 290.

[653] Ibid.

[654] Ibid.

[655] Ibid., 291.

[656] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 172.

longer enjoy UNRWA's protection or assistance.[657] The same interpretation was also employed in case 09PA00158, from 2009.[658]

7. Links

- Asylum Information Database: http://www.asylumineurope.org/reports/country/france
- French Office of Refugee and Asylum Protection: http://www.ofpra.gouv.fr/
- National Court for Asylum: http://www.cnda.fr/
- Information Guide for asylum seekers published by the Ministry of Interior: http://www.immigration.interieur.gouv.fr/Asile
- Jesuit Refugee Service, *Protection Interrupted: The Dublin Regulation's Impact on Asylum seekers' Protection (The DIASP project)*, 4 June 2013 (includes a chapter on France): https://www.jrs.net/assets/Publications/File/protection-Interrupted_JRS-Europe.pdf

[657] State of France, "Conseil d'État, 10ème et 9ème Sous-Sections Réunies, 22/11/2006, 277373, Publié Au Recueil Lebon," November 22, 2006, http://www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CETATEXT000008243528&fastReqId=1759543134&fastPos=2.

[658] State of France, "Cour Administrative d'Appel de Paris, 3 Ème Chambre, 10/12/2009, 09PA00158, Inédit Au Recueil Lebon," December 10, 2009, http://www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CETATEXT000021646232&fastReqId=1712197384&fastPos=1.

GERMANY[659]

1. Statistical Data

UN figures for 2013 show 32 Palestinian refugees and 244 Palestinian asylum seekers in Germany.[660] This appears to be the only year for which UNHCR has accurate data for Germany, and no details are available regarding the disposition of applications.

2. Refugee Status Determination: The Process

Upon entering Germany, individuals can apply for asylum at the Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge* (BAMF)). They also can declare their request for asylum protection to border officials or to the police, who will direct them to the Federal Office for Migration and Refugees.[661] There, they will be assigned to an appropriate initial reception center, and where they should remain for between six weeks and three months.[662]

During this time, the asylum application must be made in person at a branch office of the Federal Office for Migration and Refugees,[663] where the asylum seekers undergo an identification process, in which their personal data, photograph and fingerprints are taken.[664] Once an application has been filed, the asylum seeker will receive a short-term permission to stay for the purpose of completing the asylum procedure. This permission allows the individual to reside only in a specific area near the initial reception center of residence during the first three months.[665]

After the first three months, asylum seekers are allocated to accommodation in a commune within the federal state.[666] This may be an apartment but most commonly are shared accommodations.[667] Asylum seekers are not allowed to reside anywhere except in the federal state to which they are allocated and need the prior approval of the authorities before they can change their place of residence or travel to another federal state ("residence requirement").[668] In all reception centers, social services are provided to asylum seekers. Asylum seekers are not allowed to work in the

[659] Laura Hilb, Academic Assistant, and Elena Enns, law student, at the University of Gießen Refugee Law Clinic reviewed and contributed to this section.

[660] UNHCR, "UNHCR Population Statistics - Persons of Concern Time Series" (last visited Aug. 21, 2014).

[661] State of Germany, "Asylum Procedure Act (Asylverfahrensgesetz, AsylVfG)," July 27, 1993, http://www.refworld.org/docid/48e5d6582.html, Sections 18(1) and 19(1).

[662] Ibid., Section 47.

[663] Ibid., Section 23(1).

[664] Ibid., Section 16.

[665] Ibid., Sections 55 and 56.

[666] Ibid. Section 50.

[667] Ibid., Section 53.

[668] Ibid., Section 58.

first 9 months of their stay.[669] For any questions concerning the asylum procedure itself, applicants can contact counselling centers, which are usually located near the reception centers. Counselling centers give free procedural advice for asylum seekers and can recommend a lawyer if needed.

After an asylum application is submitted, the applicant will have a personal hearing before an officer from the Federal Office for Migration and Refugees. There, the applicant has the chance, but also the task and obligation, to present the reasons for applying for asylum and any evidence supporting the claim. He or she must give reasons for leaving their country of origin, the facts of persecution and what he or she would be facing if returned.[670] This hearing is mandatory as it forms the basis of the subsequent decision on the asylum application.

3. Refugee Status Determination Process: The Legal Framework

There are three different ways for making an asylum claim under German law. First, an asylum seeker may claim status under Article 16a of the German Constitution. To qualify under this article of the German Constitution, the applicant must be claiming asylum based on political persecution, and cannot have entered from a safe third country. Asylum seekers caught at the border without legal documents may be deported to the country from which they entered.[671] Additionally, refugee status can be granted under Section 3 of the Asylum Procedure Act (*Asylverfahrensgesetz*)[672] in accordance with Section 60 (1) of the Residence Act (*Aufenthaltsgesetz*).[673] This Act is in conformity with the requirements of the Geneva Convention on Refugees and the Qualification Directive. Finally, the asylum claim includes an application for international subsidiary protection under Section 4 of the Asylum Procedure Act in accordance with Section 60 (2) of the Residence Act, which also is in conformity with the requirements of the Qualification Directive. Under this Section, international subsidiary protection can be granted in line with Article 15 of the Qualification Directive (in accordance with Section 4 of the Asylum Procedure Act), as well as on the basis of a "substantial and concrete danger to life and limb or liberty." This has been interpreted to mean that an applicant must face "certain death or most serious harm" if forced to return to his or her country of origin.[674]

[669] Ibid., Section 61.

[670] Ibid., Section 25.

[671] This is true even if they file an asylum application given that the neighboring countries are considered "safe third countries" due to Art. 16a (2) of the German Constitution in accordance with Section 26a of the Asylum Procedure Act. Ibid., Section 26a.

[672] Ibid., Section 3.

[673] State of Germany, "Residence Act (Aufenthaltsgesetz, AufenthG) [with Amendments]," July 30, 2004, http://www.iuscomp.org/gla/statutes/AufenthG.htm, Section 60.

[674] European Database of Asylum Law, "EDAL Country Overview - Germany," accessed November 21, 2014, http://www.asylumlawdatabase.eu/en/content/edal-country-overview-germany.

4. Refugee Status Determination: Article 1D

Case A 5 K 1072/08

In November 2010, the Administrative Court of Dresden considered a case involving a Palestinian from the West Bank, who was registered with UNWRA. The asylum seeker, his wife and two children lived in a village outside Ramallah. As a result of Israel's construction of the wall in and around the West Bank, the applicant's land was confiscated with no compensation. Due to the wall construction and various checkpoints, the family no longer had medical services within reach, and also the applicant was repeatedly late to his job as an insurance broker. Because of his tardiness at work, he was eventually fired. After he was fired, he was unable to pay for his daughter's school. He could not get a permit to work in Israel because his brother, who was a member of the Popular Front for the Liberation of Palestine, was in prison. Unable to work and having lost his land, the applicant decided to leave the West Bank in 2007, without his family.

In assessing the applicant's claim, the Federal Office for Migration and Refugees found that the alien experienced no persecution while he was in Palestine, and there was no evidence showing he would face a risk of the intensity and duration required to qualify as persecution according to Section 60 (1) of the Residence Act if he were to return. The Federal Office for Migration and Refugees dismissed the argument that the Israeli government's wall construction and other actions that prohibited the applicant from traveling around the West Bank was persecution. It stated that there was no evidence that Israel was acting on the basis of a persecutory ground because of his ethnicity.

On appeal, the Administrative Court dismissed this decision and found that because the Israeli authorities would not allow the applicant back into the West Bank (due to his three-year absence), he was the victim of a ban of return and exclusion because of his Palestinian ethnicity, which constitutes persecution according to Section 60 (1) of the Residence Act. The Court found that since Israel was the *de facto* government in the Palestinian territories it was occupying, the applicant should be treated as subject to persecution from Israel – despite his statelessness. Therefore the Court granted refugee status according to Section 60 (1) of the Residence Act.

The Court did not mention Article 1D of the Refugee Convention in its decision.

Case A 5 K 3151/10

On 9 March 2011, the Administrative Court of Sigmaringen decided that a member of the Preventive Security Service of Fatah was entitled to recognition as a refugee under Section 60 (1) of the Residence Act because of persecution by Hamas. In this case, it was also relevant that there were no internal flight alternatives in the West Bank or Israel.

The plaintiff argued that he worked for the Preventive Security Service of Fatah and assisted in the arrest of persons from Hamas. Hamas attacked his physical person

and the house he lived in regularly for 4 years, as a result of which he was injured several times.

The Court found that the claim of the plaintiff was substantiated. It also took the view that since 2007, Hamas exercises authority of the state in the Gaza Strip, and since the plaintiff left the Gaza Strip having been persecuted, it cannot be excluded that Hamas would not persecute the plaintiff should he return.

Furthermore, the plaintiff was not able to access any internal flight alternatives. First, he would not get a residence permit for Israel, and if he could enter Israel, he would likely be sent to the Gaza Strip or to the West Bank. Second, even if the plaintiff was able to live in the West Bank, which is mostly controlled by Fatah (from whom he could receive protection), he would still need permission to enter the West Bank from Israeli authorities, which he would not get.

Case 34 X 54.07

The Administrative Court of Berlin ruled in its decision on 23 January 2012 that a revocation of the entitlement of asylum was not warranted.

The plaintiff was a Palestinian from Lebanon who was granted asylum in Germany in 1990. He left Lebanon in April 1988 with his parents and siblings. The Amal movement had looked for him and his father. The Federal Office for Migration and Refugees wanted to revoke the decision to grant asylum because the situation in Lebanon had changed.

The Court took the view that the situation in Lebanon was still not stable and permanent. Especially since Palestinians face discrimination throughout Lebanon, it was highly doubtful that the state of Lebanon would be willing and able to protect Palestinians from such discrimination (the Court cited the Situation Report on Lebanon by the German Federal Office of Foreign Affairs from 26 April 2011). Protection from the Amal movement, which works with Lebanese security services, also was not likely.

The Court could not find any indication that a significant change had occurred with respect to the situation of Palestinians in Lebanon and found that revocation of the entitlement to asylum (Article 16a of the German Constitution) did not come into question.

Case 11 LB 97/11

A January 2012 decision from the High Administrative Court of Luneburg involved the granting of subsidiary protection to a Palestinian applicant. The applicant was born in Gaza and was registered with UNRWA. In 1996, he received a Ukrainian visa, and lived lawfully in the Ukraine until 2009. After he left the Ukraine, the applicant travelled through Germany as well as Norway, until he finally applied for asylum and subsidiary protection in Germany. The Federal Office for Migration and Refugees rejected the applicant's asylum request on the basis that political persecution had not been shown. The Federal Office for Migration and

Refugees rejected the applicant's argument for subsidiary protection on the basis that the "periodic clashes" between Israel and Hamas were not enough to constitute persecution under Section 60 (2) to (5) of the Residence Act, and that there was not the risk of certain death or serious injury as required by Section 60 (7).

After the denial of his application, the applicant amended his application and claimed that he had completed a degree in the Ukraine and that he could not return to Gaza because of unacceptable living conditions and the threat of attacks by militia members and the Israeli army.

On review, the Administrative Court agreed with the plaintiff and granted subsidiary protection under Section 60 (7) of the Residence Act because of the military conflict in the Gaza Strip.

However, the High Administrative Court of Luneburg confirmed the decision of the Federal Office for Migration and Refugees and determined that there was neither an internal armed conflict in the relevant autonomous Palestinian area Gaza Strip, the home region of the plaintiff, nor a considerable individual risk for him at the present time.

Case 18 A 901/1

The Higher Administrative Court of North Rhine-Westphalia issued a decision in February 2012 involving nine plaintiffs, eight from the West Bank and one born in Germany.

In its decision, the Court upheld the Administrative Court's ruling that protection or assistance from UNRWA did not cease for the purposes of the second paragraph of Article 1D of the Geneva Convention on Refugees because the plaintiffs left from the West Bank voluntarily. The Court found that the Administrative Court properly construed Article 1D of the Geneva Convention on Refugees. The regulations of the Geneva Convention on Refugees can be applied only when the protection or assistance of UNRWA ceases. The Court claimed that it can be left open whether the exclusion clause of Article 1D of the Geneva Convention on Refugees operates only when the alien is located in the UNRWA zone and protection or assistance ceases to exist, or whether it can also apply when the alien is outside of the UNRWA zone.

In construing the second paragraph of Article 1D of the Geneva Convention on Refugees, the Court relied on a June 1991 Federal Administrative Court decision.[675] Under that decision, the protection of UNRWA was found not to cease simply where an alien voluntarily left an UNRWA area. The decision found that protection ceased only when reasons outside of the alien's control made it impossible for him to return to an UNRWA area. The question for the court was how it should weigh the alien's voluntary decision and the external factors prohibiting return. Thus, the court created a "three tier system" for evaluating cases under Article 1D of the Geneva Convention on Refugees. First, Palestinians will be excluded from protection under the first

[675] Bundesverwaltungsgericht, "Urteil Vom 04.06.1991 (Decision of 04/06/1991) - 1 C 42.88," June 4, 1991, http://www.asyl.net/fileadmin/user_upload/dokumente/20497.pdf.

paragraph of Article 1D of the Geneva Convention on Refugees if they are under the protection or assistance of UNRWA. Second, for Palestinians who are not excluded in accordance with the first paragraph of Article 1D of the Geneva Convention on Refugees, because they no longer receive the protection or assistance of UNRWA, the Geneva Convention on Refugees is applicable. But refugee status can only be granted when the requirements of Article 1A(2) or the second paragraph of Article 1D of the Geneva Convention on Refugees are fulfilled. Therefore, the Federal Office for Migration and Refugees and the courts have to determine whether the reason for the cessation of protection or assistance of UNRWA is due to the alien's choice (voluntary departure from an UNRWA area) or an external cause (country prohibits return). Where the alien's choice is the primary factor, the Court will evaluate the case under Article 1A of the Geneva Convention on Refugees, and where an external cause is the primary reason for the alien's inability to receive UNRWA protection, the Court will apply the second paragraph of Article 1D of the Geneva Convention on Refugees. Finally, the third tier cases are those in which a factor outside the alien's control results in the failure of UNRWA assistance or protection; in such cases, the Court will automatically grant refugee status without reference to Article 1A of the Geneva Convention on Refugees.

Case 34 L 51.13 A

In this 22 March 2013 decision, the Administrative Court of Berlin ruled upon a case involving a Palestinian from the West Bank who received a visa in 2004 to study in Germany. After living in Germany for several years, in May 2012, he applied for asylum on the grounds that he had finished his studies without obtaining a university degree and could not return to Palestine because it would be a huge shame to go back without a university degree. The plaintiff also claimed that the Israeli authorities would not give permission to return due to his long absence from the West Bank (as per the decision of the Administrative Court of Dresden in November 2010; see case A 5 K 1072 08).

The plaintiff could not tell exactly when he visited his family the last time and refused to provide his passport (expiring in 2012) from the Federal Office for Migration and Refugees, instead sending it back to Palestine. The Court ruled that it was unascertainable whether the plaintiff would be among the group of people who would not get permission from the Israeli authorities to enter the West Bank.

The Court further stated that expatriation and comparable reasons for refusal of return can constitute grounds for asylum only if the person is seriously affected in his personal and individual situation under these measures. However, it also needed to be taken into account whether the person concerned was responsible for these measures. For example, relevant facts would include whether the person stayed abroad longer than the duration of his exit document or if he tried to annul the expatriation or made any efforts to return.

In this case, the Court took the view that the plaintiff could not argue that he was the victim of a ban on return by Israel because he was responsible for not having a

valid passport and had made no effort to return to the West Bank. The plaintiff had caused the inability to return to the West Bank due to his long absence.

Case 5 A 1656/10 As

In June 2013, the Administrative Court of Schwerin issued a decision regarding the case of a Palestinian born in Jerusalem. He entered Germany in January 2010 and applied for asylum. The plaintiff was working as a lawyer in Bethlehem and was a member of a Palestinian commission which agitated against the Israeli government's wall construction. Many of their members were persecuted, detained and even killed by Israelis. In October 2009, Israeli agents searched his family house, interrogated his brothers and asked about his whereabouts. On the following day, he was called by an Israeli Captain who told him to stop his actions. On another night, the Israeli Military searched his chambers, took files and his computer and destroyed his monitor. After that, he stopped working as a lawyer, but in November, his family house caught fire and burned for unknown reasons. The Israeli army took his brother and gave his mother a certificate stating that he needed to contact the army. Two weeks later, the army invaded the Al-Daheisha camp where he was hiding at a friend's place. He fled and stayed in hiding in different places until he could leave Israel.

The Court ruled that his claim was substantiated and that he was persecuted by Israeli authorities on political grounds. The Court made clear that it did not matter that he was persecuted by Israel rather than Palestine due to the fact that Israel exercised public authority and that Palestinian authorities were not able to ensure protection.

The Court granted refugee status under Section 3 of the Asylum Procedure Act in accordance with Section 60 (1) of the Residence Act and stated that refugee status could not be excluded under Section 3 (3) of the Asylum Procedure Act, which refers to Article 1D of the Geneva Convention on Refugees, because the protection or assistance of UNRWA ceased to exist.

Case 34 K 172.11 A

This case, decided by the Administrative Court of Berlin on 24 February 2014, concerned a Palestinian from Lebanon who was born in the refugee camp Ein El-Hilweh. He entered Germany in February 2010 and applied for asylum. In his claim, he argued that he was persecuted by several radical organizations and that he and his family belonged to Fatah. Several attempts on his and his family lives occurred – the last one in October 2009. He was also detained several times in a barrack by the Lebanese military when he wanted to leave the camp. In its decision, the Court ruled that the plaintiff's arguments that he would be persecuted if he returned to Lebanon were not substantiated. The Court took the view that even if his claim was true, since December 2010, the security situation in the camp had relaxed. Furthermore, the Court believed that the attacks targeted his father, who had a special position at Fatah, rather than the plaintiff. Moreover, the Court decided that the plaintiff could have gone to another refugee camp to escape from the attacks by these organizations.

The Court observed that the plaintiff was registered with UNRWA, and that he received assistance and protection from UNRWA (but did not state whether it was in fact a requirement to have received assistance from UNRWA in order to come within the inclusion clause of Article 1D). The Court relied on the *El Kott* decision which established that to qualify as "cessation" of assistance or protection, the person had to have been forced to leave the UNRWA area of operations. A "cessation" would occur when the person concerned was in a personal situation of insecurity and it was impossible for UNRWA to ensure living conditions commensurate with its mandate. Mere absence from the UNRWA area or choosing to leave the zone voluntarily does not constitute a cessation of assistance or protection by UNRWA according to the second paragraph of Article 1D of the Geneva Convention on Refugees.

Furthermore, the Court ruled that the plaintiff was not eligible for subsidiary protection because there was no internal armed conflict in Lebanon.

5. Refugee Status Determination Process: Outcome

After making a decision, the authorities deliver the result to the applicant in writing.[676] If the decision is positive the applicant will obtain a residence permit for three years if he or she is entitled to asylum or refugee status.[677] Applicants granted subsidiary protection obtain a residence permit for only one year, but it is renewable for a further two years.[678]

Both recognition of entitlement to asylum and refugee status shall be revoked if the requirements on which such recognition is based have ceased to exist. No more than three years after a decision becomes non-appealable it shall be re-examined, for a determination of whether the conditions for revocation are met.[679] In addition, international as well as national subsidiary protection are revocable if the circumstances in the country of origin have changed significantly and the conditions on which the protection is based no longer exist.[680]

After possessing a residence permit for three years, refugees will be granted a settlement permit (permanent residence permit) if the Federal Office for Migration and Refugees determines that the entitlement to asylum or refugee status is not subject to revocation.[681] For persons granted subsidiary protection, a settlement permit can be granted only after seven years.[682]

[676] State of Germany, "Asylum Procedure Act (Asylverfahrensgesetz, AsylVfG)," Section 31(1).

[677] Ibid., Section 25(1) and (2); State of Germany, "Residence Act (Aufenthaltsgesetz, AufenthG) [with Amendments]," Section 26(1).

[678] State of Germany, "Asylum Procedure Act (Asylverfahrensgesetz, AsylVfG)," Section 25(2); State of Germany, "Residence Act (Aufenthaltsgesetz, AufenthG) [with Amendments]," Section 26(1).

[679] State of Germany, "Asylum Procedure Act (Asylverfahrensgesetz, AsylVfG)," Section 73.

[680] Ibid., Section 73(b) and (c).

[681] State of Germany, "Residence Act (Aufenthaltsgesetz, AufenthG) [with Amendments]," Section 26(3).

[682] Ibid., Section 26(4).

If the asylum decision is negative, it will include a deportation order and instructions for legal remedies.[683]

Decisions by the Federal Office for Migration and Refugees can be appealed to the administrative courts. An initial appeal may be made at the Administrative Court *Verwaltungsgerichte (VG)* to overturn the refusal/rejection of the application and must be filed within two weeks.[684] Representation is not mandatory at this stage. An applicant may appeal to the Higher Administrative Court (*Oberverwaltungsgericht/ Verwaltungsgerichtshof (OVG/VGH)*) for a review of the decision of the court of origin, but review will only be granted for significant questions of fact or law.[685] Finally, the Federal Administrative Court *(BVerwG)* may review a case for significant questions of law. A decision by the Federal Administrative Court usually cannot be contested further.[686]

In general, judges are not bound to follow prior cases under the civil law tradition. Jurisdiction of the court is based on the asylum seeker's place of residence, and there is considerable variation in outcomes due to judicial independence.

Generally appeals have suspensive effect; however, for cases where the application is rejected as "manifestly unfounded" or "inadmissible,"[687] appeals do not have automatic suspensive effect, and the applicant must apply to the Administrative Court to suspend the decision of the Federal Office for Migration and Refugees.[688]

In the case of a negative decision, the Federal Office for Migration and Refugees will issue a deportation order. It will determine a deadline of 7 to 30 days for leaving the country voluntarily;[689] otherwise the deportation will be enforced.[690]

There are several decisions by different courts regarding the return of Palestinians to Lebanon and Israel (see cases under Section 6). The most recent case concerning the possibility of obtaining a Laissez-Passer from the Lebanese Embassy for a return to Lebanon indicates that this is not a possibility. The Courts take the view that there is no possibility of returning to Israel if the applicant is Palestinian and has no citizenship. There are no documented figures about deportation or voluntary return by Palestinians.

[683] State of Germany, "Asylum Procedure Act (Asylverfahrensgesetz, AsylVfG)," Sections 31(1) and 34.

[684] Ibid., Section 74(1).

[685] Ibid., Section 78.

[686] The Federal Administrative Court will review decisions on points of law. In cases where the Federal Administrative Court disagrees with the law of a decision, it will remand the decision to be decided in light of an instructed analysis. From a denial at the Federal Administrative Court, appeals may be to the Federal Constitutional Court, but it is extremely rare for the Court to accept an asylum claim. Appeal is also possible to the CJEU in some cases. Information provided by Laura Hilb.

[687] State of Germany, "Asylum Procedure Act (Asylverfahrensgesetz, AsylVfG)," Section 30.

[688] There are ways to restore suspensive effect, but these are limited in time and by procedural law due to section 36 (3) of the Asylum Procedure Act: legal remedy within one week. Ibid., Section 36(3).

[689] Ibid., Section 34; State of Germany, "Residence Act (Aufenthaltsgesetz, AufenthG) [with Amendments]," Section 59.

[690] State of Germany, "Residence Act (Aufenthaltsgesetz, AufenthG) [with Amendments]," Section 58.

Germany's Federal High Court ruled in July 2014 that detention of an asylum seeker pending a transfer to another EU country under the Dublin III Regulation violates German law.[691]

6. Protection under the Statelessness Conventions

Germany is a party to both the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.[692]

According to the 2005 edition of this *Handbook*,[693] even though Germany does not have a specific procedure for determining whether statelessness exists it 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. Cases of Palestinian asylum seekers who could not establish entitlement to the benefits of the 1951 Refugee Convention are assessed under the 1954 Stateless Persons Convention.[694]

Germany's 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 Persons Convention. However, the individual entitlement to the benefits of the 1954 Stateless Persons Convention is conditioned upon fulfilment of the same restrictive criteria of Article 1D, i.e., UNRWA assistance or protection must have "ceased" without the stateless person having "voluntarily relinquished" such assistance or protection.[695] The non-compliance with those criteria leads to the exclusion, of the stateless Palestinian concerned, from the scope of the 1954 Stateless Persons Convention.[696]

Nevertheless, it should be noted that Germany understands that the 1954 Convention is only applicable to those who left URNWA's area of operation – and, thus, no longer enjoy its protection or assistance – *due to a well-founded fear of persecution* in their country of habitual residence.[697]

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[691] Asylum Information Database, "Germany: Federal High Court Declares Unlawful Any Detention under Dublin III Regulation," July 29, 2014, http://www.asylumineurope.org/news/17-10-2014/germany-federal-high-court-declares-unlawful-any-detention-under-dublin-iii.

[692] UNTC, "Status of Treaties: Convention Relating to the Status of Stateless Persons;" UNTC, "Status of Treaties: Convention on the Reduction of Statelessness."

[693] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 184–185.

[694] Ibid., 184.

[695] UN General Assembly, *Convention Relating to the Status of Stateless Persons*, Article 1(2).

[696] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 185.

[697] See Verwaltungsgericht (Administrative Court), "A Gegen BMI, Betreffend Feststellung Der Flüchtlingseigenschaft [Against BMI, Concerning Determination of Refugee Status]," January 29, 1986, ZI 84/01/0106, http://www.refworld.org/docid/3ae6b7000.html; and Bundesverwaltungsgericht (Federal Administrative Court), "Urteil Vom 21.1.1992 (Decision of 21/01/1992)," January 21, 1992, BVerwG 1 C 21.87, http://www.refworld.org/docid/3ae6b72f20.html, Item (dd)(3).

Germany ensures through the Citizenship Act (*Staatsangehörigkeitsgesetz*) that stateless and other persons are able to acquire German citizenship if eligible. In general, all naturalization candidates need to fulfil the same requirements, for example having legal residence in Germany for 8 years.[698] In special cases, stateless persons (and refugees) can be naturalized after seven years instead of eight years of legal residence in Germany.[699]

7. Additional Relevant Jurisprudence[700]

Case 11 LC 312/10

The High Administrative Court of Luneburg ruled in January 2011 that Palestinians who are registered in Lebanon but obligated to leave Germany are able to receive a Laissez-Passer from the Lebanese Embassy to return to Lebanon. Therefore, the person concerned needs to apply for such a pass; without having done so, s/he will not receive a residence permit under the Residence Act.

Case 35 K 202.11

In an 25 August 2011 decision, the Administrative Court of Berlin takes the view that Lebanon had been preventing Palestinians from returning to Lebanon and had not issued Laissez-Passer documents. The Court observes that since 2010, there had not been any cases in which a stateless Palestinian succeeded in efforts to return voluntarily to Lebanon. Therefore, the Foreigners Authority is not allowed to ask for a certificate showing that the person concerned applied at the Embassy of Lebanon to receive a Laissez-Passer, because such an application has no prospect of success. If the Foreigners Authority believes that there is a chance to receive the Laissez-Passer, they need to submit the application form and monitor the procedure. Otherwise, they need to grant the Palestinian involved a residence permit.

Case 11 LA 68/13

The High Administrative Court of Luneburg ruled on 15 March 2013 that there was no possibility of returning to Israel for Palestinians from the Gaza Strip without any other citizenship. The Court supports its view with several reports by the German Federal Office of Foreign Affairs, the Country Policy Bulletin by the British Home Office, the Swiss Refugee Council and several internet reports by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) in the Occupied Palestinian Territory.

[698] State of Germany, "Nationality Act (Staatsangehoerigkeitsgesetz) of 22 July 1913 (last Amended in 2012)," July 22, 2013, http://www.bmi.bund.de/SharedDocs/Gesetzestexte/EN/Staatsangehoerigkeitsgesetz_englisch.pdf?__blob=publicationFile, Section 10(1).

[699] Ibid., Section 10(3).

[700] Information provided by Laura Hilb.

8. Links

- Federal Office for Migration and Refugees, Asylum and Refugee Protection: http://www.bamf.de/EN/Migration/AsylFluechtlinge/asylfluechtlinge-node.html
- Federal Ministry of the Interior**:** http://www.bmi.bund.de/EN/Home/home_node.html
- Representative of the Federal Government for Migration, Refugees and Integration: http://www.bundesregierung.de/Webs/Breg/EN/Homepage/_node.html;jsessionid=CC82037C9511A57D07145772B7A50042.s2t1
- Federal Constitutional Court: https://www.bundesverfassungsgericht.de/en/index.html
- Federal Administrative Court: http://www.bverwg.de/informationen/english/decisions/asylum_immigration_law.php
- Published Asylum Cases: http://www.asyl.net/index.php?id=rechtsprechungsdatenbank
- Pro-Asyl (NGO dealing with refugees): http://www.proasyl.de/en/home/
- List of the different refugee councils in Germany: http://www.proasyl.de/de/ueber-uns/foerderverein/arbeitsbereiche/fluechtlingsraete/
- Jesuit Refugee Service, *Protection Interrupted: The Dublin Regulation's Impact on Asylum seekers' Protection (The DIASP project)*, 4 June 2013 (includes a chapter on Germany): https://www.jrs.net/assets/Publications/File/protection-Interrupted_JRS-Europe.pdf

HUNGARY[701]

1. Statistical Data

UNHCR data show that there were 48 Palestinian refugees and 77 Palestinian asylum seekers in Hungary 2013 (the only year for which data are available).[702] The data also show that at the start of 2013, there were 5 Palestinian asylum cases pending, and 88 new applications by Palestinians throughout the year. Of these, 5 were granted Convention status; 9 were rejected; and 75 cases were 'otherwise closed,' reportedly leaving 77 cases pending at the end of 2013.[703]

2. Refugee Status Determination: The Process

Along with other asylum seekers, Palestinians in Hungary may submit an application for asylum to the Office of Immigration and Nationality (OIN).[704]

Asylum seekers have the right to legal assistance during the asylum application process, and may receive aid from non-governmental organizations if they do not otherwise have the resources to obtain legal representation.[705] After an asylum application is submitted to the OIN, the asylum seeker is assigned to a reception center where he or she must live for the duration of the application process.[706] Additionally, Hungary may detain an asylum seeker if necessary. Hungary permits the asylum seeker to work in the territory of the reception center and to contact the UNHCR representative in Hungary.[707]

A representative from UNHCR may attend or take part in any other portion of the initial application process.[708] The OIN will also take photos of and fingerprints from each asylum seeker.[709] During the initial application proceedings, the refugee authorities may inspect the asylum seeker and any items he or she may have brought into Hungary.[710] Subsequently, the asylum seeker must participate in an interview.[711] During this preliminary evaluation, the OIN will consider whether Hungary is the

[701] Grusa Matevsic, Legal Officer at the Hungarian Helsinki Committee, reviewed and contributed to this section.

[702] UNHCR, "UNHCR Population Statistics - Persons of Concern Time Series" (last visited Aug. 24, 2014).

[703] UNHCR, "UNHCR Population Statistics - Asylum Seekers Status Determination" (last visited Sept. 22, 2014).

[704] UNHCR, "Hungary as a Country of Asylum," April 2012, para. 23, http://www.refworld.org/pdfid/4f9167db2.pdf.

[705] State of Hungary, "2007. Évi LXXX. Törvény - a Menedékjogról [Hungary's Asylum Act of 2007] (last Amended in 2014)," 2007, para. 37, http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0700080.TV.

[706] Ibid., para. 48.

[707] Ibid.

[708] Ibid., para. 38.

[709] Ibid., para. 39.

[710] Ibid.

[711] Ibid., para. 43.

appropriate country to process the applicant's asylum claim in light of the Dublin Regulation.[712] The preliminary proceedings must not last longer than thirty days.[713]

After the preliminary evaluation, the OIN will examine the asylum application on the merits and determine whether the asylum seeker has met Hungary's refugee requirements.[714] During this examination, the Officer for National Security will issue an opinion on whether the applicant poses a national security risk. The Officer for National Security will begin conducting his or her investigation within sixty days after the preliminary proceedings.[715] A final decision must be provided to the asylum seeker in Hungarian and translated orally in his or her preferred language.[716]

3. Refugee Status Determination Process: The Legal Framework

Hungary has adopted the refugee definition of Article 1A(2) of the Refugee Convention.[717] Hungary excludes applicants with refugee status claims under Refugee Convention Articles 1D, 1E, and 1F.[718]

4. Refugee Status Determination: Article 1D

Human Rights Education in the Field of Return[719]

A published official statement regarding the interpretation of Article 1D in Hungarian asylum law states that Article 1D does not apply to persons who are already receiving protection from UNRWA. However, the statement makes clear that UNRWA extends protection over a small part of the Middle East; those who are outside the area of the UNRWA mandate do not receive protection from UNRWA. As such, when a Palestinian is outside of the UNRWA area, Hungarian policy is to evaluate his or her claim under Article 1D.

The treatment of Palestinians under Hungarian asylum law has experienced a major shift as the result of the *El Kott* decision.[720] Hungary requested an opinion by the CJEU on the two questions that that the *Bolbol* decision left open: (1) What is the meaning of the "ipso facto" language in the second clause of Article 1D?; and (2) when does UNRWA protection or assistance cease?

[712] Ibid., para. 49. At the time of this *Handbook*'s publication, Hungary has not incorporated the Dublin III Regulation into its asylum procedure, however the Regulation is directly applicable and therefore binding on Hungary (information provided by Grusa Matevzic).

[713] Ibid., para. 47.

[714] Ibid., para. 58.

[715] Ibid., para. 56.

[716] Ibid., para. 36.

[717] Ibid., para. 5(1).

[718] Ibid., para. 7(1).

[719] Országos Bírósági Hivatal [National Judicial Office], *Emberi Jogi Képzés a Visszatérés Területén [Human Rights Education in the Field of Return], 2012 - 2013*, October 6, 2013, 239–242, http://www.birosag.hu/sites/default/files/allomanyok/project_docs/emberi_jogi_kepzes_oktatasi_segedanyag.pdf.

[720] Ibid.

In general, the Courts follow the *El Kott* decision. Very few administrative decisions by the OIN are made publicly available, but the following decisions are available:

U.S. v. Office of Immigration and Nationality, 31.755/2011/12, Sept. 22, 2011[721]

The petitioner in this case was a Palestinian who had been living in the West Bank. He claimed that he was forced to leave the West Bank because he had been kidnapped on numerous occasions by the Islamic Jihad groups and Fatah. The OIN dismissed Petitioner's claims for refugee status, finding that he lacked credible reasons for leaving the West Bank. In so deciding, the OIN relied in part on Canadian and British travel-safety information. From this information, the OIN reasoned that if the West Bank was not a fully-restricted travel destination, Petitioner's claims of fear in the West Bank were unfounded.

This case further demonstrates the jurisprudential shift in Hungary as a result of the *El Kott* decision. In this decision, which predates *El Kott*, the Administrative and Labour Court did not even address whether petitioner had left UNRWA's operational area. Rather, the Court only considered whether the OIN violated the *jus cogens* norm of *non-refoulement* by denying Petitioner's asylum application. Specifically, the court addressed the validity of Petitioner's claim of a well-founded fear of persecution, regardless of the Canadian and British travel-safety reports. The Court did not deliver a final decision, but overturned the OIN's initial denial of refugee status, and remanded the case to consider whether return to the West Bank would violate *non-refoulement* obligations.

A.A.A. v. Office of Immigration and Nationality, 6.K.30.092/2013/12, 7 March 2013[722]

The petitioner in this case was a Palestinian registered with UNRWA and living in Lebanon. Petitioner claimed that he was subject to physical and psychological attacks in Lebanon, and was forced to leave as a result. The OIN denied Petitioner's asylum application, reasoning that Palestinians living in Lebanon were subject to an insufficient degree of discrimination for refugee protection. However, the Administrative and Labour Court, applying the analytical framework of *El Kott*, granted the applicant refugee status.

The ALC framed the *El Kott* inquiry around three questions:

1. Did the applicant receive UNRWA assistance?
2. Has UNRWA assistance ceased?
3. Do any other grounds exist to justify exclusion from coverage under the 1951 Convention?

[721] Metropolitan Court of Hungary, "U.S. v. Office of Immigration and Nationality [Hungarian]," September 22, 2011, 15 K 31.755/2011/12, http://m.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/U.S..pdf.

[722] Budapest Administrative and Labour Court, "A.A.A. v. Office of Immigration and Nationality [Hungarian]," March 7, 2013, 6.K.30.092/2013/12, http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/%C3%ADt%C3%A9let_Al%20Tayyar%20Abdelhakim%20Alaa_1.pdf.

The ALC found that Petitioner was registered with UNRWA when he lived in Lebanon, thus satisfying the first inquiry. Second, the Court found that Petitioner was forced to leave the UNRWA area of operations. Because UNRWA was unable to protect Petitioner, and, as a result, Petitioner's personal safety was at risk, the Court determined that Petitioner also satisfied the second *El Kott* inquiry. Finally, the Court found no other grounds to justify Petitioner's exclusion from refugee protection, and Petitioner was "entitled *ipso facto* to the benefits provided by the Geneva Convention." Accordingly, the Court granted Petitioner refugee status.

K.K.F. v. Bevándorlási és Állampolgársági Hivatal (Office of Immigration and Nationality), 15.K30.590/2013/5, 21 March 2013[723]

The applicant was a Palestinian who had lived in the Beddawi refugee camp in Lebanon and received UNRWA assistance. He left his home because of the poor security situation in the camp as well as harassment and threats from various Palestinian groups. The OIN rejected his application, having determined that the applicant voluntarily left UNRWA's area of operations and therefore was not automatically entitled to international protection. Furthermore, the OIN decided that the applicant had not been persecuted for reasons outlined in the Geneva Convention, and therefore denied refugee status. The Court followed the reasoning of *El Kott* and found that in the circumstances of this case, UNRWA assistance had ceased for reasons beyond the control of the applicant (due to threats against his personal safety and a series of physical and psychological attacks). UNRWA could not protect the applicant, and therefore he was entitled *ipso facto* to the benefits provided by the Geneva Convention, i.e. refugee status.

Case 16.K.27.128/2014/8, Gyor-Moson-Sopron County Court[724]

The applicant was a Palestinian who had previously lived in Ein El Hilweh camp in Lebanon. He claimed that he was approached and threatened by several Islamic groups who wanted him to join them, as well as that his life was in danger because of many security incidents that put civilians at risk. His asylum application was rejected by the OIN. The decision stated that *El Kott* criteria were not applicable in his case. However, the decision in this case was not well-reasoned. The Court quashed the OIN's decision and ordered a new procedure because the OIN decision contained no adequate reasoning on the key issues of the case.

The applicant's mother's asylum application was also rejected, but in her case another judge confirmed the OIN's decision (case 6.K.27.116/2014/12). This case is not representative of Hungarian jurisprudence, however. Most courts now follow the *El Kott* criteria.

[723] Budapest Administrative and Labour Court, "K.K.F. v. Bevándorlási És Állampolgársági Hivatal (Office of Immigration and Nationality, OIN) [Hungarian]," March 21, 2013, 15.K30.590/2013/5, http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/Original%20Judgment%20-%20Budapest%20Administrative%20and%20Labour%20Court%20-%20KKF%20Palestinian%20v%20OIN.pdf.

[724] Information provided by Grusa Matevsic.

5. Refugee Status Determination Process: Outcome

If an applicant receives refugee status, he or she is entitled to all the rights and obligations of Hungarian citizens.[725] However, a refugee may not vote in elections except those for "local municipality representatives and mayors, local referenda, and public initiative," and may not take any job or hold any public office that is reserved exclusively for Hungarian nationals.[726] Persons granted refugee status are entitled to social benefits, health care services and education on the same basis as Hungarian citizens, as well as extra benefits and support specific to refugees. The rules on integration allowances changed as of January 2014; the allocation of such benefits depends on the potential beneficiary's income and assets.[727] Refugees are also entitled to an identity card and a travel document.[728]

If an application for refugee status is denied, the asylum seeker may request a review of the decision.[729] A request for review must be submitted within eight days of the contested decision.[730] The local court which has jurisdiction will hear the claim and make a decision within sixty days.[731]

Rejected asylum applicants who have entered the country illegally and who fail to leave may be deported. There is little information available regarding Hungary's deportation procedures. However, research suggests that, at least prior to 2005, no Palestinians had been deported from Hungary to the Gaza Strip or the West Bank.[732]

6. Protection under the Statelessness Conventions

Hungary is a party to both the 1954 Stateless Persons and 1961 Statelessness Conventions.[733] Hungary is one of the few countries in the world with a formalized and regulated statelessness determination procedure, "including elaborate rules on evidentiary assessment."[734]

[725] State of Hungary, "2007. Évi LXXX. Törvény - a Menedékjogról [Hungary's Asylum Act of 2007] (last Amended in 2014)," para. 10(1).

[726] Ibid.

[727] Office of Immigration and Nationality, "Subsidies for Refugees/beneficiraies of Subsidiary Protection," February 10, 2014, http://www.bmbah.hu/jomla/index.php?option=com_k2&view=item&layout=item&id=425&Itemid=732&lang=en.

[728] State of Hungary, "2007. Évi LXXX. Törvény - a Menedékjogról [Hungary's Asylum Act of 2007] (last Amended in 2014)," para. 10(3).

[729] Ibid., para. 68.

[730] Ibid.

[731] Ibid.

[732] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 190.

[733] UNTC, "Status of Treaties: Convention Relating to the Status of Stateless Persons;" UNTC, "Status of Treaties: Convention on the Reduction of Statelessness."

[734] Gyulai, "Statelessness in the EU Framework for International Protection," 292, citing Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals (2007. evi II.torveny a harmadik orszagbeli allampolgarok beutazasarol es tartozkodasarol), Chapter VIII; Government Decree 114/2007. (V. 24.) on the execution of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals (170/2001. (IX. 26.) Korm. rendelet a kulfoldiek beutazasarol es tartozkodasarol szolo 2001. evi XXXIX. torveny vegrehajtasarol), Chapter VIII.

However, only lawfully residing persons can apply for stateless status. This restriction has been severely criticized by numerous actors as being in breach of the 1954 Convention and excluding those most in need of protection from the scope of the statelessness-specific protection regime.[735]

Between 2007 and 2010, 109 people applied for stateless status in Hungary, of which 56 were recognized as stateless persons.[736] Between 2011 and August 2014, 104 people applied for status as stateless persons, 67 of whom were granted status.[737] The majority of applicants granted stateless status were Palestinians and persons from the former Yugoslavia or the former Soviet Union.[738]

Applications based on statelessness must be submitted to the Office of Immigration and Nationality. Residence permits based on statelessness are granted for a maximum 3-year period initially and can be renewed for one year at a time.[739] However, this residence permit is flawed in that it comes with "seriously restricted access to the labour market, no access to state-funded higher education, [and] no preferential treatment with regard to access to health care."[740] Stateless persons are eligible to apply for citizenship after living in Hungary for 5 years ("having a registered domicile").[741]

Appeals against negative decisions can be made to the Metropolitan Court, and a further negative decision may be brought to the Supreme Court in a judicial review procedure in some cases.[742]

7. Additional Relevant Jurisprudence

Hungary - Metropolitan Court, 29 August 2013, H.A.I. v Office of Immigration and Nationality (OIN), 3.K.30.602/2013/15[743]

The applicant was a stateless Palestinian from Lebanon who had worked for Fatah. He claimed that his life was in danger due to numerous conflicts with other groups (Usbet Al Ansar, Jund Al Sham), during which several of his companions were killed. The OIN rejected his application, and the applicant appealed. The Office

[735] Ibid.

[736] Gábor Gyulai, *Statelessness in Hungary - The Protection of Stateless Persons and the Prevention and Reduction of Statelessness* (Hungarian Helsinki Committee, December 2010), 5.

[737] Information provided by Grusa Matevzic.

[738] Gyulai, *Statelessness in Hungary - The Protection of Stateless Persons and the Prevention and Reduction of Statelessness*, 5.

[739] Gábor Gyulai, *Statelessness Determination and the Protection Status of Stateless Persons* (European Network on Statelessness, 2013), 36, http://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/Statelessness%20determination%20and%20the%20protection%20status%20of%20stateless%20persons%20ENG.pdf.

[740] Gyulai, "Statelessness in the EU Framework for International Protection," 293.

[741] Gyulai, *Statelessness Determination and the Protection Status of Stateless Persons*, 40.

[742] Gyulai, "Statelessness in the EU Framework for International Protection," 292.

[743] Metropolitan Court of Hungary, "H.A.I. v. Office of Immigration and Nationality (OIN) [Hungarian]," August 29, 2013, 3.K.30.602/2013/15, http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/Original%20judgment%20-%203.K.30.602-2013-15.pdf.

of National Security raised objections in relation to the applicant's status and the Counter-Terrorism Centre (TEK) intervened in the case. The Court found that the Objection of the OIN (unsupported by documentation) was unfounded and held that the applicant should be granted refugee status.

8. Links

- Office of Immigration and Citizenship: http://www.bmbah.hu/ugyintezes_eljarasrend.php?id=56
- Hungarian Helsinki Committee: http://helsinki.hu/en/
- Menedék - Hungarian Association for Migrants: http://menedek.hu/en
- The Cordelia Foundation for the Rehabilitation of Torture Victims: http://www.cordelia.hu
- Jesuit Refugee Service, *Protection Interrupted: The Dublin Regulation's Impact on Asylum seekers' Protection (The DIASP project)*, 4 June 2013 (includes a chapter on Hungary): https://www.jrs.net/assets/Publications/File/protection-Interrupted_JRS-Europe.pdf

IRELAND[744]

1. Statistical Data

UNHCR data show the number of Palestinian refugees and asylum seekers in Ireland. There were 18 asylum applications by Palestinians pending at the start of 2013, and 16 cases remained pending at the end of the year. No further information about these cases is available on UNHCR's statistics page.[745]

Palestinian Refugees and Asylum seekers in Ireland[746]

	2009	2010	2011	2012	2013
Refugees	116	120	127	119	82
Asylum seekers	24	30	27	29	17

2. Refugee Status Determination: The Process

Asylum applications may be lodged at a port of entry with an Immigration Officer (e.g., an airport), or if the asylum seeker is already in Ireland, directly to the Office of Refugee Applications Commissioner (ORAC) in Dublin.[747] After submitting the application at a port of entry, the authorities conduct an initial interview with the applicant.[748] ORAC will review applications, and an ORAC officer will interview the applicant.[749] During the initial asylum determination process, the applicant may stay in a direct provision accommodation center provided by the Reception and Integration Agency.[750] Meals are provided and asylum seekers receive weekly allowances of €19.10 per adult and €9.60 per child. Asylum seekers are not permitted to work.[751] Asylum seekers are also entitled to free medical care[752] and legal assistance.[753]

[744] Bernadette McGonigle, Solicitor, and Julia Hull, Solicitor, of the Legal Aid Board, Cork, Ireland reviewed and contributed to this section.

[745] UNHCR, "UNHCR Population Statistics - Asylum Seekers Status Determination" (last visited Aug. 27, 2014).

[746] UNHCR, "UNHCR Population Statistics - Persons of Concern Time Series" (last visited Aug. 27, 2014).

[747] Office of the Refugee Applications Commissioner, "Legal and Administrative Framework for Decision Making," accessed November 21, 2014, http://www.orac.ie/website/orac/oracwebsite.nsf/page/refugeestatusdetermination-legalandadministrativeframeworkfordecisionmaking-en.

[748] Ibid.

[749] Ibid.

[750] Ibid.

[751] Irish Refugee Council, "FAQs about Asylum," accessed November 21, 2014, http://www.irishrefugeecouncil.ie/information-and-referral-service/faqs-about-asylum.

[752] Citizens Information, "Medical Services and Entitlements for Asylum Seekers," October 24, 2011, http://www.citizensinformation.ie/en/moving_country/asylum_seekers_and_refugees/services_for_asylum_seekers_in_ireland/medical_services_and_entitlements_for_asylum_seekers.html.

[753] Citizens Information, "Legal Aid for Asylum Seekers in Ireland," March 26, 2013, http://www.citizensinformation.ie/en/moving_country/asylum_seekers_and_refugees/services_for_asylum_seekers_in_ireland/legal_aid_for_asylum_seekers_in_ireland.html.

3. Refugee Status Determination Process: The Legal Framework

Section 2 of the Refugee Act's refugee definition is as follows:

> 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 […]. [754]

Since 2005, the legislature has not altered the framework for granting or denying refugee status in Ireland. Accordingly, the Refugee Act of 1996 (as amended) continues to regulate the decision-making process for asylum applications.[755]

4. Refugee Status Determination: Article 1D

The High Court has acknowledged that §2(a) of the Refugee Act 1996 incorporates Article 1D of the Refugee Convention. §2(a) provides that a refugee "does not include a person who is receiving from organs or agencies of the United Nations (other than the High Commissioner) protection or assistance."[756]

Asylum decisions of the High Court are the only case law available to the public. Concerning Palestinian asylum applicants, the High Court has delivered only a handful of judgments. Previous analysis of Palestinian applicants by the High Court has not involved Article 1D. For example, in a 2007 decision involving a Palestinian from Gaza, the Court reversed a denial of refugee status on well-founded fear grounds.[757] The High Court found that the lower court, in assessing the applicant's credibility, did not adequately consider the country conditions information.[758] Similarly in 2009,

[754] State of Ireland, "Refugee Act 1996, No. 17 of 1996 (last Amended in 2004)," June 26, 1996, http://www.orac.ie/website/orac/oracwebsite.nsf/page/CRSE-8Z6JJX1561517-en/$File/refugee+act+1996(newer).pdf, Section 2.

[755] Ireland has, however, now implemented the EU Qualification Directive. The draft Immigration, Residence and Protection Bill from 2010 (which is an update to the Immigration, Residence and Protection Bill from 2008) will introduce radical changes to the asylum process if adopted, though it is uncertain when that will occur (information provided by Bernadette McGonigle). A new Minister for Justice, Equality and Law Reform, Frances Fitzgerald, took office in 2014, and in October 2014 announced, with the Minister of State, the creation of a new Working Group which will "report to Government on improvements to the protection process, including Direct Provision and supports to asylum seekers." Irish Naturalisation and Immigration Service, "Ministers Fitzgerald and O Ríordáin Announce Composition of Working Group to Examine Improvements to the Protection Process and the Direct Provision System," October 13, 2014, http://www.inis.gov.ie/en/INIS/Pages/Ministers%20Fitzgerald%20and%20O%20R%C3%ADord%C3%A1in%20announce%20composition%20of%20Working%20Group%20to%20examine%20improvements%20to%20the%20Protection%20process%20and%20the%20Direct%20Provision%20system.

[756] State of Ireland, "Refugee Act 1996, No. 17 of 1996 (last Amended in 2004)," Section 2(a).

[757] High Court of Ireland, "H.Y. v. Refugee Appeals Tribunal & Anor [2007] IEHC 274," July 31, 2007, 2006 199 JR, http://www.bailii.org/ie/cases/IEHC/2007/H274.html.

[758] Ibid.

the Court failed to consider Article 1D in the case of a stateless Palestinian applicant claiming fear of persecution in Libya.[759]

In another case preceding the CJEU's *El Kott* judgment, the Court also considered a Palestinian refugee claim exclusively under Article 1A.[760] *S.H.M. v. Refugee Appeals Tribunal* involved a 27-year-old Palestinian woman born in Libya who arrived in Ireland in 2000. Her parents fled from Gaza to Libya after the 1967 war, where they enjoyed stability until 1993. Then, in the aftermath of the Oslo Accords, Colonel Gaddafi declared that all Palestinians living in Libya had to leave the country. Consequently, the applicant's father was dismissed from his teaching position, and the applicant and her siblings were prohibited from attending school for over a year. The family relocated to Tubrok, another Libyan town, but her father became depressed and died suddenly in 1997. The family relocated again, but neighbors continuously persecuted the family due to their Palestinian nationality. The Court also found that, "[t]he fear of physical attacks and rapes against Palestinians prompted the applicant and her sisters to remain indoors as much as possible."[761] The High Court, however, did not consider Article 1D in reaching a decision, in parallel with the position held by many judges in other countries that statelessness itself is not a justification for automatic refugee status and that the denial of re-entry does not amount to persecution.[762]

In recent cases, however, the High Court has begun to consider Article 1D in its analysis. For example, on 31 January 2013, the Court decided *M.A v. Refugee Appeal Tribunals & Ors*.[763] *M.A.* concerned the appeal of a denial of asylum to a stateless applicant of Kurdish ethnicity born in Iran. The applicant claimed that, if returned, the Iranian government would persecute him for his active membership in the Democratic Party of Kurdish Kurdistan ("KDPI").[764] After reviewing the applicant's claim, ORAC made a negative recommendation. The Commissioner reasoned that, because the applicant was a low-level member of the KDPI, he would not likely be the target of the Iranian authorities. The applicant appealed to the Tribunal, which affirmed the denial of asylum stating:

> In any event, this Applicant has already been afforded refugee status by the UNHCR, and he provides documentation in this regard, thus pursuant to (Article 1D) being a person already receiving United Nations protection or assistance, he does not come within the definition of refugee.[765]

[759] High Court of Ireland, "W. M. M. v. Refugee Appeals Tribunal & Anor [2009] IEHC 492," November 11, 2009, 2009 96 JR, http://www.bailii.org/ie/cases/IEHC/2009/H492.html.

[760] High Court of Ireland, "S.H.M. v. Refugee Appeals Tribunal & Anor [2009] IEHC 128," March 12, 2009, 2006 833 JR, http://www.bailii.org/ie/cases/IEHC/2009/H128.html.

[761] Ibid.

[762] Ibid.

[763] High Court of Ireland, "M.A. v. Refugee Appeal Tribunal & Ors [2013] IEHC 36," January 31, 2013, 2009 789 JR, http://www.bailii.org/ie/cases/IEHC/2013/H36.html.

[764] Ibid.

[765] Ibid.

In reviewing the Tribunal's decision, the High Court noted that the Refugee Act of 1996 directly incorporates Article 1D in §2(a), and that the Tribunal incorrectly applied Article 1D to the applicant. Article 1D, the Court explained, applies only to Palestinian refugees:

> Article 1D of the Refugee Convention applies exclusively to special categories of refugees for whom separate arrangements have been made to receive protection or assistance from organizations or agencies of the UN "other than" the UNCHR. Such special arrangements are currently in place for example, in relation to stateless persons of Palestinian origin who are under the protection of the *UN Relief and Works Agency for Palestine Refugees in the Near East* (UNRWA) which was established by a UN General Assembly Resolution in 1949 in the light of the specific situation of Palestinian refugees. This was confirmed by the Grand Chamber of the CJEU in *Nawras Bolbol v. Bevandorlasi es Allampolgarsagi Hivatal* (the BAH) […] where the applicability of Article 12(1) (a) of the Qualification Directive was considered.
>
> Moreover, the CJEU more recently held in *Abed El Karem El Kott & Others v. the BAH* […] that at present, UNRWA constitutes the only UN organ or agency other than the UNHCR which is referred to in Article 12(1)(a) of the Qualification Directive of Article 1D of the Refugee Convention. This is also implicit from a number of UNCHR documents furnished to the Court, namely its 2002 Note on the Applicability of Article 1D, its 2009 Statement on Article 1D issued in the context of the preliminary ruling reference to the CJEU from the Budapest Municipality Court regarding the interpretation of Article 12(1)(a) of the Qualification Directive and its 2009 Revised Note on the Applicability of Article 1D to Palestinian Refugees which was issued subsequent to the finding of the CJEU in *Bolbol*.
>
> Hence, Article 1D presently has no applicability other than to Palestinian refugees.[766]

Thus, although previous jurisprudence has not applied Article 1D, the Court's treatment of the *Bolbol* and *El Kott* opinions in *M.A. v. Refugee Appeal Tribunal* may show a willingness to employ a more favorable Article 1D analysis in subsequent Palestinian refugee claims.

5. Refugee Status Determination Process: Outcome

After interviewing the applicant, ORAC makes a recommendation either to grant or deny asylum.[767] If the ORAC recommendation is positive, the Minister for Justice, Equality and Law Reform will automatically grant asylum status for the applicant.[768]

[766] Ibid.

[767] Office of the Refugee Applications Commissioner, "Legal and Administrative Framework for Decision Making."

[768] Ibid.

If the ORAC recommendation is negative, the individual may appeal the decision to the Refugee Appeals Tribunal (RAT).[769]

The refugee status resultant from a positive decision "provides protection against return to the person's country of origin or residence, and includes the right to family reunification of immediate family members."[770] Refugees enjoy the right to work and have access to "medical, social welfare and education services on the same basis as Irish citizens."[771] Ireland provides refugees with a residence permit giving them the right to remain indefinitely in Ireland and to enjoy rights similar to Irish citizens.[772] Additionally, refugees have the opportunity to apply for a 1951 Refugee Convention Travel Document.[773] Refugees can apply for Irish citizenship after being granted refugee status and after being in Ireland for at least 3 years.[774]

In the case of a negative decision, and followed by an appeal, if the appeal fails, the asylum seeker is "invited to apply for Subsidiary Protection and/or to make representations as to why he or she should not be deported."[775]

Subsidiary Protection

Subsidiary protection is a complementary form of protection designed to grant a formal legal status to qualifying applicants so that they can enjoy a degree of certainty and stability.[776] Persons in need of international protection who do not meet the refugee requirements may qualify for subsidiary protection in Ireland. As of October 2014, applications for subsidiary protection may be submitted with new asylum applications or by persons with asylum claims currently pending.[777]

Article 18 of the Qualification Directive provides that "member states shall grant subsidiary protection to a third country national or a stateless person eligible for subsidiary protection."[778] Thus a stateless person who can show risk of serious harm

[769] Ibid.

[770] Office of the Refugee Applications Commissioner, "Criteria for the Grant and Refusal of Asylum," accessed November 21, 2014, http://www.orac.ie/website/orac/oracwebsite.nsf/page/refugeestatusdetermination-criteriaforthegrantandrefusalofasylum-en.

[771] Ibid.

[772] Ibid.; Citizens Information, "Rights Conferred on Convention Refugees, Programme Refugees and People given Leave to Remain," January 13, 2011, http://www.citizensinformation.ie/en/moving_country/asylum_seekers_and_refugees/refugee_status_and_leave_to_remain/rights_of_convention_programme_refugees_people_given_leave_to_remain.html.

[773] Office of the Refugee Applications Commissioner, "Criteria for the Grant and Refusal of Asylum."

[774] Irish Naturalisation and Immigration Service, "What Is Naturalisation and Who Can Be Naturalised?," accessed November 21, 2014, http://www.inis.gov.ie/en/INIS/Pages/WP11000014.

[775] Irish Refugee Council, *National Asylum Procedure in Ireland*, Dublin Project, 2008, 2, http://www.dublin-project.eu/dublin/content/download/554/4468/version/5/file/Long_Brochure_Ireland.pdf.

[776] Ibid.

[777] Irish Naturalisation and Immigration Service, "Important Notice Regarding the Making of Applications for Subsidiary Protection by Applicants for Refugee Status," October 8, 2014, para. 2, http://www.orac.ie/website/orac/oracwebsite.nsf/page/AJNR-9PPBG593188-en/$File/SP%20Notice%2008%20Oct%2014%20final%20version.pdf.

[778] Council of the European Union, "Directive 2011/95/EU," Article 18.

in his or her country of origin, and inability or unwillingness to avail of that country's protection, may apply for subsidiary protection in Ireland.[779]

The recent High Court decision in *M.M. v. Minister for Justice, Equality and Law Reform*[780] has led to the introduction of a new statutory instrument, the 2013 European Union Subsidiary Protection Regulations.[781] The 2013 Regulations implemented new procedures for dealing with subsidiary protection applications, such as an interview with the Office of the Refugee Applications Commissioner[782] and the right to appeal an adverse decision to the Refugee Appeals Tribunal.[783] It was announced in October 2014 that further to the CJEU ruling in the case of *H. N. v. the Minister for Justice, Equality and Law Reform, Ireland and the Attorney General*,[784] the 2013 Subsidiary Protection Regulations will be amended, and this has resulted in immediate changes to Ireland's processing of subsidiary protection claims.[785]

While the Subsidiary Protection Regulations do not specifically refer to stateless persons, the regulations' definition of "country of origin" lends itself to the conclusion that stateless persons are likely covered: the Regulations define "country of origin" as "the country or countries of nationality or, *for stateless persons*, of former habitual residence [emphasis added]." [786] Additionally, the definition's explanatory note provides that "[t]hese Regulations are made for the purpose of giving effect in Irish law to the 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 and the content of the protection granted (Directive 2004/83/EC: 'the Qualification Directive') and deal with the subsidiary protection aspects of the system for international protection in Ireland [emphasis added]."[787]

Successful applicants for subsidiary protection are granted an initial 3-year right to reside and work in Ireland,[788] which shall be renewed except for reasons of national

[779] Irish Naturalisation and Immigration Service, "Procedures for the Investigation and Determination of Applications for Subsidiary Protection: Information Note for Applicants," November 14, 2013, 3, http://www.orac.ie/website/orac/oracwebsite.nsf/page/AJNR-9DVGAX1211128-en/$File/ORAC%20SP%20INFORMATION%20NOTE%2027.11.13.pdf, Items 4.1 and 4.2.

[780] High Court of Ireland, "M.M. v. Minister for Justice & Anor [2013] IEHC 9," January 23, 2013, 2011 8 JR, http://www.bailii.org/ie/cases/IEHC/2013/H9.html.

[781] State of Ireland, "S.I. No. 426/2013 - European Union (Subsidiary Protection) Regulations 2013," November 15, 2013, http://www.inis.gov.ie/en/INIS/SI%20426%20of%202013.pdf/Files/SI%20426%20of%202013.pdf.

[782] Ibid., para. 5(3).

[783] Ibid., para. 8.

[784] Court of Justice of the European Union, "H. N. v. Minister for Justice, Equality and Law Reform and Others," May 8, 2014, C-604/12, http://curia.europa.eu/juris/document/document.jsf?text=&docid=151965&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=507468.

[785] Irish Naturalisation and Immigration Service, "Important Notice Regarding the Making of Applications for Subsidiary Protection by Applicants for Refugee Status," para. 1.

[786] State of Ireland, "S.I. No. 426/2013 - European Union (Subsidiary Protection) Regulations 2013," para. 2(1).

[787] State of Ireland, "S.I. No. 426/2013 - European Union (Subsidiary Protection) Regulations 2013," Explanatory Note.

[788] Ibid., op. 23(1).

security or public order,[789] and includes a right to apply for family reunification.[790] In applying for Irish citizenship, a person must have resided in Ireland for a total period of 5 years; however, in the case of refugees and stateless persons, "the Minister [for Justice, Equality and Law Reform] will normally waive 2 of the 5 years' reckonable residence requirement."[791] Prior to the citizenship application, a successful subsidiary protection applicant may apply to the Minister for Justice, Equality, and Law Reform for a travel document.[792] The travel document allows the applicant the same rights of Irish citizens to travel to and from the state, other than to the applicant's country of origin.[793]

Leave to Remain

Leave to remain is granted at the discretion of the Minister "for such period and subject to such conditions as the Minister may specify in writing."[794] The factors taken into account in considering this application are set out in section 3 of the Immigration Act 1999. Leave to remain, however, does not offer a durable solution for stateless persons because the applicant must produce a passport from his or her country of nationality.[795] The passport is necessary for inclusion of a Stamp 4 Visa,[796] which allows the individual to reside and work in Ireland. Without a passport, leave to remain is not an option.

Return/Deportation

If an asylum applicant is unsuccessful on appeal to the RAT, he or she may apply for subsidiary protection. If the applicant fails to meet the criteria for subsidiary protection, the Minister for Justice, Equality and Law Reform decides whether the applicant should be deported or "be granted leave to remain for humanitarian, *nonrefoulement* or other reasons." The applicant may also choose to leave Ireland voluntarily.[797]

[789] Ibid., para. 23(3)(a).

[790] Ibid., para. 23(2).

[791] Citizens Information, "Becoming an Irish Citizen through Naturalisation," October 15, 2014, http://www.citizensinformation.ie/en/moving_country/irish_citizenship/becoming_an_irish_citizen_through_naturalisation.html.

[792] State of Ireland, "S.I. No. 426/2013 - European Union (Subsidiary Protection) Regulations 2013," para. 24(1).

[793] Citizens Information, "Travel Documents for Refugees," November 14, 2013, http://www.citizensinformation.ie/en/moving_country/asylum_seekers_and_refugees/refugee_status_and_leave_to_remain/travel_documents_for_refugees.html.

[794] State of Ireland, "Refugee Act 1996, No. 17 of 1996 (last Amended in 2004)," Section 17(6).

[795] Citizens Information, "Leave to Remain in Ireland," November 14, 2013, http://www.citizensinformation.ie/en/moving_country/asylum_seekers_and_refugees/refugee_status_and_leave_to_remain/leave_to_remain.html.

[796] Citizens Information, "Residence Rights of Non-EEA Nationals in Ireland," October 3, 2014, http://www.citizensinformation.ie/en/moving_country/moving_to_ireland/rights_of_residence_in_ireland/residence_rights_of_non_eea_nationals_in_ireland.html (explaining the Stamp 4 visa in the context of resident non-EEA nationals in Ireland).

[797] Irish Refugee Council, *National Asylum Procedure in Ireland*, 6.

6. Protection under the Statelessness Conventions

In Ireland, there is, as of yet, no formal procedure for assessing claims for relief based on statelessness**.**

Ireland is a Party to the 1954 Convention relating to the Status of Stateless Persons and to the 1961 Convention on the Reduction of Statelessness.[798] Thus, Ireland is obliged to meet certain standards *vis-à-vis* stateless persons in its territory.

Ireland's Procedures for Stateless Refugees

In Ireland, it is clear that the 1996 Refugee Act encompasses those without a nationality (i.e. stateless persons) within the refugee regime by reference to their place of former habitual residence.[799] This is not only clear from paragraph 2 of the 1996 Refugee Act (as amended), but also from paragraph 21, which governs the revocation of a grant of asylum. [800]

Procedures in Ireland for Non-Refugee Stateless Persons

At present, Ireland has no prescribed procedure for protection of non-refugee stateless persons. A potential source of protection may exist under paragraph 3 of the 1999 Immigration Act pursuant to paragraphs 3(6)(h) and (i), [801] or, in the case of a stateless child born in Ireland, pursuant to the Citizenship Act.[802] If an application under §3 of the Immigration Act is successful, the Minister for Justice, Equality and Law Reform determines the rights granted and for what term.[803] While an applicant may renew a grant of leave to remain, the Minister has discretion to approve or reject the renewal for any reason. Because of the Minister's discretionary approval and the difficulty of success for individuals who cannot produce a national passport, leave to remain cannot be regarded as a durable solution.[804] Furthermore, individuals at the deportation stage with no receiving country and no right to remain or to work in Ireland may remain in limbo with no durable solution available to them.

Additionally, stateless persons may be detained with a deportation order in circumstances where deportation is unlikely to occur in the foreseeable future.[805] This

[798] UNTC, "Status of Treaties: Convention Relating to the Status of Stateless Persons;" UNTC, "Status of Treaties: Convention on the Reduction of Statelessness."

[799] State of Ireland, "Refugee Act 1996, No. 17 of 1996 (last Amended in 2004)," Sections 2 and 21.

[800] Ibid., Sections 2 and 21.

[801] State of Ireland, "Immigration Act, Number 22 of 1999," 1999, para. 3(6)(h) and (i), http://www.irishstatutebook.ie/pdf/1999/en.act.1999.0022.pdf.

[802] State of Ireland, "Irish Nationality and Citizenship Act 1956 (last Amended in 2004)," 1956, http://www.inis.gov.ie/en/INIS/consolidationINCA.pdf/Files/consolidationINCA.pdf, Section 6(3).

[803] State of Ireland, "Immigration Act, Number 22 of 1999," Section 3.

[804] Citizens Information, "Residence Rights of Non-EEA Nationals in Ireland," October 3, 2014, http://www.citizensinformation.ie/en/moving_country/moving_to_ireland/rights_of_residence_in_ireland/residence_rights_of_non_eea_nationals_in_ireland.html (explaining the Stamp 4 visa in the context of resident non-EEA nationals in Ireland).

[805] Information provided by Bernadette McGonigle and Julia Hull.

may be especially relevant to Palestinian applicants with no legal right of residence in their country of former habitual residence, and no right to re-enter there.[806] UNHCR has noted that stateless persons without legal status should only be detained after due consideration of all possible alternatives.[807]

Currently under consideration is the 2010 Immigration, Residence and Protection Bill, which sets out a legislative framework for the management of inward migration to Ireland and effectively abolishes the regularization mechanism in Section 3 of the 1999 Immigration Act.[808] The 2010 Bill does not provide for an alternative mechanism.

7. Links

- Irish Naturalisation and Immigration Service: www.inis.gov.ie
- Department of Justice: www.justice.ie
- Refugee Appeals Tribunal: www.refappeal.ie
- Office of the Refugee Applications Commissioner: www.orac.ie
- Irish Refugee Council: www.irishrefugeecouncil.ie
- Immigrant Council of Ireland: www.immigrantcouncil.ie
- Refugee Legal Service: http://www.legalaidboard.ie/lab/publishing.nsf/Content/Refugee_Legal_Service
- Citizen's Information: www.citizensinformation.ie

[806] Information provided by Bernadette McGonigle and Julia Hull.

[807] UNHCR, *UNHCR Detention Guidelines: Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, para. 34, http://www.unhcr.org/505b10ee9.html.

[808] State of Ireland, "Immigration, Residence and Protection Bill 2010," 2010, http://www.oireachtas.ie/documents/bills28/bills/2010/3810/b3810d.pdf.

ITALY[809]

1. Statistical Data

The number of Palestinian refugees and asylum seekers entering Italy has increased every year since 2000 (the earliest year for which data is available). In 2013, there were 502 Palestinian refugees in Italy, as well as 106 documented Palestinian asylum seekers, an increase from 434 Palestinian refugees and 80 Palestinian asylum seekers in Italy in 2012.[810]

UNHCR data show the disposition of Palestinian asylum applications in Italy as follows:

Asylum Applications in Italy[811]

Year	Cases pending at start of year	New asylum applications	Granted Convention status	Granted complementary protection	Rejected	Cases pending at end of year
2013	80	178	59	13	44	106
2012	--	68	37	3	16	80
2011		118	29	5	30	--
2010		120	101	16	138	30
2009		264	142	16	197	--

2. Refugee Status Determination: The Process

As is the case for other asylum seekers, Palestinians in Italy may submit an application for asylum with the Border Police, or at the *Questura* (police headquarters).[812] There is no official time frame for lodging an asylum request after arriving in Italy, but asylum seekers are generally expected to present themselves within eight days of arriving.[813]

After an asylum seeker has registered, he or she will be fingerprinted and photographed. Police authorities follow the Dublin Regulation to determine the state responsible for evaluating the asylum application.[814] If Italy finds itself responsible

[809] Giorgia Ficorilli, Legislative Assistant at Italian Parliamentary Group Presso Camera dei Deputati, reviewed and contributed to this section.

