

**GUIDELINES ON INTERNATIONAL PROTECTION:
Cessation of Refugee Status under Article 1C(5) and (6) of the
1951 Convention relating to the Status of Refugees
(the “Ceased Circumstances” Clauses)**

UNHCR issues these Guidelines pursuant to its mandate, as contained in the *Statute of the Office of the United Nations High Commissioner for Refugees*, in conjunction with Article 35 of the *1951 Convention relating to the Status of Refugees* and Article II of its *1967 Protocol*. These Guidelines complement the *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* (1979, re-edited, Geneva, January 1992). They replace UNHCR's *The Cessation Clauses: Guidelines on their Application* (Geneva, April 1999) in so far as these concern the “ceased circumstances” clauses and result, *inter alia*, from the Second Track of the Global Consultations on International Protection which examined this subject at an expert meeting in Lisbon in May 2001.

These Guidelines are intended to provide legal interpretative guidance for governments, legal practitioners, decision-makers and the judiciary, as well as UNHCR staff carrying out refugee status determination in the field.

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1951 Convention relating to the Status of Refugees
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I. INTRODUCTION

1. The *1951 Convention relating to the Status of Refugees* (hereinafter “1951 Convention”) recognises that refugee status ends under certain clearly defined conditions. This means that once an individual is determined to be a refugee, their status is maintained unless they fall within the terms of the cessation clauses or their status is cancelled or revoked.¹ Under Article 1C of the 1951 Convention, refugee status may cease either through the actions of the refugee (contained in sub-paragraphs 1 to 4), such as by re-establishment in his or her country of origin,² or through fundamental changes in the objective circumstances in the country of origin upon which refugee status was based (sub-paragraphs 5 and 6). The latter are commonly referred to as the “ceased circumstances” or “general cessation” clauses. These Guidelines are concerned only with the latter provisions.

2. Article 1C(5) and (6) provides that the 1951 Convention shall cease to apply to any person falling under the terms of Article 1(A) if:

- (5) He can no longer, because the circumstances in connexion 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(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 connexion 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.

3. UNHCR or States may issue formal declarations of general cessation of refugee status for a particular refugee caseload.³ UNHCR has such competence under Article 6A of the *Statute of the Office of the High Commissioner for Refugees* in conjunction with Article 1C of the 1951 Convention. Due to the fact that large numbers of refugees voluntarily repatriate without an official declaration that conditions in their countries of origin no longer justify international protection, declarations are infrequent. Furthermore, many States Parties grant permanent residence status to refugees in their territories after several years, eventually leading to their integration and naturalisation. Similarly, cessation determinations on an individual basis as well

¹ See, UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status*, (hereinafter “UNHCR Handbook”) (1979, Geneva, re-edited Jan. 1992), para. 112. For distinction between cessation and cancellation/revocation see, para. 4 below.

² In these Guidelines, “country of origin” is understood to cover both the country of nationality and the country of former habitual residence, the latter in relation to refugees who are stateless. For more on Article 1C(1–4), see UNHCR, “The Cessation Clauses: Guidelines on their Application”, April 1999.

³ See, for example, UNHCR’s formal declarations of general cessation: “Applicability of the Cessation Clauses to Refugees from Poland, Czechoslovakia and Hungary”, 15 Nov. 1991, “Applicability of Cessation Clauses to Refugees from Chile”, 28 March 1994, “Applicability of the Cessation Clauses to Refugees from the Republics of Malawi and Mozambique”, 31 Dec. 1996, “Applicability of the Cessation Clauses to Refugees from Bulgaria and Romania”, 1 Oct. 1997, “Applicability of the Ceased Circumstances; Cessation Clauses to pre-1991 refugees from Ethiopia”, 23 Sept. 1999, and “Declaration of Cessation – Timor Leste”, 20 December 2002.

as periodic reviews are rare, in recognition of the “need to respect a basic degree of stability for individual refugees”.⁴

