



**OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR REFUGEES
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**The Cessation Clauses: Guidelines on their Application
UNHCR, Geneva, April 1999**

Introduction

1. Refugee status, as conceived in international law, is, in principle, a transitory phenomenon which lasts only as long as the reasons for fearing persecution in the country of origin persist. Once these reasons disappear, refugee status may be legitimately terminated.

2. The cessation clauses set out the only situations in which refugee status properly and legitimately granted comes to an end. This means that once an individual is determined to be a refugee, his/her status is maintained unless he/she falls within the terms of one of the cessation clauses. This strict approach is important since refugees should not be subjected to constant review of their refugee status. In addition, since the application of the cessation clauses in effect operates as a formal loss of refugee status, a restrictive and well-balanced approach should be adopted in their interpretation.

3. The formal loss of refugee status on the basis of the cessation clauses must be distinguished from cancellation of refugee status. The latter is undertaken when it comes to light that the individual should never have been recognized as a refugee in the first place. Such would be the case where it is established that there had been a misrepresentation of material facts, or that one of the exclusion clauses would have been applicable had all the relevant facts been known.

4. The cessation clauses are contained in Article 1C of the 1951 Convention.[1] This provision reads as follows:

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 ;

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

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

(6) Being a person who has no nationality he is, because the circumstances in connection with which he has been recognised 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.”

5. The above clauses can be divided broadly into two categories: those relating to a change in the personal situation of the refugee brought about by his/her own acts (contained in sub-paragraphs 1 to 4), and those relating to a change in the objective circumstances which formed the basis for the recognition of refugee status (contained in sub-paragraphs 5 and 6). The last clause is commonly referred to as the “ceased circumstances” clause.

Voluntary Re-availing of the Protection of the Country of Nationality

6. The protection intended here is the diplomatic protection by the country of nationality of the refugee. The notion of diplomatic protection principally relates to the actions that a State is entitled to undertake vis-a-vis another State in order to obtain redress, in case the rights of one of its nationals have been violated or have been threatened by the latter State. If a refugee re-avails him or herself of such form of protection, his or her refugee status should come to an end.

7. Diplomatic protection more broadly also subsumes consular assistance. Where consular authorities provide documents and certificates that the nationals of the country may need while being abroad, including renewal of passports, birth and marriage certificates, authentication of diplomas, etc., this may also constitute re-availing of national protection.

8. The re-availing of the protection of the country of nationality should lead to cessation where the refugee has acted voluntarily, has intended to re-avail himself of the protection of the country of his/her nationality; and has actually obtained such protection.

(a) Voluntary act

9. If the refugee is compelled to act by circumstances beyond his/her control, such as at the instructions of the authorities of the country of asylum or in order to avert illegalities in regard to his/her stay there, such an act should not be considered as

voluntary. The refugee must therefore truly act out of his/her own free will in approaching the authorities of his/her country of origin.

(b) Intention or motive for the act

10. The intent or motive of the refugee in contacting the authorities of his/her country of nationality must be assessed in order to establish if the act is indeed undertaken for the purpose of obtaining the protection of the authorities. While it may be difficult to determine the intention or motive of the refugee, every case has to be assessed on its own merits and on the basis of the particular act of the refugee. Most ordinary contacts with diplomatic missions for the purpose of certification of academic documents, or for the purpose of obtaining copies of birth, marital, and other records, are not considered as acts which carry the intention of re-availment of the protection of the country of origin. Applications by refugees for the issuance or extension of national passports will normally imply an intention to entrust the protection of their interests to, or to re-establish normal relations with, their country of nationality. This implication may, however, be rebutted by the refugee. There may be cases where obtaining or renewing a national passport should not be considered as indicative of an intention to re-avail of the protection of the country of nationality. The key issue is the purpose or reason for which the passport was obtained or renewed.[2]

(c) Protection must be obtained

11. Mere attempts or unsuccessful requests for protection by the refugee to the diplomatic mission of his or her country of nationality would not lead to cessation. Cessation will come about only where such requests are granted and protection is *de facto* extended to the person.[3]

Voluntary Re-acquisition of Lost Nationality

12. This cessation clause is applicable to a refugee who at some point lost the nationality of the country in respect of which he or she had a well-founded fear of persecution. Such loss could be due to deprivation of nationality by the government concerned, or by an act of the person resulting in loss of nationality through operation of law. The loss of nationality could have occurred before or after recognition of refugee status.

