8.1 Cessation of refugee protection

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Contents

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I. Introduction

The experience of being a refugee can be a defining moment in a person's life, but refugee status is not necessarily intended to be permanent. The cessation of refugee protection poses policy and administrative challenges for States and the Office of the United Nations High Commissioner for Refugees (UNHCR), as well as risks for refugees.

The cessation clauses of the 1951 Convention Relating to the Status of Refugees[1] and parallel provisions in other international refugee instruments were long neglected as a subject of refugee law. In recent years, several developments have increased interest in their interpretation and application. These factors include: democratization in some formerly repressive States; a concern to prevent asylum from becoming a backdoor to immigration; experiments with temporary protection during mass influx; a stress upon voluntary repatriation as the optimal durable solution to displacement; the development of standards for voluntary repatriation; frustration with protracted refugee emergencies; and dilemmas posed by return to situations of conflict, danger, and instability. Cessation occurs in several distinct situations, and refugees may be placed at risk if important distinctions are overlooked.

Section II of this paper focuses on 'ceased circumstances' cessation[2] under paragraph 6(A)(ii)(e) and (f) of the UNHCR Statute,[3] Article 1C(5) and (6) of the 1951 Convention, and Article I.4(e) of the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa.[4] The ceased circumstances clauses operate in five different contexts, sometimes only by analogy: (i) cessation of UNHCR protection under the Statute; (ii) cessation of State protection of refugees previously recognized on a group basis; (iii) individualized cessation for recognized refugees; (iv) withdrawal of temporary protection; and (v) denial of initial claims to asylum based upon changed conditions between flight and status determination.

While ceased circumstances cessation is presently of great concern to decision makers, section III of the paper also addresses the four bases for cessation premised upon changes in the individual circumstances of recognized refugees, as defined in Article 1C(1)–(4) of the 1951 Convention and Article I.4(a)–(d) of the OAU Refugee Convention. These four circumstances are: (i) re-availment of national protection; (ii) re-acquisition of nationality; (iii) acquisition of a new nationality; and (iv) re-establishment in the State of origin. This section suggests standards for interpretation, with a focus upon voluntariness, intent, and effective protection.

1 189 UNTS 150 (hereinafter the '1951 Convention').

2 The term 'ceased circumstances' denotes a change in conditions in the State of origin that eliminates the persecutory causes that formed the basis of the refugee's claim to international protection.

3 A/RES/428 (V), 14 Dec. 1950 (hereinafter 'the Statute').

4 1001 UNTS 3 (hereinafter 'OAU Refugee Convention').

Formal cessation requires careful attention to the applicability of cessation criteria to the individual in question, procedural fairness, and exceptions for persons presenting compelling reasons to be given a continued legal status that preserves rights enjoyed as a refugee.

UNHCR's *Handbook on Procedures and Criteria for Determining Refugee Status*[5] provides guidance on the application of the six cessation clauses of the 1951 Convention. In 1991, the Executive Committee of the High Commissioner's Programme highlighted cessation, resulting in the following year in Executive Committee Conclusion No. 69 (XLIII),[6] which provides important guidance on the ceased circumstances cessation clauses in Article 1C(5) and (6). As concern among States and UNHCR shifted to mass influx later in the 1990s, UNHCR produced a 'Note on the Cessation Clauses' in 1997[7] and 'Guidelines on the Application of the Cessation Clauses' in 1999.[8]

Section IV of the paper examines briefly the problems which may arise where elements usually associated with cessation are applied during the refugee status determination procedure. In section V, the authors make a number of recommendations regarding both UNHCR and State practice in the application of the cessation clauses. In this context, the necessity to construe the cessation clauses narrowly deserves re-emphasis, because of the potential that genuine refugees will be exposed to risk if protection is prematurely terminated.[9] The paper ends with a conclusion in section VI.

II. Ceased circumstances cessation

Substantial similarity exists among the ceased circumstances clauses of the Statue, the 1951 Convention, and the OAU Refugee Convention. As set forth in Article 1C of the 1951 Convention, the Convention ceases to apply to a refugee 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

5 UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status* (Geneva, 1979, re-edited 1992) (hereinafter 'UNHCR *Handbook*'), paras. 111–39.

6 Executive Committee of the High Commissioner's Programme, Conclusion No. 69 (XLIII), 1992, UN doc. A/AC.96/804.

7 UNHCR, 'Note on the Cessation Clauses', UN doc. EC/47/SC/CRP.30, 30 May 1997.

8 UNHCR, 'The Cessation Clauses: Guidelines on their Application', April 1999 (hereinafter 'UNHCR Guidelines on Cessation').

9 The UNHCR *Handbook*, above n. 5, cautions that the cessation clauses are 'negative in character . . . [,] exhaustively enumerated [and] . . . should therefore be interpreted restrictively', para. 116.

previous persecution for refusing to avail himself of the protection of the country of nationality; [or]

(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 formal habitual residence.

States Parties to the 1951 Convention possess the authority to invoke Article 1C(5) and (6), while UNHCR can 'declare that its competence ceases to apply in regard to persons falling within situations spelled out in the Statute'.[10] This legal distinction, however, belies the extent of cooperation between UNHCR and States Parties in the interpretation and implementation of the ceased circumstances provisions.

When States are considering the application of the cessation clauses, UNHCR has recommended that it be 'appropriately involved' in the process pursuant to its supervisory role in the implementation of the Convention, as evidenced in Article 35 of the 1951 Convention.[11] UNHCR can assist States by 'evaluating the impact of changes in the country of origin or in advising on the implications of cessation of refugee status in relation to large groups of refugees in their territory'.[12] In addition, a declaration of cessation by the Office of the High Commissioner 'may be useful to States in connection with the application of the cessation clauses as well as the 1951 Convention'.[13] At the same time, however, UNHCR requires the cooperation of States Parties to apply the cessation clauses. Countries of origin and asylum play a critical role in the implementation of the ceased circumstances provisions and they may have specific concerns that need to be taken into account when UNHCR is considering the cessation of refugee status.

Five aspects of ceased circumstances cessation are examined here: (a) the interpretation of the clauses by UNHCR and States Parties; (b) UNHCR practice between 1973 and 1999 pursuant to its Statute; (c) cessation declared by States of refuge; (d) withdrawal of temporary protection; and (e) the impact of declarations of cessation on initial refugee status determination.

