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NOTE ON THE CESSATION CLAUSES

I. INTRODUCTION

1. In 1991, the Executive Committee highlighted the possibility of using the cessation clauses of the 1951 Convention in situations where, due to a change of circumstances in their home country, refugees no longer require international protection and cannot, therefore, refuse to avail themselves of the protection of their country. In this context, the Executive Committee called on UNHCR to explore issues relating to the application of the cessation clauses. The following year, the subject was considered at the forty-third session of the Executive Committee, which in its conclusion number 69¹ set out certain guidelines on the application of the so-called "ceased circumstances" cessation clause.

2. Since then, massive outflows of refugees, the lack of durable solutions in a number of host countries, and perceived changes in various refugee-producing countries have once again brought the issue of cessation to the fore. This Note seeks to provide a comprehensive review of the principles relating to the application of the cessation clauses.

II. GENERAL PRINCIPLES

3. All the basic international refugee instruments, including the 1951 Convention and its Protocol, the 1969 Organization of African Unity (OAU) Convention and the Statute of UNHCR, contain clauses setting out the specific situations in which those instruments and the competence of the High Commissioner, respectively, cease to apply. These are the cessation clauses.²

4. The underlying rationale for the cessation clauses was expressed to the Conference of Plenipotentiaries in the drafting of the 1951 Convention by the first United Nations High Commissioner for Refugees, G. J. van Heuven Goedhart, who stated that refugee status should "not be granted for a day longer than was absolutely necessary, and should come to an end...if, in accordance with the terms of the Convention or the Statute, a person had the status of *de facto* citizenship, that is to say, if he really had the rights and obligations of a citizen of a given country". Cessation of refugee status therefore applies when the refugee, having secured or being able to secure national protection, either of the country of origin or of another country, no longer needs international protection. This linkage of international protection to the duration for which it is needed distinguishes the cessation clauses from the exclusion clauses in Article 1F of the 1951

¹ Conclusion Number 69 (XLIII), adopted by the Executive Committee at its forty-third session (A/AC.96/804, paragraph 22), hereafter referred to as Conclusion 69.

² See Annex B for full text of the cessation clauses in the 1951 Convention.

Convention, which address situations in which the refugee does not deserve the benefits of international refugee protection.

5. For analytical purposes, it is helpful to divide the cessation clauses into two broad sets. The first set comprises the four clauses which relate to a change in personal circumstances of the refugee, brought about by the refugee's own act, and which results in the acquisition of national protection so that international protection is no longer necessary. The second set comprises the clauses which relate to a change in the objective circumstances in connection with which the refugee has been recognized, so that international protection is no longer justified (the "ceased circumstances" cessation clause).

6. The cessation clauses are exhaustive. This means that the refugee's status is maintained until one of the cessation clauses can be invoked; in any case, refugees should not be subjected to constant or regular reviews of their refugee status. In principle, the application of the cessation clauses is declaratory in nature, acknowledging that international refugee protection is no longer required. It operates to withdraw refugee status, and brings to an end related rights and benefits. Such a withdrawal should, however, be distinguished from cancellation of refugee status, which is not specifically covered by the international refugee instruments. Such cancellation is undertaken where it emerges that status was obtained by a misrepresentation of material facts or where there is subsequent discovery of material facts which clearly indicate that, had these been known at the time of status determination, the individual would not have been recognized as a refugee.

7. Cessation of refugee status based on the "ceased circumstances" cessation clause should also be distinguished from the notion of safe country of origin. While there are common and overlapping factors in the consideration of both situations, these two notions operate at different ends of the refugee protection spectrum and are conceptually differentiated. A declaration of cessation under the "ceased circumstances" clause involves an assessment of the specific conditions during a certain time period which led to the granting of refugee status to a particular refugee or group of refugees, and does not address the issue of whether other persons from that country might have refugee related reasons for leaving. On the other hand, a proper designation of a country as a "safe country of origin" does not, by that fact alone, serve as a declaration of cessation of refugee status in regard to refugees from that country. It should serve merely as a procedural tool to expedite processing of refugee claims. Such a designation may, however, reflect improvements in the human rights situation in the country of origin which could, in turn, warrant reviewing the application of this cessation clause. It should be borne in mind that whatever the level of human rights prevailing in a country, no refugee claim, whether for granting of refugee status or for its continuation, should be rejected without an individual assessment on its merits.