4. The grounds identified in the 1951 Convention are exhaustive; that is, no additional grounds would justify a conclusion that international protection is no longer required.⁵ Operation of the cessation clauses should, in addition, be distinguished from other decisions that terminate refugee status. Cessation differs from cancellation of refugee status. Cancellation is based on a determination that an individual should not have been recognised as a refugee in the first place. This is, for instance, so where it is established that there was a misrepresentation of material facts essential to the outcome of the determination process or that one of the exclusion clauses would have been applicable had all the relevant facts been known. Cessation also differs from revocation, which may take place if a refugee subsequently engages in conduct coming within the scope of Article 1F(a) or 1F(c).

II. SUBSTANTIVE ANALYSIS

5. The following framework for substantive analysis is drawn from the terms of Article 1C(5) and 1C(6) of the 1951 Convention and takes into account Executive Committee Conclusion No. 69, subsequent legal developments, and State practice.

A. GENERAL CONSIDERATIONS

6. When interpreting the cessation clauses, it is important to bear in mind the broad durable solutions context of refugee protection informing the object and purpose of these clauses. Numerous Executive Committee Conclusions affirm that the 1951 Convention and principles of refugee protection look to durable solutions for refugees.⁶ Accordingly, cessation practices should be developed in a manner consistent with the goal of durable solutions. Cessation should therefore not result in persons residing in a host State with an uncertain status. It should not result either in persons being compelled to return to a volatile situation, as this would undermine the likelihood of a durable solution and could also cause additional or renewed instability in an otherwise improving situation, thus risking future refugee flows. Acknowledging these considerations ensures refugees do not face involuntary return to situations that might again produce flight and a need for refugee status. It supports the principle that conditions within the country of origin must have changed in a profound and enduring manner before cessation can be applied.

7. Cessation under Article 1C(5) and 1C(6) does not require the consent of or a voluntary act by the refugee. Cessation of refugee status terminates rights that accompany that status. It may bring about the return of the person to the country of origin and may thus break ties to family, social networks and employment in the community in which the refugee has become established. As a result, a premature or insufficiently grounded application of the ceased circumstances clauses can have serious consequences. It is therefore appropriate to interpret the clauses strictly and to ensure that procedures for determining general cessation are fair, clear, and transparent.

B. ASSESSMENT OF CHANGE OF CIRCUMSTANCES IN THE COUNTRY OF ORIGIN

8. Article 1C(5) and (6) provides for the cessation of a person’s refugee status where “the circumstances in connexion with which he [or she] has been recognized as a refugee have ceased to exist”. To assist assessment of how and to what extent conditions in the country of

⁴ “Summary Conclusions on Cessation of Refugee Status, Global Consultations on International Protection, Lisbon Expert Roundtable”, May 2001, no. B (17). See also, UNHCR Handbook, para. 135.

⁵ See, amongst others, UNHCR Handbook, para. 116.

⁶ See, e.g., Executive Committee Conclusions No. 29 (XXXIV) (1983), No. 50 (XXXIX) (1988), No. 58 (XL) (1989), No. 79 (XLVII) (1996), No. 81 (XLVIII) (1997), No. 85 (XLIX) (1998), No. 87 (L) (1999), No. 89 (L) (2000), and No. 90 (LII) (2001).

origin must have changed before these “ceased circumstances” clauses can be invoked, UNHCR’s Executive Committee has developed guidance in the form of Executive Committee Conclusion No. 69 (XLIII) (1992), which reads in part:

[I]n 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.

... [A]n 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.

9. Key elements relevant to assessment of the extent and durability of change required before it can be said that the circumstances in connection with which refugee status was recognised have ceased to exist are outlined below.

The fundamental character of change

10. For cessation to apply, the changes need to be of a fundamental nature, such that the refugee “can no longer ... continue to refuse to avail himself of the protection of the country of his nationality” (Article 1C(5)) or, if he has no nationality, is “able to return to the country of his former habitual residence” (Article 1C(6)). Cessation based on “ceased circumstances” therefore only comes into play when changes have taken place which address the causes of displacement which led to the recognition of refugee status.

