

UNHCR Guidelines on International Protection – *Call for comments on:*

Guidelines on International Protection No. [12]: Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees

UNHCR issues its Guidelines on International Protection pursuant to its mandate, as contained in the Office's Statute, in conjunction with Article 35 of the 1951 Convention relating to the Status of Refugees and Article II of its 1967 Protocol. UNHCR Guidelines provide legal interpretative guidance for governments, legal practitioners, decision makers and the judiciary, as well as UNHCR staff carrying out mandate refugee status determination or advising governments on their own procedures.

UNHCR is committed to a broad consultation process in the issuance of its Guidelines on International Protection. Comments will be carefully reviewed to inform our own deliberations, alongside other consultation processes and other relevant instructive sources.

All stakeholders, including States, other UN and regional human rights mechanisms, UN organisations or specialised agencies, National Human Rights Institutions, Non-Governmental Organisations (NGOs), research institutions, and academics are invited to provide their comments in writing to HQPPLA@unhcr.org; *Subject: Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees.*

Submissions should:

- be submitted in English [regrettably we are not able to receive submissions in French at this time];
- be submitted in WORD format;
- submissions may be posted on UNHCR's website.

Deadline:

Comments must be submitted by **9 January 2014**. To facilitate the work of UNHCR, this deadline will be strictly applied.

DRAFT FOR EXTERNAL CONSULTATION

GUIDELINES ON INTERNATIONAL PROTECTION No [12]

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

UNHCR issues these Guidelines pursuant to its mandate, as contained in the Office's *Statute*, in conjunction with Article 35 of the 1951 *Convention relating to the Status of Refugees* and Article II of its 1967 Protocol. These Guidelines complement the UNHCR *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention* (reissued in 2011). They replace the *Revised Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees*, October 2009.

They are intended to provide interpretative legal guidance for governments, legal practitioners, decision-makers and the judiciary, as well as UNHCR staff carrying out mandate refugee status determination.

These Guidelines have been prepared in close cooperation with the United Nations Relief and Works Agency for Palestine Refugees in the Near East ("UNRWA") and have further benefited from broad consultation with a number of internal and external interlocutors.

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

I. INTRODUCTION

1. Article 1D of the 1951 Convention relating to the Status of Refugees (“1951 Convention”), and the equivalent provision in paragraph 7(c) of the 1950 Statute of the Office of the United Nations High Commissioner for Refugees (“UNHCR Statute”),¹ acknowledge that certain categories of refugees may benefit from separate arrangements for their protection or assistance by organs or agencies of the United Nations other than UNHCR.² Article 1D applies to Palestinian refugees, for which a special agency – the United Nations Relief and Works Agency for Palestine Refugees in the Near East (“UNRWA”) – was established by the United Nations in order to respond to their situation.³

2. Article 1D of the 1951 Convention provides:

This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.

3. Article 1D of the 1951 Convention has both exclusionary and inclusionary aspects and its two paragraphs are to be read sequentially. Paragraph 1 generally excludes from the protection of the 1951 Convention those Palestinian refugees who are receiving protection or assistance from UNRWA, while paragraph 2 of Article 1D operates to include those very same Palestinian refugees when that protection or assistance has ceased. Once the protection or assistance has ceased for reasons beyond their control and independent of their volition, they are entitled to benefit ipso facto from the protection of the 1951 Convention. No separate assessment under Article 1A is required. For Palestinian refugees granted refugee status pursuant to the 1951 Convention, it is without prejudice to their rights in accordance with General Assembly Resolution 194 (III) and subsequent resolutions.⁴

4. Drawing on State practice, including the latest international jurisprudence, as well as the views of leading jurists on this issue, these Guidelines set out the interpretation of Article 1D of the 1951 Convention in respect of Palestinian refugees applying for Convention refugee status. The same

¹ United Nations General Assembly Resolution 428 of 14 December 1950, available at: <http://www.unhcr.org/3b66c39e1.html>.

² United Nations General Assembly Official Records, fifth session, Third Committee, 328th meeting, 27 November 1950, para. 45. Palestinian refugees are effectively the only group so far placed outside the protection regime established by the UNHCR Statute and the 1951 Convention. With the global mandate of UNHCR conferred by the 1950 Statute, it is difficult to envisage that Article 1D could have an application outside the Palestinian case.

³ UN General Assembly Resolution 302 (IV), *Assistance to Palestine Refugees*, 8 December 1949, A/RES/302. This resolution created the United Nations Relief and Works Agency for Palestine Refugees in the Near East (“UNRWA”), which has responsibilities to provide assistance and protection to Palestinian refugees. The United Nations Conciliation Commission for Palestine (“UNCCP”) was established by GA Resolution 194 (III), *Palestine - Progress Report of the United Nations Mediator*, 11 December 1948, A/RES/194, to *inter alia* “facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation, and to maintain close relations with the Director of the United Nations Relief for Palestine Refugees and, through him, with the appropriate organs and agencies of the United Nations.” (para. 11). The General Assembly has since noted on an annual basis that UNCCP has been unable to find a means of achieving progress in the implementation of paragraph 11 of Resolution 194 (III). See, most recently, **Resolution 67/114 of 18 December 2012**. See, *Bolbol v. Bevándorlási és Állampolgársági Hivatal*, C-31/09, CJEU, 17 June 2010, para. 44, available at: <http://www.refworld.org/docid/4c1f62d42.html> (“*Bolbol*”): “It is not in dispute that UNRWA constitutes one of the organs or agencies of the United Nations other than UNHCR which are referred to in Article 12(1)(a) of the Directive and in Article 1D of the Geneva Convention ...”.

⁴ GA Resolution 194 (III), *ibid.* See, also, UN General Assembly Resolution 2452 (XXIII) A of 19 December 1968, which called for the return of the “displaced persons”, as reiterated by subsequent UN General Assembly resolutions on an annual basis, including in **Resolution 65/99 of 10 December 2010** 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.”

interpretation of Article 1D outlined in these Guidelines is to apply also in respect of paragraph 7(c) of the Statute of UNHCR.⁵

5. These Guidelines provide UNHCR's substantive interpretation of Article 1D (Part II), and also deal with a number of key procedural and evidentiary matters (Part III).

6. For the purposes of these Guidelines, 'Palestinian refugees' is used as shorthand to encompass "Palestine refugees", "displaced persons" and "descendants" or either of these groups collectively, whose position has not been definitively settled in accordance with relevant resolutions of the UN General Assembly (see Part II. C. below).

