

Refugee Law Class 4

Cecilia Bailliet

1951 Convention on the Status of Refugees

- 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 reacquired 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
- (

1951 Convention on the Status of Refugees

- (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 (I) 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 (I) 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.

Cessation Clauses

- Voluntary, Intentional Reavailment of Protection of Country of Origin
- Actual Protection from cause of fear of persecution or new cause
- Grahl Madsen: Mere presence in Home Country is not enough
- Consciously subject oneself to the government
- Normalization of the relationship between the State and the Individual

Cessation Clauses Goodwin-Gill

Age of refugee (minor may not understand nature of renewed contact with state of origin)

- Objective of renewed contact (check out situation, visit sick family, file for national passport or divorce, attainment of birth certificate or marriage certificate as opposed to regular vacation or pursuing business opportunity)
- Advantage obtained by such contact

UNHCR Cessation

- **Seek durable solution**
- **Consider rupture of family ties, social networks and employment (economic links in the community)**
- **Will return of refugees spark new tensions?**
- **Are there new circumstances which may result in persecution?**
- **Peaceful change under constitutional process**
- **Free and Fair Elections/Amnesties/Repeal of Oppressive laws**

UNHCR Cessation

- **Real Change in Government committed to respecting fundamental human rights ratification of treaties- fundamental, stable and durable changes:**
- **Life, liberty, prohibition of torture, marked progress in establishing an independent judiciary, fair trials and access to courts, freedom of expression, association and religion, prohibition of torture**
- **Monitor by international organizations of human rights**
- **Relative political and economic stability**
- **Long term assessment of human rights situation, national reconstruction and reconciliation**
- **Functioning government and basic administrative structures (law and justice)**
- **Ability of state to control non state actors**
- **Infrastructure for basic right to basic livelihood**
- **Good governance**
- **Absence of armed conflict**

Cessation Clauses

- **Do not return to a volatile situation**
- **Compelling reasons exception**
- **Atrocious persecution**
- **Ex camp or prison detainees**
- **Survivors or witnesses of violence against family members, including sexual violence**
- **Severely traumatized persons**
- **Special situation of children**

Bonoan Cessation

- Independent Statehood
- Transition to Democracy
- Resolution of Internal Conflict

Bonoan Cessation

- Existence of democratic elections
- Amnesties
- Repeal of Oppressive laws
- Repeal of judgments against political opponents
- Establishment of legal guarantees against the reoccurrence of discriminatory actions which caused refugees to leave
- Dismantling of former security services

Bonoan Cessation

- De facto and de jure guarantees of the rights to life, liberty and non-discrimination (minority rights)
- Due process
- Fair recourse of courts
- Democratic participation: freedom of expression, association, assembly, free and fair elections
- Socio-economic rights linked to basic human needs (adequate standard of living)
- Changes must remove cause of fear of persecution and establish rule of law

Cessation Clauses

- Consult the refugee
- Would return worsen IDP situation?
- Would return de-stabilize the nation?
- Would there be an increase risk of "revenge violence"
- Would cessation cause a break in strong family, social and economic ties in the host country?

Cessation Clauses Fair Process

- Notice
- Hearing or interview
- A neutral decision maker
- Examination of evidence from a wide range of sources
- Consideration of potential threats to the refugee's fundamental rights
- Burden of proof is on the Asylum State
- Particularized inquiry as to the relevance of changed conditions to the refugee's personal situation
- Delay for the purposes of assessing the durability of change

Cessation Clauses

- assessment of the situation in the country of origin . . .
- involvement of refugees in the process (perhaps including visits by refugees to the country of origin to examine conditions);
- examination of the circumstances of refugees who have voluntarily returned to the country of origin;
- analysis of the potential consequences of cessation for the refugee population in the host country; and
- clarification of categories of persons who continue to be in need of international protection and of criteria for recognizing exceptions to cessation.