8. Given that the application of the cessation clauses would result in the withdrawal of refugee status, the clauses should be interpreted in a restrictive way, taking into account the guidance contained in the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status* and in the Executive Committee's Conclusion 69. A premature or insufficiently grounded application of the cessation clauses can have extremely serious consequences as refugees who need to remain in the country of asylum may be forced to do so illegally, or may be threatened with refoulement.

9. UNHCR recommends that in deciding whether to invoke the cessation clauses, States should take into account the consequences of cessation of refugee status. Difficulties which may follow from the invocation of the cessation clauses should be considered in both the decision and the timing of cessation. In particular, States should avoid a situation where the former refugee remains in the country of asylum without a definite legal status or with an illegal status. Human rights factors should be taken into account as well as previously acquired rights of refugees, particularly in regard to those who, due to their long stay in the country of asylum, have developed strong family, social and economic links there. States should consider appropriate arrangements which would allow refugees to maintain their established situation, including the grant of permanent residence status. Where the grant of continued stay would not be feasible, States should take action to pre-empt problems which might be associated with the return of former refugees to their country of origin, notably to avoid a situation becoming a cause of tension between States.

10. In this context, where the status of a large group of refugees is affected by the application of the cessation clause, where no other durable solution has been found and no other arrangements are made for continued stay in the country of asylum, the application of the cessation clause is normally associated with arrangements being made for the orderly repatriation of the refugees. States of origin should effectively facilitate the repatriation of their nationals who have been former refugees together with States of asylum, and, whenever appropriate, with other relevant international agencies, so as to ensure that such repatriation takes place in a fair and dignified manner. The Executive Committee also recommends in its Conclusion 69, that where appropriate, States and the international agencies should provide international assistance to facilitate such return as well as the reintegration of the refugees concerned.

III. THE CESSATION CLAUSES RELATING TO AN ACT OF THE REFUGEE

11. These cessation clauses concern the refugee acting to reacquire the national protection of the country of origin, or to acquire the national protection of another country.

A. Reacquisition of the national protection of the country of origin

12. A refugee can reacquire the national protection of the country of origin while outside that country. For the cessation clauses to be applicable, the refugee must have acted voluntarily to obtain the protection of the country of origin and must have actually obtained such protection. Whether the refugee had acted voluntarily and whether national protection was actually acquired depends on the circumstances of each case. In most instances, such acts of the refugee are by way of some form of contact with the diplomatic mission of the country of origin. Where a refugee contacts the diplomatic mission of his or her country of origin on the instruction of the authorities in the country of asylum³, or where such contact is occasional and incidental⁴, this will not give rise to the application of the cessation clause. A refugee can also reacquire the protection of the country of origin by returning there. For the cessation clause to be applicable, the return must, under the

³ See UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status*; (Handbook) paragraph 120.

⁴ See Handbook; paragraph.121.

terms of the Convention, have been undertaken voluntarily and the refugee must also have "re-established" himself or herself in the country of origin; a temporary visit to the country of origin⁵ will not necessarily trigger the cessation clause. Where, however, a refugee visits the country of origin frequently and avails himself or herself of the benefits and facilities in the country normally enjoyed by citizens of the country, the cessation clause may be invoked. A *refoulement* will not warrant the application of the cessation clause.