[810] UNHCR, "UNHCR Population Statistics - Persons of Concern Time Series" (last visited Aug 25, 2014).

[811] UNHCR, "UNHCR Population Statistics - Asylum Seekers Status Determination" (last visited Sept. 22, 2014).

[812] Maria de Donato, *National Country Report: Italy* (ECRE/AIDA, May 2013), 9, http://www.asylumineurope.org/sites/default/files/report-download/italy_final_140613.pdf.

[813] Ibid., 11.

[814] Ibid.

for evaluating the asylum application, the Territorial Commissions for International Protection ("Commission") proceed with asylum review. [815]

The Commission will interview the asylum seeker within thirty days of receiving his or her paperwork from the police.[816] In limited circumstances, a "prioritized procedure" will apply.[817]

During the status-determination process, asylum seekers may briefly reside in a CARA reception and registration center, before transfer to smaller *Sistema di Protezione per Richiedenti Asilo e Rifugiati* (Protection System for Asylum Seekers and Refugees – "SPRAR") Centers, provided that the centers have space.[818] During an asylum seeker's stay at a reception center, he or she may receive minimal medical assistance, but must depend on NGOs for most basic services.[819] Asylum seekers may stay in these centers for up to six months, at which point they are allowed to work if their claims remain pending. However, actually finding employment is difficult for many asylum seekers.[820]

3. Refugee Status Determination Process: The Legal Framework

The right to asylum is guaranteed by the Italian Constitution.[821] Additionally, the refugee status determination process, as established by the EU Qualification Directive (recast) (2011/95/EU), is written into Italian Law.[822] Italy defines refugees in accordance with the Refugee Convention; in Italy, a refugee is:

> foreign national who, for well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, finds himself [or herself] outside the territory of the country of his [or her] nationality and cannot or, owing to such fear, is unwilling to avail himself [or herself] of the protection of that country, or a stateless person who finds himself [or herself] outside the territory in which he [or she] had former

[815] Ibid. A Law Decree of August 22, 2014 (No. 119) entered into force on August 23, 2014, allowing that a further ten Commissions may be added to the ten Territorial Commissions (Gorizia, Milan, Rome, Foggia, Crotone, Siracusa, Trapani, Bari, Caserta, Turin), and depending on the conditions, even more, up to a maximum of thirty Commissions. UNHCR may choose its member. The interview will be conducted by one member of the Commission of the same sex as the asylum seeker. An asylum seeker or the President of the Commission may request that the interview be conducted by all the members of the Commission (information provided by Giorgia Ficorilli, Oct. 6, 2014).

[816] Ibid.

[817] Ibid.

[818] Christina von Gunten, Maria Pitz Jacobsen, and Ida Jordal, "Asylum Procedure and Reception Conditions in Italy: Report on the Situation of Asylum Seekers, Refugees, and Persons under Subsidiary or Humanitarian Protection, with Focus on Dublin Returnees," May 2011, 20–21, http://www.refworld.org/docid/4e2699b92.html.

[819] Ibid., 25.

[820] Ibid., 21.

[821] State of Italy, "Constitution of the Italian Republic," accessed November 24, 2014, https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf, Article 10, third paragraph.

[822] State of Italy, "Decreto Legislativo 21 Febbraio 2014, N. 18," *Gazzetta Ufficiale*, February 21, 2014, http://www.gazzettaufficiale.it/eli/id/2014/03/07/14G00028/sg, Preamble.

habitual residence for the same reasons as mentioned above and cannot or, owing to such fear, is unwilling to return [to that territory], without the causes of exclusion in Article 10 [listing exclusion provisions, including Article 1D, of the Geneva Convention].[823]

4. Refugee Status Determination: Article 1D

As noted in the updated edition of this *Handbook* (2011), Italy incorporated the EU Qualification Directive (2004/83/EC) and the EU Asylum Procedure Directive by the adoption of Legislative Decree No. 251/2007[824] and Legislative Decree No. 25/2008,[825] respectively. In 2014, Legislative Decree No. 18/2014 further incorporated the EU Qualification Directive (recast).[826] As far as BADIL is aware, asylum claims continue to be assessed on the basis of these decrees, in addition to the right to asylum set out in Article 10 of the Italian Constitution.

Decree 18/2014 states that "third country nationals" are excluded from refugee status in Italy if they fall within the criteria of Article 1 D of the Refugee Convention. The Decree also contains an inclusion clause, stating that if protection or assistance provided by UN agencies other than UNHCR has "ceased for any reason, [...] they shall have full access to the forms of protection foreseen by this Decree."[827]

Furthermore, a 2010 decision by the Italian Supreme Court (*Corte Suprema di Cassazione*) has established with respect to Article 12(1)(a) of the Qualification Directive, which mirrors Article 1D, that "a person benefits from the protection or assistance of a UN agency other than UNHCR if [he or she] has effectively resorted to such protection or such assistance."[828]

According to information gathered by the Italian Refugee Council (CIR) for the 2011 updated edition, the Italian authorities do recognize Palestinian refugees *ipso facto* as refugees without requiring evidence of a well-founded fear of persecution (Article 1A(2) test).[829] Unfortunately, BADIL was unable to obtain any further information about the assessment of Palestinian asylum claims in Italy for this edition of the *Handbook*.

[823] Ibid., Article2(e), our translation.

[824] State of Italy, "Decreto Legislativo 19 Novembre 2007, N. 251," November 19, 2007, http://www.asgi.it/wp-content/uploads/public/decreto.legislativo.19.novembre.2007.n.251.pdf.

[825] State of Italy, "Decreto Legislativo 28 Gennaio 2008, n.25," January 28, 2008, http://www.camera.it/parlam/leggi/deleghe/08025dl.htm.

[826] State of Italy, "Decreto Legislativo 21 Febbraio 2014, N. 18," Preamble.

[827] Ibid., Article 10(1), our translation.

[828] Corte Suprema di Cassazione, "Sentenza Della Corte, 17 Giugno 2010," June 17, 2010, http://www.cortedicassazione.it/corte-di-cassazione/it/dettaglio_notiziario_leg_com.page?search=palestinese&searchresults=true&contentId=GCI6315&pageCode=homepage.

[829] BADIL Resource Center, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention. Jurisprudence Regarding Article 1D 2005-2010*, 47.

5. Refugee Status Determination Process: Outcome

There are three possible outcomes after the Territorial Commission completes its review of the asylum seeker's application.[830] The Commission may:

1. grant refugee status or subsidiary protection;
2. recommend that the *Questura* issue a stay permit for humanitarian protection for one year; or
3. deny the application.[831]

Asylum seekers who are granted refugee status are issued a residence permit that is valid for five years; asylum seekers who are granted subsidiary protection are issued a residence permit valid for three years. Both types of residence permits are renewable, "upon verification of the requirements that led to their release."[832]

Refugees and recipients of subsidiary protection are considered able to independently support themselves, and are not provided with financial support or significant accommodation once a residence permit is issued.[833]

If the Commission denies an asylum application, the applicant may appeal the decision before the Civil Tribunal within thirty days of receiving the decision. If the applicant is living in a *Centro di Accoglienza per Richiendenti Asilo* (Asylum Seeker Welcome Center – "CARA") or *Centro di Identificazione ed Espulsione* (Identification and Expulsion Center – "CIE"), he or she has only 15 days to raise an appeal. If that appeal is dismissed, the applicant has 10 days to raise the issue before the Court of Appeal. If this claim is rejected, the applicant has thirty days to raise the issue before the Cassation Court.[834]

When an asylum application is rejected and all avenues of appeal have been exhausted, the applicant must leave the country. Rejected asylum seekers who fail to leave the country within five days risk being sent to the CIE, where they may be detained for up to six months. If the police does not succeed in returning a detainee to his or her country of origin during the six-month time period, the asylum seeker must be released from detention.[835]

6. Protection under the Statelessness Conventions

Italy is a party to the 1954 Stateless Persons Convention, but has not signed the 1961 Statelessness Convention.[836]

[830] Donato, *National Country Report: Italy*, 9.

[831] Ibid.

[832] von Gunten, Pitz Jacobsen, and Jordal, "Asylum Procedure and Reception Conditions in Italy: Report on the Situation of Asylum Seekers, Refugees, and Persons under Subsidiary or Humanitarian Protection, with Focus on Dublin Returnees," 15.

[833] Ibid., 6–7.

[834] Ibid., 14.

[835] Ibid., 15.

[836] UNTC, "Status of Treaties: Convention Relating to the Status of Stateless Persons;" UNTC, "Status of Treaties: Convention on the Reduction of Statelessness."

Stateless persons can apply for recognition of statelessness in Italy through an administrative or judicial procedure; however, in practice, it is often not clear which procedure should be pursued, and both procedures are complex and in many cases completely inaccessible for stateless persons because the individuals lack the required documentation.[837]

The Ministry of Interior is responsible for certifying statelessness through the administrative procedure. The applicant is required to lodge an application with the following documents: birth certificate, residence documents for Italy, any document issued by the consular authority of his or her country of origin or by the former country of residence which confirms the lack of citizenship.[838]

The Italian Supreme Court confirmed in 2013 that statelessness should be assessed not only with respect to *laws* of the country of origin or former residence, but also with regard to the *practices* and *conditions* which affect stateless persons and whether they can in effect be recognized as a citizen of the country in question, and whether they have the right to reside in their country of origin.[839]

7. Links

- Italian Refugee Council: www.cir-onlus.org
- Ministry of the Interior: http://www.interno.gov.it

Other resources available in English:

- Asylum Information Database, "National Country Report: Italy," May 2013: http://www.asylumineurope.org/reports/country/italy
- Swiss Refugee Council, "Asylum procedure and reception conditions in Italy – Report – May 2011": http://www.fluechtlingshilfe.ch/droit-d-asile/ue/schengen-dublin-et-la-suisse/asylum-procedure-and-reception-conditions-in-italy
- "UNHCR Recommendations on Important Aspects of Refugee Protection in Italy," July 2013: http://www.refworld.org/docid/522f0efe4.html
- Jesuit Refugee Service, *Protection Interrupted: The Dublin Regulation's Impact on Asylum seekers' Protection (The DIASP project)*, 4 June 2013 (includes a chapter on Italy): https://www.jrs.net/assets/Publications/File/protection-Interrupted_JRS-Europe.pdf

[837] Gyulai, "Statelessness in the EU Framework for International Protection," 287–288.

[838] See State of Italy, "Decreto Del Presidente Della Repubblica 12 Ottobre 1993, N. 572," October 12, 1993, http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.del.presidente.della.repubblica:1993-10-12;572!vig, Article 17 (information provided by Giorgia Ficorilli, Oct. 6, 2014).

[839] Corte Suprema di Cassazione, "Sentenza N. 25212/13," November 8, 2013, http://www.marinacastellaneta.it/blog/wp-content/uploads/2013/11/apolidia.pdf; Gábor Gyulai, "Should Nationality Have a 'minimum Content'? – Italian Supreme Court Passes Landmark Decision," *European Network on Statelessness*, September 19, 2014, http://www.statelessness.eu/blog/should-nationality-have-%E2%80%9Cminimum-content%E2%80%9D-%E2%80%93-italian-supreme-court-passes-landmark-decision.

THE NETHERLANDS[840]

1. Statistical Data

UNHCR data show increasing numbers of Palestinian refugees in the Netherlands, with a sharp rise in 2013. In 2013, there were 115 new Palestinian asylum applications. Of these, 9 were granted Convention status, 49 were granted complementary protection, and 18 were rejected. The disposition of the remaining cases is not reported.[841]

Palestinian Refugees and Asylum seekers in the Netherlands[842]

	2009	2010	2011	2012	2013
Refugees	24	26	39	55	113
Asylum seekers	21	22	20	20	--

2. Refugee Status Determination: The Process

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. Asylum seekers seeking to enter the Netherlands by boat or plane are denied entry and are detained. They must apply for asylum immediately before entering the Netherlands at the relevant Application Center.[843] During the asylum procedure, asylum seekers are required to stay at a processing center. They are provided with identity documents which are not valid for travel purposes.[844] As of 1 September 2014, families with children are accommodated at an open reception center rather than being detained.[845]

After registering an application, an asylum seeker is entitled to a 6-day 'rest and preparation period' before the asylum process begins.[846] During the refugee

[840] Steven Ammeraal, Senior Legal Adviser at the Dutch Council for Refugees, reviewed and contributed to this section.

[841] UNHCR, "UNHCR Population Statistics - Asylum Seekers Status Determination," accessed November 5, 2014, http://popstats.unhcr.org/PSQ_RSD.aspx (last visited on 22 September 2014).

[842] UNHCR, "UNHCR Population Statistics - Persons of Concern Time Series," accessed November 16, 2014, http://popstats.unhcr.org/PSQ_TMS.aspx (last visited on 25 August 2014).

[843] Steven Ammeraal, Frank Broekhof, and Angelina Van Kampen, *National Country Report: The Netherlands* (ECRE/AIDA, March 28, 2014), 7, http://www.asylumineurope.org/sites/default/files/report-download/aida_-_netherlands_second_update_final_uploaded.pdf.

[844] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 199.

[845] Dutch Council for Refugees, European Council on Refugees and Exiles (ECRE), and Asylum Information Database (AIDA), *Netherlands: Children No Longer Detained at the Borders in the Netherlands*, September 9, 2014, 1, http://www.asylumineurope.org/sites/default/files/resources/one-pager_nl_0.pdf.

[846] Immigration and Naturalisation Service, "Asylum," accessed November 25, 2014, https://ind.nl/EN/individuals/residence-wizard/asylum/.

application process, an asylum seeker undergoes an initial interview with an IND employee and an interpreter, if necessary.[847] Next, a legal assistance counselor prepares the asylum seeker for a detailed interview during which s/he will have an opportunity to explain the reasons for seeking asylum.[848] Third, the IND will compile a report with a projected decision, and give the asylum seeker the opportunity to make any necessary corrections and additions to the report.[849] Finally, the IND will either receive a decision, or have the application handled through the Extended Asylum procedure.[850] If the application must be handled through the Extended Asylum procedure, the applicant may continue to live at the reception center.[851] The general asylum procedure normally is completed within 8 days, whereas the extended asylum procedure can take up to 6 months.[852]

3. Refugee Status Determination Process: The Legal Framework

The Netherlands has adopted the language of the Refugee Convention in its definition of a refugee.[853] A residence permit may be issued to an asylum seeker:

1. "who is a refugee under the terms of the Convention;"
2. "who makes a plausible case that he has good grounds 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. [abolished]
4. [abolished]
5. or is a qualified family member of a refugee.[854]

ECRE/AIDA's National Country Report on the Netherlands, updated in March 2014, provides further information regarding the asylum procedure.[855]

4. Refugee Status Determination: Article 1D

Until 2013, Netherland's interpretation of Article 1D followed the Aliens Circular C1/4.2.2., as amended by Circular TBV 2003/11 of 24 April 2003. According to that Circular, the inclusion clause of Article 1D only applies when the Palestinian concerned "make[s] [a] plausible [claim] that he [or she] cannot return to UNRWA['s] area [of operations] because he has a well-founded fear of persecution […] and

[847] Immigration and Naturalisation Service, *The Procedure at the Application Centre*, January 2014, 1, https://ind.nl/EN/Documents/6073.pdf.

[848] Ibid.

[849] Ibid., 2.

[850] Ibid.

[851] Ammeraal, Broekhof, and Kampen, *National Country Report: The Netherlands*, 27.

[852] Ibid., 12.

[853] State of Netherlands, "Vreemdelingenwet 2000 [Aliens Act 2000], Valid on 15 October 2014," April 1, 2001, http://wetten.overheid.nl/BWBR0011823/geldigheidsdatum_25-11-2014, Article 29(1)(a).

[854] Ibid., Article 29.

[855] Ammeraal, Broekhof, and Kampen, *National Country Report: The Netherlands*.

cannot invoke UNRWA[‘s] protection against that. In those circumstances, the alien can apply for asylum under article 29(1)(a) of Netherlands’ Alien Law; if asylum is not granted under that provision, his or her case is further examined under other admission grounds of Article 29.[856]

Article 29(1)(a) of Netherlands’ Aliens Act mirrors Article 1A(2) of the 1951 Refugee Convention – i.e., it concerns refugee status based on a well-founded fear of persecution – and guides, therefore, the first assessment of an asylum request.[857] Article 29(1)(b) establishes the risk of execution, of torture and inhuman or degrading treatment or punishment and of serious and individual threats to life as legitimate grounds for granting asylum,[858] mirroring Article 15 of the Qualification Directive, which establishes grounds for granting subsidiary protection. The remainder of Article 29 establishes the legal framework for granting residence permits. Those provisions guide a second evaluation of the case.[859]

Under that interpretation, the Dutch refugee status determination process subjected Palestinian applicants to an examination that, in practice, corresponds to well-founded fear criteria, with the added consideration of the possibility of returning to UNRWA zones.[860]

A 2010 case illustrates the approach taken until 2013:

LJN: BV1713, District Court of The Hague, seat location Amsterdam, AWB 11/2010[861]

The case concerned a subsequent application for asylum by a Palestinian whose case had previously failed. In such cases, the applicant must show that there are new relevant facts or circumstances. The Court found that the revised UNHCR Note on the applicability of Article 1D to Palestinian refugees does not constitute a new fact or circumstance. The Court found that although no longer in UNRWA territory, the applicant could in principle return to the protection of UNRWA. In addition, the Court was skeptical of his credibility, and he had not shown sufficient evidence of a risk of persecution. More importantly, this case reiterates the Dutch interpretation of article 1D seen above:

> According to Section C2 / 2.2 of the Aliens Act 2000, Article 1D of the convention is only applicable to stateless Palestinians whose situation falls under the mandate of UNRWA. The fact that a Palestinian person is out of the mandatory area of UNRWA does not mean that he should automatically

[856] See BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 200–201.

[857] State of Netherlands, “Vreemdelingenwet 2000 [Aliens Act 2000], Valid on 15 October 2014,” Article 29(1)(a).

[858] Ibid., Article 29(1)(b).

[859] Ibid., Article 29.

[860] BADIL Resource Center, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention. Jurisprudence Regarding Article 1D 2005-2010*, 49.

[861] District Court of The Hague, “Case AWB 11/2010 [Dutch],” December 23, 2011, http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBSGR:2011:BV1713.

be granted a residence permit, given that the person in question can move to the mandatory area in order to re-obtain protection of UNRWA. The case is different if the foreigner can prove that he cannot return to the UNRWA areas [of operation] out of fear for persecution inside these areas and that he cannot call on protection from UNRWA. In this case, the foreigner can apply for a residence permit according to article 29, first part, under a, of the Aliens Act 2000. If no residence permit is given on this base, the case will be investigated with respect to other bases of article 29 of the Aliens Act 2000.[862]

In September 2013,[863] a decision of the State Secretary of Security and Justice amended the Aliens Act 2000, establishing that the IND will grant asylum to persons falling under Article 1D when the protection or assistance to the alien by UN institutions other than the UNHCR has ceased for any reason, provided that the status of such persons has not been definitely decided in accordance with the relevant resolutions of the General Assembly of the United Nations. The 2013 decision brought a significant change to the Dutch legal framework for interpreting Article 1D.

The decision clarifies, with respect to Article 1D, that the isolated fact that the alien is outside UNRWA's area of operations, or that he or she left that area voluntarily, does not constitute cessation of protection or assistance. Rather, UNRWA's protection or assistance will be considered to have ceased (i) in case of the dissolution of the agency; (ii) in case of the inability of the agency to accomplish its mission; or (iii) whenever the Palestinian alien can no longer rely on the agency's protection or assistance for reasons beyond his or her control and independent of his or her volition, and based on circumstances which have forced him [or her] to leave the area in which UNRWA operates.[864]

The document also states that, in order to assess whether the applicant was forced to leave URNWA's area of operations, the IND considers (i) if the applicant personally found himself or herself in a situation of serious insecurity without protection; or (ii) if it became impossible for UNRWA to ensure living conditions commensurate with its mandate. This phrasing, also found in Germany's and Belgium's interpretations, clearly reflects the *El Kott* decision.[865]

Nonetheless, as the document also clarifies, the examination of the "situation of serious insecurity" considers whether the individual had a well-founded fear of risk of execution, torture or inhuman or degrading treatment or punishment or serious and individual threats to life, as referenced in Article 29(1)(b) of the Aliens Act, seen above.[866] Although not exactly the same as Article 1A(2), this interpretation still imposes on Palestinian refugees a need for further assessment of a "well-founded

[862] Ibid., para. 1.5.

[863] State of Netherlands, "Decision of the State Secretary of Security and Justice of 23 September 2013, Issue WBV 2013/20, Amending the Aliens Act 2000," September 23, 2013, https://zoek.officielebekendmakingen.nl/stcrt-2013-27027.html.

[864] Ibid.

[865] Ibid.

[866] Ibid.

fear," not of persecution for a Convention reason, but of the subsidiary protection standard of "serious harm."

Even though such a change demonstrates the impact of *El Kott* decision on a legal level, its impact on the Netherland's practice of asylum granting to Palestinian applicants remain unclear. According to the case law available, only two judicial decisions have referred to *El Kott*; nonetheless, they did not concern Palestinian applications. Rather, those decisions established that the Victims Protection Programme of the International Criminal Court does not constitute "protection or assistance of a UN agency" and, thus, refugees under such protection do not fall under Article 1D.[867]

Finally, it should be noted that the 2013 decision considers the cessation of protection or assistance if, *inter alia*, the Palestinian concerned "*no longer* enjoys UNRWA's protection or assistance [emphasis added]."[868] The choosing of the term "no longer" suggests that the person concerned *actually* enjoyed such protection or assistance previously, and that actual receipt of assistance is a requirement for eligibility for refugee status under Article 1D.

5. Refugee Status Determination Process: Outcome

As is the case for other asylum seekers, Palestinians who are granted refugee status or subsidiary protection will receive a temporary residence permit valid for five years.[869] A person granted either refugee status or subsidiary protection may be eligible for a permanent residence permit at the end of five years if he or she cannot return to the country of origin.[870]

The residence permit gives refugees the right to work, as well as the right to housing and education. Under certain conditions, the residence permit also allows a refugee's family members to join him or her in the Netherlands.[871]

If an asylum seeker receives a negative decision following the general asylum procedure, he or she has one week to submit an appeal against this decision and does not have the right to remain in the Netherlands during the appeal process unless he or she has requested the court to issue a preliminary decision (in which case, he or she will normally be permitted to stay while the preliminary decision is pending).[872] For negative decisions following the extended asylum procedures, appeals must be

[867] Council of State, "Cases 201303197/2 / V 3 and 201303198/2 / V3 [Dutch]," November 12, 2013, para. 4.10 and 8.4, http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RVS:2013:1882; Council of State, "Cases 201303197/1 / and V3 201303198/1 / V3 [Dutch]," February 18, 2014, para. 11.1, http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RVS:2014:627.

[868] State of Netherlands, "Decision of the State Secretary of Security and Justice of 23 September 2013, Issue WBV 2013/20, Amending the Aliens Act 2000."

[869] Immigration and Naturalisation Service, "Asylum;" Ammeraal, Broekhof, and Kampen, *National Country Report: The Netherlands*, 35.

[870] Immigration and Naturalisation Service, "Asylum."

[871] Ibid.

[872] Ibid.

lodged within 4 weeks, and appellants have the right to remain in the Netherlands during the appeal process.[873] If the district court dismisses an appeal, the applicant may appeal to the Council of State. If the Council of State dismisses the appeal, the alien may not receive authorization for a temporary stay.[874]

Asylum seekers whose applications are denied have four weeks to leave the Netherlands.[875] During this time, an applicant is provided shelter at a Repatriation Location.[876] An alien whose application has been rejected for a second time does not have a four-week grace period, and must leave the country immediately.[877]

Those who fail to leave the country can be deported. The authorities have the option to suspend expulsion if forced removal to the country of origin would bring unusual hardship to the asylum seeker, in connection with the general situation in the country. Suspension of expulsion might also occur if it is impossible to obtain a travel document to the country of former residence, proven that the asylum seeker proves that he or she has made legitimate efforts to obtain such a document.[878]

In such cases, a temporary regular residence permit might be granted (or, in the latter case, a "permission to stay for the reason that he or she cannot return to his country of former habitual residence" through no fault of his or her own). Such a permit is valid for a year and renewable upon the persistence of the obstacles to expulsion. After five years of continuous residence in the country, holders of such a residence permit are 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, and work is allowed under special circumstances.[879] This type of permit was initially created specifically for stateless persons; after some years it developed a more general character so that any alien who cannot obtain documents to return to his or her country of origin or former habitual residence can apply for such a permit.[880] See also section 6 below.

6. Protection under the Statelessness Conventions

The Netherlands is Party to the 1954 Stateless Persons and 1961 Statelessness Conventions.[881] Stateless persons who have not gained refugee status and therefore have not obtained permission to stay in the Netherlands may apply for temporary

[873] Ibid.

[874] State of Netherlands, "Vreemdelingenwet 2000 [Aliens Act 2000], Valid on 15 October 2014," Articles 69-73; Ammeraal, Broekhof, and Kampen, *National Country Report: The Netherlands*, 13.

[875] Immigration and Naturalisation Service, *The Procedure at the Application Centre*, 1.

[876] Ibid.

[877] Ammeraal, Broekhof, and Kampen, *National Country Report: The Netherlands*, 38.

[878] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 203.

[879] Ibid.

[880] Information provided by Steven Ammeraal.

[881] UNTC, "Status of Treaties: Convention Relating to the Status of Stateless Persons;" UNTC, "Status of Treaties: Convention on the Reduction of Statelessness."

regular residence permits in the Netherlands. Stateless persons are entitled to residence 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. See also Section 5 above.

7. Links

- Immigration and Naturalisation Service: www.ind.nl
- Dutch Council for Refugees: www.vluchtelingenwerk.nl
- Analysis of the Netherland Aliens act: http://fra.europa.eu/sites/default/files/fra_uploads/1039-asylum_factsheet_Netherlands_en.pdf
- Country Factsheet: http://fra.europa.eu/sites/default/files/fra_uploads/1039-asylum_factsheet_Netherlands_en.pdf

NORWAY[882]

1. Statistical Data

UNHCR data show very few Palestinian refugees or asylum seekers in Norway, and data for 2013 appear to be incomplete.[883] The Norwegian Directorate of Immigration ("UDI") publishes asylum statistics, but there is no category for Palestinians. Palestinians are registered as 'stateless' and constitute the majority of applicants in this category, although it may also include persons from other areas, such as Asia, Africa and Eastern Europe. In 2014, there were 546 asylum applications from stateless persons in the first nine months, almost as many as in all of 2013 (a total of 550 asylum applications). This compares to 263 applications in 2012; 262 in 2011; 448 in 2010; and 1280 in 2009.[884]

It appears that the majority of the applicants in the "stateless" category in 2014 are Palestinians from Syria. This is reflected in the recognition rate for stateless asylum seekers, which has increased substantially since the outbreak of war in Syria.[885]

In 2014, a total of 383 applications from stateless asylum seekers had been processed by September. Of these, 260 stateless persons were granted protection, four were given a permit on humanitarian grounds, 36 were rejected and 71 processed according to the Dublin Regulation. Six persons were considered to have access to a safe third country, and five persons withdrew their applications.[886]

2. Refugee Status Determination: The Process

As with other asylum seekers, Palestinians entering Norway must register with the National Police Immigration Service ("PU").[887] The PU holds an initial interview to establish the applicant's identity and how the applicant entered Norway.[888] The PU transfers all asylum seekers to a transit reception center in Oslo.[889] Applicants

[882] Solvei Skogstad and Line Khateeb, Advisors at the Norwegian Organisation for Asylum Seekers, and Tom Syring, Legal Adviser of the Norwegian Immigration Appeals Board and Co-Chair of the International Refugee Law Interest Group, American Society of International law, reviewed and contributed to this section.

[883] UNHCR, "UNHCR Population Statistics - Persons of Concern Time Series" (last visited on 25 August 2014).

[884] Norwegian Directorate of Immigration, "Asylvedtak Etter Statsborgerskap Og Utfall (2014) [Asylum Decisions by Citizenship and Outcome (2014)]," accessed November 25, 2014, http://www.udi.no/statistikk-og-analyse/statistikk/asylvetak-fordelt-pa-statsborgerskap-og-utfall/. Statistics from previous years available at: http://www.udi.no/statistikk-og-analyse/statistikk/?year=0&filter=5.

[885] Information provided by Solvei Skogstad and Line Khateeb, Oct. 24, 2014.

[886] Norwegian Directorate of Immigration, "Asylvedtak Etter Statsborgerskap Og Utfall (2014) [Asylum Decisions by Citizenship and Outcome (2014)]." Statistics from previous years available at: http://www.udi.no/statistikk-og-analyse/statistikk/?year=0&filter=5.

[887] European Migration Network, *The Organization of Asylum and Migration Policies in Norway - Report to the European Migration Network from the Norwegian Contact Point*, April 2012, 15, http://www.udi.no/globalassets/global/european-migration-network_i/studies-reports/organisation-asylum-norway.pdf.

[888] Ibid.

[889] Ibid.

typically remain at the center for about four days to a week. At the center, applicants undergo a compulsory medical examination, mainly to check for tuberculosis.[890]

After the preliminary medical examination, the Norwegian Organisation for Asylum seekers ("NOAS") offers all applicants information on Norway's asylum procedure.[891] NOAS shows the applicants an information film on asylum procedures in Norway and conducts information meetings and provides individual guidance in preparation for the asylum process.[892]

UDI conducts an asylum interview and processes the application. During the asylum process, the asylum seeker may stay at reception centers outside of Oslo or at a private residence.[893]

Most applications are considered "ordinary cases," in which there is no set processing time for a decision by the UDI.[894] The UDI publishes the current approximate case processing times on their website.

UDI estimates that the processing of asylum applications by newly arrived stateless Palestinians from Syria currently takes approximately three months. However, due to an increase in the numbers of applicants, Syrians and Palestinian refugees from Syria may have to wait up to four months before they are interviewed. Families with children and people with health problems are prioritized.[895]

3. Refugee Status Determination Process: The Legal Framework

The Immigration Act of 2008 entered into force in 1 January 2010. Section 28(a) of the Act regulates asylum protection, and follows the Article 1A refugee definition, providing for refugee protection to a foreign national who:

> has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or for reasons of political opinion, and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of his or her country of origin.[896]

Alternatively, Section 28(b) grants subsidiary protection to a person who does not meet the formal asylum requirements, but nevertheless faces "a real risk of being subjected to a death penalty, torture or other inhuman or degrading treatment or

[890] Ibid.; information also provided by Skogstad and Khateeb.

[891] Ibid.

[892] Ibid.

[893] Ibid., 17.

[894] Ibid., 17–18.

[895] Information provided by Skogstand and Khateeb. See also Norwegian Directorate of Immigration, "Information for Syrians and Stateless Palestinians Who Have Applied for Protection," November 2014, http://www.udi.no/en/important-messages/information-for-syrians-and-stateless-palestinians-who-have-applied-for-protection/.

[896] State of Norway, "Act of 15 May 2008 On the Entry of Foreign Nationals into the Kingdom of Norway and Their Stay in the Realm (Immigration Act) (valid as of 1 April 2014)," May 15, 2008, http://www.regjeringen.no/en/doc/laws/acts/immigration-act.html?id=585772, Article 28(a).

punishment upon return to his or her country of origin."[897] In practice, subsidiary protection and asylum are often merged together, as individuals falling under either are granted refugee status under the new Act.[898]

4. Refugee Status Determination: Article 1D

In 2009, there was a drastic change in the evaluation of Palestinian asylum applications. Previously, Norway had a policy of granting refugee status to Palestinian applicants from West Bank and Gaza under Article 1D, without a further assessment under Article 1A(2), as long as they were previously registered with UNRWA.[899] However, in 2009, the Directorate of Immigration (UDI) argued that the country was one of the preferred destinations for Palestinian asylum seekers because Norwegian practices in that regard differed from other countries'.[900] The UDI thus recommended an individual assessment of each case under Article 1A(2). The Ministry of Labor and Social Inclusion accepted the UDI's recommendation and currently Palestinian applications are assessed under Section 28(a) of the Norwegian Immigration Act of 2008.

In an "Immigration Practice Note," the UDI explained the asylum process for stateless Palestinians from the West Bank and Gaza as follows:[901]

- UDI will first consider whether the applicant is entitled to protection (asylum) of the Immigration Act § 28 subsection a, see Refugee Convention Article 1 A (2). If the applicant is not entitled to protection (asylum) under subsection a, the UDI considers if he or she is in real danger of being subjected to the death penalty, torture or other inhumane or degrading treatment and therefore entitled to protection (asylum) under Immigration Act § 28, first paragraph, subsection b. If the applicant is entitled to protection under the Immigration Act § 28, the UDI consider whether the applicant should be excluded from refugee status under the Immigration Act § 31.
- If the applicant is not entitled to protection under the Immigration Act § 28, the UDI consider whether he or she can be granted a residence permit

[897] Ibid., Article 28(b).

[898] Specifically, the distinct categories laid out in *El Kott* do not apply in the Norwegian context.

[899] BADIL Resource Center, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention. Jurisprudence Regarding Article 1D 2005-2010*, 51.

[900] A letter of April 3, 2009 from the UDI explains that the UDI suggested the change in practice in reaction to the increasing number of asylum seekers from the Occupied Palestinian Territories. This letter is on file with BADIL.

[901] "[…] Country Practice notes are an interpretation of the relevant legal authorities, such as international conventions, immigration law and regulations, legislative history, case law and instructions from the Ministry. Practice notes describing how the law should be applied in a specific factual basis and provide binding guidelines on the treatment of identical cases, provided that the sources of law and the country's situation as the basis of the note." Norwegian Directorate of Immigration, "UDI Practice Note on Stateless Palestinians from the West Bank and Gaza (last Modified on 29 January 2014) [Norwegian]," July 9, 2010, PN 2010-029, http://www.udiregelverk.no/no/rettskilder/udi-praksisnotater/pn-2010-029/, Item 1.

> because there are strong humanitarian considerations or a special connection to the country, see the Immigration Act § 28 subsection, see the Immigration Act § 38.[902]

Additionally, the Practice Note explains that "UNHCR's recommendations are not binding on the Norwegian authorities, but will always be considered and emphasized."[903] Furthermore, the UDI rejected UNHCR's finding that the conditions in the Gaza Strip are such that Palestinians are automatically entitled to subsidiary protection. The Practice Note explains that "the overall security situation no longer is of such a serious nature that all people from the West Bank and Gaza are at a real risk of being subjected to inhuman treatment in the event of return."[904] Case law reflects this process of assessing Palestinian asylum claims under an Article 1A inquiry, and makes no mention of Article 1D.

In 2012, the UDI conducted a manual count of decisions on applications from the West Bank and Gaza that had been made following the practice change in 2009. The results showed that the recognition rate for Gaza varied between 30 and 60 percent (averaging approximately 40 percent for the three-year period from 2009-2012) although they believed the actual rate to be higher for persons accepted as being from Gaza, as some of the applicants registered as coming from Gaza were considered not credibly from there. The average approval rate for applicants from the West Bank, however, was less than eight percent in that same time period, according to the manual count. This assessment indicates that the 2009 policy change had drastic effects for Palestinians seeking protection in Norway.[905]

UNHCR has recommended in the context of the Universal Periodic Review that Norway apply Article 1D of the 1951 Convention according to UNHCR's interpretation and has observed with respect to Norway's change in practice that:

> [a]s a consequence of the current practice since mid-2009, many Palestinians seeking asylum in Norway are rejected. While the authorities claim that Palestinians can return voluntarily to Gaza and the West Bank, they have faced difficulties in implementing forced returns to these areas, which has resulted in hundreds of Palestinians remaining in limbo. As a consequence, Palestinians who should in such situation qualify for refugee status under the terms of Article 1 D of the 1951 Convention are facing difficulties in obtaining such protection.[906]

[902] "[…] Country Practice notes are an interpretation of the relevant legal authorities, such as international conventions, immigration law and regulations, legislative history, case law and instructions from the Ministry. Practice notes describing how the law should be applied in a specific factual basis and provide binding guidelines on the treatment of identical cases, provided that the sources of law and the country's situation as the basis of the note." Ibid., Item 1.

[903] Ibid., Item 2.3.

[904] Ibid., Item 2.3.

[905] Information provided by Skogstad and Khateeb.

[906] UNHCR, *Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report – Norway.pdf*, September 2013, 8, http://www.refworld.org/pdfid/528349414.pdf.

However, even though Norway is not bound to EU precedent, the Norwegian approach, in practice, is in part in line with *El Kott*. First, Palestinian refugees only require a "credible claim to refugee protection" under § 28(b) rather than a persecution claim under the 1A standard. In general, losing UNRWA coverage constitutes a credible claim for refugee protection, but, at this point, the refugee status determination is not automatic. In practice, there is little difference between automatic refugee status under 1D and refugee status determined under §28 after establishing a "credible claim." In other words, there is much less of a departure from previous refugee evaluations, especially when looking at the precise wording of §28 and the legal status conferred. Also, in parallel with *El Kott* and UNHCR guidelines, Norway recognizes that UNRWA coverage has ceased when an individual flees from UNRWA's area of operations due to personal safety concerns. In Norway, personal safety concerns are considered circumstances beyond the asylum seeker's control.[907]

However, in some cases, Palestinians who might succeed under the *El Kott* framework are denied asylum in Norway. In a case decided in June 2010, the Immigration Appeals Board ("UNE") denied asylum to an applicant from the West Bank. The applicant claimed that he feared arrest, harassment and abuse at checkpoints at the hands of Israeli authorities. In rejecting the application, the UNE notes that the applicant's testimony about checkpoint harassment did not rise to the level of persecution under the Refugee Convention.[908]

Additionally, the UNE has repeatedly rejected claims that the general conditions in Gaza and the West Bank are sufficient to constitute "persecution." In an October 2010 case, an applicant from Gaza based his asylum claim on the difficult conditions in Gaza, citing the lack of work, the closed borders, and the lack of suitable housing due to bombings. In rejecting his application, the UNE emphasized the Immigration Directorate's conclusion that the persecution this applicant had claimed was related more to the geographic location of the applicant's home and not the personal attributes of the applicant or the family.[909]

Finally, the UDI considers family connections in Norway when assessing whether to grant residence to an applicant for humanitarian reasons. In an April 2012 case, a 70-year-old asylum seeker claimed that, in the West Bank, she had been approached by masked men looking for her son. According to the applicant, she was able to escape to Norway with the help of a stranger whom she met on the street shortly after. The tribunal noted that the applicant's story was not credible concerning the help she received from a "random passersby," and found that her evidence of a single incident could not support a finding for persecution. The tribunal considered the fact that the asylum seeker's son was in Norway, but also emphasized that the asylum seeker had several family members in the West Bank.[910]

[907] Information provided by Syring.

[908] The information in this paragraph is based on the Appeals Board website and contributions from Norsk Organisasjon for Asylsøkere (NOAS) staff.

[909] Ibid.

[910] Ibid.

5. Refugee Status Determination Process: Outcome

Persons granted refugee status in Norway are issued residence permits, normally for 3 years (usually leading to permanent residence). They are entitled to family reunion and may be issued travel documents. Subject to some waiting time, they will be settled in a municipality and provided with accommodation. Residence permits may be issued for humanitarian reasons for a shorter duration and may be subject to limitations on family reunion, travel documents, or accommodation, depending on the circumstances.[911]

Stateless persons may be granted citizenship after three years of residence (see also Section 6, below), while other refugees or immigrants normally wait seven years before they are eligible for citizenship.[912]

While asylum seekers are rarely permitted to work during the application process, once they have been granted a residence permit in Norway, they may seek employment.[913]

If an application is rejected by the UDI, the applicant can appeal the decision.[914] The number of hours of free legal assistance applicants are entitled to depends on the kind of asylum procedures they are in[915] (normal procedure, accelerated procedure, procedure for unaccompanied minor asylum seekers or, more rarely, detained upon arrival).[916] If the UDI upholds its decision, the Immigration Appeals Board ("UNE") assesses the appeal and makes the final decision on the application. Still, failed asylum seekers may at any time request the UNE to reverse its final decision, which occurs, for example, when "humanitarian circumstances have changed significantly."[917]

Appeals generally have a suspensive effect, unless (1) the appeal was not filed on time; (2) the individual's asylum claim was "manifestly unfounded;" (3) the individual is in the Dublin Procedure; or (4) "fundamental national or foreign political interests" require the individual's removal.[918]

If no appeal is filed, the UDI may order individuals whose protection claims have been rejected to leave Norway.[919] In the last few years, Norway has conducted forced

[911] Norwegian Directorate of Immigration, "Your Application for Protection Has Been Granted," accessed November 25, 2014, http://www.udi.no/en/received-an-answer/protection-asylum/your-application-for-protection-has-been-granted/.

[912] Utlendingsnemnda [Immigration Appeals Board], "Citizenship," December 6, 2013, http://www.une.no/en/Cases/Citizenship/.

[913] European Migration Network, *The Organization of Asylum and Migration Policies in Norway*, 25. Only those who can verify their identity with a valid travel document may be eligible for a temporary work permit while their case still is being processed. Skogstad and Khateeb.

[914] Ibid., 18.

[915] Ibid.

[916] Ibid., 15–17.

[917] Ibid., 18.

[918] Ibid., 28.

[919] Ibid.

and voluntary returns of Palestinians whose claims for asylum have been rejected, to the West-Bank and to a lesser extent also to the Gaza strip.[920]

6. Protection under the Statelessness Conventions

Norway is a party to the 1954 Stateless Persons and the 1961 Statelessness Conventions.[921] There is no legal framework in the national legislation to prevent statelessness at birth, and no procedures for considering statelessness as a ground for protection or residency. With the exception that stateless persons may obtain citizenship after only three years of legal residence (see also Section 5, above), there are no provisions to address statelessness as such.[922]

Stateless Palestinians who have been residing outside Palestine are expected to return to their "habitual residence" in the event of a rejection on their asylum application. Those who find themselves unable to return may end up in a legal "limbo" that is difficult to resolve. The Norwegian Immigrant Regulation, para. 8-7 opens the possibility for humanitarian residency to those unable to return "for reasons beyond their control." However, the criteria for granting residency on such grounds may be very difficult to fulfill, and the burden of proof is entirely on the applicant. As a result, there are several stateless individuals and families who have lived for years in Norway without legal residency or an effective mechanism to regularize their status.[923]

7. Links

- Norwegian Directorate of Immigration: http://www.udi.no/en/
- National Police Immigration Service: https://www.politi.no/politiets_utlendingsenhet/
- Norwegian Organisation for Asylum seekers: http://www.noas.no

[920] Information provided by Skogstad and Khateeb.

[921] UNTC, "Status of Treaties: Convention Relating to the Status of Stateless Persons;" UNTC, "Status of Treaties: Convention on the Reduction of Statelessness."

[922] Information provided by Skogstad and Khateeb; see also UNHCR, *Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report – Norway.pdf*, 8–9; The Economist, "Statelessness - Nowhere to Call Home: The Changing Face of the World's Non-Citizens," May 17, 2014, http://www.economist.com/news/international/21602251-changing-face-worlds-non-citizens-nowhere-call-home.

[923] Information provided by Skogstad and Khateeb.

POLAND[924]

1. Statistical Data[925]

The Polish Office for Foreigners reports statistical data on the numbers of asylum seekers in Poland. The numbers below reflect only the figures under the "Palestinian" category. The data includes a separate category for "stateless" persons, which may include Palestinians in some instances.

In 2014, 20 Palestinians applied for asylum in Poland (two from oPt; one from Lebanon, two from Jordan, and 15 from Syria). For Palestinians from Syria, in 2014, Poland granted refugee status to 22 applicants and subsidiary protection to one applicant. In addition, Poland granted subsidiary protection to one Palestinian from Lebanon. There were no negative decisions for Palestinian applicants in 2014.[926]

In 2013, 34 Palestinians applied for asylum in Poland (five from oPt, two from Lebanon, and 27 from Syria). For Palestinians from Syria, Poland granted refugee status to 25 applicants and subsidiary protection to one applicant from Syria and Iraq. For Palestinians from the oPt, one was granted subsidiary protection, one tolerated status, and there were two negative decisions.[927]

For 2012, 41 Palestinians applied for asylum in Poland (six from the oPt, 34 from Syria, and one from Syria and Iraq). Poland granted refugee status to 25 Palestinians from Syria and one Palestinian from the oPt. In addition, Poland granted subsidiary protection to one applicant from the oPt and tolerated status to two applicants from the oPt, with 3 negative decisions for claimants from the oPt.[928]

2. Refugee Status Determination: The Process

Reception Conditions

Poland follows the EU Reception Conditions Directive, which articulates standards for the reception of asylum seekers.[929]

Poland provides asylum seekers with information about their rights and obligations, and about the RSD procedure as well as the Dublin Regulation. Under a 2003 Act on protecting foreigners in Poland, the authority that receives the asylum application issues a temporary identity certificate ("TZTC") for the applicant, which is valid

[924] Katarzyna Przybysławska, President of the Halina Niec Legal Aid Center, reviewed and contributed to this section.

[925] Office for Foreigners, "Zestawienia Roczne [Annual Reports]," accessed November 26, 2014, http://www.udsc.gov.pl/Zestawienia,roczne,233.html.

[926] Katarzyna Przybysławska provided this information based on official Polish statistics. Numbers of applications and decisions do not tally because some of the decisions relate to cases submitted in previous years. UNHCR data for Poland appear to be incomplete.

[927] Ibid.

[928] Ibid.

[929] Council of the European Union, "Council Directive 2003/9/EC," 9.

for **30 days**.[930] Subsequent certificates valid for a period not exceeding six months may be issued "pending completion of proceedings on granting refugee status."[931] A TZTC confirms the applicant's identity, that he or she has applied for refugee status, and the legality of his or her stay in Polish territory during asylum proceedings.[932]

Poland accommodates many asylum seekers in one of 14 centers,[933] which have a total capacity for 2418 persons.[934] At the centers, families stay together. Unaccompanied minors are accommodated with a "professional foster family functioning as emergency shelter in crisis situations, or care and educational centre."[935] Asylum seekers may move freely within Poland. However, if an asylum seeker leaves the center for more than two days, his or her RSD procedure is discontinued unless he or she provides justification for leaving the center.[936]

All children under 18 years of age have the right to free public education. Asylum-seeking children attend school together with Polish children.[937] Access to education is also ensured in detention facilities. Poland organizes classes in guarded centers; however, sometimes "those classes are carried out by detention staff rather than by professional educators."[938]

According to asylum law in Poland, vulnerable asylum seekers (unaccompanied minors, disabled individuals, and victims of violence) may not be placed in detention.[939] However, the definition of "vulnerable persons" in Poland's asylum law is not entirely clear. As a result, Poland fails to identify many vulnerable refugees and places them in detention.[940]

[930] State of Poland, "Act of 13 June 2003 on Granting Protection to Aliens within the Territory of the Republic of Poland (last Amended in 2012)," June 13, 2003, http://www.globaldetentionproject.org/fileadmin/docs/Poland_Aliens_Protection_Act.pdf Article, 55(1).

[931] Ibid., Article 55(2).

[932] Ibid., Article 55(6).

[933] Office for Foreigners, "Lista Ośrodków Dla Uchodźców [List of Centers for Refugees]," October 18, 2013, http://www.udsc.gov.pl/Lista,osrodkow,dla,uchodzcow,464.html. Even though the English version of the Office for Foreigners' website states there are 13 refugee centers (Office for Foreigners, "Where Should I Apply for Assistance?," September 13, 2011, http://www.udsc.gov.pl/WHERE,SHOULD,I,APPLY,FOR,ASSISTANCE,1750.html), that information seems to be outdated.

[934] Information provided upon request by the Office for Foreigners (Department for Social Assistance), to Katarzyna Przybysławska.

[935] Helsinki Foundation for Human Rights, *National Asylum Procedure in Poland*, Dublin Project, 2010, 12, http://www.dublin-project.eu/dublin/content/download/557/4483/version/3/file/Long_Brochure_Poland.pdf.

[936] Office for Foreigners, *First Steps in Poland*, 2014, 25, http://www.udsc.gov.pl/files/pierwsze_kroki/informator_angielski.pdf.

[937] Ibid., 36–37.

[938] Global Detention Project, "Poland Detention Profile," January 2013, http://www.globaldetentionproject.org/countries/europe/poland/introduction.html; see also Halina Niec Legal Aid Center (HNLAC), *Detention of Migrant Children in Poland: Report on Implementation of International and Domestic Standards Concerning Detention of Migrant Children*, March 25, 2011, 15, http://www.pomocprawna.org/images/stories/pomoc_uchodcom/report_detention_HNLAC.pdf, Item 3.1.6.

[939] State of Poland, "Act of 13 June 2003 on Granting Protection to Aliens within the Territory of the Republic of Poland (last Amended in 2012)," Article 88(2).

[940] Global Detention Project, "Poland Detention Profile."

The Right to Work

An asylum seeker may apply for a certificate to work in Poland if (1) a decision on his or her asylum application has not been issued within six months from the date of submission; and (2) the asylum proceedings were prolonged for reasons beyond the applicant's control.[941] After receiving refugee status, the refugee may work in Poland without any additional permission.[942]

Social Assistance

Asylum seekers are entitled to social assistance and medical care during the asylum process. After a final decision of the Council for Refugees granting refugee status, the applicant receives a two-month extension on social and medical services while in the refugee center. The refugee must leave the center after the two-month period has elapsed.[943] If the refugee status procedure is discontinued, the period of social assistance expires 14 days after the receipt of a final decision on discontinuing the procedure. However, if the foreigner submitted an application for assistance with voluntary return, the period of assistance will be extended until the day of leaving. After receiving a return decision, the applicant is entitled to social assistance and medical care until the end of the period within which he or she may remain in Poland.[944]

Social assistance in Polish refugee centers includes:[945]

- accommodation;
- full board;
- pocket money for personal expenses;
- regular financial aid for the purchase of personal hygiene products;
- one-time financial aid or vouchers for the purchase of clothes and footwear;
- a Polish language course and basic school supplies;
- school supplies for children attending school,
- expenses of extracurricular, recreational, and sports classes for children to the extent possible; and
- financial assistance for public transportation to take part in asylum proceedings.

Social assistance may also include a rent stipend for asylum seekers choosing to live outside refugee centers.[946] Such assistance will be rendered in special cases, such as:

[941] State of Poland, "Act of 13 June 2003 on Granting Protection to Aliens within the Territory of the Republic of Poland (last Amended in 2012)," Article 36(1); Helsinki Foundation for Human Rights, *National Asylum Procedure in Poland*, 7.

[942] Belgian Refugee Council, *Polish Asylum Procedure and Refugee Status Determination - Report Following the Mission to Poland from 12 to 15 September 2010*, December 2011, 14, http://www.refworld.org/pdfid/4ece2b872.pdf.

[943] Helsinki Foundation for Human Rights, *National Asylum Procedure in Poland*, 6.

[944] Information provided by Katarzyna Przybysławska.

[945] Helsinki Foundation for Human Rights, *National Asylum Procedure in Poland*, 6.

[946] Ibid.

- to ensure an applicant's safety;
- to protect public order;
- to protect and maintain family relations; and
- to prepare an applicant for independence after granting him or her international protection.[947]

The process

A foreigner may initiate the refugee status procedure upon a personal application to Polish authorities. The Head of the Office for Foreigners receives refugee status applications for initial consideration. As a rule, applications should be submitted at the border to the Head of the Office for Foreigners through the Border Guard. The law also allows for the later submission of the application to the Border Guard in Warsaw. However, foreigners who submit applications after illegally crossing the border can be arrested and placed in a guarded center for foreigners. Persons being detained in the guarded center for foreigners can submit asylum applications through the commanding officer of the Border Guard division.[948]

An application may include the foreigner's minor children and spouse, if he or she has given his or her written consent.[949]

3. Refugee Status Determination Process: The Legal Framework

Poland is a party to the Refugee Convention and the 1967 Protocol.

The Act of 13 June 2003 affords international protection to foreigners who either meet the 1951 Convention's refugee definition or are eligible for subsidiary protection.[950] If a foreigner does not meet the requirements for refugee status, eligibility for subsidiary protection will be considered.[951]

4. Refugee Status Determination: Article 1D

In processing refugee status claims, authorities apply the Refugee Convention's provisions directly. With respect to the criteria for granting refugee protection, Poland must also follow the provisions of the EU Qualification Directive. Additionally, Polish domestic law specifically incorporates Article 1D into article 19 of the Act on Granting Protection, which states:

[947] Ibid.

[948] Information provided by Katarzyna Przybysławska.

[949] Office for Foreigners, "The Procedure for Granting the Refugee Status," September 8, 2011, http://www.udsc.gov.pl/THE,PROCEDURE,FOR,GRANTING,THE,REFUGEE,STATUS,266.html.

[950] State of Poland, "Act of 13 June 2003 on Granting Protection to Aliens within the Territory of the Republic of Poland (last Amended in 2012)," Article 13(1); see also Helsinki Foundation for Human Rights, *National Asylum Procedure in Poland*, 2.

[951] Information provided by Katarzyna Przybysławska, also noting that the Office for Foreigners website is not updated in some sections (and does not include legal changes that were introduced in Dec. 2013, which entered into force May 1, 2014).

1. *A foreigner shall be refused refugee status if:*

1) there are no reliable grounds to recognize that there is a well-founded fear of persecution in the country of origin;

2) the refugee benefits from protection or aid of organs or agencies of United Nations other than the United Nations High Commissioner for Refugees, on condition that in a given circumstance the foreigner has a practical and legal possibility to return to the territory in which such protection or aid shall be available without jeopardizing his life, personal safety or freedom; […][952]

Because Poland does not publish decisions of the Regional Administrative Court, cases concerning the application of Article 1D are largely unavailable to the public. Decisions by other authorities, on the other hand, shed some light on the treatment of Palestinians in Poland's refugee status procedure. For instance, the Office for Foreigners issued a decision in 2009 denying refugee status but granting subsidiary protection to a Palestinian from Hebron. In the decision, the Office for Foreigners made no reference to article 1D, but denied refugee status on the basis of Article 1A(2). Additionally, the Office for Foreigners failed to examine whether the claimant received UNRWA assistance.[953] In granting subsidiary protection, the Office stated:

> In the agency's opinion, in relation to the applicant, there is a real risk of serious harm in the form of degrading treatment, and the Palestinian Autonomy authorities do not undertake necessary measures to prevent such harm. The situation in the Occupied Territories is widely known. Instances of human rights violations by both sides of the conflict are common. Acts of violence are widespread; terrorist attacks carried out by Palestinians are followed by retribution campaigns of Israeli forces. During such retribution attacks or 'hunting down' of terrorists in Palestinian cities, many by-standers are killed. Taking the above into consideration, the deciding agency is of the opinion that the foreigner would be exposed to a real risk of serious harm in relation to the degrading treatment of both sides of the conflict if he would go back to the territory under the Palestinian Authority.[954]

Thus, the Court recognized that return to the oPt posed a real risk of serious harm to the claimant sufficient to warrant a grant of subsidiary protection.[955]

On 29 April 2009, the Office for Foreigners issued a decision denying all forms of protection to a Palestinian from Lebanon.[956] In the decision, the Office quotes

[952] State of Poland, "Act of 13 June 2003 on Granting Protection to Aliens within the Territory of the Republic of Poland (last Amended in 2012)," Article 19.

[953] Information provided by Katarzyna Przybysławska.

[954] Ibid.

[955] Ibid.

[956] (Office for Foreigners) decision, Nr DPU-420-1970/SU/2008. Information provided by Katarzyna Przybysławska.

Article 1D in referring to an earlier decision of the High Administrative Court:

> Protection mentioned in article 1D has precedence over the basic protection stemming from article 1A of the Geneva Convention. In such a case, it is impossible to demand that refugee status determination is made on the basis of article 1A(2) of the Convention, as it is possible to implement protection on the basis of article 1D of the Convention. The phrase used in the first sentence of article 1D of the convention "at present receiving […] protection or assistance" refers to only such Palestinians who could benefit from protection on the day when the Convention was signed, which was on 28th of July 1951, and to their descendants born after that date provided that they are under UNRWA's mandate. Protection and assistance to Palestinians is available only in territories covered by UNRWA's mandate, and therefore the exclusion from applying the Geneva Convention is only applicable to those Palestinians who permanently reside within that area. In relation to Palestinians permanently staying in Poland, the exclusion clause from the first sentence of article 1D does not apply and therefore he may not be ipso facto recognized as refugee. Such a person may seek asylum solely on the basis of article 1A(2) of the Geneva Convention.[957]

In other words, the Court's interpretation is that only Palestinians who live in UNRWA's mandate areas are excluded under Article 1D. Thus, owing to Poland's location outside the UNRWA mandate areas, Palestinian refugees in Poland are not excluded under Article 1D, nor can they be included under the second paragraph of Article 1D. Rather, they must apply under Article 1A(2), which requires demonstrating a well-founded fear of persecution for a Convention reason. According to another 2009 decision of the High Administrative Court, Palestinians are not eligible for refugee status under Article 1A(2)merely because they are outside the UNRWA mandate areas.[958]

> Article 1D […] expressly states that "when such protection or assistance has ceased for any reason" the possibility of using "the benefits of this Convention" opens.
>
> Without a doubt such a situation could arise when UNRWA ceased or limited its operations and thus withheld assistance to Palestinians. The sole fact of residing outside of UNRWA's mandate territory however, only results in the impossibility of assuming exclusion from the application of the Convention in relation to the applicant based on the first sentence of article 1 section D of the Convention. Therefore the applicant may only seek asylum on the basis of article 1 section A point 2 of the Geneva Convention.[959]

Here, the Court contemplates Article 1D's *ipso facto* application to Palestinians if

[957] NSA VSA 778/02, Dec. 3, 2002. Information provided by Katarzyna Przybysławska.

[958] Supreme Administrative Court of Warsaw (Poland), "Case V SA 1673-1601 [Polish]," February 14, 2002, http://orzeczenia.nsa.gov.pl/doc/BD9A9BAC7C.

[959] Ibid.

UNRWA ceases to operate. The Court's interpretation, however, is that until the UN limits or revokes UNRWA's mandate, Palestinians in Poland may only claim asylum under Article 1A(2).

Information regarding any changes to asylum jurisprudence in Poland following the *El Kott* decision is unavailable.

5. Refugee Status Determination Process: Outcome

If an applicant is granted refugee status, he or she receives a residence card which is valid for three years[960] and a Refugee Travel Document valid for two years.[961]

Subsidiary Protection

An applicant who does not meet the refugee status requirements may receive subsidiary protection if return to his or her country of origin may expose him or her to a real risk of serious harm in the form of:[962]

1. a death penalty sentence;
2. torture, inhuman or degrading treatment or punishment; or
3. a serious and individual threat to life or health resulting from the widespread use of violence against civilians in situations of international or internal armed conflict.

If an applicant is granted subsidiary protection, he or she receives a residence card which is valid for two years.[963]

Additional forms of protection

The procedure regarding issuance of return decisions requires the Commander of the Border Guard Unit to verify whether there are grounds for ordering one of the two additional protection statuses: residence permit for humanitarian reasons or tolerated stay.

A residence permit for humanitarian reasons is granted to persons if return to a country of origin could:

1. violate their right to life, freedom and personal security, or
2. violate their right to be free from torture or inhumane or degrading treatment or punishment, or
3. violate their rights to a fair trial or result in subjecting them to arbitrary punishment, or
4. result in subjecting them to forced labour, or

[960] State of Poland, "Act of 13 June 2003 on Granting Protection to Aliens within the Territory of the Republic of Poland (last Amended in 2012)," Article 89i(1).

[961] Ibid., Article 89i(3).

[962] Ibid., Article 15.

[963] Ibid., Article 89i(2).

5. violate their right to family or private life as defined in the Convention for the Protection of Human Right and Fundamental Freedoms drawn up in Rome on 4 November 1950, or
6. violate the rights of child in a way that would threaten the psychosocial development as defined in the Convention on the Rights of the Child of 20 November 1989.[964]

A tolerated stay permit is granted to persons, if return to a country of origin could:

1. violate their right to life, to freedom and personal security, or
2. violate their right to be free from torture, inhumane or degrading treatment or punishment, or
3. violate their rights to a fair trial or result in subjecting them to arbitrary punishment, or
4. result in subjecting them to forced labour, or
5. if expulsion is not possible due to circumstances independent from the authority executing the return decision and from the foreigner, or
6. expulsion might be effected only to a country to which the expulsion is inadmissible on the basis of the Court's judgment on the inadmissibility of a foreigner's expulsion or on the basis of the decision of the Minister of Justice.[965]

A tolerated stay permit on the grounds mentioned in points 1-4 is given when it is not possible to grant a permit for humanitarian reasons because the person is guilty of committing serious crimes, or s/he has instigated or otherwise participated in the commission of those crimes or offences, or poses a threat to the national security.[966]

Return decisions, as well as decisions on granting a residence permit for humanitarian reasons and tolerated stay permit, are issued by a Commander of the

[964] State of Poland, "Act of 12 December 2013 on Foreigners," December 30, 2013, http://www.cudzoziemcy.gov.pl/uploads/ngrey/prawo/ACT%20of%2012%20December%202013%20ON%20FOREIGNERS.pdf, Article 348. Even though the text of Article 348 in the English version mentions the permit for tolerated stay, that article seems to have been mistranslated, since in the original version, available at http://isap.sejm.gov.pl/Download?id=WDU20130001650&type=3, Article 348 concerns a permit for "humanitarian reasons" ("względów humanitarnych"). It should be also noted that Poland's Act on Foreigners, of 2013, and the Act on Granting Protection, of 2003, deal with different spheres concerning foreigners. While the 2003 Act on Granting Protection "is relevant to all issues of asylum, refugee protection and subsidiary protection, the [2013] Act on Foreigners deals with detention, return, visas, residence permits etc." Therefore, even though the 2013 Act on Foreigners replaced the 2003 Act on Granting Protection, of 2003, it does *not* repeal the protection provisions featured in the Act of 2003. With regards to protection of foreigners, the 2013 Act only established the permit for humanitarian reasons as an *additional* form of protection. Information provided by Katarzyna Przybysławska.

[965] State of Poland, "Act of 13 June 2003 on Granting Protection to Aliens within the Territory of the Republic of Poland (last Amended in 2012)," Article 97; State of Poland, "Act of 12 December 2013 on Foreigners," Article 351.

[966] State of Poland, "Act of 12 December 2013 on Foreigners," Article 351.

Border Guard Unit.[967] In cases in which grounds for granting a residence permit for humanitarian reasons or tolerated stay arise after a final return decision has been issued, a separate procedure regarding grant of the aforementioned permits shall be instituted *ex officio*.[968]

Individuals receiving refugee status, subsidiary protection, or a permit based on humanitarian reasons or for tolerated stay enjoy many of the same rights as Polish nationals, such as the right to work.[969]

In addition, refugees and individuals who are granted refugee status or subsidiary protection have a right to integration assistance for a maximum period of 12 months after a positive decision. An individual must apply for integration assistance through the Poviat Center for Family Support within 60 days of his or her grant of refugee status or subsidiary protection. [970]

Appeals

If the foreigner receives a negative decision from the Office for Foreigners or is not satisfied with the type of protection granted to him or her, he or she may appeal to the Council for Refugees. The foreigner must file the appeal with the Head of the Office for Foreigners within 14 days from the date of the initial decision.[971] In the appellate proceedings, the foreigner may submit new evidence, additional statements, and a petition for an additional hearing, according to general rules of administrative proceedings as prescribed in the Polish Code of Administrative Proceedings of 14th June 1960.[972]

Within a month of hearing the foreigner's appeal, the Council for Refugees must issue a decision. If the foreigner's case is particularly complex, the Council may take two months to issue a decision.[973] The Council's decision is the final decision in the case, subject only to the possibility of a complaint to the Regional Administrative Court ("RAC") in Warsaw. Further appeal is possible before the Supreme Administrative Court. However, these courts review cases with a focus on the legality of the administrative acts.[974]

[967] Ibid., Articles 310 and 355(1).

[968] Ibid., Article 356(2).

[969] State of Poland, "Act of 12 March 2004 on Social Assistance [Polish]," March 12, 2004, http://isap.sejm.gov.pl/Download?id=WDU20040640593&type=3, Article 91. Information provided by Katarzyna Przybysławska.

[970] Ibid. Information provided by Katarzyna Przybysławska.

[971] Belgian Refugee Council, *Polish Asylum Procedure and Refugee Status Determination - Report Following the Mission to Poland from 12 to 15 September 2010*, 11; Helsinki Foundation for Human Rights, *National Asylum Procedure in Poland*, 10.

[972] State of Poland, "Act of 14 June 1960 - Code of Administrative Procedure," June 14, 1960, Journal of Laws 1960 No. 30, item 168, http://ec.europa.eu/information_society/newsroom/cf/dae/document.cfm?doc_id=1329. Information provided by Katarzyna Przybysławska.

[973] Ibid., Article 35(3). Information provided by Katarzyna Przybysławska.

[974] Helsinki Foundation for Human Rights, *National Asylum Procedure in Poland*, 10; Belgian Refugee Council, *Polish Asylum Procedure and Refugee Status Determination - Report Following the Mission to Poland from 12 to 15 September 2010*, 12.

According to Poland's Act on Foreigners, of 2013, a complaint to the Administrative Court now suspends the execution of the Head of the Office for Foreigners' decision refusing protection and expelling the foreigner from Poland until a decision on the appeal is reached.[975]

Return/Deportation

If a foreigner is unable to obtain refugee status, subsidiary protection, humanitarian protection, or a permit for tolerated stay, he or she will receive a decision obliging return to his or her country. The foreigner is obliged to leave Poland within 30 days of receiving such a decision.[976] However, a foreigner will not receive an order if he or she:

1. already has a residence permit for a fixed period, a settlement permit, an EC long-term residence permit, a right of stay, a right of permanent stay;
2. is temporarily arrested, serving a prison sentence, or is subject to a preventive measure, such as a legal prohibition from exiting Poland;
3. is the spouse of a Polish citizen or a foreigner with a settlement permit or an EC long-term residence permit.[977]

At any time before the 30-day deadline, the foreigner may notify the Head of the Office of his or her intention to return voluntarily. If the foreigner chooses voluntary departure, Poland will extend the expulsion deadline until a day chosen by the Head of Office.[978]

Monitoring of Forced Return

Poland was required to establish an effective forced-return monitoring system under the directive of 16 December 2008 on common standards and procedures in Member States for returning illegal third-country nationals ("Return Directive").[979] In Poland, various NGOs manage the monitoring of deported individuals. NGO lawyers – including the Halina Niec Legal Aid Center, Association for Legal Intervention, and the Helsinki Foundation for Human Rights – examine the personal and legal situations of deported foreigners with a special focus on minors, families, and individuals with special needs.[980] This monitoring occurs primarily in detention centers, but NGO lawyers also participate as observers on selected deportation flights to ensure that the human rights of deported individuals are not violated.

[975] State of Poland, "Act of 12 December 2013 on Foreigners," Article 331.

[976] Helsinki Foundation for Human Rights, *National Asylum Procedure in Poland*, 10.

[977] State of Poland, "Act of 12 December 2013 on Foreigners," Article 330.

[978] Helsinki Foundation for Human Rights, *National Asylum Procedure in Poland*, 11.

[979] Council of the European Union, "Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on Common Standards and Procedures in Member States for Returning Illegally Staying Third-Country Nationals," December 16, 2008, http://www.refworld.org/docid/496c641098.html.

[980] Katarzyna Musiuk and Katarzyna Przybysławska, *Monitoring of Forced Returns of Third Country Nationals to Origin Countries* (Halina Niec Legal Aid Center (HNLAC), June 25, 2013), 8, http://www.pomocprawna.org/images/stories/Pomoc_migrantom/Raport_Monitoring_Powrotow_2013.pdf.

Additionally, the lawyers draft reports describing the conditions in detention centers and on deportation flights.[981]

6. Protection under the Statelessness Conventions

Poland is one of four European Union countries (the others are Estonia, Malta, and Cyprus) that is not a party to either the 1954 Convention Relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness.[982] As a result, Poland has no statelessness determination procedure nor an accepted legal definition of a stateless individual.[983] In 2013, the Halina Niec Legal Aid Center and other NGOs issued a report on statelessness calling on the Polish government to ratify both statelessness conventions.[984]

7. Links

- Statistics: Office for Foreigners: (http://www.udsc.gov.pl/Zestawienia,roczne,233.html)
- Database of Administrative Courts judgments: http://orzeczenia.nsa.gov.pl/cbo/query
- Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland (Journal of Laws of 2003, No 128, item 1176) http://www.udsc.gov.pl/LAW,265.html
- Jesuit Refugee Service, *Protection Interrupted: The Dublin Regulation's Impact on Asylum seekers' Protection (The DIASP project)*, 4 June 2013 (includes a chapter on Poland): https://www.jrs.net/assets/Publications/File/protection-Interrupted_JRS-Europe.pdf
- English language summaries of important refugee cases, including Poland's: http://www.asylumlawdatabase.eu/en

[981] Ibid., 6.

[982] UNTC, "Status of Treaties: Convention Relating to the Status of Stateless Persons;" UNTC, "Status of Treaties: Convention on the Reduction of Statelessness."

[983] Halina Niec Legal Aid Center (HNLAC), *The Invisible - Stateless Persons in Poland 2013 - Executive Summary*, December 2013, 8, http://www.pomocprawna.org/images/stories/Pomoc_migrantom/The_Insvisible_Stateless_Persons_in_Poland_2013_Summary.pdf.

[984] Halina Niec Legal Aid Center (HNLAC), *The Invisible - Stateless Persons in Poland 2013 - Executive Summary*.