11. Where indeed a “particular cause of fear of persecution”⁷ has been identified, the elimination of that cause carries more weight than a change in other factors. Often, however, circumstances in a country are inter-linked, be these armed conflict, serious violations of human rights, severe discrimination against minorities, or the absence of good governance, with the result that resolution of the one will tend to lead to an improvement in others. All relevant factors must therefore be taken into consideration. An end to hostilities, a complete political change and return to a situation of peace and stability remain the most typical situation in which Article 1C(5) or (6) applies.

12. Large-scale spontaneous repatriation of refugees may be an indicator of changes that are occurring or have occurred in the country of origin. Where the return of former refugees would be likely to generate fresh tension in the country of origin, however, 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 status, Article 1C(5) or (6) cannot be invoked.

The enduring nature of change

13. Developments which would appear to evidence significant and profound changes should be given time to consolidate before any decision on cessation is made. Occasionally, an evaluation as to whether fundamental changes have taken place on a durable basis can be made after a relatively short time has elapsed. This is so in situations 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 of government committed to respecting fundamental human rights, and where there is relative political and economic stability in the country.

14. A longer period of time will need to have elapsed before the durability of change can be tested where the changes have taken place violently, for instance, through the overthrow of

⁷ See Executive Committee Conclusion No. 69 (XLIII) (1992), para. a.

a regime. Under the latter circumstances, the human rights situation needs to be especially carefully assessed. The process of national reconstruction must be given sufficient time to take hold and any peace arrangements with opposing militant groups must be carefully monitored. This is particularly relevant after conflicts involving different ethnic groups, since progress towards genuine reconciliation has often proven difficult in such cases. Unless national reconciliation clearly starts to take root and real peace is restored, political changes which have occurred may not be firmly established.

Restoration of protection

15. In determining whether circumstances have changed so as to justify cessation under Article 1C(5) or (6), another crucial question is whether the refugee can effectively re-avail him- or herself of the protection of his or her own country.⁸ Such protection must therefore be effective and available. It requires more than mere physical security or safety. It needs to include the existence of a functioning government and basic administrative structures, as evidenced for instance through a functioning system of law and justice, as well as the existence of adequate infrastructure to enable residents to exercise their rights, including their right to a basic livelihood.

16. An important indicator in this respect is the general human rights situation in the country. Factors which have special weight for its assessment are the level of democratic development in the country, including the holding of free and fair elections, adherence to international human rights instruments, and access for independent national or international organisations freely to verify respect for human rights. There is no requirement that the standards of human rights achieved must be exemplary. What matters is that significant improvements have been made, as illustrated at least by respect for the right to life and liberty and the prohibition of torture; marked progress in establishing an independent judiciary, fair trials and access to courts; as well as protection amongst others of the fundamental rights to freedom of expression, association and religion. Important, more specific indicators include declarations of amnesties, the repeal of oppressive laws, and the dismantling of former security services.

C. PARTIAL CESSATION

17. The 1951 Convention does not preclude cessation declarations for distinct sub-groups of a general refugee population from a specific country, for instance, for refugees fleeing a particular regime but not for those fleeing after that regime was deposed.⁹ In contrast, 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 persecution is removed without the precondition that the refugee has to return to specific safe parts of the country in order to be free from persecution. Also, not being able to move or to establish oneself freely in the country of origin would indicate that the changes have not been fundamental.

D. INDIVIDUAL CESSATION

18. A strict interpretation of Article 1C(5) and (6) would allow their application on an individual basis. It reads: "The Convention shall cease to apply to any person [if] ... [h]e can no longer, *because the circumstances in connexion with which he has been recognized as a refugee* have ceased to exist, continue to refuse to avail himself of the protection" of his country of origin (emphasis supplied). Yet Article 1C(5) and (6) have rarely been invoked in individual cases. States have not generally undertaken periodic reviews of individual cases on the basis of fundamental changes in the country of origin. These practices acknowledge that a refugee's sense of stability should be preserved as much as possible. They are also consistent with Article

⁸ See Art. 12(4) of the 1966 International Covenant on Civil and Political Rights declaring: "No one shall be arbitrarily deprived of the right to enter his own country" and Human Rights Committee, General Comment No. 27, Article 12 (freedom of movement), 1999.

