

PROGRESS REPORT ON  
UNHCR ACTIVITIES IN THE FIELD OF STATELESSNESS

I. PURPOSE OF THIS NOTE

1. UNHCR has been requested to report on a biennial basis on its activities to assist and protect stateless persons. The last note in this regard was presented to the Standing Committee in 1997.<sup>1</sup> The present Note focuses on activities undertaken since that time with a view to informing the Standing Committee about this significant and growing feature of UNHCR's protection responsibilities.

II. BACKGROUND

2. UNHCR has long had responsibilities for stateless persons, both for those stateless persons who are refugees as well as for persons who may call upon the Office under the terms of the 1961 Convention on the Reduction of Statelessness. In 1994, the Executive Committee requested UNHCR to strengthen its efforts in the area of statelessness.<sup>2</sup> As response to this request, UNHCR provided two background reports to the Sub-Committee of the Whole on International Protection of the Executive Committee (SCIP), in June and September 1995 respectively.<sup>3</sup> They presented the historical and legal links between the 1951 Convention relating to the Status of Refugees and the 1954 Convention relating to the Status of Stateless Persons, of which the latter was originally intended as a Protocol to the 1951 Refugee Convention. The background to the 1961 Convention was also discussed, and UNHCR's role under Article 11 as that "of a body to which a person claiming the benefit of this Convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority" was described. Legal gaps, which became evident in later years for persons who were unable to establish their nationality status, were analyzed, as were the reasons for the low number of States Parties to these Conventions. Proposals were made for the promotion of additional accessions and related activities.

3. The Conclusion on the Prevention and Reduction of Statelessness and the Protection of Stateless Persons<sup>4</sup>, adopted by the Executive Committee in 1995, restated the right to a nationality and the right not to be arbitrarily deprived of nationality. Underlying this concern was that statelessness, including the inability to establish one's nationality, may result in displacement. UNHCR was encouraged to continue its activities on behalf of stateless persons and, moreover, was requested actively to promote accessions to the 1954 and 1961 Conventions, as well as to provide technical and advisory services pertaining to the preparation and implementation of nationality legislation to interested States. UNHCR was asked to promote the prevention and reduction of statelessness through the dissemination of information, to train staff and government officials, and to enhance cooperation with other interested organisations. These responsibilities were reconfirmed in General Assembly Resolution 50/152 of 21

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<sup>1</sup> Note on UNHCR and Statelessness Activities, EC/47/SC/CRP.31, 30 May 1997.

<sup>2</sup> A/AC.96/839, para.19(ee).

<sup>3</sup> Executive Committee/1995/SCP/CRP.2 of 2 June 1995 and EC/1995/SCP/CRP.6 of 21 September 1995.

<sup>4</sup> Conclusion on the Prevention and Reduction of Statelessness and the Protection of Stateless Persons, A/AC.96/860, para.20.

December 1995.<sup>5</sup> In the Note on UNHCR and Statelessness Activities of 1997, initial steps taken by the Office to ensure internal staffing resources, as well as training, promotional and technical and advisory services undertaken in response to the 1995 Conclusion were outlined in detail. Activities undertaken in cooperation with other interested organizations were also defined as well as future plans. In the past two years, since the report to the Standing Committee in 1997, the Office has continued to build on these efforts, as described in the following paragraphs.

### III. OVERVIEW OF UNHCR ACTIVITIES IN THE AREA OF STATELESSNESS FOLLOWING THE 1997 REPORT

4. The Department of International Protection (DIP) has presented a number of statelessness workshops for UNHCR field staff, including comprehensive training and the development of regional programmes of action in North Africa and the Middle East, Central Asia, the Americas and Europe. Two full sessions for Headquarters staff with periodic sessions for selected field staff have been conducted in Geneva. Similar sessions are planned for this year in Africa, Asia, and Europe. DIP also offered a training session for NGOs in Geneva in 1998, hosted by the Lutheran World Federation, and for government officials gathered at the yearly San Remo roundtable workshop in 1997.