13. Similarly, where a refugee has lost his or her nationality and acts to reacquire it, the reacquisition must be both voluntary and effective in order for the cessation clause to be applicable. It is clearly implied by the cessation clause covering this situation that the nationality referred to is the nationality of the country from which the person concerned is a refugee. The reacquisition of nationality *de jure* alone is insufficient to invoke the cessation clause. Voluntary reacquisition of former nationality must be accompanied by the actual restoration of relations between the individual and the country of nationality, that is, the effective protection of the country of nationality must be available to the refugee, who willingly re-avails himself or herself of it. This latter aspect is particularly important in regard to those refugees who were persecuted by deprivation of nationality.

14. Therefore, the key issues in considering the applicability of these three cessation clauses are, first, whether or not the refugee has acted voluntarily, and second, whether the result is that the national protection of the country of origin has been secured. The approach to such cases should be to ensure that no refugee is unjustly deprived of the right to international protection.

B. Acquisition of the national protection of another country

15. For the refugee to be considered as having acquired the protection of another country, the refugee must not only have acquired a new nationality, but this nationality must carry with it the effective protection of the country concerned. This means that the refugee must secure and be able to exercise all the rights and benefits entailed by possession of the nationality of the country. Clearly, where a refugee has acquired the nationality of the country of asylum through naturalization, refugee status will cease. It is, however, not always evident that a person has acquired the nationality of another country, particularly if it does not involve a process of naturalization. For example, Palestinians who hold national passports of certain countries but are not granted full rights and benefits of nationals of those countries, cannot be considered as having the effective protection of those countries.

16. This particular situation of cessation should be distinguished from that of a refugee being excluded from refugee status on the basis that he or she is recognized by the competent authorities of the country of asylum as having the rights and obligations which are attached to the possession of the nationality of that country.⁶ While the underlying rationale for both situations is the same,

⁵ Ibid. In Conclusion Number 18 adopted by the Executive Committee at its thirty-first session (A/AC.96/588, paragraph 48), the Executive Committee recognized that in order to facilitate voluntary repatriation of refugees, availability of information regarding the country of origin is important and in this context, visits by individual refugees to their country of origin to inform themselves of the situation there should not involve an automatic loss of refugee status.

⁶ Article 1E of the 1951 Convention.

that is, that there is no need of international protection, the latter situation operates to exclude a refugee from the benefits of international protection and is a factor for consideration during the refugee status determination process.

17. Where refugee status has been terminated through the acquisition of a new nationality, and the new nationality has been lost, refugee status may be revived depending on the circumstances.⁷ Hence, for example, where refugee status has ceased in regard to a refugee woman who has acquired a new nationality by marriage, it may be revived if she subsequently re-marries a stateless person and is forced to surrender her acquired nationality.

18. Where the person claims a well-founded fear of persecution in relation to the country of his or her new nationality, this creates an entirely new situation calling for a fresh determination of refugee status.

IV. THE CEASED CIRCUMSTANCES CESSATION CLAUSE

19. There is general consensus among jurists that for this clause to be applicable, there must have been a change in the refugee's country of origin which is fundamental, durable, and effective. Fundamental changes are considered as effective only if they remove the basis of the fear of persecution; therefore, such changes must be assessed in light of the particular cause of fear, so as to ensure that the situation which warranted the grant of refugee status has ceased to exist. The Executive Committee's Conclusion 69 reflects these principles, and stresses the importance of including the general human rights situation in the country of origin in the overall assessment of whether the changes can be characterized as "fundamental".

20. In determining whether changes in the country of origin are fundamental, and reliably can be said to remove the need for international protection in a durable manner, all relevant facts must be taken into consideration. A complete political change remains the most typical situation in which this cessation clause has been applied. Depending on the grounds for flight, significant reforms altering the basic legal or social structure of the State may also amount to fundamental change, as may democratic elections, declarations of amnesties, repeal of oppressive laws and dismantling of former security services. Large-scale spontaneous repatriation of refugees does not itself constitute fundamental change within the meaning of the cessation clause; however, such repatriation may be an indicator of changes that are occurring or have occurred in the country of origin. On the other hand, where the return of former refugees would be likely to generate fresh tension in the country of origin, this itself could signal an absence of effective, fundamental change. Similarly, where the particular circumstances leading to flight or to non-return have changed, only to be replaced by different circumstances which may also give rise to refugee-related fear, this cessation clause can clearly not be invoked. Thus in Afghanistan, where one type of civil war was replaced by another, the cessation clause could not be invoked despite a major political change.

