



**Reply by the Office of the United Nations High Commissioner
for Refugees (UNHCR) to request for guidance on the applicability of Article 1C (1) of the
Convention relating to the Status of Refugees by legal counsel in case number X ¹**

A. UNHCR's mandate and supervisory responsibility

1. The Office of the United Nations High Commissioner for Refugees ('UNHCR') has been entrusted by the General Assembly of the United Nations with the mandate to provide international protection to refugees and, together with governments, seek solutions for them.² UNHCR is also responsible for supervising the application of international conventions for the protection of refugees.³ This supervisory responsibility is reiterated in Article 35 of the 1951 Convention and Article II of the 1967 Protocol relating to the Status of Refugees ('1951 Convention').⁴

2. UNHCR welcomes the opportunity to provide this information to legal counsel X in case number X in response to a request regarding the interpretation and application of Article 1C(1) of the 1951 Convention, in particular concerning the obtaining and use of a national passport as a reason for cessation.

B. Restrictive interpretation of the cessation clauses under Article 1C of the 1951 Convention

3. The cessation clauses under Article 1C must be interpreted in light of the object and purpose of the 1951 Convention, which is to ensure that those in need and deserving of protection benefit from asylum and are protected from *refoulement*. National authorities should thus favour interpretations that produce outcomes consistent with this purpose.⁵

4. The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (the 'Handbook') stresses that "*cessation clauses are negative in character and are exhaustively enumerated. They should therefore be interpreted restrictively, and no other reasons may be adduced by way of analogy to justify the withdrawal of refugee status.*"⁶ A premature or insufficiently grounded application of the cessation clauses can have extremely serious

¹ The following guidance is limited to the interpretation and application of Article 1C(1) of the 1951 Convention and refrains from taking a position on whether the applicants' refugee status should be ceased in the individual case.

² United Nations General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950 A/RES/428(V): [unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae6b3628](https://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae6b3628).

³ *Ibid.*, para. 8(a).

⁴ United Nations General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations Treaty Series, No. 2545, Vol. 189: [unhcr.org/refworld/docid/3be01b964.html](https://www.unhcr.org/refworld/docid/3be01b964.html). According to Article 35(1) of the 1951 Convention, UNHCR has the "duty of supervising the application of the provisions of the Convention".

⁵ UNHCR, *Canada (MCI) v Camayo - Memorandum of the Intervener: U.N. High Commissioner for Refugees*, 24 February 2021: [refworld.org/jurisprudence/amicus/unhcr/2021/en/123489](https://www.refworld.org/jurisprudence/amicus/unhcr/2021/en/123489), para. 1.

⁶ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, HCR/1P/4/ENG/REV. 4, April 2019: [refworld.org/policy/legalguidance/unhcr/2019/en/123881](https://www.refworld.org/policy/legalguidance/unhcr/2019/en/123881), para. 116.

consequences, leading to a breach of the *non-refoulement* principle.⁷

5. As with all provisions taking away rights or status, the cessation clauses must be applied with caution and only after a thorough assessment. The burden of proof rests with the asylum authorities, and the benefit of the doubt should favor the refugee. This approach aligns with the restrictive interpretation appropriate to the cessation clauses, which is consistent with the 1951 Convention's overall protective goals.⁸

6. Equally important is ensuring that the cessation clauses are not applied in a punitive manner: “[t]he refugee’s voluntary acts, intent, and attitudes may be considered, but they cannot predominate over political reality. The cessation clauses should not be transformed into a trap for the unwary or a penalty for risky or naive conduct.”⁹

C. Three requirements of the cessation clause of Article 1C(1) of the 1951 Convention

7. Article 1C(1) permits cessation of a refugee’s status for having “voluntarily re-availed [themselves] of the protection of the country of [...] nationality”. Article 1C(1) is concerned exclusively with a refugee’s conduct while outside their country of origin. UNHCR’s Handbook states that for refugee status to cease under Article 1C(1), the country of asylum must demonstrate three elements:

- (i) voluntariness: the refugee must act voluntarily;
- (ii) intention: the refugee must intend by their action to re-avail themselves of the protection of the country of their nationality;
- (iii) re-availing: the refugee must actually obtain such protection.¹⁰

8. While these factors are cumulative and must all be proven, they are not meant to be applied as a checklist. The focus throughout the analysis is whether the refugee’s conduct – and any inferences to be drawn from it – can *reliably* indicate that the refugee intended to waive the protection of the country of asylum and, as a result, it would *actually* be safe for them to return to their country of origin.

i. Voluntariness

9. To meet the voluntariness standard a refugee must “truly act out of [their] own free will in

⁷ UNHCR, Executive Committee of the High Commissioner's Programme ('ExCom'), *Note on Cessation Clauses*, EC/47/SC/CRP.30, 30 May 1997: refworld.org/reference/annualreport/unhcr/1997/en/57651, para. 8.