SPAIN

1. Statistical Data

In 2007, UNHCR began to record statistics regarding Palestinian asylum seekers entering Spain.[985] Between 2007 and 2013, 630 Palestinians have applied for asylum.[986] Of those Palestinian applicants 370 have been granted asylum pursuant to the Refugee Convention's refugee status requirements.[987] A further 57 applicants have been granted relief under Spain's subsidiary protection regime.[988] A total of 29 applicants have been rejected, and 17 more applicants' cases have been "otherwise closed."[989]

In 2013, Spain received 130 new asylum applications and made 74 favorable status decisions for Palestinian asylum seekers, of which 63 were granted refugee status, with the remaining 11 applicants granted relief under Spain's subsidiary protection regime.[990]

To put asylum applications by Palestinians in Spain in context, the Spanish Refugee Council ("CEAR," Comisión Española de Ayuda al Refugiado) notes that there were a total of 4,502 applications for asylum in Spain in 2013 (from all countries of origin), an increase of 74% from the preceding year.[991] Of the 687 applications made at border posts or immigration detention centers (Centros de Internamiento de Extranjeros, "CIE") in 2013, approximately 60% were refused.[992]

2. Refugee Status Determination: The Process

Asylum seekers in Spain have one month to file an asylum application at the Asylum and Refugee Office ("OAR," *Oficina de Asilo y Refugio*).[993] The month-long time frame begins either immediately after entry into Spain or immediately after a change in circumstances that produces in the applicant a well-founded fear of persecution justifying the need for asylum.[994]

[985] UNHCR, "UNHCR Population Statistics - Asylum Seekers Status Determination" (last visited on 17 September 2014).

[986] Ibid.

[987] Ibid. The subsidiary protection regime is explained in greater detail in Sections 3 and 5.

[988] Ibid.

[989] Ibid.

[990] Ibid.

[991] Comisión Española de Ayuda al Refugiado (CEAR), *La Situación de Las Personas Refugiadas En España: Informe 2014*, 2014, 54, http://www.cear.es/wp-content/uploads/2013/05/Informe-CEAR-2014.pdf.

[992] Ibid., 65–66. Information about the approval rate for applications made at other locations is not provided in this report.

[993] UNHCR, "Hoja Informativa: El Procedimiento de Asilo En España," accessed October 30, 2013, http://www.acnur.org/paginas/?id_pag=1435. BADIL notes that as of September 2014, this document is no longer available online.

[994] Ibid.

An asylum seeker in Spain may apply at various locations:[995]

1. OAR in Madrid
2. Any Spanish border control post, such as those in airports and seaports
3. **[annulled]**
4. An Immigration Office
5. Authorized police stations
6. Immigration Detention Centers (CIEs)[996]

Applications submitted within Spain at the OAR

After the timely submission of an asylum application, the OAR begins a screening process to determine the application's admissibility. The OAR must make the admissibility determination within 60 days after submission of the application.[997]

If the OAR determines that an application is inadmissible, the applicant must leave the country within 15 days of the determination or be subject to expulsion.[998]

If an application is deemed admissible, the OAR begins the determination procedure and assesses the merits of the applicant's claim. After deeming an application admissible, the OAR must make a determination within six months. While awaiting a final decision, the applicant is permitted to remain in Spain and is entitled to receive social, educational, and healthcare services if the applicant lacks economic means to obtain them himself or herself. After making a decision, the OAR must communicate the existence of the asylum application to UNHCR so that UNHCR may intervene and provide assistance if necessary.[999]

Applications submitted at the Spanish Border

When asylum seekers submit applications at Spanish border posts, the time frame to determine admissibility is only 72 hours.[1000] After the admissibility determination, the status determination decision must be made within four days.[1001] However, the deadline for a final decision may be extended to 10 days if UNHCR requests an extension for certain specified reasons, one of which is to determine whether a Palestinian is subject to Article 1D of the Refugee Convention.[1002]

[995] Ibid.

[996] UNHCR, "Preguntas Sección Legal," accessed November 26, 2014, http://acnur.es/preguntas-seccion-legal. Previously, applicants were able to apply at Spanish diplomatic missions outside Spanish territory, but this provision was annulled by law in 2009 (Comisión Española de Ayuda al Refugiado (CEAR), *La Situación de Las Personas Refugiadas En España: Informe 2014*, 56).

[997] UNHCR, "Hoja Informativa: El Procedimiento de Asilo En España."

[998] Ibid.

[999] Ibid.

[1000] Ibid.

[1001] Spain, "Ley No. 12/2009 Reguladora Del Derecho de Asilo Y de La Protección Subsidiaria [Asylum Law]," October 30, 2009, http://www.refworld.org/docid/4b03bd9f2.html, Article21(1).

[1002] Ibid., Article 21(3). This provision refers to Art. 25(f) of the Asylum Law, which refers to Art. 8-12 of the Asylum Law; Art. 8 of the Asylum Law refers to Art. 1D of the Refugee Convention.

3. Refugee Status Determination Process: The Legal Framework

In 2009, Spain enacted Asylum Law 12/2009, which modified Spain's asylum application procedure to comport with the EU Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status (2005/85/EC).[1003] Specifically, the Asylum Law expands the granting of refugee status to those suffering persecution on the basis of gender or sexual orientation.[1004] Additionally, the law grants asylum seekers the right to free legal aid, translation, and healthcare services.[1005]

The 2009 Asylum Law establishes a two-step procedure for all asylum and refugee applications.[1006] The first step requires the Asylum and Refugee Office to determine the admissibility of the asylum application.[1007] Application admissibility requirements coincide with the EU Directive (2005/85/EC).[1008] Generally, an application will be inadmissible if the applicant (1) has been granted asylum in another country;[1009] (2) receives protection from a safe third country;[1010] (3) files a duplicate of an already-rejected application;[1011] or (4) is an EU national.[1012] During the admissibility determination, Spanish authorities have rejected applications from Palestinian asylum seekers who were unable to provide sufficient proof of Palestinian origin, or who were able to receive protection in a third country.[1013] After determining admissibility, the second step requires the OAR to consider the merits of the application.[1014]

4.Refugee Status Determination: Article 1D

Spain became a party to the Refugee Convention and the 1967 Protocol on 14 August 1978.[1015] Spain's 2009 asylum law specifically incorporates Article 1D of the Refugee Convention in Article 8, "Reasons for Exclusion."[1016] That article notes that

[1003] See ibid., Preamble.

[1004] Ibid., Articles 3 and 7(1).

[1005] Ibid., Article 16(2).

[1006] UNHCR, "Hoja Informativa: El Procedimiento de Asilo En España."

[1007] Ibid.

[1008] Council of the European Union, "Council Directive 2005/85/EC," 85, Article 25(2).

[1009] Spain, "Ley No. 12/2009 Reguladora Del Derecho de Asilo Y de La Protección Subsidiaria [Asylum Law]," Article 20(1)(c).

[1010] Ibid., Article 20(1)(d).

[1011] Ibid., Article 20(1)(e).

[1012] Ibid., Article 20(1)(f).

[1013] Audiencia Nacional - Sala de lo Contencioso, "Case 4555/2012 - Appeal No. 159/2012 [Spanish]," November 14, 2012, Roj: SAN 4555/2012 - ECLI:ES:AN:2012:4555, http://www.poderjudicial.es/search/doAction?action=contentpdf&databasematch=AN&reference=6550214&links=&optimize=20121126&publicinterface=true.

[1014] UNHCR, "Hoja Informativa: El Procedimiento de Asilo En España."

[1015] UNTC, "Status of Treaties: Protocol Relating to the Status of Refugees."

[1016] Spain, "Ley No. 12/2009 Reguladora Del Derecho de Asilo Y de La Protección Subsidiaria [Asylum Law]," Article 8(1)(a).

when UNRWA "protection or assistance ceases for any reason," those left unprotected and unassisted will receive the benefits of Spain's asylum law "ipso facto."[1017]

Under the 2009 Asylum Law, a Palestinian applicant may qualify for an expedited "emergency" decision as an applicant excluded from asylum protection under Article 8.[1018] For expedited consideration, the Palestinian applicant must petition the Ministry of the Interior (*el Ministerio del Interior*) explaining the Article 8 statutory grounds for his or her exclusion from asylum protection.[1019] The Asylum Law requires that the expedited decision-making process incorporate all aspects of the ordinary decision-making process, except that the OAR must reach a decision within three months.[1020]

In a November 2012 case, the *Audiencia Nacional*, Spain's national court of appeals, upheld a decision denying asylum to an applicant who could not sufficiently prove his Palestinian nationality.[1021] The Court noted that the applicant had resided in France for nine years before applying for asylum in Spain.[1022] In affirming the denial, the court made an Article 1A determination, and did not reference Article 1D.[1023] The Court held that the petitioner had not provided evidence of specific, individualized persecution or potential persecution in Palestine, and could not benefit from asylum relief.[1024] The Court reasoned that granting asylum solely upon objective evidence of internal conflict in Palestine would afford any Palestinian national an automatic claim to asylum in Spain.[1025] Such an interpretation of the law, the Court ruled, was contrary both to the Spanish institution of asylum protection and to the purpose of the 2009 Asylum Law.[1026]

Further information about the interpretation or application of Article 1D in Spain is not available to BADIL at this time.

5. Refugee Status Determination Process: Outcome

In the event of a favorable status determination decision, the refugee is entitled to the following rights and benefits:

1. The right against return to the refugee's country of origin or the country in which the refugee has a well-founded fear of persecution;
2. the right to live and work in Spain;
3. travel and identification documentation;

[1017] Ibid.
[1018] Ibid., Article 25(1)(f).
[1019] Ibid., Article 8(1)(a).
[1020] Ibid., Article 25(4); for the ordinary procedure see ibid., Article 24.
[1021] Audiencia Nacional - Sala de lo Contencioso, "Case 4555/2012 - Appeal No. 159/2012 [Spanish]," 1.
[1022] Ibid., 2.
[1023] Ibid.
[1024] Ibid.
[1025] Ibid.
[1026] Ibid.

4. the right of access to social services, public education, healthcare, and special integration programs for refugees;[1027] and
5. the right to apply for Spanish nationality after residing in Spain for five years.[1028]

In case of a negative decision regarding refugee status, the applicant may still be granted subsidiary protection. Spain's 2009 Asylum Law provides subsidiary protection for applicants with a well-founded fear of serious harm upon return to their country of origin who are not otherwise able to meet the requirements to receive refugee status.[1029] The Asylum Law defines serious harm as: (1) an order for the imposition of the death penalty; (2) torture or degrading or inhuman treatment; or (3) a threat against the life or integrity of the applicant due to indiscriminate violence of an internal or international conflict.[1030]

Subsidiary protection includes the right to *non-refoulement*.[1031] Those who are granted subsidiary protection have the right, along with refugees, to reside and work in Spain permanently.[1032] Subsidiary protection also allows the recipient to seek employment in Spain and to participate in the integration programs and other services normally afforded to refugees.[1033]

If the OAR rejects a refugee's application, the refugee may appeal the decision through the administrative appellate system (*Sala de lo Contencioso Administrativo de la Audiencia Nacional*).[1034] Additionally, an asylum seeker may request re-evaluation of a rejected application if he or she acquires proof of new facts supporting a favorable status determination.[1035]

The rejection of an asylum application in Spain results in an obligatory order to leave the country within 15 days.[1036] Appealing an unfavorable decision suspends the order to leave.[1037]

[1027] UNHCR, "Hoja Informativa: El Procedimiento de Asilo En España."

[1028] State of Spain, "LEY 36/2002, de 8 de Octubre, de Modificación Del Código Civil En Materia de Nacionalidad [Law 36/2002, of 8 October, Amending the Civil Code Governing Nationality]," October 9, 2002, BOE-A-2002-19484, http://www.boe.es/boe/dias/2002/10/09/pdfs/A35638-35640.pdf, Article 22(1).

[1029] Spain, "Ley No. 12/2009 Reguladora Del Derecho de Asilo Y de La Protección Subsidiaria [Asylum Law]," Article 4.

[1030] Ibid., Article 10.

[1031] Ibid., Article 5.

[1032] Ibid., Article 36(1)(c).

[1033] Ibid., Article 36(1)(f).

[1034] UNHCR, "Hoja Informativa: El Procedimiento de Asilo En España."

[1035] Ibid.

[1036] Ibid.

[1037] Ibid.

6. Protection under the Statelessness Conventions

Spain ratified the 1954 Stateless Persons Convention on 12 May 1997, but is not a party to the 1961 Statelessness Convention.[1038] Spain is one of the few European countries which has a procedure to establish permission to reside based on statelessness.[1039]

Spanish Organic Law 4/2000 requires the Ministry of the Interior to make all statelessness determinations based on the requirements of the 1954 Stateless Persons Convention.[1040] Spanish law includes the statelessness application procedure in the asylum procedure, and both forms of relief share identical procedural requirements.[1041] Applications can be made to OAR or at police stations or immigration offices.[1042] However, the approval rate of applications is extremely low. Of 1532 applications from 2001 to 2011, only 34 were approved.[1043]

7. Links

- Ministry of the Interior, Asylum and Refuge: http://www.interior.gob.es/es/web/servicios-al-ciudadano/extranjeria/asilo-y-refugio [Spanish]
- National Police, Asylum and Refuge: http://www.policia.es/documentacion/asiloyrefugio.html [Spanish]
- UNHCR (ACNUR) Spain: http://acnur.es/quienes-somos/acnur-espana [Spanish]
- Spanish Refugee Council (Comisión Española de Ayuda al Refugiado): http://www.cear.es [Spanish]
- Rescate: http://ongrescate.uni.me/ [Spanish]
- ACCEM: www.accem.es [Spanish]

[1038] UNTC, "Status of Treaties: Convention Relating to the Status of Stateless Persons;" UNTC, "Status of Treaties: Convention on the Reduction of Statelessness."

[1039] UNHCR, "2014 UNHCR Regional Operations Profile - Northern, Western, Central and Southern Europe - Spain," accessed November 27, 2014, http://www.unhcr.org/pages/49e48eed6.html.

[1040] State of Spain, "Ley Orgánica 4/2000, de 11 de Enero, Sobre Derechos Y Libertades de Los Extranjeros En España Y Su Integración Social [Organic Law 4/2000, of 11 January, on Rights and Liberties of Foreigners in Spain and Their Social Integration]," January 11, 2000, BOE-A-2000-544, https://www.boe.es/buscar/pdf/2000/BOE-A-2000-544-consolidado.pdf, Article 34(1).

[1041] State of Spain, "Real Decreto 865/2001, de 20 de Julio, Por El Que Se Aprueba El Reglamento de Reconocimiento Del Estatuto de Apátrida [Royal Decree 865/2001, of 20 July, Approving the Recognition Regulation of the 1954 Stateless Persons Convention]," July 20, 2001, BOE-A-2001-14166, http://www.boe.es/boe/dias/2001/07/21/pdfs/A26603-26606.pdf.

[1042] Gyulai, "Statelessness in the EU Framework for International Protection," 291–292.

[1043] Ibid.

SWEDEN[1044]

1. Statistical Data

Palestinians who claim to be stateless are registered as "stateless persons" by the Swedish Migration Board (*Migrationsverket*). As a result, their country of former habitual residence does not appear in the statistics.[1045] Palestinians who have obtained new citizenship (for example, in Jordan) are registered as citizens of that country.[1046]

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.[1047] However, as most stateless applicants have been Palestinians, the approximate numbers may be deduced from this data.[1048] In 2011, 1109 asylum applications were submitted by stateless persons. In 2012, this number climbed to 2289, and in 2013, reached 6921.[1049] In 2014, this number augmented to 7863.[1050] The increase in applications is likely due to the number of Palestinian refugees currently fleeing the conflict in Syria.

2. Refugee Status Determination: The Process

Aliens entering Sweden with the intention to stay must either present a visa, a residence permit, or long-term status permit to remain in the country.[1051] All aliens in need of protection from persecution may apply for asylum at either the Swedish border or at one of the Migration Board's application units.[1052] Sweden will accept "Palestinian Travel Documents" issued by the Palestinian Authorities or Israeli Identification cards issued to Palestinians living in Jerusalem.[1053] In *most* cases,

[1044] Birgitta Elfstrom, lawyer formerly at the Swedish Migration Board, reviewed and contributed to this section.

[1045] Migrationsverket [Migration Board], "Asylsökande - de 15 Största Länderna [Asylum Seekers - the 15 Largest Countries]," November 3, 2014, http://www.migrationsverket.se/4.5e83388f141c129ba639f8.html.

[1046] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 217.

[1047] Migrationsverket [Migration Board], "Asylsökande - de 15 Största Länderna [Asylum Seekers - the 15 Largest Countries]," November 3, 2014.

[1048] Ibid.

[1049] Statistikdatabasen [Statistical Database], "Asylum Seekers in Sweden by Country of Citizenship and Sex. Year 2002 - 2013 [Swedish]," accessed November 27, 2014, http://www.statistikdatabasen.scb.se/pxweb/sv/ssd/START__BE__BE0101__BE0101P/Asylsokande/?rxid=b41f2252-5381-4d4e-b90e-aa6b4a3c24d2.

[1050] Migrationsverket [Migration Board], "Asylsökande - de 15 Största Länderna [Asylum Seekers - the 15 Largest Countries]," January 16, 2015, http://www.migrationsverket.se/Om-Migrationsverket/Statistik/Asylsokande---de-storsta-landerna.html.

[1051] State of Sweden, "Aliens Act (2005:716)," September 29, 2005, http://www.government.se/content/1/c6/06/61/22/bfb61014.pdf, Chapter 2.

[1052] Swedish Migration Board, "Considering Your Asylum Application," November 27, 2014, http://www.migrationsverket.se/English/Private-individuals/Protection-and-asylum-in-Sweden/Adults-seeking-asylum/Considering-your-application.html.

[1053] Information provided by Birgitta Elfstrom.

Lebanese, Iraqi, Syrian, or Egyptian travel documents are acceptable if the holder was born, or had resided for a substantial period of time, in Lebanon, Iraq, Syria, or Egypt.[1054] Additionally, other identifying documents may suffice.

During the asylum process, asylum seekers may choose to live with friends or relatives or at one of the Migration Board's reception centers.[1055] Asylum seekers are offered opportunities to learn Swedish.[1056] Children are allowed to attend school, and accommodations are made for individuals with special needs.[1057] The Migration Board provides asylum seekers with a daily allowance, if necessary.[1058] However, Sweden prefers that applicants support themselves during the asylum process with either savings or employment earnings.[1059] If asylum seekers can prove their identity by producing identification documents and meeting other criteria, they will be able to work.[1060] If granted, Swedish authorities will designate permission to work on the identification document issued to asylum seekers.[1061] Sweden will exempt an asylum seeker from the usual work permit requirement if:

1. The applicant assists the authorities in identifying him or herself;
2. The applicant's case will be considered in Sweden; and
3. The applicant's claim is well-founded.[1062]

However, asylum seekers are not permitted to work if they have been issued a 'Refusal of Entry with Immediate Effect.'[1063]

3. Refugee Status Determination Process: The Legal Framework

Sweden incorporates the Refugee Convention's Article 1A(2) refugee definition in Chapter 4, Section 1 of the 2005 Swedish Aliens Act ("the Act"):

> Section 1
> *In this Act 'refugee' means an alien who*
> *- is outside the country of the alien's nationality, because he or she feels a well-founded fear of persecution on grounds of race, nationality, religious*

[1054] Ibid.

[1055] Swedish Migration Board, "Accommodation," August 29, 2014, http://www.migrationsverket.se/English/Private-individuals/Protection-and-asylum-in-Sweden/Adults-seeking-asylum/Accommodation.html.

[1056] Government Offices of Sweden, "Reception of Asylum Seekers," January 14, 2011, http://www.government.se/sb/d/11901/a/125266.

[1057] Ibid.

[1058] Ibid.

[1059] Swedish Migration Board, "Working While Seeking Asylum," June 10, 2014, http://www.migrationsverket.se/English/Private-individuals/Protection-and-asylum-in-Sweden/Adults-seeking-asylum/Work.html.

[1060] Swedish Migration Board, "You Must Prove Your Identity," August 20, 2014, http://www.migrationsverket.se/English/Private-individuals/Protection-and-asylum-in-Sweden/Adults-seeking-asylum/You-must-prove-your-identity.html.

[1061] Information provided by Birgitta Elfstrom.

[1062] Swedish Migration Board, "Working While Seeking Asylum."

[1063] Ibid.

or political belief, or on grounds of gender, sexual orientation or other membership of a particular social group and

- *is unable, or because of his or her fear is unwilling, to avail himself or herself of the protection of that country.*[1064]

Additionally, Sweden's 2009 amendment to the Aliens Act included a Section 2c in Chapter 4, incorporating the Refugee Convention's Article 1F exclusionary clause.[1065]

4. Refugee Status Determination: Article 1D

In 2013, the Migration Court of Appeal issued a decision interpreting Article 1D in line with the *El Kott* decision in a case involving a Palestinian from Syria (Case UM 1590-13, below). The Migration Court of Appeal reached similar decisions in other cases in 2013 relating to Palestinians from Syria (see Section 7, below). In contrast, however, in 2014, the Migration Court of Appeal declined to review cases involving Palestinians from Iraq who have been refused refugee status by the Migration Board and Migration Court (discussed below).

Migration Court of Appeal: Case UM 1590-13 (Nov. 26, 2013)[1066]

In this case, a Palestinian ("A") fleeing Syria applied for asylum in Sweden on 13 March 2012. In support of her application, A claimed both an individual and general security risk if she were to return to Syria. On 29 June 2012, the Migration Board granted a three-year temporary residence and an alternative protection declaration. The Migration Board declared that A had not met the requirements for refugee status.

A appealed arguing that, under Article 1D, she deserved a refugee status declaration and permanent residence. A claimed that she was registered with UNRWA in Syria and was outside UNRWA's area of operations due to the armed conflict. UNRWA's aid had therefore ceased, A argued, and A was entitled to refugee status.

On 8 February 2013, the Migration Court dismissed A's refugee declaration and permanent residence appeal. The Court found that A did not have a well-founded fear of persecution. Additionally, the Court held that Article 1D did not apply because UNRWA's aid only ceased because A was granted temporary residence in Sweden.

A appealed to the Migration Court of Appeal claiming entitlement to a refugee status declaration under *El Kott*. Concerning *El Kott's* UNRWA registration element, A claimed that she had received assistance from UNRWA since she was a child, and that she had fled from a refugee camp in Homs, Syria administered by UNRWA.

[1064] State of Sweden, "Aliens Act (2005:716)," Chapter 4, Section 1.

[1065] State of Sweden, "Act Amending the Aliens Act (2005:716)," December 30, 2009, SFS 2009:1542, http://www.government.se/content/1/c6/06/61/22/94531dbc.pdf, Chapter 4, Section 2b.

[1066] Migration Court of Appeal of Sweden, "Case UM 1590-13 [Swedish]," November 26, 2013, http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/UM%201590-13.pdf.

Concerning *El Kott*'s second inquiry, A claimed that she was unable to return to Syria and avail herself of UNRWA's assistance owing to individual and general danger. Because UNRWA assistance had ceased, A argued, she should be granted refugee status.

On 26 November 2013, the Migration Court of Appeal relied on Article 1D and *El Kott* in granting A refugee status. The Court of Appeal recognized that A (1) was a stateless Palestinian from Syria; (2) was registered with UNRWA; (3) had availed herself of UNRWA assistance; and (4) was forced to leave UNRWA's area of operation for personal security reasons. The Court found that A had no opportunity to obtain UNRWA assistance after leaving Syria. UNRWA assistance had therefore terminated when A left the country. Because UNRWA assistance had ceased and safety concerns prevented A's return, the Court found that A deserved refugee status in Sweden.

Palestinians from Iraq[1067]

However, in recent years, just under 150 stateless Palestinians from Iraq have received negative asylum decisions from the Migration Board, which have been affirmed on appeal by the Migration Court. Some of the 150 appealed to the Migration Court of Appeal, but the Court declined to review their decisions:

> *Case UM 542-14, 2014-01-28*: The Migration Court of Appeal declined to review the case of a stateless Palestinian (F) coming to Sweden from Iraq. F had registered with UNRWA in Gaza. F argued that neither the Migration Board nor the Migration Court considered his UNRWA registration and that UNRWA does not operate in Iraq. F also emphasized the increasing violence in Iraq and introduced a statement from the Swedish Embassy in Iraq from 14 January 2014 prohibiting F's return.

Among the 150, some have registered with UNRWA and others have not. Those who have registered did so in Gaza and hold Egyptian Travel Documents. This group of Palestinians left Gaza for Kuwait and was unable to return to Gaza after Israel occupied the territory. In 1991-92, the Palestinians were deported from Kuwait to Iraq. Eventually, the Palestinians applied for asylum in Sweden. Those without UNRWA registration went directly to Iraq from today's Israel in 1948.

Many of the 150 Palestinians hold an official document from the Iraqi Embassy in Sweden stating that Iraq will not accept their return. The Iraqi Embassy itself has stated that Iraq will enforce this return prohibition because many of the Palestinians have remained outside of country for six months or more. Deportation orders have been delivered to many in the group, but they have not yet been expelled from Sweden.

After receiving final negative decision, the 150 submitted "new applications" to the Migration Board emphasizing new circumstances preventing their return. In the

[1067] Information provided by Birgitta Elfstrom.

new applications, the Palestinians included the Iraqi Embassy documents and pointed to increased violence in Iraq. They claimed the need for international protection owing to the impossibility of their return. The Migration Board denied all of the new applications. Some of the new applicants were able to appeal the denial, but the appeals were rejected. Many of them have again submitted ”new applications” to the Migration Board, but again rejected. As of December 2014, they had started to appeal the negative decisions.

In its decisions, the Migration Board and the Migration Court made no reference to Article 1D, UNRWA registration, or *El Kott*. Both the Migration Board and the Migration Court concluded that the Palestinians from Iraq had not shown an individual risk of persecution if they were to return. Absent the risk of individual persecution, the Migration Board and Migration Court reasoned, the Palestinians are not refugees and are not in need of alternative or other protection.

The difference in treatment between Palestinians from Iraq and Palestinians from Syria is due to the nature of the conflict in each country. Given the armed conflict in Syria and the general security threat in the country, Sweden considers Palestinians from Syria in need of alternative protection. For this reason, Sweden’s policy is to grant them a residence permit. Earlier, Palestinians from Syria typically received three-year stays, but now they receive permanent stays.

On the other hand, except for a few cities, including Mosul and Kirkuk, but *not* Baghdad, Sweden does not characterize the violence in Iraq as an armed conflict, but as “severe conflicts.” Most asylum seekers from Iraq, therefore, must prove a causal connection between personal persecution and the “severe conflicts” in the country. In other words, unless they are from one of the areas where an ‘armed conflict’ is acknowledged to exist, asylum seekers from Iraq must have their own individual reasons for requiring international protection. The 150 Palestinian asylum seekers mentioned above are all from Baghdad; therefore they must show that they would face individual risks, according to the reasoning of the Migration Board. Concerning the Iraqi Embassy document, the Migration Board will compare the embassy’s statements against the policy of the Ministry of Migration and Displacement (“MOMD”) in Iraq, which has the final authority in allowing Palestinians to return. As far as the Migration Board is aware, the embassy does not refer to any law or policy of the MOMD in preparing its statements. The Migration Board expects Palestinian asylum seekers in Sweden to go to the MOMD to get permission to return, despite the fact that there is no UNRWA office in Iraq.

Palestinians from Gaza

Some Palestinian asylum seekers from Gaza have submitted new asylum claims based on renewed violence in Gaza in July 2014. As of late August 2014, the Migration Board has stated that it will take 2 months to assess the situation in Gaza

before deciding more asylum claims by refugees from Gaza.[1068] Sweden suspended all deportations to Gaza on 17 July 2014.[1069]

However, in October 2014, some of the Board's employees traveled to Egypt and gathered more data regarding the possibility of returning to Gaza. Finally, the Migration Board adopted the position that there is no "armed conflict" in Gaza; similarly to their assessment of the situation in Iraq, the Board concluded that "there are *'severe conflicts' in progress* in Gaza [emphasis in the original]," and that asylum claims must be analyzed on an individual basis.[1070]

Two weeks after this statement the Migration Board in a written notice to the stateless Palestinians gave them opportunity to supplement their applications through seeking a transit visa at the Egypt Embassy in Stockholm without having taken a decision in the new application of the Palestinians new asylum claims.[1071]

5. Refugee Status Determination Process: Outcome

An asylum seeker who receives a favorable asylum decision will receive a permanent or temporary residence permit from Sweden. Permanent residence permits are the most common, regardless of whether the person was granted refugee status or subsidiary protection. In 'exceptional circumstances' the right to residency may be restricted, but will always be for at least one year.[1072] Persons granted refugee status, subsidiary protection, or deemed otherwise in need of international protection are entitled to a "status declaration" as well as their residence permit.[1073]

Persons who are 'granted a residence permit as a refugee in accordance with Chapter 4, section 1 of the Aliens Act or corresponding sections in the old Aliens Act' are eligible to apply for Swedish citizenship after living in Sweden with a residence permit for four years.[1074]

The Swedish Aliens Act also provides for protection to individuals who may not meet the refugee status requirements, but whose circumstances necessitate additional

[1068] Ibid.

[1069] Swedish Migration Board, "Questions and Answers Concerning the Situation in Gaza," November 19, 2014, http://www.migrationsverket.se/English/Private-individuals/Protection-and-asylum-in-Sweden/Questions-and-answers-concerning-the-situation-in-Gaza.html; see also Swedish Migration Board, "Violence in Gaza Leads to a Temporary Halt on Deportations," July 24, 2014, http://www.migrationsverket.se/English/Private-individuals/Protection-and-asylum-in-Sweden/Nyheter/2014-07-24-Violence-in-Gaza-leads-to-a-temporary-halt-on-deportations.html.

[1070] Swedish Migration Board, "Questions and Answers Concerning the Situation in Gaza."

[1071] Information provided by Birgitta Elfström.

[1072] Swedish Migration Board, "Asylum Regulations," November 11, 2014, http://www.migrationsverket.se/English/Private-individuals/Protection-and-asylum-in-Sweden/Asylum-regulations.html.

[1073] Swedish Migration Board, "Protection Status," December 3, 2013, http://www.migrationsverket.se/English/Private-individuals/Protection-and-asylum-in-Sweden/Adults-seeking-asylum/If-you-are-allowed-to-stay/Protection-status.html.

[1074] Swedish Migration Board, "You Must Have Lived in Sweden for a Certain Period," November 18, 2014, http://www.migrationsverket.se/English/Private-individuals/Becoming-a-Swedish-citizen/Citizenship-for-adults/Time-in-Sweden.html.

protection. Under the Alien's Act, as amended in 2009, two types of protection categories are available: (1) Subsidiary Protection; and (2) Other Protection.[1075]

Subsidiary protection is available to individuals who: (1) may risk a death sentence if returned; (2) may risk being subjected to corporal punishment, torture or other inhumane or degrading treatment or punishment; or (3) may risk serious injury if returned due to armed conflict.[1076] An individual entitled to subsidiary protection may receive a subsidiary refugee status declaration under EU regulations.[1077]

An individual may receive other protection if he or she: (1) cannot return due to armed conflict or to serious opposition in the country of origin; (2) has a well-founded fear of suffering a severe human rights violation; or (3) cannot return due to an environmental disaster.[1078]

Concerning the current armed conflict in Syria, "[a]ll of those seeking asylum from Syria will now be granted permanent residence in Sweden, even those who have not been threatened individually."[1079] Before, Syrians and stateless Palestinians from Syria only received three-year stays. In September 2013, the Migration Board decided that everyone from Syria with a temporary Swedish residence permit could apply for permanent residence.[1080]

If an asylum application is rejected, the applicant has the right to appeal the decision within three weeks.[1081] During the appeals process, asylum seekers may still receive emergency medical care and a daily allowance, and may live in Swedish Migration Board accommodations.[1082] On appeal, the Migration Board reviews its initial decision. If the Board reaches the same conclusion, the appeal is sent to one of four Migration Courts located in Stockholm, Malmo, Gothenburg, and Lulea.[1083] If the Migration Court rejects the appeal, the applicant may appeal to the highest court, the Migration Court of Appeal.[1084] However, the Migration Court of Appeal only considers cases "where there are very strong reasons or if an important legal

[1075] State of Sweden, "Act Amending the Aliens Act (2005:716)," Chapter 4, Sections 2 and 2a.

[1076] Ibid., Chapter 4, Section 2(1); see also Swedish Migration Board, "Asylum Regulations."

[1077] Swedish Migration Board, "Asylum Regulations."

[1078] State of Sweden, "Act Amending the Aliens Act (2005:716)," Chapter 4, Section 2a(1) and (2); see also Swedish Migration Board, "Asylum Regulations."

[1079] Asylum in Sweden Advisory, "Seek Asylum in Sweden - Are You Eligible?," accessed November 27, 2014, http://www.seekasylumsweden.info/.

[1080] Swedish Migration Board, "New Judicial Position on Syria Opens up for a Higher Number of Permanent Residence Permits," September 5, 2013, http://www.migrationsverket.se/English/About-the-Migration-Board/News-archive/News-archive-2013/2013-09-05-New-judicial-position-on-Syria-opens-up-for-a-higher-number-of-permanent-residence-permits.html.

[1081] Swedish Migration Board, "If Your Asylum Application Is Refused by the Migration Board," August 20, 2014, http://www.migrationsverket.se/info/447_en.html.

[1082] Ibid.

[1083] Sveriges Domstolar [Swedish Courts], "Migration Courts," October 17, 2013, http://www.domstol.se/Funktioner/English/The-Swedish-courts/County-administrative-courts/Migration-Courts/.

[1084] Ibid.

issue must be considered;"[1085] that is the case when a decision on the appeal would (1) provide necessary guidance to Migration Boards in deciding on similar claims; or (2) correct any of the Migration Court's flagrant procedural or substantive errors.[1086] If the facts of a case have changed substantially by the time of an appeal, the Court of Appeal will send the case back to the Migration Board for a decision on the current facts.[1087]

Additionally, the applicant has the option, after a final negative decision, to submit a "new application" if "new circumstances" arise that were not known by the Migration Board at the time when the decision became final (for decisions of the Migration Court of Appeal, 3 weeks after the decision; or, if a Supreme Court decision, from the day of the decision).[1088]

If an application for asylum is denied, the individual will be trusted to leave Sweden. A longer period for voluntary return can be granted for exceptional reasons.[1089] Those who do not leave Sweden within the specified time period may receive a re-entry ban effective for one year or more.[1090]

6. Protection under the Statelessness Conventions

Sweden is a party to both the 1954 Convention and the 1961 Convention.[1091] A person who is "stateless and meet[s] the requirements of the 1954 New York Convention" is eligible to receive a travel document; however, for stateless persons, this requires that they have already been granted a residence permit in Sweden.[1092] Stateless persons may apply for Swedish citizenship after living in Sweden for four years with a residence permit (the time is calculated from the beginning of the residence permit). The time will be shorter if the stateless person is married to or cohabiting with a Swedish citizen and other requirements are met.[1093] Stateless children born in Sweden who are under age five are eligible for Swedish citizenship through 'notification' if they were stateless at birth, have permanent residence permits, and their statelessness was not 'influenced in any way' by their parents.[1094]

[1085] Migration Court of Appeal of Sweden, "Case UM 1590-13 [Swedish]."

[1086] Kammarrätten i Stockholm [Appeal in Stockholm], "Prövningstillstånd [Leave to Appeal]," August 20, 2014, http://www.kammarrattenistockholm.domstol.se/Om-kammarratten-/Provningstillstand/.

[1087] Information provided by Birgitta Elfstrom.

[1088] Ibid.

[1089] Swedish Migration Board, "If Your Asylum Application Is Refused by the Migration Board."

[1090] Ibid.

[1091] UNTC, "Status of Treaties: Convention Relating to the Status of Stateless Persons;" UNTC, "Status of Treaties: Convention on the Reduction of Statelessness."

[1092] Swedish Migration Board, "Travel Documents," November 19, 2014, http://www.migrationsverket.se/English/Private-individuals/Aliens-passport-and-travel-documents/Travel-documents.html.

[1093] Swedish Migration Board, "You Must Have Lived in Sweden for a Certain Period."

[1094] Swedish Migration Board, "Swedish Citizenship for Stateless Children under the Age of 5," August 20, 2014, http://www.migrationsverket.se/English/Private-individuals/Becoming-a-Swedish-citizen/Citizenship-for-children/Stateless-children-under-5.html.

Palestinians who are registered, or eligible to be registered, with UNRWA, or who hold travel documents from Lebanon or Syria, are entitled to apply for travel documents under the 1951 Convention. Only Palestinians who are not registered with UNRWA can apply for travel documents under the 1954 Convention.[1095]

7. Additional Relevant Jurisprudence

Case UM 8506-12, of 21 March 2013[1096]

Here, the Migration Board granted Samer, an UNRWA-registered Palestinian from the Jaramana refugee camp in Syria, a three-year permit to remain in Sweden under Sweden's alternative protection regime of stay and an alien passport. The Migration Board rejected refugee status and refused to grant a refugee passport. Samer appealed.

On 21 March 2013, the Migration court of appeal remanded Samer's case to the Migration Board to decide whether Samer met the EU Qualification Directive article 12.1 requirements for a permanent stay. If so, Samer was entitled to refugee status and a passport.

Case UM 8872-12, of 16 April 2013[1097]

Here, the Migration Board granted Ali, an UNRWA-registered Palestinian from Syria, a three-year permit to remain in Sweden under Sweden's alternative protection regime of stay and an alien passport. The Migration Board rejected refugee status and refused to grant a refugee passport reasoning that UNRWA support had not ceased for Ali under the three-year stay. Ali appealed. The Migration Court of Appeals overturned the Migration Board decision and granted Ali refugee status and a refugee passport.

8. Links

- Asylum in Europe: http://www.asylumineurope.org/reports/country/sweden/overview-legal-framework
- Migration Board Website: http://www.migrationsverket.se/
- Swedish International Group for Refugee Assistance (SIGRA): http://www.thesigra.org
- Swedish Refugee Advice Centre: http://sweref.org
- Jesuit Refugee Service, *Protection Interrupted: The Dublin Regulation's Impact on Asylum seekers' Protection (The DIASP project)*, 4 June 2013 (includes a chapter on Sweden): https://www.jrs.net/assets/Publications/File/protection-Interrupted_JRS-Europe.pdf

[1095] BADIL Resource Center, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention. Jurisprudence Regarding Article 1D 2005-2010*, 64; BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 224.

[1096] Information provided by Birgitta Elfstrom.

[1097] Ibid.

SWITZERLAND

1. Statistical Data

UNHCR data show increasing numbers of Palestinian refugees and asylum seekers in Switzerland from 2009-2012, but decreasing in 2013 (possibly due to incomplete data).

Palestinian Refugees and Asylum seekers in Switzerland[1098]

	2009	2010	2011	2012	2013
Refugees	35	88	100	109	24
Asylum seekers	--	117	118	148	*

UNHCR data also show that many Palestinian cases in Switzerland are being left undecided. There were at least 130 Palestinian asylum cases pending at the start of 2013, but the data regarding the disposition of cases in 2013 are incomplete. For 2012, the data show that there were 111 cases pending at the start of the year, with 151 new applications throughout the year. A minimal 11 Palestinian asylum cases resulted in a grant of refugee status, and 14 received some form of complementary protection. Only 2 were rejected outright, but 96 cases were 'otherwise closed,' and 148 remained pending at the end of 2012.[1099]

2. Refugee Status Determination: The Process

Applications for asylum must be made on Swiss territory or at the border, and can be made at a Swiss airport or a reception and processing center.[1100] All applications will be considered by the Federal Office of Migration (*Bundesamt für Migration*, "BFM"). Switzerland follows the Dublin procedure.[1101]

Asylum applicants are provided with "N" permits to allow them to live in Switzerland while their applications are pending. Once the asylum process is complete, such permits are no longer valid, regardless of whether the date listed on

[1098] UNHCR, "UNHCR Population Statistics - Persons of Concern Time Series" (last visited on 25 August 2014); the numbers for 2013 appear to be incomplete.

[1099] UNHCR, "UNHCR Population Statistics - Asylum Seekers Status Determination" (last visited on 22 September 2014).

[1100] Federal Office for Migration (FOM), "Asylum Application," October 8, 2012, https://www.bfm.admin.ch/bfm/en/home/asyl/asylverfahren/asylgesuch.html. In September 2012, Switzerland's Federal Assembly approved an amendment to the Asylum Act "abolishing the possibility of applying for asylum from abroad." Federal Office for Migration (FOM), "Asylum Applications from Abroad, at a Border Crossing and at the Airport," October 8, 2012, https://www.bfm.admin.ch/bfm/en/home/asyl/asylverfahren/asylgesuch/asylgesuch_aus_ausland.html.

[1101] Federal Office for Migration (FOM), "Swiss Asylum Procedure," August 27, 2014, https://www.bfm.admin.ch/bfm/en/home/asyl/asylverfahren.html.

the permit has expired. Asylum seekers are not permitted to take employment for the first three to six months of their stay in Switzerland.[1102]

3. Refugee Status Determination Process: The Legal Framework

Applications are considered under the provisions of Article 3 of Switzerland's Asylum Act. Article 3 embodies not only the well-founded fear of persecution criteria of Article 1A(2) of the Refugee Convention,[1103] but also "threat[s] to life, physical integrity or freedom as well as measures that exert intolerable psychological pressure,"[1104] similarly to the subsidiary protection criteria featured in the European Union's Qualification Directive. It should be noted, however, the Asylum Act does not establish any form of subsidiary protection; rather, it uses those parameters as grounds for granting refugee status.

In addition, Switzerland may also grant temporary protection to persons "exposed to a serious general danger, in particular during a war or civil war as well as in situations of general violence."[1105]

4. Refugee Status Determination: Article 1D

BADIL is not aware of any decisions in Switzerland which apply Article 1D. The below cases involving Palestinian applicants for asylum were decided based on whether the applicants demonstrated a well-founded fear of persecution.

An August 2011 case involved an applicant born to a Palestinian father and a Lebanese mother, who was born in Libya and had lived in Lebanon between 2001 and 2009.[1106] The applicant explained that Hamas and Osbat al-Ansar groups had pressured him to join, and the applicant had been attacked by them on multiple occasions. The applicant also claimed that his brother had disappeared in Lebanon in 2006. The applicant also explained that Palestinians were at a disadvantage for jobs. The Federal Office of Migration performed a "language test" on the applicant. The language test showed that the applicant was likely not Palestinian or Libyan, but Lebanese. The applicant had provided a Libyan birth certificate which stated his Palestinian origin and an UNRWA temporary family card. However, the BFM found that they were not highly probative given the probability that they were forged. The

[1102] Migraweb, "Residence Permits," accessed November 28, 2014, http://www.migraweb.ch/en/themen/asylrecht/aufenthalt/status/; Swiss Refugee Council (OSAR), "National Asylum Procedure in Switzerland," 2010, 7, http://www.dublin-project.eu/dublin/content/download/565/4523/version/3/file/Long_Brochure_Switzerland.pdf.

[1103] State of Switzerland, "Asylum Act (AsylA) of 26 June 1998 (Status as of 1 February 2014)," June 26, 1998, 142.31, http://www.admin.ch/ch/e/rs/1/142.31.en.pdf, Article 3(1).

[1104] Ibid., Article 3(2).

[1105] Ibid., Article 4.

[1106] Bundesverwaltungsgericht [Federal Administrative Tribunal of Switzerland], "Case D-4124/2010 [German]," August 19, 2011, http://www.bvger.ch/publiws/download?decisionId=eeb326b6-60a6-429b-be1d-5d0c21a39e3a.

BFM determined that the complainant did not meet the requirement of refugee status, rejected the application for asylum, and ordered removal.

The applicant appealed the decision of denial of asylum and refugee status. It was found that the applicant's mixed ethnicity was not contradicted by the linguistic analysis. However, they did find contradictory evidence related to the disappearance of the applicant's brother. According to Article 3 of the Asylum Act which follows the Article 1A(2) determination, it was emphasized that the applicant could easily escape harm by relocating outside of the area. It was also found that there was no reason to believe that the Lebanese authorities would not be able to protect the applicant. It was further observed that the hardships the applicant referred to were not reasonable, noting that he still had family living in Lebanon. Given these deficits in the applicant's asylum claim, BMF's rejection of the application was upheld. Furthermore, temporary admission (see section 5 below) was rejected on the grounds that return to Lebanon was reasonable.

A January 2012 decision involved a Palestinian from Lebanon.[1107] The applicant claimed that he had fled Lebanon after being suspected of committing espionage for Israel by Hezbollah. The applicant supplied an UNRWA identity card, which was determined to be valid. The Federal Office of Migration denied the applicant's asylum application, finding that he did not meet the requirements of refugee status and finding removal permissible, reasonable and possible.

In reviewing the appeal, the Federal Administrative Tribunal (FAT) examined the requirements for asylum status in Article 2, Paragraph 2 which follows the standards laid out in Article 1A(2) of the Refugee Convention. The FAT found the applicant's testimony not plausible. The FAT found evidence of communication between Hezbollah and the Committee of Safety at the refugee camp in Beirut demonstrated that the applicant may be tracked by Hezbollah if forced to return. However, the FAT finds that there was freedom of movement for Palestinians in Lebanon. It found that the applicant did not demonstrate "asylum-relevant" persecution or credibility. Additionally, it determined that removal was permissible, reasonable and possible.

A September 2010 decision involved an applicant who claimed he was a Palestinian from Lebanon.[1108] The BFM did not assess the applicant's argument for asylum because they did not accept the applicant's claim of Palestinian identity after a "language test." On appeal, the FAT upheld the BFM determination that the applicant's claims regarding his origin were not credible, basing their finding primarily on the language test. Furthermore, the Tribunal found the applicant removable after determining that: 1) the applicant would face no risk of inhumane treatment if forced to return 2) there was no civil war or generalized violence involving a whole population. The

[1107] Bundesverwaltungsgericht [Federal Administrative Tribunal of Switzerland], "Case E-2092/2009 [German]," January 20, 2012, http://www.bvger.ch/publiws/download?decisionId=1102e0c8-9911-4200-923c-8d197233d001.

[1108] Tribunale amministrativo federale [Federal Administrative Tribunal of Switzerland], "Case D-6490/2010 [Italian]," September 17, 2010, http://www.bvger.ch/publiws/download?decisionId=be4ef2c0-e276-4cd8-9bb3-3556b22078d7.

court also considered the applicant's two years of primary school and experience in construction and fishing, as well as the family that he had in Lebanon in finding that his personal circumstances did not prevent removal. Finally, the FAT found that with reasonable diligence the applicant could get the necessary travel documents.

A decision from March 2010 involved a Palestinian who, originally from Mongolia, stayed in Russia and China for extended periods of time before reaching Switzerland in 2010, where she applied for asylum for the first time on 13 January 2010.[1109] In support of her application, the applicant described that she lived with her father until she was six and her father disappeared, after which she stayed illegally with a foster family. Difficult living conditions forced her to travel to Russia in 2006, and then to Switzerland.

The BFM rejected the applicant's asylum claim and found that Mongolia and China were both deemed to be admissible for the applicant. On appeal, the Administrative Court found that return to Mongolia was lawful because the applicant did not fulfill the requirements of Article 3 of the Asylum Act, and furthermore that a forced return to Mongolia was lawful because the applicant did not prove that there was a substantial probability of facing inhumane treatment within the meaning of Article 25 §3 of the Federal Constitution. Nor did the BFM find that a return to Mongolia would be unreasonable due to civil war or generalized violence. There was no mention of Article 1D in this opinion.

A February 2010 decision involved an applicant who claimed he was a Palestinian from Syria who had originally left Gaza because of the war, to later leave Syria because conditions for Palestinians were very poor.[1110] The applicant did not claim any participation in any political or religious groups. The BFM refused refugee status, finding that the applicant was of Syrian origin.

The Federal Administrative Tribunal upheld the BFM determination, finding that the applicant was not credible and could not meet the requirements of Article 3 of the Asylum Act (which mirrors the Article 1A(2) criteria). Furthermore, the FAT found that the circumstances in Syria did not justify granting temporary admission, as the applicant failed to prove a risk of human rights violation and there was not a civil war or generalized violence in the area.

A September 2009 decision involved a Palestinian who left Gaza with his wife and four children in 2000.[1111] The applicant explained that in 1980 he became a member of the Palestinian Liberation Organization (PLO), and was trained in

[1109] Tribunale amministrativo federale [Federal Administrative Tribunal of Switzerland], "Case D-1251/2010 [Italian]," March 10, 2010, http://www.bvger.ch/publiws/download?decisionId=7f728234-4639-48ea-8965-bd4f24cc384e.

[1110] Bundesverwaltungsgericht [Federal Administrative Tribunal of Switzerland], "Case E-986/2010 [German]," February 24, 2010, http://www.bvger.ch/publiws/download?decisionId=59869d07-00e3-4c77-a067-392229f94f55.

[1111] Bundesverwaltungsgericht [Federal Administrative Tribunal of Switzerland], "Case D-5897/2008 [German]," September 3, 2009, http://www.bvger.ch/publiws/download?decisionId=ed47b920-8fa7-4bd1-ae79-ff94288f6728.

the military unit of the PLO. He was sent to be educated at the military academy and completed his studies as an engineer. In May 1995 he and his family arrived in Switzerland and applied for asylum. The applications of his wife and children were refused. The applicant left the country with his wife and children a few weeks later. Once back in Gaza the applicant was continually summoned by the PLO, and later Hamas began to approach him, seeking to recruit him. In early 2000, after the applicant refused to cooperate with them, Hamas threatened his family with death. The applicant decided to flee with his family. The applicant claimed that if he were to return to Gaza he would be sentenced to death because his fleeing Gaza would be seen as treason. In November 2002, the BFM denied the families' asylum applications and ordered their removal. The BFM mainly based its decision on the failure of the applicant to show that the alleged persecution met the requirements of refugee status, and finding the threat of the death sentence not credible.

The Federal Administrative Tribunal, in reviewing the appeal, explained the need to have a credible case for refugee status, and rejected the asylum claim on the basis of a lack of persecution in line with Article 3 of the Asylum Act. However, the FAT concluded there was not a sufficient inquiry into the conditions in Gaza to warrant a decision on temporary admission.

5. Refugee Status Determination Process: Outcome

Persons granted refugee status receive "B" residence permits. They have the right to refugee passports and family reunion with eligible family members. After five years, refugees are eligible to apply for "C" permits (permanent residence).[1112]

Other persons whose deportation would be unlawful, impossible or unreasonable may be granted 'temporary admission' in Switzerland and provided with "F" permits. The "F" permit is valid for one year and may be renewed if the relevant conditions persist; however, such permits may be withdrawn if conditions change. After five years, beneficiaries of F permits may apply for "B" permits, but the granting of a "B" permit in such cases is discretionary, with the decision being made by the canton of residence. "F" permit holders are not eligible for family reunion for three years after admission, and certain conditions apply.[1113]

Applicants have a right to appeal to the Federal Administrative Tribunal. Any appeal must be made within thirty days from the date of notification of a negative decision. Appeals against the dismissal of a case must be made within five working days.[1114]

[1112] Migraweb, "Residence Permits;" Swiss Refugee Council (OSAR), "National Asylum Procedure in Switzerland," 8.

[1113] Migraweb, "Residence Permits;" Swiss Refugee Council (OSAR), "National Asylum Procedure in Switzerland," 8.

[1114] Federal Office for Migration (FOM), "Asylum Decision," August 31, 2014, https://www.bfm.admin.ch/bfm/en/home/asyl/asylverfahren/asylentscheid.html.

Asylum applicants whose cases are finally rejected are required to leave Switzerland within a specified time period.[1115] If they are willing to leave voluntarily, they will be given assistance to do so. If not willing to leave voluntarily, persons who are in Switzerland in violation of law may be forced to leave. The canton in which they live is normally responsible for ensuring departure, and when necessary the Federal Office for Migration facilitates forced departure arrangements at the request of the cantonal authorities.[1116]

In considering whether the applicant can be removed from Switzerland, the BFM examines whether the removal is in accordance with Switzerland's international obligation; whether it is reasonable to remove the applicant to the country of origin, considering the general conditions there; and finally whether it is possible for the person to travel to the country of origin. If the applicant cannot be removed, he or she will be granted subsidiary protection.[1117]

In some cases, the authorities will "dismiss an application without entering into the substance of the case" (DAWES). Such decisions are made, for example, if the applicant fails to produce the identity document they used to travel to Switzerland without providing a "convincing" explanation; if the applicant is a national of a "safe country;" if the applicant fails to cooperate with the authorities; or in cases of duplicate asylum applications in which no new facts arise.[1118]

6. Protection under the Statelessness Conventions

Switzerland is a party to the 1954 Convention but has not signed the 1961 Convention.[1119]

Article 31 of the Foreign Nationals Act states:

(1) Anyone recognised as stateless by Switzerland has the right to a residence permit in the canton in which they are lawfully residing.

(2) If the stateless person satisfies the criteria in Article 83 paragraph 7, the provisions on temporarily admitted persons of Article 83 paragraph 8 apply.

(3) Stateless persons with the right to a residence permit, who have lawfully resided in Switzerland for a minimum of five years, are entitled to a permanent residence permit.[1120]

[1115] Federal Office for Migration (FOM), "Return," November 14, 2011, https://www.bfm.admin.ch/bfm/en/home/rueckkehr/rueckkehr.html.

[1116] Federal Office for Migration (FOM), "Forced Return," May 8, 2007, https://www.bfm.admin.ch/bfm/en/home/rueckkehr/rueckkehr/zwangsweise_rueckkehr.html.

[1117] Federal Office for Migration (FOM), "Asylum Decision."

[1118] Ibid.

[1119] UNTC, "Status of Treaties: Convention Relating to the Status of Stateless Persons;" UNTC, "Status of Treaties: Convention on the Reduction of Statelessness."

[1120] State of Switzerland, "Federal Act of 16 December 2005 on Foreign Nationals (FNA)," December 16, 2005, CC 142.20, http://www.admin.ch/opc/en/classified-compilation/20020232/index.html, Article 31.

Applications for recognition as a stateless person should be made to the Federal Office for Migration and are made separately from asylum applications. If approved, applicants receive a B permit for their canton of residence.[1121]

Stateless children under age 18 who are lawfully resident in Switzerland for at least five years may apply for Swiss citizenship, provided they meet other conditions, such as being integrated in the country, demonstrating respect for Swiss law, and not posing a security threat.[1122]

7. Links

- Federal Office for Migration: https://www.bfm.admin.ch/bfm/en/home.html
- Swiss Refugee Council: http://www.fluechtlingshilfe.ch/help/help?set_language=en
- International Committee of the Red Cross: https://www.icrc.org/eng/resources/documents/article/other/57jrek.htm

[1121] Swiss Refugee Council (OSAR), "National Asylum Procedure in Switzerland," 2.

[1122] EUDO Observatory on Citizenship, "Protection against Statelessness Data - Switzerland: Modes of Protection against Statelessness," accessed December 1, 2014, http://eudo-citizenship.eu/databases/protection-against-statelessness?p=&application=modesProtectionStatelessness&search=1&modeby=country&country=Switzerland.

THE UNITED KINGDOM[1123]

1. Statistical Data

UNHCR data show the number of Palestinian refugees and asylum seekers in the UK increasing steadily in recent years.

Palestinian Refugees and Asylum seekers in the UK[1124]

	2009	2010	2011	2012	2013
Refugees	141	194	242	282	322
Asylum seekers	--	--	--	173	161

The Home Office publishes statistics regarding the outcome of Palestinian claims for international protection in the UK (see below), which differ significantly from UNHCR data. Notably, according to these data, the number of applications by Palestinian asylum seekers declined in 2013, but the overall rate of approval on initial asylum decisions on Palestinian asylum claims increased markedly. For example, in 2012, of 99 decisions, there were 22 grants of protection – an approval rate of 22%; whereas in 2013, there were 105 decisions, of which 51 were grants of protection – an approval rate of 49%.

Grants and Refusals of Palestinian Asylum Claims in the UK[1125]

Year	Applications	Initial Decisions	Grants of International Protection (any kind, including asylum)	Grants of Asylum	Refusals	Withdrawals	Pending
2009	256	215	20	5	195	71	No data
2010	180	200	30	11	170	53	129
2011	213	154	27	13	127	60	129
2012	156	99	22	19	77	34	133
2013	120	105	51	46	54	23	114

[1123] Sarah-Jane Savage, Senior Protection Associate, and Mohbuba Choudhury, Senior Protection Associate, at UNHCR, London and Cynthia Orchard, lawyer and Consultant with BADIL, reviewed and contributed to this section.

[1124] UNHCR, "UNHCR Population Statistics - Persons of Concern Time Series" (last visited on 21 August 2014).

[1125] Home Office, "Immigration Statistics, January to March 2014," May 22, 2014, Immigration Statistics, January to March 2014; Table 1, Table 1; Cynthia Orchard and Andrew Miller, *Protection in Europe for Refugees from Syria*, Forced Migration Policy Briefing 10 (Refugee Studies Centre, September 2014), 70, http://www.rsc.ox.ac.uk/files/publications/policy-briefing-series/pb10-protection-europe-refugees-syria-2014.pdf, Table 6.

2. Refugee Status Determination: The Process

Like other asylum seekers, Palestinians can claim asylum at UK ports, airports, or at UK Visas and Immigration ("UKVI")[1126] (in London), the section of the Home Office that decides asylum applications. In exceptional cases, it may be possible to submit an application at a local UKVI office outside London or by post. All applications must be submitted on UK territory. Asylum applications should be submitted on arrival in the UK, or as soon after as possible, in order to be eligible for support while waiting for a decision and in order to avoid having adverse conclusions drawn regarding the claim. Once an asylum application has been submitted, an applicant has the right to remain in the UK until a final decision is made, in most cases including while awaiting the outcome of timely submitted appeals. Applicants for asylum do not normally have permission to work in the UK while a case is pending, but can apply for permission to work if their case is pending for more than a year and they have not caused the delay. The UK is bound to comply with the Dublin Regulation.[1127]

The applicant's partner and/or children under 18 years of age may claim asylum as dependents; or an adult partner can claim asylum independently.[1128] Unaccompanied children can also apply for asylum.[1129]

The official term for registering an asylum application is 'screening.' Each applicant is required to provide original identification documents to the authorities at the asylum screening, if they have any. The authorities will request that the applicant submit the following documents, if possible: passport and travel documents, police registration certificates, identification documents, proof of address and any other documents that may help the application. At the screening, the authorities will take photographs and fingerprints of the applicant and interview the applicant briefly to identify the applicant and his or her country of origin. During this initial screening, the authorities do not require the applicant to state his or her full case for asylum, but will require a more detailed explanation during the principal asylum interview.[1130] The applicant will be issued with an application registration card ("ARC") or a standard acknowledgement letter ("SAL").[1131]

[1126] Created in 2013; previously part of the now-defunct UK Border Agency ("UKBA").

[1127] See generally UK Visas and Immigration (UKVI), "Visas and Immigration Operational Guidance: Asylum Policy," accessed December 2, 2014, https://www.gov.uk/immigration-operational-guidance/asylum-policy; UK Visas and Immigration (UKVI), "Claim Asylum in the UK," accessed December 2, 2014, https://www.gov.uk/claim-asylum. See also Asylum Aid, "The Asylum Process Made Simple," accessed December 2, 2014, http://www.asylumaid.org.uk/the-asylum-process-made-simple; Refugee Council, *Applying for Asylum*, March 2012, http://www.refugeecouncil.org.uk/assets/0002/0701/Applying_for_asylum_March_2012_English.pdf.

[1128] UK Visas and Immigration (UKVI), "Claim Asylum in the UK," Section 2, "Eligibility."

[1129] UK Visas and Immigration (UKVI), "Processing an Asylum Application from a Child: Instruction," April 16, 2013, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257469/processingasylumapplication1.pdf.

[1130] UK Visas and Immigration (UKVI), "Claim Asylum in the UK," Section 4, "Screening."

[1131] UK Visas and Immigration (UKVI), "Application Registration Card (ARC) and Standard Acknowledgement Letter (SAL)," July 2006, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257376/applicationregistrationcard.pdf.

At some point after the screening, a caseworker will conduct an asylum interview and make a decision on the application. It may not be the same caseworker who conducts the interview and makes the decision. A written statement explaining the reasons for seeking asylum can be submitted prior to the interview. Normally, an asylum applicant will be interviewed alone (with an interpreter, if necessary) or in the presence of a legal representative or qualified adviser. In exceptional circumstances, a friend or companion may be permitted to be present. During the interview, the applicant has the opportunity to explain his or her reasons for seeking asylum in the UK. Applicants should be prepared to provide any relevant evidence or documents not provided at the screening to support their claims, and original documents, including passports or other identity documents may be retained by the interviewer. Applicants are also given the opportunity to submit further evidence relevant to their claim within a reasonable period of time after the interview.[1132]

Some asylum seekers are required to report regularly to UKVI, some are subject to electronic tagging, and some are detained. Some cases (officially, those which can be "decided quickly") are "fast-tracked," which means the applicant is detained, and the case is subject to an accelerated procedure in which the decision is produced within 7 to 14 days.[1133]

3. Refugee Status Determination Process: The Legal Framework

The Refugee or Person in Need of International Protection (Qualification) Regulations 2006,[1134] adopt the Refugee Convention definition of a refugee – a refugee is a person who:

> […] 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 [...], is unable, or owing to such fear, is unwilling to return to it.[1135]

[1132] Home Office, "Asylum Policy Instructions: Asylum Interviews, Version 5.0," March 31, 2014, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/298853/Asylum_interview_policy_guidance_v_5.pdf.

[1133] UK Visas and Immigration, "Detained Fast Track Processes: Timetable Flexibility: Instruction," November 11, 2012, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257439/Detained_fast_track_flexi.pdf, Section 2.1, "Key Principles."

[1134] United Kingdom of Great Britain and Northern Ireland, "The Refugee or Person in Need of International Protection (Qualification) Regulations 2006," September 18, 2006, para. 2, Statutory Instrument 2006 No. 2525, http://www.legislation.gov.uk/uksi/2006/2525/pdfs/uksi_20062525_en.pdf; UK Visas and Immigration (UKVI), "Immigration Rules - Part 11: Asylum (last Updated on 28 July 2014)," February 13, 2014, para. 334.

[1135] UK Visas and Immigration (UKVI), "Considering Asylum Claims and Assessing Credibility: Instruction," July 30, 2012, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257426/considering-protection-.pdf, Section 5.1.

The 2006 Regulations also incorporate Article 1D (as well as 1E and 1F) at Para. 7, stating that: "(1) A person is not a refugee, if he falls within the scope of Article 1 D, 1E or 1F of the Geneva Convention."[1136] This seems to ignore the inclusion provision of the second paragraph of Article 1D, but government guidance notes (discussed in Section 4 below) do make provision for inclusion under Article 1D.

4. Refugee Status Determination: Article 1D

A number of cases and government guidance interpret Article 1D and its application in the UK. The 2002 *El-Ali* case, which was authoritative in the UK for several years, interpreted the phrase "at present" in Article 1D (which provides that the Refugee Convention shall not apply to persons who are *at present* receiving protection or assistance from a UN body other than UNHCR) as meaning only the date on which the Refugee Convention was signed: July 28, 1951.[1137] As a result, only Palestinians who had been in receipt of UNRWA's assistance before that date risked exclusion from the Refugee Convention or were eligible for special treatment under Article 1D.[1138]

Ibrahim Said v. The Secretary of State for the Home Department (Oct. 26, 2012)[1139]

The October 2012 case of *Said* in the UK Upper Tribunal (Immigration and Asylum Chamber) was decided after *Bolbol* but before the *El Kott* decision. The Tribunal recognized that under *Bolbol*, for an individual who has left an UNRWA area and travelled to Europe, UNRWA assistance may have ceased and the individual may be *ipso facto* entitled to the benefits of the Refugee Convention.

Said states clearly that *Bolbol's* ruling on Article 1D's equivalent in the Qualification Directive not only construes the meaning of the Directive, but also the meaning of 1D, and that the CJEU interpretation is binding on *all* national courts in the EU member states.[1140]

Additionally, *Said* found that *Bolbol* clearly overruled *El-Ali*, and that the *El-Ali* interpretation of Article 1D as having a temporal limitation (i.e., applying only to persons who benefitted from UNRWA assistance in 1951) was no longer valid.[1141] This

[1136] United Kingdom of Great Britain and Northern Ireland, "The Refugee or Person in Need of International Protection (Qualification) Regulations 2006," para. 7.

[1137] Court of Appeal of the United Kingdom (Civil Division), "Amer Mohammed El-Ali v. The Secretary of State for the Home Department and Daraz v. The Secretary of State for the Home Department," July 26, 2002, para. 58, 2 December 2014, http://www.refworld.org/docid/3f278a3a4.html; Lucy Gregg, Chris Nash, and Nick Oakeshott, *Mapping Statelessness in the United Kingdom.pdf* (London: UNHCR and Asylum Aid, November 2011), 120, http://www.refworld.org/pdfid/4ecb6a192.pdf, Section 5.9.1.

[1138] The court did not accept the view put forward by UNHCR in its Note on the applicability of Article 1D of the 1951 Convention, of 2002.

[1139] Upper Tribunal (Immigration and Asylum Chamber) [United Kingdom], "Said (Article 1D: Interpretation) v. the Secretary of State for the Home Department," October 26, 2012, [2012] UKUT 00413 (IAC), http://www.refworld.org/docid/50a5fbf52.html.

[1140] Ibid., para. 19.

[1141] Ibid., para. 23.

finding was qualified, however, by a statement that the appellant was not necessarily a refugee; rather, in accordance with Article 1D, the appellant deserved the benefits of the Convention, including protection from removal.[1142] A further appeal on the *Said* decision is pending, with a decision expected in late 2014.[1143]

UKVI, Operational Guidance Note: Occupied Palestinian Territories (OGN v. 4, Mar. 19, 2013)[1144]

The *Operational Guidance Note: Occupied Palestinian Territories* of March 2013 sets out the Government's approach to Article 1D. At 2.2.20, the Guidance notes clearly that in the 2010 *Bolbol* case, the CJEU "disapproved" the 2002 *El-Ali* decision. The Guidance then discusses at 2.2.21 the CJEU's 2012 *El Kott* decision, noting the *El Kott* finding that:

> […] cessation of UNRWA protection or assistance 'for any reason' should not only refer to the cessation of UNRWA itself but should include the situation in which a person ceased to receive assistance for a reason beyond his control and independent of his volition.

The Guidance also notes at 2.2.22 that, in accordance with *El Kott*:

> […] where the condition relating to the cessation of the protection or assistance provided by UNRWA was satisfied, the applicant must be recognised as a refugee within the meaning of Article 2(c) of the Directive ('ipso facto entitled to the benefits'), provided always that he was not excluded by virtue of Article 12(1) (b) or (2) and (3) of the Directive (equivalent to Articles 1E and 1F of the Convention).

At 2.2.24, the Guidance confirms that the *El Kott* decision is binding on UK courts. The Guidance also notes at 2.2.24 that "individuals *previously assisted by UNRWA* must show that the assistance or protection is no longer being received [emphasis added]" and that applications by persons who had *not* "already been receiving assistance from the UN […] will continue to be dealt with in the same way as asylum claims from individuals from other countries." This suggests, also in accordance with *El Kott*, that actual receipt of assistance is a requirement for eligibility for refugee status under Article 1D.

The Guidance further observes that claims by Palestinians for Humanitarian Protection are not affected by Article 1D or the EU Qualification Directive and will continue to be dealt with "on their individual merits," as for all other applicants.

[1142] Ibid., 30. The Tribunal stated:

> We shall therefore re-make the decision and allow the appeal, which accordingly succeeds on Refugee Convention grounds. That is not to say precisely that the appellant is a refugee: he is entitled to the benefits of the Refugee Convention, including those prohibiting his removal.

[1143] Cynthia Orchard and Andrew Miller, *Protection in Europe for Refugees from Syria*, 72.

[1144] UK Visas and Immigration (UKVI), "Operational Guidance Note: Occupational Palestinian Territories," March 19, 2013, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/310443/Occu_pales_terri_operational_guidance_2013.pdf.

***UNRWA Assisted Palestinians: Article 1D of the Refugee Convention: Policy (November 2013)*[1145]**

This guidance, although published in November 2013, applies the *El-Ali* interpretation of 'at present' and thus clearly conflicts with the Operational Guidance Note of March 2013 and *Said*. This guidance thus should be, but hasn't been, amended.[1146] The Home Office is aware of the need to revise the November 2013 guidance on UNRWA Assisted Palestinians to comply with the *Bolbol* and *El Kott* decisions (as well as the March 2013 OGN and *Said*).[1147]

H E-H v. The Secretary of State for the Home Department (Jan. 17, 2014)[1148]

Notwithstanding the *Said* decision, *El Kott* and the 2013 Operational Guidance Note, the more recent *H E-H* decision of the Upper Tribunal relies on traditional Article 1A analysis in granting refugee status to a Palestinian asylum seeker from Egypt.[1149]

In this case, the appellant was a "stateless person of Palestinian origins" who was born in Egypt and had lived his entire life there. In June 2012, he came to the United Kingdom on a visitor visa valid until November 2012. After overstaying his visa, the appellant claimed asylum "on the basis that he would face a real risk of persecution if returned to Egypt."[1150] The appellant claimed that, because he had remained outside of Egypt for six months, the Egyptian government had canceled his Egyptian residency permit. As a result, the appellant could only return to Egypt after acquiring a re-entry visa. First, the appellant claimed that he would be unable to obtain the re-entry visa. Alternatively, if the appellant could obtain a re-entry visa, it would be unlikely that the Egyptian government would renew his residency. After 60 days, the appellant would become a "stateless illegal Palestinian" in Egypt subject to detention "in circumstances amounting to persecution or serious ill-treatment."[1151]

[1145] UK Visas and Immigration (UKVI), "UNRWA Assisted Palestinians - Claims for Asylum from UNRWA Assisted Palestinians: Article 1D of the Refugee Convention," November 15, 2013, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257401/unrwa.pdf.

[1146] UKVI's guidance "Considering Asylum Claims and Assessing Credibility: Instruction" should also be revised. It states at Section 5.4 that: "[…] issues of statelessness and whether or not an individual is returnable should not affect the decision whether to grant asylum, as they are not relevant factors in the refugee determination process" (UK Visas and Immigration (UKVI), "Considering Asylum Claims and Assessing Credibility: Instruction," Section 5.4). However, for Palestinians who are eligible for inclusion under Article 1D, 'issues of statelessness' and returnability are entirely relevant to refugee status determination.

[1147] Information provided by Mohbuba Choudhury, based on discussions with the Home Office.