II. SUBSTANTIVE ANALYSIS

A. Object and purpose

7. Article 1D of the 1951 Convention has two related purposes, which guide its interpretation and application. The first purpose of Article 1D is to ensure the continuity of rights and status of Palestinian refugees as refugees until their position has been definitively settled in accordance with the relevant resolutions of the General Assembly;⁶ the second is to avoid overlapping competencies between UNHCR and other organs or agencies of the United Nations, notably UNRWA.⁷ In this latter regard, it should be noted that UNRWA's areas of operation are limited to Jordan, Lebanon, the Syrian Arab Republic, the West Bank (including East Jerusalem) and Gaza. The mandate of UNHCR is, on the other hand, global.⁸

B. Sequential reading

8. The two paragraphs in Article 1D operate sequentially and are not mutually exclusive. Decision-makers need to assess, first, whether the Palestinian applicant for Convention refugee status is excluded under the first paragraph of Article 1D (that is, that he or she falls within the class of Palestinians to which its scope extends because he or she is receiving or eligible to receive the protection or assistance of UNRWA) and then second, whether they are included under the second paragraph owing the cessation of that protection or assistance.

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

9. The first paragraph of Article 1D of the 1951 Convention excludes from 1951 Convention protection certain 'Palestinian refugees' whose refugee character is already established pursuant to relevant General Assembly resolutions, as well as their descendants, and who are receiving or eligible to receive the protection or assistance of UNRWA. Palestinian refugees falling within the scope of Article 1D are the following:

⁵ Paragraph 7(c) of the 1950 Statute indicates that the competence of the High Commissioner shall not extend to a person who "continues to receive from other organs or agencies of the United Nations protection or assistance". Even though the 1950 Statute does not contain an equivalent second paragraph of Article 1D, it has been widely accepted that paragraph 7(c) should be read in conjunction with Article 1D: see, M.M. Qafisheh and V. Azarov, 'Article 1D', in A. Zimmermann (ed.), *The 1951 Convention relating to the Status of Refugees and its 1967 Protocol: A Commentary*, (Oxford University Press, 2011), 537-569, at 547 [15-16]. Pursuant to its global mandate, UNHCR is the agency responsible for Palestinian refugees outside UNRWA's areas of operation, or where the protection or assistance of UNRWA has ceased in accordance with Article 1D/paragraph 7(c).

⁶ Of the two purposes, Goodwin-Gill notes that the main emphasis of the drafters was on the continuity of protection: G. Goodwin-Gill and J. McAdam, *The Refugee in International Law* (Oxford University Press, 2007, 3rd ed.), p. 152.

⁷ Since 2005, UNHCR and UNRWA hold annual high-level meetings in order to address issues of common concern. Since 2010, a joint working group has also been established which remains in regular contact and meets in person twice per year. Key positions that UNHCR has issued since 2009 on the interpretation of Article 1D (including submissions in the framework of court interventions) have been discussed and agreed upon with UNRWA.

⁸ UNHCR, *Note on the Mandate of the High Commissioner for Refugees and his Office*, October 2013, available at: <http://www.refworld.org/docid/5268c9474.html>.

10. **Palestine refugees:** “Palestine refugees” are Palestinians within the sense of UN General Assembly Resolution 194 (III) of 11 December 1948 and subsequent UN General Assembly Resolutions⁹ who, as a result of the 1948 Arab-Israeli conflict, were displaced from that part of Mandate Palestine which became Israel, and who have been unable to return there.¹⁰ The definition of “Palestine refugee” eligible for registration with UNRWA is the following: “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.”¹¹

11. **Displaced persons:** “displaced persons” are Palestinians within the sense of UN General Assembly Resolution 2252 (ES-V) of 4 July 1967 and subsequent UN General Assembly resolutions¹² who, as a result of the 1967 and other hostilities, have been displaced from the Palestinian territory occupied by Israel since 1967 and have been unable to return there.¹³

12. **Descendants:** “descendants” refers to all persons born to Palestine refugees or displaced persons. Based on principles of gender equality and non-discrimination on the basis of sex, these descendants, whether or not they are descended through the male or female line, are entitled to apply for refugee status pursuant to Article 1D.¹⁴

⁹ 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 General Assembly. However, for early work on interpreting the term, see for example the following documents of the 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. See also 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; as well as 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.

¹⁰ The UN General Assembly resolved in para. 11 of Resolution 194 (III) that “the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date” and that “compensation should be paid for the property of those choosing not to return and for loss of or damage to property”. In the same paragraph, the General Assembly instructed the UNCCP to “facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation” (see above n. 2).

¹¹ See UNRWA’s Consolidated Eligibility and Registration Instructions (October 2009), page 3, available at: <http://www.unrwa.org/userfiles/2010011995652.pdf>. The General Assembly has impliedly approved this definition, which is used in the annual reports of the Commissioner-General of UNRWA. The General Assembly never adopted a Statute governing the functioning of UNRWA, as it did for UNHCR. As a result, the definition of Palestine refugees has also relied on the work of UNRWA. See also, A. Takkenberg, *The Status of Palestinian Refugees in International law* (Reeks Recht En Samenleving, 1997), p. 69, para. 92 and p. 84, para. 112; L. Bartholomeusz, ‘The Mandate of UNRWA at 60’ (2009) 28 *Refugee Survey Quarterly* 452-474; M.M. Qafisheh and V. Azarov, ‘Article 1D’, in A. Zimmermann (ed.), *The 1951 Convention relating to the Status of Refugees and its 1967 Protocol: A Commentary*, (Oxford University Press, 2011), 537-569.

¹² UNRWA’s mandate for “displaced persons” was established pursuant to UN GA Resolution 2252 (ES-V) of 4 July 1967 and subsequent GA resolutions. In accordance with its mandate, UNRWA may assist persons displaced by hostilities subsequent to 1967 who are neither 1948 Palestine refugees, 1967 displaced persons nor their descendants. Whether they would be included within the first paragraph of Article 1D would be subject to a UN resolution. Should such persons be displaced only internally, they would not fall within the 1951 Convention, where there is a general requirement to be outside one’s country of origin or habitual residence.