13. The refugee, in re-acquiring his or her nationality, must have acted on the basis of free will. Unlike the previous cessation clause, this particular cessation clause does normally not require an examination of the intent or motive of the refugee. Nationality is generally considered to reflect the bond between the citizen and the State and, as long as the refugee has of his own free will re-acquired the lost nationality, the intent to obtain the protection of his or her government may be presumed. The voluntary re-acquisition of the nationality is a clear indication that there is a normalisation of the bond between the refugee and the government in relation to which he or she has had a well founded fear of persecution.

14. In a situation where the laws in the refugee's country of origin automatically confer nationality and the refugee has re-acquired nationality in this way, there is obviously no act on the part of the refugee which would automatically trigger the

application of this clause. Nor, *a fortiori*, is the mere possibility of re-acquiring the lost nationality by exercising a right of option sufficient to put an end to refugee status. However, where the laws give an option to reject the attribution of nationality and the refugee, with full knowledge of the option, does not exercise it, then the refugee could be deemed to have voluntarily re-acquired the former nationality. Although there is usually little scope for explanation of extenuating circumstances, the refugee may nonetheless, in this particular situation, invoke special reasons to demonstrate that there was in fact no intention to obtain the protection of the government.

Acquisition of a New Nationality, and Enjoyment of the Protection of the country of New Nationality

15. Unlike the other cessation clauses, this particular cessation clause relates not to the normalisation of relations between the refugee and his country of origin but to the establishment of relations between the refugee and a new country. This country is usually the country of refuge, but it may also be another country.

(a) Acquisition of a new nationality

16. A new nationality must have been acquired. There must be conclusive evidence to regard the refugee as a national of another country, taking into account both the applicable law and actual administrative practice. The possession of the passport of another country is in itself insufficient evidence unless it is clear that the bearer of the passport is, by law of that country, its national.[4]

(b) Enjoyment of the protection of the country of new nationality

17. The enjoyment of the protection of the country of new nationality is the crucial factor. Two conditions must be fulfilled in order to consider that a person who has acquired a new nationality enjoys the protection of the country of new nationality: (i) the new nationality must be effective, in the sense that it must correspond to a genuine link between the individual and the State;^[5] and (ii) the refugee must be able and willing to avail himself or herself of the protection of the government of his or her new nationality. This element of the cessation clause is particularly relevant in cases where the new nationality has been acquired through marriage. In such cases, the protection available from the new country of nationality will depend on whether or not a genuine link has been established with the spouse's country. Where the effective protection of the country of the spouse is available and the refugee avails himself or herself of such protection, the cessation clause would apply.

18. Should the new nationality be lost, it is possible to re-claim the previous refugee status, although this is not automatic and would depend on the circumstances relating to the loss. Thus, in a case where the person had lost his newly acquired nationality by voluntary renunciation, the cessation clause may still apply. On the other hand, if the new nationality was lost as a result of circumstances beyond the individual's control, such as political events relating to the state of the individual's new nationality, then the individual's refugee status may be revived.

Voluntary Re-establishment in the Country of Origin

19. This is the only cessation clause which requires the refugee to have returned to his or her country of origin. The term “re-established” denotes not only return to the country of origin but also re-settlement there.

20. The requirement of voluntariness qualifies both the return and the stay in the country of origin. Where the return is involuntary, this cessation clause is not applicable. However, should the refugee have returned to his or her country of origin involuntarily, but nonetheless settled down without problems and resumed a normal life for a prolonged period before leaving again, the cessation clause may still apply. On the other hand, where the refugee returned to his or her country voluntarily, but his or her stay was not voluntary, such as due to imprisonment, then cessation may not be applicable.