A. Interpreting the ceased circumstances clauses

The *Handbook* articulates a concept of 'fundamental changes in the country [of origin], which can be assumed to remove the basis of the fear of persecution'.[14] The status of a refugee 'should not in principle be subject to frequent review to the

10 'Note on the Cessation Clauses', above n. 7, para. 31. 11 Ibid. 12 Ibid., para. 34.
13 Executive Committee, Conclusion No. 69, above n. 6, third preambular paragraph.
14 UNHCR *Handbook*, above n. 5, para. 135.

detriment of his sense of security'.[15] The *Handbook* also explains in greater detail the exception to the cessation clause based on 'compelling reasons arising out of previous persecution'.[16]

UNHCR and States Parties have subsequently elaborated upon these concepts and developed a set of standards for ascertaining whether events in a country of origin may be sufficient to warrant the application of Article 1C(5) and (6). These guidelines have focused on the extent and durability of developments in the country of origin as the key components of fundamental change. UNHCR and the Executive Committee have used various terms to describe the degree of change necessary to justify a declaration of general cessation, but they all intimate that such developments must be comprehensive in nature and scope. According to Executive Committee Conclusion No. 69 (XLIII):

> 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.[17]

A fundamental change in circumstances has typically involved developments in governance and human rights that result in a complete political transformation of a country of origin.[18] Evidence of such a transformation may include 'significant reforms altering the basic legal or social structure of the State ... [or] democratic elections, declarations of amnesties, repeal of oppressive laws and dismantling of former security services'.[19] In addition, the 'annulment of judgments against political opponents and, generally, the re-establishment of legal protections and guarantees offering security against the reoccurrence of the discriminatory actions which had caused the refugees to leave' may also be considered.[20] Changes in these areas must also be 'effective' in the sense that they 'remove the basis of the fear of persecution'.[21] It is therefore necessary to assess these developments 'in light of the particular cause of fear'.[22]

How should the general human rights situation in a country of origin be evaluated? UNHCR has cited adherence to international human rights instruments in law and practice and the ability of national and international organizations to

15 Ibid. 16 Ibid., para. 136.
17 Executive Committee, Conclusion No. 69, above n. 6, para. (a).
18 Executive Committee of the High Commissioner's Programme, Sub-Committee of the Whole on International Protection, 'Discussion Note on the Application of the "Ceased Circumstances" Cessation Clause in the 1951 Convention', UN doc. EC/SCP/1992/CRP.1, para. 11, 20 Dec. 1991.
19 'Note on the Cessation Clauses', above n. 7, para. 20.
20 'Discussion Note', above n. 18, para. 11.
21 'Note on the Cessation Clauses', above n. 7, para. 19. 22 Ibid.

verify and supervise respect for human rights as important factors to consider. More specific indicators include the

> right to life and liberty and to non-discrimination, independence of the judiciary and fair and open trials which presume innocence, the upholding of various basic rights and fundamental freedoms such as the right to freedom of expression, association, peaceful assembly, movement and access to courts, and the rule of law generally.[23]

Although observance of these rights need not be 'exemplary', 'significant improvements' in these areas and progress towards the development of national institutions to protect human rights are necessary to provide a basis for concluding that a fundamental change in circumstances has occurred.[24] Standards for voluntary repatriation and withdrawal of temporary protection envision a similar examination of the general human rights situation in the State of origin, with a focus upon the prospects for return in safety and with dignity.[25] The relationship between cessation and withdrawal of temporary protection, or other forms of subsidiary protection, is examined below in section II.D.

Large-scale successful voluntary repatriation may also provide evidence of a fundamental change in circumstances.[26] The repatriation and reintegration of refugees can promote the consolidation of such developments.[27] However, refugees may choose to return to their country of origin well before fundamental and durable changes have occurred. Therefore, voluntary repatriation may be considered in an evaluation of conditions in the country of origin, but it cannot be taken as evidence that changes of a fundamental nature have occurred.

Positive developments in a country of origin must also be stable and durable. As noted by UNHCR: 'A situation which has changed, but which also continues to change or shows signs of volatility is not by definition stable, and cannot be described as durable.'[28] Time is required to allow improvements to consolidate. UNHCR has thus advocated a minimum 'waiting period' of twelve to eighteen months before assessing developments in a country of origin.[29] The practice of some States Parties is consistent with this recommendation. For example, the Swiss Government observes a minimum two-year 'waiting period',[30] while Netherlands

23 Ibid., para. 23. 24 Ibid.

25 UNHCR, 'Handbook: Voluntary Repatriation: International Protection', chapters 2.2 and 2.4, 1996; UNHCR, 'Progress Report on Informal Consultations on the Provision of International Protection to All Who Need It', UN doc. EC/47/SC/CRP.27, 1997, para. 4(n); J. Fitzpatrick, 'Temporary Protection of Refugees: Elements of a Formalized Regime', 94 *American Journal of International Law*, 2000, pp. 279 and 300–2.

26 'Note on the Cessation Clauses', above n. 7, paras. 21 and 29.

27 Ibid., para. 29. 28 Ibid., para. 21.

29 'Discussion Note', above n. 18, para. 12; 'Note on the Cessation Clauses', above n. 7, para. 21.

30 Comments of B. Tellenbach, Judge of the Swiss Asylum Appeal Commission, for the Lisbon Expert Roundtable, p. 5.

policy considers a period of three years necessary to establish the durability of a change in circumstances in the country of origin.[31]

More recently, UNHCR has indicated that the length of the waiting period can vary depending on the process of change in the country of origin. An evaluation within a relatively brief period may be possible when such changes 'take place peacefully under a constitutional, democratic process with respect for human rights and legal guarantees for fundamental freedoms, and where the rule of law prevails'.[32] Conversely, when developments in the country of origin occur in the context of violence, unreconciled warring groups, ineffective governance, and the absence of human rights guarantees, a longer waiting period will be necessary to confirm the durability of change.[33]

The issue of measuring the extent and durability of change in situations of internal conflict has been examined in recent UNHCR memoranda on cessation. According to these documents, close monitoring of the implementation of any peace agreement is necessary, including provisions such as the restoration of land or property rights, as well as overall economic and social stability in the country of origin. In addition, a longer waiting period may be necessary to establish the durability of changes in circumstances in post-conflict situations.[34] Seemingly conflicting guidelines regarding the applicability of Article 1C(5) and (6) when peace, security, and effective national protection have been restored to portions of a country of origin have also been issued.[35]

The development of the preceding guidelines has involved extensive dialogue between UNHCR and States Parties, especially through meetings of the Executive Committee and its Subcommittee of the Whole on International Protection (SCIP). Outside proceedings of the Executive Committee and the Subcommittee, States Parties have reiterated the need to interpret the ceased circumstances provisions in a cautious manner.