5. DIP has regular consultations with a number of United Nations organs and bodies concerned with particular aspects of the problem of statelessness. Presentations were made to the Committee on Human Rights, the Committee on the Rights of the Child, and to the Sub-Commission on Prevention of Discrimination and Protection of Minorities. Consultations and technical support have been undertaken with the International Law Commission in its ongoing work in the area of nationality and State succession, while information exchanges on situation-specific issues have taken place with the Office of Legal Affairs in New York. Significant cooperation has also been established with other concerned organizations such as the Council of Europe, the Organization for Security and Cooperation in Europe (OSCE), the High Commissioner on National Minorities, and the Office of Democratic Institutions and Human Rights (ODIHR), and with individual NGOs. UNHCR has received numerous requests from these and other organizations to provide technical and advisory services and to cooperate in structuring programmes to address particular caseloads.

6. UNHCR's cooperation with the Council of Europe has been particularly significant, involving active participation in drafting the 1997 European Convention on Nationality, a process conducted under the auspices of the Council of Europe. UNHCR played an important role in drafting a detailed framework for States Parties implementing the 1997 European Convention in the form of a separate Council of Europe instrument entitled *Recommendation on the Avoidance and Reduction of Statelessness*. Drafted in sessions held during 1997 and 1998, the Recommendation will be before the Committee of Ministers for adoption this year. This cooperation has been extended to jointly organized nationality workshops, in consultation with the nationality authorities of several European countries. Productive workshops have been held to date in Romania, Ukraine, Azerbaijan and Albania, and are planned in several more States this year.

7. UNHCR has provided technical advice in the drafting, implementation, and promulgation of nationality laws, most recently in Poland, Canada, the Russian Federation, Romania, Czech Republic, Bosnia and Herzegovina, Albania and Azerbaijan. The Office's expertise in this area is also regularly sought by States which are putting in place and implementing procedures to regulate cases of statelessness. This expertise has been provided to courts, administrative tribunals and relevant Ministries in, for example, Canada, Australia, Argentina, Belgium, Spain, the United Kingdom, South Africa, Latvia and Estonia. Questions put to UNHCR have extended to the actual implementation of nationality laws, one of the more significant problems facing States. Without harmonization of basic principles or approaches to nationality, and without consultation concerning the national interpretation and application of laws, the interpretation of nationality laws may vary considerably from one region to another.

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<sup>5</sup> General Assembly resolution 50/152, adopted by the General Assembly on 21 December 1995, in reference to the report of the Third Committee, *Office of the United Nations High Commissioner for Refugees* (A/50/632).

8. One growing area of concern is statelessness of children due to the lack of registration of births, particularly in refugee camps or in instances of large-scale population movement. As nationality is generally granted based on either where one is born, or to whom one is born, inability to establish these facts quite easily results in statelessness. Efforts are being strengthened in co-operation with concerned organizations to ensure that all children, regardless of their nationality status or place of birth, are registered when born.

9. The range of problems concerning nationality with which States have to deal is increasingly broad. Logistical and legal support has been welcomed by certain States trying to cope with significant numbers of stateless or potentially stateless persons on their territory. Programmes have been established, in cooperation with States including the Czech Republic and Ukraine, and partners such as the OSCE, to document individuals and to assist them through legal procedures to avoid statelessness. These States have also cooperated closely with UNHCR when promulgating legislation to address the problem of statelessness. UNHCR field offices have laid the groundwork for cooperation with NGOs as implementing partners in structuring programmes concerning legal procedures, maintaining statistical information, and assisting individuals applying for nationality.

10. Indeed, this level of interaction with governments throughout the Commonwealth of Independent States, the former Yugoslavia, and Central and Eastern Europe, has contributed significantly to reduce the risk of statelessness which loomed following the dissolution of various States earlier this decade. Since the last report on statelessness activities in 1997, the citizenship laws of Bosnia and Herzegovina, including the State law and the laws of both the Federation and of Republika Srpska, have been drafted and harmonized with the joint participation of designated experts from Bosnia and Herzegovina, UNHCR, the Council of Europe, and the Office of the High Representative. The State law is already in force and, with the adoption of the Entity laws, an effective legal framework will finally be in place in Bosnia and Herzegovina and throughout the States of the former Yugoslavia to resolve outstanding questions of nationality status following the dissolution of the Socialist Federal Republic of Yugoslavia. Current programmes are underway in cooperation with the OSCE/ODIHR, the High Commissioner for National Minorities, the Council of Europe, NGOs and concerned States to cope with other situations, including that of formerly deported peoples such as the Meskhetian Turks now dispersed through several nations, in order to avert statelessness. Where appropriate, successful experiences in one State are being used as a model in shaping an effective approach elsewhere.