21. There are no definite criteria as to when a person could be considered as being “re-established”. Prolonged stay is an indication of re-establishment. The length of stay, however, is only one factor for determining “re-establishment”. Another indicator is the sense of “commitment” which the refugee has in regard to the stay in the country of origin. A short stay may warrant cessation of refugee status if the refugee had carried on a normal livelihood without problems and performed obligations which a normal citizen would, such as paying taxes. Such behaviour would be indicative of a normalization of relations with the country. On the other hand, short visits to the country of origin for compelling reasons would not normally suffice for application of this clause. For instance, the return of a refugee to his or her country of origin to assess the situation should not be considered as “re-establishment” within the meaning of this provision.[6]

22. The application of this cessation clause does not preclude the person from having a new refugee claim based on circumstances in the country of origin which had occurred after he or she re-established himself or herself.

“Ceased Circumstances” Clause

23. Sub-paragraph 5 of Article 1(C) refers to refugees who have a nationality and sub-paragraph 6 refers to stateless refugees.

a) Nature and scope of changed circumstances

24. Sub-paragraph 5 provides that the Convention shall cease to apply to a refugee if “he can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality”. Sub-paragraph 6 provides that the Convention shall cease to apply to a refugee if, “being a person who has no nationality he is, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, able to return to the country of his former habitual residence”. The substitution of the phrase “is ... able to return to the country of his former habitual residence” for the phrase “he can no longer ... continue

to refuse to avail himself of the protection of the country of his nationality” is due to the fact that stateless persons are not entitled to the diplomatic protection of any State.

25. The phrase “circumstances in connection with which he has been recognised as a refugee” refers to the objective situation in the refugee’s country of origin. For this cessation clause to be applicable, there must be fundamental changes in the country of origin which can be assumed to remove the basis of the fear of persecution. The changes must be major, profound or substantial. Fundamental changes may occur suddenly, or they may occur gradually extended over a long time period.

26. The fundamental changes must also be durable and a strict approach should be maintained in deciding whether or not the changes can be qualified as durable. Momentary periods of peace and stability will not warrant application of the cessation clause. All developments which would appear to evidence significant and profound changes bringing the cessation clauses into play should be given time to consolidate before any decision on cessation is made.

27. While the time period will vary from situation to situation, an evaluation of the durability of changes should also take into account the way the changes had occurred or are occurring, the nature of the changes, the overall political climate of the country, the effects of the change on the present and previous government (if there was a change of government) and the ability of the regime in governance, in fortifying the changes, and in the restoration of stability.

28. An evaluation as to the durability of change can be made within a relatively short time period where, for example, the changes are peaceful and take place under a constitutional process, where there are free and fair elections with a real change in the regime which respects fundamental human rights and where there is relative political and economic stability in the country. On the other hand, a longer period of time will be required to test durability of change where the changes are violent in nature involving the overthrow of a regime. Under the latter circumstances, the human rights situation needs to be especially carefully assessed. The process of national reconstruction must be given ample time to take hold and any peace arrangements with opposing militant groups must be carefully monitored. Unless national reconciliation takes place and real peace is restored, political changes which have occurred may not be firmly established. The failure to accomplish major aspects of a peace process, such as the restoration of land and property rights, may constitute a source of tension preventing full reconciliation. Economic and social stability have relevance in so far as serious instability in the economic or social situation could generate further political unrest.

29. Changes in the refugee’s country of origin affecting only part of the territory should not, in principle, lead to cessation of refugee status. Refugee status can only come to an end if the basis for fear of persecution is removed without the precondition that the refugee has to return to specific “safe areas” of the country in order to be free from persecution.

b) Exemption from cessation

30. The “ceased circumstances” clause contains a provision which allows refugees falling under section A(1) of Article 1 of the 1951 Convention, that is, the so-called

“statutory” refugees, to invoke compelling reasons arising out of previous persecution for refusing to avail themselves of the protection of the country of nationality and thereby retain refugee status. The provision was specifically intended to cover persons who suffered atrocious forms of persecution by the Nazi regime, so that due to trauma they could not reasonably be expected to return to their country of origin.