31 Ministry of Justice of the Netherlands, Directorate-General for International and Aliens Affairs, Policy on Refugees, Annex to the letter of 6 May 1999 to the Lower House of the States General, Session 1998–9, doc. No. 19637, 'Memorandum on the Withdrawal of Refugee Status', section 2.2 (document submitted to the expert roundtable meeting on cessation in May 2001).

32 'Note on the Cessation Clauses', above n. 7, para. 22.

33 Ibid. See also 'UNHCR Guidelines on Cessation', above n. 8, para. 28.

34 Interestingly, UNHCR has invoked the cessation clauses more rapidly in the two cases of post-conflict settlement (Sudan, 1973, and Mozambique, 1996) than in situations involving a transition to democracy. See below section II.B.

35 The 1997 'Note on the Cessation Clauses', above n. 7, states that the cessation clauses may be applicable to certain regions of a country of origin if: (1) refugees are able to avail themselves of national protection (which involves not only peace and security, but also access to basic governmental, judicial, and economic institutions); and (2) the developments in these areas constitute a fundamental, effective, and durable change in circumstances: above n. 7 at paras. 25–6. The UNHCR 'Guidelines on Cessation' issued in April 1999 suggest, however, that '[c]hanges in the refugee's country of origin affecting only part of the territory should not, in principle, lead to cessation of refugee status', above n. 8, at para. 29.

The Commission of the European Communities, for example, has drafted a proposed Directive harmonizing minimum standards for refugee status within the European Union, which includes cessation provisions.[36] The Commission's explanatory memorandum to the draft Directive suggests the following standards for assessing a change of circumstances in the State of origin:

> [A] change [must be] of such a profound and durable nature that it eliminates the refugee's well-founded fear of being persecuted. A profound change of circumstances is not the same as an improvement in conditions in the country of origin. The relevant inquiry is whether there has been a fundamental change of substantial political or social significance that has produced a stable power structure different from that under which the original well-founded fear of being persecuted was produced. A complete political change is the most obvious example of a profound change of circumstances, although the holding of democratic elections, the declaration of an amnesty, repeal of oppressive laws, or dismantling of former [security] services may also be evidence of such a transition.
>
> A situation which has changed, but which also continues to show signs of volatility, is by definition not durable. There must be objective and verifiable evidence that human rights are generally respected in that country, and in particular that the factors which gave rise to the refugee's well-founded fear of being persecuted are durably suppressed or eliminated. Practical developments such as organised repatriation and the experience of returnees, as well as the reports of independent observers should be given considerable weight.[37]

Similarly, the Australian Government has recommended that the cessation of refugee status based on ceased circumstances should only be considered when developments in the country of origin are:

- substantial, in the sense that the power structure under which persecution was deemed a real possibility no longer exists;
- effective, in the sense that they exist in fact, rather than simply promise, and reflect a genuine ability and willingness on the part of the home country's authorities to protect the refugee; and
- durable, rather than transitory shifts which last only a few weeks or months.[38]

36 Commission of the European Communities, 'Proposal for a Council Directive on Minimum Standards for the Qualification and Status of Third Country Nationals and Stateless Persons as Refugees or as Persons who Otherwise Need International Protection', COM (2001) 510 final, 12 Sept. 2001 (hereinafter 'Draft Directive on Minimum Standards for Qualification and Status as Refugees'), Art. 13.

37 Ibid., explanatory memorandum, Art. 13(1)(e).

38 Refugee and Humanitarian Division, Department of Immigration and Multicultural Affairs, Australia, 'The Cessation Clauses (Article 1C): An Australian Perspective', Oct. 2001, p. 16.

According to Netherlands government policy, indicators of 'fundamental change' include:

> successful changes to the constitution, the conduct of democratic elections, the establishment of a democratic administration or a multi-party system, successful large-scale repatriation, the introduction and application of amnesty schemes, a general improvement in the human rights situation or the implementation of other social developments marking the end of systematic repressive government action. . . .[39]

The consistency between UNHCR guidelines and the official positions of States Parties suggests that there exists substantial agreement on the interpretation of the 'ceased circumstances' cessation clauses. Perhaps most importantly, States Parties and UNHCR appear to share the view that Article 1C(5) and (6) should be applied carefully and only when comprehensive and lasting changes have occurred in the country of origin. Processes for applying the ceased circumstances clauses are not well developed, however, and are examined below.

B. UNHCR practice under its Statute, 1973–1999

Consideration of the ceased circumstances provisions within UNHCR has arisen through several different procedures. Changes of a potentially fundamental and durable nature in a country of origin have frequently led UNHCR to explore the possibility of applying the cessation clauses to refugee populations under its mandate. Occasionally, UNHCR has also taken a proactive approach, surveying conditions in countries of origin worldwide to determine whether the cessation clauses should be applied to refugee populations under its mandate. Finally, favourable developments in a country of origin have often led asylum countries to consult UNHCR regarding the applicability of the ceased circumstances provisions.

In some cases, positive changes in a country of origin have enabled UNHCR to promote the voluntary repatriation of refugees and terminate its assistance programs. UNHCR has then considered invoking Article 1C(5) and (6) to facilitate its withdrawal and resolve the status of a residual caseload. For example, in July 1988, UNHCR explored issuing a declaration of general cessation for Ethiopian refugees after Ethiopia and Somalia reached a settlement in April of that year ending the conflict over the Ogaden.[40] Similarly, the end of the civil war in Chad and the consolidation of President Habré's government enabled UNHCR to examine the possibility of applying the ceased circumstances provisions to Chadian refugees

39 'Memorandum on the Withdrawal of Refugee Status', above n. 31, section 2.2.