- Sudan 12 July 1973 26/73 Settlement of civil conflict
- Mozambique 14 November 1975 36/75 Independence
- Guinea-Bissau 1 December 1975 38/75 Independence
- Sa˜o Tome´ and 16 August 1976 7/76 Independence
- Pri´ncipe
- Cape Verde 16 August 1976 21/76 Independence
- Angola 15 June 1979 22/79 Independence
- Equatorial Guinea 16 July 1980 44/80 Regime change/
● democratization
- Zimbabwe 14 January 1981 4/81 Independence
- Argentina 13 November 1984 84/84 Regime change/
● democratization
- Uruguay 7 November 1985 55/85 Regime change/
● democratization
- Poland 15 November 1991 83/91 Regime change/
● democratization

- Czechoslovakia 15 November 1991 83/91 Regime change/
democratization
- Hungary 15 November 1991 83/91 Regime change/
democratization
- Chile 28 March 1994 31/94 Regime change/
democratization
- Namibia 18 April 1995 29/95 Independence
- South Africa 18 April 1995 29/95 Regime change/
democratization
- Mozambique 31 December 1996 88/96 Settlement of
civil conflict
- Malawi 31 December 1996 88/96 Regime change/
democratization
- Bulgaria 1 October 1997 71/97 Regime change/
democratization
- Romania 1 October 1997 71/97 Regime change/
democratization
- Ethiopia 23 September 1999 91/99 Regime change/

Cancellation

- Individual should not have been recognized as a refugee in the first place, there was a misrepresentation of material facts or the exclusion clauses would have been applicable had all the relevant facts been known.

Palestinian Refugees

- 1D. This 1951 Convention for refugees 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 1951 Convention for refugees.
- Amendement 7 © UNHCR Statute

Reem Salahi

- 1947 partition of Palestine displaced 750,000-800,000
- 75% Palestinians are displaced
- 50% Palestinians are stateless
- Most live in Jordan (attain education), Syria, Lebanon (lack education and jobs) and Saudi Arabia, 500,000 live outside the Arab world
- Palestinian refugees compose 2 out every 5 refugees
- Excluded from UNHCR, since 1952 no institution has mandate to provide permanent solution

Reem Salahi

- United Nations Relief and Works Agency (UNRW) created in 1949
- It lacks resources and has limited mandate: Assistance- for daily needs of food, shelter, and clothing for refugees in Jordan, Syria, Lebanon, West Bank and the Gaza Strip
- Protection gap created as Palestinians are excluded from UNHCR

Definition of Palestinian Refugee pursuant to UNRWA

- Any person whose normal place of residence was Palestine during the period of 1946-48 and who lost both home and means of livelihood as result of the 1948 conflict
- UN General Assembly authorized UNRWA to provide assistance to other Palestinians after 1967 war as an emergency/temporary measure
- UNRWA can assist "refugee offspring", inherit refugee status paternal line
- Now provides education, microfinance, health, social services

United Nations Conciliation Commission for Palestine

- Mandate to protect Palestinian refugees and find permanent solution
- To facilitate repatriation, resettlement, rehabilitation, and compensation
- Israel refused to accept repatriation and compensation
- Since 1952 UNCCP limited to collecting records and documenting refugee properties, protection function dissolved

UNHCR Note on Palestinians

- It is UNHCR's position that Palestinians who are outside the areas of operation of UNRWA and who are unable to re-avail themselves of UNRWA's protection or assistance for objective reasons outside their control are refugees within the meaning of Article 1D of the 1951 Convention and the corresponding provision in the EU Qualification Directive. They are not required additionally to fulfill the criteria in Article 1A(2) of the 1951 Convention. As refugees, they are entitled to the rights and benefits laid down in the 1951 Convention.

