

## 8.2 Summary Conclusions: cessation of refugee status

*Expert roundtable organized by the United Nations High Commissioner for Refugees and the Carnegie Endowment for International Peace, hosted by the Luso-American Foundation for Development, Lisbon, Portugal, 3–4 May 2001*



The second day of the expert roundtable addressed the cessation clauses of the 1951 Convention relating to the Status of Refugees, based on two discussion papers, 'Current Issues in Cessation of Protection under Article 1C of the 1951 Convention and Article I.4 of the 1969 OAU Convention', by Professor Joan Fitzpatrick and 'When is International Protection No Longer Necessary? The "Ceased Circumstances" Provisions of the Cessation Clauses: Principles and UNHCR Practice, 1973–99', by Rafael Bonoan. Participants were also provided with the UNHCR Guidelines on the Application of the Cessation Clauses and written contributions from: the Government of the Netherlands; Judge Bendicht Tellenbach, Swiss Asylum Appeal Commission; and Dr Penelope Mathew, Australian National University. NGO and other input was fed into the process in the course of the discussion. Professor Walter Kälin moderated the discussion.

The following Summary Conclusions do not represent the individual views of each participant or necessarily of UNHCR, but reflect broadly the issues emerging from the discussion.

### **A. State and UNHCR practice with respect to the cessation clauses**

1. One of the objectives of the discussion was to understand why, overall, the cessation clauses under the 1951 Convention are little-used provisions by States. There was therefore considerable discussion across the range of issues which impact on the application of the cessation clauses. The emergent focus of the discussion was on the more complex issue of the application of Articles 1C(5) and (6). For this reason, and in view of the fact that Articles 1C(1)–(4) are less used, these conclusions reflect the greater emphasis in the discussion on the application of Articles 1C(5) and (6).

2. A number of countries do not invoke the cessation clauses at least in part because of the administrative costs involved, including the costs of implementing review procedures; the recognized likelihood that even where cessation results, it may not lead to return because those whose refugee status has ceased will have the possibility to remain under another status; and/or a State preference for naturalization under Article 34 of the Convention.
3. Cessation has, on occasion, been a formality used for administrative reasons, that is, to transfer both administrative and fiscal responsibility from one government entity to another. In this sense, it may not have any direct impact on the life of the individual(s) concerned.
4. In some States a declaration of general cessation has been made in relation to refugees from a specific country not for the purpose of reviewing the status of those recognized as refugees but with a view to limiting applications of asylum seekers coming from that country. In some instances cessation appears to have been used to designate a country of origin as generally 'safe' in the context of refugee status determination. In a similar light, recent legislation in some States providing for the periodic review of refugee status may lead to an increased interest in invoking the cessation clauses. These examples indicate that there is a need to clarify applicable standards in the application of the cessation clauses.
5. UNHCR has, in certain specific situations involving large numbers of refugees, invoked the cessation clauses by publicly issuing declarations of general cessation.

### **B. Application of the 'ceased circumstances' cessation clause (Articles 1C(5)–(6) of the 1951 Convention)**

#### **(a) Cessation as a flexible tool**

6. The 'ceased circumstances' cessation provisions pose a number of legal and operational questions and are most in need of expert examination and practical guidance.
7. State practice indicates that there is not necessarily a basis for the view that more flexible interpretation and/or more active use of the 'ceased circumstances' cessation clauses would lead States to extend full Convention refugee status to those who would otherwise benefit from temporary protection.
8. In considering a flexible approach to cessation, it is helpful to distinguish between operational procedures and normative standards. At the operational level, a flexible approach is needed. This would include such measures as consultations between the affected parties, including refugee communities, and phased implementation that takes into account the

needs of the host country, the country of return, and the refugees themselves. On the other hand, at the normative level, a flexible application of the cessation clauses should not be taken to mean that protection standards may be diminished.

#### (b) Criteria and process

9. The process of arriving at a declaration of general cessation requires coherence, consultation, and transparency.
10. The criteria for declaring general cessation as set out in Executive Committee Conclusion No. 69 (1992) on cessation of status and in UNHCR's Guidelines are generally adequate. This being said, there is a need for further development of the guidelines which should focus on procedures for assessing ceased circumstances. This should include broader consideration of a range of factors including human security, the sustainability of return, and the general human rights situation.
11. The criteria for cessation should be applied carefully, not in purely formalistic terms, with full awareness of the situation in the country of origin as well as the country of asylum.
12. In determining whether general cessation can be invoked with regard to a specific group of refugees, the following elements are crucial: (i) assessment of the situation in the country of origin against the criteria mentioned above in paras. 10 and 11 on the basis of all available information from a variety of sources; (ii) involvement of refugees in the process (perhaps including visits by refugees to the country of origin to examine conditions); (iii) examination of the circumstances of refugees who have voluntarily returned to the country of origin; (iv) analysis of the potential consequences of cessation for the refugee population in the host country; and (v) clarification of categories of persons who continue to be in need of international protection and of criteria for recognizing exceptions to cessation.
13. Following a declaration of general cessation, procedures should be implemented in a flexible, consultative, and phased manner, particularly in developing countries hosting large numbers of refugees.
14. Factors critical to the success of implementing general cessation include agreement on implementation procedures and timeframes among States, UNHCR, NGOs, and refugees, counselling of refugees, information sharing, and the provision of assistance to returnees.