⁸ UNHCR, *Interpreting Article 1 of the 1951 Convention Relating to the Status of Refugees*, April 2001: refworld.org/policy/legalguidance/unhcr/2001/en/29198, para 10. See also, UNHCR, Canada (MCI) v Camayo, note 5 above, para. 8.

⁹ Joan Fitzpatrick, Rafael Bonoan, *Cessation of Refugee Protection*, Cambridge University Press, June 2003: refworld.org/reference/research/cup/2003/en/49729, p. 525.

¹⁰ UNHCR, Handbook, note 6 above, para. 119. See also Susan Kneebone, Maria O’Sullivan, *Article 1C*, in Andreas Zimmermann, Felix Machts, Jonas Dörschner (eds), *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol: A Commentary*, Oxford Commentaries on International Law, 2011: doi.org/10.1093/actrade/9780199542512.001.0001; Guy S. Goodwin-Gill, Jane McAdam with Emma Dunlop, *The Refugee in International Law*, Oxford University Press, 4th ed., 2021, p. 164; James C. Hathaway, Michelle Foster, *The Law of Refugee Status*, Cambridge University Press, 2014, pp. 465-66; Joan Fitzpatrick, Rafael Bonoan, *Cessation of Refugee Protection*, note 9 above, p. 491, 523.

approaching the authorities of [their] country of origin.”¹¹ If the refugee does not act voluntarily, they will not cease to be a refugee. For example, while a refugee in principle should not be required to apply for a national passport from their consular services, if they are instructed to do so by an authority in their country of asylum, they will not cease to be a refugee merely because they obey such an instruction.¹² There may also be circumstances where an application for a national passport is made on a refugee’s behalf by a third party (e.g. a parent or guardian applying for a child’s passport) without the refugee’s knowledge or consent. Such acts cannot be considered a voluntary re-availing of protection and will not deprive a person of refugee status.¹³

10. In the context of resettlement, a refugee’s exit and travel from the country of first asylum to the country of resettlement will often include requirements and formalities over which the refugee has limited control, if any. The refugee will necessarily follow instructions and requirements by the authorities of the country of asylum and the country of resettlement. In some instances, they will also be guided by advice from UNHCR. For instance, some countries of asylum require the refugee to be in possession of a passport of the country of origin to verify the identity of departing refugees. The country of resettlement will also be informed of the kind of travel document of which the refugee must be in possession, and how the refugee is expected to obtain it, to facilitate the exit and onward travel from the first country of asylum.

11. Where a refugee is thus compelled to act under circumstances beyond their control, the refugee’s interaction with the authorities of their country of origin during the resettlement process will not be an expression of their own genuine free will. Therefore, the element of voluntariness is not fulfilled where, for instance, a refugee is required to obtain a national passport in order to comply with instructions of the authorities of the country of asylum or other relevant entities to facilitate their travel to the country of resettlement.

ii. Intention to re-avail oneself of the protection of the country of nationality

12. The second requirement of the cessation clause under Article 1C(1) concerns the refugee’s intention to re-avail themselves of the protection of their country of nationality. In particular, the question arises whether the refugee’s interaction with the authorities of the country of origin was motivated by an intention to re-avail themselves of the protection of their country of nationality, such that it can safely be assumed that they no longer need international protection.

13. UNHCR’s Handbook provides that “[i]f a refugee applies for and obtains a national passport or its renewal, it will, **in the absence of proof to the contrary**, be presumed that he intends to avail himself of the protection of the country of his nationality.”¹⁴ However, UNHCR notes that such acts may create false assumptions, especially when the risk of persecution remains. Therefore,

¹¹ UNHCR, *The Cessation Clauses: Guidelines on Their Application*, 26 April 1999: refworld.org/policy/legalguidance/unhcr/1999/en/39942, para. 9.

¹² UNHCR, Handbook, note 6 above, para. 120.

¹³ UNHCR, Canada (MCI) v Camayo, note 5 above, para. 12. See also the case-law of the French National Court of Asylum (‘CNDA’) cited in Guy S. Goodwin-Gill, Jane McAdam with Emma Dunlop, *The Refugee in International Law*, note 10 above, p. 164: *Recueil* 2013, 121 -2, CNDA (24 July 2013) Mlle L. M., no. 12002308C+: Passport extended at request of Paris police to ensure continuation of medical care; not voluntary. Also, *Recueil* 2018, 201-3, CNDA (14 September 2018) M. H., no. 16029914C: no voluntary re-availing when driving licence renewed by third party; personal contact with the authorities required.