¹³ UN General Assembly Resolution 2452 (XXIII) A of 19 December 1968 called for the return of the “displaced persons”, as reiterated by subsequent UN General Assembly resolutions on an annual basis. See, also, *Bolbol*, para. 47: “[...] it cannot be maintained, as an argument against including persons displaced following the 1967 hostilities within the scope of Article 1D of the Geneva Convention, that only those Palestinians who became refugees as a result of the 1948 conflict who were receiving protection or assistance from UNRWA at the time when the original version of the Geneva Convention was concluded in 1951 are covered by Article 1D of that convention [-]”

¹⁴ UNRWA’s Consolidated Eligibility and Registration Instructions (CERI) (2009), at Part III(A)(I), p. 3, provide that “Palestine Refugees, and descendants of Palestine refugee males, including legally adopted children, are eligible to register for UNRWA services.” Descendants of women who are Registered Refugees and are (or were) married to husbands who are not registered refugees are not considered to meet UNRWA’s Palestine refugee criteria, but they (including legally adopted children) “are eligible to register to receive UNRWA services”. Part II(A)(2). Including within the first paragraph of Article 1D of the 1951 Convention descendants of a Palestine refugee woman and a non-refugee would be compatible with the principle of non-discrimination on the basis of sex and avoid serious consequences for family unity. Further, the approach adopted in these Guidelines, which recognises descendants of Palestinian refugees, is identical to UNHCR’s general

13. **Derivative status:** For non-Palestinian-refugee spouses and children of Palestine refugees or displaced persons, who are not independently entitled to refugee status per Article 1D, they would normally acquire derivative status.

14. **UNRWA's 'areas of operation':** UNRWA has competence in five geographical areas or fields of operation: Jordan, Lebanon, the Syrian Arab Republic, the West Bank (including East Jerusalem) and Gaza. Taken together, these territories constitute UNRWA's areas of operation, in which it provides protection or assistance to a population of over five million registered Palestinians.¹⁵

15. Based on the dual purposes of Article 1D (see II. A. above), the first paragraph of Article 1D covers both Palestinians who are eligible to receive¹⁶ as well as those who were actually receiving the protection or assistance of UNRWA prior to a request for refugee status under the 1951 Convention. The wording 'at present' is to be read to mean 'persons who were and/or are now receiving' protection or assistance,¹⁷ or are eligible for such protection or assistance. By capturing both within Article 1D, the continuing refugee character of Palestinian refugees is acknowledged and protection gaps are avoided. An interpretation of the first paragraph of Article 1D to cover only those who had 'actually availed' themselves of the protection or assistance of UNRWA would result in the denial of protection for some Palestinian refugees in need of the 1951 Convention protection regime provided by Article 1D, and therefore create protection gaps in that regime.¹⁸ For example, children born to Palestinian refugees, whether born inside or outside an UNRWA area of operation, would be eligible to be registered by UNRWA at birth but may not yet be 'actually availing' themselves of that protection or assistance until they are registered. Another example would be Palestinian refugees who are not aware that they are eligible to receive UNRWA's protection or assistance, but later learn that they are eligible. It is accepted that registration with UNRWA is conclusive proof of receiving protection or assistance of UNRWA (see Part III), although it is not a precondition to protection under Article 1D.¹⁹ It is also conclusive proof of eligibility for UNRWA's protection or assistance.

16. Finally, this interpretation – supported by both UNHCR and UNRWA – is the only one that rightly excludes from UNHCR's mandate those Palestinians who are eligible for UNRWA's protection or assistance inside an UNRWA area of operation, yet have not previously needed to avail themselves of that protection or assistance.²⁰

approach to protracted refugee situations in which children born to refugees in exile are registered as refugees until a durable solution has been found.

¹⁵ For latest UNRWA figures, see: <http://www.unrwa.org/>.

¹⁶ Position supported by, for example, Goodwin-Gill and McAdam, p. 158.

¹⁷ Goodwin-Gill and McAdam, p. 157, rejecting the decision of the United Kingdom Court of Appeal in *El-Ali and Daraz v. Secretary of State for the Home Department* [2002] EWCA Civ. 1103 (26 July 2002), which accepted only historical refugees from 1951. The Advocate General in *El Kott* also rejected the 'historical' argument: Advocate General's Opinion in *El Kott*, 13 September 2012, ECLI:EU:C:2012:569, paras. 51-52, n. 24 (in relation to 'at present receiving'), <http://curia.europa.eu/juris/celex.jsf?celex=62011CC0364&lang1=en&type=TEXT&ancre=>.

¹⁸ This interpretation is distinct from the position taken by the CJEU in *Bolbol*, where only those who had 'actually availed' themselves of that protection or assistance were considered to fall within the first paragraph of Article 1D, based on a 'clear reading' of Article 1D (para. 51). It is UNHCR's view that the provision is not clear on this point. The CJEU did accept, however, that registration was sufficient proof to establish this, while also noting that it was not necessary to be considered to fall within Article 1D (para. 52).

¹⁹ *Bolbol*, para. 52.

²⁰ Cf. the CJEU in *Bolbol* 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 not fall within the first paragraph of Article 1D and, as such, would need to make their application for refugee status via Article 1A(2) of the 1951 Convention. It is UNHCR and UNRWA's view that interpreting Article 1D not to cover eligible Palestinian refugees for UNRWA's protection or assistance would lead to the duplication of mandates over the same refugee population between UNHCR and UNRWA inside UNRWA's areas of operation and that this same interpretation ought to guide the interpretation of the provision outside UNRWA's areas of operation. For the purposes of how this should be approached and reconciled as a matter of European Union law, UNHCR notes that Article 3 of the European Union: 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)*, 20 December 2011, OJ

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

17. On an ordinary reading of the phrase “ceased for any reason” and in line with Article 1D’s object and purposes, the second paragraph of Article 1D should not be construed restrictively. It covers a range of circumstances beyond an applicant’s control and independent of their volition.²¹ It does not, however, extend to those who for mere personal convenience are absent from an UNRWA area of operation.²² While the drafters of the 1951 Convention envisaged primarily the application of the second paragraph in the event of the cessation of UNRWA as an agency, the *travaux préparatoires* confirm that other interpretations were not excluded.²³ Importantly, where the drafters intended to limit the scope of provisions in other parts of the Convention, they did so explicitly and outlined the possible exceptions.²⁴

18. The assessment needs to be carried out having regard to UNRWA’s mandate and operations, the situation in the host country and the circumstances of the individual.

