

I. Introduction

1. It was never intended that, through application of the 1951 Convention relating to the Status of Refugees, persons determined to be refugees should remain with this status for the rest of their lives. The international protection of refugees was foreseen as a temporary substitute for the national protection of which these persons had been deprived. It was anticipated that, after a certain period, the refugees would no longer be in need of international protection, either because they could return to the country they had left, or could integrate in a country of asylum which would extend to them the same degree of protection as enjoyed by citizens of that country. The main means envisaged in the Convention to achieve this was naturalization.

2. For the large majority of refugees, the preferred and most appropriate durable solution, where circumstances allow, is nevertheless voluntary repatriation. Countries of asylum spending considerable resources to assist groups of refugees are reluctant, outside the individual case, to extend their protection and assistance beyond the time strictly necessary. Having evaluated their personal risk situation, some refugees may decide to return on their own. Many, however, will have their return facilitated through agreement between UNHCR and the States concerned on implementation of a voluntary repatriation programme, accompanied by guarantees as to safety and reintegration assistance. A small number of refugees may oppose return to their country. Some may claim that the circumstances in their country have not changed and that their fear of persecution remains valid. Others, having stayed for a longer time in the country of asylum, may have developed strong ties there. A number of refugees may not wish to return as the opportunities in the country of asylum prove persuasively better than those available in their own country.

3. In recognition of the temporary nature of refugee status, the 1951 Convention, among other instruments, sets out the conditions under which the Convention shall cease to apply. The clauses containing these conditions are generally referred to as the cessation clauses. They have not, in the past, been resorted to with any frequency, partly because solutions to refugee problems are achieved more often outside the framework of cessation. In addition, assessments as to whether the criteria for applying the clauses have been met are often very difficult to make. Nevertheless, recent political developments in certain parts of the world have given more immediate relevancy to the clauses in a number of refugee situations and interest in their application has much increased over recent months.

4. Against this background, the purpose of this note is to put forward a number of considerations which should be taken into account by States and UNHCR when interpreting and applying the provisions on cessation of status on account of "ceased circumstances".

II. Cessation clauses

5. Clauses providing for cessation of refugee status following developments of a specified nature are found in the 1951 Convention (Art. 1C), the 1969 OAU Convention (Art 1(4)) and in the Statute of the Office of the High Commissioner (Paragraph 6A)¹. The cessation clauses in the three instruments are very similar and, for the purposes of this Note, will largely be treated as one and the same. In the context of the individual instruments, the cessation clauses are exhaustive. In other words, once a person has been recognized as a refugee, he/she maintains this status until one of the cessation clauses applies. A strict approach is taken to their application, motivated by the need to provide refugees with the assurance that their status will not be subject to constant review in the light of temporary changes - not of a fundamental character - in the situation prevailing in their country of origin.

6. Cessation is always to be distinguished from cancellation of status. Exceptionally, a refugee may lose his/her status as a result of cancellation where it is subsequently determined that the person did not fulfill the requirements of the refugee definition at the time of the eligibility determination, but obtained recognition based on serious misrepresentation of facts. This note does not go into the issue of cancellation, which raises considerations quite separate from cessation.

7. The cessation clauses in Article 1 C of the 1951 Convention can be divided into two main categories:

(A) Those which become operative as a result of a change in the situation of the person concerned brought about by that person, (Article 1 C(1)-(4)).

(B) Those which become operative as a result of a change of circumstances in the refugee's country of origin or habitual residence (Article 1 C(5)-(6)).

A. Cessation due to changes in Personal circumstances

8. The clauses here in question apply because of the refugee's own voluntary actions leading to reacquisition of national protection, which then eliminates the need for international protection. Commonly, the refugee will have acted voluntarily with the intent of obtaining national protection, for example, through obtaining citizenship, or through acquiring a national passport and/or returning to the country of origin with the full cognizance and even assistance of the authorities of that country. The application of these clauses can raise difficult questions in the individual case, which are outside the scope of this present note. Reference should be had to the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (pages 27 to 31) for further details.

B. Cessation of Refugee Status based on changed circumstances in the country of origin or habitual residence

9. The second category of cessation clauses, in effect, take as their starting point that international protection needs only to be provided for as long as it is necessary, until it can be replaced by national protection. In the application of Art. 1 C(5) and (6), a Contracting State is called upon to decide whether "the circumstances in connection with which a person has been recognized as a refugee have ceased to exist and the person therefore no longer can refuse to avail himself of the protection of the country of his nationality".

"Ceased circumstances" in Art. 1C (5)-(6)

10. It is generally assumed that the "circumstances" in question are, principally, the political and basic human rights conditions in the country of origin or habitual residence. These circumstances will have been at the base of the fear of persecution giving rise to refugee status.