⁷ This view was expressed by the Ad Hoc Committee in the report of its first session: "Persons who have lost subsequently their new nationality are not meant to be excluded if the conditions set out in [Article 1] A apply to them". *Report of the Ad Hoc Committee on Statelessness and Related Problems*, [E/1618 (E/AC.32/5), page 40, 17 February 1950]. See also paragraph 132 of the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status*.

21. The fundamental changes must also be stable and durable. A situation which has changed, but which also continues to change or shows signs of volatility is not by definition stable, and cannot be described as durable. UNHCR generally recommends that all developments which would appear to evidence significant and profound changes be given time to consolidate before any decision on cessation is made. In the *Discussion Note on the Application of the 'ceased circumstances' cessation clause in the 1951 Convention* (EC/SCP/1992/CRP.1), it was advocated that a period of twelve to eighteen months elapse after the occurrence of profound changes before such a decision is made. It is UNHCR's recommendation that this period be regarded as a minimum for assessment purposes. Recent applications of the cessation clause by UNHCR show that the average period is around four to five years from the time fundamental changes commenced. Practical developments, including organized repatriation and the experience of returnees are given considerable weight, as are reports by independent observers.

22. Obviously, there can be no firm rule on the period needed in evaluating whether the fundamental changes which have occurred can be considered as durable. In general, changes which take place peacefully under a constitutional, democratic process with respect for human rights and legal guarantees for fundamental freedoms, and where the rule of law prevails, permit an assessment of durable change within a relatively shorter period. Where the changes take place in a violent environment, where warring groups or factions have yet to be reconciled, where repatriation itself has provoked new clashes or killings, where the new regime has yet to govern effectively over the entire territory and where there is a lack of human rights guarantees, the changes are manifestly not yet confirmed, and the period for assessing their durability will be longer. Until national reconciliation takes root and political changes are stable and firmly in place, such changes cannot be considered as durable.

23. In regard to the human rights situation, the Executive Committee's conclusion number 69 stipulates that the "general" human rights situation should be assessed, thus implying that a broad range of human rights should be taken into account. International human rights instruments act as a guide in evaluating such improvements. Indicators may include the following: right to life and liberty and to non-discrimination, independence of the judiciary and fair and open trials which presume innocence, the upholding of various basic rights and fundamental freedoms such as the right to freedom of expression, association, peaceful assembly, movement and access to courts, and the rule of law generally. There is no requirement that the standards of human rights achieved must be exemplary. However, where real progress has been made in developing national institutions for human rights protection and significant improvements have been achieved in the general human rights situation in the country, as illustrated by some of the indicators above, these will constitute grounds for deciding that fundamental changes have occurred.

24. The "ceased circumstances" cessation clause contains a proviso which allows a refugee to invoke "compelling reasons arising out of previous persecution" for refusing to re-avail himself or herself of the protection of the country of origin.⁸ This proviso is intended to cover cases where refugees or family members have suffered atrocious forms of persecution and, due to the trauma, cannot be expected to associate again with their country of origin. The proviso has also been interpreted to cover those refugees who had suffered persecution at the hands of elements of the local population, who may not necessarily have changed their attitude despite a change in the regime.