#### (c) Targeted/partial application of the 'ceased circumstances' clause

15. Possible criteria for targeted, or partial, application of the cessation clauses require further examination. Two situations may arise. In the first,

a certain sub-group, rather than an entire refugee caseload, from a specific country of origin might be targeted for cessation. This approach has been taken by UNHCR on one occasion, in relation to declaring general cessation for Ethiopian refugees from the Mengistu regime, but not for Ethiopian refugees who had fled subsequently. In some circumstances it might be possible to use a similar approach.

16. The second possible use of partial cessation would be with respect to persons from a particular area of the country of origin. Consideration should be given to the importance of not subjecting refugees to unnecessary review in light of changes which may in fact be temporary. The notion of eventual return to safe areas in the country of origin would need further careful examination in the context of cessation. Importing the idea of relocation/internal flight alternative from refugee status determination is, for instance, not appropriate in relation to cessation and would raise human rights concerns, most notably the creation or expansion of situations of internal displacement.

#### (d) Individual application of the ceased circumstances cessation clause

17. The practice under Article 1C(5)–(6) has hitherto been for cessation to be declared on a group basis, and not applied to individual cases selected from among a larger group of the same nationality. While nothing in the Convention precludes its use with respect to an individual refugee, such an approach would require further analysis if it were to be used, not least because of the need to respect a basic degree of stability for individual refugees.

#### (e) Compelling reasons

18. Application of the ‘compelling reasons’ exception to general cessation contained in Article 1C(5)–(6) is interpreted to extend beyond the actual words of the provision and is recognized to apply to Article 1A(2) refugees. This reflects a general humanitarian principle that is now well grounded in State practice.
19. In addition, Executive Committee Conclusion No. 69 sets out a further humanitarian exception for persons whose long stay in the host country has resulted in strong family, social, and economic ties. These and other similar categories of cases should benefit from a secure legal status.

#### (f) Cessation in situations of mass influx

20. The use of cessation in mass influx depends on the situation in the country of origin and on the status of the refugees in the host countries. It can be categorized as follows:
- *Prima facie group determination under the 1951 Convention and/or the OAU Convention.*<sup>1</sup> The Conventions' cessation clauses apply.
  - *Temporary protection in the wake of mass influx, which includes persons covered by the 1951 Convention.* Since temporary protection is built upon the 1951 Convention framework, it is crucial that in such situations the cessation clauses are respected. This can be achieved, for instance, by promoting voluntary repatriation in safety and dignity when conditions so allow, and by providing access to refugee status determination procedures when temporary protection is lifted, if not sooner. Access to status determination procedures after lifting temporary protection would need to take into account humanitarian and human rights exceptions and in particular compelling reasons arising out of previous persecution.
  - *Complementary protection/broader notion of temporary protection.* A different set of procedures and criteria would avail, linked to the reasons for recognition, given that it applies to those who are not covered by the 1951 Convention. Such standards would still need to be developed, depending on the situation.

#### (g) Relationship to durable solutions

21. As a guiding principle, cessation of refugee status should lead to a durable solution. It should not result in people residing in a host State with an uncertain status. Nor would cessation necessarily lead to return.
22. While voluntary repatriation and cessation may both be elements in a comprehensive approach to address specific refugee situations, the standards and policies appropriate for each are different. An analysis of the circumstances of refugees who repatriate voluntarily may be an important element in determining whether a general declaration of cessation would follow.
23. Residual caseloads remaining after the ending of a voluntary repatriation programme can be divided broadly into two categories. Where there has been an individual status determination, the cessation clauses might be

<sup>1</sup> **Editorial note:** Refers to 1969 Organization of Africa Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa, 1001 UNTS 45.

applied if the circumstances so warrant. Where there has been no individual determination (either because of a prima facie determination of refugee status or because of the granting of temporary protection), individuals not choosing voluntary repatriation should be entitled to seek individual determinations which, in addition to the principles that would ordinarily apply to such determinations, might also include a review of whether their circumstances have changed in the particular case, or there are compelling reasons arising out of previous persecution.

24. In those cases where return is not a viable option, naturalization or at the very least some form of permanent residence is necessary.

### **C. Change in personal circumstances under 1951 Convention, Article 1C (1)–(4) and OAU Convention, Article I.4(a)–(d)**

25. Cessation based on changes in personal circumstances should be assessed under the criteria of voluntariness, intent, and effective protection, which should not be applied in a formalistic manner. The conclusions contained under this heading in Professor Fitzpatrick's paper were broadly endorsed.

### **D. Relationship of cessation to determination of refugee status**

26. In principle, refugee status determination and cessation procedures should be seen as separate and distinct processes, and should not be confused.
27. If in the course of the asylum procedure there are fundamental changes in the country of origin, the asylum authorities should bear the burden of proof that such changes are indeed fundamental and durable. Humanitarian exceptions would need to be properly accommodated in such a context, that is, for instance, in cases where individuals had previously suffered severe forms of persecution.

### **E. Final observations**

28. It was considered that UNHCR's Guidelines on Cessation were generally well crafted but should be updated on the basis of the findings of this meeting. Particular attention should be paid to ensuring that cessation is undertaken only following full consultation and open communication with all affected parties.