40 UNHCR Somalia, to UNHCR Headquarters Geneva, 3 Aug. 1988; 1986–91 Protection; Fonds 17, Protection; Archives of the United Nations High Commissioner for Refugees (hereinafter Fonds UNHCR 17).

in 1990.[41] The administration of the cessation clauses to Albanian refugees was considered in 1994 after improvements in the human rights situation and progress towards democratic reform.[42]

On several occasions, UNHCR has also conducted a comprehensive review of refugee caseloads under its mandate to identify situations in which the cessation clauses might be applicable based on changed circumstances. A 1994 internal review, for example, concluded that Article 1C(5) and (6) could be invoked with regard to refugees from South Africa, Slovakia, Albania, Bulgaria, and Romania.[43] Further deliberations over the course of 1995 led to the decision to declare general cessation for South African, as well as Namibian, refugees and to defer final judgments on the other cases.[44]

UNHCR has frequently advised the governments of asylum countries about the applicability of Article 1C(5) and (6) to specific refugee populations. In some cases, it has taken the initiative to provide asylum States with an assessment of whether changes in a country of origin warrant the use of the ceased circumstances provisions. In June 1996, for example, UNHCR contributed to deliberations within the Panamanian Government regarding the application of the cessation clauses to Haitian refugees.[45]

In addition, UNHCR has regularly responded to inquiries from the governments of asylum countries. Often, such inquiries have been received shortly after the occurrence of major developments in a country of origin. In January 1983, three months after the establishment of a democratic government in Bolivia, the Peruvian Government asked UNHCR to apply the ceased circumstances provisions to Bolivian refugees.[46] UNHCR received a similar inquiry from the Government of South Africa in November 1999 about the status of Nigerian refugees, six months after the transition to civilian rule in Nigeria.[47]

41 UNHCR staff, interview by R. Bonoan, Geneva, Switzerland, 21 Nov. 2000.

42 HCR/USA/1126, 3 Oct. 1994; UNHCR Department of International Protection (DIP) staff personal files.

43 UNHCR Division of International Protection, 'Application of Cessation Clause, Article 1C(5) of 1951 Convention and para. 6(A) of the Statute', memo, 2 Dec. 1994, UNHCR DIP staff personal files. Division of International Protection to Directors of Bureaux, Regional Legal Advisors, 20 Feb. 1995; 91/95 Cessation Clauses, Americas; Sub-fonds 2, Americas Bureau; Fonds 19, Regional Bureaux; Archives of the United Nations High Commissioner for Refugees (hereinafter Fonds UNHCR 19). UNHCR Division of International Protection, 'Survey of the Application of Cessation Clauses', memo, 16 Aug. 1995, UNHCR DIP staff personal files.

44 UNHCR Division of International Protection, to All Directors of Operations, 'Cessation Clause', memo, 22 Nov. 1996, UNHCR DIP staff personal files. 'Survey of the Application of Cessation Clause . . .', above n. 43.

45 UNHCR Regional Bureau for the Americas and Caribbean (RBAC), to UNHCR Regional Office Costa Rica, 6 June 1996, UNHCR RBAC staff personal files.

46 UNHCR Americas Bureau, to Division of International Protection, 6 Jan. 1983; 1986–91 Protection; Fonds UNHCR 17.

47 UNHCR Branch Office South Africa, Pretoria, to Department of International Protection, 'Application of Cessation Clause to Nigerian Refugees in South Africa', memo, 25 Nov. 1999, UNHCR

Finally, UNHCR has evaluated the significance of developments in refugee-sending countries in the context of the status determination procedures of asylum countries. In response to requests from governments and asylum seekers, UNHCR has provided its assessment of improvements in a country of origin and their implications, if any, for claims of refugee status. For instance, in recent years, UNHCR has advised US government agencies and asylum seekers in this manner in status determination proceedings for asylum seekers from the Democratic Republic of the Congo, Haiti, and Guatemala, among others.[48]

Despite receiving regular consideration within the organization, the ceased circumstances provisions have only been applied by UNHCR to refugee populations under its mandate on twenty-one occasions during the period from 1973 to 1999 (see Table 8.1 overleaf). According to UNHCR, the cessation clauses have not been used extensively for two reasons.[49] First, the availability of alternative solutions, such as voluntary repatriation, has usually obviated the need to invoke the cessation clauses. Secondly, it has often been difficult to determine whether developments in a country of origin warranted the application of the cessation clauses. Rather, UNHCR has issued declarations of cessation mainly to 'provide a legal framework for the discontinuation of UNHCR's protection and material assistance to refugees and to promote with States of asylum concerned the provision of an alternative residence status to the former refugees'.[50]

The cases in which UNHCR has ultimately invoked Article 1C(5) and (6) on a group basis can be organized according to the kind of change that has occurred in the country of origin. Three basic types of change in circumstances can be identified: (i) accession to independent statehood; (ii) achievement of a successful transition to democracy; and (iii) resolution of a civil conflict.

In seven cases, the application of Article 1C(5) and (6) was related to the achievement of independence by the country of origin (Mozambique, Guinea-Bissau, São Tomé and Príncipe, Cape Verde, Angola, Zimbabwe, and Namibia). Such independence cases account for six of the ten instances in which UNHCR invoked the ceased circumstances provisions prior to 1991 (the exception being Namibia in 1995).

In twelve cases, UNHCR has invoked the ceased circumstances provisions based upon a change in the regime (typically involving a transition to democracy) in the country of origin. These cases, which occurred over the period 1980–99, were often associated with the end of the Cold War. The application of the cessation clauses to refugees from Chile (1994), Romania (1997), and Ethiopia (1999) is examined below in greater detail. In these cases, invoking the ceased circumstances provisions has

DIP staff personal files. See also, Department of International Protection, to UNHCR Branch Office South Africa, Pretoria, 20 Dec. 1999; AF05 PRL3/3.1/3.2/3.3; Sub-fonds 1, Africa Bureau; Fonds UNHCR 19.

48 UNHCR staff, interview by R. Bonoan, Washington, DC, 9 Jan. 2001.

49 'Discussion Note', above n. 18, paras. 3 and 11.

50 'Note on the Cessation Clauses', above n. 7, para. 31.

Table 8.1 *'Ceased circumstances' cessation cases*

Country of origin	Date of IOM/FOM*	IOM No.	Nature of fundamental change
Sudan	12 July 1973	26/73	Settlement of civil conflict
Mozambique	14 November 1975	36/75	Independence
Guinea-Bissau	1 December 1975	38/75	Independence
São Tomé and Príncipe	16 August 1976	7/76	Independence
Cape Verde	16 August 1976	21/76	Independence
Angola	15 June 1979	22/79	Independence
Equatorial Guinea	16 July 1980	44/80	Regime change/ democratization
Zimbabwe	14 January 1981	4/81	Independence
Argentina	13 November 1984	84/84	Regime change/ democratization
Uruguay	7 November 1985	55/85	Regime change/ democratization
Poland	15 November 1991	83/91	Regime change/ democratization
Czechoslovakia	15 November 1991	83/91	Regime change/ democratization
Hungary	15 November 1991	83/91	Regime change/ democratization
Chile	28 March 1994	31/94	Regime change/ democratization
Namibia	18 April 1995	29/95	Independence
South Africa	18 April 1995	29/95	Regime change/ democratization
Mozambique	31 December 1996	88/96	Settlement of civil conflict
Malawi	31 December 1996	88/96	Regime change/ democratization
Bulgaria	1 October 1997	71/97	Regime change/ democratization
Romania	1 October 1997	71/97	Regime change/ democratization
Ethiopia	23 September 1999	91/99	Regime change/ democratization

* Internal Office Memorandum/Field Office Memorandum

involved a three-stage process of: (i) consulting with the country of origin and/or asylum countries; (ii) conducting a comprehensive evaluation of conditions in the country of origin; and (iii) issuing a memorandum declaring the application of Article 1C(5) and (6) to refugees from the country of origin in question.