V. APPLICATION OF THE CEASED CIRCUMSTANCES CESSATION CLAUSE TO REFUGEES FROM CIVIL CONFLICT

25. The question of whether the cessation clause can be invoked with reference to peaceful parts of a given country has been raised in relation to refugees whose fear stems from internal conflict or civil strife. This issue is particularly relevant where a State has fragmented into different parts without any part attaining statehood. In such situations, the key question in deciding on the application of the "ceased circumstances" cessation clause is whether the refugee could re-avail himself or herself of the national protection of the country of origin. For this cessation clause to be applicable, national protection must be effective. National protection means more than mere physical security or safety, and would need to include, apart from the prevalence of calm and security in the area concerned, the presence of a functioning governing authority, the existence of basic structures of administration including a functioning system of law and justice and the existence of adequate infrastructures to enable residents to exercise their right to a basic livelihood. In light of the Executive Committee's Conclusion 69, the general human rights situation must also be assessed. Obviously, where there are serious violations of human rights in the area, whether by the authorities concerned or due to the lack of protection of the authorities, the changes cannot be considered as fundamental nor as effective. Thus, in northwestern Somalia, the lack of a functioning central authority, the absence of administrative structures, the widespread presence of mines resulting in serious lack of security and general absence of governance are elements which militate against the application of the cessation clause.

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26. Even if changes in part of a country of origin can be considered as fundamental, they must be given a sufficiently long period of time before an evaluation is made of their stability and durability. Brief periods of peace will be insufficient. Thus where a peaceful area is surrounded by other areas of conflict and strife, the fundamental changes must stabilize before an assessment of durability is made.

⁸ The proviso expressly covers only those refugees falling under section A(1) of Article 1 of the 1951 Convention, that is, those persons who are considered as refugees under the "Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization". However, the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status* suggests that the exception reflects a more general humanitarian principle and could also be applied to refugees other than those in Article 1A(1) of the 1951 Convention (see paragraph 136 of the Handbook).

VI. PERSONS IN NEED OF INTERNATIONAL PROTECTION

27. In some parts of the world, large groups of individuals who flee across international borders from situations of conflict and violence or from widespread human rights abuses, are granted temporary protection. Such persons may or may not qualify as refugees under the 1951 Convention. The cessation clauses may therefore be applicable to some, if not all. Bearing in mind the object of temporary protection, which is to ensure international protection to all those in need of it, the criteria for the withdrawal of such protection should take into account the individual's continued need for it and may therefore apply differently among the beneficiaries. The termination of temporary protection should, in principle, be undertaken only when it is considered that the beneficiaries would be able to return in safety and dignity, and when their return is sustainable. Return should preferably take place voluntarily. The withdrawal of temporary protection should be without prejudice to the entitlement of an individual to invoke the principle of *non-refoulement*, or to seek recognition of refugee status. Definitive criteria for withdrawal of temporary protection are still being developed within the framework of the informal consultations and discussions organized by UNHCR as requested by the Executive Committee.⁹ Factors taken into consideration in application of the "ceased circumstances" cessation clause under the 1951 Convention may serve as useful guidelines in the formulation of the criteria and may be referred to whenever appropriate.

VII. CESSATION, SOLUTIONS AND PREVENTION

28. Cessation of refugee status is not of itself a durable solution. The successful attainment of a durable solution will normally lead to cessation of refugee status. A refugee ceases to require international protection where he or she repatriates voluntarily and reintegrates into the country of origin, or settles in the host country and obtains the nationality of that country, or resettles in another country and obtains the nationality of that country. Such changes will bring about cessation of refugee status, although in these situations formal declarations of cessation are normally not undertaken, since refugee status will have been subsumed by another national status. On the other hand, the absence of a durable solution does not preclude the application of the cessation clauses. Thus, if a refugee acts in such a way as to obtain the protection of the country of origin or of another country, such as obtaining a national passport and using it to travel frequently for business or leisure to the country concerned, the application of the cessation clause would be warranted. Similarly, if the circumstances in connection with which refugee status has been granted have ceased to exist, the cessation clause may be invoked without a durable solution having been found.

29. Voluntary repatriation can take place at a lower threshold of change in the country of origin, occurring as it does at the express wish of the refugee, who may also have personal reasons for repatriating, regardless of the situation prevailing in the country of origin. Therefore, the facilitation or promotion of voluntary repatriation by UNHCR does not necessarily mean that the cessation clause should be applied. However, where large-scale voluntary repatriation is organized against a

⁹ Conclusion No. 79, paragraph (m), adopted by the Executive Committee at its forty-seventh session (A/AC.96/878, paragraph 32).

backdrop of fundamental changes and providing that such fundamental changes stabilize and can eventually be considered as durable, the cessation clause may be invoked at an appropriate later time. The successful reintegration of returning refugees can have a stabilizing effect upon the situation in the country of origin.