[1148] Upper Tribunal (Immigration and Asylum Chamber) [United Kingdom], "H E-H v. The Secretary of State for the Home Department," January 17, 2014, http://www.bailii.org/uk/cases/UKAITUR/2014/AA040182013.html.

[1149] "The appellant is a refugee as he is outside his country because of a well-founded fear of persecution for a Convention reason." Ibid., para. 51.

[1150] Ibid., para. 2.

[1151] Ibid., para. 11.

In support of his claims, the appellant submitted reports on Egypt's treatment of Palestinians. On the basis of these reports, the Tribunal found "a real risk that [the appellant would] be detained at the airport on return." The Tribunal further found that the appellant likely would "thereafter, be detained in an Egyptian prison and that conditions will be such as to breach Art 3 of the ECHR […] [and would be] on account of his Palestinian origin."[1152] The Tribunal therefore granted the appellant refugee status, concluding that, "if returned, he would be at risk of persecution for a Convention reason and treatment contrary to Art 3 of the ECHR."[1153]

5. Refugee Status Determination Process: Outcome

The UK government publishes detailed information about its asylum determination procedures.[1154] Typically, decisions are issued within about six months of the asylum interview.[1155] There are four possible outcomes: (1) Permission to stay as a refugee; (2) Permission to stay for humanitarian reasons; (3) Permission to stay for other reasons; and (4) No permission to stay.[1156]

Permission to stay as a refugee

A refugee determination grants the applicant and his or her dependents a 5-year stay in the UK.[1157] The legal term for this type of residence permit is "leave to remain."[1158] While a claim is pending, asylum seekers may apply for assistance provided through the National Asylum Support Service of the Home Office. Once granted refugee status, the Home Office (NASS) support ends within 28 days. Refugees are then able to access NHS healthcare and mainstream support through the Department of Work and Pensions, Local Authorities, and other relevant agencies.[1159]

Permission to stay for humanitarian reasons

If an applicant does not meet the asylum criteria, he or she may still receive permission to remain in the UK for humanitarian reasons.[1160] If the applicant qualifies, he or she receives a 5-year residence permit ("leave to enter" or "leave to remain").[1161]

[1152] Ibid., para. 37.

[1153] Ibid., para. 53.

[1154] See UK Visas and Immigration (UKVI), "Asylum Decision Making Guidance (asylum Instructions) [last Updated on 1 October 2014]," accessed December 2, 2014, https://www.gov.uk/government/collections/asylum-decision-making-guidance-asylum-instructions.

[1155] UK Visas and Immigration (UKVI), "Claim Asylum in the UK," Section 7, "Decision."

[1156] Ibid.

[1157] Ibid.

[1158] Ibid.

[1159] Refugee Council, "Move On Advice - Advice for People Recently Granted Refugee Status," accessed December 2, 2014, http://www.refugeecouncil.org.uk/move_on_advice.

[1160] UK Visas and Immigration (UKVI), "Claim Asylum in the UK," Section 7, "Decision."

[1161] Ibid.

Persons granted either refugee status or humanitarian protection may apply for permanent settlement in the UK after 5 years.[1162]

Permission to stay for other reasons

Depending on the circumstances, an applicant may receive a shorter stay in the UK despite not qualifying for asylum or a stay for humanitarian reasons.[1163] This type of leave is referred to as Discretionary Leave and is granted outside the UK's Immigration Rules.[1164] The duration of the stay depends on the circumstances of the individual case, but should normally be for 30 months or longer and is renewable if the applicant "continues to meet the relevant criteria."[1165]

No permission to stay

A negative decision may result in a removal order. There are various types of negative "immigration decisions;" if making a refusal to grant any type of leave, decision makers must "determine the immigration status of an applicant as this will affect which immigration decision they will need to make."[1166] Regardless what type of immigration decision is made, the person refused outright becomes liable to "administrative removal"[1167] and is notified of this via the service of form number IS151A. This 'notice' of liability to administrative removal is not appealable.[1168] However, the applicant may appeal the underlying negative decision and may have the right to remain in the UK while the appeal is pending; but if the case is "certified as 'clearly unfounded'," there is no right to remain in the UK while the appeal is pending.[1169] An applicant with a negative asylum decision may apply for exceptional short-term support regarding their accommodation if s/he fulfills the criteria.[1170]

[1162] UK Visas and Immigration (UKVI), "Humanitarian Protection," May 15, 2013, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257431/huma-prot.pdf, Section 2, "Key Point."

[1163] UK Visas and Immigration (UKVI), "Claim Asylum in the UK," Section 7, "Decision."

[1164] UK Visas and Immigration (UKVI), "Discretionary Leave," May 19, 2014, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/312346/discretionaryleave.pdf, Section 1.1, "Key Point."

[1165] Ibid., Section 4, "Duration of grants of Discretionary Leave."

[1166] UK Visas and Immigration (UKVI), "Implementing Substantive Decisions: Instruction," November 15, 2013, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257442/implementingsubstantivedecs.pdf, Section 3.5, "Outright Refusal."

[1167] See UK Visas and Immigration, "Immigration Rules - Part 13: Deportation (last Updated on 6 November 2014)," February 13, 2014, para. 395A–395F, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/370961/20141106_immigration_rules_part_13_final.pdf.

[1168] UK Visas and Immigration (UKVI), "Chapter 51: Administrative Removal Procedures (last Updated on 6 November 2014)," December 11, 2013, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/371074/Chapter_51_v14_November_2014.pdf, Section 51.2.

[1169] UK Visas and Immigration (UKVI), "Non Suspensive Appeals (NSA) Certification under Section 94 of the NIA Act 2002," May 24, 2013, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257463/certificationundersection94.pdf, Section 2, "Introduction Section 94."

[1170] UK Visas and Immigration (UKVI), "Section 4 Support: Instruction (last Updated on 15 July 2014)," April 12, 2013, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/330528/Section_4_SupportEXTERNAL_-_v29.pdf, Section 2.1.

Appeals

In the event of a negative decision, an applicant may be able to: (1) appeal the decision to the immigration and asylum tribunal; or (2) request a review of the decision (known as a "reconsideration request" or "administrative review").[1171]

If the applicant appeals to the Immigration and Asylum Tribunal, he or she may appeal a subsequent negative decision to the Upper Tribunal (Immigration and Asylum Chamber). There may also be the possibility of a further appeal if there is an error of law in the Upper Tribunal's decision. Applicants may request a hearing before the Immigration and Asylum Tribunal. For an applicant who fails to request a hearing, the judge will decide the appeal on the documents submitted. The applicant should be notified of the Tribunal's decision within ten business days from the hearing. The Tribunal is not required to accept all appeals, and it may dismiss an appeal without a hearing after reviewing the initial decision.[1172]

Return/Deportation

In most cases, until an applicant receives a final negative decision, the authorities will not remove him or her (or his or her dependents) from the United Kingdom.[1173] If a final decision is negative, the asylum seeker is responsible for leaving the UK.[1174] If the decision is "certified as 'clearly unfounded'," there is no in-country right of appeal and the person can be removed and submit his or her appeal from abroad.[1175] If an applicant who is liable to removal does not leave voluntarily, he or she may be detained pending removal and removed from the UK.[1176]

6. Protection under the Statelessness Conventions

The United Kingdom is a party to both the 1954 Convention Relating to the Status of Stateless Persons[1177] and the 1961 Convention on the Reduction of Statelessness.[1178] A change to the Immigration Rules (Part 14) on Apr. 6, 2013 brought into existence

[1171] UK Visas and Immigration (UKVI), "Appeal against a Visa or Immigration Decision," accessed December 2, 2014, https://www.gov.uk/immigration-asylum-tribunal/overview.

[1172] Ibid., Section 7, "If you lose your case."

[1173] UK Visas and Immigration (UKVI), "Asylum Applicants' Rights and Responsibilities," February 21, 2014, https://www.gov.uk/government/publications/asylum-applicants-rights-and-responsibilities/asylum-applicants-rights-and-responsibilities.

[1174] Ibid.

[1175] UK Visas and Immigration (UKVI), "Non Suspensive Appeals (NSA) Certification under Section 94 of the NIA Act 2002," Section 2, "Introduction Section 94."

[1176] UK Visas and Immigration (UKVI), "Claim Asylum in the UK," Section 7, "Decision;" see also UK Visas and Immigration (UKVI), "Chapter 55: Detention and Temporary Release (last Updated on 6 November 2014)," December 11, 2013, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307995/Chapter55.pdf; UK Visas and Immigration (UKVI), "Chapters 46 to 62: Detention and Removals (last Updated on 6 November 2014)," December 11, 2013, https://www.gov.uk/government/publications/chapters-46-to-62-detention-and-removals.

[1177] UNTC, "Status of Treaties: Convention Relating to the Status of Stateless Persons."

[1178] UNTC, "Status of Treaties: Convention on the Reduction of Statelessness."

a formal procedure for applying to be recognized as stateless in the UK.[1179] To be eligible for status in the UK as a stateless person, the individual must be: (1) physically present in the UK; and (2) "unable to return to another country as a result of being stateless."[1180] The individual must also demonstrate that s/he is "not considered as a national by any State under the operation of its law."[1181]

If an application to remain in the UK as a stateless person is approved, the applicant will normally be granted two-and-a half years "leave to remain" in the UK, which may be renewable. Stateless persons who fear persecution in their country of former residence (i.e., they seek international protection not only because they are stateless) are instructed to claim asylum before making an application as a stateless person; an application as a stateless person can then be made if an asylum claim is refused.[1182]

Those making an application through the statelessness determination procedure must submit a completed FLR(S) form which requires information on the reasons for statelessness, family history, travel history, and previous places of residence, as well as any documentation supporting the application.[1183] The form must be returned to the Status Review Unit in Liverpool. There is no legal aid available for applications made under the statelessness determination procedure. The applicant will be assigned a caseworker who will conduct the statelessness interview (in Liverpool) and then make a decision on the application.[1184]

The 2013 *Operational Guidance Note: Occupied Palestinian Territories*[1185] discusses claims based on statelessness at 3.15. However, some of this guidance is out-of-date, as it was written prior to the change in the Immigration Rules in April 2013.

The Home Office issued guidance in May 2013 on how it will treat applications based on statelessness.[1186] This Guidance refers in section 4.1 to the *Operational Guidance Note: Occupied Palestinian Territories*, stating:

[1179] UK Visas and Immigration, "Immigration Rules - Part 14: Stateless Persons," February 13, 2014, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/279697/Immigration_Rules_-_Part_14.pdf; Chris Nash, "Stateless in the UK: Amid the Chaos, a Groundbreaking Step Forward," *openDemocracy*, April 8, 2013, https://www.opendemocracy.net/5050/chris-nash/stateless-in-uk-amid-chaos-groundbreaking-step-forward.

[1180] UK Visas and Immigration (UKVI), "Apply to Stay in the UK as a Stateless Person," December 1, 2014, https://www.gov.uk/stay-in-uk-stateless.

[1181] UK Visas and Immigration (UKVI), "Applications for Leave to Remain as a Stateless Person," May 1, 2013, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/258252/stateless-guide.pdf, Sections 3.1 and 3.2.

[1182] UK Visas and Immigration (UKVI), "Apply to Stay in the UK as a Stateless Person."

[1183] UK Visas and Immigration (UKVI), "Application for Leave to Remain as a Stateless Person (FLR(S) Form) Version 03/2013," January 1, 2013, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257086/formflrs.pdf.

[1184] Information provided by Mohbuba Choudhury.

[1185] UK Visas and Immigration (UKVI), "Operational Guidance Note: Occupational Palestinian Territories."

[1186] UK Visas and Immigration (UKVI), "Applications for Leave to Remain as a Stateless Person."

> [p]ending fuller guidance on the operation of Article 1D of the Refugee Convention and the case law which underpins that guidance, a summary is available in Paragraphs 2.2.14 to 2.2.25 of the published Operational Guidance Note on asylum applications by persons from the Occupied Palestinian Territories.[1187]

The May 2013 Guidance notes that if a person is granted status in the UK under the statelessness provisions, his or her family members should be granted the same type of leave to remain in the UK.[1188] Persons granted leave under the statelessness provisions are also entitled to travel documents.[1189]

The May 2013 Guidance notes at 4.1 that the Immigration Rule governing Statelessness (Rule 402 (a)) "mirrors the provision of Article 1(2)(i) of the 1954 Stateless Convention" (which mirrors, in part, Article 1D of the Refugee Convention) stating that stateless persons are excluded from being granted residence in the UK if they 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.[1190]

The May 2013 Guidance further notes at 4.1 that:

> In practice [this] means that stateless Palestinians do not come within the scope of the 1954 Stateless Convention if they are already given the protection and assistance of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). However, they may come within the scope of the Stateless Convention if they have not received that assistance, or have ceased to receive assistance for reasons beyond their control and independent of their volition.[1191]

Further exclusion grounds are noted at 4.2-4.3 and 5.1-5.2, relating to persons who have rights in another country which are similar to rights of citizens and persons who are reasonably believed to pose security risks or to have committed certain crimes.[1192]

The Guidance of May 2013 states at 2.1 that "[t]here is no right of appeal against the refusal to grant leave as a stateless person in addition to those [rights of appeal] which may already be available."[1193] Although the UKVI website states that applicants *may* be able to appeal if they are not granted status as a Stateless person,[1194]

[1187] Ibid., Section 4.1.
[1188] Ibid., Section 6.2.
[1189] Ibid., Section 7.
[1190] Ibid., Section 4.1.
[1191] Ibid.
[1192] Ibid., Sections 4.2, 4.3, 5.1 and 5.2.
[1193] Ibid., Sections 2.1.
[1194] UK Visas and Immigration (UKVI), "Apply to Stay in the UK as a Stateless Person."

the Guidance of May 2013 clarifies this at 6.1, stating that:

> Refusal of leave under this route does not generate a free-standing right of appeal. However, in some cases, a refusal decision may generate an appeal right under the Nationality, Immigration and Asylum Act 2002. For example:
>
> i) If an applicant has leave to enter or remain at the time that he made his statelessness application, but this has expired by the time that the decision to refuse leave is made;
>
> ii) If the applicant is served with a decision to remove at the same time as his application for leave is refused.

In these circumstances, appropriate appeal papers should be issued with the decision to refuse leave.[1195]

The UK Supreme Court held in the 2013 *Al-Jedda* case that the government cannot withdraw a person's citizenship if that would make the person stateless, even if the person had the possibility of obtaining another nationality.[1196] However, the British Nationality Act (BNA) was amended in 2014 to allow the Home Secretary to withdraw the British nationality of a naturalized citizen, "where this is in the public good because of conduct seriously prejudicial to the UK even if this may lead to statelessness."[1197]

7. Links

- UK Visas and Immigration: https://www.gov.uk/visas-immigration
- Asylum and Immigration Tribunal: http://www.justice.gov.uk/tribunals/immigration-asylum
- British and Irish Legal Information Institute: http://www.bailii.org/
- Office of the Immigration Services Commissioner: http://oisc.homeoffice.gov.uk/
- Refugee Council: www.refugeecouncil.org.uk
- Asylum Aid: www.asylumaid.org.uk
- Refugee Legal Centre: http://www.refugee-legal-centre.org.uk/
- Joint Council for the Welfare of Immigrants: http://www.jcwi.org.uk/
- The Law Society: http://www.lawsociety.org.uk/for-the-public/common-legal-issues/claiming-asylum/
- Immigration Law Practitioners' Association: www.ilpa.org.uk
- UNHCR UK: http://www.unhcr.org.uk/
- Palestine Solidarity Campaign: http://www.palestinecampaign.org/about/

[1195] UK Visas and Immigration (UKVI), "Applications for Leave to Remain as a Stateless Person," Sec. 6.1.

[1196] Supreme Court, "Secretary of State for the Home Department (Appellant) v Al-Jedda (Respondent)," October 9, 2013, [2013] UKSC 62, https://www.supremecourt.uk/decided-cases/docs/UKSC_2012_0129_Judgment.pdf.

[1197] Ruma Mandal and Amanda Gray, *Out of the Shadows: The Treatment of Statelessness under International Law*, International Law Programme (Chatham House, October 2014), 5, http://www.chathamhouse.org/sites/files/chathamhouse/field/field_document/20141029StatelessnessMandalGray.pdf.

LATIN AMERICA

1. Statistical Data

Due to a lack of comprehensive record keeping, the exact size of the Palestinian community in Central and South America is difficult to calculate. The individual country sections that follow provide rough estimates that may be helpful in allocating resources to assist refugee communities.

Palestinian immigrants began settling in South and Central America late in the nineteenth century. Unlike the refugees seeking protection in this region today, the first waves of Palestinians were predominately Christian and originally from towns and villages in the central West Bank, such as Bethlehem, Beit Sahour, Beit Jala, and Ramallah. Soon after, Palestinian communities began to develop in Chile, Colombia, Peru, Honduras, and El Salvador. Chile's Palestinian population has grown to around 500,000. Additionally, Honduras has a prominent Palestinian community of approximately 200,000-300,000, accounting for around 3% of the total population.[1198]

However, the 1948 and 1967 Palestinian refugees make up a relatively small segment of Palestinians currently residing in South and Central America. Additionally, 1948 and 1967 refugees in Central and South America rarely utilize refugee and asylum law procedures to obtain legal residency status.[1199]

2. Status of Palestinians in Central and South America

Most Palestinians have not entered Central and South American countries seeking immediate asylum relief. Rather, Palestinians enter with visitor visas, which they convert into permanent residency permits under the respective county's immigration procedures with the help of extensive community and family networks.

3. Refugee Status Determination: The Legal Framework

On 22 November 1984, in the context of the refugee crisis in Central America in the 1980s,[1200] the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama adopted the Cartagena Declaration on Refugees,[1201] "one of the most encompassing approaches to the refugee question."[1202]

The most relevant aspect of the Declaration is the recommendation of a "definition or concept of refugee" which:

[1198] Viola Raheb, "Sisters and Brothers in the Diaspora: Palestinian Christians in Latin America," in *Latin American with Palestinian Roots*, by Viola Raheb (Diyar Publisher, 2012), 9–14.

[1199] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 298.

[1200] Goodwin-Gill and McAdam, *The Refugee in International Law*, 38.

[1201] Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, "Cartagena Declaration."

[1202] Goodwin-Gill and McAdam, *The Refugee in International Law*, 38.

> in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees 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* [emphasis added].[1203]

Even though the Declaration does not constitute a formally binding treaty, the definition above was approved in 1985 by the General Assembly of the Organization of American States and recommended to its member states – i.e., 35 American states, which includes all the Latin American states presented in this section as well as the United States and Canada.[1204]

As our findings will demonstrate, *all* the Latin American countries surveyed adopted such expanded definition of refugee.

4. Historical Overview: Palestinian Emigration to Central and South America[1205]

a) Emigration

The first Palestinians emigrated to Central and South America during the final decades of the nineteenth century.[1206] International commercial exhibitions in the United States played a major role in attracting Palestinians to the western hemisphere.[1207] Following the outbreak of the First World War, Palestinian emigration to South and Central America began to accelerate.[1208] 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.[1209] The total number of Palestinian immigrants in Central and South America in 1936 was estimated at 40,000.[1210]

b) Return

As Palestinians emigrated to escape war and to improve their economic situations,

[1203] Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, "Cartagena Declaration," Article 3.

[1204] Hathaway, *The Law of Refugee Status*, 20; Goodwin-Gill and McAdam, *The Refugee in International Law*, 38.

[1205] Much of this information appears in the 2005 edition of this *Handbook*: BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 299–300.

[1206] Raheb, "Sisters and Brothers in the Diaspora: Palestinian Christians in Latin America."

[1207] Adnan 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), 43.

[1208] Ibid., 45.

[1209] Ibid.

[1210] Ibid., 46.

they did not intend to settle in new countries, and many desired to return home.[1211] However, following the enactment of the Palestinian Citizenship Orders by the British Mandate between 1925 and 1942, returning home became difficult for Palestinians in distant Central and South America. Considered Turkish subjects under the British Orders, these Palestinians had the right to opt for Palestinian citizenship only if they had left Palestine after 1924 and fulfilled certain legal conditions. Ninety percent of Palestinians in Central and South America, however, had left Palestine *before* 1924, making them ineligible for the Palestinian citizenship option.[1212]

While Palestinians in the Bethlehem region appealed and lobbied the British authorities for the citizenship rights of their relatives abroad, they did not reap substantive results. Only 100 of the 9,000 applications submitted by emigrants from the area were approved.[1213] Return to Palestine remained out of reach 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 West and East Banks of the River Jordan were united.[1214] Since 1967, return to the Israel-occupied West Bank has been obstructed by Israeli restrictions of movement of Palestinians in the 1967-Occupied Palestinian Territories ("oPt").[1215]

5. Links

The UNHCR website provides extensive information on asylum procedures and refugee protection throughout Central and South America. The information is available only in Spanish: http://www.acnur.org.

[1211] Ibid., 47.
[1212] Ibid., 47–48.
[1213] Ibid., 48–50.
[1214] Ibid., 51.
[1215] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 299.

BRAZIL[1216]

1. Statistical Data

By the end of 2013, Brazil had recognized 212 Palestinians as refugees. Of these refugees, 95 were part of a resettlement program in 2007. For the other 117, Brazil was their first country of asylum, and the Brazilian National Committee for Refugees ("CONARE") issued them favorable asylum decisions. Currently, 13 Palestinian asylum claims are pending decision. Palestinians rank 11th largest in terms of groups of refugees in Brazil.[1217]

2. Refugee Status Determination: The Process

Asylum seekers may indicate their intention to apply for refugee status at the Brazilian border.[1218] The 1997 Refugee Act (Law 9,474 of 1997) prohibits deportation of anyone requesting refugee status.[1219]

In Brazil, refugee status determination is a "tripartite" procedure involving the participation of the State, UNHCR and civil society organizations.[1220] The Brazilian government is responsible for all final decisions in the RSD procedure, and UNHCR plays an advisory role in individual refugee applications.[1221] The 1997 National Refugee Act established CONARE for asylum adjudication. CONARE includes governmental, non-governmental, and UNHCR members, although UNHCR may not vote in final refugee status decisions.[1222] The Ministry of Justice is the presiding governmental authority in adjudicating asylum claims.[1223]

Along with other foreigners arriving in Brazil, Palestinians wishing to be admitted as refugees must present themselves to a Federal Police Unit and complete the Asylum Application Form (*Termo de Solicitação de Refúgio*).[1224] This form includes the applicant's name, nationality, date of birth, and the reasons for leaving his or her

[1216] UNHCR Brazil provided expert advice for this country section.

[1217] Information provided by UNHCR Brazil.

[1218] State of Brazil, "Lei Nº 9.474 de 22 de Julho de 1997 - Define Mecanismos Para a Implementação Do Estatuto Dos Refugiados de 1951, E Determina Outras Providências," July 23, 1997, http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=t3/fileadmin/Documentos/BDL/2002/0801, Article 7.

[1219] Ibid., Article 7(1).

[1220] Karina Sarmiento, Jessica Soley, and Ana Guglielmelli White, *Refugee Status Determination in Latin America: Regional Challenges & Opportunities - The National Systems of Brazil, Colombia, Costa Rica, Ecuador, and Mexico* (Asylum Access Ecuador and U.S. Committee for Refugees and Immigrants (USCRI), January 2013), 9, http://asylumaccess.org/AsylumAccess/wp-content/uploads/2013/04/refugeestatus.pdf.

[1221] Ibid., 16.

[1222] Ibid., 17.

[1223] Ibid.

[1224] CONARE, "Resolução Normativa CONARE Nº 18, de de 30 de Abril de 2014," April 30, 2014, http://www.justica.gov.br/seus-direitos/estrangeiros/refugio/anexos/resolucao-18-dou-pdf.pdf, Article 1.

country of origin,[1225] and it is equivalent to the Declaration Term mentioned in Law 9,474,[1226] according to the latest CONARE Resolution.[1227] Once the Term is received, the Federal Police issues the Refuge Protocol,[1228] which grants the asylum seeker all the rights provided by the Brazilian Law 9,474/97, by the Brazilian Constitution, by relevant international conventions as well as the right to obtain an ID, a work permit and a social security number.[1229] The Refuge Protocol is valid, initially, for one year, but can be extended.[1230]

Once the Asylum Application Form is filled, the Federal Police has 15 days to forward the case to the General Coordination of Refugee Affairs (*Coordenação Geral de Assuntos para Refugiados* – CGARE).[1231] The CGARE has then 5 days to inform UNHCR, representatives of the civil society that work with CONARE, and the Federal Public Defender's Office (*Defensoria Pública da União*) about the asylum request, as well as schedule interviews.[1232] The applicant has the right to be interviewed by CONARE's staff, or by an official of the Federal Public Defender's Office, in a language he or she is able to understand. It is also possible that he or she have a second interview with lawyers from organizations partner to UNHCR.[1233]

3. Refugee Status Determination: The Legal Framework

CONARE engages in refugee status determination under the requirements of the 1997 Refugee Act. Article 1 of 1997 Law 9,474, which establishes the mechanisms for implementation of the 1951 Refugee Convention, defines refugee as every person who:

> I due to well-founded fear of persecution for reasons of race, religion, nationality, social group or political opinion, finds [himself or herself] outside [his or her] country of nationality and is unable or unwilling to avail [himself or herself] to the protection of that country;
>
> II having no nationality and being outside the country where before had habitual residence, is unable or unwilling to return to it, under the circumstances described in the preceding item;

[1225] CONARE, "CONARE Resolution Nº 18, Annex I, Asylum Application Form," April 30, 2014, http://www.justica.gov.br/seus-direitos/estrangeiros/refugio/anexos/termo-de-solicitacao-de-refugio-ingles.pdf.

[1226] State of Brazil, "Lei Nº 9.474 de 22 de Julho de 1997 - Define Mecanismos Para a Implementação Do Estatuto Dos Refugiados de 1951, E Determina Outras Providências," Article 9.

[1227] CONARE, "Resolução Normativa CONARE Nº 18, de de 30 de Abril de 2014," Article 2(1).

[1228] Ibid., Article 2.

[1229] Ibid., Article 2(2) and (3); see also State of Brazil, "Lei Nº 9.474 de 22 de Julho de 1997 - Define Mecanismos Para a Implementação Do Estatuto Dos Refugiados de 1951, E Determina Outras Providências," Article 5.

[1230] CONARE, "Resolução Normativa CONARE Nº 18, de de 30 de Abril de 2014," Article 2(5).

[1231] Ibid., Article 3.

[1232] Ibid., Article 4(I).

[1233] Ministério da Justiça, "Refugiados," accessed December 3, 2014, http://www.justica.gov.br/seus-direitos/estrangeiros/refugio.

III due to severe and widespread violation of human rights, is compelled to leave [his or her] country of nationality to seek refuge in another country.[1234]

In Brazilian legislation, the "well-founded fear" criteria of Article 1A(2) for granting refugee status are mirrored in items I and II, above. Nonetheless, the additional grounds for refugee status in item III, which mirror the additional grounds of the Cartagena Declaration, are restricted to those who "leave [their] *country of nationality* [emphasis added]."

While this could have an impact on stateless Palestinians, it remains unclear whether and how such broader provisions are applied to Palestinian asylum applicants.

Law 9,474 also incorporates the exclusion clauses of the 1951 Convention, including Article 1D.[1235] It also expands the exclusion from refugee status to terrorists and drug traffickers.[1236]

4. Refugee Status Determination: Article 1D

UNHCR Brazil: Statement on Article 1D (26 February 2014)[1237]

In today's context, paragraph 1 of Article 1D of the 1951 Refugee Convention is interpreted as an exclusion clause to 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"). However, this does not mean that certain groups of Palestinian refugees can never benefit from the protection of the 1951 Convention.

CONARE tends to adopt a wider and more inclusive interpretation of the 1951 Convention when deciding asylum claims submitted by Palestinians, but the Committee may or may not apply Article 1D.

In May of 2007, CONARE made a historic decision approving the resettlement of a group of 108 Palestinian refugees, who had been living at the Ruweished camp in Jordan since 2003. The resettled Palestinians were in a situation of extreme vulnerability, as the Ruweished camp was about to be shut down and no other durable solution was envisioned for them. In view of this exceptional situation, CONARE's decision represented an expansion of the Brazilian Solidarity Resettlement Program, which was originally put in place to benefit refugees from the Latin American region.

According to UNHCR, Article 1D is not consistently applied in decisions on Palestinian asylum applications in Brazil. Though Brazil's refugee definition is more expansive than the Refugee Convention definition, UNRWA-registered Palestinians

[1234] State of Brazil, "Lei Nº 9.474 de 22 de Julho de 1997 - Define Mecanismos Para a Implementação Do Estatuto Dos Refugiados de 1951, E Determina Outras Providências," Article 1, our translation.

[1235] Ibid., Article 3.

[1236] Ibid., Article 3(III).

[1237] UNHCR's statement is on file with BADIL.

often do not receive automatic refugee recognition. In most cases, Palestinians, like other asylum seekers, must satisfy the expanded refugee definition criteria under Article 1 of the 1997 Refugee Act.

With regards to relevant Brazilian legislation, Article 1D is incorporated in a limited manner: Article 3 of Law 9,474 establishes that "[individuals who] already enjoy protection or assistance from UN agencies or institutions other than [UNHCR]" will not benefit from the status of refugee.[1238] While this phrasing clearly reflects the first paragraph – i.e., the exclusion clause – of Article 1D, there is no provision in Brazilian asylum law that embodies its second paragraph – i.e., the inclusion clause.

5. Refugee Status Determination: Outcome

A positive CONARE decision results in a grant of refugee status, followed by the signature, by the refugee, of the Statement of Responsibility[1239] and his or her registration in the National System of Registry of Foreigners.[1240] Persons recognized as refugees are also issued Foreigner ID Cards, which gives them the same rights as other foreigners in regular situation in Brazil, including a permanent work permit.[1241]

If the decision is negative, the applicant may appeal to the Minister of Justice for review and a final decision. The applicant must appeal a negative decision within 15 days of receiving the initial decision.[1242]

6. Protection under the Statelessness Conventions

Brazil is a party to both the 1954 Convention Relating to the Status of Stateless Persons[1243] and the 1961 Convention on the Reduction of Statelessness.[1244] No information on procedures under the Statelessness Conventions is available.

7. Links

- UNHCR Brazil: http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e4929a6
- Refworld: Brazil National Legislation: http://www.refworld.org/type,LEGISLATION,,BRA,,,0.html

[1238] State of Brazil, "Lei Nº 9.474 de 22 de Julho de 1997 - Define Mecanismos Para a Implementação Do Estatuto Dos Refugiados de 1951, E Determina Outras Providências," Article 3(I).

[1239] CONARE, "CONARE Resolution Nº 18, Annex IV, Statement of Responsibility," April 30, 2014, http://www.justica.gov.br/seus-direitos/estrangeiros/refugio/anexos/termo-de-responsabilidade-ingles.pdf.

[1240] CONARE, "Resolução Normativa CONARE Nº 18, de de 30 de Abril de 2014," Article 11.

[1241] Ministério da Justiça, "Decisão Do Caso," accessed December 4, 2014, http://www.justica.gov.br/seus-direitos/estrangeiros/refugio/decisao-do-caso.

[1242] CONARE, "Resolução Normativa CONARE Nº 18, de de 30 de Abril de 2014," Article 9.

[1243] UNTC, "Status of Treaties: Convention Relating to the Status of Stateless Persons."

[1244] UNTC, "Status of Treaties: Convention on the Reduction of Statelessness."

CHILE[1245]

1. Statistical Data

Unofficial sources estimate that approximately 500,000 Palestinians currently reside in Chile, making Chile's Palestinian community the largest in Central and South America.[1246] In 2008, the Chilean government agreed to receive 117 Palestinian refugees fleeing from violence in Iraq.[1247]

2. Refugee Status Determination: The Process

According to the Center for Human Rights at the Diego Portales University in Chile, refugees may enter the country in one of two ways. Asylum seekers may enter Chile as tourists, and apply for refugee status directly from the Department of Immigration. Those who do not qualify as tourists, either because they lack the appropriate consular visa or are unable to show adequate financial means, may begin the refugee status determination process at the Chilean border. Asylum seekers who do not qualify as tourists must immediately inform government officials of their intent to apply for refugee status. Chilean authorities will then permit the applicant to enter the country and to begin the refugee status determination process.[1248]

To begin the refugee status determination process, the refugee must submit his or her application to a Department of Immigration office. The application must then be formalized in accordance with Chilean law. In practice, this requires that the applicant undergo a series of formulated questions by a Department of Immigration official who, based on the applicant's responses, decides whether or not to submit the application for further consideration.[1249]

The Ministry of the Interior (*el Ministerio del Interior*) manages all refugee status determination decisions.[1250] Chilean law imposes no time limit on the refugee

[1245] National and regional protection and UNHCR officers provided expert information for this country section; John Handal, Dissertation Fellow at Rutgers University, conducting research on the emigration of Palestinians to Latin America, also provided expert advice for this country section.

[1246] Information provided by John Handal.

[1247] USA Today, "Palestinian Refugees Welcomed in Chile," April 6, 2008, http://usatoday30.usatoday.com/news/world/2008-04-06-palestine-chile_N.htm.

[1248] Helena Olea et al., "Refugiados En Chile: Análisis de La Ley 20.430 Y Su Reglamento," in *Informe Anual Sobre Derechos Humanos En Chile 2012* (Centro de Derechos Humanos de la Universidad Diego Portales, 2012), 121, https://web.archive.org/web/20140226170540/http://www.derechoshumanos.udp.cl/wp-content/uploads/2012/11/informe-anual-de-ddhh-2012.pdf. In addition, Chilean legislation provides that the principle of *non-refoulement* explicitly includes non-rejection at the border. State of Chile, "Ley 20.430 - Establece Disposiciones Sobre Protección de Refugiados," April 15, 2010, http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=t3/fileadmin/Documentos/BDL/2010/7733, Article 3.

[1249] Olea et al., "Refugiados En Chile: Análisis de La Ley 20.430 Y Su Reglamento," 124.

[1250] The Ministry of Interior manages refugee applications through its Commission for the Recognition of Refugee Status (La Comisión de Reconocimiento), which consists of representatives from the Department of Immigration (el Departamento de Extranjería y Migración del Ministerio del Interior) and the Ministry of Foreign Relations (el Ministerio de Relaciones Exteriores). State of Chile, "Ley 20.430," Articles 20 and 21.

decision-making process, and the Commission on Recognition of Refugee Status (La Comisión de Reconocimiento de la Condición de Refugiado) considers each application individually during regular meetings.[1251] Chile grants refugee applicants a temporary eight-month visa that may be extended if the Commission requires more than eight months to reach a decision.[1252] During this period, applicants have the right not only to remain in Chile, but also to seek employment.[1253]

Asylum applicants have the right to *non-refoulement*, as well as the right against penalization for illegal entry into Chile as long as applications are submitted within 10 days of arrival.[1254] They also enjoy the rights to confidentiality, non-discrimination and family reunification.[1255] In addition, they enjoy certain rights guaranteed by Chile's constitution and by the international human rights treaties to which Chile is a party, especially the 1951 Refugee Convention and the 1967 Protocol.[1256]

In addition, Chile's Department of Social Action (DSA) of the Ministry of the Interior has established partnerships with civil society organizations in order to guarantee the delivery of basic humanitarian assistance to asylum seekers and refugees in accordance with national legislation.[1257] Nonetheless, a report by the Center for Human Rights at the Diego Portales University has observed that in the first semester of 2011 and in the same period of 2012, the agencies charged with implementing such assistance did not receive the necessary resources from the DSA, which made it impossible for them to deliver the anticipated economic assistance to refugees.[1258]

The 2007 Resettlement Program

In 2007, Chile agreed to receive 117 Palestinian refugees from the Al Tanf refugee camp on the border of Syria and Iraq. The group consisted of 29 families. UNHCR chose Chile as a destination for the Al Tanf refugees because Chile boasts social, political, and economic stability, cultural diversity, and has successfully integrated other refugee populations. UNHCR did not cite Article 1D as the basis for requesting refugee status for the Al Tanf Palestinians when it formulated the 2007 Resettlement Program. Instead, UNHCR determined that these particular refugees unquestionably qualified for refugee status under the Refugee Convention's standard refugee definition.[1259]

[1251] UNHCR, "Hoja Informativa: El Procedimiento de Asilo En Chile," accessed October 30, 2013, http://www.acnur.org/index.php?id_pag=1394. BADIL notes that as of September 2014, this document is no longer available online.

[1252] Olea et al., "Refugiados En Chile: Análisis de La Ley 20.430 Y Su Reglamento," 122.

[1253] State of Chile, "Decreto 837 - Aprueba Reglamento de La Ley Nº 20.430, Que Establece Disposiciones Sobre Protección de Refugiados," February 17, 2011, http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=t3/fileadmin/Documentos/BDL/2011/7411, Article 17; see also UNHCR, "Preguntas Y Respuestas Sobre La Protección E Integración de Los Refugiados En Chile," 2006, 2, http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=biblioteca/pdf/4168.

[1254] State of Chile, "Decreto 837," Articles 6 and 8.

[1255] State of Chile, "Ley 20.430," Articles 7, 8 and 9, respectively.

[1256] Ibid., Article 13.

[1257] "Chile - ACNUR," accessed September 18, 2014, http://www.acnur.org/t3/donde-trabaja/america/chile/.

[1258] Olea et al., "Refugiados En Chile: Análisis de La Ley 20.430 Y Su Reglamento," 128.

[1259] UNHCR, Solidariedad Hoy, and Gobierno de Chile, "Preguntas Y Respuestas Sobre El Reasentamiento Humanitario de 29 Familias Palestinas En Chile," 1–2, accessed December 4, 2014, http://www.extranjeria.gob.cl/filesapp/CP_cuestionario_para_la_prensa.pdf.

A UNHCR report indicates that the Chilean government placed the Palestinian refugees in the cities of San Felipe and La Calera as well as the Recoleta and Ñuñoa municipalities of Santiago. In Chile, the refugees receive assistance under a specialized Resettlement Program (*El Programa de Reasentamiento Solidario*), which was created for Columbian refugees in 1999.[1260] The Resettlement Program offers a broad support system for refugees, including assistance from the Vicaría de Pastoral Social, a Catholic organization that works with public and private institutions to ensure refugees access to fundamental public services and economic opportunities. These services include an initial welcoming reception for refugees, housing, medical attention, food, public school for children, cultural orientation programs, translators, Spanish classes, transportation, and clothing.[1261]

The Vicaría de Pastoral Social also works to ensure that refugees have access to meaningful employment opportunities after resettling in Chile. By the time the 29 Palestinian families arrived in Chile from Al Tanf, many local businesses had already offered the adult refugees employment positions in support of UNHCR and Chile's refugee integration efforts.[1262]

Finally, the 2007 Resettlement Program does not guarantee protection for Palestinians other than the ones coming from Al Tanf refugee camp seeking refugee status in Chile. However, other Central and South American Countries such as Brazil have agreed to work alongside UNHCR to resettle Palestinians currently living in refugee camps along the Iraqi and Syrian border.[1263]

3. Refugee Status Determination: The Legal Framework

Article 2 of Chile's Law 20.430,[1264] passed in 2010 and implemented by decree in 2011,[1265] which establishes general provisions regarding the protection of refugees, defines refugees as:

1. [Those] [w]ho, due to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, are outside the country of their nationality and unable or unwilling to avail themselves of the protection of that [country] owing to such fear[;]
2. [t]hose who have fled their country of nationality or habitual residence and whose life, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disrupted public order in that country[;]
3. [those] [w]ho, not having a nationality and for the reasons stated in the preceding paragraphs, find themselves outside the country of their former habitual residence and are unable or unwilling to return to it[;]
4. [t]hose who, although at the time of leaving their country of nationality or habitual residence did not have refugee status, fully satisfy the conditions for inclusion as a result of events occurred after his departure.[1266]

[1260] UNHCR, *Informe Mundial: América Latina*, 2008, 283, http://www.unhcr.org/4a2d28cf2.html.

[1261] UNHCR, Solidariedad Hoy, and Gobierno de Chile, "Preguntas Y Respuestas Sobre El Reasentamiento Humanitario de 29 Familias Palestinas En Chile," 6.

[1262] Ibid., 6–7.

[1263] Ibid., 1 and 7.

[1264] State of Chile, "Ley 20.430."

[1265] State of Chile, "Decreto 837."

[1266] State of Chile, "Ley 20.430," Article 2, our translation.

Accordingly, not only Article 1A(2) criteria is incorporated into Chilean legislation (mirrored in item 1, above), but also protection-related issues, such as threats to one's life, safety or freedom (item 2), reflecting the expanded definition of refugee established by the Cartagena Declaration.

4. Refugee Status Determination: Article 1D

Chile became a party to the 1951 Refugee Convention on 28 January 1972[1267] and a party to the 1967 Refugee Protocol on April 27, 1972.[1268] Chile has also adopted the broader refugee definition from the Cartagena Declaration, as seen above, and the Mexico Plan of Action.[1269] In fact, the Mexico Plan of Action inspired Chile to adopt its 1999 Refugee Resettlement Program, which eventually led to the reception of the 117 Palestinian refugees in 2007, as seen above.[1270]

As previously mentioned, UNHCR did not use Article 1D as the basis for the 2007 Resettlement Program. Instead, UNHCR explained that the 117 Palestinian refugees clearly met the criteria of the Refugee Convention's Article 1A refugee definition.[1271]

Most recently, Chile's Law 20.430, establishes legal provisions regarding the protection of refugees, but does not mention Article 1D in its clauses of exclusion or inclusion. Article 16 of Law 20.430, relating to the exclusion from refugee status, only includes provisions based on paragraphs (a), (b) and (c) of Article 1F of the Refugee Convention.[1272]

5. Refugee Status Determination: Outcome

Refugees recognized under Chilean law have the right to a two-year residency visa verified by a stamp in the refugee's passport and a separate identity document. The two-year visa may be extended and, eventually, may be converted into permanent residency. Additionally, after a certain period of time, the refugee may become a naturalized Chilean citizen.[1273]

If the Commission rejects a refugee application, there is no opportunity for an appeal.[1274]

[1267] UNTC, "Status of Treaties: Convention Relating to the Status of Refugees."
[1268] UNTC, "Status of Treaties: Protocol Relating to the Status of Refugees."
[1269] Information provided by UNHCR.
[1270] UNHCR, Solidariedad Hoy, and Gobierno de Chile, "Preguntas Y Respuestas Sobre El Reasentamiento Humanitario de 29 Familias Palestinas En Chile," 1.
[1271] Ibid., 2.
[1272] State of Chile, "Ley 20.430," Article 16.
[1273] UNHCR, "Hoja Informativa: El Procedimiento de Asilo En Chile."
[1274] Ibid.

6. Protection Under the Stateless Conventions

Chile is not a party to the 1954 Convention Relating to the Status of Stateless Persons,[1275] nor to the 1961 Convention on the Reduction of Statelessness,[1276] and it is unclear how statelessness affects the refugee status determination of Palestinian asylum seekers in the country.

7. Links

The UNHCR website includes information on asylum procedures and refugee protection throughout Central and South America. These resources are only available in Spanish:

- www.acnur.org
- http://www.acnur.org/index.php?id_pag=1394 (for information on each stage of the asylum procedure in Chile)

[1275] UNTC, "Status of Treaties: Convention Relating to the Status of Stateless Persons."
[1276] UNTC, "Status of Treaties: Convention on the Reduction of Statelessness."

ECUADOR[1277]

1. Statistical Data

No reliable estimate of Palestinians residing in Ecuador is available. However, Ecuador had approved the applications of 55,480 refugees as of 2012. Additionally, 14,567 refugee applications were under review in Ecuador as of 2012.[1278]

2. Refugee Status Determination: The Process

Ecuador's refugee law requires that a refugee file his or her status determination application within 15 days of entering the country.[1279]

The Commission for Determining Refugee Status in Ecuador (*La Comisión para Determinar la Condición de Refugiados en el Ecuador*) manages the status determination process.[1280] During status determination, the Commission allows UNHCR representatives to observe the proceedings and make recommendations, but UNHCR does not hold any decision-making authority.[1281]

Each asylum applicant receives a provisional identification card that expires at the end of the decision-making process.[1282] Ecuadoran law requires that the Commission's decision-making process last no longer than four months.[1283] For more complicated cases, the law allows the Commission a 30-day extension.[1284]

From the moment they register their asylum application, Palestinians, along with every asylum seeker, enjoy Ecuadoran protection and cannot be expelled, deported or returned to the territory where their lives, safety and freedom were threatened, according to article 66(14) of the Ecuadorian Constitution. [1285]

Asylum seekers receive a temporary ID card, which legalizes their situation in the country and allows them to work.[1286] If their request for asylum is denied,

[1277] National and regional protection and UNHCR officers provided expert information for this country section.

[1278] ACNUR, "Refugiados En Las Américas: Ecuador," accessed August 15, 2014, http://www.acnur.org/t3/index.php?id=166&tx_refugiadosamericas_pi1%5Buid%5D=ECU, Section "Estadísticas."

[1279] State of Ecuador, "Decreto Nº 1.182 - Reglamento Para La Aplicación Del Derecho de Refugio," May 30, 2012, http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=t3/fileadmin/Documentos/BDL/2012/8604, Article 27.

[1280] ACNUR, "Refugiados En Las Américas: Ecuador," Section "Procedimiento para la Determinación de la Condición del Refugiado."

[1281] Ibid.

[1282] Ibid.

[1283] State of Ecuador, "Decreto Nº 1.182 - Reglamento Para La Aplicación Del Derecho de Refugio," Article 20.

[1284] Ibid., Article 20.

[1285] ACNUR, "Refugiados En Las Américas: Ecuador."

[1286] State of Ecuador, "Decreto Nº 1.182 - Reglamento Para La Aplicación Del Derecho de Refugio," Articles 34 and 35.

the asylum seeker has the right to appeal the decision before the Foreign Ministry within 30 days.[1287]

On 24 December 2010, Ecuador formally recognized Palestine as an independent state.[1288] In May 2013, the Ministry of Foreign Relations signed a Memorandum of Understanding (*Memorando de Entendimiento*) committing to establish a Palestinian diplomatic missions in Ecuador.[1289] Palestinian Foreign Minister Riad al-Maliki, who participated in the signing of the Memorandum, thanked Ecuador for its support to and solidarity with the Palestinian cause.[1290] These steps, combined with Ecuador's "genuine system of asylum," may make Ecuador an ideal location for future UNHCR Palestinian resettlement programs.[1291] However, BADIL is unaware of any proposals for a resettlement program or other special forms of relief for Palestinian refugees in Ecuador.

3. Refugee Status Determination: The Legal Framework

Ecuador ratified the 1951 Refugee Convention on 17 August 1955[1292] and the 1967 Protocol on 6 March 1969.[1293] Chapter 1 of Decree No. 3301, of 1992, recognizes as refugees all persons who (i) fall under Article 1A(2) criteria,[1294] (ii) fall under the expanded definition of refugee established by the Cartagena Declaration.[1295]

Ecuador's Constitution protects asylum applicants' rights against expulsion, deportation, or other return to a country in which their life, liberty, security, or integrity would be threatened.[1296]

4. Refugee Status Determination: Article 1D

Ecuador's refugee law seems to suggest that all terms of the Refugee Convention are incorporated into domestic law.[1297] However, Article 1D is incorporated in a

[1287] ACNUR, "Refugiados En Las Américas: Ecuador."

[1288] Radio France Internationale, "Ecuador Latest Latin Country to Recognize Palestine," December 25, 2010, http://www.english.rfi.fr/americas/20101225-ecuador-latest-latin-country-recognize-palestine.

[1289] Agencia Pública de Noticias del Ecuador y Suramérica (ANDES), "Ecuador Y Palestina Dan Paso a La Conformación de Misiones Diplomáticas En Sus Territorios," May 27, 2013, http://www.andes.info.ec/es/politica/ecuador-palestina-dan-paso-conformacion-misiones-diplomaticas-sus-territorios.html.

[1290] Ibid.

[1291] Michael Kagan, *Shared Responsibility in a New Egypt: A Strategy for Refugee Protection* (Center for Migration and Refugee Studies at the American University in Cairo, September 2011), http://www.aucegypt.edu/gapp/cmrs/documents/kaganrefugeepolicyegypt1109.pdf.

[1292] UNTC, "Status of Treaties: Convention Relating to the Status of Refugees."

[1293] UNTC, "Status of Treaties: Protocol Relating to the Status of Refugees."

[1294] State of Ecuador, "Decreto Nº 3.301 - Reglamento Para La Aplicación En El Ecuador de Las Normas Contenidas En La Convención de Ginebra de 1951 Sobre El Estatuto de Los Refugiados Y En Su Protocolo de 1967," May 6, 1992, http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=t3/fileadmin/Documentos/BDL/2001/0067, Article 1.

[1295] Ibid., Article 2.

[1296] State of Ecuador, "Constitución de La República Del Ecuador [last Modified on 13 July 2011]," 2008, http://www.oas.org/juridico/PDFs/mesicic4_ecu_const.pdf, Article 66(14).

[1297] State of Ecuador, "Decreto Nº 1.182 - Reglamento Para La Aplicación Del Derecho de Refugio," Article 8.

limited manner. According to Decree No. 1,182 of 2012, which constitutes the most recent national legislation concerning the implementation of refugee law and the rules in the 1951 Convention and the 1967 Protocol, only the exclusion clause of Article 1D is implemented.

Paragraph 1 of Article 11 of the above-mentioned decree states that: "[t]hose who currently receive protection or assistance from a United Nations organ or body other than the United Nations High Commissioner for Refugees [do not require international protection as refugees and, therefore, will not be recognized as such]."[1298] While this article clearly reflects the phrasing of the exclusion clause of Article 1D of the 1951 Convention, there is no provision in Ecuador's Decree 1,182 regarding the inclusion of such persons in cases where "such protection or assistance has ceased for any reason."

It remains unclear how the aforementioned Decree affects Palestinians in Ecuadoran asylum procedures.

5. Refugee Status Determination: Outcome

If the Commission approves an application, it must provide the applicant with a refugee identity card containing the refugee's 12-IV Refugee Visa.[1299] The 12-IV visa expires after two years and permits the refugee to work in Ecuador.[1300]

If the Commission rejects an application, the applicant has the right to appeal the decision before the Ministry of Foreign Relations within five days after receiving the Commission's notification of rejection.[1301] If the rejection of a refugee application is affirmed on appeal, Ecuador's refugee law requires that the applicant leave the country immediately.[1302] The law does not elaborate further on the deportation process.

6. Protection under the Statelessness Conventions

Ecuador has been a Party to the 1954 Convention Relating to the Status of Stateless Persons since 2 October, 1970,[1303] and the 1961 Convention on the Reduction of Statelessness since 24 September, 2012.[1304] There is no available information regarding relief for Palestinians in Ecuador under such conventions.

[1298] Ibid., Article 11(1).

[1299] Ministerio de Relaciones Exteriores y Movilidad Humana, "Visa 12: IV Solicitud de Asilo Y Refugio," accessed December 5, 2014, http://cancilleria.gob.ec/visa-12-iv-solicitud-de-asilo-y-refugio/.

[1300] State of Ecuador, "Decreto N° 1.182 - Reglamento Para La Aplicación Del Derecho de Refugio," Article 45.

[1301] Ibid., Article 48.

[1302] Ibid., Article 49.

[1303] UNTC, "Status of Treaties: Convention Relating to the Status of Stateless Persons."

[1304] UNTC, "Status of Treaties: Convention on the Reduction of Statelessness."

7. Links

UNHCR's Ecuador page provides detailed information regarding the procedure for refugee status recognition. The website is only available in Spanish:

- http://www.acnur.org/t3/index.php?id=166&tx_refugiadosamericas_pi1%5Buid%5D=ECU

MEXICO[1305]

1. Statistical Data

Statistics regarding the number of Palestinians living in Mexico are not available. However, as of a 2013 UNHCR report, Mexico has recognized a total of 1,831 refugees from all countries, and had 1,352 asylum seekers with applications still pending a final decision.[1306]

2. Refugee Status Determination: The Process

Upon entering Mexico, Palestinians, as other asylum seekers, must submit their application for asylum before the Mexican Commission for Refugee Assistance (COMAR), which acts under the authority of the "Secretariat of Governorship" (SEGOB).[1307] Mexico's Refugee Protection Law requires that asylum seekers submit their applications within 30 business days after arriving in Mexico,[1308] unless the refugee proves that it was impossible to meet that 30-day deadline.[1309] If the refugee is unable to present a written application, he or she may apply in person at a COMAR office.[1310]

Additionally, if any Mexican government official discovers a refugee's intent to formally solicit refugee status in Mexico, that official has a legal duty to notify COMAR immediately in order to begin the application process.[1311]

After an asylum seeker submits the initial refugee status application, Mexican law affords him or her certain protections during COMAR's decision-making process. For instance, Mexican law requires that the state provide special services to pregnant women, children or adolescents, the disabled, the chronically ill, or victims of torture or sexual assault.[1312] Furthermore, once the asylum seeker has formally submitted his or her application, Mexican authorities cannot notify the diplomatic or consular authorities of the applicant's country of origin.[1313]

[1305] National and regional protection and UNHCR officers provided expert information for this country section; John Handal also provided expert advice for this country section.

[1306] UNHCR, "Global Trends 2013 - War's Human Cost," 42.

[1307] ACNUR, "Refugiados En Las Américas: México," accessed December 5, 2014, http://www.acnur.org/t3/index.php?id=166&tx_refugiadosamericas_pi1%5Buid%5D=MEX, Section "Procedimiento para la Determinación de la Condición del Refugiado."

[1308] State of Mexico, "Ley Sobre Refugiados Y Protección Complementaria," January 27, 2011, http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=t3/fileadmin/Documentos/BDL/2010/8150, Article 18.

[1309] State of Mexico, "Reglamento de La Ley Sobre Refugiados Y Protección Complementaria," February 21, 2012, http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=t3/fileadmin/Documentos/BDL/2012/8339, Article 19.

[1310] State of Mexico, "Ley Sobre Refugiados Y Protección Complementaria," Article 18.

[1311] Ibid., Article 21.

[1312] Ibid., Article 20.

[1313] Ibid., Article 21; State of Mexico, "Reglamento de La Ley Sobre Refugiados Y Protección Complementaria," Article 22.

Asylum applicants in Mexico also enjoy the right against return either to their country of origin or to another country where they are at risk,[1314] the right against penalization for improper entry into Mexico,[1315] the right to an interpreter if unable to communicate in Spanish,[1316] and the right to information about their individual proceedings throughout the status determination process.[1317]

Under Mexico's Refugee Protection Law, a refugee status applicant must submit accurate identity information to COMAR.[1318] COMAR will conduct the necessary interviews regarding the refugee's specific reasons for applying for asylum in Mexico.[1319] Within 45 business days, COMAR must release a written decision on the applicant's status, and the applicant must receive notification of that decision in writing.[1320]

Furthermore, the Mexican government offers institutional assistance – i.e., assistance provided by state institutions – to both refugees[1321] and asylum seekers[1322] in situations of particular vulnerability in order to attend their basic needs. Those persons also enjoy the right to family reunification[1323] and assistance in obtaining official documents from their country of origin, if necessary.[1324]

***The Mexico Plan of Action**: Movement towards a Uniform Regional Refugee Status Determination Process in Central and South America:*

In 2004, 20 Central and South American countries[1325] adopted the Mexican Declaration and Plan of Action for Strengthening International Protection for Refugees in Latin America.[1326] Chapter Three of the Mexico Plan of Action calls specifically for durable solutions, including programs to facilitate

[1314] State of Mexico, "Ley Sobre Refugiados Y Protección Complementaria," Article 6; State of Mexico, "Reglamento de La Ley Sobre Refugiados Y Protección Complementaria," Article 22.

[1315] State of Mexico, "Ley Sobre Refugiados Y Protección Complementaria," Article 7; State of Mexico, "Reglamento de La Ley Sobre Refugiados Y Protección Complementaria," Article 12.

[1316] State of Mexico, "Ley Sobre Refugiados Y Protección Complementaria," Article 23; State of Mexico, "Reglamento de La Ley Sobre Refugiados Y Protección Complementaria," Article 29.

[1317] State of Mexico, "Ley Sobre Refugiados Y Protección Complementaria," Article 19; State of Mexico, "Reglamento de La Ley Sobre Refugiados Y Protección Complementaria," Article 15(I).

[1318] State of Mexico, "Ley Sobre Refugiados Y Protección Complementaria," Article 23.

[1319] Ibid.; State of Mexico, "Reglamento de La Ley Sobre Refugiados Y Protección Complementaria," Article 27.

[1320] State of Mexico, "Ley Sobre Refugiados Y Protección Complementaria," Articles 24 and 25; State of Mexico, "Reglamento de La Ley Sobre Refugiados Y Protección Complementaria," Article 45.

[1321] State of Mexico, "Ley Sobre Refugiados Y Protección Complementaria," Article 54; State of Mexico, "Reglamento de La Ley Sobre Refugiados Y Protección Complementaria," Articles 67-73.

[1322] State of Mexico, "Ley Sobre Refugiados Y Protección Complementaria," Articles 20 and 55; State of Mexico, "Reglamento de La Ley Sobre Refugiados Y Protección Complementaria," Articles 61-66.

[1323] State of Mexico, "Ley Sobre Refugiados Y Protección Complementaria," Article 58; State of Mexico, "Reglamento de La Ley Sobre Refugiados Y Protección Complementaria," Articles 80-82.

[1324] State of Mexico, "Ley Sobre Refugiados Y Protección Complementaria," Article 57.

[1325] Those countries include Argentina, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, and Venezuela. ACNUR, "Información General - Plan de Acción de México," accessed December 5, 2014, http://www.acnur.org/t3/pam/informacion-general/.

[1326] Ibid.

self-sufficiency and local integration for refugees resettling in urban areas.[1327] The Declaration suggests the following goals for local integration: (1) to generate employment and micro-credit loan opportunities for refugees; (2) to streamline paperwork including the validation and recognition of professional certification documents and university diplomas; and (3) to promote civil participation in integration efforts.[1328]

Additionally, Chapter Three of the Mexico Plan of Action contemplates more effective cooperation at the borders between states adopting the Plan.[1329] Cooperation priorities include: (1) establishing a uniform refugee classification system to ensure consistency between states in the assistance and protection of refugees and to promote more narrowly tailored durable solutions; (2) fortifying institutional mechanisms of refugee protection and refugee status determination; and (3) the development of "Sensitivity Programs" to prevent adverse sentiment towards refugees by local populations.[1330]

The Mexico Plan of Action represents an important step in the advancement of refugee protection in Central and South America. Because the Plan reinforces the principles of the 1951 Convention and the expanded refugee definition of the Cartagena Declaration, it may be another useful tool for the recognition of refugee status for Palestinians in Mexico and other Latin American States.

3. Refugee Status Determination: The Legal Framework

Article 13 of Mexico's *Ley sobre Refugiados y Protección Complementaria* (Law on Refugees and Complementary Protection) establishes the grounds for granting refugee status to asylum applicants. Article 13(I) mirrors the criteria of Article 1A(2) of the 1951 Convention, while Article 13(II) incorporates in Mexican national law the expanded definition of refugee of the Cartagena Declaration. Finally, Article 13(III) extends the recognition of refugee status to persons who were not refugees when they left their country of origin, but who, due to circumstances that *have arisen* in their country, find themselves in situations reflecting the criteria in Article 13(I) or Article 13(II).[1331]

4. Refugee Status Determination: Article 1D

Mexico ratified the 1951 Refugee Convention and the 1967 Protocol on 17 April 2000.[1332] Mexico incorporates the Refugee Convention's refugee definition, as well as the Cartagena Declaration's expanded refugee definition in its Refugee Protection Law, as seen above.

However, Mexico's Law on Refugees and Complementary Protection (*Ley sobre Refugiados y Protección Complementaria*) and its Regulation (*Reglamento*) do not incorporate Article 1D. Article 27 of the Law on Refugees and Complementary

[1327] Regional Refugee Instruments & Related, "Mexico Declaration and Plan of Action to Strengthen International Protection of Refugees in Latin America," November 16, 2004, http://www.refworld.org/docid/424bf6914.html, Chapter Three.

[1328] Ibid., 9.

[1329] Regional Refugee Instruments & Related, "Mexico Declaration and Plan of Action to Strengthen International Protection of Refugees in Latin America," Chapter Three, Section 2, "Integrated 'Borders of Solidarity' Programme."

[1330] Ibid., 9–10.

[1331] State of Mexico, "Ley Sobre Refugiados Y Protección Complementaria," Article 13.

[1332] UNTC, "Status of Treaties: Convention Relating to the Status of Refugees;" UNTC, "Status of Treaties: Protocol Relating to the Status of Refugees."

Protection, regarding the conditions under which refugee status will not be granted, includes the text of Article 1F of the Geneva Convention.[1333]

5. Refugee Status Determination Process: Outcome

Mexico grants Palestinian refugees temporary residence permits for non-immigrants, which are renewable on an annual basis. Recognized refugees can opt for permanent residence and naturalization after a certain period of time.[1334]

Asylum seekers in Mexico are protected by law from being returned to their countries of origin,[1335] in accordance with the international principle of *non-refoulement*, and from several forms of discrimination.[1336] When refugee status is denied, the asylum seeker has 15 days after being notified to ask for the review of such decision.[1337]

No specific information on Mexico's deportation procedure for asylum applicants is available. However, Title V, Chapter II, Articles 36-43 of Mexico's Refugee Protection Law establish the procedures for cessation or cancellation of refugee status after COMAR makes a favorable status determination.[1338] If Mexican authorities cancel or revoke a refugee's status, the applicant may re-submit a refugee status application, but may not use the same set of facts that were used in the first application, especially if the facts from the first application were found to be fraudulent.[1339]

6. Protection under the Statelessness Conventions

Mexico acceded to the 1954 Convention Relating to the Status of Stateless Persons on June 7, 2000,[1340] but is not a party to the 1961 Convention on the Reduction of Statelessness.[1341] No information is available regarding application of the 1954 Stateless Persons Convention to Palestinian refugees.

7. Links

The UNHCR website provides extensive information as well as short guidebooks for refugees applying for refugee status determination in Mexico. The website is only available in Spanish:

- http://www.acnur.org/t3/index.php?id=166&tx_refugiadosamericas_pi1%5Buid%5D=MEX

[1333] State of Mexico, "Ley Sobre Refugiados Y Protección Complementaria," Article 27.

[1334] Information regarding outcomes of the refugee status determination process in Mexico comes from the 2005 edition of this *Handbook*.

[1335] State of Mexico, "Ley Sobre Refugiados Y Protección Complementaria," Article 6.

[1336] Ibid., Article 8.

[1337] See ibid., Article 25 and 39.

[1338] Ibid., Articles 36-43.

[1339] Ibid., Article 43.

[1340] UNTC, "Status of Treaties: Convention Relating to the Status of Stateless Persons."

[1341] UNTC, "Status of Treaties: Convention on the Reduction of Statelessness."

PERU[1342]

1. Statistical Data

While specific statistics are unavailable, the UNHCR's population statistics website reports that 20 refugees and 9 asylum seekers of Palestinian origin were living in Peru in 2013.[1343] Still according to UNHCR, in 2013, seven persons of Palestinian origin applied for asylum in Peru.[1344] Additionally, as of 2013, Peru had a total refugee population of 1,162, with 507 asylum applications pending a decision.[1345]

2. Refugee Status Determination: The Process

Asylum seekers in Peru must submit an application for refugee status determination immigration control posts at Peruvian borders or to the Special Commission for Refugees (*Comisión Especial para los Refugiados*, "CER"), either in person or through a legal reprensentative.[1346] After submitting the application, refugees receive a Refugee Applicant Card that guarantees their right to remain in Peruvian territory throughout the status determination process.[1347] Such document is initially valid for 60 days, with the possibility of being renewed.[1348]

In Peru, the Special Commission for Refugees receives, analyzes, and makes an initial decision regarding refugee status applications.[1349]

Each applicant has the right to a personal interview with a CER official to disclose individual circumstances and the applicant's reasons for fleeing his or her country of origin.[1350] The information disclosed during the interview remains confidential

[1342] National and regional protection and UNHCR officers provided expert information for this country section; John Handal also provided expert advice for this country section.

[1343] UNHCR, "UNHCR Population Statistics - Persons of Concern Time Series."

[1344] UNHCR, "UNHCR Population Statistics - Asylum Seekers Status Determination."

[1345] UNHCR, "Global Trends 2013 - War's Human Cost," 42.

[1346] State of Peru, "Decreto Supremo Nº 119-2003-RE - Aprueban Reglamento de La Ley Del Refugiado de 2002," December 23, 2002, http://spij.minjus.gob.pe/clp/contenidos.dll/temas/coleccion00000.htm/tomo00993.htm/libro01046.htm/sumilla01051.htm?f=templates$fn=document-frame.htm$3.0#JD_m43327, Article 18.

[1347] State of Peru, "Ley 27.891 - Ley Del Refugiado," December 20, 2002, http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=t3/fileadmin/Documentos/BDL/2003/1938, Article 14(1) and (2); State of Peru, "Decreto Supremo Nº 119-2003-RE - Aprueban Reglamento de La Ley Del Refugiado de 2002," Article 41.

[1348] State of Peru, "Ley 27.891," Article 14(3); State of Peru, "Decreto Supremo Nº 119-2003-RE - Aprueban Reglamento de La Ley Del Refugiado de 2002," Article 41.

[1349] State of Peru, "Ley 27.891," Article 7(1); State of Peru, "Decreto Supremo Nº 119-2003-RE - Aprueban Reglamento de La Ley Del Refugiado de 2002," Article 7.

[1350] State of Peru, "Decreto Supremo Nº 119-2003-RE - Aprueban Reglamento de La Ley Del Refugiado de 2002," Article 22.

throughout the status determination process.[1351] Additionally, CER provides interpreters for applicant interviews if necessary.[1352]

Asylum seekers and refugees in Peru enjoy the rights to freedom of movement, to education, to work, to health, to freedom of religion, of *non-refoulement*, to non-discrimination and to "a life free from gender[-based] violence."[1353]

Asylum seekers receive a provisional document that regularizes their situation in the country and allow them to work. This document is initially valid for 60 days, but it can be renewed by the Special Commission for Refugees.[1354] If the request for asylum is denied, the applicant has up to 15 days after having been notified of such decision to ask the Special Commission to reconsider.[1355] If the Commission sustains its decision, the applicant has another 15 days to appeal to the Reviewing Commission for Refugee Affairs (*Comisión Revisora para Asuntos de Refugiados*), which is the final appeal option.[1356]

3. Refugee Status Determination: The Legal Framework

Peru's refugee status determination process is governed under two principal instruments: the Refugee Law No. 27,891 of 2002 (*Ley 27.891, Ley del Refugiado*) and its regulation, the Supreme Decree No. 119-2003-RE (*Decreto Supremo Nº 119-2003-RE*).[1357]

Article 3 of Law 27,891 establishes Peru's definition of refugee. Article 3(a) defines refugee in accordance with the "well-founded fear of persecution" criteria of Article 1A(2) of the 1951 Convention; Article 3(b) incorporates in Peruvian legislation the expanded definition of refugee of the Cartagena Declaration; and Article 3(c) extends the recognition of refugee status to persons residing in Peru legally who, "due to supervening causes arising in their country of nationality or residence," cannot, or do not any longer want to return to such country due to a well-founded fear of persecution, in accordance with Article 3(a).[1358]

[1351] State of Peru, "Ley 27.891," Article 11; State of Peru, "Decreto Supremo Nº 119-2003-RE - Aprueban Reglamento de La Ley Del Refugiado de 2002," Article 3(d).

[1352] State of Peru, "Decreto Supremo Nº 119-2003-RE - Aprueban Reglamento de La Ley Del Refugiado de 2002," Article 23.

[1353] Foreign Ministry of Peru and UNHCR, "Guía Para Refugiados Y Solicitantes de La Condicion de Refugiado En Perú," 5, accessed September 19, 2014, http://www.acnur.org/t3/uploads/tx_refugiadosamericas/Guia_para_refugiados_y_solicitantes_de_la_condicion_de_refugiado_en_Peru.pdf?view=1.

[1354] State of Peru, "Ley 27.891," Article 14.

[1355] Ibid., Article 17.

[1356] Ibid., Article 18.

[1357] Foreign Ministry of Peru and UNHCR, "Guía Para Refugiados Y Solicitantes de La Condicion de Refugiado En Perú," 2; see also State of Peru, "Ley 27.891;" and State of Peru, "Decreto Supremo Nº 119-2003-RE - Aprueban Reglamento de La Ley Del Refugiado de 2002."

[1358] State of Peru, "Ley 27.891," Article 3.

4. Refugee Status Determination: Article 1D

Peru became a party to the 1951 Refugee Convention on 21 December 1964[1359] and to the 1967 Protocol and September 15, 1983.[1360] However, Peru's Refugee Law does not mention Article 1D, either its clauses of exclusion or inclusion; on the contrary, its the Refugee Law provisions regarding exclusion reflect only Articles 1E and 1F of the Refugee Convention.[1361]

No information regarding the application of such legislation to Palestinian refugees in Peru is available.

5. Refugee Status Determination Process: Outcome

If CER recognizes an applicant's refugee status, the refugee will receive an Immigrant Identity Card (*Carné de Extranjería*).[1362] The refugee must renew this identity document every year by soliciting a special communication from the Executive Secretariat of the Commission (*La Secretaría Ejecutiva de la Comisión*) to the Migration and Naturalization Director General (*La Direción General de Migraciones y Naturalización*) for approval.[1363]

If CER rejects the application, they must notify the applicant. The applicant may appeal the decision within 15 business days after receiving the CER notification.[1364] In case of error of law, the refugee may appeal the CER decision again to the Commission of Review of Matters Involving Refugees (*La Comisión Revisora de Asuntos de Refugiados*).[1365] During the entire appeals process, CER must renew the applicant's Refugee Applicant Card, and the asylum seeker is permitted to remain in Peru until a final decision is made.[1366]

According to Article 32 of Peru's Refugee Law No. 27.891, CER has exclusive authority to deport asylum seekers from Peruvian territory. During the expulsion process, CER has a duty to treat the deportees in accordance with domestic law requirements as well as the principles of the Refugee Convention.[1367] The specific domestic law regarding the deportation process is not available.

[1359] UNTC, "Status of Treaties: Convention Relating to the Status of Refugees."

[1360] UNTC, "Status of Treaties: Protocol Relating to the Status of Refugees."

[1361] See State of Peru, "Ley 27.891," Article 4.

[1362] Ibid., Article 23; State of Peru, "Decreto Supremo Nº 119-2003-RE - Aprueban Reglamento de La Ley Del Refugiado de 2002," Article 42.