In Chile, a 1988 plebiscite and national elections in 1989 culminated in the transfer of power from the military regime led by General Augusto Pinochet to the elected government of President Patricio Aylwin in March 1990. This event marked the return of democracy to Chile after seventeen years of military rule. Shortly after the Aylwin administration took office, UNHCR began to receive inquiries from governments of asylum countries regarding the application of the cessation clause to Chilean refugees. Responding to such inquiries in November 1990 and October 1991, UNHCR argued that it was premature to invoke Article 1C(5) and (6) because the transition to democracy was still underway and more time was needed to determine the durability of the change in circumstances in Chile.[51]

By 1992, however, sufficient time had elapsed for these changes to consolidate and for UNHCR to initiate consideration of the application of the ceased circumstances provisions to Chilean refugees. In March 1992, consultations were held with the Chilean Government and local advocacy groups regarding a declaration of general cessation.[52] Chilean policymakers and human rights activists both expressed support for such a declaration. UNHCR also modified its position on the application of the ceased circumstances provisions by asylum countries, advising the French Government in July 1992 that it would not object to the application of the cessation clause to Chilean refugees.[53]

Deliberations within UNHCR regarding a declaration of general cessation continued throughout 1993. During this period, UNHCR sought to ascertain the significance and durability of developments in Chile and to address, in cooperation with the Chilean Government, the problem of refugees with pending legal proceedings before military or civilian tribunals.[54] The latter issue had emerged as the principal obstacle to a declaration of general cessation for Chilean refugees.[55] Attempts to resolve the issue by developing a comprehensive list of refugees who faced such

51 Regional Bureau for Latin America and the Caribbean and Division of International Protection to Branch Offices Argentina, Chile, and Venezuela, 2 Nov. 1990; 91/95 Cessation Clauses, Americas; Sub-fonds 2, Americas Bureau; Fonds UNHCR 19. UNHCR Chile to UNHCR Geneva, UNHCR Canada, CHL/HCR/0306, CHL/CAN/HCR/0248, 22 Oct. 1991; 91/95 Cessation Clauses, Americas; Sub-fonds 2, Americas Bureau; Fonds UNHCR 19.

52 UNHCR Santiago de Chile, to Regional Bureau for Latin America and the Caribbean and Division of International Protection, 24 June 1992; 91/95 Cessation Clauses, Americas; Sub-fonds 2 Americas; Fonds UNHCR 19.

53 UNHCR Regional Bureau for Latin America and Caribbean/Division of International Protection, to HRC/France, HRC/Chile, and HRC/Argentina, 8 July 1992; 560.CHL; Series 3, Classified Subject Files; Fonds 11, Records of the Central Registry; Archives of the United Nations High Commissioner for Refugees.

54 UNHCR Santiago de Chile, above n. 52.

55 UNHCR staff, interview by R. Bonoan, Geneva, Switzerland, 30 Nov. 2000.

proceedings, however, were unsuccessful.[56] UNHCR therefore decided to proceed with a declaration of general cessation, including a specific provision for Chilean refugees facing the possibility of detention or prosecution upon their return.[57] The general issue of exceptions to cessation is discussed in further detail below in section II.C.3.

Specific human rights concerns also played an important role in the case of Romania. The collapse of the Ceausescu regime in 1989 was followed by several years of political instability and mixed progress on human rights issues. Although significant improvements occurred in some areas, discriminatory measures and practices from the Ceausescu era persisted. These included deficiencies in the protection of the rights of minority groups (particularly the Roma and Hungarian minorities), homosexuals, and detainees.[58]

In May 1995, however, the French Government notified UNHCR of its intention to apply the ceased circumstances provisions to Romanian refugees.[59] France had continued to receive large numbers of asylum seekers from Romania since 1989. According to the French authorities, many of the applicants' claims were manifestly unfounded and primarily of an economic nature and the influx had begun to undermine public support for the institution of asylum.[60] French officials may have therefore viewed a declaration of general cessation as an important political signal as well as a potentially effective method of deterring additional flows of refugees from Romania.[61] The problems posed by the importation of 'cessation' concepts into initial refugee status determination are examined below in section IV.

The French Government assured UNHCR that those recognized as refugees would neither lose their status automatically nor be forcibly returned to Romania, and that new asylum seekers would continue to have their claims evaluated on an

56 Liaison Office Chile to Regional Bureau for the Americas and Caribbean, 14 Jan. 1994; 91/95 Cessation Clauses, Americas; Sub-fonds 2, Americas Bureau; Fonds UNHCR 19.

57 The exemption stated:

> Special attention should be given to the cases of refugees who have reason to believe they may still be the subject of arrest warrants or convictions *in absentia* for acts related to the situation which led to recognition of refugee status. Such cases should be referred to Headquarters in order to examine the merits of the case and advise the country of asylum accordingly.

UNHCR, 'Applicability of the Cessation Clauses to Refugees from Chile', 28 March 1994.

58 HCR/USA/0510, 25 May 1994, UNHCR DIP staff personal files.

59 UNHCR Regional Bureau for Europe, 'France's Intention to Declare General Cessation in Respect of Romanian Refugees', Note for the File, 7 June 1995, UNHCR DIP staff personal files.