30. Activities in countries of origin aimed at preventing situations leading to population displacement and refugee flows, such as those undertaken to develop an effective human rights regime, as well as efforts by the international community to promote conditions conducive to the return and reintegration of refugees, help generate fundamental changes in those countries and create the necessary foundations for such changes to be stable and durable. Such activities can contribute to the restoration of national protection in the countries of origin.

VIII. UNHCR'S ROLE

31. UNHCR may declare that its competence ceases to apply in regard to persons falling within situations spelled out in the Statute. The situations specified are akin to the cessation clauses of the 1951 Convention. On this basis, UNHCR has, over the past years, declared cessation of refugee status in regard to certain nationality groups of refugees under its mandate. The declaration of cessation of UNHCR's competence is undertaken essentially to provide a legal framework for discontinuation of UNHCR's protection and material assistance to the refugees and to promote with States of asylum concerned the provision of an alternative residence status to the former refugees. UNHCR normally assists in the repatriation of former refugees who wish to go home but who may not have the necessary resources to do so.

32. In the past twenty years, UNHCR has declared cessation in respect of fifteen national groups of refugees, in all cases based on profound political changes in the countries of origin involving the installation of democratic rule.¹⁰ The more recent examples relate to Chileans, in whose country elections and democratic developments occurred, as well as large-scale voluntary repatriation of refugees; Namibians, following the attainment of independence and elections in Namibia; South Africans, after the dismantling of apartheid and transition to democratic rule; Malawians, when Malawi underwent a transition to multi-party rule and elections, drew up a new Constitution and successfully reintegrated returnees; and Mozambicans, when a peace accord among fighting factions led to multi-party elections and democratic rule in Mozambique and when large-scale voluntary repatriation of refugees took place in safety and dignity. In 1991, cessation of refugee status was declared for refugees from Poland, Czechoslovakia and Hungary on the basis of the political changes which began in Eastern Europe in the late 1980's and the transition to genuine democratic rule in these three countries.

33. The Executive Committee Conclusion 69 affirms that any declarations by UNHCR that its competence ceases to apply in relation to certain refugees may be useful to States in connection with the application of the cessation clauses. Where UNHCR has made a declaration of cessation of

¹⁰ See Annex C

its competence in relation to any specified group of refugees, States may resort to the cessation clauses for a similar group of refugees if they deem it appropriate and useful for resolving the situation of these refugees in their territory.

34. Where States are deciding on the application of the cessation clauses, they may involve UNHCR as appropriate, such as in evaluating the impact of changes in the country of origin or in advising on the implications of cessation of refugee status in relation to large groups of refugees in their territory. Such an involvement would be in-line with UNHCR's supervisory role under Article 35 of the 1951 Convention.

IX. PROCEDURES RELATING TO APPLICATION OF THE CESSATION CLAUSES

35. Where the application of a cessation clause would result in the termination of residential rights, or in deportation of the refugee, procedures should be established which would allow the refugee the opportunity to challenge the authorities' decision to invoke the cessation clause. It is worth noting that the Executive Committee, in its Conclusion 69, recognized that in applying the "ceased circumstances" cessation clause, there may be compelling reasons to support the continuation of refugee status for certain individuals. In this context, the Executive Committee endorsed a "careful approach" which uses "clearly established procedures" in the application of this cessation clause.

36. The decision to apply the "ceased circumstances" cessation clause lies with the State of asylum concerned. As the "ceased circumstances" cessation clause is not generally triggered by an act of the refugee but rather by developments in the country of origin, the host State must be completely satisfied that all the elements of this particular cessation clause have been fulfilled before invoking it. This strict standard is reflected in the Executive Committee's Conclusion 69 which underlines that States, in making an assessment of the country of origin "must make sure in an objective and verifiable way that the situation which justified the granting of refugee status has ceased to exist".