[1363] Foreign Ministry of Peru and UNHCR, "Guía Para Refugiados Y Solicitantes de La Condicion de Refugiado En Perú," 4.

[1364] State of Peru, "Ley 27.891," Article 17; State of Peru, "Decreto Supremo Nº 119-2003-RE - Aprueban Reglamento de La Ley Del Refugiado de 2002," Article 26.

[1365] State of Peru, "Ley 27.891," Article 18; State of Peru, "Decreto Supremo Nº 119-2003-RE - Aprueban Reglamento de La Ley Del Refugiado de 2002," Article 27.

[1366] Foreign Ministry of Peru and UNHCR, "Guía Para Refugiados Y Solicitantes de La Condicion de Refugiado En Perú," 4.

[1367] State of Peru, "Ley 27.891," Article 32.

6. Protection under the Statelessness Conventions

Peru acceded to the 1954 Convention Relating to the Status of Stateless Persons on 23 January 2014,[1368] and the 1961 Convention on the Reduction of Statelessness on 14 December 2014.[1369]

7. Links

The UNHCR website provides extensive information and guides for refugees applying for refugee status determination in Peru. The website is only available in Spanish:

- http://www.acnur.org/t3/index.php?id=166&tx_refugiadosamericas_pi1%5Buid%5D=PER

[1368] UNTC, "Status of Treaties: Convention Relating to the Status of Stateless Persons."
[1369] UNTC, "Status of Treaties: Convention on the Reduction of Statelessness."

OTHER AMERICAN COUNTRIES

CANADA

1. Statistical Data

According to 2006 Census data, there are approximately 24,000 Palestinians currently living in Canada.[1370] However, community estimates and Palestinian organizations suggest this is under-inclusive. The General Delegation of Palestine in Canada estimates that between 42,000 and 50,000 Palestinians live in Canada today, most having arrived in the 1980's and 1990's.[1371]

This disparity in statistics is based on the method of registration in Canada. 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.[1372]

Canada is increasing the number of refugees it resettles annually by approximately 20% each year. About one in every ten people it assists with resettlement is accepted into Canada itself. The goal for 2013, was to resettle up to 14,500 people.[1373]

2. Refugee Status Determination: The Process

All asylum seekers who are physically in Canada may submit a claim for refugee status to the immigration department, Citizenship and Immigration Canada (CIC). An officer will determine whether the claim is eligible for referral to the Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB).[1374]

Asylum seekers are entitled to a "refugee claimant in Canada" permit. They are eligible to apply for a work permit[1375] and social insurance card.[1376] Refugee

[1370] Statistics Canada, "Ethnic Origins, 2006 Counts, for Canada, Provinces and Territories - 20% Sample Data," accessed December 5, 2014, http://www12.statcan.gc.ca/census-recensement/2006/dp-pd/hlt/97-562/pages/page.cfm?Lang=E&Geo=PR&Code=01&Data=Count&Table=2&StartRec=1&Sort=3&Display=All&CSDFilter=5000.

[1371] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 240.

[1372] Ibid.

[1373] Citizenship and Immigration Canada, "The Refugee System in Canada," November 26, 2012, http://www.cic.gc.ca/english/refugees/canada.asp (last visited 20 May 2014). BADIL notes that as of September 2014, this webpage has been updated and no longer features the information mentioned in the paragraph.

[1374] Canada Immigration, "Refugee Status Application Process," accessed January 18, 2015, http://www.canadavisa.com/canadian-immigration-refugee-eligibility.html.

[1375] Work permits are not guaranteed to all refugee claimants. Applicants must prove that they need to work to support themselves and would otherwise require social welfare. NewYouth.ca, "How Do I Apply for a Work Permit as a Refugee Claimant?," accessed January 18, 2015, http://www.newyouth.ca/work/find-job/how-do-i-apply-work-permit-refugee-claimant.

[1376] Ibid.

claimants are also entitled to some health care. As of 30 June 2012, the CIC limited the health care to exclude supplemental health services, including: dental, vision, and pharmaceutical coverage. There is an ongoing lawsuit challenging this legislation.[1377]

3. Refugee Status Determination: The Legal Framework

Asylum seekers must first submit a claim for refugee status to an immigration officer. The officer will determine,[1378] within three working days after receiving the asylum seeker's claim,[1379] whether the asylum seeker is eligible[1380] for refugee status. If eligible, the officer will refer the applicant to the Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB).[1381] Claims for refugee status are considered by RPD under the Immigration and Refugee Protection Act (IRPA), which entered into force in June 2002. The claimant must fill out a Personal Information Form and submit it to the IRB. About a year later the claimant must attend a hearing before a member of the IRB, unless the evidence is exceptionally clear, in which case the claimant will get refugee status without a hearing.[1382] If the RPD denies refugee status to the applicant, he or she may appeal the decision to the Refugee Appeal Division.[1383]

The IRPA provides that refugee protection is conferred on persons who have been determined to be Convention refugees or "persons in need of protection." 'Convention refugee' is defined along the lines of Article 1A(2) of the Refugee Convention and includes a definition of a stateless person as someone who is "outside the country of […] former habitual residence and [who] is unable or, by reason of that fear, is unwilling to return to that country."[1384]

In addition, complementary protection applies to persons in need of protection, defined as individuals whose removal to their country or countries of nationality or of former habitual residence would subject them personally to a danger of torture, a risk to life, or a risk of other cruel and unusual treatment.[1385]

The main barriers to refugee status determination for Palestinians are: presumption of the availability of protection elsewhere; conclusions of lack of credibility based

[1377] Canada Immigration, "Court Challenge to Refugee Healthcare Cuts," accessed January 18, 2015, http://www.canadavisa.com/court-challenge-to-refugee-healthcare-cuts.html.

[1378] If the claim is made at border crossing, a quick decision will be made as compared with applying to an immigration office inside Canada. Canada Immigration, "Refugee Status Application Process."

[1379] State of Canada, "Immigration and Refugee Protection Act (last Amended on November 20, 2014)," November 1, 2001, S.C. 2001, c. 27, http://laws-lois.justice.gc.ca/PDF/I-2.5.pdf, Section 100(1).

[1380] Asylum seekers are ineligible if: (1) they have made a prior refugee claim in Canada; (2) they have refugee status elsewhere; (3) they arrived via a "safe third country;" or (4) they are inadmissible as a result of security concerns or serious criminality or human rights violations. Canada Immigration, "Refugee Status Application Process."

[1381] Ibid.; State of Canada, "Immigration and Refugee Protection Act (last Amended on November 20, 2014)," Section 100(1).

[1382] Canada Immigration, "Refugee Status Application Process."

[1383] State of Canada, "Immigration and Refugee Protection Act (last Amended on November 20, 2014)," Section 110(1).

[1384] Ibid., Section 96.

[1385] Ibid., Section 97.

on the claimants' inability to obtain evidence in support of their claims; inability to prove well-founded fear of persecution; and the presumption that treatment in host states amounts to discrimination falling short of the persecution standard.

4. Refugee Status Determination: Article 1D

The Refugee Convention is only partially incorporated into Canadian law. IPRA refers to Article 1E, 1F[1386] and 1C[1387] of the Convention. There is no reference to Article 1D in domestic law.

The Federal Court examined Article 1D in a 1994 decision 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 the area does not enjoy the assistance mentioned and may be considered for determination of his refugee status under the criteria of the 1951 Convention.[1388]

The Federal Court thus interpreted Article 1D as an exclusion clause which only applies in the areas where UNRWA operates. Palestinian refugees in Canada are therefore outside this region and entitled to apply for protection under Canadian law. Canadian courts have not interpreted Article 1D as an independent inclusion clause, and the inclusion provision is not applicable in Canada. Hence, Palestinians are not barred from refugee status, but must establish that they are refugees as defined in the Refugee Convention and incorporated into domestic law.[1389]

4.1 UNRWA Registration and Country of Former Habitual Residence (CFHR) in Refugee Status Determination[1390]

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 the IRPA. The relevant factors for the authorities are whether the claimants can demonstrate a well-founded fear of persecution in their country of former habitual residence under one of the five Convention grounds, or whether they are in need of protection from risk of torture, threat to their life, or other cruel and unusual treatment.

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 in asylum claims of stateless Palestinians (see below).

[1386] Ibid., Section 98.

[1387] Ibid., Section 108(1).

[1388] El-Bahisi v. Canada (Minister of Employment and Immigration), [1994] 2 F.C. 0. *apud* BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 241.

[1389] Ibid.

[1390] This information appears in the 2005 BADIL *Handbook*. Ibid., 241–244.

Jurisprudence: Relevance of UNRWA Registration and Country of Former Habitual Residence

In *El-Bahisi* (mentioned above), the Federal Court concluded based on the language of the UNHCR Handbook that, in assessing whether a person should be recognized as a refugee, "it should normally be sufficient to establish that the circumstances which originally made him qualify for protection or assistance from UNRWA still persist."[1391]

This 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. In other words, previous recognition as a refugee by UNRWA is relevant to a person's status under the Convention. As the 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 the IRB have followed the ruling in the *El-Bahisi* case in subsequent cases, and have concluded that UNRWA registration cards may be persuasive for a refugee determination process without, however, representing determinative evidence of refugee status.

An IRB decision in 2000 involved a stateless Palestinian who was born in Egypt and had lived in the United Arab Emirates where his parents were residents. The 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.

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 the IRB adopted a restrictive approach limiting the term to countries to which claimants could return.[1392] 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 country against which a claim could be made.[1393]

The IRB argued in essence that a state could only be regarded as a CHFR if the claimant was legally able to return there, because if there was no return option, there

[1391] UNHCR, "Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees," para. 143.

[1392] A similar argument has been advanced by Hathaway: Hathaway, *The Law of Refugee Status*, 61.

[1393] See, e.g., 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" *apud* BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 324–325.

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 solely that ground.

This legal debate was ended by the decision of the Federal Court in the *Maarouf* case in 1993.[1394] 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. The Federal Court concluded that:

> [T]he 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.[1395]

The Court cited the Supreme Court of Canada, stating that the rationale for international refugee protection is to act "as "surrogate" shelter coming into play upon the failure of national support."[1396] The Federal Court held that two factors must be established for stateless persons to conform to this definition: the CFHR must be identified and the claimant must be outside that country by reason of well-founded fear of persecution for one of the protected reasons of the Convention.

Another legal debate revolved around the question of 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 if 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 *Marwan Youssef Thabet v. The Minister of Citizenship and Immigration*. The Trial Division of the Federal Court concluded that the *last* CFHR should be the one used as reference. The Federal Appeal Court, however, concluded that a stateless individual should demonstrate a well-founded fear against *any* one, not necessarily the last, of his CFHRs. In addition, the claimant must demonstrate that he is unable or unwilling to return to any of the other CFHRs:

[1394] Federal Court of Canada, "Maarouf v. Canada (Minister of Employment and Immigration)," December 13, 1993, [1994] 1 F.C. 723, http://www.refworld.org/publisher,CAN_FC,,PSE,47bda74c2,0.html.

[1395] Ibid., 12. 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," accessed January 18, 2015, http://www.edcorrigan.ca/articles/the-legal-debate-in-canada-on-the-protection-of-stateless-individuals-under-the-1951-geneva-convention.html, and Ardi Imseis, "Statelessness and Convention Refugee Determination: An Examination of the Palestinian Experience at the Immigration and Refugee Board of Canada," *University of British Columbia Law Review* 31, no. 2 (1997): 317.

[1396] Ward v. A.G. Canada [1993] 2 S.C.R. 689 *apud* BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 243.

> 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.[1397]

This rule has been named "any-country-plus-the-Ward-factor-test" in reference to the Supreme Court's decision in the case.

The IRB applied this test in a case involving a stateless Palestinian born in Lebanon who had subsequently lived in Kuwait and the United Arab Emirates. The 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 issue was whether he could return to Kuwait or the UAE. As the claimant could not return to either country, the IRB concluded that they were not relevant to the refugee claim.[1398]

5. Refugee Determination Process: Outcome

Asylum seekers who are determined to be Convention refugees or persons in need of protection become "protected persons,"[1399] and are entitled to the same rights.[1400] Persons granted refugee protection may apply for "landing" (permanent residence of the refugee and his or her dependents).[1401] The Canadian government provides refugees with health care benefits, financial assistance and programs that help them adjust to life in Canada.[1402]

[1397] See also UNHCR, "Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees," 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."

[1398] (AAO-01454) IRB 6 September 2001 *apud* BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 244.

[1399] State of Canada, "Immigration and Refugee Protection Act (last Amended on November 20, 2014)," Section 21(2).

[1400] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 246.

[1401] Ibid.

[1402] Citizenship and Immigration Canada (CIC), "Help from within Canada," October 10, 2012, http://www.cic.gc.ca/english/immigrate/refugees/help.asp. For a summary of benefits protected persons enjoy, see Citizenship and Immigration Canada (CIC), "Interim Federal Health Program: Summary of Benefits," November 3, 2014, http://www.cic.gc.ca/english/refugees/outside/summary-ifhp.asp.

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 (PRRA). However, if the person made a refugee claim within the prior twelve months they are ineligible for a PRRA. 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 become "protected persons" and may apply for a permanent residence permit.[1403] Individuals can also make an application to remain in Canada on humanitarian and compassionate grounds if removal would cause unusual and undeserved disproportionate hardship.[1404] Some cases have been successfully resolved under this provision.[1405]

A permanent resident or foreign national may be considered inadmissible due to engagement in "terrorism."[1406] According to Canadian case law, some Palestinians have been deemed inadmissible in the country due to their membership to various Palestinian organizations, considered terrorist organizations by Canadian authorities.[1407]

As many Palestinians who have received final negative decisions cannot return to their CFHR (or any of their CFHRs), removal of Palestinians is often impossible.[1408]

Since late 2003, many Palestinians from refugee camps in Lebanon and the oPt have faced deportation from Montreal.[1409] While some of them are older men and women, and some include entire families, the great majority are young men of 20 to 35 years of age.[1410] By February 2004, deportation procedures were launched against at least forty Palestinian refugees, and at least fourteen were deported from Canada in 2003–2004. Most of these Palestinian refugees had first come from Lebanon to

[1403] Citizenship and Immigration Canada (CIC), "Pre-Removal Risk Assessment – Refugee Claims in Canada," July 12, 2013, http://www.cic.gc.ca/english/refugees/inside/prra.asp.

[1404] State of Canada, "Immigration and Refugee Protection Act (last Amended on November 20, 2014)," Section 25(1). See also Citizenship and Immigration Canada (CIC), "Guide 5291 - Humanitarian and Compassionate Considerations," November 21, 2014, http://www.cic.gc.ca/english/information/applications/guides/5291ETOC.asp.

[1405] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 246.

[1406] State of Canada, "Immigration and Refugee Protection Act (last Amended on November 20, 2014)," Section 34(1)(c).

[1407] BADIL Resource Center, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention. Jurisprudence Regarding Article 1D 2005-2010*, 80–81.

[1408] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 246.

[1409] The Coalition Against the Deportation of Palestinian Refugees, *Stateless & Deported: Palestinian Refugees Facing Deportation from Canada, 2003-2004* (Montreal, 2004), 2003–2004, http://refugees.resist.ca/files/stateless_&_deported.pdf.

[1410] Ibid., 2.

the United States on student visas and then applied for refugee status in Canada.[1411] 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.[1412] Human rights activists in Canada, including the Coalition Against the Deportation of Palestinian Refugees, have sought to protect Palestinians against the deportations.[1413]

6. Protection Under Statelessness Conventions

Canada has not signed the 1954 Stateless Persons Convention.[1414] It became a party to the 1961 Statelessness Convention in 1978.[1415] However, treaties are not self-executing in Canada and the provisions of the 1961 Statelessness Convention have not been codified in domestic law.[1416] Stateless persons are, therefore, not entitled to claim protection under these Conventions.

7. Reference to Relevant Jurisprudence[1417]

Federal Court of Canada

Application for Judicial Review Allowed

Date	Name	Summary
25 September 2012	Alhayek v. Canada (Minister of Citizenship and Immigration)[1418]	Appellants were a Palestinian family (husband, wife and three sons) who were citizens of Palestine from the West Bank. The main claimant (the husband) joined the Democratic Union, a group focused on peaceful resistance of Israeli occupation. As a result of his political opinions/activism, he was arrested and their home was searched several times, and he was tortured and interrogated. The pressure forced him to leave to the United States for a few years. Upon return, Hamas (who had joined with the Democratic Union, now supporting non-peaceful resistance) began pressuring him to join. Once again he left to the US. The IRB denied refugee status due to a lack of credible evidence resulting from inconsistency in his testimony. The IRB's decision on credibility is given strong deference, except when clear evidence to the contrary is determined. The Federal Court held that failure to address the documentary evidence and in light of the transcript (which showed the inconsistency was a misunderstanding of the English terms "arrest" and "detention") constituted an error in drawing negative credibility.

[1411] Ibid., 4.

[1412] Ibid.

[1413] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 247.

[1414] UNTC, "Status of Treaties: Convention Relating to the Status of Stateless Persons."

[1415] UNTC, "Status of Treaties: Convention on the Reduction of Statelessness."

[1416] The only mention of stateless persons in the IRPA occurs in Section 2(1): "'foreign national' means a person who is not a Canadian citizen or a permanent resident, and includes a stateless person" State of Canada, "Immigration and Refugee Protection Act (last Amended on November 20, 2014)," Section 2(1).

[1417] For jurisprudence prior to 2005, see BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 248–262.

[1418] Federal Court of Canada, "Alhayek v. Canada (Citizenship and Immigration)," September 25, 2012, 2012 FC 1126, http://decisions.fct-cf.gc.ca/fc-cf/decisions/en/61393/1/document.do.

18 April 2012	Hannoon v. Canada (Minister of Citizenship and Immigration)[1419]	Appellant received phone calls in Palestine from anti-PA representatives asking his cooperation in deeming prospective detainees physically unfit for detention, in his capacity as a medical doctor. He did not cooperate and thus in a subsequent call the caller expressed displeasure. A month later, unknown attackers shot at his home while he was in it. The next day he received a call threatening that he would not survive next time. Appellant left on a pre-planned trip, but once in Canada began to experience psychological and cognitive disability due to fear of returning. The Court held that the IRB erred in not assessing the *sur place* claim, that addresses people who were not refugees at the time they left the country but have since become refugees. The appellant need not have explicitly brought up the *sur place* claim for the IRB to be obligated to consider it in a case where it is appropriate.
2 April 2012	Shaltaf v. Canada (Minister of Citizenship and Immigration)[1420]	Appellant left Palestine in 2008 and sought refugee protection in Canada based on fear of persecution by the Israeli army. He had experienced several incidents with Israeli forces, including: frequent attacks on the refugee camp he lived in; occasional arrest and assault; being denied the opportunity to return to India to complete his education; and, upon encountering a Palestinian-Israeli army dispute while working as a truck driver, witnessed his cousin□s death by bullet wound. The Court held that he was not specifically targeted, thus the experiences constituted discrimination, but not persecution. Appellant had returned to Palestine a few times after leaving, for instance to bring family members with him, which led the Court to hold that there must not be a true fear of persecution if he was willing to return. However, the case was remanded to the IRB because they had failed to analyze the documentary evidence fully under IRNA § 97. This is obligatory, particularly when there is a question of credibility.
20 March 2009	Kablawi v. Canada (Minister of Citizenship and Immigration)[1421]	Kablawi obtained refugee status in Canada in 1998, but his application for permanent residence was denied due to past membership in the Syrian Socialist National Party (SSNP). In prior interviews during his refugee claim, Kablawi explained that his role had been strictly recruitment and he was unaware of any terrorist activity. The Federal Court allowed his appeal that the office had unfairly denied his claim. It stated that it "requires disclosure of a document, report or opinion, if it is required to provide the individual with a meaningful opportunity to fully and fairly present her case to the decision-maker." Since the officer did not inform Kablawi of the sources he used to determine the nature of the SSNP, he had no opportunity to view them and properly defend himself.
1 October 2007	Asali v. Canada (Minister of Citizenship and Immigration)[1422]	The appellant was a stateless Palestinian from the West Bank. He and his family (wife and four children) were denied refugee status and applied for judicial review of the PRRA application. The main appellant identified several risks they faced if they returned, including systemic harassment, humiliation and persecution, and beatings and detainment. Further, he emphasized the risks facing his children in the West Bank due to non-combatant civilian conflicts that frequently occur. The Federal Court held that IRB erred in failing to address the risk faced by the minor applicants.

[1419] Federal Court of Canada, "Hannoon v. Canada (Citizenship and Immigration)," April 18, 2012, 2012 FC 448, http://decisions.fct-cf.gc.ca/fc-cf/decisions/en/60747/1/document.do.

[1420] Federal Court of Canada, "Shaltaf v. Canada (Citizenship and Immigration)," April 2, 2012, 2012 FC 386, http://decisions.fct-cf.gc.ca/fc-cf/decisions/en/60676/1/document.do.

[1421] Federal Court of Canada, "Kablawi v. Canada (Citizenship and Immigration)," March 20, 2009, 2009 FC 283, http://decisions.fct-cf.gc.ca/fc-cf/decisions/en/56866/1/document.do.

[1422] Federal Court of Canada, "Asali v. Canada (Citizenship and Immigration)," October 1, 2007, 2007 FC 991, http://decisions.fct-cf.gc.ca/fc-cf/decisions/en/54428/1/document.do.

Application for Judicial Review Dismissed

Date	Name	Summary
30 May 2012	Khouri v. Canada (Minister of Citizenship and Immigration)[1423]	Originally from Palestine, Khouri lived in the US for 8 years before seeking refuge in Canada. She left her abusive husband in Palestine and began a relationship with a new man in the US, with whom she had two children. She feared returning to Palestine where both her family and her ex-husband's family were angry with her for leaving. The IRB denied refugee status based on credibility concerns. The appellant's testimony and claims were inconsistent regarding the behavior of her ex-husband while she was in the US and in which countries she feared persecution (some accounts include the US and Jordan; others do not). The Court dismissed the appeal.
9 September 2011	Abedalaziz v. Canada (Minister of Citizenship and Immigration)[1424]	The appellant was born in Jordan and lived in the West Bank. The IRB determined that he was a Jordanian citizen, but claimed a fear of persecution only with respect to Palestine. The Court upheld the IRB's decision that he was not a refugee because he could reside in Jordan.
11 August 2011	Altwayjery v. Canada (Minister of Citizenship and Immigration)[1425]	A stateless Palestinian woman, accompanied by her three young children, was smuggled out of Gaza to Canada. Her family supported Hamas and opposed her choice to marry her husband. He was targeted by Hamas over several years, eventually causing the family to change their address. However, they were found and targeted in their new home. The IRB determined that she had failed to credibly prove that they had resided in Gaza, as she had no identifying documents. This was relevant because of the presence of Hamas in Gaza, but not the West Bank. Credibility determinations are generally upheld by the Federal Court, unless there is clear evidence the IRB erred. Therefore, the Court upheld the IRB decision.
24 November 2006	Abdalla v. Canada (Minister of Citizenship and Immigration)[1426]	Kuwaiti-born stateless Palestinian spent the first 25 years of his life studying in Kuwait. From 1991-2003 he lived in the US, except for a 3 year stay in Ramallah in Palestine. During that time he was approached once by Hamas trying to recruit him. The appellant declined and feared retribution afterward, but was never bothered again. Appellant argued that the IRB had given inadequate reasons for the decision refusing his asylum application. The Court disagreed, stating that "it might have been salutatory […] to note that the applicant had encountered no further incidents with Hamas […] However, its failure to do so does not constitute a reviewable error."
5 December 2005	Hermas v. Canada (Minister of Citizenship and Immigration)[1427]	Palestinian born in Jordan came to Canada and was granted permanent resident status in 1995. He sought protection for four siblings as "dependent children." The Court concluded that they were not within the definition of dependent children because the text suggests a parent-child relationship.

[1423] Federal Court of Canada, "Khouri v. Canada (Citizenship and Immigration)," May 30, 2012, 2012 FC 659, http://decisions.fct-cf.gc.ca/fc-cf/decisions/en/60914/1/document.do.

[1424] Federal Court of Canada, "Yah Abedalaziz v. Canada (Citizenship and Immigration)," September 9, 2011, 2011 FC 1066, http://decisions.fct-cf.gc.ca/fc-cf/decisions/en/59918/1/document.do.

[1425] Federal Court of Canada, "Altwayjery v. Canada (Citizenship and Immigration)," August 11, 2011, 2011 FC 989, http://decisions.fct-cf.gc.ca/fc-cf/decisions/en/59865/1/document.do.

[1426] Federal Court of Canada, "Abdalla v. Canada (Citizenship and Immigration)," November 24, 2006, 2006 FC 1429, http://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/53262/index.do.

[1427] Federal Court of Canada, "Hermas v. Canada (Minister of Citizenship and Immigration)," December 5, 2005, 2005 FC 1649, http://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/43366/index.do.

8. Links

- Citizenship and Immigration Canada: http://www.cic.gc.ca
- Canadian Council for Refugees: ccrweb.ca
- Coalition against the Deportation of Palestinian Refugees: http://refugees.resist.ca/refugees/about.htm

THE UNITED STATES[1428]

1. Statistical Data

According to census data, there are approximately 101,985 Palestinians in the United States.[1429] However, other sources indicate a much greater population.[1430] Arab Americans are not a federally recognized minority and therefore estimates are not very accurate. Palestinians' place within this group further complicates the statistics. Arab America estimates that there are 180,000 Palestinians/Jordanians currently living in the US.[1431]

The United States Census Bureau data disaggregates national groups of Arabs and Arab-Americans, and gives the figure for Palestinians residing in the US as of its May 2013 Survey Brief as 83,241, while Jordanians are separately listed as numbering 60,056.[1432] The Arab American Institute reports that

> Arab Americans live in all 50 states, but two thirds reside in 10 states; one third of the total live in California, New York, and Michigan. About 94% live in metropolitan areas. Detroit, Los Angeles, New York, Chicago, Washington, D.C., and Northeastern NJ are the top six metro areas of Arab American concentration. Lebanese Americans constitute a greater part of the total number of Arab Americans residing in most states, except New Jersey, where Egyptian Americans are the largest Arab group. Americans of Syrian decent make up the majority of Arab Americans in Rhode Island, while the largest Palestinian population is in Illinois.[1433]

Most Palestinians arrived in the US from the Gulf States and Lebanon. Relatively few have come from the West Bank and the Gaza Strip. Many Palestinians have

[1428] Susan M. Akram, Clinical Professor and Supervising Attorney at Boston University School of Law, Yolanda Rondon and Abed Ayoub, Staff Attorneys at the American-Arab Anti-Discrimination Committee (ADC), immigration attorneys Malea Kiblan, Karen Pennington and John Wheat Gibson, reviewed and contributed to this section.

[1429] U.S. Census Bureau, "2013 American Community Survey 1-Year Estimates - Total Ancestry Reported," September 18, 2014, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_13_1YR_B04003&prodType=table. See also Angela Brittingham and G. Patricia de la Cruz, *We the People of Arab Ancestry in the United States*, Census 2000 Special Reports (U.S. Census Bureau, March 2005), http://www.census.gov/prod/2005pubs/censr-21.pdf.

[1430] 2012 study conducted on the adjusted total population of Arab-Americans concluded that that there are approximately 3.5 million Arab-Americans in the United States (Arab American Institute Foundation, *National Arab American Demographics*, 2012, http://b.3cdn.net/aai/44b17815d8b386bf16_v0m6iv4b5.pdf). This number contrasts with the 1.8 million Arab-Americans estimated by the U.S. Census Bureau (U.S. Census Bureau, "2013 American Community Survey 1-Year Estimates - Total Ancestry Reported").

[1431] Arab America, "Arab Americans," accessed January 21, 2015, http://www.arabamerica.com/arab-americans/.

[1432] Maryam Asi and Daniel Beaulieu, *Arab Households in the United States: 2006-2010*, American Community Survey Briefs (United States Census Bureau, May 2013), 2, http://www.census.gov/prod/2013pubs/acsbr10-20.pdf.

[1433] Arab American Institute Foundation, "Quick Facts About Arab Americans," n.d., http://b.3cdn.net/aai/fcc68db3efdd45f613_vim6ii3a7.pdf.

entered as students (F-1 Status), visitors (B-1 or B-2 Status), or exchange visitors (J-1 Status).[1434]

Palestinians are registered by the US Authorities by place of birth.[1435] In asylum cases, the US considers the origin of travel documents only when determining an individual's place of birth or to where an individual may be deported. Palestinian passports are accepted as travel documents, but not proof of citizenship.[1436]

According to UNHCR, between 2005 and 2010 64 stateless Palestinians applied for asylum in the United States.[1437] Five of the applicants were granted asylum, 32 were denied and the remaining were abandoned or withdrawn.[1438]

2. Refugee Status Determination: The Process

Palestinian asylum seekers who are in the US have the same right as other asylum seekers[1439] to submit an "affirmative"[1440] application for asylum to the regional Citizenship and Immigration Service ("USCIS").[1441] Once the affirmative asylum process begins, the asylum seeker's stay in the US is legal in the sense that no unlawful presence will accrue while the asylum application is pending. However, the asylum seeker has no status in the United States. During the asylum process, asylum seekers are entitled to travel within the US but cannot receive any welfare benefits.[1442] They can also travel outside the country by obtaining an "advance parole" beforehand; if they leave the US without such obtaining such document, authorities assume they have abandoned their asylum application.[1443]

An asylum seeker may apply for employment authorization only if, after 150

[1434] Some may have entered illegally, for example, arriving in Texas from Mexico. BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 264.

[1435] Palestinians from Gaza may be listed as "Egyptians," "Gazans" or "Palestinians," 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. Ibid., 264 and 326.

[1436] INS Resource Information Center, "RIC Query - Palestinian Territory, Occupied," *U.S. Citizenship and Immigration Services (USCIS)*, May 20, 2002, http://www.uscis.gov/tools/asylum-resources/ric-query-palestinian-territory-occupied-20-may-2002.

[1437] UNHCR, *Citizens of Nowhere: Solutions for the Stateless in the U.S.*, December 2012, 35, http://www.refworld.org/docid/50c620f62.html.

[1438] Ibid.

[1439] Regardless of country of origin or current immigration status.

[1440] In affirmative asylum applications, as opposed to defensive applications, the asylum seeker is not in removal proceedings at the time of application. See U.S. Citizenship and Immigration Services (USCIS), "Obtaining Asylum in the United States," March 10, 2011, http://www.uscis.gov/humanitarian/refugees-asylum/asylum/obtaining-asylum-united-states.

[1441] U.S. Citizenship and Immigration Services (USCIS), "The Affirmative Asylum Process," February 21, 2014, http://www.uscis.gov/humanitarian/refugees-asylum/asylum/affirmative-asylum-process.

[1442] Information provided by Yolanda Rondon.

[1443] U.S. Citizenship and Immigration Services (USCIS), "Travel Documents," March 22, 2011, http://www.uscis.gov/green-card/green-card-processes-and-procedures/travel-documents.

days, his or her asylum application has still not been adjudicated.[1444] The clock begins on the date on which the U.S. Citizenship and Immigration Services ("USCIS") receives the asylum seeker's application.[1445] Additionally, the clock may stop if authorities determine that the applicant interrupted the asylum procedure by causing a delay in adjudication.[1446] Thus, asylum seekers may remain ineligible to work for many years because authorities often claim that the applicant has caused a delay in the proceedings, even in situations where the authorities themselves have caused the failure to adjudicate in timely fashion.[1447]

An asylum seeker must apply for asylum within one year of his most recent arrival in the United States.[1448] There are two statutory exceptions for 'changed circumstances' or 'extraordinary circumstances relating to the delay in filing' from the one-year filing deadline, that allow for sur place claims. However, the exceptions must be proved, and adjudicators tend to expect proof through expert evidence.[1449] The asylum process begins with the applicant filing Form I-589 (Application for Asylum and for Withholding Removal), either with the USCIS if the applicant is not in proceedings and filing affirmatively, or with the immigration court if the applicant has been placed in removal proceedings and filing a defensive application.[1450] There are some exceptions to these jurisdictional rules for specific types of claims, such as for unaccompanied minors.[1451] Applicants must include a recent[1452] passport-style photograph and copies of all passports and travel documents.[1453] The USCIS recommends that applicants also submit copies of any additional identification as well as evidence of general conditions in the country from which they are seeking asylum and specific facts on which they are relying to support their claims.[1454] There is no application fee for the initial application.[1455]

The USCIS will send a notice acknowledging receipt of the application and scheduling an appointment at the nearest Application Support Center. At the Support

[1444] U.S. Citizenship and Immigration Services (USCIS), "Asylum," January 22, 2013, http://www.uscis.gov/humanitarian/refugees-asylum/asylum.

[1445] U.S. Citizenship and Immigration Services (USCIS), "The 180-Day Asylum EAD Clock Notice," 1, accessed January 21, 2015, http://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/Asylum_Clock_Joint_Notice.pdf.

[1446] Nolo - Law for all, "Timing of the Affirmative Asylum Application Process," accessed January 21, 2015, http://www.nolo.com/legal-encyclopedia/timing-the-affirmative-asylum-application-process.html.

[1447] Information provided by Susan Akram.

[1448] U.S. Citizenship and Immigration Services - Department of Homeland Security, "I-589, Application for Asylum and Withholding of Removal: Instructions," 2012, 1, http://www.uscis.gov/sites/default/files/files/form/i-589instr.pdf.

[1449] Information provided by Susan Akram.

[1450] Information provided by Susan Akram and Yolanda Rondon.

[1451] Information provided by Susan Akram.

[1452] "Recent" is within 30 days prior to submitting the application.

[1453] U.S. Citizenship and Immigration Services - Department of Homeland Security, "I-589, Application for Asylum and Withholding of Removal: Instructions," 7.

[1454] Ibid.

[1455] U.S. Citizenship and Immigration Services (USCIS), "Application for Asylum and Withholding of Removal," December 1, 2014, http://www.uscis.gov/i-589.

Center, applicants will undergo fingerprinting and background security checks. After that, applicants receive a notice of an interview. Applicants will normally receive notice of an interview within 21 days of mailing the Form I-589. The interview will be conducted at either an Asylum Office or one of the Field Offices. Typically, the interview will take place within 43 days of USCIS receives the completed application. The interview lasts about an hour, depending on the case.[1456] Applicants may bring a legal representative, interpreters, and witnesses to testify on their behalf.[1457] While an applicant's testimony may be sufficient as a legal matter, no successful case in the US today relies on testimony alone. Documentation supporting the allegations is essential. Expert testimony is necessary in most cases, but particularly in Palestinian cases.[1458]

Asylum Officers or immigration judges (in removal proceedings) will make a decision on whether the applicant is eligible under the Immigration and Nationality Act ("INA"). A Supervisory Asylum Officer will review the decision to ensure that it is consistent with law and previous decisions. Supervisory Asylum Officers may refer the decision to asylum division headquarters staff for additional review. Applicants usually return to the office to receive the decision approximately two weeks after the interview. Generally, the decision will be finalized no later than 60 days after filing for asylum. A decision may take longer if the applicant currently has valid immigration status, security checks are pending, or Asylum Division Headquarters staff are still reviewing the case.[1459] An asylum officer cannot deny the I-589, but can refer the application to the immigration court for further decision if the application is not approved.[1460]

3. Refugee Status Determination: The Legal Framework

The US is a party to the 1967 Protocol,[1461] but not the 1951 Refugee Convention.[1462] In general, a claim for refugee status will be considered under the Immigration and Nationality Act (INA) [8 U.S. Code § 1101].[1463] The INA has incorporated some provisions of the Refugee Convention into domestic law, including Article 1A(2), which appears in Section 101(a)(42). Asylum procedure is governed by INA Section 208(a) and the immigration Regulations found in 8 CFR Section 208. Article 1D, however, is not among the provisions incorporated into US domestic law.

[1456] It is common for interviews to last up to 3 to 5 hours in Palestinian cases. Information provided by Malea Kiblan.

[1457] U.S. Citizenship and Immigration Services (USCIS), "The Affirmative Asylum Process."

[1458] Information provided by Malea Kiblan and Susan Akram.

[1459] U.S. Citizenship and Immigration Services (USCIS), "The Affirmative Asylum Process."

[1460] Information provided by Susan Akram.

[1461] UNTC, "Status of Treaties: Protocol Relating to the Status of Refugees."

[1462] UNTC, "Status of Treaties: Convention Relating to the Status of Refugees."

[1463] United States of America, "Immigration and Nationality Act (last Amended in February 2013)," February 2013, http://www.uscis.gov/iframe/ilink/docView/SLB/HTML/SLB/act.html.

Section 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 unwilling or unable 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 on account of race, religion, nationality, membership in a particular social group, or political opinion.[1464]

4. Refugee Status Determination: Article 1D

Courts have not applied Article 1D in any published Palestinian asylum decisions in the United States. Despite the lack of case law, many disagree on whether Article 1D has been incorporated into domestic law. On one hand, Congress expressly codified Article 1A(2) in the INA, but failed to include Article 1D. On the other hand, when the United States ratified the 1967 Protocol, it may have also implicitly ratified Article 1D.[1465]

On 29 July 1993, the General Counsel of the INS presented its view on Article 1D in a letter to UNHCR in Washington D.C. In the letter, the General Counsel acknowledged UNHCR's position that any Palestinian, or his forebearer, who was registered with UNRWA and is now outside UNRWA's area of operations, is entitled to refugee protection *ipso facto*.[1466]

However, the General Counsel rejected UNHCR's position that eligibility for assistance from UNRWA "somehow equates to a showing that the person is a refugee under the Convention." Instead, the General Counsel argued that an asylum seeker must fall within the INA's statutory refugee definition. According to the General Counsel, displacement from the 1948 Israeli-Arab war was not sufficient to establish eligibility for refugee status under US law.[1467]

The General Counsel concluded, "Article 1D would then seem to mean, not that Palestinian refugees are refugees in the sense defined by [the] Convention and United States law, but only that they are not precluded from claiming that status."[1468] In its interpretation, the first paragraph of Article 1D constitutes one of the exclusion clauses in the 1951 Convention, while the second paragraph, instead of being taken as an *ipso facto* mechanism of inclusion, is understood as a nullification of the exclusion clause applicable to Palestinians, provided that they are no longer within

[1464] Ibid., Section 101(a)(42).

[1465] See BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 265–266.

[1466] Ibid.

[1467] Ibid.

[1468] Ibid.

UNRWA's area of operation.[1469] Thus, the General Counsel determined that, rather than receive automatic protection, Palestinians must fulfill the Article 1A(2) criteria (INA § 101(a)(42)) to qualify for asylum.

4.1 Article 1A(2) in Refugee Status Determination

Given that Article 1D does not apply Palestinian asylum claims in the US, the most important aspect of Palestinian refugee status determination is the assessment of past persecution or a well-founded fear of persecution.[1470] In US case law, persecution has been defined as:

> [t]he 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.[1471]

In the aftermath of the 1991 Gulf War, many stateless Palestinians who had last resided in Arab Gulf States, but failed to demonstrate past persecution or could not establish a well-founded fear of persecution, filed asylum claims in the US. These claims, together with efforts by lawyers and UNHCR, gave rise to an in-depth examination of the meaning of persecution in the context of expulsion and denial of re-entry to individuals, including stateless persons. As a result, the INS issued a non-binding legal opinion concluding that denial of re-entry to an alien, including a stateless person, by his country of former habitual residence may constitute "persecution."[1472]

INS Legal Opinion: Denial of re-entry to aliens, including stateless persons, may constitute "persecution."[1473]

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, and 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:

[1469] "A finding that a 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" (Ibid).

[1470] See U.S. Department of Justice, "Matter of Acosta, Interim Decision #2986," March 1, 1985, http://www.justice.gov/eoir/vll/intdec/vol19/2986.pdf; U.S. Department of Justice, "Matter of Chen, Interim Decision #3104," April 25, 1989, http://www.justice.gov/eoir/vll/intdec/vol20/3104.pdf (information provided by Yolanda Rondon).

[1471] United States Court of Appeals for the Fifth Circuit, "Abdel-Masieh v. U.S. Immigration and Naturalization Service," January 15, 1996, 7, http://www.ca5.uscourts.gov/opinions/pub/94/94-41155.CV0.wpd.pdf. See also United States Court of Appeals for the Fifth Circuit, "Rosa Cordon Montes v. Eric Holder, Jr.," September 1, 2010, 5, http://www.ca5.uscourts.gov/opinions/unpub/09/09-60262.0.wpd.pdf.

[1472] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 267.

[1473] This information appears in the 2005 BADIL *Handbook*. Ibid., 267–270.

> 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, which said 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.[1474] The General Counsel said that since 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 stated that the denial of re-entry or the expulsion of aliens from the territory of these Gulf States was an exercise of their sovereignty. The General Counsel affirmed that all independent nations have the sovereign power "to determine whether and under what circumstances aliens may enter and remain in the nation's territory." Additionally, nations would exercise such power more frequently in war or during a national emergency.

However, following efforts by practitioners of the Middle East Asylum Project[1475] and UNHCR, the General Counsel modified its position in a second Legal Opinion dated 27 October 1995.[1476] In this second opinion, it concluded that –without infringing on state sovereignty – certain actions of sovereign states against individuals living in their territories may entail the kind of harm qualifying as persecution under the 1951 Convention and US immigration law. The General Counsel affirmed that this may apply to both expulsion and denial of re-entry. The General Counsel, moreover, stated that its opinion may also apply to stateless persons, underscoring 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 upheld the rationale in the 1992 opinion that these state actions *per se* do not constitute persecution. The General Counsel tempers this proposition "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, thus, that any expulsion, denial of re-entry, or seizure of property simply because of Palestinian nationality could be considered illegitimate state action rising to the level of persecution. Additionally, arbitrary denial of re-entry to a person who had no intent to relinquish his residence may constitute a violation of basic human rights. The General Counsel defined this type of human rights violation as follows:

> [e]xpelling 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.

Determination of whether such a violation is so serious a deprivation of human rights as to constitute persecution will be decided on a case-by-case basis. An individual who has, through long-term residence in the country, established "family, home, business and property there" will more likely be able to prove that the offense constitutes persecution. Other factors that tend to indicate a serious violation of human rights include deprivation of virtually all means of earning a livelihood; relegation to substandard housing; expulsion from institutions of higher learning; passport denial; and enforced social or civil inactivity.[1477] In addition, an alien living legally in a country also has the right to basic due process in the context of expulsion.[1478]

[1474] Published as an appendix to the 69 No. 48 *Interpreter Releases* 1609 *apud* Ibid., 327, footnote 730.

[1475] Started by refugee lawyers, including Malea Kiblan, in response to the influx of Palestinians from Kuwait during the Gulf War, but since dissolved. As Palestinian asylum seekers raise unique issues, the Project prepared and trained other practitioners and asylum officers dealing with Palestinian cases *apud* Ibid., footnote 731.

[1476] Memorandum from David A. Martin, INS Office of General Counsel, to Asylum Division, *Legal Opinion: Palestinian Asylum Applicants*, 27 October 1995 (Genco Opinion 95-14). On file with BADIL.

[1477] U.S. Immigration and Naturalization Service, *The Basic Law Manual*, November 1994, p. 25 *apud* BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 327, footnote 733.

[1478] See UN General Assembly, "International Covenant on Civil and Political Rights," December 16, 1966, A/RES/2200(XXI)[A-C], Article 13: "an alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons for 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.

The General Counsel concluded that, with regard to stateless persons, "expulsion or denial of re-entry may well entail the kind of harm that could qualify as persecution."

If US Courts apply the standard developed by the INS General Counsel, an asylum applicant who has suffered serious human rights violations may qualify for refugee status. The applicant would have to establish that the persecution was inflicted for one of the protected reasons under the Refugee Convention, which includes "nationality."[1479] However, the opinion is advisory and not binding on courts.[1480]

In many cases, the US has recognized Palestinian asylum seekers as refugees, including most of the Palestinians who fled to the US from Kuwait following the Gulf War.[1481] Many stateless Palestinians who arrived in the US at this time claimed a well-founded fear of persecution in Kuwait based on their national origin. Most of them had US-born children and were generally granted refugee status. Very few were denied refugee status, and those denied were subsequently granted Deferred Enforced Departure (DED) status, which the authorities regularly renewed.[1482]

However, with the exception of Palestinian asylum seekers who arrived from Arab Gulf states (especially Kuwait), Palestinian asylum seekers arriving from countries outside UNRWA's area of operations are generally not granted refugee status. As these Palestinians often cannot return to their countries of former residence, many of them live in the US with no lawful immigration status, and if they are under a final order of removal, they are subject to forcible return at any time removal becomes possible.[1483]

According to practitioners, Palestinians who were denied refugee status tended to fall within four categories:

- Palestinians from Jordan who enjoy effective protection from the Jordanian authorities (subject to changes enumerated in subsequent sections);
- 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; and
- Asylum seekers whose cases are denied based on credibility concerns.

[1479] See UNHCR, "Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees," para. 74: "The term 'nationality' in this context [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."

[1480] Despite inclusion of the General Counsel Opinion in the Refugee Officer Training Module, BADIL is not aware of any court decisions that followed the General Counsel's guidelines.

[1481] In Re Ibrahim Qasmieh, Sameha Machari and Lana Qasmieh, # A72-021-057, et. seq, Miami, Fl (Feb. 28, 1996); In Re Salah Samha and Imad Samha, #A70-482-803 et.seq., Arlington, VA (Aug. 7, 1995). Copies on file with BADIL.

[1482] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 270.

[1483] Ibid.

Other final negative decisions on Palestinian asylum cases have involved credibility issues[1484] and claims based on general discrimination.[1485]

Recently, however, Jordan has begun denationalizing Palestinians within its territory. Government officials revoke passports and travel documents, and in essence, strip Palestinians of their citizenship.[1486] For this reason, the Legal Opinion of the INS General Counsel is still relevant. These state acts of denationalization mirror several indicators of human rights violations that could constitute persecution (i.e., passport denial and enforced social or civil inactivity).

5. Refugee Determination Process: Outcome

Asylum seekers granted refugee status/asylum may not be removed from the US.[1487] However, an asylum grant is at the Attorney General or Secretary of Homeland Security's discretion.[1488]

Asylum seekers who have obtained lawful status in another (safe) country are not entitled to asylum in the US.[1489] Otherwise eligible asylum seekers may also be denied on the basis of prior criminal activity, posing a threat to US security, or having participated in the persecution of others.[1490]

Individuals granted asylum receive temporary residence permits (I-94) from the USCIS.[1491] This permit is valid for one year and is renewable. Asylees are authorized

[1484] See, e.g., Mohammed Issa Alshiabat 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 Alshiabat 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 the Board of Immigration Appeals (BIA) 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 the BIA based on credibility. See, e.g., 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 *apud* Ibid., 327, footnote 737.

[1485] See, e.g., 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 specifically singled out for harassment or abuse" *apud* Ibid., footnote 738.

[1486] Ali Younes, "Revoking Citizenships: The Future of Palestinians in Jordan," *Al-Arabiya News*, September 10, 2012, http://www.alarabiya.net/views/2012/09/10/237182.html.

[1487] United States of America, "Immigration and Nationality Act (last Amended in February 2013)," Section 208(c)(1)(A).

[1488] Ibid., Section 208(b)(1)(A).

[1489] Ibid., Section 208(b)(2)(A)(vi).

[1490] Ibid., Section 208(b)(2)(A)(i), (ii), (iii) and (iv).

[1491] U.S. Citizenship and Immigration Services (USCIS), "Types of Asylum Decisions," March 15, 2011, http://www.uscis.gov/humanitarian/refugees-asylum/asylum/types-asylum-decisions, Section "Grant of Asylum."

to work beginning on the date of their positive asylum decision.[1492] Moreover, they are entitled to apply for an unrestricted Social Security card immediately upon grant of asylum.[1493]

Individuals may apply for permanent residence status (green cards) one year after receiving asylum.[1494] Up until 2005, the US government was authorized to grant lawful permanent residence to 10,000 recognized refugees annually.[1495] The REAL ID Act eliminated the cap, and there is no longer any annual limit on the number of refugees and asylees who can adjust their status to that of a permanent lawful resident.[1496] For example, in 2012, 150,000 refugees and asylees adjusted to lawful permanent resident status.[1497]

Four years after an asylee has been granted permanent residence, he can apply for naturalization (US citizenship).[1498]

If the US rejects a Palestinian's asylum claim, he or she will be removed to his or her country of former residence. A removal order may be cancelled, however, if the applicant (1) has been living in the US for ten or more years;[1499] and (2) 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 exceptionally unusual hardship as a result of the removal.[1500] Only 4,000 such cancellations may be granted annually. Because, generally, a claimant must apply for asylum within one year of arrival, few are eligible for cancellation. US immigration law includes other bars to cancellation, including the "material support" provision and a very broad criminal bar.[1501] The material support bar was introduced in the 1952 Immigration and Nationality Act (INA) and was expanded in the 1996 amendments to the INA.[1502] According to Section 212(a)(3)(B)(i) any alien who has engaged in terrorist activity is inadmissible into

[1492] U.S. Citizenship and Immigration Services (USCIS), "Benefits and Responsibilities of Asylees," April 1, 2011, http://www.uscis.gov/humanitarian/refugees-asylum/asylum/benefits-and-responsibilities-asylees.

[1493] Ibid.

[1494] United States of America, "Immigration and Nationality Act (last Amended in February 2013)," Section 209(b)(2).

[1495] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 271.

[1496] Lara Burt and Jeanne Batalova, "Refugees and Asylees in the United States," *Migration Policy Institute*, February 3, 2014, http://www.migrationpolicy.org/article/refugees-and-asylees-united-states.

[1497] Ibid.

[1498] Information provided by Susan Akram.

[1499] The ten years must be fulfilled by the time the removal case begins. Time after the case is initiated will not count toward the ten years.

[1500] U.S. Department of Justice - Executive Office for Immigration Review, "Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents," July 2014, http://www.justice.gov/eoir/eoirforms/eoir42b.pdf, "Advice to the Applicant."

[1501] Ibid.

[1502] Swetha Sridharan, "Material Support to Terrorism - Consequences for Refugees and Asylum Seekers in the United States," *Migration Policy Institute*, January 30, 2008, http://www.migrationpolicy.org/article/material-support-terrorism-%E2%80%94-consequences-refugees-and-asylum-seekers-united-states.

the United States, even if they are seeking asylum.[1503] Section 212(a)(3)(B)(iv)(VI) defines the term "engage in terrorist activity" to include "an act that the actors knows, or reasonably should know, affords material support" for the commission of terrorist activity, to an individual who has or is planning to commit terrorist activity, or to a terrorist organization.[1504] Examples of "material support" provided by the INA include "a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training,"[1505] however that list is not exclusive, and asylum has been denied on this ground to individuals for typing communiqués denouncing violence on behalf of individuals or organizations deemed to be terrorists, distributing leaflets and the like.[1506] Section 212(a)(3)(B)(vi) defines a terrorist organization as one designated by Section 219 of the Act, otherwise designated by the Secretary of State, or a group of two or more people who have engaged in terrorist activity.[1507] This provision is of particular applicability to Palestinian refugees because Hamas, the Palestinian Liberation Front (PLF), Palestinian Islamic Jihad (PIJ), and the Popular Front for the Liberation of Palestine (PFLP) were designated as foreign terrorist organizations by the Secretary of State in the 1990s.[1508] This means that if an individual applying for asylum in the United States has, for example, allowed a member of Hamas to sleep at his home or has fed him a meal because they are either friends or family, that individual may be barred from asylum in the United States under the broad material support bar of the INA.

Another important bar to asylum is the "persecutor of others" ground of exclusion. Arab political and other activists have been denied asylum and withholding for throwing stones, participating in demonstrations and protests as well as for dissident speech for being persecutors of others.[1509]

Currently, Palestinians arriving to the US from Egypt, Jordan, Syria, Lebanon, the West Bank and the Gaza Strip are subject to deportation and are returned to those countries and regions.[1510] Recently, Immigration Courts have accepted the United Arab Emirates as a return state. US authorities began returning Palestinians with valid travel documents "to Palestine" in mid-November 2002. Palestinians from Iraq are not removed.[1511]

[1503] United States of America, "Immigration and Nationality Act (last Amended in February 2013)," Section 212(a)(3)(B)(i).

[1504] Ibid., Section 212(a)(3)(B)(iv)(VI).

[1505] Ibid.

[1506] Information provided by Susan Akram.

[1507] United States of America, "Immigration and Nationality Act (last Amended in February 2013)," Section 212(a)(3)(B)(vi).

[1508] U.S. Department of State, "Foreign Terrorist Organizations," accessed January 22, 2015, http://www.state.gov/j/ct/rls/other/des/123085.htm.

[1509] See Susan M. Akram, "Scheherezade Meets Kafka: Two Dozen Sordid Tales of Ideological Exclusion," *Georgetown Immigration Law Journal* 14, no. 1 (Fall 1999): 51–113.

[1510] Those who are returned to the West Bank or Gaza Strip are often sent there via Jordan or Egypt.

[1511] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 272.

Many human rights activists and practitioners claim that deportations increased after 11 September 2001, and that several Palestinians have been deported, including Palestinians with long-standing deportation orders pending.[1512] According to the INS, these removals do not reflect a change in policy, but are the result of newly resolved "logistical issues" owing to the conflict in the region, which had previously prevented removals.[1513]

Return of Palestinians to Arab Gulf States is often impossible as a practical matter. 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. Palestinians who have been issued a deportation order, including those who cannot be returned, may be held in custody for an extensive period of time until removal becomes possible, depending upon the circumstances of their cases.[1514] In Zadvydas vs. Davis, 533 U.S. 678 (2001), the Supreme Court interpreted 8 USC 1231(a)(6) to contain a "reasonable time limitation" beyond the 90-day removal period as presumptively six months within which the immigration services must either remove or release an alien.[1515] However, the Supreme Court has also stated that indefinite detention is unconstitutional.[1516] After the six month period, the authorities are required to assess the likelihood of removal, but rejected asylum seekers may remain in detention under a loophole in the Zadvydas decision which allows the government to continue detention "until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future."[1517] The government has applied this loophole in practice to stateless Palestinians with nowhere to return, who may be detained for an exceptionally long time, perhaps indefinitely.[1518] In such cases, Palestinians have had the burden of proving that no country will accept them, an exceedingly difficult and time-consuming process made even more difficult if the individual does not have counsel and remains in detention.[1519]

Recently, two judges have concluded that the authorities should have released Palestinian asylum seekers in detention pending removal after it became clear that

[1512] See also Richard Hugus, "My Country Is At War With Palestine [Archive]," *One Palestine*, October 8, 2003, http://www.onepalestine.org/resources/articles/My_Country_Is_At_War.html: "Through the FBI and the Immigration and Naturalization Service, and now with the Department of Homeland Security, the US has 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."

[1513] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 272.

[1514] Ibid.

[1515] United States Court of Appeals for the Fifth Circuit, "Kestutis Zadvydas v. Christine G. Davis, U.S. Immigration and Naturalization Service," March 12, 2002, 8, http://www.ca5.uscourts.gov/opinions/pub/97/97-31345.cv1.wpd.pdf.

[1516] Ibid., 8–9.

[1517] Ibid., 11.

[1518] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 272.

[1519] Information provided by Susan Akram.

no country would accept them. The first case involved a Palestinian refugee from the oPt. Judge Kane in the District Court for the Middle District of Pennsylvania concluded that:

> [t]he lengthy history of Petitioner's efforts, made while in custody, and those of the [Bureau of Immigration and Customs Enforcement] to repatriate him to the West Bank, support his claim that he cannot be deported in the reasonably foreseeable future.[1520]

The second case involved a Palestinian from Gaza sentenced to 84 months imprisonment following conviction of multiple crimes including the exportation of goods to terrorist states (i.e., Libya and Syria).[1521] After serving his sentence, he was taken into custody. In his *habeas corpus* petition to the United States District Court for the Middle District of Pennsylvania, the claimant did not contest the final removal order. Instead, he claimed that his continued detention pending removal violated INA § 241(a)(6). Because the claimant was not listed in the Israeli population registry, did not have an Israeli identification number, and had no family in the Palestinian territories, he argued that he could not return to the oPt. Additionally, fourteen countries - including Israel, Jordan and Egypt, as well as UNHCR and the Palestine Liberation Organization Mission, refused to issue travel documents to the claimant. The claimant had also been unsuccessful in obtaining travel documents from 41 other countries. The court concluded that:

> We will grant Elashi's habeas corpus petition because the Government has not rebutted Elashi's reasons to believe that there is no significant likelihood of his removal in the reasonably foreseeable future.[1522]

Stateless Palestinians are often worse off than other rejected asylum seekers because they have nowhere to go. Additionally, the US may revoke asylum or temporary protection and order deportation if an alien engages in any criminal activity, or if the US determines that the alien no longer suffers a threat of persecution.

6. Protection Under Statelessness Conventions

The US is party to neither the 1954 Stateless Persons Convention[1523] nor the 1961 Statelessness Convention.[1524]

[1520] U.S. District Court, M.D. Pennsylvania, "Abdel-Muhti v. Ashcroft," April 8, 2004, http://law.justia.com/cases/federal/district-courts/FSupp2/314/418/2471060/.

[1521] U.S. District Court, M.D. Pennsylvania, "Bayan Elashi vs Mary E. Sabol, et Al.," March 18, 2010, https://casetext.com/case/elashi-v-sabol-2. See also BADIL Resource Center, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention. Jurisprudence Regarding Article 1D 2005-2010*, 85.

[1522] U.S. District Court, M.D. Pennsylvania, "Bayan Elashi vs Mary E. Sabol, et Al."

[1523] UNTC, "Status of Treaties: Convention Relating to the Status of Stateless Persons."

[1524] UNTC, "Status of Treaties: Convention on the Reduction of Statelessness."

Although Palestinians are recognized as stateless persons in the US,[1525] this recognition in itself affords them no protection. The case Abauaelian v. Gonzales, of 2005, illustrates American rejection of statelessness as a basis for asylum. While the applicant argued that his status as a stateless Palestinian amounted to persecution, the Court held that:

> [s]tatelessness alone does not warrant a grant of asylum […] [stateless] applicants are evaluated by referring to their country of last habitual residence […] the applicant must demonstrate he [or she] is "unable or unwilling to return to […] 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.[1526]

Under this logic, the US considers a stateless person to have essentially the same relationship with his country of last habitual residence as an alien national would with his country of nationality. However, in contrast to other alien nationals, Palestinians often have nowhere to return if the US refuses to grant asylum.

The issue of statelessness in US immigration policy was examined by Brian F. Chase in 1992, 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."[1527]

7. Temporary Protection

The US offers Temporary Protected Status ("TPS") to eligible people from designated countries, whether nationals of those countries or stateless persons

[1525] Regarding the issue of whether a Palestinian from the West Bank was a national of Jordan; see, e.g., the US Board of Immigration Appeals' unpublished decision that the applicant had established that he was not a national of Jordan, relying on 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" *apud* BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 328, footnote 756.

[1526] Abauaelian v. Gonzales, 2005, U.S. App. LEXIS 8577, 132 Fed. Appx. 121 (9th Cir. 2005) *apud* BADIL Resource Center, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention. Jurisprudence Regarding Article 1D 2005-2010*, 85. See also United States Court of Appeals for the Fifth Circuit, "Faddoul v. Immigration and Naturalization Service," October 25, 1994, http://www.ca5.uscourts.gov/opinions/pub/93/93-04303.CV0.wpd.pdf; and United States Court of Appeals for the Fifth Circuit, "USA v. Abdallah," November 7, 2001, http://www.ca5.uscourts.gov/opinions/unpub/01/01-11208.0.wpd.pdf.

[1527] Brian F. Chase, "The Problem of Statelessness: The Gulf War, Palestinian Evacuees and United States Immigration Policy," *Georgetown Immigration Law Journal* 6 (1992): 572.

formerly resident in those countries. However, TPS is available only to persons who are physically present in the US, and they must "[h]ave been continuously physically present (CPP) in the United States since the effective date of the most recent designation date" of their country of origin; and "[h]ave been continuously residing (CR) in the United States since the date specified" for their country of origin.[1528] TPS is granted for a minimum of six months and a maximum of 18 months and may be renewed if the circumstances pertaining to the designation persist.[1529]

Currently, the US has designated the following countries: El Salvador, Guinea, Haiti, Honduras, Liberia, Nicaragua, Sierra Leone, Somalia, Sudan, South Sudan, and Syria.[1530] Syria was first designated for TPS on 29 March 2012, and most recently re-designated on 5 January 2015. The designation expires on 30 September 2016.[1531]

As far as BADIL is aware, the US has never designated Palestine or Israel for temporary protection status.[1532] Lebanon was designated for TPS from March 1991 to March 1993, and Kuwait was designated from March 1991 to March 1992.[1533]

Approximately 1500 Palestinians were airlifted from Kuwait to the US in 1990, along with Kuwaiti nationals. However, the US Department of Justice concluded that these stateless Palestinians could not be granted TPS because the TPS provisions at the time specified that an "alien" must be a national of a designated country. Kuwaiti nationals, however, were granted TPS.[1534]

Further details regarding TPS are provided on the USCIS website, including the following information:

> The Secretary of Homeland Security may designate a foreign country for TPS due to conditions in the country that temporarily prevent the country's nationals from returning safely, or in certain circumstances, where the country is unable to handle the return of its nationals adequately. USCIS may grant TPS to eligible nationals of certain countries (or parts of countries), who are already in the United States.

[1528] U.S. Citizenship and Immigration Services (USCIS), "Temporary Protected Status," January 7, 2015, http://www.uscis.gov/humanitarian/temporary-protected-status-deferred-enforced-departure/temporary-protected-status.

[1529] United States of America, "Immigration and Nationality Act (last Amended in February 2013)," Sections 244(b)(2)(B) and 244(b)(3)(C).

[1530] U.S. Citizenship and Immigration Services (USCIS), "Temporary Protected Status."

[1531] U.S. Citizenship and Immigration Services (USCIS), "Temporary Protected Status - Designated Country: Syria," January 1, 2015, http://www.uscis.gov/humanitarian/temporary-protected-status-deferred-enforced-departure/tps-designated-country-syria/temporary-protected-status-designated-country-syria.

[1532] See Ruth Ellen Wasem and Karma Ester, *Temporary Protected Status: Current Immigration Policy and Issues*, CRS Report for Congress (Congressional Research Service, January 19, 2010), 3, http://fpc.state.gov/documents/organization/137267.pdf.

[1533] Ibid.

[1534] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 275. See also Chase, "The Problem of Statelessness: The Gulf War, Palestinian Evacuees and United States Immigration Policy," 568–569.

The Secretary may designate a country for TPS due to the following temporary conditions in the country:

- Ongoing armed conflict (such as civil war)
- An environmental disaster (such as earthquake or hurricane), or an epidemic
- Other extraordinary and temporary conditions

During a designated period, individuals who are TPS beneficiaries or who are found preliminarily eligible for TPS upon initial review of their cases (*prima facie* eligible):

- Are not removable from the United States
- Can obtain an employment authorization document (EAD)
- May be granted travel authorization

Once granted TPS, an individual also cannot be detained by DHS on the basis of his or her immigration status in the United States.[1535]

8. Reference to Relevant Jurisprudence[1536]

Administrative Decisions by the USCIS and immigration judges are not published. Unpublished decisions by the Board of Immigration Appeals are generally unavailable, but can sometimes be obtained through immigration organization sources. Published decisions of the Board of Immigration Appeals (BIA) are available at http://www.uscis.gov.

The following tables document case law from numerous Federal Circuit Courts across the United States and each Court's treatment of Palestinian cases.

First Circuit

Date	Name	Summary
17 May 2005	Sharari v. Gonzales 407 F.3d 467[1537]	Claimant and his pregnant wife left Lebanon and went to the US on a temporary visa. When the visa expired, claimant applied for refugee status for the two of them, but [their application was rejected because] the one year time limit had already expired. They were also denied withholding of removal under the Convention against Torture (CAT). It was not until appealing the decision that appellant claimed he had been shot, badly burned, beaten and detained. The First Circuit upheld the Immigration Judge's decision to disregard the information and reject claimant's excuse that he did not want to be perceived as a "troublemaker."

[1535] U.S. Citizenship and Immigration Services (USCIS), "Temporary Protected Status." See also Claire Bergeron, "Temporary Protected Status after 25 Years: Addressing the Challenge of Long-Term 'Temporary' Residents and Strengthening a Centerpiece of US Humanitarian Protection," *Journal on Migration and Human Security* 2, no. 1 (2014): 23–44.

[1536] For jurisprudence prior to 2005, see BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 277–281.

[1537] United States Court of Appeals for the First Circuit, "Sharari v. Gonzales," May 17, 2005, http://media.ca1.uscourts.gov/pdf.opinions/03-2635-01A.pdf.

Third Circuit

Date	Name	Summary
14 April 2005	Al-Fara v. Gonzales 404 F.3d 733[1538]	Appellant and his wife sought refugee status. He was born in Gaza. Israeli forces entered his home and he attacked a soldier before fleeing. He was afraid he would be killed in retaliation. He escaped to Jordan and remained there until Jordan began issuing travel documents to Palestinian refugees. The Immigration Judge held that the single incident with the Israeli solider did not rise to the level of persecution, and the Third Circuit affirmed.

Fifth Circuit

Date	Name	Summary
17 April 2006	Majd v. Gonzales 446 F.3d 590[1539]	D) to a West Bank Palestinian.)١ The Court rejected application of Article Although shot at on multiple occasions by Israeli forces, the Immigration Judge found the treatment to have no nexus to a protected ground and .٥th Circuit affirmed denied asylum. The

Sixth Circuit

Date	Name	Summary
14 August 2012	Awad v. Holder 493 Fed. Appx. 740[1540]	The claimant appealed for review of a denial of withholding of removal. Owing to inconsistencies in his claim concerning the torture of family members of PLO and Fatah supporters, the Sixth Circuit affirmed the immigration judge's decision denying asylum for lack of credibility.
6 May 2006	Almuhtaseb v. Gonzales, 453 F.3d 743[1541]	The claimant, Almuhtaseb, was born in the West Bank. She applied for refugee status and was denied. She was also denied withholding of removal. Almuhtaseb challenged the denial on "change of circumstance" grounds, arguing that she was entitled to reconsideration of her asylum claim. The Sixth Circuit dismissed her claim for reconsideration finding that the "changed circumstances" alleged were changes in the general conditions within the territory, rather than changes in Almuhtaseb's individual circumstances.
31 March 2005	Hassan v. Gonzales, 403 F.3d 429[1542]	A Palestinian born and raised in a refugee camp in Lebanon applied for asylum out of fear that a radical group would kill him for refusing to join. The Immigration Judge found inconsistencies in the claimed history, and denied asylum for lack of credibility. The claimant was not permitted to present evidence that the group was still searching for him, which his parents had explained to him in a letter. The claimant appealed the refusal, arguing that he should have been permitted to present the evidence. The Sixth Circuit denied his appeal because he had failed to procure the letter in time.

[1538] United States Court of Appeals for the Third Circuit, "Al-Fara v. Gonzales," April 14, 2005, http://caselaw.findlaw.com/us-3rd-circuit/1003126.html.

[1539] United States Court of Appeals for the Fifth Circuit, "Majd v. Gonzales," April 17, 2006, http://www.ca5.uscourts.gov/opinions/pub/05/05-60141-CV1.wpd.pdf.

[1540] United States Court of Appeals for the Sixth Circuit, "Awad v. Holder," August 14, 2012, http://www.ca6.uscourts.gov/opinions.pdf/12a0895n-06.pdf.

[1541] United States Court of Appeals for the Sixth Circuit, "Almuhtaseb v. Gonzales," May 6, 2006, http://www.ca6.uscourts.gov/opinions.pdf/06a0246p-06.pdf.

[1542] United States Court of Appeals for the Sixth Circuit, "Hassan v. Gonzales," March 31, 2005, http://www.ca6.uscourts.gov/opinions.pdf/05a0153p-06.pdf.

Eighth Circuit

Date	Name	Summary
6 March 2009	Banat v. Holder 557 F.3d 886[1543]	The claimant, a Palestinian born in Lebanon, argued that the Immigration Judge violated his due process rights by basing his adverse credibility determination on an inherently unreliable U.S. Department of State Report. The claimant stated that he was abducted from a Lebanese airport by a Palestinian terrorist group that beat and detained him while trying to persuade him to join. He provided a handwritten letter, with what appears to be an original seal of the organization, as evidence. The Immigration Judge found it to be non-credible because a U.S. Department of State Report indicated that the U.S. Embassy in Beirut had no prior experience with such letters. The Court vacated the BIA's decision and remanded the case.

Tenth Circuit

Date	Name	Summary
30 August 2012	Hassoun v. Holder 495 Fed. Appx. 930[1544]	Lebanese citizen of Palestinian nationality appealed the decision to deny his refugee claim and restriction on removal claim. He feared his conversion from Islam to the Mormon faith would cause the Lebanese government and his family to persecute him. Additionally, his claim included the threat of torture. General conditions within Lebanon did not corroborate these claims. As a result, the Tenth Circuit, affirmed the denial of asylum.

9. Links

- US Citizenship and Immigration Service: http://www.uscis.gov
- Executive Office for Immigration Review: http://www.justice.gov/eoir/
- Board of Immigration Appeals: http://www.justice.gov/eoir/biainfo.htm
- US Committee for Refugees and Immigrants: www.refugees.org
- Refugee Council USA: www.rcusa.org
- International Rescue Committee: www.rescue.org
- Palestinian American Council: www.pac-usa.org
- Americans United for Palestinian Human Rights: www.auphr.org
- The American Task Force on Palestine: http://www.americantaskforce.org

[1543] United States Court of Appeals for the Eighth Circuit, "Banat v. Holder," March 6, 2009, http://caselaw.findlaw.com/us-8th-circuit/1065615.html.

[1544] United States Court of Appeals for the Tenth Circuit, "Hassoun v. Holder," August 30, 2012, https://www.ca10.uscourts.gov/opinions/11/11-9558.pdf.