31. Formally speaking, this provision applies only to a very small group of refugees in the present day context. However, there is nothing to prevent it being applied on humanitarian grounds to other than statutory refugees. Besides, the Executive Committee of UNHCR has recommended in Conclusion No. 69 (XLIII) of 1992 that, in order to avoid hardship, 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”.

Procedures for the Application of the Cessation Clauses

32. The 1951 Convention does not indicate what type of procedures are to be adopted in respect of cessation. Excom Conclusion 69, however, emphasises a “careful approach” to the application of the cessation clauses which uses “clearly established procedures” so that refugees are assured that their status will be reviewed fairly. Given the significant implications of an erroneous declaration of cessation, certain safeguards must be incorporated into such procedures, which must respect ordinary rules of fairness and natural justice.

a) Rebuttable presumption

33. All the cessation clauses are applicable on an individual basis. Considering, however, that the “ceased circumstances” clause relates to the objective conditions prevailing in the refugees’ country of origin, it is reasonable to assume that where a fundamental change of circumstances has taken place, the reasons which caused the refugee movement have, in principle, disappeared with regard to all refugees of that origin. As such, a statement made by the competent authorities of the country of asylum or by UNHCR that conditions in a particular country of origin of refugees have changed in a fundamental and durable manner, amounts to establishing a presumption that, as a group, refugees from that country no longer have a well-founded fear of being persecuted. Such presumption must be rebuttable and, as recommended by EXCOM Conclusion No. 69 (XLIII) of 1992, the persons concerned must have the possibility, upon request, to have such application in their cases reconsidered on grounds relevant to their individual situation.

34. Refugees who have obtained their status on the basis of dependency maintain their status until they individually fall within the cessation clauses. This means that loss of refugee status on the part of any refugee family member would not, as such, affect the refugee status of any other member of the family.

b) Role of UNHCR

35. While it is for UNHCR to evaluate whether conditions in the country of origin have changed sufficiently to warrant the application of the ceased circumstances”

clause under the Office's Statute for UNHCR Mandate refugees, the application of the cessation clauses under the Convention rests formally with States. Nevertheless, UNHCR has a role in this latter process in light of its supervisory functions under Art. 35 of the 1951 Convention. Excom Conclusion 69 stipulates that the "High Commissioner should be appropriately involved" and stresses that States should make use of country of origin information available, "particularly" from UNHCR. Apart from being a source of country of origin information, in view of UNHCR's universal competence for refugees generally, it could also appropriately assist Governments to evaluate the changes in countries of origin. Excom Conclusion 69 notes 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". Since 1975, UNHCR has declared cessation in respect of fifteen national groups of refugees, based on fundamental changes in the country of origin (see the list attached to this Memorandum).

36. Both the decision and timing of cessation should take into account difficulties which may result from the invocation of the cessation clauses. Where the cessation clauses are invoked, States should deal humanely with the consequences which arise. Cessation of refugee status must not necessarily imply that the former refugee should leave the country of asylum. EXCOM Conclusion No.69 recommends in this connection that, where cessation clauses are applied, the relevant authorities of countries of asylum should consider appropriate arrangements for those persons who cannot be expected to leave the country due to a long stay resulting in strong family, social and economic links in that country. Such arrangements should include the grant of an appropriate residence status which would allow former refugees to maintain their established situation and retain their acquired rights.

c) Cessation and Repatriation

37. The existence of conditions conducive to voluntary repatriation does not *ipso facto* warrant the application of the "ceased circumstances" clause. Although the situation in the country of origin may have improved sufficiently to provoke a refugee's personal decision to return voluntarily, the scope of these changes may fall short of the fundamental and durable character of changes required for the application of that particular clause.