Circumstances beyond the person’s control and independent of their volition

19. Reasons attributable to circumstances beyond that person’s control and independent of their volition²⁵ include:

(a) **Termination of the mandate of UNRWA or discontinuation of its protection or assistance.** Termination of UNRWA’s mandate would be based upon a resolution of the United Nations General Assembly, while discontinuation of assistance or protection would be determined as a matter of fact, on an area of operation or country-wide basis. This might occur where, notwithstanding that the agency continued to exist, it had become impossible for UNRWA to carry out its mission.²⁶

(b) **Serious threats to life, physical integrity, security or liberty or other serious protection-related reason.** Examples of such serious threats would include group-based threats such as armed conflict or other situations of violence, such as civil unrest, widespread insecurity or events seriously disturbing public order. Other examples would be threats of a more individualized nature, such as sexual or gender-based violence, human trafficking and exploitation, torture, inhuman or degrading treatment or punishment, or arbitrary arrest or detention. Where the threat emanates from agents of the host State,

L 337; December 2011, pp 9-26, available at: <http://www.refworld.org/docid/4f197df02.html>, 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: *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, available at: <http://www.refworld.org/docid/518cb8c84.html>.

²¹ A restrictive interpretation of ‘for any reason’ would not be in accordance with the object and purposes of Article 1D, which is to ensure inter alia the continuity of protection for Palestinian refugees.

²² *Mostafa Abed El Karem El Kott and Others v. Bevándorlási és Állampolgársági Hivatal ('El Kott')*, C-364/11, European Union: Court of Justice of the European Union, 19 December 2012, para. 51, available at: <http://www.refworld.org/docid/50d2d7b42.html>.

²³ See for example the statement of the Egyptian delegate at the Third Committee of the General Assembly (Fifth Session, 344th Meeting, 11 December 1950, paragraph 13) and at the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons (20th meeting: UN doc. A/CONF.2/SR.20, pp. 8-9). See also the views of the French delegate at the Conference (Summary of the 2nd Meeting: UN doc. A/CONF.2/SR.2, p. 27).

²⁴ For example, the drafters of the 1951 Convention set out, in a clearly limited fashion, the list of grounds on which refugee status may be considered to have ceased under Article 1C of the 1951 Convention. See, *El Kott*, para. 57.

²⁵ *El Kott*, para. 58.

²⁶ *El Kott*, para. 56.

automatic recognition under Article 1D would be required. Regardless of the willingness of UNRWA to provide protection or assistance to individuals at risk, it is not in a position to protect effectively a Palestinian refugee against such threats from the host State anywhere within its areas of operation. Although a Palestinian refugee at risk of persecution would be protected by Article 1D, they are not required to establish a well-founded fear of being persecuted to qualify for refugee status under Article 1D.

(c) Practical, legal and/or safety barriers preventing an applicant from re-availing him/herself of the protection or assistance of UNRWA. Practical barriers include being unable to access the area of operation, for example, because of border closures. Legal barriers would include absence of documentation allowing the individual to travel to, or transit through, or re-enter and reside in the relevant UNRWA area of operation. Where the authorities in the host country refuse readmission or the renewal of travel or other requisite documents, the inclusion paragraph of Article 1D would be satisfied. An applicant would not, however, benefit from protection under Article 1D if he or she were to seek to frustrate his/her readmission and stay by refusing to co-operate, for example, in acquiring documents.²⁷ That would not be a reason beyond his or her control. Safety barriers preventing return would include unreasonable dangers en route such as mine fields, factional fighting, shifting war fronts or the threat of other forms of harassment, violence or exploitation, preventing the applicant from being able to return safely. Up-to-date information on the realities of being able to re-avail oneself of the protection or assistance is required. The likelihood of return cannot be assessed in the abstract.

20. The reasons listed above are alternative, not conjunctive, examples. Depending on the case at hand, one or more of the aforementioned factors may however be present. While the inclusionary paragraph of Article 1D will be established where, for example, an applicant was forced to leave the area of operation of UNRWA because his or her personal safety was a serious risk and it was impossible for UNRWA to guarantee his or her living conditions commensurate with the mission entrusted to it,²⁸ requiring both of these elements to be present would be inherently problematic. Should an applicant be at serious risk to their personal safety – for example, because of threats of unlawful killing, abduction or armed violence, they would be a refugee under Article 1D where they cannot receive effective protection against such threats. The assistance provided by UNRWA commensurate with their mission in the form of cash or food, for example, would be irrelevant to their need for international protection under Article 1D.

21. The evidentiary aspects of establishing these circumstances are dealt with in Part III.

Sur place claims

22. “Ceased for any reason” does not include reasons of mere personal convenience for being absent from an UNRWA area or for refusing to re-avail oneself of the protection or assistance of UNRWA.²⁹ On the other hand, if the applicant concerned departed voluntarily from an UNRWA area of operation (for example, for study or work purposes), and finding him/herself outside an UNRWA area of operation and being unable or unwilling to re-avail him/herself of that protection or assistance for one or more of the above-mentioned reasons, they would benefit from 1951 Convention under Article 1D

²⁷ Article 2 of the 1951 Convention notes that every refugee has duties to the country in which he finds himself, which require in particular that he or she conform to its laws and regulations as well as to measures taken for the maintenance of public order.

²⁸ *El Kott*, para. 65. It is UNHCR’s reading of this judgment, in the context of the facts before it, that the CJEU accepted that such circumstances ‘will’ fall within the second paragraph of Article 1D. The CJEU did not however exhaust the circumstances in which such protection or assistance would be considered ceased, as this will depend on the case at hand.

²⁹ This interpretation is closely aligned with State practice which has not broadly accepted automatic entitlement to Article 1D by the mere fact of being outside an UNRWA area of operation.

(sur place claims).³⁰ The recognition of sur place claims of Palestinian refugees under Article 1D would be in line with general principles of international refugee law applicable to Article 1 of the 1951 Convention that accept sur place refugee claims, recognising that changes in the country of origin whilst abroad may make them a refugee.³¹ Also, a person may become a refugee sur place as a result of his or her own actions, such as associating with refugees already recognized, or expressing political views in his or her country of residence or study.³² In recognising this general position, an understanding of ‘beyond their control and independent of their volition’ cannot be read as requiring, for example, politically active Palestinian refugees who may attract adverse attention because of their beliefs or activities, and who may even do so at great personal risk to themselves or their families, from benefiting from the protection of Article 1D. To deny refugee status to Palestinian refugees on this basis would be contrary to the very purpose of Article 1D.³³ A careful examination of the circumstances in each case would be required.