11. DIP has produced several publications to support field staff, concerned organizations, and States dealing with problems relating to statelessness. The *Information and Accession Package: The 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness* is the main publication outlining the issue, the Office's role, main provisions of international law, and information concerning accession to the 1954 and 1961 Conventions. This Package has been reissued in English early in 1999, and has also now been translated into French, Arabic, and Russian with a Spanish version soon to follow. Also recently released by DIP is the public information brochure entitled *Statelessness: What would life be like if you had no nationality?* This brochure outlines in brief the problems faced by stateless persons, underlying causes of statelessness, UNHCR's role and steps States can take in cooperation with the international community to avoid the creation of statelessness. The brochure will be translated into various languages.

12. In 1998 DIP issued a memorandum entitled *Guidelines: Field Office Activities Concerning Statelessness*, providing field staff with detailed information on steps they should take in cooperation with authorities to address existing cases of statelessness and to maximize efforts to avoid statelessness. UNHCR's Centre for Documentation and Research has an on-line Nationality Database which is an important source of information for States trying to resolve nationality issues arising with other States, and includes publications by experts in the field and other relevant documentation. UNHCR publications undertaken in cooperation with States include *Citizenship and Prevention of Statelessness Linked to the Disintegration of the Socialist Federal Republic of Yugoslavia* and *Citizenship in the Context of the Dissolution of Czechoslovakia*.<sup>6</sup> Also included in UNHCR's library are Volumes I to IV of *Nationality &*

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<sup>6</sup> Published respectively in UNHCR's *European Series* Vol.3, No.1, June 1997 and Vol.2, No.4, September 1996.

#### IV. SOME CHALLENGES AHEAD

13. While identifying a statelessness problem can be relatively straightforward when an individual does not have the legal bond of nationality or citizenship<sup>8</sup> with any State, UNHCR has found that one of the most challenging elements of dealing with the issue in practice is the inability of States to agree on whether a particular person or category of persons is actually stateless. UNHCR, as the body responsible for providing technical and advisory services on nationality principles in international law, can assist efforts to determine nationality status. However, the determination as to whether an individual does or does not have the nationality of a given State ultimately rests with the State, as is stipulated by international law. If States do not or cannot make this determination, an individual's status will remain unclear. The 1954 and 1961 statelessness Conventions provide an internationally recognized legal framework, through which States can work to resolve cases of unclear status. The High Commissioner's global accessions campaign running up to the Office's 50th anniversary in the year 2000 is an effort to promote accessions not only to the refugee instruments, but also to the lesser-known statelessness Conventions for which the Office has recently been given increased responsibility. States are actively encouraged both to support this effort and, as appropriate, to undertake measures to accede to the Conventions. One new accession (Government of St. Vincent and the Grenadines) has been deposited in April 1999. With this exception, there have, however, been no new accessions to the 1954 or to the 1961 statelessness Conventions during the reporting period.

14. In cases where an individual or a category of persons is determined to be stateless, the challenge is to identify which State might best be in a position to assist in identifying and working towards a solution. There are some reference points under international law for addressing the problems of stateless persons. The 1954 Convention relating to the Status of Stateless Persons outlines a framework within which a State can provide a legal status for lawfully resident stateless persons. This legal status allows an individual to live a relatively normal and stable life even though stateless. However, despite the fact that the 1954 Convention does not obligate States in broad areas - for example, there is no general obligation to admit stateless persons to the State's territory or to grant nationality to lawfully resident stateless persons - only 45 States have ratified this important instrument to date, and few States have implemented provisions for granting status to lawfully resident stateless persons. Consequently, countless stateless persons around the globe continue to live without any legal status in any country. The 1954 Convention is a valuable legal tool for use in minimizing the negative effects of statelessness, both for States and for individuals.