37. The "ceased circumstances" cessation clause may be applied on an individual or a group basis (whether the refugee status of individuals in the group has been formally determined or not). A decision by the host State to apply the "ceased circumstances" cessation clause operates as a rebuttable presumption against the individual refugee concerned, or, where it is applied to a group of refugees, against each individual in the group. As emphasised in the Executive Committee's Conclusion 69, the individual should, upon application, be given the possibility of having his or her case reconsidered on its own merits. Such reconsideration should be normally undertaken by way of procedures which would enable a fair hearing to be given to the refugee concerned, and, in the event that there is any doubt as to the application of the clause in the particular case, refugee status should be maintained. Claims made under the proviso to the "ceased circumstances" cessation clause should also be considered under such procedures.

38. The first four cessation clauses, given that they are based on acts of the refugee altering his or her personal circumstances, are normally applicable on an individual basis. Procedures for application of any of these cessation clauses should include safeguards based on ordinary rules of fairness and natural justice which would enable the refugee to contest the evidence supporting cessation. The deciding authority should weigh the evidence as a whole and, based on clearly established facts, decide on whether all the elements of the relevant cessation clause have been fulfilled. Cessation of refugee status should only be applied when all the elements of the relevant cessation clause are clearly satisfied. Furthermore, no action should be taken to withdraw any rights of the refugee until a final decision has been taken.

X. CONCLUSION

39. The refugee law regime envisages refugee status as a temporary phenomenon which should last for as long as international protection is needed. The cessation clauses embody exhaustively those situations where national protection is secured or available and therefore international protection is no longer needed or justified. Proper application of the cessation clauses will contribute to limiting abuses of the international refugee protection regime and facilitating States' disengagement from an international responsibility which is no longer required. The "ceased circumstances" cessation clause may be usefully resorted to in order to provide an appropriate legal framework for dealing with refugees who remain in countries of asylum after fundamental and durable changes have occurred in the country of origin.

40. Cessation of refugee status, however, should not be used as a short-cut to overcome an intractable refugee problem. Where an unjustified or premature application of a cessation clause results in the forced return of any refugee, the consequences could be extremely serious, leading to further displacement within the country of origin or renewed displacement outside, as well as risks to life and personal security.

No. 69 (XLIII) - 1992

CESSATION OF STATUS

The Executive Committee,

Recalling Conclusion No. 65 (XLII) which, *inter alia*, underlined the possibility of use of the cessation clauses in Article IC (5) and (6) of the 1951 Convention in situations where a change of circumstances in a country is of such a profound and enduring nature that refugees from that country no longer require international protection, and can no longer continue to refuse to avail themselves of the protection of their country, provided that it is recognized that compelling reasons may, for certain individuals, support the continuation of refugee status,

Taking into account that the application of the cessation clause(s) in the 1951 Convention rests exclusively with the Contracting States, but that the High Commissioner should be appropriately involved, in keeping with the role of the High Commissioner in supervising the application of the provisions of the 1951 Convention as provided for in Article 35 of that Convention,

Noting that any declaration by the High Commissioner that the competence accorded to her by the Statute of her Office with regard to certain refugees shall cease to apply, may be useful to States in connection with the application of the cessation clauses as well as the 1951 Convention,

Believing that a careful approach to the application of the cessation clauses using clearly established procedures is necessary so as to provide refugees with the assurance that their status will not be subject to unnecessary review in the light of temporary changes, not of a fundamental character, in the situation prevailing in the country of origin,