60 Ibid.

61 According to one UNHCR staff member, the number of Romanian asylum seekers decreased significantly following the declaration of general cessation by the French Government. This decline was probably the result of numerous factors, the most significant likely being the gradual improvement of conditions in Romania, although the application of the cessation clause may have contributed to the decline by deterring additional flows of asylum seekers from Romania.

individual basis.[62] UNHCR expressed no objection to the cessation of status for pre-1989 Romanian refugees on an individual basis, but maintained its position that concerns about the rights of minorities and other vulnerable groups precluded a declaration of general cessation.[63] UNHCR also indicated, however, that it would continue to monitor the situation in Romania and consider the application of the ceased circumstances clauses if progress were made in these areas.[64]

In June 1995, France proceeded to apply the cessation clauses to Romanian refugees. UNHCR publicly expressed satisfaction with its consultations with the French Government and with the safeguards that had been adopted by the French authorities to protect the rights of refugees and asylum seekers.[65] UNHCR also reiterated its willingness to consider the application of the ceased circumstances provisions if the situation in Romania improved.[66]

By 1997, a number of positive developments had occurred in Romania. These included a second round of national elections in November 1996 that had generally been recognized as free and fair, as well as efforts by the new Romanian Government to strengthen guarantees for the rights of minorities. In July 1997, a comprehensive review of circumstances in Romania by UNHCR found that the ceased circumstances provisions could be applied to Romanian refugees.[67] The resulting declaration of cessation issued by UNHCR in October 1997 included a special provision for refugees who had lost their personal documentation.[68]

In the case of Ethiopia, the application of the ceased circumstances provisions was complicated by the need to address the concerns of the country of origin and an important asylum country. The military regime of Lt.Col. Mengistu Haile Mariam had collapsed in 1991 after seventeen years in power. From 1993 to 1998, UNHCR conducted a voluntary repatriation programme for Ethiopian refugees who had fled persecution by the Mengistu regime. As the voluntary repatriation programme drew to a close, UNHCR began to consider the application of the cessation clauses to the remaining caseload of Ethiopian refugees. Such a recommendation was first made in 1998, and was subsequently endorsed at a Standing Committee meeting in February 1999.[69]

62 UNHCR staff, interview by R. Bonoan, Geneva, Switzerland, 14 Nov. 2000.
63 'France's Intention to Declare General Cessation', above n. 59.
64 Ibid.
65 UNHCR Branch Office for France, 'Press Statement by UNHCR on the Invocation by the French Authorities of the Cessation Clause in Respect of the Romanian Asylum-seekers', 21 June 1995, UNHCR DIP staff personal files.
66 Ibid.
67 UNHCR Liaison Office for Romania, 'Application of General Cessation to Romanian Refugees', Discussion Paper, June 1997, UNHCR DIP staff personal files.
68 UNHCR, 'Applicability of the Cessation Clauses to Refugees from Bulgaria and Romania', 1 Oct. 1997.
69 UNHCR Branch Office Sudan, to UNHCR Regional Office East and Horn of Africa and the Great Lakes, *et al.*, 'Application of the Cessation Clause Pre-91 Ethiopian Refugees', memo, undated, UNHCR DIP staff personal files.

A comprehensive review of developments in Ethiopia since 1991 concluded that the invocation of Article 1C(5) and (6) was justified,[70] although continued political instability and human rights abuses, followed by the outbreak of war between Ethiopia and Eritrea in May 1998, raised the possibility that Ethiopians who had sought international protection *after* 1991 could possess valid claims for refugee status.[71] To avoid jeopardizing the claims or status of these refugees, UNHCR therefore limited the application of the cessation clauses to those who had fled persecution by the Mengistu regime (or pre-1991 refugees).[72]

The governments of Ethiopia and Sudan both sought, however, to postpone the application of the cessation clauses to pre-1991 Ethiopian refugees. The Ethiopian Government expressed concerns about the reintegration of large numbers of returnees, given the internal population displacement and destruction wrought by the war with Eritrea.[73] The reluctance of the Sudanese Government reflected fears about the loss of international financial assistance, as well as the large remaining caseload of Ethiopian refugees in Sudan to whom the cessation clauses did not apply.[74]

While continuing to insist that the application of the cessation clauses proceed as planned, UNHCR sought to address the issues raised by both governments. It agreed to assist the Sudanese Government with the conduct of refugee status determination procedures for the entire caseload of pre-1991 Ethiopian refugees.[75] In response to the concerns of the Ethiopian Government about the absorption of returnees, UNHCR consented to phasing the implementation of the cessation clauses and the repatriation of refugees from Sudan.[76]

The third and final category of circumstances in which UNHCR has invoked Article 1C(5) and (6) involves the settlement of a civil conflict. There have only been two such cases to date: Sudan (1973) and Mozambique (1996). These cases merit further consideration because they represent the most likely situation in which the application of the ceased circumstances provisions will be considered in the future.

In March 1972, a peace agreement was reached between the Government of Sudan and the South Sudan Liberation Movement ending the civil war in Sudan. The conflict had generated some 180,000 refugees (in Uganda, Zaire, the Central African Republic, and Ethiopia) as well as 500,000 internally displaced persons.[77]

70 UNHCR staff, personal communication with R. Bonoan, 10 Nov. 2000.
71 UNHCR staff, interviews by R. Bonoan, Geneva, Switzerland, 15 and 24 Nov. 2000, and 1 Dec. 2000.
72 According to one UNHCR staff member, this precaution has proven ineffective in the case of Sudan, which has proceeded to deny automatically the claims of asylum seekers from Ethiopia.
73 UNHCR staff, interview by R. Bonoan, Geneva, Switzerland, 24 Nov. 2000.
74 UNHCR staff, interviews by R. Bonoan, Geneva, Switzerland, 24 Nov. 2000 and 1 Dec. 2000.
75 UNHCR staff, interview by R. Bonoan, Geneva, Switzerland, 1 Dec. 2000.
76 Ibid.
77 UNHCR, 'The Southern Sudan: The Ceasefire and After', Aug. 1973; 7/2/3/SSO Reports from Various Sources – Southern Sudan Operation – Reports on the Situation in the Southern Region;

UNHCR was formally assigned responsibility for the voluntary repatriation, relief, and resettlement of refugees from July 1972 to June 1973.[78] The reconstruction and development phase of the United Nations emergency relief programme was then to begin in July 1973 under the leadership of the United Nations Development Programme (UNDP).[79]

By July 1973, the voluntary repatriation of Sudanese refugees from the Central African Republic and Ethiopia had been completed. Furthermore, UNHCR expected to finish repatriating Sudanese refugees from Zaire and Uganda by October of that year. UNHCR therefore proceeded to issue a declaration of general cessation, arguing that the circumstances upon which the group recognition of Sudanese refugees had been based no longer existed.[80] Refugees who wished to maintain their status would therefore be required to demonstrate that the end of the civil war and national reconciliation in Sudan had not affected the basis of their fear of persecution or that they could not be expected to return to Sudan because of the severity of the persecution that they had suffered. Given the 'reality of national reconciliation' in Sudan, however, UNHCR called for a restrictive approach to the granting of such exemptions.