OCEANIA

AUSTRALIA

1. Statistical Data

According to Australia's official records, from 1 October 2008 to 31 September 2013, 253 Palestinians were settled in the country.[1545] By 2005, there were between 20,000 to 30,000 Palestinians living in Australia, according to unofficial community estimates.[1546]

2. Refugee Status Determination: The Process

Palestinians, as other asylum seekers, may apply to settle permanently in Australia either by declaring themselves in the Refugee Category, or applying through the Special Humanitarian Program. Those in the Refugee Category must face persecution in their home country and currently be living outside of their home country. The Special Humanitarian Program is open for those who are not refugees, but are subject to substantial discrimination in their home country. Those applying through the Special Humanitarian Program must be sponsored by an Australian citizen, permanent resident, or organization, and must also be deemed to be in humanitarian need.[1547]

As of July 2013, asylum seekers who arrive by boat without a visa will not be permitted enter in Australia, and will be sent to Papua New Guinea, Nauru, or another state in the region. Applicants may seek asylum status in those states, but will remain in those regional states, *not* Australia, if found to be a refugee. The Australian government also emphasizes that asylum seekers can still come to the country through regular migration.[1548] The trend of the "by boat, no visa" principle seems to limit the number of people physically present in the country without having sought permanent visas prior to arrival.

For those already in Australia who have not arranged a visa under the preceding categories prior to arrival, pursuing refugee status follows a similar method to the

[1545] Department of Social Services [Australia], "Migration Stream By Ethnicity," November 19, 2013, 5, https://www.dss.gov.au/sites/default/files/documents/04_2014/national-ethnicity.pdf.

[1546] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 282.

[1547] Department of Immigration and Border Protection [Australia], "Offshore - Resettlement," August 27, 2014, https://www.immi.gov.au/visas/humanitarian/offshore/.

[1548] Department of Immigration and Border Protection [Australia], "By Boat, No Visa [Archive]," July 22, 2013, https://web.archive.org/web/20130722140043/http://www.immi.gov.au/visas/humanitarian/novisa.

Refugee Category;[1549] additionally, they must complete character and security checks, as well as a health exam.[1550]

Asylum seekers should first apply to the Department of Immigration and Citizenship (DIAC) for a protection visa. This application requires asylum seekers to fill out Form 866 (Application for a Protection Visa Class: XA), prepare a statement of claim with supporting documentation, pay a $30 application fee, and allow officials to take their fingerprints and photographs for identification. An officer from DIAC will typically interview asylum seekers after reviewing all relevant documentation. Successful applicants at this stage will receive their protection visas.[1551] The DIAC aims to deliver a decision within 90 days of receiving the application. However, this frequently proves impossible.[1552]

Unsuccessful applicants may bring their claim to the Refugee Review Tribunal ("RRT"). The RRT will consider all the facts of the applicant's case anew at a hearing. If they reach a positive decision on the claim, the asylum seeker will be sent to DIAC, where they will process the protection visa.[1553] The RRT also tries to provide a decision within 90 days of receiving an applicant's file. However, it is not uncommon to have a delay in receiving a hearing or a decision. If there are extenuating circumstances,[1554] an applicant can request, in writing, that the RRT prioritize their case.[1555]

Typically, bridging visas are provided for any asylum seekers not in detention upon applying for a protection visa. Bridging visas are temporary visas which allow an individual either to stay in Australia while his or her "application for a substantive visa is being processed" (bridging visas A, B and C), or to remain in the country for a short period after his or her substantive visa has ended (bridging visas D and E).[1556]

[1549] Under the Refugee category, asylum seekers must prove that they fall within the definition of a refugee under the 1951 Convention on Refugees.

[1550] Department of Immigration and Border Protection [Australia], "Onshore - Protection," August 27, 2014, https://www.immi.gov.au/visas/humanitarian/onshore/index.htm; Department of Immigration and Border Protection [Australia], "Protection Visa (subclass 866)," January 19, 2015, http://www.immi.gov.au/Visas/Pages/866.aspx.

[1551] Asylum Explained, "Applying for a Protection Visa [Archive]," February 28, 2014, https://web.archive.org/web/20140228143723/http://www.asylumexplained.asrc.org.au/?page_id=483.

[1552] Asylum Explained, "How Long Will It Take? - Stage 1: DIAC [Archive]," February 28, 2014, https://web.archive.org/web/20140228143804/http://www.asylumexplained.asrc.org.au/?page_id=663.

[1553] Asylum Explained, "Applying for a Protection Visa [Archive];" Asylum Explained, "Stage 2: Refugee Review Tribunal (RRT) [Archive]," February 28, 2014, https://web.archive.org/web/20140228143822/http://www.asylumexplained.asrc.org.au/?page_id=522.

[1554] Extenuating circumstances include: being in detention; suffering from serious medical conditions; experiencing significant financial hardship; separation from one's child; or immediate danger to family members in home country or country of former habitual residence.

[1555] Asylum Explained, "How Long Will It Take? - Stage 2: Refugee Review Tribunal [Archive]," February 28, 2014, https://web.archive.org/web/20140228143846/http://www.asylumexplained.asrc.org.au/?page_id=728.

[1556] Department of Immigration and Border Protection [Australia], "Bridging Visas," August 27, 2014, https://www.immi.gov.au/visas/bridging/.

3. Refugee Status Determination: The Legal Framework

Pursuant to the Migration Act of 1958,[1557] Australia has "protection obligations" to individuals defined as refugees by Article 1A of the Refugee Convention and the 1967 Protocol. Due to the recent no-visa policy for arrivals by boat, Australia recommends asylum seekers apply prior to arrival. Many opt to apply for an alternate temporary visa in order to enter Australia to apply for asylum.

4. Refugee Status Determination: Article 1D

Australian courts have consistently rejected that Article 1D contains an inclusion clause that would automatically confer refugee status upon Palestinian refugees.[1558]

The scope of the exclusion clause in Article 1D has been applied broadly since the Federal Court's decision in *Abou-Loughod* and its reaffirmation of the holding in *Wabq* (see below). The Court has interpreted Article 1D to refer to a *group*, rather than to *individuals*, who receive protection or assistance from a United Nations organ besides UNHCR. Thus, individuals who are outside the geographic limits of UNRWA are excluded by Article 1D as long as they are part of the sub-class of Palestinians eligible to receive protection or assistance under the UNRWA or United Nations Conciliation Commission for Palestine ("UNCCP") mandates.

Since UNCCP was responsible for providing protection in 1951 and is no longer providing this class of people protection, *protection* has ceased for the group. Nonetheless, according to Australia's interpretation of the term *ipso facto*, such cessation of protection does not prompt Palestinians to be automatically recognized as refugees; rather, it only entitles them to apply for refugee status under Article 1A(2).

Wabq v. Minister for Immigration and Multicultural and Indigenous Affairs[1559]

In this 2002 case, the full Federal Court unanimously developed and applied a new interpretation of Article 1D, whereby Article 1D referred to the entire "class of persons" receiving "assistance or protection" from UNRWA. This position was based on the language of Article 1D, namely that the provision refers to "persons" plural. The position was also grounded in 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); rather, this language makes sense in terms of an entire group. The term "persons" must therefore refer to a group, according to Australia's Federal Court.[1560] Now, when applying Article 1D, a fact-finder does not need to determine whether a particular asylum seeker

[1557] State of Australia, "Act No. 62 of 1958, Migration Act 1958 [considering Amendments up to Act No. 5 of 2011]," October 8, 1958, http://www.refworld.org/docid/4e23f3962.html.

[1558] See the cases referred to in the footnotes below.

[1559] Federal Court of Australia, "Minister for Immigration and Multicultural Affairs v. WABQ [2002] FCAFC 329," November 8, 2002, http://www.refworld.org/pdfid/403b14df4.pdf.

[1560] Ibid., para. 162 (Judge Tamberlin).

is actually receiving assistance or protection from an agency other than UNHCR; rather, it is sufficient to determine whether that person belongs to a class of persons who are presently receiving assistance or protection from an agency of the United Nations.[1561]

If an asylum seeker falls within the class of persons protected by a UN agency other than UNHCR, the Court must determine whether that protection has ceased, such that the exclusion clause no longer applies. The Court agreed that the word "protection" in Article 1D referred to UNCCP. However, the three judges in the Court expressed different views regarding how to determine "when such assistance or protection has ceased."

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.[1562] The references in the Refugee Convention to "organs or agencies" of the United Nations in the plural and the language "for any reason" must be interpreted in this way.[1563]

Judge Hill concluded that the question was whether UNCCP provided protection at the time of the ratification of the 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.[1564]

The Judges ultimately remanded the question whether protection or assistance had ceased to the Refugee Review Tribunal, but 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

[1561] Ibid., para. 69 (Judge Hill).

[1562] Ibid., para. 168; see also ibid., 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;" and also ibid., 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."

[1563] Federal Court of Australia, "Minister for Immigration and Multicultural Affairs v. WABQ [2002] FCAFC 329," para. 168.

[1564] Ibid., para. 69(5).

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.[1565]

Thus, the Court strongly suggests that the Refugee Review Tribunal should hold that protection has ceased. If the protection has ceased then Palestinians are entitled to refugee status under the same Article 1A standard as all other asylum seekers. In January 2003, the Refugee Review Tribunal in Melbourne made the findings referred to it by the Federal Court.[1566] The RRT granted Wabq's asylum claim and confirmed that protection had ceased.

It should be noted that this understanding of Article 1D and UNCCP's activities partially corresponds to Susan Akram and Terry Rempel's view, analyzed in Chapter 2, Section 2.5, that, because UNCCP has ceased to provide protection, all 1948 Palestinian refugees are now entitled to the benefits of the 1951 Convention. In fact, by adopting the "class of person" approach mentioned above, Australian case law extended the scope of Palestinian beneficiaries of the Convention beyond 1948 refugees, including as well those Palestinians who became refugees as a consequence of the 1967 war, and their descendants.

Notwithstanding, even though all Palestinian refugees, under Australian jurisprudence, fall under the second paragraph – i.e., the inclusion clause – of Article 1D, their cases are still subject to an examination under Article 1A(2); in other words, they do not become refugees *ipso facto*, automatically. In this sense, Australian Courts' view, despite being similar to Akram and Rempel's interpretation regarding UNCCP's cessation of activities, have led to an outcome completely different from the one expected and supported by those scholars. The Australian Court's outcome illustrates a misunderstanding of the terms "ipso facto" and "benefits of the Convention" and of the drafting history of Article 1D.

In his opinion, Judge Hill stated:

> It is clear from the history of the Convention that the first paragraph of Article 1(D) operated to exclude temporarily Palestinian Refugees from the Convention. It may even be fair to adopt the word "suspension" in this connection in so far as it can be said that the benefits of the Treaty have been suspended while aid or protection was available from United Nations Agencies and there was no final solution to the Palestinian problem. However, it does not necessarily follow that the Palestinian automatically is a refugee.
>
> It can be accepted that the Latin "ipso facto" conveys the meaning "by the very fact." […] But the question is […] what, by the very fact of protection or assistance ceasing, is contemplated to happen. The answer […] is that the person becomes entitled to "the benefits" of the Convention. It is not that the

[1565] Ibid., para. 171.

[1566] The Tribunal had concluded prior to its January 2003 decision that *Wabq* fulfilled the criteria set out in Article 1A.

> person is deemed to be a refugee. […] But those benefits are available only to those persons who are refugees. They are not available to anyone else.[1567]

Therefore, pursuing that argument, an assessment of a well-founded fear of persecution becomes necessary.[1568] The same reasoning features in Judge Carr's opinion in the Australian Federal Court's decision of 11 January 2002, Al Khateeb v. MIMI:

> The reference to 'refugee', in my view, picks up and requires the application of the definition of that term in Article 1A(2). […] 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 […], 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.[1569]

Indeed, this is the approach that has prevailed in Australian case law, as more recent cases, such as 1108826 [2011] RRTA 1026[1570] (5 December 2011) and 1113683 [2012] RRTA 611[1571] (9 August 2012), demonstrate.

The "class of person" approach to interpreting Article 1D also has been followed by the Refugee Review Tribunal in subsequent cases. In its decision on 29 March 2011, 1100132 [2011] RRTA 246, for example, the Tribunal concluded that:

> [t]he second paragraph is 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. Whether protection or assistance has ceased in relation to the class of persons is a question of fact for the Tribunal to determine according to the material before it. In relation to a stateless Palestinian applicant, if it is found that either protection or assistance has ceased in relation to the class, the applicant is entitled to have his or her application for a protection visa determined according to the Convention definition in Article 1A(2).[1572]

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

[1567] Federal Court of Australia, "Minister for Immigration and Multicultural Affairs v. WABQ [2002] FCAFC 329," para. 69(6).

[1568] Ibid.

[1569] Federal Court of Australia, "Al-Khateeb v Minister for Immigration and Multicultural Affairs [2002] FCA 7," January 11, 2002, para. 63–64, http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FCA/2002/7.html.

[1570] Refugee Review Tribunal of Australia, "1108826 [2011] RRTA 1026," December 5, 2011, para. 52, http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/RRTA/2011/1026.html.

[1571] Refugee Review Tribunal of Australia, "1113683 [2012] RRTA 611," August 9, 2012, para. 49, http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/RRTA/2012/611.html.

[1572] Refugee Review Tribunal of Australia, "1100132 [2011] RRTA 246," March 29, 2011, para. 56, http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/RRTA/2011/246.html.

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 would be eligible for UNRWA assistance if they lived in an area in which UNRWA operates.[1573]

5. Refugee Determination Process: Outcome

If an application for refugee status is accepted, DIAC may grant the applicant a permanent resident visa either under the refugee category or the special humanitarian program.

Under either category, the visa entitles the individual and their spouses and dependents to permanent residency. Visa holders have the right to live and work permanently in Australia, to study in Australian schools, to access subsidized health care through Medicaid and PBS, to travel for up to 5 years, to access certain social security benefits, and to sponsor others. Permanent residents are also later eligible for citizenship (after living in Australia for four years).[1574]

Asylum seekers whose applications are rejected by the courts may apply for residence permits on humanitarian grounds. The Department of Immigration will review their claims and consider whether there are compelling humanitarian grounds (Section 417 of the Migration Act). However, the Minister is not compelled to intervene and rarely does so.[1575] The Minister's rationale for intervention must be brought before Parliament within six months of granting a permit.[1576]

In addition, a negative decision at the RRT stage can be appealed to the Federal Magistrates Court ("FMC") on the basis of legal error. The FMC can determine whether the RRT correctly applied the law, but cannot determine whether the applicant is a refugee. If the FMC rules that there was a legal error, the case will be remanded to the RRT for another hearing.[1577] There is no specific time limit for FMC

[1573] See, e.g., Federal Court of Australia, "Minister for Immigration and Multicultural Affairs v. WABQ [2002] FCAFC 329," para. 69(2) (Judge Hill): "[…] 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."

[1574] Department of Immigration and Border Protection [Australia], "Refugee Visa (subclass 200)," January 16, 2015, http://www.immi.gov.au/Visas/Pages/200.aspx; Department of Immigration and Border Protection [Australia], "In-Country Special Humanitarian Visa (subclass 201)," January 16, 2015, http://www.immi.gov.au/Visas/Pages/201.aspx; Department of Immigration and Border Protection [Australia], "Global Special Humanitarian Visa (subclass 202)," January 16, 2015, http://www.immi.gov.au/Visas/Pages/202.aspx.

[1575] The argument is that the decision-makers have, at this stage, already rejected a case under the definition of a refugee under Article 1A(2). The applicant cannot therefore reasonably claim to be unwilling to return to his or her country because of threats to his or her physical safety or freedom for a Convention reason. The Minister has granted humanitarian visas to persons who were in need of protection pursuant to CAT and ICCPR. BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 289.

[1576] Ibid.

[1577] Asylum Explained, "Stage 3: Judicial Review [Archive]," February 28, 2014, https://web.archive.org/web/20140228143906/http://www.asylumexplained.asrc.org.au/?page_id=527.

decisions. Most will take between three to six months. The FMC may prioritize the case if an asylum seeker is being held in detention.[1578]

If, on remand, the RRT reaches another negative decision, the applicant may apply for Ministerial Intervention. The Minister for Immigration and Citizenship may intervene if there are demonstrable unique and exceptional circumstances or if there is new evidence that could affect the outcome of the claim. The Minister can give applicants a permanent visa or allow the applicant to apply again for a protection visa.[1579]

Return/Deportation

Like other rejected asylum seekers, unsuccessful Palestinian asylum seekers are expected to leave Australia and to return to their country of formal habitual residence.[1580]

A migration officer will determine the length of time permitted before a failed applicant must leave Australia after receiving a final negative decision.[1581] If an individual fails to leave within that time, a deportation order will be issued, and the Government will organize removal after liaising with the authorities in the country of origin or former habitual residence.[1582] Under the Migration Act of 1957, immigration officers must detain a person they know or suspect to be an unlawfully present non-citizen.[1583] Section 196 mandates this detention until he or she is removed, deported, or granted a visa.[1584]

Detention of Rejected Asylum seekers

Under Section 196, sometimes Australia keeps asylum seekers whose cases have been refused in detention for long periods of time, theoretically until permission to return is granted. In certain cases, such asylum seekers can be released from detention if there is no real likelihood or prospect for their removal

[1578] Asylum Explained, "How Long Will It Take? - Stage 3: Judicial Review [Archive]," February 28, 2014, https://web.archive.org/web/20140302211309/http://www.asylumexplained.asrc.org.au/?page_id=763.

[1579] Asylum Explained, "Stage 4: Ministerial Intervention [Archive]," March 2, 2014, https://web.archive.org/web/20140302211329/http://www.asylumexplained.asrc.org.au/?page_id=531; Asylum Explained, "What Does Decision Maker Consider? [Archive]," March 2, 2014, https://web.archive.org/web/20140302211357/http://www.asylumexplained.asrc.org.au/?page_id=771.

[1580] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 289.

[1581] The amount of time will depend on personal circumstance and the availability of travel documents. Asylum Explained, "Leaving Australia [Archive]," February 28, 2014, https://web.archive.org/web/20140228143734/http://www.asylumexplained.asrc.org.au/?page_id=492, under "How long will I have before I have to leave Australia?"

[1582] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 289.

[1583] State of Australia, "Act No. 62 of 1958, Migration Act 1958 [considering Amendments up to Act No. 5 of 2011]," Section 189(1).

[1584] Ibid., Section 196(1).

from Australia in the reasonably foreseeable future,[1585] as in *MIMIA v. Al Masri* in the Federal Court.[1586]

SHMB v. Godwin

On 10 December 2003,[1587] 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.

In another case concerning a twenty-five year old Kuwaiti-born Palestinian asylum seeker, the applicant 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. 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. On 28 May 2004, following a request by UNHCR, he was released from detention and granted a five-year humanitarian visa.[1588]

However, in the 2004 case of *Al-Kateb v. Godwin*,[1589] the High Court confirmed the legality of unlimited detention, based on textual analysis of Sections 189, 196, and 198 of the Migration Act of 1957. The Court stated that while the State's removal obligations were conditional on being "reasonably practicable," the detention was not conditional. The possibility of unlimited detention does not overextend the powers granted to Parliament because it is "reasonably necessary to facilitate the making of laws with respect to the head of power."[1590] The case involved a stateless Palestinian who was born in Kuwait. In 2000, he arrived in Australia without a visa. His application failed. Attempts by the Australian authorities to remove him have failed.

[1585] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 289.

[1586] Federal Court of Australia, "Minister for Immigration & Multicultural & Indigenous Affairs v Al Masri [2003] FCAFC 70," May 13, 2003, http://www.refworld.org/pdfid/3f57308c2c.pdf.

[1587] Federal Court of Australia, "SHMB v Goodwin (No 3) [2003] FCA 1444," December 10, 2003, http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2003/2003fca1444.

[1588] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 290.

[1589] High Court of Australia, "Al-Kateb v. Godwin [2004] HCA 37; 219 CLR 562; 208 ALR 124; 78 ALJR 1099," August 6, 2004, http://www.austlii.edu.au/au/cases/cth/HCA/2004/37.html.

[1590] Ibid., para. 38.

6. Protection Under Statelessness Conventions

Australia is a party to both the 1954 Convention Relating to the Status of Stateless Persons[1591] and the 1961 Convention on the Reduction Statelessness.[1592] BADIL is not aware of any procedures by which stateless persons can be granted the right to reside in Australia as stateless persons.

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.[1593]

7. Temporary Protection/Assistance During Refugee Process

Australia abolished the use of temporary protection visas as of 9 August 2008. For more details, see the 2011 updated edition of this *Handbook*.[1594]

8. 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
- The website of the Australian Legal Information Institute (AUSTLII) contains decisions of the Refugee Review Tribunal, as well as decisions by the Australian High Court and Federal Court: http://www.austlii.edu.au/au/cases/cht/rrt.

[1591] UNTC, "Status of Treaties: Convention Relating to the Status of Stateless Persons."

[1592] UNTC, "Status of Treaties: Convention on the Reduction of Statelessness."

[1593] 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 his or her country of former habitual residence is entitled to the status of refugee, or whether there is the additional requirement that the person have a well-founded fear of being persecuted for one of the Convention reasons. See Federal Court of Australia, "Minister for Immigration & Multicultural Affairs v Savvin [2000] FCA 478," April 12, 2000, 478, http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2000/2000fca0478.

[1594] BADIL Resource Center, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention. Jurisprudence Regarding Article 1D 2005-2010*, 91–92.

NEW ZEALAND

1. Statistical Data

The 2006 Census estimates there are 102 Palestinians currently living in New Zealand.[1595]

New Zealand receives among the fewest asylum requests per capita worldwide. In 2011, only 337 people sought asylum in New Zealand.[1596]

In 2006, 2009, and 2010, Palestinian refugees were among the top ten nationalities granted asylum by the Refugee Status Branch. Given the low volume of asylum seekers, this averages to less than four Palestinians granted refugee status in a given year.[1597] Between 1 July 1996 and 1 September 2004, fourteen asylum claims were submitted by Palestinians. During that time, three claims were approved on the first instance level (Refugee Status Branch) and seven declined. Four appeals by Palestinians to the Refugee Status Appeals Authority (RSAA) were unsuccessful.[1598]

The Refugee Quota Branch allots 750 refugee resettlement slots per year, out of which 107 are destined to refugees coming from the Middle East.[1599] Quota refugees apply prior to entry in New Zealand. The criteria for refugee status under the quota system prioritize geographic diversity, individuals with family, and global crises. Palestinians, specifically those seeking asylum from Syria, have been given priority in the last two years.[1600]

2. Refugee Status Determination: The Process

As is the case for other asylum seekers, Palestinians in New Zealand may submit their applications for asylum to the Refugee Status Branch of the New Zealand Immigration Service. The Immigration Act of 2009 expanded the definition of asylum seekers to include even those arriving by boat or without documentation.[1601] During the status determination process, asylum seekers may be detained either in a remand

[1595] Statistics New Zealand Tatauranga Aotearoa, "Ethnic Group (Total Responses) for the Census Usually Resident Population Count, 2006," 2007, http://www.stats.govt.nz/~/media/Statistics/Census/2006-reports/Classification-Count-Tables/People/ethnic-group-census-usually-resident-pop-count.xls.

[1596] Amnesty International Aotearoa New Zealand, *Rethinking Refugees and Asylum Seekers*, 2012, 1, http://www.amnesty.org.nz/files/NZFactSheetAsylumSeekers.pdf.

[1597] New Zealand Immigration, Refugee and Protection Unit, *Refugee Status Branch Statistics* (Ministry of Business, Innovation and Employment [New Zealand], 2014), http://www.immigration.govt.nz/NR/rdonlyres/FD786C95-327E-40F9-9DBB-68AFFB9BD9FE/0/RSBStatPakInternet.pdf.

[1598] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 292.

[1599] New Zealand Immigration, *Refugee Quota Programme 2013/14 to 2015/16*, 2014, 1, http://www.immigration.govt.nz/NR/rdonlyres/BFA5A365-51D3-44C7-BAEE-112683F82C18/0/refugeequotaprogramme201314to201516.pdf.

[1600] Ibid., 1–3.

[1601] Amnesty International Aotearoa New Zealand, *Rethinking Refugees and Asylum Seekers*, 1.

prison or in an open detention center, or they may be granted a temporary residence visa. The New Zealand Immigration Service has discretion to issue work permits.[1602]

Refugees should claim asylum upon entry to New Zealand. Claims may be made in person or in writing by an individual in New Zealand. Asylum seekers must confirm the claims by filling out Form INZ 1071 (Confirmation of Claim to Refugee and Protection Status in New Zealand). Within the Refugee Status Branch, Refugee Protection Officers will initially decide the claim. Declined applicants can appeal to the Immigration and Protection Tribunal.[1603]

New Zealand may extend complementary protection to individuals not recognized as refugees if they are deemed protected persons under the CAT or the ICCPR.[1604] Such a person cannot be removed from New Zealand unless it is to a nation where they will not be at risk.[1605]

3. Refugee Status Determination: The Legal Framework

Like the Immigration Act of 1987,[1606] the 2009 Act adopts the definition of a refugee set forth in the 1951 Refugee Convention and the 1967 Refugee Protocol.[1607] In addition, the Act incorporates New Zealand's obligations under the Convention Against Torture (CAT) and the International Covenant on Civil and Political Rights (ICCPR), as said above.[1608]

4. Refugee Status Determination: Article 1D

The New Zealand Refugee Status Appeals Authority (RSAA) has interpreted Article 1D as 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 Convention. As laid out in RSAA decision on case No. 1/92:

> The interpretation we prefer is […] [that] 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."[1609]

[1602] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 292.

[1603] Immigration New Zealand, "Refugee Status Branch," June 17, 2013, http://www.immigration.govt.nz/branch/RSBHome/.

[1604] State of New Zealand, "Immigration Act 2009," November 16, 2009, http://www.refworld.org/docid/4b13c9e32.html, Sections 130-131.

[1605] Ibid., para. 164(a).

[1606] See State of New Zealand, "Immigration Act 1987," April 21, 1987, http://www.refworld.org/docid/3ae6b5e50.html, Section 129C(1).

[1607] See State of New Zealand, "Immigration Act 2009," Sections 124(a) and 125(1).

[1608] Ibid., Sections 124(b), 130 and 131. See also Immigration New Zealand, *Immigration Act 2009: Summary of Key Changes*, December 2010, 1, http://www.immigration.govt.nz/NR/rdonlyres/AA311B8C-5283-4E61-B0FE-1BEB0615BBF3/0/Summary.pdf.

[1609] Refugee Status Appeals Authority, "Refugee Appeal No. 1/92," April 30, 1992, http://refugee.org.nz/Casesearch/Fulltext/1-92.htm, Section "Article 1D."

Consequently, the second paragraph of Article 1D does not provide wholesale entitlement to the benefits of the 1951 Refugee Convention to Palestinians who fall under UNRWA's mandate. They must, rather, independently prove they fall under the definition provided in Article 1A.[1610]

This interpretation has been upheld in subsequent decisions by the Refugee Status Branch and RSAA. As a result, Palestinian asylum cases are determined under 1A(2). The RSAA determined that Palestinians were not excluded by Article 1D because they were not "presently receiving" protection or assistance, as they were beyond the geographic area of operation. Neither were the applicants wholesale included in the benefits of the Convention based on Article 1D, second paragraph, as UNRWA cannot be said to have "ceased" providing assistance simply because individuals leave the geographic area. Thus the provisions of Article 1D are de facto irrelevant in this context.

Sample Cases Analyzing Exceptional Humanitarian Circumstances

In 2003, a 31 year-old Palestinian from the West Bank was in New Zealand on a student visa with validity until 31 December 2004.[1611] In July 2004 he applied for refugee status on the basis that he was at risk of being persecuted by the Israeli Defense Forces ("IDF") if he returned to Palestine. His claim was denied by both the Refugee Status Branch and on appeal because it was found that the risk of harm from Israeli Defense Forces was not specific enough to the appellant and his family residing in the West Bank.[1612] During the course of litigating his asylum claim, the appellant was granted a temporary work permit. However, New Zealand declined to grant the appellant a further permit after the conclusion of his claim. A removal order was served in January 2006.

He appealed the removal order on the grounds that there were exceptional circumstances of a humanitarian nature. The appellant argued that (1) due to his lack of travel documents and citizenship it would be difficult to return to Palestine; (2) he had a risk of harm from the IDF; and (3) he would suffer from the social, economic and security conditions in Palestine.

The Court agreed with the decision in his asylum claim, that the risk of persecution from the IDF was not individual enough to constitute a duty on New Zealand. However, the Court held that the appellant was at risk of being stateless because of the uncertainty of his ability to re-enter Palestine or any other country of former habitual residence. On 7 December 2007, the appellant's appeal was granted based on the Court's assertion that the inability to re-enter Palestine and conditions

[1610] For more details about the RSAA decision on case No. 1/92, see BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 293–295.

[1611] Removal Review Authority [New Zealand], "Removal Appeal No: 46657 [2007] NZRRA 100," December 7, 2007, http://www.nzlii.org/nz/cases/NZRRA/2007/100.html.

[1612] The findings were based on the applicant's being generally unknown and apolitical.

in the West Bank provided "little hope of making a secure future for himself in his homeland."

The Court did not set out a rigid standard for what constitutes "unjust or unduly harsh." It held that it must be a high standard by virtue of the text. The decision must be based on an expansive view of the individual's situation, considering "both circumstances and effects" based on "questions of fact and degree." Finally, the Court must weigh the individual's effect on New Zealand society. Character, education, work ethic, and evidence of establishing roots in New Zealand all demonstrate that an individual is well-settled in New Zealand and poses no threat to the public interest. The appellant in this case easily passed this test. As a result he was permitted to remain in New Zealand.

Another case decided in 2004 concerned a Palestinian born in Kuwait with a right of residence in Lebanon, but determined to be stateless because he had no Kuwaiti passport and was not able to obtain Lebanese citizenship because his father is Palestinian.[1613] He claimed that Palestinian refugees are unwanted in Lebanon and are treated poorly by the Lebanese government and Syrian forces there. Even his mother's own family beat her and the appellant because of her marriage to his Palestinian father. The appellant stated that in June 1991, Syrian forces arrested and tortured his father. He was released in poor health and died shortly after, fostering appellant's anti-Syrian sentiment. The appellant was arrested thrice by Syrian forces for his anti-Syrian beliefs.[1614] He further claimed that he was beaten by the Syrian forces and feared he would be killed.

The appellant arrived in New Zealand after using a false passport to enter Australia and being denied asylum there. His asylum claim was rejected leading to removal orders. He appealed on the grounds of exceptional humanitarian circumstances. The Authority held that the test is not so stringent as to require proof of persecution, but that it remains a high standard, stating:

> The correct approach of this Authority is that it must consider whether, on an objective basis, the appellant's circumstances, including any subjectively held beliefs, constitute exceptional circumstances of a humanitarian nature that would make it unjust or unduly harsh for removal to occur.

The Authority determined that he was not entitled to remain in New Zealand based on exceptional humanitarian circumstances. Despite being stateless, the Authority held that his familial ties in Lebanon, prior possession of Lebanese residence and ability to travel in and out of Lebanon in the past suggested that his prospects for re-entry were reasonable. The Authority deemed the threat of persecution to be minimal since he was not a known activist. It would not be unreasonable to return him with

[1613] Removal Review Authority [New Zealand], "NR; Removal Appeal No:AAS45641 [2004] NZRRA 23," October 8, 2004, http://www.nzlii.org/nz/cases/NZRRA/2004/23.html.

[1614] The anti-Syrian sentiment stemmed from his father's death, for which he believed the Syrian forces were responsible. His father died of health complications that the appellant attributed to stress from interactions with Syrian forces.

the understanding that he should not provoke the Syrian forces as he had in the past. Lastly, the potential for discrimination based on his Palestinian/Lebanese parentage was not unique enough to constitute exceptional circumstance. The consideration of public interest was unnecessary in this case. The appellant was denied residence in New Zealand and his removal mandated.

The above cases demonstrate little discernible pattern in the "unduly harsh" test. The only standard that is agreed upon among the cases is that the determination of exceptional humanitarian circumstances must consider the "whole picture." Circumstances and effects, both on the individual and on others must be considered. As shown in the first case, general conditions within a country may be sufficient to constitute an appeal on humanitarian grounds, while in others, such as the second case above, a showing of specific individual threat is necessary. If the facts of the appellants' claim entitle them to relief, their need is still balanced against the public interest.

5. Refugee Determination Process: Outcome

If an asylum seeker's claim is successful, he is granted permanent residence and benefits such as: education, health, employment and social welfare. After five years, refugees may apply for citizenship.[1615]

If the claim is unsuccessful, applicants may submit a humanitarian appeal under Section 207 of the Immigration Act. Individuals must 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, despite not being granted refugee status.[1616]

Once a person has been denied refugee status, he or she 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 CAT.[1617]

Rejected asylum seekers who cannot be returned to their country of nationality or country of former habitual residence may be issued a temporary visa in some cases.[1618]

No information could be obtained about Palestinians whose asylum claims were finally rejected.

[1615] New Zealand Red Cross, "FAQs [Archive]," December 14, 2013, https://web.archive.org/web/20131214092739/http://www.refugeeservices.org.nz/faqs, Section "What rights and entitlements do quota refugees have on arrival in New Zealand?"

[1616] State of New Zealand, "Immigration Act 2009," Section 207.

[1617] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 296.

[1618] Ibid.

6. Protection Under Statelessness Conventions

Although New Zealand is not party to the 1954 Stateless Persons Convention,[1619] it became party to the 1961 Statelessness Convention in September 2006.[1620]

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 Persons Convention: "[w]hile 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."[1621]

With regard to Palestinians, RSAA added that: "[p]resumably, the stateless status of Palestinians who do not enjoy Israeli or Jordanian citizenship arises from the fact that there is no Palestinian state."[1622]

RSAA then noted that statelessness on its own is not recognized as grounds for granting refugee status in New Zealand. 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. RSAA then decided to assume that he could return to the West Bank.[1623]

As yet, it seems the accession to the 1961 Stateless Convention in 2006 has not created substantial change in the status of stateless Palestinians in New Zealand. The four main areas that the Convention asks states parties to address are: reduce statelessness for children by considering birth place within the territory and descent (it does not, however, require application of the *jus soli* or *jus sanguinis* doctrines);[1624] reduce statelessness by renunciation of nationality; reduce deprivation of nationality; and avoid statelessness in the context of succession.[1625] New Zealand has not participated in renunciation or deprivation of any group, including Palestinians, and faces little risk of succession.

Most relevantly, in a 2002 decision, the RSAA has observed that:

> [a]n unsuccessful attempt has been made to argue, contrary to the language of Article 1A(2), that stateless persons do not have to establish a well-founded fear of being persecuted for a Convention reason in order to qualify for refugee

[1619] UNTC, "Status of Treaties: Convention Relating to the Status of Stateless Persons."

[1620] UNTC, "Status of Treaties: Convention on the Reduction of Statelessness."

[1621] Refugee Status Appeals Authority, "Refugee Appeal No. 1/92."

[1622] Ibid.

[1623] Ibid.

[1624] *Jus soli* is a doctrine according to which citizenship is granted to individuals born in the territory of the concerned State; *jus sanguinis*, on its turn, regards the granting of citizenship to individuals whose parent or parents are citizens of the concerned State.

[1625] UNHCR, *Preventing and Reducing Statelessness*, September 2010, 4–5, http://www.unhcr.org/4ca5937d9.pdf.

> status. It is argued that such persons need establish only that they are presently unable to return to their country of former habitual residence. […][1626]
>
> This view was decisively rejected by the House of Lords on appeal in Adan v Secretary of State for the Home Department [1999] 1 AC 293, 304C-E (HL) (decision of the Court of Appeal reversed) and by the Court of Appeal itself in Revenko v Secretary of State for the Home Department [2001] QB 601, 623C, 631G, 642B (CA).[1627]

The RSAA finally concluded that:

> In the result there is but a single test for refugee status. The only modification in the case of a stateless refugee claimant is that he or she must show that he or she is unable, or owing to such fear, unwilling to return to the country of former habitual residence.[1628]

As of 1 January 2006, New Zealand restricts the conferral of citizenship by virtue of birth in New Zealand. Prior to the change, most children born in New Zealand or its territories were automatically citizens. Now one must be born in New Zealand or its territories and at least one of their parents must be either a New Zealand citizen or entitled to be in New Zealand indefinitely.[1629] There is an exception for children who would otherwise be stateless.[1630] For Palestinian children born in New Zealand, this means that all those born to at least one parent who has successfully claimed asylum, or otherwise granted permanent residency, are citizens of New Zealand. Children born to stateless Palestinians in New Zealand, regardless of their immigration status, or born to parents whose citizenship will not transmit to children born outside the territory of their home country are also granted citizenship under the statelessness exception. Thus, the only Palestinian children born in New Zealand who will not be granted citizenship are those born to parents without permanent residence in New Zealand and who confer citizenship of their home nation onto their children.[1631]

[1626] Refugee Status Appeals Authority, "Refugee Appeal No. 72635/01," September 6, 2002, para. 66, http://refugee.org.nz/Casesearch/Fulltext/72635-01.htm.

[1627] Ibid., para. 67.

[1628] Ibid., para. 68.

[1629] E.g., their parent has a permanent resident visa in New Zealand or is an Australian citizen.

[1630] Department of Internal Affairs [New Zealand], "Changes to Citizenship by Birth in New Zealand from 2006: Frequently Asked Questions," accessed January 28, 2015, http://www.dia.govt.nz/Services-Citizenship-Changes-to-Citizenship-by-Birth-in-New-Zealand-from-2006-Frequently-Asked-Questions.

[1631] E.g., if a Palestinian who is a Turkish citizen gave birth to a child while in New Zealand on a temporary visa (e.g., student or work visa) the child would not be a New Zealand citizen. Turkish citizenship automatically is granted through descent, even when abroad, thus they would not be stateless. The visa is temporary, so the parent does not have the right to remain indefinitely in New Zealand.

7. Reference to Relevant Jurisprudence

New Zealand Immigration and Protection Tribunal

Date	Name	Summary
30 November 2011	AC (Saudi Arabia) NZIPT 800004[1632]	A family of Palestinians (father, mother, adult daughter, son, and young daughter) formerly living in Saudi Arabia sought a humanitarian appeal. Appellants claimed they would be subject to slight discrimination from anti-Palestinian sentiment upon return to Saudi Arabia and threats from AA (a relative in Saudi Arabia). The son argued that he would no longer be able to exert his individuality by wearing his hair long. The young daughter was very involved in sports in New Zealand and would have to give them up if forced to return to Saudi Arabia. The older daughter and the mother argued they would be subjected to the religious regime of Saudi Arabia and lose elements of their autonomy, including the rights to work and pursue education. The mother had been briefly abducted once while walking home. The Court held that none of the family members were protected persons under CAT or ICCPR. Only the mother and elder daughter were refugees under the "unduly harsh" standard because the regime in Saudi Arabia would violate their basic human rights. The rest of the family was denied protection under this standard.

New Zealand Refugee Status Appeals Authority

Date	Name	Summary
26 June 2009	76328 [2009] NZRSAA 52[1633]	A Palestinian habitually residing in Syria sought refugee status due to fear of persecution by Syrian authorities. Appellant was politically active and during two demonstrations was arrested, detained and beaten by Syrian forces (*Mukhabarat)*. They threatened that if he were caught again he would not be released. The *Mukhabarat* were known to torture, resulting in the disappearance of people, and to have spies within the camps. He stopped protesting, but then in 2005 he was once again detained. For five days he was beaten, handcuffed, blindfolded and interrogated. They required him to report monthly after the incident. The appellant was deemed credible due to his testimony, supporting evidence and known country conditions. He was granted refugee status.

8. Links

- The New Zealand Refugee Law website: http://www.refugee.org.nz
- New Zealand Legal Information Institute: http://nzlii.org

[1632] Immigration and Protection Tribunal [New Zealand], "AC (Saudi Arabia) [2011] NZIPT 800004, 117, 119-121," November 30, 2011, https://forms.justice.govt.nz/search/IPT/Documents/RefugeeProtection/pdf/ref_20111130_800004.pdf.

[1633] Refugee Status Appeals Authority, "Refugee Appeal No. 76328," June 26, 2009, http://www.refworld.org/docid/4a5de7902.html.

AFRICA

1. Statistical Data

Due to a lack of comprehensive record keeping, the exact size of the Palestinian community in Africa is difficult to calculate. The individual country sections that follow provide rough estimates that may be helpful in allocating resources to assist refugee communities.

2. Status of Palestinians in Africa

In general, Palestinian refugees in Africa are entitled to rights under the 1951 Convention and 1967 Protocol, and the Organization of African Unity (OAU) Convention Governing Specific Aspects of Refugee Problems in Africa.

As of December 2014, only two states in Africa were not party to the 1951 Convention or the 1967 Protocol: Eritrea, and South Sudan.[1634]

In addition to the international legal instruments, the OAU adopted the Convention Governing Specific Aspects of Refugee Problems in Africa in 1969, which entered into force in 1974. According to the African Commission on Human and People's Rights, 45 states have signed and ratified the convention, four states have signed but not ratified (Djibouti, Madagascar, Mauritius, and Somalia), and five states have neither signed nor ratified (Eritrea, Namibia, Sahrawi Arab Democratic Republic, Sao Tome and Principle, and South Sudan).[1635]

The OAU Convention's refugee definition is broader than the 1951 Convention and extends protection to persons who need protection due to armed conflict or serious public disorder in their country of origin. 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 of 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.[1636]

Similarly, the OAU Convention contemplates temporary protection for refugees who have not been granted asylum. Article 2(5) states that "[w]here a refugee has not received the right to reside in any country of asylum, he may be granted temporary

[1634] UNTC, "Status of Treaties: Convention Relating to the Status of Refugees;" UNTC, "Status of Treaties: Protocol Relating to the Status of Refugees."

[1635] African Commission on Human and Peoples' Rights, "Ratification Table: AU Convention Governing Specific Aspects of Refugee Problems in Africa," accessed January 28, 2015, http://www.achpr.org/instruments/refugee-convention/ratification/.

[1636] Organization of African Unity (OAU), *Convention Governing the Specific Aspects of Refugee Problems in Africa ("OAU Convention")*, 1969, http://refworld.org/docid/3ae6b36018.html, Article 1(2).

residence in any country of asylum in which he first presented himself as a refugee pending arrangement for his resettlement […]."[1637]

3. Links

- The UNHCR website provides extensive information on asylum procedures and refugee protection throughout Africa: http://www.unhcr.org/pages/4a02d7fd6.html

[1637] Ibid., Article 2(5).

CÔTE D'IVOIRE[1638]

1. Statistical Data[1639]

As of August 2014, UNHCR Côte d'Ivoire was aware of 4 asylum applications by Palestinians, currently under consideration.[1640] In the general framework, just under 4,000 recognized refugees resided in Côte d'Ivoire as of 2013, and around 520 individuals were seeking asylum in Côte d'Ivoire. As of 2010, around 97% of refugees in Côte d'Ivoire were from Liberia.[1641] There are 700,000 stateless people in Côte d'Ivoire.[1642]

2. Refugee Status Determination: The Process

Upon arrival in Côte d'Ivoire, asylum seekers must report to either UNHCR or the Aid and Assistance Service for Refugees and Stateless Persons ("SAARA," *Service d'Aide et d'Assistance aux Refugiés et Apatrides*) to apply for refugee status. Asylum seekers may receive medical care, scholarships, funding for housing and other loans during their first six months in Côte d'Ivoire.[1643]

In the early 1990s, in the context of civil war in Liberia, Liberian refugees were considered refugees *prima facie* under the refugee definition in the 1969 OAU Convention.[1644] However, no information is available regarding the specific standard used for non-Liberian refugees and asylum seekers. SAARA's mandate includes coordination of refugees, status determination, protection and assistance to refugees, and inter-organization collaboration to accomplish any of these aims.[1645]

To apply for refugee status, asylum seekers must submit two copies of an application, a handwritten letter to the Minister of Foreign Affairs requesting asylum, and photocopies of any accompanying material such as photographs, identity documents, or news clippings. At SAARA or UNHCR, pictures of the asylum seeker and all family members are taken. The asylum seeker will also undergo an interview regarding reasons for asylum and will receive a provisional pass, enabling her or him to travel throughout Côte d'Ivoire and access health services and UNHCR resources.[1646]

[1638] Nora Sturm, Public Information Officer at UNHCR Côte d'Ivoire, contributed to this section.

[1639] Major source: UNHCR, "2015 UNHCR Country Operations Profile - Côte d'Ivoire," accessed December 5, 2014, http://www.unhcr.org/pages/49e484016.html.

[1640] "Correspondence with Nora Sturm, Public Information Officer at UNHCR Côte d'Ivoire," August 18, 2014.

[1641] SAARA, "Politique D'asile En Côte d'Ivoire," accessed December 5, 2014, http://www.saara.gouv.ci/asylum.php.

[1642] UNHCR, "2015 UNHCR Country Operations Profile - Côte d'Ivoire."

[1643] SAARA, "Politique D'asile En Côte d'Ivoire."

[1644] Ibid.

[1645] SAARA, "Attributions," accessed January 28, 2015, http://www.saara.gouv.ci/attribution.php.

[1646] SAARA, "Procedure de Reconnaissance," accessed January 28, 2015, http://www.saara.gouv.ci/asylum_process.php.

Within SAARA, the National Eligibility Commission on the status of refugees ("CNE," *Commission Nationale d'Eligibilité au statut de réfugié*) receives the asylum application and determines refugee status.[1647] After CNE receives the application, they may contact the applicant for further information.[1648]

3. Refugee Status Determination: The Legal Framework

Côte d'Ivoire has acceded to the 1951 Refugee Convention[1649] and its 1967 Protocol.[1650] The country is also Party to the OAU's Convention Governing Specific Aspects of Refugee Problems in Africa of 1969 (1969 OAU Convention).[1651] Asylum applications are reviewed "in accordance with international standards" to determine refugee status.[1652]

On the level of national legislation, SAARA's mandate, which includes the determination of refugee status, is set by Decree 2006-100 of 7 June 2007;[1653] however, such decree was not available. Thus, BADIL has no further information regarding the legal framework for refugee status determination.

4. Refugee Status Determination: Article 1D

No additional information is available on further integration of Article 1D into the status determination process.

5. Refugee Status Determination Process: Outcome[1654]

If CNE grants the application, the refugee will be issued an identity card. The identity card lasts for five-year intervals and is also a residence permit.[1655]

If CNE denies the application, the asylum seeker can appeal to the Appeal Committee ("CR," *Commission de Recours*) within thirty days of notification of denial from the CNE. A provisional pass will be extended to allow the asylum seeker to remain in Côte d'Ivoire during the appeals process. If the CR grants the application, the Secretariat of the CR will inform the applicant of her or his new status. A CR denial is the final decision on the status determination of an asylum seeker.[1656]

[1647] SAARA, "Politique D'asile En Côte d'Ivoire;» SAARA, "Procedure de Reconnaissance."

[1648] SAARA, "Procedure de Reconnaissance."

[1649] UNTC, "Status of Treaties: Convention Relating to the Status of Refugees."

[1650] UNTC, "Status of Treaties: Protocol Relating to the Status of Refugees."

[1651] Organization of African Unity (OAU), *Convention Governing the Specific Aspects of Refugee Problems in Africa ("OAU Convention")*, 8, Annex "States Parties to the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa of 10 September 1969."

[1652] SAARA, "Procedure de Reconnaissance."

[1653] SAARA, "Attributions."

[1654] Major source: SAARA, "Procedure de Reconnaissance."

[1655] SAARA, "Intégration Locale Des Réfugies En Côte d'Ivoire," accessed January 29, 2015, http://www.saara.gouv.ci/integrationlocale2010.php.

[1656] SAARA, "Procedure de Reconnaissance."

6. Protection under the Statelessness Conventions

Côte d'Ivoire has acceded to the 1954 Convention Relating to the Status of Stateless Persons[1657] and the 1961 Convention on the Reduction of Statelessness.[1658] UNHCR Côte d'Ivoire clarified that Palestinians *can* be considered stateless, but that determination depends on a number of very specific criteria, and UNHCR cannot make a statement on these criteria "until the issue of [Palestinian] statehood is resolved under general international law."[1659]

7. Links

- Ivoirian Asylum Process: http://www.saara.gouv.ci/asylum_process.php [French]
- UNHCR, Côte d'Ivoire: http://www.unhcr.org/pages/49e484016.html

[1657] UNTC, "Status of Treaties: Convention Relating to the Status of Stateless Persons."
[1658] UNTC, "Status of Treaties: Convention on the Reduction of Statelessness."
[1659] "Correspondence with Nora Sturm, Public Information Officer at UNHCR Côte d'Ivoire."

KENYA

1. Statistical Data

Although there are likely Palestinians living in Kenya, no statistics are available. Some Palestinians may be living with relatives or have acquired illegal documentation, making the number of actual Palestinians in Kenya difficult to measure. The number of recognized refugees (from all countries) living in Kenya was just under 540,000 as of July 2014, with around 32,000 asylum seekers and 20,000 stateless persons.[1660]

2. Refugee Status Determination: The Process

The Department of Refugee Affairs, falling under the Internal and Coordination Ministries, is headed by the Commissioner of Refugee Affairs ("the Commissioner") and oversees the asylum application process.[1661] The Refugee Affairs Committee ("the Committee") brings together leadership from multiple government agencies to aid the Commissioner.[1662] One third of the Committee must be made up of women.[1663]

Asylum seekers must report to the Refugee Commissioner's office within thirty days after entry into Kenya.[1664] Asylum seekers should also report to the UNHCR.[1665] Asylum seekers are directed to refugee camps upon entry; they are not allowed to stay in Nairobi without a specific reason to do so.[1666] The Commissioner must take special steps to ensure the safety of asylum seekers who are women and children, and must attempt to locate family members of unaccompanied children.[1667]

On the asylum seeker's first visit to the reception center, a registration officer will fill out a form with the asylum seeker's information and issue the asylum seeker a one-year permit to stay in Kenya until a status determination is rendered.[1668] The asylum seeker should bring any identification to the first meeting, and he or she will likely be fingerprinted and photographed during the first visit.[1669] During the

[1660] UNHCR, "2015 UNHCR Country Operations Profile - Kenya," accessed January 29, 2015, http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e483a16&submit=GO#.

[1661] State of Kenya, "The Refugees Act, 2006" (Kenya Gazette Supplement No. 97 (Acts No. 13), December 30, 2006), http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=467654c52, Sections 6 and 7.

[1662] Ibid., Section 8(3).

[1663] Ibid., Section 8(4).

[1664] Ibid., Section 11(1).

[1665] Department of Refugee Affairs [Kenya], "Refugee Status Determination (RSD) [Archive]," July 21, 2013, https://web.archive.org/web/20130721112041/http://www.refugees.go.ke/index.php?option=com_content&view=article&id=83&Itemid=115.

[1666] Ibid.

[1667] State of Kenya, "The Refugees Act, 2006," Section 23.

[1668] Department of Refugee Affairs [Kenya], "Registration Procedures [Archive]," July 21, 2013, https://web.archive.org/web/20130721080341/http://www.refugees.go.ke/index.php?option=com_content&view=article&id=82&Itemid=114.

[1669] State of Kenya, "Refugees (Reception, Registration and Adjudication) Regulations, 2009," February 27, 2009, http://www.refworld.org/docid/4a1c0d782.html, Section 9(1).

next visit to the reception center, the asylum seeker will undergo an interview.[1670] At the interview, a Refugee Status Determination Officer will verify the identity of the asylum seeker and accompanying family members, receive evidence and witnesses, and ask the asylum seeker questions concerning identity, reasons for application, and any reason refugee status should not be granted, such as criminal history and alternative nationality.[1671] An officer then writes a recommendation to the Commissioner, who will accept or decline the applicant within 90 days.[1672] A false application will result in a fine and imprisonment.[1673]

If the refugee is living in a refugee camp, a Refugee Camp Officer can assist him or her with the application process.[1674] Accelerated procedures may be available for the following populations: unaccompanied children, pregnant women, persons awaiting deportation orders, persons at risk, and persons experiencing a medical emergency.[1675] An asylum seeker may only be confined upon written request of the Commissioner and may only be held for a maximum of thirty days.[1676]

Asylum seekers in Kenya are given the Asylum Seeker Pass, a document that legalizes their stay in the country during the refugee status determination process, the validity of which may not exceed one year after its issuance.[1677] Although the Pass states that "[a]ny assistance accorded to the above named individual would be most appreciated," there are no provisions in Kenyan legislation specific to the delivery of such assistance.[1678]

3. Refugee Status Determination: The Legal Framework

Kenya has acceded to the 1951 Refugee Convention[1679] and its 1967 Protocol.[1680] The country is also Party to the 1969 OAU Convention.[1681] Applications for asylum

[1670] Department of Refugee Affairs [Kenya], "Registration Procedures [Archive]." Although the refugee application process is a non-adversarial one, an asylum seeker may hire a legal representative for the interview, in which case she or he must complete paperwork, which is available in the 2009 Regulations. See State of Kenya, "Refugees (Reception, Registration and Adjudication) Regulations, 2009," Sections 20(1)(b) and 21(1).

[1671] State of Kenya, "Refugees (Reception, Registration and Adjudication) Regulations, 2009," Section 21. The legal representative has the opportunity to make a closing statement at the interview. See Ibid., Section 21(b). For more information about witnesses, see Ibid., Section 26.

[1672] State of Kenya, "The Refugees Act, 2006," Section 11(4); Department of Refugee Affairs [Kenya], "Refugee Status Determination (RSD) [Archive]."

[1673] State of Kenya, "The Refugees Act, 2006," Section 25.

[1674] Ibid., Section 17.

[1675] State of Kenya, "Refugees (Reception, Registration and Adjudication) Regulations, 2009," Section 30.

[1676] Ibid., Section 17.

[1677] Ibid., Section 13.

[1678] Ibid., Schedule, Form 2.

[1679] UNTC, "Status of Treaties: Convention Relating to the Status of Refugees."

[1680] UNTC, "Status of Treaties: Protocol Relating to the Status of Refugees."

[1681] Organization of African Unity (OAU), *Convention Governing the Specific Aspects of Refugee Problems in Africa ("OAU Convention")*, 8, Annex "States Parties to the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa of 10 September 1969."

are treated under the Refugees Act, No. 13 of 2006, revised in 2012 ("Refugees Act"), which adopts the refugee definition of the Refugee Convention and the "broader" refugee definition of the 1969 OAU Convention.[1682]

4. Refugee Status Determination: Article 1D

The Refugee Act does not incorporate Article 1D. Its article 4, entitled "Disqualification from grant of refugee status," only refers to provisions laid out by Articles 1C and 1F of the 1951 Convention.[1683]

5. Refugee Status Determination Process: Outcome

The Commissioner will accept or reject the application; if the application is rejected, the Commissioner must inform the applicant in writing.[1684]

Appeals from the Commissioner's decision must be submitted to the Refugee Appeal Board within 30 days of the decision.[1685] The Appeal Board may conduct a further investigation or refer the matter to the Commissioner to do so before rendering a decision.[1686] The Appeal Board must make its decision in writing; any further appeal should be addressed to the High Court within 20 days.[1687] During the appeals process, asylum seekers and their families may reside in Kenya.[1688]

If refugee status is granted, refugees and family members who are 18 and older receive an identity card,[1689] commonly called an "alien card." If the refugee is living in a refugee camp, a Refugee Camp Officer ("the Officer") should ensure each refugee has an identity card.[1690] A refugee may apply for a Convention Travel Document, allowing departure and return to Kenya,[1691] a movement pass, allowing movement beyond the refugee camp,[1692] or a pupil's pass.[1693]

The Refugee Act does not refer to the term "*non-refoulement*." However, Article 18 establishes that:

> No person shall be […] compelled to return to or remain in a country where—

[1682] State of Kenya, "The Refugees Act, 2006," Section 3.

[1683] Ibid., Section 4.

[1684] State of Kenya, "The Refugees Act, 2006," Section 11(6).

[1685] Ibid., Section 10(1).

[1686] Ibid., Section 10(2).

[1687] Ibid., Section 10(3). If the application is through UNHCR rather than the Department of Refugee Affairs, the Appeal Board's determination is final and no appeal to the High Court is available. See Department of Refugee Affairs [Kenya], "Refugee Status Determination (RSD) [Archive]."

[1688] State of Kenya, "The Refugees Act, 2006," Section 12.

[1689] Ibid., Sections 14 and 15; State of Kenya, "Refugees (Reception, Registration and Adjudication) Regulations, 2009," Section 33.

[1690] State of Kenya, "The Refugees Act, 2006," Section 17.

[1691] State of Kenya, "Refugees (Reception, Registration and Adjudication) Regulations, 2009," Section 34.

[1692] Ibid., Section 35.

[1693] Ibid., Section 36.

(a) the person may be subject to persecution on account of race, religion, nationality, membership of a particular social group or political opinion; or

(b) the person's life, physical integrity or liberty would be threatened on account of external aggression, occupation, foreign domination or events seriously disturbing public order in part or the whole of that country.[1694]

Moreover, Section 5 of the Refugee Act states that the cessation of refugee status "[…] shall not apply to a person who has compelling reasons arising out of previous persecution for refusing to avail himself or herself of the protection of the country of nationality or to return as the case may be."[1695]

The Commissioner may withdraw refugee status for anyone who is a threat to national security.[1696]

6. Protection under the Statelessness Conventions

Kenya has not signed or ratified the 1954 Convention Relating to the Status of Stateless Persons[1697] or the 1961 Convention on the Reduction of Statelessness.[1698]

7. Links

- Refugee Law of 2006, 2009 Regulations, and Forms: http://www.kenyalaw.org/klr/fileadmin/pdfdownloads/Acts/RefugeeAct_No13of2006.pdf
- Department of Refugee Affairs: http://www.refugees.go.ke/
- Kenya Immigration Office: http://www.immigration.go.ke/
- Kenya Immigration Existing and Open Control Points: http://www.immigration.go.ke/index.php?option=com_content&view=article&id=91&Itemid=129

[1694] State of Kenya, "The Refugees Act, 2006," Section 18.
[1695] Ibid., Section 5.
[1696] Ibid., Sections 19 and 21.
[1697] UNTC, "Status of Treaties: Convention Relating to the Status of Stateless Persons."
[1698] UNTC, "Status of Treaties: Convention on the Reduction of Statelessness."

NIGERIA

1. Statistical Data

There are currently just one Palestinian refugee and one Palestinian asylum seeker in Nigeria.[1699] In the general framework, around 1,500 recognized refugees resided in Nigeria as of July 2014,[1700] mainly originating from Cameroon and the Democratic Republic of the Congo.[1701] There are about 1,000 individuals seeking asylum in Nigeria,[1702] predominantly from the Democratic Republic of Congo, Chad, and Mali.[1703]

2. Refugee Status Determination: The Process

All asylum seekers who enter Nigeria meet with the Eligibility Committee, which determines whether to grant refugee status. After applying for asylum, asylum seekers are entitled to work and are not restricted to a specific area.

UNHCR or the Federal Commissioner can receive refugee applications, which are forwarded to the Eligibility Committee.[1704] The Eligibility Committee for Refugees is charged with overseeing the refugee application process and registering successful applicants.[1705]

Asylum seekers are allowed to reside in Nigeria until a final decision is made about their application.[1706]

In 1989, Act No. 52 ("Refugee Act") established the National Commission for Refugees, Migrants and Internally Displaced Persons (NCFRMI) with a mandate to "safeguard the interest and treatment of persons seeking to become refugees in Nigeria and persons seeking political asylum in Nigeria and other matters incidental thereto" and to bring refugee services to individuals in need.[1707] Under the 1989 Refugee Act, the Commission has power to create guidelines and policy around refugee and asylum issues and advise the Nigerian government on refugee issues.[1708] As of 2013, this Commission had established voluntary return centers, supported internally displaced persons with food and clean water, and repaired bridges to enable

[1699] "Correspondence with Babawale Owolabi, Staff of UNHCR Nigeria," August 18, 2014.

[1700] UNHCR, "2015 UNHCR Country Operations Profile - Nigeria," accessed January 29, 2015, http://www.unhcr.org/pages/49e484f76.html.

[1701] UNHCR, *Nigeria Factsheet*, December 2014, 1, http://www.unhcr.org/524d86149.html.

[1702] UNHCR, "2015 UNHCR Country Operations Profile - Nigeria."

[1703] UNHCR, *Nigeria Factsheet*, 1.

[1704] State of Nigeria, "National Commission for Refugees, Etc. Act No. 52 of 1989," December 29, 1989, http://lawnigeria.com/LawsoftheFederation/NATIONAL-COMMISSION-FOR-REFUGEES-(ESTABLISHMENT-ETC.)-ACT.html, Article 8(3).

[1705] Ibid., Article 6(2).

[1706] Ibid., Article 9.

[1707] Ibid., Preamble.

[1708] Ibid., Article 4(1).

accessibility to some refugees.[1709] The Commission also began the Health Insurance Scheme for Refugees, which had a reported enrollment of 561 persons as of 2013.[1710] The Commission's funding has increased, and the Commission was given additional funds to deal with flooding in Nigeria.[1711] Other government agencies working with refugees include the National Human Rights Commission and the National Emergency Management Agency.[1712] The Senate Committee on Internal Affairs deals with political asylum and refugees.[1713]

Nigeria is part of UNHCR's West Africa strategy, which will focus on providing direct services to refugees in the area, training countries in refugee response and building national asylum capacity, among other things. Specific to Nigeria, UNHCR will focus on care for Cameroonian refugees, vocational skills projects, and voluntary repatriation of Cameroonian refugees.[1714]

3. Refugee Status Determination: The Legal Framework

Nigeria has acceded to the 1951 Refugee Convention[1715] and its 1967 Protocol.[1716] It is also Party to the 1969 OAU Convention.[1717] Applications for asylum are governed by the Refugee Act, which adopts the definition of a refugee as set out in the Refugee Convention and the "broader" definition of a refugee as set out in the 1969 OAU Convention.[1718]

4. Refugee Status Determination: Article 1D

The First Schedule of Nigeria's Refugee Act adopts the Refugee Convention, including Article 1D.[1719]

As of 2005, two Palestinians had been recognized as refugees by the Nigerian authorities. One case involved a Palestinian who was born in 1921 and claimed to

[1709] Kabiru Tanimu Turaki, *Mid-Term Report on the Progress and Achievements of President Goodluck Jonathan's Administration* (Federal Ministry of Special Duties and Inter-Governmental Affairs, June 2013), 20–23, http://fmi.gov.ng/wp-content/uploads/2013/06/SPECIAL-DUTIES-INTER-GOVTL-AFFAIRS-PRESENTATION-3.pdf.

[1710] Ibid., 23.

[1711] Ibid., 26.

[1712] UNHCR, *Nigeria Factsheet*, 2.

[1713] National Assembly [Nigeria], "Senate Committee on Internal Affairs," accessed January 29, 2015, http://www.nass.gov.ng/nass/committees.php?id=34.

[1714] UNHCR, "2015 UNHCR Subregional Operations Profile - West Africa," accessed January 30, 2015, http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e484f76&submit=GO.

[1715] UNTC, "Status of Treaties: Convention Relating to the Status of Refugees."

[1716] UNTC, "Status of Treaties: Protocol Relating to the Status of Refugees."

[1717] Organization of African Unity (OAU), *Convention Governing the Specific Aspects of Refugee Problems in Africa ("OAU Convention")*, 1969, 8, http://refworld.org/docid/3ae6b36018.html, Annex "States Parties to the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa of 10 September 1969."

[1718] State of Nigeria, "National Commission for Refugees, Etc. Act No. 52 of 1989," Article 20(1).

[1719] Ibid., First Schedule.

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.[1720]

As of 2014, however, Nigeria hosted only one Palestinian refugee. He was born in Syria and lived there as a Palestinian refugee but fled the country due the ongoing conflict. "He was recognized as a refugee under paragraph 2 of Article 1D of the 1951 Convention[,] having been outside the UNRWA's area of operation."[1721]

Seven other Palestinians were in UNHCR's database. Nevertheless, their cases were deactivated in 2013, after they failed to attend a verification exercise. UNHCR does not know their whereabouts.[1722]

5. Refugee Status Determination Process: Outcome

Recognized refugees are granted the benefits of the Refugee Convention, including a refugee identity card, which constitutes a residence permit, and a United Nations Travel Document (UNCTD) when needed.[1723]

Some refugee children may be eligible for educational scholarships.[1724] Refugees have access to employment training programs and start-up loans, as well as health care through the National Health Insurance Scheme.[1725] Refugees are entitled to work.[1726] The Refugee Commission may assist an asylum seeker in securing employment, education, and relief assistance; it may also coordinate relationships between the applicant and non-governmental organizations.[1727]

If the applicant is not granted refugee status, the Eligibility Committee must give reasons for its decision.[1728] A Refugee Appeal Board hears appeals,[1729] which must be filed within 30 days of notification of the decision of the Eligibility Committee.[1730] While the Board considers the appeal, the applicant may stay in Nigeria.[1731] If the application is denied after appeal, the applicant has a "reasonable time" to seek admission to another country.[1732] If an applicant is granted refugee status, the

[1720] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 305.
[1721] "Correspondence with Babawale Owolabi, Staff of UNHCR Nigeria."
[1722] Ibid.
[1723] State of Nigeria, "National Commission for Refugees, Etc. Act No. 52 of 1989," Article 11.
[1724] UNHCR, *Nigeria Factsheet*, 2.
[1725] Ibid.
[1726] State of Nigeria, "National Commission for Refugees, Etc. Act No. 52 of 1989," Article 18(d).
[1727] Ibid., Article 18.
[1728] Ibid., Article 8(6).
[1729] Ibid., Article 7. The Refugee Appeal Board also hears other special cases referred to it.
[1730] Ibid., Article 8(7).
[1731] Ibid., Article 8(8).
[1732] Ibid., Article 8(9).

applicant's family may reside in Nigeria as long as the refugee is permitted to stay.[1733]

The first words of the Refugee Act set out the principle of *non-refoulement*.[1734] Part VII of the Refugee Act is consistent with this principle, stating that "[a] refugee may be detained or expelled for reasons of national security or public order provided that no refugee shall be expelled to a country where he has reasons to fear persecution."[1735] The Eligibility Committee may revoke refugee status; the revocation must be accompanied by written notice and a statement of the Committee's reasoning.[1736] In such a case, the applicant has a right of appeal to the Secretary of the Federal Commissioner.[1737]

As far as the UNHCR office in Nigeria is aware, there are no cases of Palestinian refugees being deported.[1738]

6. Protection under the Statelessness Conventions

Nigeria has acceded to the 1954 Convention Relating to the Status of Stateless Persons[1739] and the 1961 Convention on the Reduction of Statelessness.[1740] There is no official practice with regard to protection of stateless persons and, according to UNHCR, there have been no cases of Palestinian refugees being granted protection as stateless persons.[1741]

7. Links

- Senate Committee on Interior Affairs (dealing with asylum and refugee issues): http://www.nass.gov.ng/nass/committees.php?id=34
- National Commission for Refugees, Etc. Act: http://www.placng.org/lawsofnigeria/node/227
- There is a National Commission for Refugees, Migrants and Internally Displaced Persons (NCFRMI), but no working website for this Commission exists as of the writing of this *Handbook*.
- UNHCR Nigeria: http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e484f76&submit=GO

[1733] Ibid., Article 14.
[1734] Ibid., Article 1.
[1735] Ibid., Article 16(1).
[1736] Ibid., Article 12.
[1737] Ibid., Article 13.
[1738] "Correspondence with Babawale Owolabi, Staff of UNHCR Nigeria."
[1739] UNTC, "Status of Treaties: Convention Relating to the Status of Stateless Persons."
[1740] UNTC, "Status of Treaties: Convention on the Reduction of Statelessness."
[1741] "Correspondence with Babawale Owolabi, Staff of UNHCR Nigeria."

SOUTH AFRICA

1. Statistical Data

No statistics regarding the number of Palestinians living in South Africa are available. As of July 2014, just over 65,000 recognized refugees resided in South Africa. There are over 230,000 individuals seeking asylum in South Africa, making South Africa the country with the highest number of asylum seekers in the world. Most of the country's asylum seekers are from Burundi, the Democratic Republic of the Congo (DRC), Ethiopia, Rwanda, Somalia and Zimbabwe.[1742]

As of November 2003, ten Palestinians had applied for asylum. Five were granted refugee status, while the other five were rejected.[1743]

2. Refugee Status Determination: The Process

Like other asylum seekers, Palestinians in South Africa may submit an application for asylum under the Refugees Act No. 130 of 1998 (Refugees Act).[1744]

Any asylum seeker who enters South Africa through a port of entry (land, harbor or airport) is given a "Section 23 Permit" or an "asylum transit permit." The permit allows the asylum seeker to travel to a Refugee Reception Office (RRO).[1745] The Standing Committee for Refugee Affairs determines the conditions relating to study or work of such persons.[1746]

To apply for refugee status at the RRO, the asylum seeker must present the Section 23 Permit, and, if possible, proof of identification and a travel document from the country of origin. During the first visit to the RRO, there is a hearing, and the asylum seeker will undergo an interview and fingerprinting.[1747] The office

[1742] UNHCR, "2015 UNHCR Country Operations Profile - South Africa," accessed January 30, 2015, http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e485aa6&submit=GO.

[1743] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 306.

[1744] State of South Africa, "Refugees Act, No. 130 of 1998," December 2, 1998, http://www.gov.za/sites/www.gov.za/files/a130-98_0.pdf. The 1998 Refugees Act has been amended twice, in 2008 and 2010. However, neither of these amendments has been implemented. This country profile will cite relevant sections of the 1998 Act for current procedures, mentioning amendments where changes were made in text or footnotes. Major changes in the 2008 and 2010 amendments are discussed in full below.

[1745] Department of Home Affairs [South Africa], "Refugee Status & Asylum," accessed February 4, 2015, http://www.dha.gov.za/index.php/refugee-status-asylum.

[1746] State of South Africa, "Refugees Act, No. 130 of 1998," Section 11(h).