⁹ This approach has been taken by UNHCR on one occasion.

34 of the 1951 Convention, which urges States “as far as possible [to] facilitate the assimilation and naturalization of refugees”. Where the cessation clauses are applied on an individual basis, it should not be done for the purposes of a re-hearing *de novo*.

E. EXCEPTIONS TO CESSATION

Continued international protection needs

19. Even when circumstances have generally changed to such an extent that refugee status would no longer be necessary, there may always be the specific circumstances of individual cases that may warrant continued international protection. It has therefore been a general principle that all refugees affected by general cessation must have the possibility, upon request, to have such application in their cases reconsidered on international protection grounds relevant to their individual case.¹⁰

“Compelling reasons”

20. Both Article 1C(5) and (6) contain an exception to the cessation provision, allowing 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. This exception is intended to cover cases where refugees, or their family members, have suffered atrocious forms of persecution and therefore cannot be expected to return to the country of origin or former habitual residence.¹¹ This might, for example, include “ex-camp or prison detainees, survivors or witnesses of violence against family members, including sexual violence, as well as severely traumatised persons. It is presumed that such persons have suffered grave persecution, including at the hands of elements of the local population, and cannot reasonably be expected to return.”¹² Children should also be given special consideration in this regard, as they may often be able to invoke “compelling reasons” for refusing to return to their country of origin.

21. Application of the “compelling reasons” exception is interpreted to extend beyond the actual words of the provision to apply to Article 1A(2) refugees. This reflects a general humanitarian principle that is now well-grounded in State practice.¹³

Long-term residents

22. In addition, the Executive Committee, in Conclusion No. 69, recommends that States consider “appropriate arrangements” for 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”. In such situations, countries of asylum are encouraged to provide, and often do provide, the individuals concerned with an alternative residence status, which retains previously acquired rights, though in some instances with refugee status being withdrawn. Adopting this approach for long-settled refugees is not required by the 1951 Convention *per se*, but it is consistent with the instrument’s broad humanitarian purpose and with respect for previously acquired rights, as set out in the aforementioned Executive Committee Conclusion No. 69 and international human rights law standards.¹⁴

¹⁰ Executive Committee, Conclusion No. 69 (XLIII) (1992), para. d.

¹¹ See amongst others, UNHCR Handbook, para. 136.

¹² See UNHCR and UNHCHR Study, “Daunting Prospects Minority Women: Obstacles to their Return and Integration”, Sarajevo, Bosnia and Herzegovina, April 2000.

¹³ See generally, J. Fitzpatrick and R. Bonoan, “Cessation of Refugee Protection” in *Refugee Protection in International Law: UNHCR’s Global Consultations on International Protection*, eds E. Feller, V. Türk and F. Nicholson, (Cambridge University Press, 2003 forthcoming).

¹⁴ See e.g., above footnote 8.

F. CESSATION AND MASS INFLUX

***Prima facie* group determinations under the 1951 Convention**

23. Situations of mass influx frequently involve groups of persons acknowledged as refugees on a group basis because of the readily apparent and objective reasons for flight and circumstances in the country of origin. The immediate impracticality of individual status determinations has led to use of a *prima facie* refugee designation or acceptance for the group.¹⁵ For such groups, the general principles described for cessation are applicable.