11. Circumstances are normally deemed to have ceased when fundamental changes have taken place which remove the causes of the refugee's fear of persecution and offer the guarantee of safety on return. What constitutes "safe" conditions in a country is rarely an easy judgement to make. Factors which have been given special weight in this regard have included the level of democratic development in the country, its adherence to international human rights (including refugee) instruments and access allowed for independent national or international organizations freely to verify and supervise the respect for human rights. More specific factors which have significance in the context of cessation include declarations of amnesties, repeal of repressive legislation, annulment of judgments against political opponents and, generally, the re-establishment of legal protections and guarantees offering security against the reoccurrence of the discriminatory actions which had caused the refugees to leave. Such elements taken together will form the basis for a decision on whether the circumstances giving rise to refugee status can be considered to have ceased.

12. Obviously, changes in a country do not happen overnight, but gradually over a period of time. In addition, not all changes which succeed initially prove durable and implementable over time. Frequently, national efforts to develop democratic institutions are countered by forces inside the country which oppose such changes. For this reason, UNHCR generally recommends that all developments which would appear to evidence significant and profound changes bringing the cessation clauses into play should be given time to consolidate before any decision on cessation is made. No universal rule can be established as to the length of the period sufficient to testify to the stability of the changes. Experience has shown, however, that a minimum period of 12 to 18 months (always depending on the circumstances) should normally elapse before a judgement on ceased circumstances can be considered reliable. Such period should be used by the country or countries considering resort to the cessation clauses to inform themselves, through the various sources available, including the refugees, reputable human rights bodies, UNHCR and diplomatic representations, as to the fundamental nature of the changes in the country of origin.

13. Although Art. 1C (5) and (6) refer to the cessation of status of "a refugee", normally the clauses are more directly applicable in group situations, particularly where all refugees are of the same nationality. However, a prerequisite for any individual or group application is that the right is preserved for any one person to contest the appropriateness of declaring cessation in his/her case, because of elements particular to the case which would justify maintenance of refugee status due to ongoing fear. There must be provision made in the procedures implementing cessation for reconsideration of status on this basis.

Implementation of a decision to apply Article 1C (5)-(6)

14. A decision to apply these cessation clauses only affects those refugees who have not meanwhile acquired a different personal status; e.g. through naturalization or the grant of permanent residence.

15. As indicated earlier, within the group of refugees to whom the cessation clauses are applied, there may be those with strong valid reasons for refusing to avail themselves of their countries. These reasons often one or other of the following type:

i) ongoing well-founded fear of persecution, despite the changes in the country of origin. In this regard, for example, a change in official attitudes may not be sufficient to relieve the refugee of the fear of persecution, where prejudices or grievances still exist among a portion of the population which continue to pose a threat to the security of the person concerned.

li) Compelling reasons for maintaining status based on previous persecution. This exception is specifically provided for in Art. 1C (5)-(6), in relation to refugees recognized under previous refugee instruments. It has also generally been accepted though, that the exception should apply more broadly, reflecting, as it does, a humanitarian concern that persons traumatized by persecutory treatment or loss of family members cannot reasonably be expected to return to the country where such acts took place.

lii) Acquired rights, including as a result of strong economic and/or family and social links in the country of asylum, particularly when all or most ties in the country of origin have been lost. This particular exception, while not expressly included in the Convention, is to some extent implicit in Paragraph 6A (II) (e) of the Statute of the High Commissioner which recognizes that "grounds other than those of personal convenience" might be claimed. A distinction should be made here between the refugee's desire to live a better material life and the very real and significant difficulties inherent in having to break, once again, the social, cultural and professional ties that, by force of circumstances, the person had had to develop abroad. A positive determination of refugee status, while declaratory of a particular state of affairs, is also constitutive of rights. Once recognized, refugee status brings with it certain rights under international and municipal law on the basis of which recognized refugees are able to act and live their lives. It is also probable

that refugees, especially long-term residents, will acquire material rights, property and other, that must be respected by States pursuant to the doctrine of acquired rights. Moreover, the overall situation of resident aliens gives rise to what may loosely be called "legitimate expectations" as to the continuance of their status. The responsibility to respect and protect these expectations in the case of long-term resident aliens is increasingly recognized by States. As cessation of refugee status could have the effect of depriving individuals of their acquired rights and interfering with legitimate expectations, it is all the more a decision to be approached restrictively.

16. For those refugees who have no valid reasons to refuse to avail themselves of the protection of their country, the application of the cessation clauses will lead to withdrawal of their refugee status. Thereafter, their situation in the country of asylum is regulated by the relevant laws of that country. The numbers affected may well be small as, following the changes in the country of origin, many individuals may already have returned, either spontaneously or under a voluntary repatriation programme. It is recommended that the return of persons whose status has ceased be accompanied, as far as possible, by some form of reintegration assistance from the governments and/or organizations involved, equal to the assistance provided to other returnees. Provision of this type of assistance might also serve to facilitate the return.