[1747] Department of Home Affairs [South Africa], "Refugee Status & Asylum." The 2008 and 2010 amendments allow for the collection of identifying "biometrics" including "photographs, fingerprints, palmprints, hand measurements, signature verification, facial patterns or retinal patterns." State of South Africa, "Refugees Amendment Act, No. 33 of 2008," November 26, 2008, http://www.gov.za/sites/www.gov.za/files/31643_1274.pdf, Section 1[(vi)]; State of South Africa, "Refugees Amendment Bill," August 20, 2010, http://pmg-assets.s3-website-eu-west-1.amazonaws.com/bills/100913b30-10.pdf, Section 1(a).

will then issue a six-month "Section 22 Permit," which allows the asylum seeker to reside in South Africa until a decision about refugee status is rendered (the permit can be extended if the determination waiting time exceeds six months). A Section 22 permit allows an asylum seeker to work and study in South Africa.[1748] The principle of *non-refoulement* is generally respected for any person who has lodged an asylum claim under the South African Refugees Act.[1749]

During the initial visit to the RRO, the asylum seeker should inquire about next steps. Generally, an asylum seeker who possesses the Section 22 permit must make a second visit to the RRO. During this second visit, an additional interview is required. A Refugee Status Determination Officer (under the 1998 law, reflecting current practice as of 2013) or a Status Determination Committee[1750] (under the 2010 amendments, not yet in effect) will grant or deny the application, stating reasons, or refer the case to the Standing Committee for Refugee Affairs (under the 1998 law) or the Refugee Appeals Authority[1751] (under the 2008 amendments, also not yet in effect).[1752]

While a decision is pending, a permit may be revoked for reasons outlined in the Refugees Act.[1753] If the permit is revoked, an asylum seeker can be arrested and detained until a decision about her or his application is rendered. The Minister of Home Affairs decides where and how the individual may be detained, although detainment must be "with due regard to human dignity."[1754]

3. Refugee Status Determination: The Legal Framework

South Africa has acceded to the 1951 Refugee Convention[1755] and its 1967 Protocol.[1756] It is also party to the 1969 OAU Convention. [1757] The Refugees Act adopts the refugee definition as set out in the 1951 Refugee Convention as well as the "broader" refugee definition set out in the 1969 OAU Convention.[1758]

The 1998 Refugees Act is the main mechanism for refugee and asylum laws in South Africa. Even though it was amended in 2008 and 2010, such amendments have not yet been implemented.

[1748] Department of Home Affairs [South Africa], "Refugee Status & Asylum."

[1749] State of South Africa, "Refugees Act, No. 130 of 1998," Section 2. Section 28 allows removal of refugees for national security reasons, but this section is subject to the *non-refoulement* principles outlined in Section 2. See Ibid., Section 28(1).

[1750] State of South Africa, "Refugees Amendment Bill," Section 3(a).

[1751] State of South Africa, "Refugees Amendment Act, No. 33 of 2008," Section 11.

[1752] Department of Home Affairs [South Africa], "Refugee Status & Asylum."

[1753] State of South Africa, "Refugees Act, No. 130 of 1998," Section 22(6).

[1754] Ibid., Section 23.

[1755] UNTC, "Status of Treaties: Convention Relating to the Status of Refugees."

[1756] UNTC, "Status of Treaties: Protocol Relating to the Status of Refugees."

[1757] Organization of African Unity (OAU), *Convention Governing the Specific Aspects of Refugee Problems in Africa ("OAU Convention")*, 1969, 8, http://refworld.org/docid/3ae6b36018.html, Annex "States Parties to the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa of 10 September 1969."

[1758] State of South Africa, "Refugees Act, No. 130 of 1998," Section 3.

1998 Refugees Act

The 1998 Refugees Act establishes the institutions, processes, and some of the substance for assessing refugee applicants. Under the Refugees Act, South Africa's Minister of Home Affairs, who heads the Department of Home Affairs (DHA), is responsible for implementing the Act.[1759] The Director-General of the DHA establishes Refugee Reception Offices (RROs) at which applications are received and processed.[1760] Applications are granted or denied by Refugee Status Determination Officers (RSDO) who work out of the RRO.[1761] The Standing Committee for Refugee Affairs oversees the status determination process by monitoring the RROs and RSDOs, developing procedures for considering refugee applications, resolving questions of South African refugee law, and communicating between UNHCR and non-governmental organizations.[1762] The Refugee Appeal Board is independent from the Standing Committee and has the power to review decisions by the Standing Committee.[1763]

2008 Amendments

The 2008 amendments significantly altered the refugee application process in South Africa. The Refugee Appeal Board and Standing Committee were replaced with the Refugee Appeals Authority, which hears appeals from the RROs, but does not oversee the work of the RROs and the RSDOs. Instead, a group of administrators oversees the RROs.[1764] The amendments solidified procedures for unaccompanied children, persons with disabilities, and spouses and dependents of asylum seekers and refugees.[1765] Under the 2008 amendments, the Director-General of the Department of Home Affairs reviews all determinations made by the Refugee Status Determination Officer, which were formerly only reviewable by the Standing Committee upon appeal.[1766]

Additionally, the 2008 amendments to the Refugees Act defined marriage[1767] and extended refugee status applications to spouses as well as dependents of individuals qualifying as refugees.[1768] Instead of fingerprints and photographs, asylum seeker permits will incorporate "biometrics,"[1769] including "photographs, fingerprints, hand

[1759] Ibid., Section 6(2).
[1760] Ibid., Section 8.
[1761] Ibid., Section 8(2).
[1762] Ibid., Section 11.
[1763] Ibid., Sections 12 and 14.
[1764] State of South Africa, "Refugees Amendment Act, No. 33 of 2008," Section 11.
[1765] Ibid., Section 14.
[1766] Ibid., Section 19.
[1767] Marriage is inclusive of civil partnerships in accordance with the Civil Union Act of 2006. See Ibid., Section 1[(xii)]. Further, a spouse includes a partner within "a permanent homosexual or heterosexual relationship as prescribed." See Ibid., Section 1[(xxi)](b).
[1768] State of South Africa, "Refugees Amendment Act, No. 33 of 2008," Section 4(c).
[1769] Ibid., Section 15.

measurements, signature verification, facial patterns, and retinal patterns."[1770] Also, the Immigration Act now governs procedures for asylum seekers who do not raise an appeal after their application is rejected.[1771] Detention of more than 30 days is reviewable by any court in the jurisdiction of the detainee as opposed to the High Court.[1772]

2010 Amendments

The 2010 amendments further clarified the protocol in the event of a "manifestly unfounded" application: the applicants will be dealt with in accordance with the Immigration Act.[1773] The framework outlined in the 2008 amendments was altered slightly in the 2010 amendments. The Refugee Status Determination Officer from the 1998 Refugees Act was replaced by the Status Determination Committee in order to "ensure that the applications for asylum in terms of the act are dealt with efficiently, promptly and in a less subjective fashion."[1774] Lastly, the Minister, rather than the Director-General, has the power to revoke refugee status after the 2010 amendments take effect.[1775]

4. Refugee Status Determination: Article 1D

The Refugees Act does not contain a provision similar to Article 1D of the Refugee Convention, although the Refugees Act reads: "[t]his Act must be applied with due regard to […] the Convention Relating to the Status of Refugees (UN, 1951)."[1776] Despite this general reference to the Refugee Convention, Article 1D is not applied in cases involving Palestinian asylum seekers. Instead, cases are assessed on the basis of criteria set out in the Refugees Act, which is based on Article 1A(2) of the Refugee Convention 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 he or she resided previously.[1777] The practice in cases involving Palestinians is thus to assess whether the individual enjoyed effective protection in the area from which he or she fled.

5. Refugee Status Determination Process: Outcome

If an application is granted, the RRO office will issue the refugee a "Section 24 Permit," which is a two-year permit to reside in South Africa; these permits may be

[1770] Ibid., Section 1[(vi)].
[1771] Ibid., Section 17.
[1772] Ibid., Section 24.
[1773] State of South Africa, "Refugees Amendment Bill," Section 6(f).
[1774] Ibid., Annex "Memorandum on the Objects of the Refugees Amendment Bill," Section 1.7.
[1775] Ibid., Section 10(a).
[1776] State of South Africa, "Refugees Act, No. 130 of 1998," Section 6.
[1777] Ibid., Section 4(d).

renewed, pending another review. Refugees with a valid permit may work in South Africa.[1778] Aside from voting, the 1998 Refugees Act gives refugees and asylum seekers the same rights as nationals.[1779]

After refugee status is granted, refugees must apply for identification through the RRO. Additionally, refugees may apply for a United Nations Convention Travel Document. If a refugee has lived in South Africa for five years with refugee status, she or he may apply for certification and eventually permanent residence. A refugee applying for certification must do so at the RRO where the asylum application was made.[1780]

If an asylum application is denied, an asylum seeker may appeal to the Refugee Appeal Board (RAB) within 30 days of the denial (the appeal is to the Refugee Appeals Authority under the 2008 amendments).[1781] The appellate authority will hold a hearing and issue a decision. If the application is denied, the Minister of Home Affairs may order removal of the asylum seeker,[1782] although rights under South Africa's constitution or international law may not be breached in this process.[1783] A High Court (under the 1998 Act) or any court within the jurisdiction (2008 amendments) must review any detention lasting longer than 30 days; the RRO detains children only as a "last resort."[1784] Providing fraudulent or false information during the asylum application process may result in revocation of refugee status.[1785]

No information is available regarding the return or deportation of the above-mentioned five Palestinians whose asylum applications were rejected.

6. Protection under the Statelessness Conventions

South Africa has not signed or ratified the 1954 Convention Relating to the Status of Stateless Persons[1786] nor the 1961 Convention on the Reduction Statelessness.[1787] The UNHCR in South Africa is working to prevent statelessness.[1788]

[1778] Department of Home Affairs [South Africa], "Refugee Status & Asylum."

[1779] South African Human Rights Commission, *Shadow Report on South Africa's Compliance with the Provisions of the International Convention against All Forms of Racial Discrimination*, June 1, 2006, 21, http://www.gov.za/sites/www.gov.za/files/shadowreport_0.pdf.

[1780] Department of Home Affairs [South Africa], "Refugee Status & Asylum."

[1781] Ibid.

[1782] State of South Africa, "Refugees Act, No. 130 of 1998," Section 22(6)(c).

[1783] Ibid., Section 28.

[1784] Ibid., Section 29; State of South Africa, "Refugees Amendment Act, No. 33 of 2008," Section 24.

[1785] State of South Africa, "Refugees Act, No. 130 of 1998," Sections 36 and 37.

[1786] UNTC, "Status of Treaties: Convention Relating to the Status of Stateless Persons."

[1787] UNTC, "Status of Treaties: Convention on the Reduction of Statelessness."

[1788] UNHCR, "2015 UNHCR Country Operations Profile - South Africa."

7. Links

- South Africa's Department of Home Affairs, Application for Asylum Procedure: http://www.dha.gov.za/index.php/refugee-status-asylum
- Text of 1998 Refugees Act (currently effective): http://www.gov.za/sites/www.gov.za/files/a130-98_0.pdf
- Text of 2008 Refugee amendments (amendments not yet implemented): http://www.gov.za/sites/www.gov.za/files/31643_1274.pdf
- Text of 2010 Refugees Act amendments (amendments not yet implemented): http://www.pmg.org.za/files/bills/100913b30-10.pdf
- 1969 OAU Convention: http://www.unhcr.org/45dc1a682.html

Chapter Four

Summary of Findings

Summary of Findings

1. Introduction

Based on the survey presented in this *Handbook*, this chapter will elucidate and summarize the major findings concerning country-specific interpretation and application of international and national instruments available for the protection of Palestinian refugees.

It should be noted that the findings presented in *Chapter Three* are preliminary, since, for many countries, information on national case law was incomplete, or completely unavailable. In particular, there was a lack of information regarding national case law for all the Latin American countries surveyed –namely, **Brazil**, **Chile**, **Ecuador**, **Mexico** and **Peru** – and all the African countries surveyed – namely, **Côte d'Ivoire**, **Kenya**, **Nigeria** and **South Africa**.

In addition, for the European Union countries, BADIL is not aware of any case law subsequent to the 2012 *El Kott* decision regarding Palestinian refugees for **Denmark**, **Finland**, **Ireland**, **Italy**, **Norway, Poland, Spain, or Switzerland**.

2. Protection under Article 1D

Both the 2005 edition and the 2011 update of the *Handbook* concluded with respect to national practices toward Palestinian asylum applicants that there was "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 the determination of the status of Palestinian refugees by reference to the criteria of Article 1A(2) of the 1951 Refugee Convention."[1789]

Our findings in this edition suggest that this conclusion is, to a large extent, still accurate. First, not only does the lack of consensus persist, but also national practice has become more complex and diverse, so that categorization is even more difficult than it was previously. Notably, **Australia** presents such a unique interpretation that it requires separate explanation.

Even for those countries in the European Union whose case law demonstrated interpretations and applications in accordance with *El Kott*, their approaches varied to the extent that they followed (or not) more specific guidelines provided by UNHCR's Note of 2013,[1790] notably the first and second set of "objective reasons" for leaving the country of habitual residence.

Accordingly, much of this *Handbook*'s profiles of domestic practice involves

[1789] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 334; BADIL Resource Center, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention. Jurisprudence Regarding Article 1D 2005-2010*, 10.

[1790] UNHCR, "2013 Note."

analysis of national interpretations of the meaning of Article 1D's provision regarding the cessation of URNWA's activities, and whether these interpretations follow the set of objective reasons featured in UNHCR's Note of 2013. UNHCR's framework includes two sets of objective criteria: first, protection-related issues, such as threats to life, physical security or freedom; and second, barriers to return, of a practical, legal or security nature.[1791] Some countries adopted such interpretations even prior to 2013; however, they still present at least partial similarities with UNHCR's framework for assessing "objective reasons."

Second, at least ten of the countries surveyed, all of them European,[1792] follow, to some extent, the guidelines featured in UNHCR's Note of 2013, rather than the Article 1A(2) criteria, to grant refugee status to Palestinian applicants. Still, the evidence available demonstrates that, of these countries, at least **Germany**, **Norway** and **Netherlands** adopt practices toward Palestinian applicants which can be equated, to some degree, to an assessment under Article 1A(2) criteria.[1793] This issue will be further examined in Sections 2.11.3 and 2.11.4 of this chapter.

In short, the *El Kott* decision by the Court of Justice of the European Union, largely endorsed by UNHCR,[1794] has had the positive effect of bringing European countries – even Norway, which is not part of the European Union, and therefore not bound to uphold CJEU decisions – closer to UNHCR's interpretation of Article 1D as presented in its 2013 Note. Some additional considerations regarding UNHCR's interpretation are further discussed in Chapter Five, *The Interpretation and Application of Article 1D: a critical approach*.

From this survey of national practice – and in accordance with *El Kott*, but not with UNHCR's Note of 2013 – no country is known to apply Article 1D to Palestinians who are *eligible* for but who have not *actually accessed* UNRWA's assistance. According to the information available, at least the **Czech Republic**, **France**, **Hungary**, **Italy** and **Norway** (prior to 2009) apply Article 1D only to Palestinians who *actually* availed themselves of UNRWA's services.

Positive practice may exist in **Nigeria** and **Italy**, where Palestinians are seemingly granted refugee status automatically, without any further screening. However, the details of such procedures remain unclear, given that information about cases in these countries is very limited.

We have identified 11 general approaches in the different practices adopted by the countries surveyed. The last category comprises countries which follow, to some

[1791] Ibid., 5.

[1792] Namely, Czech Republic, France, United Kingdom, Hungary, Sweden, Austria, Norway, Germany, Netherlands and Belgium (in the order their profiles are presented in section 2.11).

[1793] Due to lack of evidence, it remains unclear how the six remaining countries – i.e., Belgium, Czech Republic, France, Hungary, Sweden and United Kingdom – assess Palestinian applicants' "objective reasons" for leaving their country of habitual residence, and to what extent, if any, such assessment takes into account Article 1A(2) criteria.

[1794] For more details on *El Kott*'s and UNHCR's interpretations, as well as on their differences, please refer to Chapter Two, sections 2.1 (especially 2.1.4) and 2.2.

extent, the guidelines in UNHCR's Note of 2013; those countries were sub-divided into five approaches, according to the degree of similarity between their practices and those guidelines.

2.1. Automatic granting of refugee status to Palestinians outside UNRWA's area of operations

Nigeria

Nigeria has granted refugee status to a Palestinian asylum seeker under the second paragraph of Article 1D, due to his presence outside UNRWA's area of operation. No additional assessment under Article 1A(2) was required. However, no further details about this case are available and it is unclear whether this reflects standard procedure.

Italy

According to information gathered by the Italian Refugee Council (CIR) for the 2011 updated edition of the *Handbook*,[1795] the Italian authorities do recognize Palestinian refugees *ipso facto* as refugees without requiring evidence of a well-founded fear of persecution (Article 1A(2) test) – even though, as explained in Section 2.9, actual receipt of URNWA's assistance is required to trigger Article 1D.

However, due to the unavailability of more recent case law, it was not possible to analyze Italy's current practice regarding Palestinian requests for asylum, nor to assess the impact, if any, of the *El Kott* decision on Italy's interpretation and application of Article 1D.

2.2. No incorporation of Article 1D in national legislation

Canada, **Chile**, **Kenya**, **Mexico**, **Peru** and the **United States** do not have any provision that incorporates either the exclusion clause or the inclusion clause of Article 1D in their national legislation.

Nonetheless, this does not prevent some countries, such as **Canada** and the **United States**, from having their own interpretation of Article 1D.

However, the application of Article 1D in **Chile**, **Kenya**, **Mexico** and **Peru** could not be assessed due to lack of available case law.

It should be noted that **Brazil**, **Ecuador** and the **United Kingdom** only incorporate the first paragraph of Article 1D – i.e., the exclusion clause – in their national legislation. While the **United Kingdom**'s approach will be explained further below, with regards to **Brazil** and **Ecuador**, due to lack of case law, it remains unclear how those laws affect Palestinians in asylum procedures.

[1795] BADIL Resource Center, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention. Jurisprudence Regarding Article 1D 2005-2010*, 47.

2.3. No application of Article 1D

As a consequence of the **United States**' interpretation (see item 2.8), Article 1D is not applied at all in Refugee Status Determination processes concerning Palestinian applicants.

Available Swiss case law also indicates that **Switzerland** does not apply Article 1D.

In **South Africa**, even though its Refugee Act refers to the 1951 Convention, Article 1D is not applied in cases involving Palestinian applicants, which are examined under Article 1A(2) criteria.

2.4. The role of Article 1D is unclear

Brazil

Although Brazil's refugee definition is more expansive than the Refugee Convention definition, according to UNHCR, Article 1D is not consistently applied in decisions on Palestinian asylum applications.

Côte d'Ivoire

Refugee status determination in Côte d'Ivoire is done "in accordance with international standards" to determine refugee status. However, due to lack of information and case law, the application of Article 1D remains unclear.

Finland

Finland's 2004 Aliens Act provides with regards to Article 1D that "[i]f the person [concerned] 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."[1796] Consequently, Palestinian refugees' eligibility for refugee status in Finland under Article 1D depends on the specific meaning to be given to the term "voluntarily relinquished" by the Finnish authorities. Due to the unavailability of case law subsequent to 2004, it remains unclear how this phrase is being interpreted.

Ireland

Ireland's High Court has ruled that Article 1D applies to Palestinian refugees, in light of the *Bolbol* and *El Kott* decisions. However, this case related to non-Palestinian applicants, and due to lack of case law available subsequent to the High Court's decision, it remains unclear what role Article 1D plays in refugee status determination processes concerning Palestinian applicants.

[1796] See p. 121 above.

Spain

In the one case discussed in this edition of the *Handbook*, Spain did not grant asylum under Article 1D because the applicant could not provide evidence of his Palestinian nationality.

The lack of further case law prevents further analysis of the role played by Article 1D in the granting of refugee status to Palestinian asylum seekers.

Other countries

As previously mentioned, the application of Article 1D in **Chile**, **Kenya**, **Mexico** and **Peru** could not be assessed due to lack of available case law.

2.5. Article 1D is not applicable as long as UNRWA continues its functions

In this approach, the countries below interpret the phrasing "[w]hen such protection or assistance has ceased for any reason" in Article 1D as corresponding only to the "termination of UNRWA as an agency" or the "discontinuation of URNWA's activities," but not to "any objective reason outside the control of the person concerned."[1797] It can be inferred that all the countries in this category also apply an approach similar to Australia's "class of persons" approach (see Section) – i.e., the inclusion clause of Article 1D does not apply when Palestinians apply for asylum in those countries because they still belong to a class of persons (Palestinian refugees) which benefits from UNRWA's services.

Denmark

Denmark considers the inclusion clause of Article 1D inapplicable as long as UNRWA continues its functions. Consequently, the authorities do not apply Article 1D in analyzing cases of Palestinian asylum seekers.

The lack of more recent case law, especially after *El Kott*, hinders a thorough analysis of the role played by Article 1D in the granting of refugee status to Palestinian asylum seekers, and the impact of the *El Kott* decision on the Danish refugee status determination process remains unclear.

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; UNRWA cannot be said to have "ceased" providing assistance simply because individuals leave the geographic area. Consequently, Palestinians have to apply for refugee status under Article 1A(2) criteria.

[1797] According to UNHCR, "[t]he phrase 'ceased for any reason' [...] would include the following: (i) the termination of UNRWA as an agency; (ii) the discontinuation of UNRWA's activities; or (iii) any objective reason outside the control of the person concerned such that the person is unable to (re-) avail themselves of the protection or assistance of UNRWA" (UNHCR, "2013 Note," 4). Thus, the countries in this category only consider situations (i) and (ii) in their interpretation of that phrasing.

Poland

According to a 2009 decision of Poland's High Administrative Court, the cessation of protection or assistance referred to in Article 1D can only happen when "UNRWA ceased or limited its operations and thus withheld assistance to Palestinians."

Therefore, the inclusion clause does not apply when Palestinians apply for asylum in Poland because UNRWA continues to operate. Instead of activating the inclusion clause, presence outside UNRWA's area of operations only deactivates the exclusion clause. Consequently, Article 1D becomes irrelevant, and Palestinian asylum applications are examined under Article 1A(2) criteria.

Due to the unavailability of case law subsequent to the *El Kott* decision, it remains unclear what impact, if any, *El Kott* may have had on Polish interpretation and application of Article 1D.

2.6. Article 1D purely as an exclusion clause that applies in UNRWA's area of operations

Canada

Canada's interpretation, as established by its case law, is that Article 1D excludes Palestinians from the benefits of the 1951 Convention; i.e., it is an exclusion clause that applies in UNRWA area of operations. Accordingly, once Palestinians leave that area, they cease to receive protection or assistance; being no longer excluded, they are eligible to apply for refugee status under Article 1A(2).

Such an understanding demonstrates a complete neglect of the inclusion clause in Article 1D, since, instead of automatically (*ipso facto*) falling under the 1951 Convention, as the inclusion clause establishes, Palestinians must apply for refugee status under the criteria of Article 1A(2).

Netherlands

Prior to 2013, Netherlands' interpretation, similar to **Canada**'s, was that the exclusion clause of Article 1D ceases to apply whenever a Palestinian refugee is no longer present in UNRWA's area of operations. Consequently, Palestinians apply for asylum under the Article 1A(2) criteria.

Poland

Poland does not see Article 1D "purely" as an exclusion clause, since, as seen above (see Section), it also considers the applicability of the inclusion clause – even though *only* in the case UNRWA ceases or limits its operations. However, Polish interpretation of Article 1D is that "the exclusion from applying the Geneva Convention is *only* applicable to those Palestinians who permanently reside within [UNRWA's] area [of operations] [emphasis added]." Consequently, "[i]n relation

to *Palestinians permanently staying* in Poland, the exclusion clause from the first sentence of article 1D does not apply [emphasis added],” and such persons must apply for refugee status under Article 1A(2) criteria.

2.7. No automatic granting of refugee status

United States

Article 1D is not applied in published US case law. The General Counsel of the US Immigration and Naturalization Service in 1993 rejected UNHCR’s position that eligibility for assistance from UNRWA “somehow equates to a showing that the person is a refugee under the Convention.”[1798]

The US interpretation is that Article 1D means “not that Palestinian refugees are refugees in the sense defined by [the] Convention and United States law, but only that they are not precluded from claiming that status.”[1799] Accordingly, Palestinians must apply for asylum under Article 1A(2), like other asylum seekers.

The US approach reaches a final outcome similar to the ones seen above, in **Canada**, **Netherlands**, **New Zealand** and **Poland** (see Sections and). However, US interpretation does not make reference to the exclusion clause and the inclusion clause in Article 1D; rather, it is specifically based on US (mis)understanding of the term *ipso facto*.

Such understanding of that term can also be found in Australia’s interpretation (see Section 2.8, sub-section “No automatic granting of refugee status” below). However, **Australia**’s approach, although leading to an outcome similar to the one reached by US, is based on a very particular interpretation, which deserves special attention, as seen below.

2.8. Australia

Australia constitutes a singular example, for it is the only country analyzed in this *Handbook* that has officially recognized that UNCCP ceased its activities in the early 1950s and that this has important implications for Palestinian refugees. However, as the following three-part examination of the Australian interpretation of Article 1D demonstrates, the final outcome of its application of Article 1D to Palestinian asylum applications differs from the outcome reached by Akram and Rempel regarding the cessation of UNCCP’s activities.

“Class of persons” approach

The Australian “class of persons” approach to Article 1D consists of evaluating the cessation of “protection or assistance” provided to Palestinians *as a group*. It follows that, in order for the inclusion clause of Article 1D to be triggered, either the

[1798] See p. 264 above.
[1799] Ibid.

protection or the assistance provided to all Palestinian refugees must have ceased. Under this interpretation, unless such protection or assistance has ceased for the group, individual Palestinians who leave UNRWA's area of operations would not be eligible for asylum under Article 1D, because Palestinians, as a group, still have access to UNRWA's services.

In practice, Australian judicial decisions take the position that all Palestinians no longer enjoy the protection of UNCCP and are all, consequently, entitled to the benefits of the 1951 Convention (see below). Therefore, the potential impediment for individual Palestinian asylum seekers in Australia does not exist.

UNCCP has ceased its activities

Australia recognizes, in line with the interpretation advanced by Susan Akram and Terry Rempel, that the second paragraph of Article 1D – i.e., the inclusion clause – applies to all Palestinians because UNCCP ceased its activities in the early 1950s.[1800]

No automatic granting of refugee status

However, Australian jurisprudence has rejected the idea that the term "*ipso facto*" in Article 1D means that Palestinians should automatically be granted refugee status, which would be "contrary to [the] purpose" of the 1951 Convention, "designed to provide protection only to those who truly require it."[1801] That conclusion, coupled with a very narrow interpretation of the term "benefits of the convention,"[1802] has led the Australian courts to interpret the *ipso facto* clause in the second paragraph of Article 1D as entitling Palestinian refugees only to the benefits of the Convention, but not to refugee status itself. Rather, according to the Australian interpretation, Palestinian refugees are only entitled to *refugee status* if they prove that they have a well-founded fear of persecution. Consequently, the cessation of UNCCP's protection to Palestinian refugees, according to Australian case law, only enables them to apply for refugee status under Article 1A(2).[1803]

2.9. Article 1D only applicable to those Palestinians who actually availed themselves of UNRWA's assistance

Czech Republic

The Czech Republic's Supreme Administrative Court has ruled, on more than one occasion, that Palestinian applicants for asylum must have "actually accessed the protection or assistance of UNRWA" in order to qualify for refugee status under Article 15(3)(a) of the Czech Asylum Act, which mirrors Article 1D.

[1800] See, e.g., Refugee Review Tribunal of Australia, "1113683 [2012] RRTA 611," para. 48.
[1801] See p. 283 above.
[1802] See p. 282-282 above.
[1803] See, e.g., Refugee Review Tribunal of Australia, "1113683 [2012] RRTA 611," para. 49.

France

France's National Court of Asylum declared in 2008 (Case 493412, A) that Article 1D applies only to asylum seekers actually receiving assistance from UNRWA or other UN agencies. This position was upheld by the Court in 2013 cases 04020557 and 04020558, even though they rendered quite different outcomes (see below).

Hungary

Hungary's Administrative and Labour Court established in 2013 (Case 6.K.30.092/2013/12) that the first condition of applying Article 1D is that the applicant has actually received UNRWA assistance.

Italy

The Italian Supreme Court held in 2010 that actually having accessed UNRWA assistance is required to trigger the application of Article 1D: "a person benefits from the protection or assistance of a UN agency other than UNHCR if [he or she] has effectively resorted to such protection or such assistance."[1804]

Norway

Prior to 2009, Norway applied Article 1D only to Palestinians who were previously registered with UNRWA, in order to grant them refugee status.

2.10. Article 1D limited temporally

Poland

According to a 2009 decision of the Office for Foreigners, Article 1D only applies to Palestinians who benefitted from UNRWA's services on the date the 1951 Convention was signed (28 July 1951) and the descendants of such Palestinians.

United Kingdom

Previously, the United Kingdom's application of Article 1D was based on the 2002 *El-Ali* case, which limited its applicability only to Palestinians who benefitted from UNRWA's services at the time the 1951 Convention was signed, excluding their descendants. The *El-Ali* case was disapproved in the 2012 case of *Said* which specifically discusses the invalidity of the temporal limitation (at Para. 23).[1805]

[1804] See p. 163 above.

[1805] Even though the guidance note from November 2013 (see p. 218 above) perpetuates the temporal limitation, it is not authoritative in light of the conflicting CJEU's decision on *Bolbol*, on which the UK Upper Tribunal's decision in the *Said* case was based. Moreover, as explained in the country profile, it conflicts with the Operational Guidance Note of March 2013, and should be, but has not yet been, amended.

2.11. Approaches that follow, to some extent, the 2013 UNHCR Note

2.11.1. The El Kott Approach

Both the CJEU decision in *El Kott* and the 2013 UNHCR Note state that Article 1D is applicable whenever the protection or assistance provided to Palestinian refugees has ceased for reasons beyond his or her control and independent of his or her will.

The *El Kott* decision, however, does not incorporate the main additional elements set out in the 2013 UNHCR interpretation. First, *El Kott* does not consider Article 1D as applicable to Palestinians who were eligible for UNRWA's services, but rather only those who actually availed themselves of such services.

Second, the *El Kott* case does not provide a framework for any objective criteria to define the phrase "beyond [one's] control and independent of [one's] volition," that are laid out in 2013 UNHCR Note. Without more national jurisprudence interpreting what will satisfy the *El Kott* criteria, it remains to be seen how countries following *El Kott* will determine what circumstances constitute "reasons beyond the applicant's control."

For more details on El Kott's and UNHCR's interpretations, as well as on their differences, refer to Chapter Two, sections 2.1 (especially 2.1.4) and 2.2.6.

Czech, **French** and **British** interpretations follow the *El Kott* approach (and, in a more limited way, UNHCR's 2013 Note, since, as discussed above, the *El Kott* decision corresponds only partly to the UNHCR Note).[1806]

Czech Republic

The Czech Republic requires Palestinian asylum seekers to have been actually receiving UNRWA's assistance in order to qualify for refugee status under Article 1D. However, aside from that, the country seems to adopt a general understanding of Article 1D similar to the one laid out in the 2013 UNHCR Note. In the same decisions by the Czech Supreme Administrative Court that required proof of "actual access" to UNRWA's services, the Court also established that Article 1D applies whenever the "protection or assistance provided by the UN for Palestinian refugees in the Middle East has ceased for *reasons independent of the will of the applicant* [emphasis added]."[1807]

[1806] **Hungary**'s current practices also restrict the application of Article 1D to Palestinians who actually received UNRWA's assistance, as seen in Section . However, Hungary falls under a different category because, in contrast to the **Czech Republic**, **France** and the **United Kingdom**, it does make use of, at least, the first set of "objective reasons" that qualify as beyond one's control and independent of one's volition, laid out in 2013 UNHCR Note (see item). Likewise, **Italy's** legislation also requires actual receipt of UNRWA's assistance so that Article 1D can apply; nonetheless, Italy's approach falls under Section 2.9 because, according to information available in 2011, it granted asylum to Palestinian refugees *ipso facto*, without resorting to Article 1A(2) criteria. Furthermore, it should be noted that in cases in **Austria**, **Belgium**, **Germany**, **Norway** (post-2009) and **Sweden**, it remains unclear whether actual receipt of UNRWA assistance is a requirement for refugee status under Article 1D. **Netherlands** and the **United Kingdom** do present such a requirement in their legal framework; however its application remains unclear, due to the unavailability of case law.

[1807] See p. 107 above.

Although Palestinian cases are still being decided under *El Kott*, it is not yet clear how courts in the Czech Republic will assess such "reasons independent of [one's] volition."

France

The 2013 cases 04020557 and 04020558 constitute France's most recent case law regarding a Palestinian request for asylum, and it finally settles a contentious case that produced inconsistent rulings in 2008 (case 493412) and 2010 (case 318356).

In 2013, France's National Court of Asylum followed the *El Kott* decision and ruled that "a person who […] ceases to receive [protection or assistance] for any reasons beyond his or her control and independent of his or her volition" qualifies for refugee status under the second paragraph (i.e., the inclusion clause) of Article 1D.[1808]

This decision also found that Article 1D is only applicable to those Palestinians who actually availed themselves of UNRWA's assistance. Nonetheless, and similar to the **Czech** case, the French interpretation of Article 1D seems to be consistent with the 2013 UNHCR Note.

Until more cases are decided, it is unclear how French refugee status determination proceedings will assess such "reasons independent of [one's] volition."

United Kingdom

In the case of *Said* (October 2012), the UK Upper Tribunal established that for an individual who has left UNRWA's area of operations and travelled to Europe, UNRWA assistance may have ceased and the individual may be *ipso facto* entitled to the benefits of the Refugee Convention.

More recently, relying on the *El Kott* decision, the UK's Operational Guidance Note from March 2013 established that "cessation of UNRWA protection or assistance 'for any reason' should not only refer to the cessation of UNRWA itself but should include the situation in which a person ceased to receive assistance for a reason beyond his control and independent of his volition."[1809] UK's Operational Guidance Note from March 2013 stated that "individuals *previously assisted by UNRWA* must show that the assistance or protection is no longer being received [emphasis added],"[1810] suggesting that having actually received UNRWA's assistance is a requirement for refugee status under Article 1D. However, the application of such requirement remains unclear.[1811]

No other Palestinian cases have been decided in the UK subsequent to the Operational Guidance Note other than the *H E-H* decision (which appears to

[1808] See p. 129 above.
[1809] See p. 217 above.
[1810] See p. 217 above.
[1811] See p. 325, fn. 1806 above.

have been argued and decided solely on Article A1(2) criteria);[1812] without more jurisprudential developments, it is unclear how the United Kingdom will apply its interpretation to Palestinian asylum seekers.

2.11.2. Considerations under the first set of "objective reasons" in the 2013 UNHCR Note[1813]

This approach consists of not only acknowledging the applicability of Article 1D in cases in which UNRWA's services have ceased for reasons beyond the control of the person concerned, but also of adopting practices that reflect the use of the first set of "objective reasons" laid out in the 2013 UNHCR Note.

Hungary

The Hungarian approach is similar to the **French** and **Czech** approaches in that the country only applies Article 1D to Palestinian refugees who actually received UNRWA assistance, and it follows *El Kott*'s and UNHCR's common reasoning that Article 1D applies to Palestinians who do not benefit from UNRWA services for reasons beyond their control and independent of their volition.

However, Hungary is more specific with respect to the assessment of such reasons. Hungarian case law demonstrates that, in examining the reasons beyond the control of the applicant, the judicial decision makers consider threats against his or her personal safety. This approach parallels the first set of objective reasons laid out in the 2013 UNHCR Note.

Nevertheless, the available case law does not provide any evidence that Hungarian authorities also take into account the impossibility of return to the country of habitual residence as a legitimate reason for granting refugee status under Article 1D.Thus, it remains unclear whether Hungary also applies the second set of objective reasons in the 2013 UNHCR Note.

Sweden

In case UM 1590-13 (Nov. 26, 2013), the Swedish Migration Court of Appeal, following the *El Kott* decision, granted asylum to a Palestinian who was prevented from returning to UNRWA's areas of operations due to *personal* security concerns.[1814] The reference to "personal" security concerns, rather than general ones, applies the first set of objective reasons in the 2013 UNHCR Note (i.e., protection-related issues, such as threats to life, physical security or freedom).

At the same time, the available case law does not provide evidence that Swedish authorities also take into account the practical, legal and safety (*general*) barriers to

[1812] See p. 218-219 above.

[1813] The two sets of "objective reasons" laid out in 2013 UNHCR Note, as seen in Chapter Two, Section 2.1.3, are: "[t]hreats to life, physical security or freedom, or other serious protection-related reasons" and "[p]ractical, legal and safety barriers to return." UNHCR, "2013 Note," 5.

[1814] See p. 199-200 above.

return to the country of habitual residence as a legitimate reason for granting refugee status under Article 1D. For now, it remains unclear whether Sweden will apply the second set of objective reasons.

In the case above, the Swedish Migration Court of Appeal also recognized that the Palestinian applicant was registered with UNRWA and had availed herself of its assistance; however, similarly to other cases,[1815] it is unclear whether the Migration Court of Appeal is imposing registration with UNRWA as a requirement for Palestinians seeking refugee status under Article 1D, or simply noting the applicant's own situation.

2.11.3. First set of "objective reasons" is examined under Article 1A(2)[1816]

Norway

Norway recognizes that UNRWA's coverage has ceased when an individual flees from UNRWA's area of operations due to circumstances beyond his or her control, such as personal safety concerns. This resembles the first set of objective reasons in the 2013 UNHCR Note.

However, Norway seems to assess such circumstances on the basis of a well-founded fear of persecution, which indicates an examination under Article 1A(2) criteria. In addition, the Norwegian Immigration Act also includes the risk of being subjected to "inhuman or degrading treatment or punishment upon return" (Article 28(b)) as grounds for granting refugee status.

However, there is no evidence that Norway's application of Article 1D also involves assessing the issue of impossibility of return, which mirrors the second set of "objective reasons" in UNHCR's Note of 2013. Prior to 2009, Norway applied Article 1D only to Palestinians who were previously registered with UNRWA, similar to the **Czech Republic**, **France**, and **Hungary** (see above). However, without additional case law, we could not examine to what extent being registered, or actually receiving UNRWA's services, under the new Norwegian approach, is a requirement for an applicant to meet the criteria of "circumstances beyond his or her control."

Even though **Norway** seemingly grants refugee status to Palestinians who do not enjoy UNRWA's services due to safety concerns – which is partially in line with the 2013 UNHCR Note – the country's practices are very inconsistent with UNHCR's interpretation because: (i) the assessment of safety concerns and circumstances beyond the applicant's control is carried out under Article 1A(2) criteria; and (ii) the decisions do not appear to consider practical barriers to return to the applicant's country of habitual residence, or the second set of objective reasons in the 2013 UNHCR Note.

[1815] See p. 325, fn. 1806 above.
[1816] See p. 327, fn. 1813 above.

2.11.4. Considerations of both sets of "objective reasons," but resorting to Article 1A(2) criteria

This approach consists of determining the applicability of Article 1D not only in cases in which the applicant's safety is at risk, as established by the first set of "objective reasons" in UNHCR's Note of 2013, but also when there are barriers for the applicant's return to his or her country of habitual residence, or the second set of "objective reasons." **Germany** and the **Netherlands** follow this approach, but their cases demonstrate that the assessment of the first set of "objective reasons" strongly resembles Article 1A(2) criteria.

Germany

German jurisprudence establishes two possibilities for cases concerning Palestinian asylum seekers: (i) the cessation of UNRWA services is due to the alien's voluntary choice, in which case the courts evaluate the application under Article 1A; and (ii) the cessation of UNRWA services is due to a factor outside the alien's control, in which case the courts automatically grant refugee status to the applicant without reference to Article 1A.

In practice, in order to qualify for refugee status under the inclusion clause of Article 1D, a Palestinian asylum seeker must prove that UNRWA was unable to protect him. The two following cases are illustrative.

In the 2013 case 5 A 1656/10 As, the Court acknowledged that the applicant, a Palestinian refugee born in Jerusalem, was being persecuted by Israeli authorities on political grounds, and that such persecution demonstrated the cessation of UNRWA's protection. Accordingly, the Court granted him refugee status under Section 3 of the Asylum Procedure Act, which mirrors Article 1D.[1817]

In the 2014 case 34 K 172.11 A, the Court reiterated that, in order for the second paragraph of Article 1D to apply, the person must have been forced to leave the UNRWA area of operations, which occurs whenever the person concerned is in a situation of insecurity or in which UNRWA is not able to ensure living conditions commensurate with its mandate.[1818]

The reference to a "situation of insecurity" is similar to the first set of "objective reasons" laid out in the 2013 UNHCR Note.[1819] In addition, previous German case law[1820] had already established the impossibility of return to the country of habitual residence as a legitimate reason to consider that an asylum seeker has *not* "voluntarily relinquished" UNRWA's assistance, and, thus, qualified for refugee status under Article 1D, which is similar to the second set of objective reasons. Considering these two general reasons, German practice of assessing Palestinian

[1817] See p. 139 above.

[1818] See p. 139-140 above.

[1819] See p. 327, fn. 1813 above.

[1820] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 175–180.

asylum applications seems to be in accordance with the guidelines laid out in the 2013 UNHCR Note.

However, as case 5 A 1656/10 As clearly demonstrates, in order to prove that UNRWA was not able to protect him, the applicant had to prove that he was being persecuted, which, in practice, reflects the logic of Article 1A(2) – even though he was granted refugee status under Article 1D.

Finally, it should be noted that, in its decision, the Court "observed that the plaintiff was registered with UNRWA, and that he received assistance and protection from UNRWA." However, since the Court only mentioned the applicant's registration without discussing its relevance, it is not clear if being registered, or actually receiving UNRWA's services, is a requirement for eligibility under Article 1D in Germany.[1821]

The Netherlands

Since an amendment in September 2013 to its Aliens Act, the Netherland's official interpretation of Article 1D is that UNRWA's protection or assistance has ceased if the Palestinian concerned "no longer rely on the agency's protection or assistance for reasons beyond his or her control and independent of his or her volition, and based on circumstances which have forced him [or her] to leave the area in which UNRWA operates."[1822]

The assessment of what circumstances constitute a reason beyond the applicant's control takes into account whether he or she found himself or herself in a situation of serious insecurity, or whether it became impossible for UNRWA to ensure living conditions commensurate with its mandate. Those standards, especially concerning insecurity, seem to fall under the first set of "objective reasons" in the 2013 UNHCR Note. Moreover, the Netherlands also considers the issue of impossibility of return in its assessment of Palestinian asylum requests,[1823] consistent with the second set of "objective reasons." The Netherlands' most recent, along with its earlier, interpretation does appear to correspond to the guidelines in the 2013 UNHCR Note.

Nonetheless, the 2013 amendment to the Dutch Aliens Act clearly states that the determination of a "situation of serious insecurity" should consider whether the Palestinian concerned has a well-founded fear of not persecution, but of execution, torture or inhuman or degrading treatment or punishment, or serious and individual threats to life – which reflects Article 15 of the European Qualification Directive, determining grounds for granting subsidiary protection. Here, it seems that Dutch legislation incorporated European guidelines for subsidiary protection as their criteria to grant refugee status under Article 1D. Without more jurisprudence

[1821] See p. 325, fn. 1806 above

[1822] See p. 169 above.

[1823] See Netherland's profile in Chapter Three, Section 4. See also BADIL Resource Center, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention. Jurisprudence Regarding Article 1D 2005-2010*.

available, it remains unclear how Dutch authorities conduct such evaluations. Still, the requirement of assessing the applicant's "well-founded fear" follows the logic of Article 1A(2), even if not making use of the standard of persecution for a Convention reason, but employing the subsidiary protection standard of "risk of serious harm."[1824]

Finally, by applying Article 1D to Palestinians who "no longer" enjoy UNRWA's assistance, the 2013 amendment implies that actual receipt of assistance is a requirement for eligibility for refugee status under Article 1D. Further jurisprudence will have to be examined for application of these criteria.

2.11.5. Article 1A(2) criteria do not resemble "reasons beyond the applicant's control"

Belgium and **Austria** are the only countries whose jurisprudence acknowledges a difference between "reasons beyond the applicant's control" and the criteria set by Article 1A(2).

Belgium

In a 2012 decision, the Aliens Litigation Council, in accordance with the 2009 UNHCR Note, agreed that "when a person is outside the mandate of the UNRWA area, he or she no longer enjoys the protection or assistance from agencies other than UNHCR and […] is automatically entitled to the provisions of the Refugee Convention of 1951."[1825] Further, a 2011 Council of State decision interpreted the cessation of protection or assistance as including circumstances beyond the applicant's control and independent of his or her volition.[1826] Accordingly, the Belgian authorities began to require that Palestinians present proof of "either fear of persecution or inability to return to the country" to be granted refugee status (as indicated in a 2012 Aliens Litigation Council decision).[1827]

These criteria parallel the objective reasons laid out in the UNHCR 2013 Note.[1828] However, only the impossibility of return to the country of habitual residence leads to an automatic granting of refugee status. If there are no practical obstacles to return, Palestinian asylum seekers must, in order to qualify under the second paragraph of Article 1D, establish a well-founded fear of persecution in the sense of Article 1A or under the criteria for risk of "serious harm" established by Article 15 of the Qualification Directive.[1829] In this sense, Belgium interpretation of Article 1D could be categorized along with Germany's and the Netherlands'.

[1824] See p. 169-170 above.

[1825] See p. 96 above.

[1826] See p. 95 above.

[1827] See p. 96 above.

[1828] See p. 327, fn. 1813 above.

[1829] "Serious harm" includes, according to the Qualification Directive, execution, torture or inhuman or degrading treatment or punishment, and/or serious and individual threats to life. Similarly to the case of the **Netherlands**, Belgium incorporated these criteria, originally destined to determine grounds for subsidiary protection, into their assessment for granting *refugee* status under Article 1D.

Nonetheless, in a 2013 decision, the Aliens Litigation Council affirmed that "*an additional examination in the sense of Article 1A of the Refugee Convention is in principle not necessary* for asylum seekers originating from this area of operations [emphasis added]," and that the "reasons beyond one's control" preventing one's access to UNRWA's assistance include cases in which "the asylum seeker finds himself [or herself] in a situation where his [or her] personal safety is at serious risk and […] it is impossible for that agency to guarantee that his living conditions in that area will be commensurate with the mission entrusted to that agency."[1830]

Belgium's discussion of the difference between the first set of "objective reasons" laid out in the 2013 UNHCR Note and Article 1A(2) is extremely helpful, given that many countries that do follow the 2013 UNHCR Note still apply Article 1A(2) in evaluating Palestinian requests for asylum. However, it remains to be seen how this distinction will be applied in practice in subsequent cases. This important subject will be returned to in Chapter Five, Section 2.

In the Belgian case law analyzed in this *Handbook*, there is no reference to actual receipt of UNRWA's assistance or registration with the agency as a criteria for eligibility for refugee status under Article 1D.

Austria

Prior to 2013, Austria seems to have followed UNHCR's 2013 interpretation by considering that Palestinian applicants are *ipso facto* entitled to the benefits of the 1951 Refugee Convention when they leave the area covered by UNRWA's mandate, even if this is done voluntarily, so long as they are unable to return for reasons that are "beyond their control." However, Austrian case law equates such reasons [beyond the applicant's control] to a well-founded fear of persecution and, accordingly, examines cases in accordance with Article 1A(2) of the 1951 Convention.

Still, Austria's Asylum Court seems to be considering *both* the first and second set of criteria laid out in the 2013 UNCHR Note, since Austrian cases have considered whether the applicant was actually unable to return to his or her previous country due to lack of permission of that State.[1831] In this aspect, Belgium, Austria, Germany and the Netherlands have similar approaches.

In contrast to the Asylum Court, however, in 2013, Austria's Constitutional Court annulled four decisions which had assessed cases of Palestinian asylum seekers based on Article 1A(2) criteria. The Court determined that the proper assessment of such cases must rely on whether the applicant left his or her country of origin, or of habitual residence, for reasons beyond the applicant's control and independent of his or her volition. The Court emphasized that such reasons include, but are not limited to, the well-founded fear of persecution criteria of Article 1A(2).[1832]

[1830] And, if this is not the case, the Council then proceeds to examine the possibility of return to the UNRWA area of operations. See p. 98-99 above.

[1831] See p. 84 and fn. 404 above.

[1832] See p. 83 above.

Again, like Belgium, Austria has established a distinction between the criteria of "reasons beyond the applicant's control" and Article 1A(2) criteria, though admitting that the latter could be *part* of the former. However, since the Constitutional Court has not established what criteria, besides Article 1A(2), the "reasons beyond the applicant's control" encompass, without further decisions, it is yet unclear how Austrian authorities will assess Palestinian requests for asylum after *El Kott*.

In the Austrian case law analyzed in this *Handbook*, there is no reference to actual receipt of UNRWA's assistance or registration with the agency as a requirement for refugee status.

3. Other forms of protection

3.1. Protection under the Statelessness Conventions

With regards to protection under the Statelessness Conventions, the survey presented here shows that most countries still lack procedures by which statelessness can be determined, as the 2005 edition and the 2011 update of this *Handbook* also found.

Of the thirty-one countries surveyed, five have not signed either the 1954 *Convention Relating to the Status of Stateless Persons* (1954 Stateless Persons Convention) or the *1961 Convention on the Reduction of Statelessness* (1961 Statelessness Convention) – namely, **Chile**, **Kenya**, **Poland**, **South Africa** and the **United States**. Sixteen countries are Parties both to the 1954 and to the 1961 Statelessness Conventions;[1833] seven countries are Parties only to the 1954 Convention;[1834] and **Canada** and **New Zealand** are Parties only to the 1961 Convention. Nevertheless, **Canada** has not codified the Convention in its domestic law and stateless persons cannot claim protection under the Statelessness Convention.

Eight of the countries surveyed do have procedures under which statelessness can be determined.[1835] These countries are: **France**, **Germany**, **Hungary**, **Italy**, the **Netherlands**, **Spain**,[1836] **Sweden**[1837] and the **United Kingdom**. Seven countries have jurisprudence involving stateless Palestinians seeking protection under the

[1833] Those countries are **Australia**, **Austria**, **Brazil**, **Côte d'Ivoire**, the **Czech Republic**, **Denmark**, **Ecuador**, **Finland**, **Germany**, **Hungary**, **Ireland**, the **Netherlands**, **Nigeria**, **Norway**, **Sweden** and the **United Kingdom**.

[1834] Those countries are **Belgium**, **France**, **Italy**, **Mexico**, **Peru**, **Spain** and **Switzerland**. It should be noted that **France** did sign the 1961 Convention, but it did not ratify it.

[1835] In contrast with only two, as explained in the 2011 version of this *Handbook*.

[1836] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 216.

[1837] However, in Sweden, Palestinians who are registered, or eligible to be registered, with UNRWA, or who hold travel documents from Lebanon or Syria, are entitled to apply for travel documents only under the 1951 Refugee Convention. BADIL Resource Center, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention. Jurisprudence Regarding Article 1D 2005-2010*, 64; BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 224.

Statelessness Convention(s): **Belgium**, **France**, **Germany**, **Hungary**, **Spain**, **Sweden** and the **United States**.

In **France**'s case law, the exclusion clause of the 1954 Convention – which mirrors the exclusion clause of Article 1D – does not apply to Palestinians residing outside UNRWA's area of operation, for they no longer enjoy protection or assistance from an agency other than UNHCR. This interpretation mirrors the geographical approach used by UNHCR in its Note of 2009 regarding the application of Article 1D, as seen in Chapter Two.

The **United Kingdom**, despite not having case law regarding Palestinian stateless persons (so far as BADIL is aware), applies the 1954 Convention in a specific way to Palestinians. By stating that such persons "may come within the scope of the Stateless Convention if they have not received that assistance, or have ceased to receive assistance for reasons beyond their control and independent of their volition,"[1838] the United Kingdom relates the stateless definition to the receipt of UNRWA's assistance or protection, and repeats the phrasing of *El Kott* – "for reasons beyond their control and independent of their volition."

In assessing why an applicant for stateless status cannot return to his or her country of habitual residence, **Germany**,[1839] **New Zealand**,[1840] and the **United States**[1841] have evaluated whether the applicant presented a well-founded fear of persecution in their country of habitual residence, seemingly turning to Article 1A(2) of the 1951 Refugee Convention. More specifically, in the United States, in a case involving a stateless Palestinian from Saudi Arabia, the Court established that he must prove a "clear probability" of persecution, which "requires a higher objective likelihood of persecution than the 'well-founded fear' standard" of Article 1A(2) of the 1951 Refugee Convention.[1842]

Ultimately, those cases illustrate that the interpretation of the Statelessness Conventions – notably of Article 1(2)(i) of the 1954 Stateless Persons Convention, which mirrors Article 1D of the 1951 Refugee Convention – face difficulties similar to the interpretation of Article 1D. In contrast to Article 1D of the 1951 Refugee Convention, the 1954 Stateless Persons Convention and the 1961 Statelessness Convention have not generated as much national jurisprudence or UNHCR official interpretations to clarify its application. Consequently, the Statelessness Conventions, as an instrument that could offer additional mechanisms for the protection of stateless Palestinians, falls short of its potential due to questionable state practices and lack of guidance for its interpretation and application.

[1838] The United Kingdom, "Applications for Leave to Remain as a Stateless Person," May 1, 2013, para.4.1, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/258252/stateless-guide.pdf.

[1839] See p. 142 above.

[1840] See p. 293-294 above.

[1841] See p. 273 above.

[1842] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 275–277.

3.2. Subsidiary Protection

With respect to European countries, the survey presented in Chapter Three provides evidence that Palestinians, along with other asylum seekers, enjoy another mechanism for protection: subsidiary protection. Article 15 of the European Qualification Directive provides the grounds for granting subsidiary protection, namely, risk of: (i) "death penalty or execution;" (ii) "torture or inhuman or degrading treatment or punishment;" or (iii) "serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict."[1843]

The recast Qualification Directive adopted in 2011 replaced the Qualification Directive of 2004, and applies "to all [European Union] Member States with the exception of Denmark, Ireland and the United Kingdom;" however, Ireland and the United Kingdom "continue to be bound by Directive 2004/83/EC."[1844] Even though Norway and Switzerland, which are not members of the European Union, and Denmark, are not bound by the Qualification Directive, they do offer the possibility of protection for asylum seekers under the "risk of serious harm" criteria of Article 15 of the Qualification Directive, mentioned above. It should be noted, however, that in **Switzerland** those criteria are part of the very definition of refugee and constitute the grounds for granting refugee status itself – with no mention to "subsidiary protection" in Switzerland's Asylum Act.[1845] In **Norway**, even though its Immigration Act identifies the "risk of serious harm" criteria as grounds for "subsidiary protection," in practice, subsidiary protection and asylum are merged together, since individuals falling under either are granted refugee status.[1846]

With currently-available information it is so far unclear how the benefits of such protection in **Austria**, **Finland**, **Hungary**, **Spain**, **Switzerland** and **United Kingdom**, differ from the ones that accompany refugee status. In **Denmark**, the **Netherlands** and **Sweden**, refugees and persons granted subsidiary protection enjoy the same benefits – residence permits with the same duration (even though that duration varies in each country). Persons granted subsidiary protection benefit from shorter residence permits in **Belgium**, the **Czech Republic**, **France**, **Germany**, **Ireland**, **Italy** and **Poland**. Furthermore, in **France** and **Ireland**, refugees are entitled to other specific benefits, such as education, medical and social welfare services, to which persons granted subsidiary protection are not entitled. Moreover, although in **Poland** persons granted subsidiary protection benefit from a shorter residence permit than refugees, otherwise, they enjoy the same benefits; they have the same rights as Polish nationals and to an integration assistance program.

[1843] Council of the European Union, "Directive 2011/95/EU," Article 15.

[1844] European Council on Refugees and Exiles (ECRE), "Qualification Directive," February 14, 2014, http://www.ecre.org/topics/areas-of-work/protection-in-europe/92-qualification-directive.html.

[1845] See p. 207 above.

[1846] See p. 174-175 above.

Similarly to practices in **Norway** and **Switzerland**, where subsidiary protection and asylum are merged together, but with regards to Palestinian applicants, in **Belgium**, the "risk of serious harm" criteria of Article 15 of the Qualification Directive were used, in addition to the "well-founded fear" criteria of Article 1A(2), as requirements for applying the second paragraph of Article 1D.[1847] This interpretation of Article 1D was overruled in 2013, when the Aliens Litigation Council stated that "an additional examination in the sense of Article 1A of the Refugee Convention is in principle not necessary for asylum seekers originating [from UNRWA's area of operations]."

3.3. Temporary Protection

As noted in the introductory part of Chapter Three, the United States was the only country surveyed currently offering temporary protection to Palestinians. Notwithstanding, such protection is not related to the Palestinian origin of such persons; rather, it is (at least in theory) offered for all those fleeing the Syrian conflict, including stateless Palestinians.

The option of obtaining protection through a "temporary protection" mechanism is theoretically legally viable to all Palestinian refugees to the extent they constitute a group of refugees who have experienced an unresolved situation of mass influx which began 66 years ago – the Nakba.[1848] In this protracted situation, in which Palestinian refugees find themselves deprived of exercising their right of return, temporary protection would grant them a recognized legal status, accompanied by immediate access to safety and protection of basic human rights.

However, as this study demonstrates, and similar to the benefits of the Statelessness Conventions, the potential of temporary protection mechanisms largely remains unexplored and unused for Palestinians.

[1847] In **Netherlands**, such criteria *replaced* Article 1A(2) in validating the applicability of Article 1D, while in **Norway** they are used in addition to Article1A(2) in general refugee status determination processes.

[1848] According to a study commissioned by the UNHCR, situations of mass influxes tend to feature "some or all of the following four recurring features: considerable numbers of people arriving over an international border; a rapid rate of arrival; inadequate absorption or response capacity in host States, particularly during the emergency phase; individual asylum procedures, where they exist, which are unable to deal with assessment of such large numbers." See UNHCR, *Ensuring International Protection and Enhancing International Cooperation in Mass Influx Situations: Advance Summary Findings of the Study Commissioned by UNHCR*, June 7, 2004, 1, EC/54/SC/CRP.11, http://www.unhcr.org/40c70c5310.html; see also the definition of "mass influx" in Council of the European Union, "Council Directive 2001/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts Between Member States in Receiving Such Persons and Bearing the Consequences Thereof," Article 2(d).

Chapter Five

The Interpretation and Application of Article 1D: a Critical Approach

The Interpretation and Application of Article 1D: a Critical Approach

1. A comparative overview of UNHCR's interpretations and national practices

As seen in previous chapters, the history of the drafting process of the UNHCR statute, the 1951 Convention, and the 1954 Stateless Persons Convention, demonstrates that UN Delegates, intended to create a special regime of protection for Palestinian refugees. That regime was based on the protection mandate of the United Nations Conciliation Commission for Palestine (UNCCP) and the assistance mandate of the United Nations Relief and Works Agency for Palestine Refugees in the Near East's (UNRWA).

Under this regime, Article 1D was initially designed to ensure the continuity of protection and assistance of Palestinian refugees, should such protection or assistance "cease for any reason." In the years that followed, as the law and jurisprudence of the countries studied in this volume indicate, the provisions in Article 1D have been widely misinterpreted. The guidelines provided by UNHCR in its interpretations and Notes,[1849] although not legally binding,[1850] seek to clarify "some pertinent aspects of the position of Palestinian refugees under international refugee law" and to provide "useful guidance for decision-makers in asylum proceedings."[1851]

1.1. The "*ipso facto*" provision

The first of those documents is UNHCR's "Note on the Applicability of Article 1D of the 1951 Convention Relating to the Status of Refugees to Palestinian Refugees" (2002 UNHCR Note).

In this document, UNHCR emphasizes that Article 1D consists not only of the exclusion clause (first paragraph), which excludes certain Palestinian refugees from the benefits of the 1951 Convention. Article 1D also contains an *inclusion* clause (second paragraph) that entitles certain Palestinians to the benefits of the 1951 Convention whenever "protection or assistance from UNRWA has ceased for any reason."[1852]

This interpretation of Article 1D is more comprehensive than the interpretation set out in UNHCR's "Handbook on Procedures and Criteria for Determining Refugee

[1849] Namely, UNHCR, "2002 Note;" UNHCR, "2009 Revised Note;" UNHCR, "UNHCR's Oral Intervention at the Court of Justice of the European Union, Hearing of the Case of El Kott and Others v. Hungary (C-364/11);" and UNHCR, "2013 Note."

[1850] Kirimova Nigar, "The Status of Palestinian Refugees in International Law: The Issue of Interpretation and Implementation of Article 1D of the 1951 Convention Relating to the Status of Refugees in Europe." (Central European University, 2010), 75.

[1851] UNHCR, "2002 Note," para. 14.

[1852] Ibid., para. 2.

Status"[1853] (1992 UNHCR Handbook). In addition, Lex Takkenberg particularly criticized the guidelines' placement of the section regarding the application of Article 1D to Palestinian refugees in the chapter of the Handbook entitled "Exclusion Clauses."[1854]

UNHCR's emphasis that Article 1D has an inclusion clause as well as an exclusion clause has been critical, for example, in considering the cases of the **Netherlands** (prior to 2013) and **Canada**, discussed in this *Handbook*.[1855] **Canada** does, and the **Netherlands** did, interpret Article 1D solely as an exclusion mechanism applying to Palestinians in UNRWA's area of operations. Consequently, whenever Palestinians were outside that area, neither the *inclusion* clause nor the *exclusion* clause applied, leaving Palestinians with only one option: applying for refugee status under Article 1A(2). The interpretation of other countries such as **Denmark**, **New Zealand** and **Poland**,[1856] that the inclusion clause of Article 1D is only applicable if UNRWA ceases to exist, have similar consequences – i.e., because UNRWA still exists, Article 1D is currently seen purely as an exclusion mechanism.

Such a reading of Article 1D renders ineffective the automatic fallback by which drafters intended Palestinian refugees to be transferred from the special regime of protection (i.e UNRWA's and UNCCP's regime)[1857] to the general regime of protection (i.e UNHCR's regime) if either prong of the 'assistance or protection' formula ceased. In other words, this reading makes the "*ipso facto*" clause utterly superfluous in the article's second paragraph.

In some other countries, the "*ipso facto*" clause is rendered ineffective because Article 1D, as a whole, is not considered. This is the case in **South Africa**, **Switzerland** and the **United States**.[1858] In general, those countries fail to implement Article 1D at all, and requests for asylum by Palestinian refugees are decided on a case-by-case basis, according to the criteria set out in the Article 1A(2).

In the **United States**, the non-application of Article 1D results from a rejection of UNHCR's position that being eligible for UNRWA's assistance "somehow equates to a showing that the person is a refugee under the Convention." It is UNHCR's position that outside UNRWA's area of operations, the benefits of the 1951 Convention are the equivalent to UNRWA's services, and therefore those persons considered eligible for UNRWA assistance are entitled to refugee status under the Convention if they cannot

[1853] UNHCR, "Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees," 142–143.

[1854] Takkenberg, *The Status of Palestinian Refugees in International Law*, 92–93.

[1855] See Chapter Four, Section 2.6.

[1856] See Chapter Four, Section 2.5.

[1857] The fact that UNCCP is omitted from UNHCR Notes and in most – with the exception of Australia – national judicial decisions regarding Palestinian applications for asylum will be addressed in Section of this chapter.

[1858] See Chapter Four, Section 2.3. Also Austria, Belgium, Hungary, Italy, Spain, Sweden, Canada, Australia, Mexico and Nigeria adopted the same approach in the past. See BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 145, 149, 188, 197, 214, 218, 241, 283, 302, 304–305, respectively.

access UNRWA assistance. However, the US does not accept this interpretation, and does not recognize refugee status *ipso facto* for Palestinians eligible for UNRWA assistance.

Other interpretations of the term "*ipso facto*" are demonstrated in the case of **Australia**. As explained above,[1859] Australia does recognize that Palestinians no longer enjoy UNCCP's protection – similarly to the views of Susan Akram and Terry Rempel[1860] – being the one single country surveyed whose policies refer to that agency. However, the cessation of UNCCP, according to the Australian interpretation, only allows Palestinians to apply for refugee status under Article 1A(2) criteria – similarly to the Netherlands (prior to 2013), Canada, Denmark, New Zealand and Poland. The final outcome of this interpretation in all these countries is that the *exclusion* clause ceases to apply.

In the Australian case, this is largely due to the narrow interpretation of the term "*ipso facto*." More specifically, in Australia's Federal Court's decision of 11 January 2002, *Al Khateeb v. MIMI*, Judge Carr stated:

> 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 […], 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.[1861]

With this reading of Article 1D, Judge Carr is nullifying the main purpose of Article 1D, i.e., "to ensure the continuity of protection and assistance for Palestinian refugees whose refugee character has already been established and recognized by various United Nations General Assembly resolutions."[1862]

Furthermore, by declaring that "[t]he reference to 'refugee', in my view, picks up and requires the application of the definition of that term in Article 1A(2),"[1863] Judge Carr overlooks the very purpose of Article 1D for Palestinian refugees, which is to treat them as a very "unique" case, of "such a particular concern"[1864] that they deserve a "special, heightened, protection regime."[1865]

It is useful to examine UNHCR's Intervention before the Court of Justice of the European Union in *El Kott and Others v. Hungary* (C-364/11) (2012 UNHCR Intervention), which clarifies the agency's interpretation of the term "*ipso facto*":

> Article 1D refers to an "*ipso facto*" entitlement, meaning that persons falling within the scope of Article 1D are automatically entitled to the benefits of

[1859] See Chapter Four, Section 2.8.
[1860] See Chapter Two, Section 2.5, sub-section "Alternative Interpretation of Article 1D."
[1861] See p. 283 above.
[1862] UNHCR, "2013 Note," 2.
[1863] See p. 283 above.
[1864] Akram, "Palestinian Refugees and Their Legal Status," 40.
[1865] Akram, "Temporary Protection Status and Its Applicability to the Palestinian Case," 4.

the Convention. The term "*ipso facto*" would be entirely redundant, in our submission, 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 [emphasis in the original].[1866]

1.2. The "benefits of this Convention"

Another term of the 1951 Convention that has engendered controversy is "the benefits of this Convention" to which persons falling under the second paragraph of Article 1D would be entitled.

Australian jurisprudence is a good example of the controversy over this clause:

> [According to the second paragraph of Article 1D,] the person becomes entitled to "the benefits" of the Convention. It is not that the person is deemed to be a refugee. […] those benefits are available only to those persons who are refugees.[1867]

Under this interpretation, the second paragraph of Article 1D is not taken as an automatic inclusion clause. On the contrary, the "benefits" to which an applicant is entitled are dependent on the determination of his or her being a refugee under Article 1A(2).

New Zealand's jurisprudence has a similar approach:

> The interpretation we prefer is […] [that] the automatic assimilation in paragraph 2 of Article 1D only applies to persons who first fulfill the conditions prescribed for a person to be recognized as a Convention "refugee."[1868]

UNHCR has emphasized that such an interpretation contradicts the purposes of Article 1D of conferring on Palestinian refugees an *ipso facto* entitlement so that they are not required to "apply for international protection in accordance with the general rules and in the same way as all asylum-seekers." [1869]

Given that the second paragraph of Article 1D has been interpreted in such a narrow way in some countries, the following guidelines in UNHCR's "Revised Note on the Applicability of Article 1D of the 1951 Convention Relating to the Status of Refugees to Palestinian Refugees" (2009 UNHCR Revised Note) are important:

a) The term "benefits of the 1951 Convention" refers to the standard of treatment that States Parties to the 1951 Convention are required to accord to refugees under Articles 2 to 34 of that Convention;
b) In the case of persons falling within paragraph 2 of Article 1D, *no separate*

[1866] UNHCR, "UNHCR's Oral Intervention at the Court of Justice of the European Union, Hearing of the Case of El Kott and Others v. Hungary (C-364/11)," para. 13.

[1867] See p. 282-282 above.

[1868] See p. 289 above.

[1869] UNHCR, "UNHCR's Oral Intervention at the Court of Justice of the European Union, Hearing of the Case of El Kott and Others v. Hungary (C-364/11)," para. 13.

determination of well-founded fear under Article 1A(2) of the 1951 Convention is required to establish that such persons are entitled to the benefits of that Convention [emphasis added].[1870]

1.3. "When such protection or assistance has ceased for any reason"

Another phrase in the second sentence of paragraph two of Article 1D has added to the confusing interpretations of the article: interpretation of the clause that determines when "such protection or assistance" has ceased for Palestinian refugees.

The interpretations of this clause by **Poland** and **the United Kingdom**,[1871] illustrate some of the ambiguities; both states have limited the application of Article 1D to those Palestinians who benefitted from UNRWA's services on the date the 1951 Convention was signed (28 July 1951), as well as their descendants, *excluding the group of Palestinians displaced as a consequence of the 1967 War*.

In that sense, the 2002 UNHCR Notes provided a useful definition of the scope of Article 1D,[1872] reinforced in later documents by the Agency – most recently, in its 2013 Note on Article 1D and Article 12(1)(a) of the EU Qualification Directive (2013 UNHCR Note). According to the 2013 UNHCR Note, the scope of Article 1D extends to both 1948 refugees and their descendants (referred to as "Palestine refugees") and 1967 refugees and their descendants (referred to as [Palestinian] "displaced persons").[1873]

Implementing yet another interpretation, the **Czech Republic**, **France**, **Hungary**, **Italy** and **Norway** (prior to 2009) restrict(ed) the application of Article 1D *only* to those who *actually* received assistance from UN agencies other than UNHCR.[1874] Such an application is in accordance with the *El Kott* decision; nonetheless, as explained in Chapter Two,[1875] despite having largely endorsed that decision, UNHCR's most recent guidelines for interpretation and application of Article 1D differ from *El Kott*; the Agency's 2013 Note explains that Article 1D concerns both "those Palestinians who were *eligible* as well as those who were [actually] *receiving* protection or assistance [from UNRWA] [emphasis added]."[1876]

In contrast, **Denmark**, **New Zealand** and **Poland** adopt the view that the phrase "ceased for any reason" means that such *"cessation" will occur only if UNRWA ceases existing*.[1877]

[1870] UNHCR, "2009 Revised Note," para. 9.

[1871] Under the *EL-Ali* interpretation, which was found invalid in *Said*. See Chapter Four, Section 2.10

[1872] UNHCR, "2002 Note," para. 3.

[1873] UNHCR, "2013 Note," 2–3. See also Chapter Two, Section 2.1.1.

[1874] See Chapter Four, Section 2.9

[1875] See Chapter Two, Section 2.1.4.

[1876] UNHCR, "2013 Note," 4.

[1877] See Chapter Four, Section 2.5. The same interpretation was adopted by France, Germany, Sweden and the United Kingdom in the past. See BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 169, 175, 218 and 231, respectively.

In its 2013 Note, in line with its 2012 Intervention in *El Kott*,[1878] UNHCR clarifies that:

> The phrase "ceased for any reason" in the second paragraph of Article 1D of the 1951 Convention/Article 12(1)(a) of the Qualification Directive should not be construed restrictively. The phrase would include the following: (i) the termination of UNRWA as an agency; (ii) the discontinuation of UNRWA's activities; or (iii) any objective reason outside the control of the person concerned such that the person is unable to (re-)avail[1879] themselves of the protection or assistance of UNRWA.[1880]

The 2013 UNHCR Note also laid out guidelines for assessing the "objective reasons," divided into protection-related issues and barriers to return.[1881] As explained in Chapter Two, Section 2.1.4, even though *El Kott* refers to "reasons beyond [one's] control and independent of [one's] volition," the *El Kott* decision does not provide a framework for assessing such reasons. This constitutes a second key difference between UNHCR's and the *El Kott* decision's interpretations of Article 1D.