Temporary protection in mass influx situations that include persons covered by the 1951 Convention

24. Some States have developed “temporary protection” schemes¹⁶ under which assistance and protection against *refoulement* have been extended on a group basis, without either a determination of *prima facie* refugee status for the group or individual status determinations for members of the group. Even though the cessation doctrine does not formally come into play, this form of protection is built upon the 1951 Convention framework and members of the group may well be or include refugees under the Convention. Decisions by States to withdraw temporary protection should therefore be preceded by a thorough evaluation of the changes in the country of origin. Such decisions should also be accompanied by an opportunity for those unwilling to return and requesting international protection to have access to an asylum procedure. In this context, it is also appropriate for States to provide exceptions for individuals with “compelling reasons” arising out of prior persecution.

III. PROCEDURAL ISSUES

25. As mentioned earlier, a declaration of general cessation has potentially serious consequences for recognised refugees. It acknowledges loss of refugee status and the rights that accompany that status, and it may contemplate the return of persons to their countries of origin. Thus, the following procedural aspects should be observed:

General considerations

- (i) In making an assessment of the country of origin, States and UNHCR must “make sure in an objective and verifiable way that the situation which justified the granting of refugee status has ceased to exist”.¹⁷ As noted above, this assessment should include consideration of a range of factors, including the general human rights situation.
- (ii) The burden rests on the country of asylum to demonstrate that there has been a fundamental, stable and durable change in the country of origin and that invocation of Article 1C(5) or (6) is appropriate. There may be instances where certain groups should be excluded from the application of general cessation because they remain at risk of persecution.
- (iii) It is important that both the declaration process and implementation plans be consultative and transparent, involving in particular UNHCR, given its supervisory role.¹⁸ NGOs and refugees should also be included in this consultative process. “Go and see” visits to the

¹⁵ See “Protection of Refugees in Mass Influx Situations: Overall Protection Framework, Global Consultations on International Protection”, EC/GC/01/4, 19 Feb. 2001.

¹⁶ See, e.g., the European Union Directive on Temporary Protection, 2001/55/EC, 20 July 2001.

¹⁷ This rigorous standard is reflected in Executive Committee Conclusion No. 69 (XLIII) (1992), para. a.

¹⁸ See para. 8(a) of the UNHCR Statute, Article 35 of the 1951 Convention and Article II of the 1967 Protocol, as well as in particular, the second preambular paragraph of Executive Committee Conclusion No. 69 (XLIII) (1992).

country of origin could, where feasible, be facilitated to examine conditions there, as well as an examination of the situation of refugees who have already returned voluntarily.

- (iv) General cessation declarations should be made public.
- (v) Counselling of refugees, information sharing and, if necessary, the provision of assistance to returnees are critical to the successful implementation of general cessation.
- (vi) Procedures operationalising a declaration of cessation need to be carried out in a flexible, phased manner, particularly in developing countries hosting large numbers of refugees. There needs to be a certain time lapse between the moment of declaration and implementation, allowing for preparations for return and arrangements for long-term residents with acquired rights.
- (vii) Noting the potential impact of a general cessation declaration on refugees and their families, they should be given an opportunity, upon request, to have their case reconsidered on grounds relevant to their individual case, in order to establish whether they come within the terms of the exceptions to cessation.¹⁹ In such cases, however, no action should be taken to withdraw rights of the refugee until a final decision has been taken.
- (viii) UNHCR retains a role in assisting the return of persons affected by a declaration of cessation or the integration of those allowed to stay, since they remain under UNHCR's Mandate for a period of grace.

Post-declaration applications for refugee status

- (ix) A declaration of general cessation cannot serve as an automatic bar to refugee claims, either at the time of a general declaration or subsequent to it. Even though general cessation may have been declared in respect of a particular country, this does not preclude individuals leaving this country from applying for refugee status. For example, even if fundamental changes have occurred in a State, members of identifiable sub-groups – such as those based on ethnicity, religion, race, or political opinion – may still face particular circumstances that warrant refugee status. Alternatively, a person may have a well-founded fear of persecution by a private person or group that the government is unable or unwilling to control, persecution based on gender being one example.

¹⁹ See paras. 19–22 of these Guidelines and Executive Committee Conclusion No. 69 (XLIII) (1992).