38. In the absence of an independent residence status or special considerations which would justify the adoption of exceptional arrangements for the continued stay of the former refugee in the country of asylum, the application of cessation clauses may eventually lead to the repatriation of the concerned person. The Executive Committee recommends in Excom Conclusion 69 that, in giving effect to a decision to invoke the cessation clauses, States should in all situations deal humanely with the consequences for the affected individuals or groups, that countries of asylum and countries of origin should together facilitate return and then should ensure that it takes place in a fair and dignified manner. Conclusion 69 further recommends that, where appropriate, return and reintegration assistance should be made available to the returnees by the international community, including through relevant international agencies. Individuals whose refugee status have been ended by operation of the "ceased circumstances" clause are in principle eligible for UNHCR's assistance towards repatriation. Normally, former refugees wishing to benefit from such repatriation

assistance are required to express their interest within a certain time limit and the repatriation must also take place within a certain time limit.[7] As in all cases, however, granting of assistance will be dependent upon the person fulfilling the relevant requirements, as set out in the relevant guidelines, including the Handbook on Voluntary Repatriation.

39. Finally UNHCR Field Offices must ensure that the standards of Conclusion No.69 are applied to Mandate refugees affected by the Office's own application of the relevant cessation clause contained in the UNHCR Statute.

[1] Cessation clauses are also contained in Paragraph 6A of the Statute of UNHCR and Article I(4) of the OAU Convention. While the cessation clauses in the UNHCR Statute are similar to those in the 1951 Convention, the OAU Convention includes among the circumstances that bring refugee status to an end, that the refugee has committed a serious non-political crime outside his country of refuge after his admission to that country as a refugee", and that the refugee has seriously infringed the purposes and objectives of this Convention." Under the 1951 Convention, having committed a serious non-political crime in the country of asylum is not regarded as a reason for cessation of refugee status, but is considered relevant in the context of the application of Articles 32 and 33 (2) as one of the grounds which exceptionally may justify expulsion or return to the country of origin. The infringement on the purposes and objectives of the OAU Convention relates essentially to acts such as subversive activities prohibited by Article III of the OAU Convention.

[2] During the discussion of this clause at the eleventh session of the ECOSOC in 1950, the representative of the United States pointed out that, although technically speaking to ask for a passport would amount to claiming protection, such passport might be needed only for the purpose of travelling to resettle in a third country, and application for a passport should not, therefore be necessarily regarded as an indication that the person concerned was no longer afraid of persecution. (ECOSOC, Official Records of the Eleventh Session (1950), Summary Record of the Hundred and Sixty-Fifth Meeting of the Social Committee, UN Doc. E/AC.7/SR.165, p.19.

[3] This was also established during the discussion of the provision at ECOSOC in 1950. The draft text being considered by the Committee provided that the person will cease to be a refugee if "he voluntarily claims anew the protection of the government of the country of his nationality". In connection with that text, the representative of the United States submitted that a person should not automatically lose his status as a refugee just because he had made a claim which might not be granted and, in order to make this clear, proposed that the words "he has voluntarily re-availed himself" should be substituted for the words "he voluntarily claims anew". (Loc.cit. in previous footnote, pp.19 to 21).

[4] See also IOM No. 66/98 – FOM No. 70/98 of 28 September 1998 (Guidelines: Field Office Activities Concerning Statelessness).

[5] This condition was enunciated by the International Court of Justice in the Nottebohm Case (ICJ Reports, 1955).

[6] In Conclusion No. 18 (XXXI) of 1980, the Executive Committee of UNHCR recognized the importance of refugees being provided with the necessary information regarding conditions in their country of origin in order to facilitate their decision to repatriate, and recognized further that “visits by individual refugees or refugee representatives to their country of origin to inform themselves of the situation there - without such visits automatically involving loss of refugee status- could also be of assistance in this regard”.

[7] For instance, the time limit set for the registration of former Chilean refugees after the declaration of cessation was six months, and the time limit for their repatriation was 16 months. In the case of Uruguayans, the time limit to request the assistance was four and a half months and the time limit for the repatriation was ten months.