The Sudanese Government nevertheless requested that UNHCR extend its role as coordinator of the UN emergency relief programme for southern Sudan until the end of 1973.[81] The request raised concerns within UNHCR that any delay would complicate the transition from the relief to the development phase of the UN programme and mire the organization in development activities outside its competence and mandate.[82] The High Commissioner therefore limited the extension of UNHCR involvement to October 1973, when the voluntary repatriation operation was scheduled for completion, and called for the launch of the development phase on 1 July 1973 as originally planned.[83]

In December 1996, UNHCR issued its second declaration of general cessation for Mozambican refugees. In 1992, the Government of Mozambique and the Mozambique National Resistance Movement (Renamo) had signed a peace accord, bringing an end to a long-running civil war. In October 1994, successful multiparty elections were then held. Finally, the voluntary repatriation and reintegration of 1.7 million Mozambican refugees was completed in June 1996. UNHCR cited these

Series 1, Classified Subject Files; Fonds 11, Records of the Central Registry; Archives of the United Nations High Commissioner for Refugees (hereinafter Series 1, Fonds UNHCR 11).

78 Ibid. 79 Ibid.

80 UNHCR, 'Protection and Assistance for Sudanese Refugees', 12 July 1973.

81 UNHCR, 'Note to the File', 23 June 1973; 1/9/1/SSO Relations with Governments – Southern Sudan Operations – Relations with Sudanese Government on the Southern Region; Series 1, Fonds UNHCR 11.

82 Ibid.

83 UN High Commissioner for Refugees, to Vice-President of the Democratic Republic of Sudan, 10 July 1973; 1/9/1/SSO Relations with Governments – Southern Sudan Operations – Relations with Sudanese Government on the Southern Region; Series 1, Fonds UNHCR 11.

developments as evidence of a 'fundamental' and 'durable' change in circumstances in Mozambique warranting the application of the ceased circumstances provisions to refugees from Mozambique.[84]

The application of the cessation clauses had already been envisioned, however, before the October 1994 elections. In June 1994, the High Commissioner had announced at an informal Executive Committee meeting that UNHCR would terminate its repatriation and reintegration operation by the middle of 1996.[85] In September 1994, UNHCR had stated its expectation that

> [g]iven a successfully run election, the establishment of a new Government as well as a stable and secure environment, Mozambican refugees who still wish to live outside their country [would], after a suitable period, have to regularize their status with the relevant authorities and [would] no longer be regarded as persons of concern to UNHCR.[86]

The successful October 1994 elections led UNHCR to suggest in March 1995 that the cessation clauses would be invoked in the near future, although an August 1995 analysis recommended that UNHCR wait a minimum of an additional twelve months before proceeding with a declaration of general cessation.[87] The study cited the extensive presence of landmines, inadequate food supplies, and the limited availability of land for cultivation as important constraints on the security of returnees that required additional monitoring.[88] The application of the ceased circumstances provisions to Mozambican refugees was thus deferred until November 1996, when the decision was reached to proceed with a declaration of general cessation.

The cases examined in the preceding paragraphs have involved the formal application of Article 1C(5) and (6) to an entire group of refugees by UNHCR. With regard to other refugee populations, UNHCR has demurred from issuing a declaration of general cessation despite improvements in their countries of origin. In some cases, UNHCR has found that such developments simply fail to meet the standard of a fundamental and durable change in circumstances. For example, in August 1997, UNHCR advised the US Government that the application of the cessation clauses generally to all Haitian refugees was premature because of continued concerns about the human rights situation in Haiti.[89] Similarly, in November 1998,

84 UNHCR, 'Applicability of the Cessation Clauses to Refugees from the Republics of Malawi and Mozambique', 31 Dec. 1996, para. 2.

85 UNHCR, 'Mozambique: Repatriation and Reintegration of Mozambican Refugees, Progress Report and 1995 Reintegration Strategy, Addendum: UNHCR Reintegration Strategy for 1995', Sept. 1994, para. 20.

86 Ibid., para. 43.

87 'Survey of the Application of Cessation Clauses . . .', above n. 43.

88 Ibid.

89 UNHCR Regional Office for the Americas and the Caribbean (RBAC), to Resource Information Center, US Immigration and Naturalization Service, 'Current Country Conditions in Haiti', letter, 14 Aug. 1997, UNHCR RBAC staff personal files.

UNHCR counselled the Netherlands Government against the application of the ceased circumstances provisions to Bosnian refugees because of the absence of fundamental and durable change in Bosnia and Herzegovina.[90]

Occasionally, UNHCR has supported the application of Article 1C(5) and (6) on an individual rather than a group basis. UNHCR employed this approach in 1992 for Albanian refugees under its care in the Federal Republic of Yugoslavia.[91] In 1996, UNHCR advised the Government of Panama that Article 1C(5) and (6) could be invoked on an individual basis with regard to Haitian refugees.[92] Similarly, in response to a 1997 inquiry from the Swedish Government, UNHCR suggested that the cessation clauses could be applied individually to Vietnamese refugees.[93]

UNHCR has also endorsed the use of Article 1C(5) and (6) on a group basis by asylum countries rather than invoke the ceased circumstances provisions themselves, especially when a declaration of general cessation by UNHCR could affect the claims of asylum seekers waiting to have their status determined. The cases of El Salvador and Nicaragua illustrate this approach. Consideration within UNHCR of a declaration of general cessation for El Salvadorean and Nicaraguan refugees began in 1995, following the successful conclusion of the International Conference on Central American Refugees (CIREFCA) in June 1994.[94] A review of conditions in El Salvador and Nicaragua and subsequent consultations inside and outside UNHCR identified several factors that militated against a declaration of general cessation at that time.[95] These included fragile economic conditions in both countries as well as continued concerns about the human rights situation in El Salvador. Moreover, the status determination process for El Salvadorean and Nicaraguan asylum seekers in the United States had been delayed by litigation to ensure that the claims of El Salvadorean refugees were fairly adjudicated and by legislative efforts to protect Central American refugees.[96] A declaration of general cessation by UNHCR could unduly influence these proceedings.[97]