The differences between *El Kott*'s and UNHCR's interpretations can be categorized into five approaches[1882] among the countries surveyed in Chapter Three. In half of the countries falling into such categories – the **Czech Republic**, **France**, **Hungary**, **Sweden** and the **United Kingdom** – the available case law is inadequate for an analysis of how the authorities assess the objective reasons (beyond one's control and independent of one's volition).[1883] As for the remaining countries – **Austria** (prior to 2013), **Belgium** (prior to 2013), **Germany**, **Netherlands** and **Norway** – the case law suggests that they assess the "objective reasons" for leaving one's country of habitual residence by applying the familiar criteria for an Article 1A(2) status determination.[1884]

Belgium changed its position in 2013, specifically asserting that the assessment of "objective reasons," as suggested by UNHCR's Note of 2013, does *not* amount to an examination under Article 1A(2). Similarly, a 2013 **Austrian** decision emphasized that the "reasons beyond the applicant's control and independent of his or her volition" include, but are not limited to, the well-founded fear of persecution criteria of Article 1A(2).[1885] However, a clear procedure for determining the applicability of Article 1D without resorting to the logic of Article1A(2) could not be found neither in state practice nor in UNHCR's guidelines. This issue will be addressed in the next section.

[1878] UNHCR, "UNHCR's Oral Intervention at the Court of Justice of the European Union, Hearing of the Case of El Kott and Others v. Hungary (C-364/11)," para. 19.

[1879] As noted in Chapter Two, Section 2.1.2, by choosing the term "(re-)avail," UNHCR includes both persons who were *registered* with UNRWA – and would *re-avail* themselves – as well as persons who are *eligible* for registering – and would *avail* themselves for the first time.

[1880] UNHCR, "2013 Note," 4.

[1881] See Chapter Two, Section 2.1.3.

[1882] See Chapter Four, Section 2.11.

[1883] See Chapter Four, Sections 2.11.1 and 2.11.2.

[1884] See Chapter Four, Sections 2.11.3, 2.11.4 and 2.11.15.

[1885] See Chapter Four, Section 2.11.5.

2. Beyond UNHCR's 2013 interpretation of Article 1D

In the 2005 edition of this *Handbook,* the mapping of state practice revealed that applying Article 1A(2) to interpret Article 1D was the most common way that countries assessed Palestinian asylum claims. That is, Article 1A(2) was used in conjunction with Article 1D as the tool used to assess whether the reasons for cessation of UNRWA's assistance were legitimate.

One example of this approach was **Ireland**.[1886] In the 2004 case Np. 657 JR, the court first applied Article 1D and, then Article 1A(2) of the Refugee Convention, in a two-step approach to the assessment of a Palestinian asylum claim. This approach is also incorporated in the **Netherlands**' 2003 guidelines[1887] regarding the recognition of Palestinian refugees. According to those guidelines, a Palestinian refugee who left UNRWA's area of operation was "expected to return to this mandate area for the purpose of re-invoking the protection of UNRWA" unless "[he or she] can make plausible [claims] that he[or she] cannot return to the UNRWA area because he[or she] has a *well-founded fear of persecution* within the UNRWA mandate area, and cannot invoke UNRWA protection against that [emphasis added]."[1888] The 'well-founded fear of persecution' requirement, of course, is the Article 1A(2) standard.

The **Netherlands** amended its 2003 guidelines in 2013, establishing that the second paragraph of Article 1D applies to Palestinian applicants who are forced to leave URNWA's area of operation due to, *inter alia*, a "situation of serious insecurity."[1889] While such phrasing seems consistent with UNHCR's interpretation, the amendment also specifies that such situation of insecurity should take into account whether the individual had a "well-founded fear" of execution, torture or inhuman or degrading treatment or punishment, or of serious and individual threats to life (i.e., the person must meet the subsidiary protection standard). Thus, even though the subsidiary protection standard is supposed to be distinct from the well-founded fear of persecution standard under Article 1A(2) (i.e., in terms of not requiring a nexus to a Convention reason for the persecution), these standards have converged in the approaches discussed here.[1890]

Other recent examples of applying the Article 1A(2) standard in Article 1D analyses can be found in **Austria** (prior to 2013) and **Norway**, which relate reasons "beyond the applicant's control" to a *well-founded fear of persecution*; in **Belgium** (prior to 2013), where, in order to qualify under Article 1D, a Palestinian applicant had to establish a *well-founded fear of persecution*; and in **Germany**, where an applicant had to prove that he was being *persecuted* in order to show that UNRWA

[1886] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 193.

[1887] Namely, the Sub-chapter 2.2 (Exclusion Grounds of the 1951 Refugee Convention) of Aliens Circular C1/4.2.2 (Admission Grounds).

[1888] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 200.

[1889] See p. 169 above.

[1890] See p. 331 above.

was not able to protect him. This case showed Germany applying Article 1A(2) to the refugee's application even though he was granted refugee status under Article 1D.[1891]

Although UNHCR's interpretive documents provide helpful, insightful guidelines concerning the application of Article 1D to national and regional legislation, they do not offer a clear procedure for determining the "objective reasons" for leaving the previous country of asylum. Most notably, both types of objective reasons laid out in the 2013 UNHCR Note can still be interpreted as perpetuating the criteria set out in Article 1A(2). On the one hand, the first set of "objective reasons," by referring to protection-related issues, seems to rephrase the "well-founded fear of persecution" criteria in Article 1A(2), and only slightly expanding it by adding other protection-related issues that are already taken into account as the "risk of serious harm" criteria in European countries, or in the expanded definition of refugee under the Cartagena Declaration in Latin American countries. As for UNHCR's approach to the second set of criteria, the "[p]ractical, legal and safety barriers to return," the 2013 Note seems to apply the "inability to return" criteria also set in Article 1A(2): "['refugee' shall apply to any person who] is unable […] to return to [the country of his or her former habitual residence]."[1892]

In the countries mentioned above, i.e., Austria (prior to 2013), Belgium (prior to 2013), Germany, the Netherlands and Norway, which interpret and/or apply Article 1D in accordance with the 2013 UNHCR Note, Article 1A(2) still functions, in practice, as the main guideline for determining asylum claims by Palestinian refugees, even when refugee status is being officially determined under Article 1D. In sum, there seems to be no difference between the practice of countries that do apply Article 1D and countries that do not apply it at all. In the former, Article 1A(2) criteria are used to assess the "objective reasons" underlying the cessation of UNRWA's assistance; in the latter, 1A(2) is applied to determine refugee status *ab initio*.

In the following subsections, we argue that the difficulty in applying, in practice, the second paragraph of Article 1D independently of Article 1A(2) finds its origin in the hesitations of the drafters of the 1951 Convention in allowing for secondary refugee movement and devising mechanisms that could guarantee the continuity of refugee status in such situations. As we will argue, in light of the cessation of UNCCP and limited mandate of UNRWA, secondary refugee movement is the very context in which the application of the inclusion clause of Article 1D, for reasons other than UNRWA's demise or the cessation of its activities in a given area, can occur. In short, it is only in situations in which Palestinian refugees leave their former country of asylum that UNHCR's sets of "objective reasons" for come into play.

Secondary movement is the ongoing reality of the Palestinian refugees of concern to this *Handbook*, who leave or are expelled from their countries of asylum and seek asylum in the States surveyed in Chapter Three.

[1891] See Chapter Four, Section 2.11.

[1892] UN General Assembly, "Convention Relating to the Status of Refugees," Article 1A(2).

2.1. The "safe country" mechanism and effective protection

Refugee protection in the regime established after World War II with the Refugee Convention and UNHCR as core mechanisms, is grounded in a few key articles in the Convention and UNHCR Statute. Articles 1, 31 and 32 of the Refugee Convention are the non-derogable provisions whose adherence is the core minimum obligation on states parties. Returning to these articles also helps to understand the Palestinian refugee case in the context of the wider scheme of refugee protection and the scope of such protection. Article 31(1) of the 1951 Convention reads:

> 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 [emphasis added].[1893]

The final phrasing "coming directly from a territory where their life or freedom was threatened in the sense of article 1" was the consequence of a French amendment (A/CONF.2/62). During the *travaux préparatoires*, the French delegate stated that, while he "felt that it was right to exempt from any penalties imposed for illegal crossing of the frontier refugees coming directly from their countries of origin, [France] did not see any justification for granting them similar exemption in respect of their subsequent movements."[1894] France's delegate, Mr. Colemar, explained that:

To admit without any reservation that a refugee who had settled temporarily in a receiving country was free to enter another, would be to grant him a right of immigration which might be exercised for reasons of mere personal convenience.[1895]

In light of this concern, the drafters approved the French amendment, preserving the authority of States other than the first state of refuge to decide whether to recognize the refugee status that had already been granted by another State. It is with this background, *inter alia*, that states have been reluctant to apply the inclusion clause in Article 1D to grant Palestinians refugee status when they are coming from countries other than their place of origin – i.e., countries of (first) asylum. The national practices examined in this *Handbook* that subject Palestinian refugees to a further assessment of the "objective reasons" why they fled their country of asylum reflect a historical concern about granting asylum to refugees who "had settled temporarily in a receiving country."

[1893] Ibid., Article 31.

[1894] UN General Assembly, "Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons: Summary Record of the Thirteenth Meeting," November 22, 1951, http://www.unhcr.org/3ae68cdc8.html.

[1895] UN General Assembly, "Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons: Summary Record of the Fourteenth Meeting," November 22, 1951, http://www.unhcr.org/3ae68cdb0.html.

This approach has left a serious problem in addressing the protection needs of secondary refugee movements. As Goodwin-Gill and McAdam state:

> [a]sylum and resettlement policy tends to concentrate on refugees 'still in need of protection'. Consequently, a refugee formally recognized by one State […] generally has no claim to transfer residence to another State, otherwise than in accordance with normal immigration policies. Much of the same approach has also been applied to refugees and asylum seekers who, though not formally recognized, have found protection in another State.[1896]

This policy, reflecting the reticence to grant asylum to refugees already recognized as such in another state, has also generated a set of policies that focus on returning asylum seekers in secondary movements to their "country of first asylum," or to a "safe third country," if it is considered to "provide appropriate protection."[1897]

The term "safe third country" relates to a state to which an asylum seeker can be returned, normally in a situation in which "the state rejects asylum applications filed by individuals who have traveled through countries that are generally thought to be safe and where, it is felt, the person should have requested protection." In contrast, the phrase "country of first asylum"[1898] applies to a country in which an asylum seeker "*in fact received* some kind of protection [emphasis in the original]" in a country other than the second State where they seek asylum.[1899] Arguably, "country of first asylum," is more relevant to the situation of Palestinian refugees seeking asylum outside UNRWA's area of operations. It can be claimed that "country of first asylum" does not apply to Palestinians who were eligible[1900] for UNRWA's assistance but did not actually benefit from it because they did not "in fact receive some kind of protection." However, both Palestinians who actually avail themselves from, and those eligible for, UNRWA's assistance have usually long-established themselves in countries under UNRWA's mandate. Their situation is much different from those refugees who are "travelling through" or have short stays in a country that could be characterized as a "safe third country."

Although the concept of "country of first asylum" best fits the situation of Palestinian refugees seeking asylum in third countries, we share UNCHR's view, articulated by Stephen H. Legomsky, that "in actual practice the two strategies [i.e., rejecting asylum claims because the asylum seeker could obtain projection in the "country of first asylum" or a "safe third country"] occupy two points on the same

[1896] Goodwin-Gill and McAdam, *The Refugee in International Law*, 149–150.

[1897] Morten Kjaerum, "The Concept of Country of First Asylum," *International Journal of Refugee Law* 4, no. 4 (1992): 514–515.

[1898] Some authors refer to "country of first asylum" as "first country of asylum."

[1899] Stephen H. Legomsky, *Secondary Refugee Movements and the Return of Asylum Seekers to Third Countries: The Meaning of Effective Protection*, Legal and Protection Policy Research Series (UNHCR, Department of International Protection, February 2003), 3, http://www.unhcr.org/3e6cc63e4.html.

[1900] As extensively argued, UNHCR's most recent interpretation supports the applicability of Article 1D both for Palestinians who "in fact received" and those eligible for UNRWA's services. See Chapter Two, Section 2.1.2.

continuum."[1901] Goodwin-Gill and McAdam also observe that the "'safe country' concept arises in a number of different contexts – safe country of origin, safe first country of asylum, and safe third country."[1902] In all these cases, the underlying premise is "that, *under certain circumstances*, an asylum seeker should be somebody else's responsibility [emphasis in the original],"[1903] and these concepts all raise "the same fundamental concern: whether 'effective protection' is available" in the country alleged to be safe.[1904]

As discussed in Chapter Two,[1905] "effective protection" refers to a number of critical factors that must be fulfilled by the country to which a refugee in secondary movement is to be returned – whether a "country of first asylum" or a "safe third country." Therefore, effective protection complements the principle of *non-refoulement* – that is, a refugee cannot be returned to a country "where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion" (*non-refoulement* under the Refugee Convention),[1906] nor can a refugee be returned to states where he or she would not enjoy "effective protection." "Effective protection" interconnects with Article 1D, as both serve to ensure continuity of protection.

We highlight three additional criteria for *non-refoulement* encompassed by the principle of "effective protection": socio-economic rights, compliance with the 1951 Refugee Convention, and the prospect of a durable solution.

2.1.1. Effective protection: access to socio-economic rights

The Lisbon Expert Roundtable, organized by UNHCR in 2002, presented, as one of the critical factors for the realization of "effective protection" in a given country, that "the person [have] access to means of subsistence sufficient to maintain an adequate standard of living."[1907] While the term "adequate standard of living" already provides a basis for defining socio-economic rights, other interpretations of "effective protection" are even more specific.

[1901] Legomsky, *Secondary Refugee Movements and the Return of Asylum Seekers to Third Countries: The Meaning of Effective Protection*, 3.

[1902] Goodwin-Gill and McAdam, *The Refugee in International Law*, 393.

[1903] Legomsky, *Secondary Refugee Movements and the Return of Asylum Seekers to Third Countries: The Meaning of Effective Protection*, 3. Likewise, Goodwin-Gill and McAdam explain that "[t]he concept of the 'safe country' is a procedural mechanism for shuttling asylum seekers to other States said to have *primary responsibility* for them [emphasis added]." Goodwin-Gill and McAdam, *The Refugee in International Law*, 392.

[1904] Goodwin-Gill and McAdam, *The Refugee in International Law*, 393.

[1905] See Chapter Two, Section 1.3.

[1906] UN General Assembly, "Convention Relating to the Status of Refugees," Article 33. It should be noted that *non-refoulement* has a broader application under human rights law, applying to torture, and cruel, inhuman or degrading treatment or punishment, and it is also part of customary international law. See Chapter Two, Section 1.1.

[1907] UNHCR, "Summary Conclusions on the Concept of 'Effective Protection' in the Context of Secondary Movements of Refugees and Asylum-Seekers (Lisbon Expert Roundtable, 9-10 December 2002)," para. 15(g).

NGOs have suggested that the concept of "effective protection" should include "respect for the rights of refugees, which includes protection from *refoulement* and respect for their fundamental human rights (*including economic and social rights*) [emphasis added]."[1908] This view is shared by UNHCR: in its Executive Committee Conclusion No. 58, UNHCR states that refugees and asylum seekers in secondary movements can be returned to their previous country only if "they are permitted to remain there and to be *treated in accordance with recognized basic human standards* until a durable solution is found for them [emphasis added]."[1909]

Those "basic human standards" can be identified in the International Bill of Rights, comprising the Universal Declaration of Human Rights and the two International Covenants, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Consequently, "[t]he concept of [effective] protection should clearly include, at a minimum, protection of basic economic and social rights." [1910]

Despite these fundamental treaty guarantees of economic and social rights, states have taken the position, "particularly evident at the political and rhetorical level of state policy," of "construct[ing] a dichotomy between 'economic migrants' and 'political refugees,' with the former falling outside the terms of the Refugee Convention."[1911]

This dichotomy has also been noted by NGOs such as Human Rights Watch, International Catholic Migration Committee and the World Council of Churches, which have observed that:

> [p]eople leaving their home countries because of violations of their economic and social rights have generally not been granted the same level of protection as those fleeing violations of their civil and political rights. The denial of civil and political rights is considered as a "violation," while the denial of economic and social rights is generally viewed as an "injustice."[1912]

It is beyond the scope of this *Handbook* to argue whether persons fleeing their country for economic (or social or cultural) reasons should be granted refugee status.

[1908] UNHCR, "Report on Pre-ExCom Consultations with Non-Governmental Organisations (Geneva, 24-26 Sep. 2003), Annex IX, 54th Session of the Executive Committee," October 2, 2003, 79, http://www.unhcr.org/3fb0a4304.pdf.

[1909] UNHCR, "Executive Committee Conclusion No. 58 (XL) - Problem of Refugees and Asylum-Seekers Who Move in an Irregular Manner from a Country in Which They Had Already Found Protection," October 13, 1989, para. f(ii), http://www.unhcr.org/3ae68c4380.html.

[1910] Catherine Phuong, "The Concept of 'effective Protection' in the Context of Irregular Secondary Movements and Protection in Regions of Origin," *Global Migration Perspectives* 26 (April 2005): 5.

[1911] Michelle Foster, *International Refugee Law and Socio-Economic Rights Refuge from Deprivation* (Cambridge, U.K.; New York: Cambridge University Press, 2007), 2, http://public.eblib.com/choice/publicfullrecord.aspx?p=307092.

[1912] Human Rights Watch, International Catholic Migration Committee, and the World Council of Churches, "NGO Background Paper on the Refugee and Migration Interface, Presented to the UNHCR Global Consultations on International Protection, Geneva, 28-29 June 2001," June 29, 2001, 3, http://www.hrw.org/sites/default/files/reports/ngo_refugee.pdf.

However, the general neglect of socio-economic claims with respect to refugee status adversely affects asylum practices for refugees (particularly *Palestinian refugees*) in secondary movements – that is, their secondary movement is taken as illegitimate when related to severe socio-economic (and cultural) reasons.

This perspective is also evident in UNHCR's Note of 2013. In assessing the reasons "beyond one's control" which would trigger the second paragraph of Article 1D and entitle a Palestinian who has left UNRWA's area of operations to the benefits of the 1951 Convention, UNHCR established two sets of "objective" reasons. These focus on (i) "[t]hreats to life, physical security or freedom, or other serious protection-related reasons" and (ii) "[p]ractical, legal and safety barriers to return."[1913] These objective reasons fail to include reasons of a social, economic and/or cultural nature, limiting the grounds for granting asylum to refugees in secondary movements to only civil and political rights. It is important to point out that refugees, who have already lost the protection of their states of origin, are still entitled to seek their socio-economic and cultural rights in other states rather than the country of first refuge. This is crucial for long-standing cases of refugees who are deprived of socio-economic and cultural rights.

This gap between guaranteed rights in countries of first asylum and state practice regarding asylum granting underlies the failure to recognize the refugee status of Palestinian refugees outside UNRWA's area of operations when their (secondary) movement is based on a lack of basic social, economic and/or cultural rights as encompassed by the principle of "effective protection." A prominent example is the 2010 Case (A 5 K 1072/08)[1914] from Germany's Administrative Court of Dresden, in which land confiscation, denial of the right to work and lack of access to education were not considered sufficient reasons to grant an asylum request, leading to the return of the asylum seeker in this case to the West Bank.

Since 2013, German jurisprudence has begun to consider both sets of "objectives reasons" elaborated by UNHCR. However, even under such terms, the asylum application discussed above would not be approved, because UNHCR's "objective reasons" themselves are restricted to civil and political rights – along with barriers to return – and do not incorporate denial of social, economic and cultural rights.

Alternatively, and beyond UNHCR's interpretation of Article 1D, the concept of effective protection could provide broader grounds for applying the inclusion clause of Article 1D to cover Palestinian refugees who are forced into secondary movement for reasons of severe socio-economic and cultural deprivation. This could contribute, as well, to reducing the traditional dichotomy between political and economic refugees for refugees in secondary movements in general. Moreover, by allowing refugees to move to other countries on economic grounds, the principle of effective protection could also prompt the international community to share the economic burden of refugees more equitably. This is an important goal, considering that, as

[1913] UNHCR, "2013 Note," 5.
[1914] See p. 135 above.

of 2013, "5.4 million refugees under UNHCR's mandate (46%) resided in countries where the GDP per capita was below USD 5,000."[1915] This becomes much more relevant to the case of Palestinian refugees not only because of the long-standing and unresolved nature of their plight, but also due to the lack of an international body mandated with seeking a durable solution for their protracted refugee situation.

It should be noted that recognizing economic (and social and cultural) grounds in a more robust fashion would apply primarily to *secondary* refugee movements – i.e., to refugees who have already been recognized as such in their country of first asylum and now seek refuge in a new country due to economic, social and cultural deprivation. These persons cannot be considered economic migrants, because, as refugees, they cannot return to the country they originally fled (i.e., not their country of first asylum, but their country of origin), either because they fear persecution or, as in the Palestinian case, because Israel does not allow them to return. Consequently, while economic migrants still have the opportunity to seek economic (and social and cultural) rights in their own country, refugees do not have such opportunity in their State of origin, from which they were forcibly displaced. The lack of opportunity to access one's rights in the country of origin is the key distinction between refugees and economic migrants. Such lack of opportunity is also the basis for our position that refugees should be allowed to seek such rights in *any* country, even through migration, if necessary (i.e., by moving from their country of first asylum to a second State, *if they do not enjoy such rights in the former*).

Furthermore, from a legal perspective, refugees differ from economic migrants because refugees have their status established by international instruments – such as the 1951 Convention, binding on all state parties, or by relevant UN General Assembly Resolutions, which can become customary international law, as in the case of Resolution 194(III).[1916]

2.1.2. Effective protection: compliance with the 1951 Refugee Convention and prospects for a durable solution

With regards to "effective protection," UNHCR's Lisbon Expert Roundtable also stated that:

> [w]here 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.

This reasoning was again endorsed by UNHCR in its Legal and Protection Policy Research Series:

> if the country in which the asylum application is lodged (described here as the destination country) is a party to the 1951 Convention, it may not knowingly

[1915] UNHCR, "Global Trends 2013 - War's Human Cost," 2.

[1916] See p. 24, fn. 138 above.

send the person to a third country that will deprive the person of any rights guaranteed by the Convention.[1917]

Under this logic, Palestinians applying for asylum in States Party to the 1951 Convention (which is the case of the countries surveyed in this *Handbook*), should never be returned to UNRWA's area of operations, because in that area they are excluded from the benefits of the 1951 Convention. Moreover, even if return to the UNRWA area did not imply exclusion from the benefits of the Convention under Article 1D, Palestinians would still not enjoy such benefits, because the very territories to which they would be returned (i.e., Jordan, Lebanon, Syria, the West Bank and Gaza) are not parties to the Convention.

It could be argued that, Palestinians could safely be returned to such territories as long as the governments in those territories demonstrate that their practices are "akin to the 1951 Convention and/or its 1967 Protocol." Although an investigation into whether such practices exist is outside the scope of this *Handbook*, a preliminary analysis suggests that this standard is not met in the territories under UNRWA's regime. In Lebanon and Jordan, Palestinian refugees face discriminatory asylum policies further exacerbated in the context of the Syrian refugee crisis;[1918] in Syria, Palestinians used to enjoy an "adequate level of protection," compared to other Arab countries,[1919] but the current conflict has undermined that situation;[1920] and in the West Bank and Gaza, the refugee and human rights of Palestinians are severely compromised by Israeli occupation and in Gaza by a host of measures including the blockade.

UNHCR has also asserted that "a refugee/asylum-seeker may be returned to the country of first asylum if [*inter alia*] the person [...] has *access to a durable solution* [emphasis added]."[1921] The three forms of durable solutions for refugees are repatriation to place of origin, local integration or resettlement in a third country. Of these, local integration is relevant for Palestinians being returned to their countries of first asylum. However, as explained above, local integration as a secure and long-term status has not been available to Palestinian refugees in any of the host Arab states other than Syria before the civil war. The more recent

[1917] Legomsky, *Secondary Refugee Movements and the Return of Asylum Seekers to Third Countries: The Meaning of Effective Protection*, 56.

[1918] See box "Palestinian Refugees from Syria", p. 11-12 above. See also Al-Majdal, *Palestinian Refugees from Syria: Ongoing Nakba, Ongoing Discrimination* (Bethlehem: BADIL Resource Center for Palestinian Residency & Refugee Rights, Autumn 2014), http://BADIL.org/phocadownload/BADIL_docs/publications/al-majdal-56.pdf.

[1919] Mohammed Khaled Al-Az'ar, "Arab Protection for Palestinian Refugees, Analysis and Prospects for Development," in *Rights in Principle - Rights in Practice: Revisiting the Role of International Law in Crafting Durable Solutions for Palestinian Refugees*, by Terry Rempel (Bethlehem: BADIL Resource Center for Palestinian Residency and Refugee Rights, 2009), 233.

[1920] See BADIL Staff, "Palestinian Refugees from Syria: Ongoing Nakba, Ongoing Discrimination," *Al-Majdal*, Palestinian refugees from Syria: Ongoing Nakba, Ongoing Discrimination, no. 56 (Autumn 2014), http://BADIL.org/phocadownload/BADIL_docs/publications/al-majdal-56.pdf.

[1921] UNHCR, "Background Note on the Safe Country Concept and Refugee Status," July 26, 1991, para. 13, EC/SCP/68, http://www.unhcr.org/3ae68ccec.html.

increase in discriminatory policies in Lebanon and Jordan, and the state of civil war in Syria have further undermined any claim of local integration of Palestinian refugees. These three countries declined to accede to the 1951 Convention based on their persistent objection to the "international political pressure for the forced resettlement/integration of Palestinian refugees" into their territories.[1922] This has meant that few protection benefits are available for Palestinian refugees in the Arab host states, and only those assistance benefits which UNRWA can provide. In the case of the West Bank and Gaza, local integration of Palestinian refugees in the sense of offering effective protection is impossible while a final solution for the Israeli-Palestinian conflict is not achieved – i.e., in the current state of prolonged occupation with ongoing Israeli oppression and dispossession and with the sovereignty of the Palestinian Authority severely undermined, there is no serious prospect of a durable solution for Palestinian refugees in the West Bank or Gaza.

In addition, even if the durable solution of local integration were available in territories under UNRWA's mandate, it should be noted that durable solutions are guided by the principle of voluntariness: consequently, a Palestinian refugee cannot *voluntarily* integrate in a country he or she moved from and is *forcibly* returned to.

With these points in mind, the concept of "effective protection" could not only make the application of Article 1D more consistent with its purpose, but also address the serious problem of non-returnability of Palestinian refugees to UNRWA's area of operations. "Effective protection" for Palestinian refugees would then mean that no third state could return them to territories that are not signatories to the 1951 Convention and/or the 1967 Protocol, have not developed practices akin to such conventions, nor offer realistic prospects for a durable solution.

2.1.3. Extraterritorial refugee status and transfer of responsibility for refugees between States

Insofar as effective protection provides an expanded framework for accepting refugees in secondary movements in new countries of asylum, and thus legitimizing that very movement, such criteria related the concept of extraterritorial refugee status and the transfer of responsibility between states.

The recognition of refugee status for Palestinian refugees experiencing secondary movements can be conceptualized as a simple transfer of responsibility for refugees between duty bearers – i.e., mandated agencies and States – rather than being considered a "granting" of such status. In other words, instead of being granted refugee status once again, the new State would simply acknowledge that such persons are already refugees and take the responsibility of guaranteeing that they enjoy the

[1922] BADIL, *Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, 14. See also Akram, "Palestinian Refugees and Their Legal Status," 40: "[Arab States] did not want Palestinians to be bound by the prevailing consensus for refugees—third-country resettlement. Instead, they demanded repatriation and compensation in accordance with the refugees' wishes and existing international law, notably Paragraph 11 of UNGA Resolution 194 (III)."

rights established by the 1951 Convention. This could apply both to Palestinian refugees and to other persons granted refugee status in one country and being forced to flee to a second.

This rests on an argument about the inherent extraterritorial character of refugee status. UNHCR's 1978 "Note on the Extraterritorial Effect of the Determination of Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees"[1923] (1978 UNHCR Note) and the Agency's Executive Committee "Conclusion No. 12"[1924] (UNHCR Conclusion 12) discuss this issue at length. In those documents, UNHCR argues for the international (and extraterritorial) character of refugee status as one of the essential aspects defined by the 1951 Convention and the 1967 Protocol,[1925] based on the drafting history of the Convention:

> One of the major preoccupations of the international community in defining this legal status [of refugees] was to ensure that it would be a realistic one and hence acceptable to as many States as possible. […] During the early discussions leading to the adoption of the 1951 Convention, consideration was given to the question of whether the definition of the term "refugee" should be a wider or a narrower one. Several representatives took the view, which finally prevailed, that a more restrictive definition should be adopted in order that it should be acceptable to all Governments. The consequences would be precisely *to avoid the situation where a person would be considered a refugee in one State but not in another* [emphasis added].[1926]

The last sentence explains that the drafters of the Convention shared the idea of common recognition of refugee status, which prompted their considerable efforts, to establish a common, narrow definition of "refugee." That idea of common recognition underpins the principle of responsibility-sharing, or burden-sharing of refugees, based on respect for each state's decisions regarding the granting of asylum and attribution of refugee status to such persons. This is what generates the extraterritorial character of the refugee status assigned to a refugee by a third State or by international bodies – such as UNHCR – and mechanisms – such as UN Resolutions.

Considering that a number of articles in the Convention enable refugees to exercise certain rights in Contracting States other than the one where they reside,[1927] and also that the Convention features no "requirement that such an exercise of rights should be dependent upon a fresh determination of refugee status by the other Contracting

[1923] UNHCR, "Note on the Extraterritorial Effect of the Determination of Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees," August 24, 1978, EC/SCP/9, http://www.unhcr.org/3ae68cccc.html.

[1924] UNHCR, "Executive Committee Conclusion No. 12 (XXIX) - Extraterritorial Effect of the Determination of Refugee Status," October 17, 1978, http://www.unhcr.org/3ae68c4447.html.

[1925] Ibid., para. a.

[1926] UNHCR, "Note on the Extraterritorial Effect of the Determination of Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees," para. 33.

[1927] See, e.g., UN General Assembly, "Convention Relating to the Status of Refugees," Articles 14, 16 and 33.

State,"[1928] UNHCR has concluded that the exercise of such rights "is not subject to a new determination of his refugee status."[1929]

However, the 1951 Refugee Convention and its Schedule "do not specify whether there is any broader extraterritorial effect of the recognition of refugee status by one of the contracting states to the Convention" other than the obligation of second State parties to *issue travel documents*.[1930] The 1978 UNHCR Note only refers to a "transfer of responsibility *for the issue of 1951 Convention Travel Documents* [emphasis added]."[1931]

Based on this foundation, BADIL calls for greater recognition and more robust implementation of extraterritorial refugee status coupled with the consideration of "effective protection" criteria – i.e., that refugees in secondary movements prompted by the lack of effective protection have their status acknowledged by the new State of asylum, which takes responsibility for such persons. Such responsibility, however, would involve not only the issuance of travel documents, but the assurance that such persons enjoy all the rights provided by the 1951 Convention– i.e., it would concern a *transfer of protection*. This proposition is consistent with the inclusion clause of Article 1D and UNHCR's interpretation of the term "benefits of the 1951 Convention."[1932] Therefore, while the principle of extraterritorial refugee status is an important starting point, it is critical that more states parties meaningfully implement the guarantees that accompany it and that they implement a broader range of rights beyond the issuance of documents.

BADIL's position is that refugees in secondary movements, instead of being *granted* refugee status once again, simply have their refugee status acknowledged. Consequently, any further screening should only be to: (i) assess whether he or she remains a refugee vis-à-vis his or her country of origin (in the case of Palestinian refugees, Israel); and (ii) whether the cessation and exclusion clauses of the 1951 Convention (Articles 1C, 1D, 1E and 1F) apply; (iii) assess whether the person concerned enjoyed effective protection in his or her previous country of asylum.

This position is consistent with UNHCR's accounts on the extraterritoriality of refugee status:

> refugee status as determined in one Contracting State should only be called into question by another Contracting State in exceptional cases when it appears

[1928] UNHCR, "Note on the Extraterritorial Effect of the Determination of Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees," para. 36.

[1929] UNHCR, "Executive Committee Conclusion No. 12 (XXIX) - Extraterritorial Effect of the Determination of Refugee Status," para. c.

[1930] S. Peers, "Transfer of International Protection and European Union Law," *International Journal of Refugee Law* 24, no. 3 (October 1, 2012): 528, doi:10.1093/ijrl/ees038.

[1931] UNHCR, "Note on the Extraterritorial Effect of the Determination of Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees," para. 21, 22, 28, 31 and 38.

[1932] As explained above, "the term 'benefits of the 1951 Convention' refers to the standard of treatment that States Parties to the 1951 Convention are required to accord to refugees under Articles 2 to 34 of that Convention." UNHCR, "2009 Revised Note," para. 9. See also Section 1.2 of this Chapter.

that the person manifestly does not fulfill the requirements of the Convention, e.g., if facts become known indicating that the statements initially made were fraudulent or showing that the person concerned falls within the terms of a cessation or exclusion provision of the 1951 Convention.[1933]

Once refugee status is acknowledged in accordance with such further screening, the State concerned should then assess whether the refugee concerned is allowed to *stay*, i.e., whether he or she can be *returned* to their country of first asylum, respecting the principle of "effective protection."

This is not to suggest that refugees should have the right to move freely among States Party to the Convention for "reasons of mere convenience," as feared by France's Mr. Colemar during the *travaux préparatoires*. Rather, the legitimacy of the secondary movement would be subjected to an examination of whether the refugee concerned enjoyed effective protection in their former country of asylum. Notably, it is not the refugee status of such persons that is brought into question,[1934] but the legitimacy of their (secondary) movement, in accordance with the principle of "effective protection."

If the extraterritorial character of refugee status were widely accepted as a fundamental principle of international refugee law, *coupled with an equally accepted principle of effective protection*, the transfer of responsibility for and protection of refugees between duty bearers and the granting of refugees rights to such persons would occur only when refugees in secondary movement do not enjoy effective protection in their country of first asylum.

Because the language of the texts of the 1978 UNHCR Note and the UNHCR Conclusion 12 focuses on refugee status under the 1951 Convention, one could argue that the extraterritorial character of refugee status is limited to refugees recognized as such by the 1951 Convention.[1935] However, the special regime designed for Palestinian refugees in 1948, i.e., even before the conclusion of the 1951 Convention, was intended to provide them with special protection and to ensure its continuity until a durable solution is reached.[1936] Consequently, the Palestinian refugees of concern to this *Handbook* did not become refugees due to an individualized "well-founded fear of persecution," in the sense of Article 1A(2); rather, such persons were acknowledged as an entire class of refugees by virtue of relevant UN Resolutions – namely, Resolution 194(III), of 1948, and Resolution 2252, of 1967. The special character of the Palestinian refugee regime does not and should not mean their

[1933] UNHCR, "Executive Committee Conclusion No. 12 (XXIX) - Extraterritorial Effect of the Determination of Refugee Status," para. g.

[1934] This assumes that they remain refugees vis-à-vis their country of origin and that they do not fall under the cessation or exclusion clauses of the 1951 Convention, as explained above

[1935] For example, paragraph f of UNCHR Conclusion 12 states: "[c]onsidered that the very purpose of the 1951 Convention and the 1967 Protocol implies that *refugee status determined by one Contracting State* will be recognized also by the other Contracting States [emphasis added]." UNHCR, "Executive Committee Conclusion No. 12 (XXIX) - Extraterritorial Effect of the Determination of Refugee Status," para. f.

[1936] See box, p. 25 above.

refugee status affords them something less than other recognized refugees; the determination of Palestinian refugees' status was intended as *prima facie* recognition of their refugee condition.

The 1951 Convention, in its Article 1A(1) does recognize other categories of *prima facie* refugees; those who were considered refugees under various pre-war instruments.[1937] Such persons constitute "statutory refugees" and the extraterritorial character of their refugee status is supported by the 1978 UNHCR Note.[1938] However, the 1951 Convention failed to include any provision acknowledging the legitimacy of refugee status conferred by other international instruments, such as UN Resolutions themselves, prior or subsequent to the Convention.

In this context, BADIL supports the expansion of the definition of refugee in the 1951 Convention by including in Article 1A(1) relevant UN Resolutions. The very fact that Palestinian refugees had their status conferred by the UN itself – i.e., by all its State Members, and not only by one State (as occurs with other refugee status determination processes) – strengthens the argument for acknowledging the extraterritorial character of their refugee status. Moreover, the very purpose of Article 1D of ensuring the continuity of protection of Palestinians who stop benefitting from the assistance or protection of agencies other than UNHCR relates to the transfer of protection of extraterritorially-recognized refugees. It amounts to a designation of *prima facie* refugee status under the 1951 Convention for such persons. Finally, recognition of the extraterritorial character of Palestinian refugees' status is consistent with the UN's special responsibility toward Palestinian refugees, as explained in Chapter One.[1939]

In the light of the above, the application of extraterritoriality of refugee status and effective protection should prompt the transfer of responsibility for and protection of refugees in secondary movements who fled their former country of asylum due to lack of effective protection._"Effective protection" is an alternative framework for legitimizing secondary refugee movements, adding to the "objective reasons" laid out by UNHCR, but moving beyond the UNHCR limitations that confine such reasons only to a lack of civil and political rights.

For Palestinian refugees, if national practice were consistent with the principles of extraterritoriality of refugee status and effective protection, it would allow the transfer of responsibility for refugees (and transfer of protection) on a much broader basis than is now possible under Article 1D as interpreted by UNHCR.

Most important, such practice would extend broader transfer of responsibility and protection to *all refugees* in secondary movements, including Palestinian refugees

[1937] Namely, "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." UN General Assembly, "Convention Relating to the Status of Refugees," Article 1A(1).

[1938] UNHCR, "Note on the Extraterritorial Effect of the Determination of Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees," para. 11.

[1939] See box, p. 25 above.

moving from countries other than those in UNRWA's mandate. The geographical limitations regarding the application of Article 1D according to UNHCR guidelines are the focus of the next section.

2.2. UNCCP and the cessation of protection

As discussed above, Australia is the only country to have recognized that UNCCP ceased its protection activities in the early 1950s,[1940] as also observed by Susan Akram and Terry Rempel[1941] – even though the outcome of Australia's interpretation differs from the one supported by those scholars.

The findings presented in Chapter Three demonstrate a general disregard of the issue of protection of refugees by UNCCP. UNHCR's 2013 Note, by emphasizing the applicability of Article 1D to Palestinians who were actually receiving or eligible to receive "*UNRWA's* protection or assistance [emphasis added],"[1942] also fails to acknowledge that "protection" in Article 1D was intended to refer to UNCCP, and, more important, fails to address either that UNCCP's protection activities have ceased, or the impact of this cessation of protection on Palestinian refugees under the meaning of Article 1D.[1943]

UNRWA has argued that it has been developing a protection mandate since the 1980's[1944] and has been strengthening it for the last decade.[1945] Nevertheless, UNRWA admits that its 'protection' mandate still does not cover, among other things, the search for a durable solution, which was the core of UNCCP's mandate.

The protection of Palestinian refugees (and the lack thereof) under UNCCP and URNWA is further analyzed elsewhere;[1946] however, what matters for the purposes of this *Handbook* is that Article 1D was never meant to be applied in a geographically limited manner. This is clear from the fact that, even though UNRWA's activities are restricted to Jordan, Lebanon, Syria, and the West Bank and Gaza, UNCCP was

[1940] See Chapter Four, Section 2.8.

[1941] See Chapter Two, Section 2.5, sub-section "Alternative Interpretation of Article 1D."

[1942] See, e.g., UNHCR, "2013 Note," 4.

[1943] See Chapter Two, Section 2.5, sub-section "Alternative Interpretation of Article 1D."

[1944] See, e.g., UN General Assembly, "Resolution 37/120J - United Nations Relief and Works Agency for Palestine Refugees in the Near East - Protection of Palestine Refugees," December 16, 1982, UN Doc. A/RES/37/120J, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/37/120&Lang=E&Area=RESOLUTION; UN Security Council, "Res. 605," para. 6; UN Secretary-General, *Report Submitted to the Security Council by the Secretary-General in Accordance with Resolution 605 (1987) (Goulding Report)*, para. 37; L. Bartholomeusz, "The Mandate of UNRWA at Sixty," *Refugee Survey Quarterly* 28, no. 2–3 (January 1, 2009): 467–468, doi:10.1093/rsq/hdp033.

[1945] See, e.g., UNRWA, "Outline of Protection Initiatives," 2010, http://www.unrwa.org/sites/default/files/outline%20of%20protection%20initiatives.pdf; UN General Assembly, "Resolution 62/236 - Questions Relating to the Proposed Programme Budget for the Biennium 2008–2009," December 22, 2007, para. 109, UN Doc. A/RES/62/236, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/62/236; M. Kagan, "Is There Really a Protection Gap? UNRWA's Role Vis-a-Vis Palestinian Refugees," *Refugee Survey Quarterly* 28, no. 2–3 (January 1, 2009): 528.

[1946] See Susan Akram, "UNRWA and Palestinian Refugees," in *The Oxford Handbook of Refugee and Forced Migration Studies*, by Elena Fiddian-Qasmiyeh et al., 2014, 227–40.

never limited by its mandate to a particular geographical area of operations. UNCCP was mandated to find a durable solution for *all* Palestinian refugees defined as such by Resolution 194, regardless of whether they had fled to a country within or outside UNRWA's area of operations.

The cessation of UNCCP's protection activities left *all* Palestinian refugees *everywhere* with no agency to defend their right to a durable solution to their situation. Accordingly, Palestinians in secondary movements from *any country* – not only from UNRWA's area of operations – should be entitled to be granted refugee status under the second paragraph of Article 1D, because they all qualify as persons who were defined as being under the protection (the search for a durable solution) of an agency "other than UNHCR" (i.e., UNCCP), and found themselves after 1952 in a situation in which such protection had ceased.[1947]

This means that all Palestinian refugees in secondary movements, regardless of the country they are fleeing, fall under the second paragraph of Article 1D. Notwithstanding, UNHCR's interpretation of Article 1D, by completely ignoring the cessation of UNCCP's protection activities and neglecting its impact on Palestinian refugees on a *global level*, does not allow for the application of Article 1D to Palestinian refugees in secondary movements departing from countries outside UNRWA's area of operations.

This issue has great relevance to cases such as UM 542-14, 2014-01-28 of Sweden's Migration Court of Appeal, in which the Court declined to review the case of a Palestinian refugee from Iraq, disregarding his UNRWA registration because UNRWA does not operate in Iraq;[1948] or on H E-H v. Secretary of State for the Home Department, in the United Kingdom, where the applicant, a Palestinian refugee from Egypt, was admitted as a refugee under the "well-founded fear" criteria.[1949] In both cases, the applicants could have argued, instead, that they fell under Article 1D because they no longer enjoyed the protection of UNCCP, and were entitled *ipso facto* to the benefits of the Convention.

Not only does UNHCR's interpretation of Article 1D limit the transfer of protection of Palestinian refugees to secondary refugee movements prompted by lack of civil and political rights, it also restricts the applicability of such transfer to Palestinian refugees who were under UNRWA's mandate (or eligible for it).

3. Final remarks: pathways to change

This final chapter demonstrates that, although UNHCR guidelines, and most recently its 2013 Note, do provide important clarifications regarding the interpretation and application of Article 1D in comparison with the national practices analyzed in Chapter Three, the "objective reasons" that, according to UNHCR, legitimize

[1947] See p. 31, fn. 172 above.
[1948] See p. 200 above.
[1949] See p. 218-219 above.

Palestinian refugees' secondary movements still follow and perpetuate, to a large extent, the criteria set out in Article 1A(2). By subjecting Palestinian refugees in secondary movements to a further screening regarding the reasons for fleeing their country of former asylum that is solely based on civil and political rights, UNHCR ignores the conditions that relate to the principle of "effective protection," under which such refugees cannot be return to their country of first asylum and must, therefore, be admitted. Thus, it denies the extraterritorial character of Palestinian refugees' refugee status, as established by UN relevant resolutions, in situations where their flight is prompted by economic, social and cultural deprivation.

The lack of clear procedures for the recognition of refugee status in situations of secondary movement, then, relates to the original opposition of the drafters of the 1951 Convention to allow refugees to move freely through different States, for "reasons of mere convenience." However, the development of refugee law and rights and state practice related to refugee movements has produced important concepts that can overcome the barriers to protection of secondary refugee movers.

On the one hand, adding socio-economic rights, compliance with the 1951 Convention and access to durable solutions as requirements in assessing a "safe country" of return and "effective protection" can help to prevent return of Palestinian refugees to former countries of asylum where they do not have meaningful protection. On the other hand, the principle of "extraterritorial refugee status," as defined by UNHCR (in its 1978 UNHCR Note and corresponding Executive Committee's Conclusion No. 12), provides a starting point for broader protection of refugees caught in secondary movements. Efforts to promote the application of transfer of protection should be coupled with advocating for the inclusion in Article 1A(1) of other international instruments as legitimate sources of international (and, thus, extraterritorial) refugee status – most relevantly to Palestinians refugees, UN Resolutions 194(III) and 2252.

More than broadening the criteria for non-returnability, the acceptance of such "effective protection" standards would expand the grounds for legitimate secondary movements beyond civil and political rights, while at the same time ensure that such movements are not the result of "reasons of mere convenience." Legitimate secondary refugee movement would address, e.g., refugees who fled because they suffered severe deprivation of a guaranteed economic right under treaty standards, and not because they would enjoy better economic conditions in a new country of asylum.

Finally, the proper acknowledgment of the cessation of UNCCP's activities by UNHCR and States parties to the 1951 Convention/Protocol could prompt the application of extraterritorial refugee status to *all* Palestinian refugees, guaranteeing the transfer of protection of even those Palestinian refugees residing outside UNRWA's area of operations.

The examination of national practices in Chapter Three allow drawing some important conclusions, concerning the consequences of secondary movement of

Palestinian refugees in particular and secondary movement of refugees in general. These findings and conclusions suggest guidelines for advocacy, both with national States and international institutions (notably, UN bodies).

The ongoing Palestinian experiences of exile, prolonged occupation, human rights violations and harsh living conditions continue to demand durable solutions in accordance with the principles of international law and relevant UN resolutions. This *Handbook's* analysis and recommendations are, of course, only a beginning. Our observation of the limitations of UNHCR and State interpretations of Article 1D illustrate the need for changes in laws, policies, and practices relating to Palestinian refugees at the global and national levels. It is our hope that this *Handbook* will serve as a useful starting point for those who wish to advocate for or implement a proper interpretation of Article 1D, as well as other policies and practices which benefit Palestinian refugees.

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Appendix 1

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[1]

This Note provides UNHCR's interpretation of Article 1D of the 1951 Convention relating to the Status of Refugees ("1951 Convention")[2] and the corresponding article in the EU Qualification Directive, Article 12(1)(a).[3] It also reflects upon and draws attention to the recent jurisprudence of the Court of Justice of the European Union ("CJEU").[4]

Article 1D of the 1951 Convention provides as follows:

> This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.
>
> When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall *ipso facto* be entitled to the benefits of this Convention.[5]

1 This Note provides UNHCR's updated position on the proper interpretation of Article 1D of the 1951 Refugee Convention and the corresponding provision in the Qualification Directive (Article 12(1)(a)), taking into account the recent decisions of the Court of Justice of the European Union (CJEU) in *Bolbol* (C-31/09) and *El Kott* (C-364/11), and UNHCR's amicus curiae intervention in *El Kott*. Further guidance will be issued in due course.

2 1951 Convention relating to the Status of Refugees, 189 UNTS 137, available at: http://www.unhcr.org/refworld/docid/3be01b964.html.

3 Council of the European Union, *Council Directive 2004/83/EC of 29 April 2004 on minimum* standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted [OJ L 304/12, 30.09.2004], Recital 15, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:304:0012:0023: EN:PDF.

4 *Mostafa Abed El Karem El Kott and Others v. Bevándorlási és Állampolgársági Hivatal*, C-364/11, CJEU, 19 December 2012, available at: http://www.unhcr.org/refworld/docid/50d2d7b42.html("*El Kott*") and *Bolbol v. Bevándorlási és Állampolgársági Hivatal*, C-31/09, CJEU, 17 June 2010, available at: http://www.refworld.org/docid/4c1f62d42.html("Bolbol").

5 The corresponding provision of the EU asylum acquis, Article 12(1)(a) of the Qualification Directive provides as follows: "A third country national or a stateless person is excluded from being a refugee, if: (a) he or she falls within the scope of Article 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."

1. The purpose of Article 1D of the 1951 Convention

First and foremost, the two related purposes of Article 1D need to be kept in mind in order to ensure its proper interpretation. The first purpose is to avoid overlapping competencies between UNHCR and other organs or agencies of the United Nations, including specifically the United Nations Relief and Works Agency for Palestine Refugees in the Near East ("UNRWA"). Article 1D reflects this purpose through the "exclusion clause" contained in the first paragraph of Article 1D. In this regard, it should be noted that UNRWA's areas of operation, where it provides assistance to some five million registered Palestinian refugees, are limited to Jordan, Lebanon, Syria, the West Bank (including Jerusalem East) and Gaza. The second purpose is to ensure the continuity of protection and assistance for Palestinian refugees whose refugee character has already been established and recognized by various United Nations General Assembly resolutions, in circumstances where that protection or assistance has ceased in accordance with the "inclusion clause" contained in the second paragraph of Article 1D.

2. The exclusion clause contained in the first paragraph of Article 1D/the first sentence of Article 12(1)(a) – persons receiving protection or assistance of UNRWA

It is UNHCR's view that the following groups of Palestinians who were either actually receiving or eligible to receive protection or assistance from UNRWA are considered to be "receiving protection or assistance of UNRWA," as per the first paragraph of Article 1D:

a) Palestinians who are "Palestine refugees" within the sense of UN General Assembly Resolution 194 (III) of 11 December 1948 and subsequent UN General Assembly Resolutions,[6] and who, as a result of the 1948 Arab-Israeli conflict, were displaced from that part of Mandate

[6] UNRWA's mandate for "Palestine refugees" was established pursuant to UN General Assembly Resolution 302 (IV) of 8 December 1949 and subsequent General Assembly resolutions. The term "Palestine refugees" has never been expressly defined by the UN GA. However, for early work on interpreting the term, see for example the following documents of the UN Conciliation Commission for Palestine (UNCCP): UN Doc. A/AC.25/W.45, *Analysis of paragraph 11 of the General Assembly's Resolution of 11 December 1948*, 15 May 1950, 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. UNRWA's operational definition of the term "Palestine refugees" 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," see UNRWA's Consolidated Eligibility and Registration Instructions (October 2009), available at: http://www.unrwa.org/userfiles/2010011995652.pdf. The GA has tacitly approved the operational definition used in annual reports of the Commissioner-General of UNRWA setting out the definition.

Palestine which became Israel;[7]

b) Palestinians not falling within paragraph (a) above 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,[8] and who, as a result of the 1967 Arab-Israeli conflict, have been displaced from the Palestinian territory occupied by Israel since 1967.[9]

Included within the above groups are not only persons displaced at the time of the 1948 and 1967 hostilities, but also the descendants of such persons.[10]

[7] The UN GA resolved in para. 11 of Res. 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 GA instructed the UNCCP to "facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation". The GA has since noted on an annual basis that UNCCP has been unable to find a means of achieving progress in the implementation of para. 11 of Res. 194 (III). See, most recently, Res. 67/114 of 18 December 2012, in which the GA notes with regret "that repatriation or compensation of the refugees, as provided for in paragraph 11 of GA Res. 194 (III), has not yet been effected, and that, therefore, the situation of the Palestine refugees continues to be a matter of grave concern ...;" and that UNCCP "has been unable to find a means of achieving progress in the implementation of para. 11 of GA Res. 194 (III); and reiterates its request to UNCCP "to continue exerting efforts towards the implementation of that paragraph ...".

[8] UNRWA's mandate for "displaced persons" was established pursuant to UN GA Res. 2252 (ES-V) of 4 July 1967 and subsequent GA resolutions. Essentially two groups of Palestinian "displaced persons" have been displaced from the Palestinian territory occupied by Israel since 1967: (i) Palestinians originating from that territory; and (ii) "Palestine refugees" who had taken refuge in that territory prior to 1967. The territory concerned comprises the West Bank, including East Jerusalem, and the Gaza Strip.

[9] UN GA Res. 2452 (XXIII) A of 19 December 1968 called for the return of the "displaced persons," as reiterated by subsequent UN GA resolutions on an annual basis. The most recent such resolution is Res. 67/115 of 18 December 2012, which "[r]eaffirms the rights 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," and stresses the necessity for "an accelerated return of displaced persons" and calls for compliance with "the mechanism agreed upon by the parties in Article XII of the Declaration of Principles on Interim Self-Government Arrangements of 13 September 1993 on the return of displaced persons has not been complied with;" and stresses the necessity for "an accelerated return of displaced persons".

[10] The concern of the UN GA with the descendants both of "Palestine refugees" and of "displaced persons" was expressed in UN GA Res. 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" (para. 9, UN Doc. A/38/382, *Special Identification cards for all Palestine refugees. Report of the Secretary-General*, 12 September 1983). From 1983 to 1987 UN GA resolutions dropped all reference to the issuance of identity cards, and then from 1988 onwards, starting with Res. 43/57 of 6 December 1988, the GA has annually urged issuance of identity cards only to Palestine refugees and their descendants in the Palestinian territory occupied by Israel since 1967. The most recent such resolution is Resolution 67/116 of 18 December 2012, para. 20, which requests "the Commissioner General to proceed with the issuance of identification cards for Palestine refugees and their descendants in the Occupied Palestinian Territory".

Because these persons were actually receiving or eligible to receive UNRWA's protection or assistance, they are generally excluded from the protection of the 1951 Convention, unless they meet the conditions for inclusion set forth in the second paragraph of Article 1D (see Section 3 below).

Palestinians who were not actually receiving or eligible to receive the protection or assistance of UNRWA as per the first paragraph of Article 1D may nevertheless qualify as refugees if they fulfill the criteria of Article 1A(2) of the 1951 Convention. Such persons are entitled to apply for refugee status in the normal way under the 1951 Convention via Article 1A(2).

Although in its judgment in *Bolbol v. Bevándorlási és Állampolgársági Hivatal* ("*Bolbol*"),[11] the CJEU concluded that only Palestinians who had "actually availed" themselves of the protection or assistance of UNRWA (as opposed to also those who are eligible) would be considered to fall within the first paragraph of Article 1D,[12] UNHCR takes a different position. UNHCR's position is based on the dual purposes of Article 1D to avoid overlapping competencies and to ensure the continuity of protection and assistance of Palestinian refugees.

By capturing those Palestinians who were eligible as well as those who were receiving protection or assistance, their continuing refugee character is acknowledged. They will be entitled to the benefits of the 1951 Convention only should that protection or assistance cease for any reason in accordance with the second paragraph of Article 1D. However, if that refugee character is not acknowledged in the first place – even if they have not themselves needed protection or assistance previously – they would not have access to the Article 1D regime, specifically designed for their particular circumstances. A narrow interpretation of the first paragraph of Article 1D would actually lead to the denial of protection for many Palestinians in need of the 1951 Convention protection regime provided by Article 1D, and therefore create protection gaps in that regime.

For the purposes of how this should be approached and reconciled as a matter of European law, UNHCR notes that Article 3 of the Qualification Directive provides that Member States may introduce or retain more favourable standards for determining who qualifies as a refugee. Member States are thus recommended to adopt the more favourable interpretation put forward by UNHCR, which is more in line with the object and purpose of Article 1D.

[11] *Bolbol*, footnote 4 at paras 53 and 57(1).

[12] Ibid., at paras. 53 and 57(1).

3. The inclusion clause contained in the second paragraph of Article 1D/the second sentence of Article 12(1)(a) – persons who are *ipso facto* entitled to the benefits of the 1951 Convention/Qualification Directive because the protection or assistance of UNRWA has "ceased for any reason"

The phrase "ceased for any reason" in the second paragraph of Article 1D of the 1951 Convention/Article 12(1)(a) of the Qualification Directive should not be construed restrictively. The phrase would include the following: (i) the termination of UNRWA as an agency; (ii) the discontinuation of UNRWA's activities; or (iii) any objective reason outside the control of the person concerned such that the person is unable to (re-)avail themselves of the protection or assistance of UNRWA. Both protection-related as well as practical, legal or safety barriers to return are relevant to this assessment.[13]

Objective reasons why the applicant is unable to return or re-avail himself or herself of the protection or assistance of UNRWA would include, but are not limited to:

- Threats to life, physical security or freedom, or other serious protection related reasons.
  - o Examples would include situations such as armed conflict or other situations of violence, civil unrest and general insecurity, or events seriously disturbing public order.
  - o It would also include more individualized threats or protection risks such as sexual and gender-based violence, human trafficking and exploitation, torture, inhuman or degrading treatment or punishment, or arbitrary arrest or detention.

- Practical, legal and safety barriers to return.
  - o Practical barriers would include being unable to access the territory because of border closures, road blocks or closed transport routes.
  - o Legal barriers would include absence of documentation to travel to, or transit, or to re-enter and reside, or where the authorities in the receiving country refuse his or her re-admission or the renewal of his or her travel documents.
  - o Safety barriers would include dangers en route such as mine fields, factional fighting, shifting war fronts, banditry or the threat of other forms of harassment, violence or exploitation.

[13] *UNHCR's Oral Intervention at the Court of Justice of the European Union- Hearing of the case of El Kott and Others v. Hungary (C-364/11),* 15 May 2012, available at: http://http://www.refworld.org/4fbd1e112.html, at para. 19.

Thus a Palestinian falling within the personal scope of Article 1D and who is unable to return to an UNRWA area of operation, for example, where the authorities refuse his or her re-admission or the renewal of his or her travel documents, is a refugee for the purposes of Article 1D of the 1951 Convention.

It is UNHCR's position that where the protection or assistance of UNRWA has ceased "for any reason" within the meaning of Article 1D, a Palestinian refugee (who falls within the personal scope of Article 1D and is eligible for UNRWA assistance), is automatically entitled to the benefits of the 1951 Convention/Qualification Directive.

Broadly similar to UNHCR's position, the CJEU in *Mostafa Abed El Karem El Kott and Others v. Bevándorlási és Állampolgársági Hivatal* held that the phrase "when such protection or assistance has ceased for any reason" (without the position of those persons concerned being definitely settled in accordance with the relevant UN General Assembly resolutions) includes the following situations:

• Situations where a person who, after actually availing him/herself of UNRWA's assistance, ceases to receive it for a reason beyond his/her control and independent of his/her volition which forces him/her to leave the UNRWA area and therefore prevents him/her from receiving UNRWA's assistance. This includes situations where a Palestinian refugee 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.[14]
• The cessation of UNRWA as an agency or the cessation of UNRWA's activities. This would include the fact that it has become impossible for UNRWA to carry out its mission. However, the CJEU noted that it is primarily the actual assistance provided by UNRWA and not the existence of UNRWA as an agency that must cease in order for the second sentence of Article 12(1)(a) to be triggered.[15]

The CJEU's conclusions on the meaning of "ceased for any reason" are nearly identical to UNHCR's position. Likewise, the CJEU held that as refugees, they are entitled to the benefits of the 1951 Convention (and equivalent standards of treatment of refugees in the EU Qualification Directive).[16]

[14] *El Kott*, footnote 4, at paras. 65, 82(1).
[15] Ibid., at paras. 56–58.
[16] Ibid., at paras. 71-74, 81 and 82(2).

4. The Applicability of Articles 1C, 1E or 1F of the 1951 Convention to Palestinian Refugees

Articles 1C, 1E or 1F of the 1951 Convention apply to Palestinians falling within the scope of the second paragraph of Article 1D, even if they remain "Palestine refugees" or "displaced persons" whose position is yet to be definitively settled in accordance with the relevant UN General Assembly resolutions and would otherwise ipso facto be entitled to the benefits of the 1951 Convention.

The CJEU shares UNHCR's view in this regard, such that the exclusion clauses contained in Article 12(1)(b) or (2) and (3) and the cessation clauses contained in Article 11(f), read in conjunction with Article 14(1) of the Qualification Directive, apply to Palestinians falling within the scope of the second sentence of Article 12(1)(a) of the Qualification Directive.[17]

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[17] Ibid., at paras. 76, 77 and 82(2).

Appendix 2

UNHCR's Oral Intervention at the Court of Justice of the European Union Hearing of the case of El Kott and Others v. Hungary (C-364/11) 15 May 2012, Luxembourg

Mr. President, Members of the Court, Madam Advocate General,

Introduction

1. UNHCR has a long tradition of appearing as a third party intervener, or "amicus curiae," in cases raising important points of asylum and refugee law before the European Court of Human Rights and before supreme courts of several EU Member States. UNHCR is very pleased in the present case to make submissions for the second time before this Court.

2. I wish to inform the Court of the presence of representatives of UNHCR, as well as the presence of a representative of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, or UNRWA. UNRWA supports both the written and oral submissions that UNHCR is making in this case.

3. UNHCR has a mandate to provide international protection to refugees, including by supervising the application of relevant international conventions. This supervisory responsibility is recognized in the 1951 Convention relating to the Status of Refugees (the Refugee Convention), and has been acknowledged by a number of international, regional and national courts. UNHCR's supervisory responsibility is also recognized in EU law, including by way of a general reference to the Refugee Convention in Article 78 of the Treaty on the Functioning of the EU and in Declaration 17 to the Treaty of Amsterdam, as well as in the EU asylum acquis, notably through references to the role of UNHCR in the Qualification Directive and the Asylum Procedures Directive.

4. In addressing the two questions posed to the Court by the Metropolitan Court of Budapest in this case, I will divide UNHCR's oral submissions into the following parts:
   - Firstly, I will address the primacy of the Refugee Convention when interpreting and applying EU secondary legislation on asylum, such as the Qualification Directive;
   - Secondly, I will provide UNHCR's position on the interpretation of "benefits of this Directive / benefits of this Convention" (which corresponds to Question 1 referred by the national Court); and
   - Finally, I will address the proper interpretation of the phrase "when such protection or assistance has ceased for any reason" (which corresponds to Question 2 referred to the Court).

1. Primacy of the Refugee Convention & the central role of the Refugee Convention when interpreting and applying the Qualification Directive

5. I will now turn to our first point, notably the central role of the Refugee Convention in the interpretation and application of the legislative instruments of the EU asylum acquis, such as the Qualification Directive.

6. Article 12(1)(a) of the Qualification Directive is based upon, and very largely replicates the wording of, Article 1D of the Refugee Convention. Article 12(1)(a) should therefore be interpreted in accordance with Article 1D of the Refugee Convention. The principle of the primacy of the Refugee Convention, as well as the obligation of EU secondary legislation to conform to the Refugee Convention may be found in a number of European Union legislative instruments, notably Article 78 of the Treaty on the Functioning of the EU, related Commission policy documents, as well as Recitals of the Qualification Directive.

7. This Court has acknowledged this important principle in its judgments of *Salahadin Abdulla and Others, Bolbol,* and *Germany v. B and D*.

8. The principle of primacy is very relevant in the present case, since Article 12(1)(a) of the Qualification Directive largely replicates the wording of Article 1D of the Refugee Convention.

2. Interpretation of "Benefits of this Directive/Benefits of this Convention" (Question #1)

9. I will now address the first question referred to the Court, namely the interpretation of the phrase "benefits of this Directive".

10. As noted in our Written Submissions, the meaning of the phrase "benefits of this Convention" contained in Article 1D refers to the rights and standards of treatment contained in Articles 2 to 34 of the Refugee Convention, and which are attached to refugee status as defined in Article 1 of that Convention.

11. The same meaning must, in our submission, be attributed to Article 12(1)(a) which uses the same language, but with reference to the Qualification Directive. As such, the phrase "the benefits of this Directive" refers to the rights and standards of treatment accorded to refugees under Chapters IV "Refugee Status" and VII "Content of International Protection" of the Qualification Directive.

12. This follows, in our submission, from both the ordinary meaning, and the purpose of Article 1D.

13. With regard to its ordinary meaning, "benefits of the Convention" must mean the

substantive benefits contained in Articles 2 to 34 of the Refugee Convention and Chapters IV and VII of the Qualification Directive. The contrary interpretation distorts the meaning of "benefits". It cannot means simply access to asylum procedures for determining refugee status under Article 1A(2) of the Refugee Convention. Article 1 does not itself contain any benefits – it simply defines who *is* and who *is not* entitled to have access to those benefits. This 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 benefits conferred by the Refugee Convention. It would be very odd if the same word had a different meaning in Article 1D. Furthermore, Article 1D refers to an "*ipso facto*" entitlement, meaning that persons falling within the scope of Article 1D are automatically entitled to the benefits of the Convention. The term "*ipso facto*" would be entirely redundant, in our submission, 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.

14. As to the purpose of Article 1D, the provision aims to ensure continuity of protection of persons whose *refugee character has already been established*. This is an important point in our submission. This is not unlike Article 1A(1) (the provision of the Refugee Convention dealing with "statutory refugees," which I will return to shortly). The purpose of ensuring continuity of protection for Palestinian refugees would not be achieved if Article 1D were interpreted as meaning only access to asylum procedures under Article 1A(2) and the corresponding provisions of the Qualification Directive.

15. Contrary to some of the submissions made to this Court, this construction of Article 1D does not result in discrimination or preferential treatment of Palestinian refugees granted refugee status under Article 1D. It stems from the fact that the Refugee Convention recognizes three categories of refugees in Article 1. The first category is that of "statutory refugees" recognized under Article 1A(1), being those who had been recognized as refugees under preexisting arrangements at the time of the entry into force of the Refugee Convention. The second category covers refugees with a well-founded fear of being persecuted on a Convention ground in Article 1A(2). And the third category of refugees identified by the Refugee Convention are those refugees under Article 1D, only a sub-set of whom are recognized as falling within the Refugee Convention protection scheme.

16. All three categories of refugees who fall within the Convention terms are entitled to the benefits of the Refugee Convention as refugees. 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.

3. Interpretation of "when such protection or assistance has ceased for any reason" (Question #2)

17. I will now turn to provide UNHCR's position on the second question referred to this Court, notably the phrase "when such protection or assistance has ceased for any reason" in the second sentence of Article 1D.

18. As way of background to our submissions on this point, I wish to draw the Court's attention to the two related purposes of Article 1D of the Refugee Convention, and these are:
    - Firstly, to avoid overlapping competencies between UNHCR and other organs or agencies of the UN, in particular UNRWA – this is the justification for the "exclusion clause" found in the first sentence of Article 1D; and
    - Secondly, to ensure the continuity of protection or assistance for Palestinian refugees, in circumstances where that protection or assistance has ceased – this is the justification for the "inclusion clause" found in the second sentence of Article 1D.

19. As we've stated in our Written Submissions, it is UNHCR's position the expression "for any reason," on its plain reading, must not be construed restrictively. Consequently, reasons other than the cessation of UNRWA as an agency or the cessation of UNRWA's activities are valid, and may trigger the application of Article 1D. In particular, the expression "ceased for any reason" would also cover any objective reason outside the control of the person concerned such that they are unable to avail themselves of the protection or assistance of UNRWA.

20. In determining what would be an objective reason outside the control of the person concerned such that "protection or assistance has ceased for any reason," States need to assess whether a Palestinian who falls within the personal scope of Article 1D *cannot* return to an UNRWA area of operation where he or she previously received protection or assistance. This may be the case, for example, where the authorities refuse his or her re-admission or the renewal of his or her travel documents, or, as in this case, because of threats to his or her physical safety or freedom. In such circumstances, the special regime established under Article 1D is triggered so as to ensure the continuity of protection, and the individual Palestinian refugee should be granted refugee status in the EU Member State where he or she has sought asylum. And of course, in carrying out such an assessment, States need to ensure that access to protection is not unduly delayed.

21. This interpretation of Article 1D is consistent with the clear wording of the provision which talks about "any reason" (and its equivalent in Article 12(1)(a) of the Qualification Directive). At the same time, it achieves the objective of Article 1D, namely to ensure the continuity of protection or assistance of Palestinian refugees, until such time as their situation is definitively settled in accordance with

relevant UN General Assembly Resolutions. Moreover, we would point out that where the drafters of the Refugee Convention (and the Qualification Directive) intended to limit the scope of other provisions, they did so expressly and set out the exceptions. In Article 1D there are no such limitations or exceptions.

22. In conclusion:
    - UNHCR's proposed response to Question #1 is that "benefits of the Convention" means the substantive benefits that are attached to refugee status in the Refugee Convention, and the corresponding benefits attached to refugee status in the Qualification Directive.
    - UNHCR's proposed response to Question #2 is that "ceased for any reason" should not be construed restrictively, and should be interpreted as meaning any objective reason outside the control of the person concerned such that the person is unable to avail themselves of the protection or assistance of UNRWA.

It may be that the primary cause of this necessity [of this *Handbook*] 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 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 does not leave one fully confident in the good faith interpretation and implementation of international obligations.

Guy S. Goodwin-Gill

As the *Handbook* concludes at the end of the mapping of national practice, there remains great inconsistency in domestic jurisprudence: there are at least 11 different analyses apparent in the different practices adopted by the countries surveyed. The issue is not simply one of harmonizing state practice: there remains a significant difference in BADIL's interpretation based on expert scholarship and UNHCR and the ECJ approach to 1D. The main difference is in the assessment of what is meant by 'protection' and 'assistance' in the two sentences of Article 1D, and when such 'protection and assistance' has ceased such that Palestinian refugees no longer benefit from the special regime established for them. The key role of the UNCCP and its termination has not been adequately considered by either UNHCR or any judicial authority with regard to what international protection obligations are owed Palestinian refugees. The *Handbook* aims to parse out these ambiguities and point out the errors in existing interpretations and state practice. Until this issue is properly analyzed and corrected, Palestinian refugees will continue to receive lesser protection than they were guaranteed by the international community in the critical period of 1948-1951 when the instruments designed to ensure continuity of protection for them were debated and drafted.

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