15. Lack of legal status very often leads to further complications. Those with no legal status anywhere live in legal uncertainty which, in UNHCR's experience, can be the impetus to onward migration. Such movement may take place for economic, religious, linguistic, cultural, political, historical or other reasons, in order to find a place to belong, with a secure future. Stateless individuals, or persons whose nationality status is disputed, sometimes cross borders to seek asylum. In cases where an asylum claim is rejected, States will generally seek to return the individual to his or her country of nationality or place of lawful, habitual residence. However, in cases where there is no country of nationality or lawful residence because the individual has been entirely excluded from any national legal system, serious difficulties arise. UNHCR is regularly confronted with cases of individuals languishing in indefinite detention for years, turning often to decades, because they have no recognized legal status in any country. Statelessness, *de facto* or *de jure*, is thus a compounding factor in the problems confronting rejected asylum seekers.

16. The Office has also had to contend with the movement of entire populations who are motivated, at least in part, by the desire to secure recognition under a legal system. Without a nationality, and with no other legal status, it is not easy to work, to own property, to educate one's children, to participate in civil and political life, or even to undertake such basic functions as marrying or burying one's family members. In some cases the dislocation is perpetuated generation after generation, exacerbated by

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<sup>7</sup> *Nationality and Statelessness: A Collection of National Laws*, IBHI Humanitarian Series, 1997.

<sup>8</sup> Some States use the word citizenship to denote this legal bond while other States use the word nationality. For purposes of this report these words are interchangeable.

religious, ethnic, or cultural intolerance, or simply by the inability of some countries to absorb large numbers of persons seeking to settle. More complicated are situations in which persons are welcomed under one government, only to be stripped of status and expelled when the regime changes in later years. These situations are very often connected to sweeping changes, such as State succession and political or military coups, in the constitution of a government or State. Increased ratification and implementation of the 1954 Convention relating to the Status of Stateless Persons would help contribute to containing the problems of statelessness associated with a lack of legal status.

17. It has often been observed that statelessness can be a root cause associated with displacement and refugee flows. Methodical and structured cooperation between States is needed to resolve cases which result from a lack of understanding or coordination on questions of nationality. For example, statelessness easily arises if an individual is born in a State which grants nationality by descent only, to parents who hold nationality in a State which grants nationality by virtue of birth on the territory only. In a world of global interaction, frequent movement across borders, mixed marriages, and increased numbers of persons living outside of their country of nationality, it is no longer possible for States to avoid the creation of statelessness solely through an independent application of national laws. Consultations between States within an established legal framework are critical for the purpose of avoiding statelessness. The 1954 and 1961 statelessness instruments provide a legal framework within which States may undertake such consultations and promote cooperation.

18. The 1961 Convention on the Reduction of Statelessness represents the first and, to date, the only international instrument designed with the primary object and purpose of reducing cases of statelessness. The Convention deals only with cases in which the individual concerned will be stateless, not with nationality attribution in general. The Convention does not require States Parties to grant nationality to all persons already stateless, but seeks only to provide a framework for the avoidance of future cases of statelessness. It does not, in fact, require States to go further than many have already gone through their national legislation. The fact that there are only 19 States Parties to this instrument has no easy explanation, but may constitute a stark commentary on the lack of resolve of the international community to work together on this issue.

#### V. THE FUTURE OF THE STATELESSNESS PROGRAMME

19. The demands on UNHCR for technical and support services in this area continue to grow. UNHCR's role has already proved a contributing factor to the reduction both of specific cases of statelessness and of the threat of statelessness. This, though, has led to requests for enhanced support services. The 1998 Inspector's report to the High Commissioner recommended that a statelessness unit be established within the Department of International Protection. DIP has taken steps toward this end both to ensure that the existing expertise is maintained and in an effort to secure additional human resources. The Office will continue to respond to requests from States subject only to mandate limitations and the availability of resources.

20. There are practical steps that States themselves can take at the national level to assist in avoiding statelessness. States can ensure that their nationality legislation does not create cases of statelessness independently of or in conjunction with the laws of other States; that every child is registered at birth; that there are no discriminatory administrative practices in acquiring nationality for equally situated persons; that they do not allow renunciation of nationality without the prior acquisition or guarantee of acquisition of another nationality; and that they cooperate with other concerned States. UNHCR will continue to provide advice and assistance on these issues where States deem it useful. Accession to the 1954 Convention relating to the Status of Stateless Persons and to the 1961 Convention on the Reduction of Statelessness would represent a significant stride toward the international community's goal of addressing the problem of statelessness in a cooperative and harmonized manner.