- (a) Stresses that, in taking any decision on application of the cessation clauses based on "ceased circumstances", States must carefully assess the fundamental character of the changes in the country of nationality or origin, including the general human rights situation, as well as the particular cause of fear of persecution, in order to make sure in an objective and verifiable way that the situation which justified the granting of refugee status has ceased to exist;
- (b) Underlines that an essential element in such assessment by States is the fundamental, stable and durable character of the changes, making use of appropriate information available in this respect, *inter alia*, from relevant specialized bodies, including particularly UNHCR;
- (c) Emphasizes that the "ceased circumstances" cessation clauses shall not apply to refugees who continue to have a well-founded fear of persecution;
- (d) Recognizes therefore that all refugees affected by a group or class decision to apply these cessation clauses must have the possibility, upon request, to have such application in their cases reconsidered on grounds relevant to their individual case;
- (e) Recommends, so as to avoid hardship cases, that States seriously consider an appropriate status, preserving previously acquired rights, for persons who have compelling reasons arising out of previous persecution for refusing to re-avail themselves of the protection of



their country and recommends also that appropriate arrangements, which would not put into jeopardy their established situation, be similarly considered by relevant authorities for those persons who cannot be expected to leave the country of asylum, due to a long stay in that country resulting in strong family, social and economic links there;

- (f) Recommends that States, in giving effect to a decision to invoke the cessation clauses, should in all situations deal humanely with the consequences for the affected individuals or groups, and that countries of asylum and countries of origin should together facilitate the return, to assure that it takes place in a fair and dignified manner. Where appropriate, return and reintegration assistance should be made available to the returnees by the international community, including through relevant international agencies.



Convention relating to the Status of Refugees of 28 July 1951

United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons,
Geneva, 2-25 July 1951

22 April 1954 -

Preamble

The High Contracting Parties

Considering that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination,

Considering that the United Nations has, on various occasions, manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms,

Considering that it is desirable to revise and consolidate previous international agreements relating to the status of refugees and to extend the scope of and protection accorded by such instruments by means of a new agreement,

Considering that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation,

Expressing the wish that all States, recognizing the social and humanitarian nature of the problem of refugees will do everything within their power to prevent this problem from becoming a cause of tension between States,

Noting that the United Nations High Commissioner for Refugees is charged with the task of supervising international conventions providing for the protection of refugees, and recognizing that the effective co-ordination of measures taken to deal with this problem will depend upon the co-operation of States with the High Commissioner,

Have agreed as follows:

Chapter I, General Provisions

Article 1

Definition of the term "Refugee"



A. For the purposes of the present Convention, the term "refugee" shall apply to any person who:

- (1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization; Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section;
- (2) As a result of events occurring before 1 January 1951 and owing to 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 nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

In the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

B. (1) – For the purposes of this Convention, the words "events occurring before 1 January 1951" in Article 1, Section A, shall be understood to mean either

- (a) "events occurring in Europe before 1 January 1951"; or
 - (b) "events occurring in Europe or elsewhere before 1 January 1951", and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.
- (2) Any Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United Nations.

C. This Convention shall cease to apply to any person falling under the terms of Section A if:

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



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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 of 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.



Application of Cessation Clause to Nationality Groups

NUMBER	NATIONALITY GROUP	REFERENCE
1.	Mozambicans	IOM 36/75 (14 November 1975)
2.	Guinea-Bissau	IOM 38/75 (1 December 1975)
3.	Sao Tomeans	IOM 7/76 (16 August 1976)
4.	Angolans	IOM 22/79 (15 June 1979)
5.	Zimbabweans	IOM 4/81 (14 January 1981)
6.	Argentinians	IOM 84/84 (13 November 1984)
7.	Uruguayans	IOM 55/85 (7 November 1985)
8.	Polish	IOM 83/91 (November 1991)
9.	Czechoslovakians	IOM 83/91 (November 1991)
10.	Hungarians	IOM 83/91 (November 1991)
11.	Chileans	IOM 31/94 (28 March 1994)
12.	Namibians	IOM/FOM 29/95 (18 April 1995)
13.	South Africans	IOM/FOM 29/95 (18 April 1995)
14.	Malawians	IOM 88/96 (31 December 1996)
15.	Mozambicans	IOM 88/96 (31 December 1996)

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