¹⁴ UNHCR, Handbook, note 6 above, para. 121 [emphasis added].

this presumption should not be considered definitive and can be rebutted by the refugee.¹⁵

14. As noted in the expert report produced following UNHCR's Global Consultations on International Protection, "*while the refugee may reasonably be expected to explain [their] conduct,*" it is always the State initiating cessation procedures that will "*bear the burden of proving re-availment.*" Therefore, this presumption, is best understood as imposing an obligation on the refugee to explain their conduct, "*because voluntariness and intent are largely unknowable without the testimony of the individual concerned.*"¹⁶ Ultimately, the key consideration lies in the purpose or reason for which the passport was obtained or renewed. The refugee's intent in contacting the authorities of their country of nationality must be carefully assessed to determine if the act was undertaken to actually seek the authorities' protection.¹⁷ In this context, the actions of the refugee should be evaluated also in light of their individual circumstances and background (e.g. the level of education, age and gender), including potential vulnerabilities.

15. Some States require, by national law or standard operating procedures, that refugees surrender their national passport upon arrival, grant of status, or application for a Convention Travel Document or other type of travel document.¹⁸ While recognizing the obligation of refugees under Article 2 of the 1951 Convention to respect the laws of their country of asylum, it is crucial that they receive clear information in a language they understand about these requirements and the consequences of non-compliance, in order to facilitate their cooperation. Retention of a national passport, in the absence of knowledge of an obligation to surrender it to the authorities of the country of asylum, should not be seen as evidence of an intention to maintain ties with the refugee's country of origin, or to re-avail themselves of its protection.

16. The very notion that one is acceding to a state's consular protection when obtaining or travelling on a passport is outdated and does not reflect practical realities. Most refugees, like anyone else, will understand passports as mere travel documents that permit them to cross borders, and not as documents signifying the consular protection of their home country. Even if passports were commonly understood as markers of such protection while travelling abroad, few refugees – if any – would understand an acceptance of such consular protection as a general indicator of their

¹⁵ UNHCR, ExCom, *Note on Cessation Clauses*, note 7 above, para. 38. The Judicial Position of the Swedish Migration Agency affirms that the presumption can be rebutted: "[W]hen it is a question of occasional or temporary contact with the authorities of the home country for satisfying requirements set by Swedish authorities does not necessarily mean that the refugee has made use of the protection of his or her home country. [...] This could be the case when the refugee obtains a home country passport to prove his or her identity when applying for Swedish citizenship. The same could apply in the case of individual travel to their home country to visit a sick parent, for example. But an individual assessment must always be made in the individual case, where the refugee must be given the possibility to explain their actions. However, if the refugee cannot prove that it is only such a one-off and temporary contact, the starting point may be that the possession of the passport document or the visit to the home country means that he or she freely availed himself or herself of the protection of the country of which he or she is a national". See, Swedish Migration Agency, *Legal Position: Conditions for Revoking a Protection Status Declaration - RS/054/2021 (version 5.0)*, 8 December 2023: lifos.migrationsverket.se/dokument?documentSummaryId=47878, p. 8.

¹⁶ Joan Fitzpatrick, Rafael Bonoan, *Cessation of Refugee Protection*, note 9 above, p. 524.

¹⁷ Swedish case-law has affirmed that where an applicant who had acquired a passport from their country of origin for the purpose of verifying their identity and applying for Swedish citizenship was not considered to have re-availed themselves of the protection of their country of origin. Migration of Court of Appeal, UM5495-10, MIG 2011:13, 13 June 2011, Sweden lagen.nu/dom/mig/2011:13#kammartten-i-stockholm-migrations-verdomstolen. See also, Government of Sweden, *Advisory decision of 21 August 1997*, reg. 73-97.

¹⁸ See Article 28 of the 1951 Convention.

belief in the availability of state protection of their country of origin in all circumstances.¹⁹

17. While the presumption of re-avilment arises in those cases where a refugee voluntarily requests and obtains a national passport, the underlying inference is most persuasive where a refugee has fled a state agent of persecution, in particular where the state agent has an active interest in the refugee (e.g. through the issuance of an outstanding warrant) or where the refugee is actively hiding from the state. It follows that the inference grows less persuasive the further the facts of the case depart from that scenario.²⁰

18. In practice, in many situations, the issuance of a national passport does little if anything to indicate that it is now safe for the refugee to return to their home country – especially in cases involving non-state agents of persecution. For instance, women refugees fleeing domestic violence or persons fleeing forced recruitment by militant groups, where the state is unable to offer protection, do not become any safer in their country of origin by having a passport issued in the country of asylum.²¹ In such circumstances, approaching one’s consular services does not equate to approaching the agent of persecution itself and applying for a national passport does not necessarily disclose the refugee’s precise whereabouts to their agent of persecution. Therefore, unless there is evidence of significant collaboration between the state and the non-state actor, undertaking such actions is generally not inconsistent with a person’s continued fear of persecution from the non-state agent.²²