Last place of habitual residence

23. Consistent with general principles of international refugee law, the assessment as to whether protection or assistance has ceased is to be made vis-à-vis the UNRWA area of operation where the applicant had his or her last place of habitual residence.³⁴ The assessment ought not be made against each of UNRWA’s areas of operation, nor in relation to an UNRWA area of operation to which the individual has no previous connection. In refugee claims generally, the relevant assessment is as to whether an individual can (re-)avail him/herself of the protection of his or her country of origin or, the case of stateless applicants, his or her place of former habitual residence. The assessment is not as to whether he can be returned to *any* State. That would be to ignore the general workings of the State-based system of international relations and impose unreasonable and insurmountable obstacles on asylum applicants. ‘Habitual residence’, for the purpose of these Guidelines, refers to lawful and secure residency status in the State/territory. It does not cover temporary or short-term stay, mere transit or visit [see also Part III below].³⁵

Circumstances in the host State

24. Subject to paragraphs 39-40 below [ref here to paragraphs on Article 1E], although Article 1D focuses on the cessation of the protection or assistance of UNRWA, the situation in the State in whose jurisdiction UNRWA is operating will not only be relevant but may be decisive. For example, the State – not UNRWA – will control whether a Palestinian refugee will be permitted to re-enter their

³⁰ *El Kott*, para. 59 (amended).

³¹ *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, (‘Handbook’), 1979, re-issued December 2011, HCR/1P/4/ENG/REV. 3, available at: <http://www.refworld.org/docid/4f33c8d92.html>, paras. 94-96 on sur place claims relating to Article 1A(2) of the 1951 Convention. There is no reason to apply a different approach to Palestinian claimants under Article 1D.

³² Handbook, para. 96.

³³ By analogy on the general position that one cannot be required to conceal or be discreet about a protected characteristic, see *X, Y, Z v Minister voor Immigratie en Asiel*, C-199/12 - C-201/12, European Union: Court of Justice of the European Union, 7 November 2013, available at: <http://www.refworld.org/docid/527b94b14.html>; UN High Commissioner for Refugees (UNHCR), *UNHCR intervention before the Court of Justice of the European Union in the cases of Minister voor Immigratie en Asiel v. X, Y and Z*, 28 September 2012, C-199/12, C-200/12, C-201/12, available at: <http://www.refworld.org/docid/5065c0bd2.html>; Joined cases of C-71/11 and C-99/11, *Bundesrepublik Deutschland v Y and Z, Judgment of the Court (Grand Chamber) of 5 September 2012* available at <http://www.refworld.org/pdfid/505ace862.pdf>; *HJ (Iran) and HT (Cameroon) v. Secretary of State for the Home Department*, [2010] UKSC 31, United Kingdom: Supreme Court, 7 July 2010, available at: <http://www.unhcr.org/refworld/docid/4c3456752.html>; *Appellant S395/2002 v. Minister for Immigration and Multicultural Affairs*; *Appellant S396/2002 v. Minister for Immigration and Multicultural Affairs*, [2003] HCA 71, Australia: High Court, 9 December 2003, available at: <http://www.refworld.org/docid/3fd9eca84.html>, paras. 78-83; *RT (Zimbabwe) and others v Secretary of State for the Home Department*, [2012] UKSC 38, United Kingdom: Supreme Court, 25 July 2012, available at: <http://www.refworld.org/docid/500fdacb2.html>.

³⁴ See also, *El Kott*, para. 77: ‘... the person concerned ceases to be a refugee if he is able to return to the UNRWA area of operations in which he was formerly habitually resident because the circumstances which led to that person qualifying as a refugee no longer exist.’

³⁵ For the meaning of ‘habitual residence’, see UNHCR, “*Lawfully Staying*” - A Note on Interpretation, 3 May 1988, p. 3, available at: <http://www.refworld.org/docid/42ad93304.html>.

territory and re-establish him/herself there, including whether her or she is able to obtain the necessary legal documentation of a right to stay in the State.³⁶ These assessments are to be based on reliable and up-to-date information, and special care needs to be exercised where the situation is fluid or unclear.

25. Despite the recognition of the Status of Palestine by the UN General Assembly,³⁷ Article 1D should continue to be interpreted and applied in the ordinary way, as outlined in these Guidelines. Whether a Palestinian refugee is considered a national of the State of Palestine or stateless is not determinative to the applicability of Article 1D to their individual case. What is determinative is whether the protection or assistance of UNRWA has ceased as outlined in [paragraph 19 above](#).

Personal circumstances of applicant

26. Whether the protection or assistance of UNRWA has ceased for the purposes of Article 1D would generally take account of the personal circumstances of the applicant.³⁸ Applicants to whom Article 1D may apply will have differing personal circumstances which may bear on the availability to them of the protection or assistance of UNRWA. Each claim must be determined on its individual merits, enabling consideration of elements that may be specific to each and any applicant. These personal circumstances may including age, sex, gender, sexual orientation and gender identity, health, disability, civil status, family situation and relationships, social or other vulnerabilities, ethnic, cultural or religious considerations, political and social links and compatibility, language abilities, and any past experiences of serious harm and its psychological effects.

Internal relocation

27. As far as internal relocation is concerned, in the absence of personal factors preventing internal relocation within the same UNRWA area of operation, the protection or assistance of UNRWA will not have ceased if an individual is able to access and receive protection or assistance of UNRWA elsewhere in the same area of operation. For example, if a camp is destroyed by an armed attack and the protection or assistance of UNRWA is as a matter of fact available elsewhere within another part of the area of operation, and the individual has access to that protection or assistance, then the second paragraph of Article 1D will not be satisfied. On the other hand, it cannot be expected that the applicant relocate to a different UNRWA area of operation with which he or she has no previous connection. As noted at [paragraph 23 above](#), the assessment as to the application of the second paragraph of Article 1D is to be carried out vis-à-vis the UNRWA area of operation where they had their last place of habitual residence.

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

28. When it is established that UNRWA’s protection or assistance has ceased for any of the reasons mentioned in [paragraphs 19](#), the Palestinian refugee is automatically or “ipso facto” entitled to the benefits of the 1951 Convention, provided Articles 1C, 1E or 1F of the 1951 Convention do not apply [see [paragraphs 31-41 below](#)].³⁹

29. The phrase “benefits of this Convention” in the second paragraph of Article 1D refers to granting of Convention refugee status and the enjoyment of the rights and standards of treatment contained in

³⁶ For example, in relation to the occupied West Bank, the position of the Israeli authorities will be determinative. Likewise, for passage across the border to Gaza, permission from Egypt is likely to be required, and at times, the border is closed.