III. UNHCR's role with regard to cessation

17. The decision to apply the cessation clauses under the 1951 Convention rests exclusively with the Contracting States. However, under Article 35 of the Convention, the High Commissioner has a role in supervising the application of its provisions. In this connection, the High Commissioner could assist Governments to evaluate the changes in countries of origin with a view to possible application of the cessation clauses.

18. The Statute of the office also envisages that the High Commissioner can declare that her competence ceases for persons previously of her concern. That declaration will be made for reasons similar to those in the 1951 Convention. Although, as the Statute is drafted, the ceased-circumstances cessation provisions only refer to refugees under Paragraph 6A (i.e. persons who became refugees as a result of events before 1 January 1951), and not to refugees under Paragraph 6B (i.e. post-1951 refugees), there is no indication in official documentation that this legal lacuna was intended, from an operational point of view. In practice, the High Commissioner has, on a number of occasions, declared the cessation of competence for post-1951 refugees.

19. Given the serious implications of the cessation clauses, the High Commissioner has tended to apply them very restrictively. Most refugee situations are preferably resolved through voluntary repatriation, when circumstances allow, removing the need for the High Commissioner to resort to the cessation clauses. Over the last ten years, the occasions on which the High Commissioner has invoked the ceased circumstances cessation clause for groups of refugees include for Zimbabweans (1981), Argentinians (1984), Uruguayans (1985), Czechs (1991), Hungarians (1991) and Poles (1991).

20. A declaration by the High Commissioner that the competence of the office towards a particular group of refugees has ceased leads to the phasing out of the office's protection and assistance activities for this group. The question of the refugees' continued residence in their country of asylum is a matter between the refugees and that country, although the High Commissioner recommends that the country of asylum favourably consider maintaining refugee status or finding alternative personal status for those refugees who have strong valid reasons (see earlier listing) for wishing to remain in the asylum country.

IV. Conclusion

21. In summary, UNHCR recommends that:

- i) Any decision to re-evaluate the status of refugees based on "ceased circumstances" should be taken only after careful and exhaustive examination of the profound and enduring nature of the changes, which usually would require a period of between 12 to 18 months to elapse after the significant and profound changes have taken place before a decision on cessation should be made.
- ii) Each individual affected should have the option to initiate reconsideration of the basis of his/her claim, if circumstances suggest that the fear is ongoing or that past persecution is of such a magnitude as to militate against return. Those refugees with other strong and valid reasons for refusing to reavail themselves of the protection of their country should also be allowed to maintain their refugee status or be given the option of an alternative personal status; e.g. permanent residency or, preferably, citizenship. In giving effect to a decision to invoke the cessation clauses in any situation, States should deal humanely with the consequences for the affected individuals, particularly where recognized rights are involved which would argue for maintenance of residency.
- iii) Any return should be accompanied by measures calculated, to the extent possible, to facilitate both the return and reintegration.

¹ Convention relating to the Status of refugees of 28 July 1951
Article IC

"This Convention shall cease to apply to any person falling under the terms of section A if:

- (1) He has voluntarily re-availed himself of the protection of the country of his nationality; or
- (2) Having lost his nationality, he has voluntarily re-acquired it; or

(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or

(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution;
or

(5) He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

Provided that this paragraph shall not apply to a refugee falling under section A(1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;

(6) Being a person who has no nationality he is, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;

Provided that this paragraph shall not apply to a refugee falling under section A(1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence."

OAU Convention of 10 September 1969 governing the specific aspects of refugees in Africa
Article 1(4)

"This Convention shall cease to apply to any refugee if:

(A) he has voluntarily re-availed himself of the protection of the country of his nationality, or,

(B) having lost his nationality, he has voluntarily reacquired it, or,

(C) he has acquired a new nationality, and enjoys the protection of the country of his new nationality, or,

(D) he has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution,
or,

(E) he can no longer, because the circumstances in connection with which he was recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality, or,

(F) he has committed a serious non-political crime outside his country of refuge after his admission to that country as a refugee, or,

(G) he has seriously infringed the purposes and objectives of this Convention."

Statute of the Office of the United Nations High Commissioner for Refugees
Paragraph 6 (A)

"The competence of the High Commissioner shall cease to apply to any person defined in section A above if:

(A) He has voluntarily re-availed himself of the protection of the country of his nationality; or

(B) Having lost his nationality, he has voluntarily re-acquired it; or

(C) He has acquired a new nationality, and enjoys the protection of the country of his nationality; or

(D) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution;
or

(E) He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, claim grounds other than those of personal convenience for continuing to refuse to avail himself of the protection of the country of his nationality. Reasons of a purely economic character may not be invoked; or

(F) Being a person who has no nationality, he can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist and he is able to return to the country of his former habitual residence, claim grounds other than those of personal convenience for continuing to refuse to return to that country."

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