Lack of Durable Solution

- Palestinian refugees are denied permanent status
- Many wish to be repatriated
- Salahi calls for UNHCR to accept Palestinians within mandate and coordinate with UNRWA

Stateless Conventions

- 1954
- 1961
- Lack an institution
- See also: League of Arab States Resolutions and Casablanca Protocol
- Lack of harmonized approach among Arab states- Jordan grants C&P rights, Lebanon restricts

Durable Solutions- Repatriation

- Voluntary repatriation in **safety and dignity** requires the full commitment of the country of origin to help reintegrate its own people. Seek empowerment, particularly of women and enhancement of productive capacities and self-reliance of refugees
- UNHCR's priorities when it comes to return are to promote **enabling conditions** for voluntary repatriation; to ensure the exercise of a free and informed choice; and to mobilize support for returnees. UNHCR promotes "go-and-see" visits for refugees; compiling updated information on their country and region of origin; engaging in peace and reconciliation activities; promoting housing and property restitution; and providing return assistance and legal aid to returnees.
- In post-conflict situations in countries of origin, the High Commissioner proposed an integrated approach known as "4Rs" (Repatriation, Reintegration, Rehabilitation and Reconstruction). This approach brings together humanitarian and development actors and funds. The aim is that greater resources should be allocated to create a conducive environment inside the countries of origin so as to, not only prevent the recurrence of mass outflows, but also facilitate sustainable repatriation.
- This initiative is being piloted in Eritrea, Sierra Leone, Sri Lanka and Afghanistan and has clear linkages with the government, development actors such as UNDP, World Bank, UNICEF and WFP, the donor community and bilateral aid agencies.

Local Integration

- The High Commissioner has proposed a strategy called “Development through Local Integration”, or “DLI”. In situations where the State opts to provide opportunities for gradual integration of refugees, DLI would solicit additional development assistance with the aim of attaining a durable solution in terms of local integration of refugees as an option and not an obligation.
- Central to the success of this strategy is the attitude of the host government and the local authorities as well as the commitment on the part of the donor community to provide additional assistance.
- Consider human rights- non-discrimination, freedom of movement, speech, right to participate in labour market, own property, attain citizenship, family reunification, pursuit of education
- UNHCR estimates that, during the past decade, 1.1 million refugees around the world became citizens in their country of asylum.

Resettlement

- To achieve a more equitable sharing of burdens and responsibilities and to build capacities to receive and protect refugees and to resolve their problems on a durable basis. Some refugees are subject to violations and or abuse in the country of asylum and must be placed elsewhere.
- Of the 10.5 million refugees of concern to UNHCR around the world, only about 1 per cent are submitted by the agency for resettlement.
- Sometimes resettlement is abused as reward to “good refugees” or removal of problematic refugees from camps
- Only a small number of states take part in UNHCR resettlement programmes. The United States is the world's top resettlement country, while Australia, Canada and the Nordic countries also provide a sizeable number of places annually. In recent years there has been an increase in the number of countries involved in resettlement in Europe and Latin America.
- The resettlement country provides the refugee with legal and physical protection, including access to civil, political, economic, social and cultural rights similar to those enjoyed by nationals. It should allow for refugees to become naturalized citizens.

Resettlement

- In 2011, UNHCR submitted the files of some 92,000 refugees for consideration by resettlement countries. By nationality, the main beneficiaries of UNHCR-facilitated resettlement programmes were refugees from Myanmar (21,300), Iraq (20,000), Somalia (15,700) and Bhutan (13,000). Ten per cent of all submissions were for women and girls at risk, the highest percentage of the last six years.
- In the same year, almost 62,000 individuals departed to 22 resettlement countries with UNHCR's assistance. The largest number of resettled refugees left from Nepal (18,150), followed by Thailand (9,570) and Malaysia (8,370).
- Providing for their effective reception and integration is beneficial for both the resettled refugee and the receiving country. Governments and non-governmental organization partners provide services to facilitate integration, such as cultural orientation, language and vocational training as well as programmes to promote access to education and employment.