³⁷ UNGA Resolution 67/19, *Status of Palestine in the United Nations*, 29 November 2012, available at:

http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/67/19.

³⁸ An exception would be in circumstances where UNRWA has ceased to operate as an agency [see paragraph 19(a) above].

³⁹ *El Kott*, paras. 80-81. See also *UNHCR written intervention before the Court of Justice of the European Union in the case of El Kott and Others v. Hungary*, 27 October 2011, para 4.3, C-364/11, available at: <http://www.refworld.org/docid/4eaa95d92.html>.

Articles 2 to 34 of the 1951 Convention and which are attached to being a refugee as defined in Article 1 of the 1951 Convention. An automatic or “ipso facto” entitlement also means that no separate determination of well-founded fear in the sense of Article 1A(2) is required.⁴⁰ This interpretation is in line with the object and purpose of Article 1D, which is to ensure continuous protection for an already established and clearly identified refugee group,⁴¹ and is supported by the equally authentic French version of Article 1D, which uses the expression ‘*bénéficieront de plein droit du régime de cette convention.*’ They benefit ‘as of right’ once they fulfil the criteria in Article 1D.⁴²

F. Applicability of Article 1C

30. Under the 1951 Convention it is recognised that refugee status ends under certain clearly defined conditions in Article 1C. This means that refugees maintain their Convention refugee status unless they fall within the cessation clauses of the 1951 Convention, or their status is cancelled or revoked on other grounds.⁴³ Noting the underlying premise of finding durable solutions for refugees,⁴⁴ and that applying the cessation clauses should not result in persons residing in host States with an uncertain status, the cessation clauses should be applied cautiously.⁴⁵ Procedures for applying them need to be fair, clear and transparent.⁴⁶

31. The application of Article 1C applies in principle to Palestinian refugees benefiting from the 1951 Convention. Although a literal interpretation of Article 1C, which explicitly references only refugees recognised under ‘Article 1A’ of the 1951 Convention, would render it inapplicable to the case of Article 1D Palestinian refugees, a number of Palestinian refugees have acquired, for example, the nationality of their country of asylum providing them with protection, such that they no longer need the protection of the 1951 Convention. At the time of drafting Article 1D, it was not envisaged that some Palestinian refugees would obtain the nationality and its effective protection in any country other than through final settlement. Should a Palestinian’s refugee status under the 1951 Convention cease pursuant to one of the sub-clauses in Article 1C, his or her status as a Palestine refugee or displaced person for the purposes of UNRWA’s registration, and/or final settlement, would not be affected.⁴⁷

32. Should a Palestinian refugee benefiting from 1951 Convention protection voluntarily re-avail him/herself of the protection of the country of his or her nationality, or acquire a new nationality and enjoy the protection of that nationality, his or her status as a 1951 Convention refugee ceases.⁴⁸ The most relevant sub-clauses in respect of Palestinian refugees are those in Article 1C(1), (3) and (5) or (6).

⁴⁰ *El Kott*, para. 81.

⁴¹ This position is shared by many leading jurists: Atle Grahl-Madsen, *The Status of Refugees in International Law. Vol. 1. Refugee Character* (Leyden: Sijthoff 1966), p. 264; Guy Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (Oxford: Oxford University Press, 2007), pp. 153-159; Mutaz M. Qafisheh and Valentina Azarov, ‘Article 1D’, Mutaz M. Qafisheh and Valentina Azarov, “Article 1D”, in: Andreas Zimmermann (ed.), *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, A Commentary* (Oxford: Oxford University Press, 2011), pp. 568-569 see above footnote 43, pp. 565-568.

⁴² *El Kott*, paras. 70-71.

⁴³ UNHCR Handbook, para. 112. On distinction between cessation, cancellation and revocation, see UNHCR, *Guidelines on International Protection No. 3: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the “Ceased Circumstances” Clauses)*, (‘Guidelines No. 3’), 10 February 2003, HCR/GIP/03/03, para. 4, available at: <http://www.refworld.org/docid/3e50de6b4.html>.

⁴⁴ UNHCR Statute, para. 1; 1951 Convention, Art. 34.

⁴⁵ Guidelines No. 3, paras. 6 and 7.

⁴⁶ Guidelines No. 3, paras. 6 and 7.

⁴⁷ See, above n. 3.

⁴⁸ UNHCR, *The Cessation Clauses: Guidelines on their Application*, January 1992, available at: <http://www.refworld.org/pdfid/3c06138c4.pdf>. These Guidelines remain on foot as far as Article 1C(1)-(4) is concerned, but have been replaced by *Guidelines on International Protection No. 3*, in respect of Article 1C(5)-(6).

33. Article 1C(1) applies to the situation of a Palestinian refugee who voluntarily re-avails him/herself of the protection of the country of his/her nationality. This may be the case, for example, where a recognised Palestinian refugee under Article 1D, who holds a certain nationality, seeks diplomatic protection from country, of his or her own free will, while in exile. Mere attempts or unsuccessful attempts would not be sufficient, as the protection must have been received. Each case needs to be assessed on its individual merits.⁴⁹

34. In order for Article 1C(3) to apply, not only must a new nationality have actually been acquired by the person in question, but the nationality must be effective.⁵⁰ The new nationality must be effective in general, and in particular, protect them against the reasons for their Convention refugee status such that they can be said to no longer be in need of international protection under the 1951 Convention [see paragraph 19]. Article 1C(3) refers not to the normalisation of relations between the refugee and his or her country of origin or former habitual residence, but to the establishment of relations between the refugee and a new country.⁵¹ Ordinarily, therefore, the new nationality referred to in Article 1C(3) is that of the country of asylum. Acquisition of nationality is assessed on the basis of national law and its implementation in practice. The possession of a passport of a country ordinarily gives rise to a rebuttable presumption that the bearer of the passport is a national of the country of issuance.⁵²

35. As to the acquisition of Palestine nationality,⁵³ Palestine does not yet have a nationality law so other elements of State practice need to be examined, such as the practice of the competent authorities with regard to issuance of documentation proving nationality. As mentioned above, the possession of a passport ordinarily gives rise to a presumption that the bearer is a national of the country of issuance. The Palestinian Authority issues passports and identity cards, which suggest that the holders of such documents are considered to be nationals of the State of Palestine. However, as the practice and the basis for issuance of such documents needs to be clarified, at present possession of or absence of a Palestinian passport or ID cannot be regarded as proof of possession or lack of Palestinian nationality. As a result of the foregoing, there is still uncertainty as to who is considered as a national of Palestine.⁵⁴

36. For Palestinians from Gaza or the West Bank where it is assessed that they possessed Palestine nationality at the time of their departure, Article 1C(3) would not apply to them as it would not be considered that their Palestine nationality is a 'new' nationality.⁵⁵ Article 1C(1) may be applicable should they re-avail themselves of the protection of that nationality. For Palestinians not holding Palestine nationality at the time of their departure from their country of former habitual residence, it would need to be established that they had acquired the nationality of the State of Palestine and they enjoy the protection of that nationality, including providing protection against their reasons for flight and they are permitted to enter and establish themselves in the State of Palestine.