19. The inquiry must focus on whether obtaining or using a national passport to travel to a third country reliably indicates a lack of ongoing fear of the agent of persecution. If there is no evidence that the refugee’s need for protection has fundamentally changed, the presumption can be easily refuted. For example, a refugee who applies for a national passport may rebut the presumption by explaining that they continue to fear the non-state agent of persecution as the national authorities are unable or unwilling to protect them from the actions of these non-state agents. Since the refugee’s fear of persecution remains unchanged, the legal basis for international protection remains intact. In certain cases, the presumption may be overcome by the refugee clarifying that they needed the document for routine travel to a third country and were unaware of or unable to access alternative travel documents.²³ Situations where consular services operate independently of the ruling government must also be considered. Such circumstances do not necessarily indicate re-avilment of protection or a lack of fear of persecution, as they do not involve meaningful contact with the agent of persecution or its representatives.

20. In conclusion, assuming that obtaining or using a national passport automatically signifies a refugee’s acceptance of consular or general protection from their country of origin contradicts a purposive and cautious application of the cessation clauses. Such a rigid interpretation risks leading to the *refoulement* of refugees who never intended to forfeit international protection and

¹⁹ As James Hathaway and Michelle Foster write: “when most persons approach consular or diplomatic authorities to secure the documentation needed for such purposes as travel, enrollment in school, or professional accreditation, they do so simply as a matter of routine, with no thought to the legal ramifications of their act.”: James C. Hathaway, Michelle Foster, *The Law of Refugee Status*, note 10 above, p. 465; UNHCR, Canada (MCI) v Camayo, note 5 above, para. 20.

²⁰ UNHCR, Canada (MCI) v Camayo, note 5 above, para. 26.

²¹ *Ibid.*, para. 22.

²² *Ibid.*, para. 26.

²³ *Ibid.*, para. 27.

who remain at risk in case of return to their countries of origin. An approach consistent with the 1951 Convention must follow analytical frameworks that ensure cessation is applied only when the refugee is genuinely no longer at risk in the event of return.

iii. Actual re-availment

21. The last element in the Article 1C(1) inquiry is actual re-availment: having intended to avail themselves of the protection of their country of origin, “*the refugee must actually obtain such protection.*”²⁴ Mere attempts or unsuccessful requests for protection will not suffice. “*Cessation will come about only where such requests are granted and protection is de facto extended to the person.*”²⁵

22. The paramount issue is whether effective protection is available to the concerned individual in practice.²⁶ During the cessation procedure, it is crucial to assess whether effective protection from the country of origin has been sought and obtained in practice. National authorities assessing the cessation of refugee status must provide evidence that protection of the country of origin is in practice available to the individual concerned. If the refugee sought and actually received such protection, re-availment could in some cases be established depending on the individual circumstances. However, mere travel on the passport without assistance from the state of origin would not suffice to justify cessation.²⁷

D. Conclusions

23. UNHCR submits that, since the application of the cessation clauses under Article 1C of the 1951 Convention effectively results in a formal loss of refugee status, a restrictive and non-punitive approach should be adopted in their interpretation. Regarding Article 1C(1), UNHCR emphasizes three key points: (i) to meet the voluntariness standard, a refugee must approach their country’s authorities of their own free will and not simply comply with instructions from the authorities of the country of asylum or other relevant entities; (ii) while the motivation to apply for or renew a national passport should be assessed, such an action in itself should not be interpreted as an intent to re-avail oneself of the protection of the country of origin, and the key consideration lies in the purpose or reason for which the passport was obtained or renewed; and (iii) re-availment of the protection of one’s country of origin means that a refugee must actually obtain such protection, which will not be established simply by a refugee travelling to or through states other than their country of origin on their national passport.

UNHCR, 30 January 2025

²⁴ UNHCR, Handbook, note 6 above, para. 119.

²⁵ UNHCR, *Note on the Principle of Non-Refoulement as a Norm of Customary International Law*, 1997: refworld.org/policy/legalguidance/unhcr/1999/en/39942, para. 11.

²⁶ Joan Fitzpatrick, Rafael Bonoan, Cessation of Refugee Protection, note 9 above, pp. 491-544. See also Andreas Zimmermann, Felix Machts, Jonas Dörschner (eds), *The 1951 Convention Commentary*, note 11 above, p. 497.

²⁷ Joan Fitzpatrick, Rafael Bonoan, Cessation of Refugee Protection, note 9 above, p. 525.