37. In applying Article 1C, a clear distinction in the case of Palestinian refugees must be drawn between the cessation of refugee status and the acquisition of a nationality. The acquisition of a nationality may end the stateless status of that individual, yet it is insufficient on its own to cease their

⁴⁹ Ibid., paras. 6-11.

⁵⁰ It should be noted in respect of Jordanian nationality some Palestinians have been issued with a type of Jordanian passport without the conferral of nationality. Particular care in assessing the serial numbers of the passports would be required.

⁵¹ Ibid., para. 15.

⁵² UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014, para. 95, available at: <http://www.refworld.org/docid/53b676aa4.html>.

⁵³ UNGA Resolution 67/19, *Status of Palestine in the United Nations*, 29 November 2012, available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/67/19. See, also, International Law Commission, Articles on the Nationality of Natural Persons in Relation to the Succession of States, *Yearbook of the International Law Commission*, 1999, vol. II, Part Two.

⁵⁴ The UNHCR, *Handbook on Protection of Stateless Persons* provides further guidance.

⁵⁵ In such cases, Palestinian nationality would not be considered a 'new' nationality and as such, Article 1C(3) is not the applicable cessation clause.

refugee status. Refugee status can only be ended in accordance with the sub-clauses of Article 1C, as explained above.

38. In respect of applying the ‘ceased circumstances’ clauses in Article 1C(5)-(6), in which refugee status is considered to end based on fundamental, stable and durable changes in the country of origin or former habitual residence upon which the refugee status was based, it is UNHCR’s view that the primary triggering circumstance for the cessation of Article 1D refugee status would be the final settlement of the Palestinian refugee problem in accordance with relevant resolutions adopted by the UN General Assembly.⁵⁶ It is premature to consider ceasing status on the basis of the recognition by the UN of Palestine as a State.

G. Applicability of Article 1E

39. Article 1E of the 1951 Convention applies to Palestinian refugees falling within the personal scope of Article 1D of the 1951 Convention.⁵⁷ The fact that some Palestinian refugees have been living in countries where they exercise rights and obligations ordinarily attached to the possession of nationality may render Article 1E applicable to their case. In the case of children/descendants of Palestinian refugees and non-Palestinians who are enjoying rights and obligations identical to those of nationals of another country, consideration of the application of Article 1E of the 1951 Convention would be required.

40. Historically, countries party to the League of Nations’ *Protocol for the Treatment of Palestinians in Arab States ("Casablanca Protocol")*⁵⁸ have pledged to provide a range of rights on a par with citizens to Palestinian refugees, however, many remain unimplemented in practice. Close scrutiny of the situation on the ground prior to applying Article 1E on the basis of the Casablanca Protocol would be required, including the stability of such rights, as well access to educational and other social rights equivalent to nationals, which are implicit though not explicit in the Protocol.

H. Applicability of Article 1F

41. Article F of the 1951 Convention is applicable to Article 1D. Reference is made to UNHCR’s Guidelines on International Protection No. 5 and other guidance.⁵⁹

III. PROCEDURAL AND EVIDENTIARY ISSUES

A. Individual assessment

42. Although Article 1D recognizes a specific class of refugees receiving the protection or assistance of an United Nations entity other than UNHCR, the application of Article 1D can, and is commonly, assessed on an individual basis.⁶⁰ Individual circumstances are part of the overall assessment of whether the protection or assistance of UNRWA has ceased.

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

⁵⁷ UNHCR, Note on the Interpretation of Article 1E of the 1951 Convention relating to the Status of Refugees, March 2009, available at: <http://www.refworld.org/pdfid/49c3a3d12.pdf>.

⁵⁸ League of Arab States, *Protocol for the Treatment of Palestinians in Arab States ("Casablanca Protocol")*, 11 September 1965, available at: <http://www.refworld.org/docid/460a2b252.html>. The Casablanca Protocol provides among others to Palestinian refugees right of employment on par with citizens, residency rights, travel documents, right to leave and return.

⁵⁹ UNHCR, *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, HCR/GIP/03/05, available at: <http://www.refworld.org/docid/3f5857684.html>.

⁶⁰ A group-based approach, such as the prima facie recognition of refugee status, may be appropriate in certain circumstances: see UNHCR, *Guidelines on International Protection No. 11: Prima facie recognition of refugee status [forthcoming]*.

B. Time of assessment

43. The assessment must be as to whether, at the time the individual claim is considered, the protection or assistance of UNRWA has ceased such that the applicant is unable or unwilling to re-avail him/herself of that protection or assistance of UNRWA for a justified reason beyond his/her control. While the reasons for departure may be relevant to the granting of refugee status in Article 1D (a backward-looking analysis), they can only be relevant as to whether, at the time of the assessment, the applicant falls within Article 1D. For example, should UNRWA's services have been temporarily suspended in the past, but resumed at the time of the applicant's hearing for refugee status, the applicant would not have made out, absent other factors, the reasons for the need for international protection under Article 1D.

C. Burden and standard of proof

44. In refugee claims including those pursuant to Article 1D, the burden generally rests on the person making the assertion to produce evidence as far as possible to support his or her statements. The applicant is required to give a truthful account of facts relevant to his or her claim so far as these are within his or her own knowledge, and insofar as there is information that is available to him/her and which he or she can reasonably be expected to provide to the decision-maker. A decision-maker shares the duty of ascertaining the facts relevant to the determination of refugee status, given the particular situation of a refugee.⁶¹ In some cases, it may be for the decision-maker to use the means at his or her disposal to produce the necessary evidence in support of the application and to make relevant inquiries. Even such independent research may not, however, always be successful and there may also be statements that are not susceptible of proof. In such cases, if the applicant has made a genuine effort to substantiate their claim, all available evidence has been obtained and checked and the examiner is satisfied as to the applicant's general credibility, s/he should, unless there are good reasons to the contrary, be given the benefit of the doubt. The applicant's statements must, however, be coherent and plausible, and must not run counter to generally known facts. The requirement of evidence should thus not be too strictly applied in view of the difficulty of proof inherent in the special situation in which an applicant for refugee status finds him/herself.⁶²

45. Article 1D requires an examination of whether (i) the applicant falls within the category of Palestinian refugees who is receiving or eligible to receive the protection or assistance of UNRWA and (ii) the protection or assistance of UNRWA has ceased for any reason. In this context, the decision-maker has a duty to inquire as to the situation in the relevant area of UNRWA operation, and the ability or otherwise, as a matter of fact, of UNRWA to provide the requisite protection or assistance vis-à-vis the reasons for refusing or being unable to reavail oneself of the protection or assistance of UNRWA. Inquiries also need to be made in relation to the circumstances in the host State, as well as the applicant's individual circumstances. The burden of proof shifts to the State authorities where it is asserted that the applicant could (iii) relocate internally within the same UNRWA area of operation, or (iv) absent other factors, be able to return safely and with appropriate legal documentation per **paragraph 19 (c)** above.

(i) Receiving or eligible to receive – UNRWA registration

46. In order to fall within the first paragraph of Article 1D, actual or previous residence in an UNRWA area of operation and the actual receipt of UNRWA protection of assistance, or eligibility for that protection or assistance, needs to be established.

⁶¹ UNHCR Handbook, paras. 196 onwards; UNHCR, *Note on the Burden and Standard of Proof in Refugee Claims*, 16 December 1998.

⁶² *Ibid.*

47. Being registered by UNRWA or possessing UNRWA documentation would serve as conclusive proof of falling within the first paragraph of Article 1D.⁶³ For applicants without documentation, there remain other means to adduce evidence to this effect including through, for example, the applicant's own statements or affidavits of others.⁶⁴

48. As regards "displaced persons", they are not "registered" in UNRWA's registration system.⁶⁵ That said, UNRWA keeps due records of such persons not "registered" and UNRWA documentation would also be conclusive proof that they fall within the first paragraph of Article 1D.

(ii) UNRWA protection or assistance ceased – statements or positions of UNRWA

49. Whether the protection or assistance of UNRWA has ceased is a question of fact, taking into account all the available evidence, namely UNRWA's mandate and operations, the circumstances in the host country and the individual's personal circumstances (as detailed at paragraphs 19-20, 24-25, 26). The evidence in relation to this part of the assessment may come from a variety of sources. The applicant him/herself may provide evidence that is relevant in his own statements.

50. It is not required that the applicant is able to produce a public statement by UNRWA or other documentation published by UNRWA that it has discontinued activities in one of its areas of operation. While such statements would be clear evidence that it had done so, evidence from other sources that UNRWA had discontinued its activities could also be persuasive, not least because there may be many reasons why reliance on such public statements alone would be unfairly prejudicial to the applicant. UNRWA may not, for example, be in a position to pronounce itself on the temporary or permanent discontinuation of its activities, or UNRWA may well not be able to answer, or answer authoritatively. Further, if such a requirement were to be imposed, it would place an undue burden on UNRWA, one which it may not be able to satisfy in every case, such as for resources or logistical reasons or those of confidentiality.⁶⁶ Finally, no burden of inquiring of UNRWA directly should be placed on the claimant.

51. There will also be circumstances relevant to the particular applicant about which UNRWA would not know and could not provide relevant information.

D. Individual Procedures

52. Fair and efficient procedures for the determination of eligibility for refugee status under Article 1D of the 1951 Convention need to be established. As noted at earlier (paragraph 3, 29), a Palestinian refugee is not required to also establish that they have a well-founded fear of being persecuted per Article 1A(2).

53. Where a Palestinian applicant should fail in his or her application for recognition under Article 1D, a determination of his/her eligibility under Article 1A(2) would then normally proceed. This would be the case, for example, for Palestinians who are not within the class of Palestinian refugees covered by Article 1D. Where available, forms of complementary/subsidiary forms of protection would then be assessed. UNHCR recommends that States carry out these assessments within a single procedure, and that the assessments are carried out sequentially.

⁶³ UNRWA, *CERI*, January 2009, Section III.A.1, page 3, available at: <http://www.unrwa.org/userfiles/2010011995652.pdf>. Bolbol, paras. 46, para. 52: "While registration with UNRWA is sufficient proof of actually receiving assistance from it, it has been explained in paragraph 45 above that such assistance can be provided even in the absence of such registration, in which case the beneficiary must be permitted to adduce evidence of that assistance by other means."

⁶⁴ Special consideration would need to be given to descendants of Palestinian refugee women, who are not under current registration rules of UNRWA, registered. See, paragraph 12 in text.

⁶⁵ Ibid, Section III.B, page 6.

⁶⁶ Here an analogy can be made with UNHCR's position regarding information relating to mandate recognition, see submission in UNHCR, *I. A. v. Secretary of State for the Home Department: Case for the Intervener*, 27 October 2013, United Kingdom Supreme Court, UKSC2012/0157, available at: <http://www.refworld.org/docid/52a098e34.html>.

54. Even though refugee status pursuant to Article 1D is normally carried out in individual procedures, requiring an individual assessment, there may be situations in which a whole population of Palestinian refugees may be recognised on a prima facie basis as a group. For example, where the mandate of UNRWA is terminated in one of UNRWA's areas of operation, they would be considered – as a group – not to be receiving the protection or assistance of UNRWA and would ipso facto benefit from UNHCR's mandate pursuant to paragraph 7(c) of the UNHCR Statute.⁶⁷

E. Refugee and stateless procedures

55. Where an applicant raises both a refugee and a statelessness claim, it is important that each claim is assessed and that both types of status are explicitly recognised. Further guidance on determination of statelessness is available in UNHCR's *Handbook on Protection of Stateless Persons*.⁶⁸

56. Best State practice ensures that Palestinian refugees recognised under Article 1D are properly recorded and separately registered in national asylum statistics.

⁶⁷ UNHCR, *Guidelines on International Protection No. 11: Prima facie recognition of refugee status* [forthcoming].

⁶⁸ UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014, available at: <http://www.refworld.org/docid/53b676aa4.html>.