UNHCR therefore elected not to apply the ceased circumstances provisions to refugees from El Salvador and Nicaragua. In May 2000, however, not least because of changed circumstances, UNHCR did provide technical assistance to the Panamanian Government regarding the application of Article 1C(5) and (6) to El Salvadorean and Nicaraguan refugees. This included the submission of a

90 UNHCR staff, interview by R. Bonoan, Geneva, Switzerland, 30 Nov. 2000.
91 HCR/HRV/0731, HCR/YUG/1578, 2 Dec. 1992, UNHCR DIP staff personal files.
92 UNHCR Regional Bureau for the Americas and Caribbean, above n. 45.
93 UNHCR memo, 'Information on the Application of Cessation Clauses – Reply', 3 March 1997, UNHCR DIP staff personal files.
94 The CIREFCA process was a comprehensive, regional programme for the repatriation and reintegration of refugees and the removal of the root causes of displacement.
95 UNHCR staff, interviews by R. Bonoan, Geneva, Switzerland, 22, 27, and 30 Nov. 2000.
96 UNHCR staff, interviews by R. Bonoan, Geneva, Switzerland, 23 Nov. 2000 and Washington DC, USA, 9 Jan. 2001.
97 Ibid.

comprehensive evaluation of developments in El Salvador and Nicaragua that drew on previous UNHCR assessments.[98] This study found that conditions in both countries now satisfied the standard of fundamental and durable change necessary for Panama to proceed with a declaration of cessation for refugees from El Salvador and Nicaragua.[99]

Finally, the issue of cessation has arisen when improving conditions in refugee-sending countries have led asylum countries to pursue efforts to return refugees to their country of origin. Such developments have not been sufficient to warrant a declaration of general cessation by UNHCR. UNHCR has sought, however, to identify those in continued need of international protection, while acknowledging that certain groups may no longer require refugee status. In the case of Bosnia and Herzegovina, people who remain in need of international protection include persons of mixed ethnicity or in mixed marriages, deserters and draft-evaders of the Bosnian Serb army, and members of the Roma communities. Conversely, individuals who may no longer require international protection and for whom return may be feasible include those who originally resided in areas in which they constituted a majority and, more recently, those from specific minority areas.[100]

In the case of Afghanistan, the collapse of the Soviet-backed Najibullah regime in 1992 and the gradual establishment of Taliban control over most of the country by the mid-1990s suggested that certain groups of Afghan refugees might no longer require international protection (these included individuals who had fled persecution by the Najibullah government or those of Pashtun ethnicity, the majority of whom had fled to Pakistan).[101] The absence of effective national protection,[102] an ongoing civil war, extensive human rights problems, and economic collapse, however, precluded a declaration of general cessation by UNHCR. Nevertheless, the Iranian Government proceeded with efforts to return Afghan asylum seekers residing within its territory, prompting UNHCR to conclude a voluntary repatriation agreement with Iran in February 2000. The agreement established a screening procedure to identify those Afghans who required international protection as well as those who did not require refugee status.[103] The

98 UNHCR Regional Office Mexico, Central America, Belize, and Cuba, 'UNHCR's Assessment of the Change of Circumstances in Nicaragua and El Salvador', 5 May 2000, UNHCR RBAC staff personal files.

99 Ibid.

100 UNHCR, 'Update of UNHCR's Position on Categories of Persons from Bosnia and Herzegovina in Need of International Protection', Aug. 2000, p. 2, UNHCR South Eastern Europe Operation staff personal files. The report states that '[d]ue to the overall improved situation in [Bosnia and Herzegovina], it can no longer be upheld that belonging to a numerical minority group upon return *per se* renders a person in need of international protection'.

101 UNHCR staff, interview by R. Bonoan, Geneva, Switzerland, 20 Nov. 2000.

102 The Taliban was not recognized by the international community as the legitimate government of Afghanistan.

103 'Joint Programme for the Voluntary Repatriation of Afghan Refugees Between the Government of the Islamic Republic of Iran and the United Nations High Commissioner for Refugees',

subsequent overthrow of the Taliban in 2001 and uncertainty surrounding the future governance of Afghanistan illustrate both the difficulty and importance of correctly ascertaining the extent and durability of changes in circumstances in a country of origin, particularly when a protracted, complex refugee situation is involved.

UNHCR has encountered a similar situation involving Cambodian refugees in Thailand. In 1999, the Government of Thailand approached UNHCR about resolving the status of a small group of Cambodian refugees who had remained in Bangkok after the completion of a UNHCR voluntary repatriation programme.[104] This group consisted of political leaders, activists, students, and military personnel who had fled the outbreak of violence in July 1997 between the supporters of the two Cambodian prime ministers, Prince Ranariddh and Hun Sen.[105] Monitoring of returnees in Cambodia indicated that those who had voluntarily repatriated had been able to reintegrate successfully.[106] While extensive consultations with the local Center for Human Rights and other organizations suggested that most of these individuals were no longer in need of international protection and could return in safety to Cambodia, other refugee advocates in the region contested this evaluation.[107]

Since these refugees had been individually recognized by UNHCR, standard procedure called for an overall assessment of the human rights situation in Cambodia, as stipulated in Executive Committee Conclusion No. 69, and a formal declaration of cessation. Such an assessment was unlikely to conclude, however, that a fundamental and durable change in circumstances had occurred in Cambodia. At the same time, UNHCR possessed extensive information indicating that the refugees belonging to this residual caseload might no longer require international protection.[108]

Rather than formally invoke the cessation clauses, UNHCR launched a 'status review' exercise for this group of Cambodian refugees in March 1999.[109] Individuals who wished to maintain their refugee status were required to register with UNHCR, and those who failed to do so would no longer be considered under

Tehran, Feb. 2000, UNHCR Bureau of Central Asia, South-West Asia, North Africa, and the Middle East (CASWANAME) staff personal files.

104 UNHCR staff, interview by R. Bonoan, Geneva, Switzerland, 1 Dec. 2000.

105 Ibid. See also, UNHCR Regional Office Thailand, 'Cambodia Urban Caseload Update', 19 Oct. 1998, UNHCR Evaluation and Policy Analysis Unit (EPAU) staff personal files.

106 UNHCR staff, interview by R. Bonoan, Geneva, Switzerland, 1 Dec. 2000.

107 UNHCR staff, interviews by R. Bonoan, Geneva, Switzerland, 15 and 23 Nov. 2000, and 1 Dec. 2000. See also, UNHCR Regional Office Thailand, 'Mission Report, Phnom Penh, 7–9 September 1999', 12 Sept. 1999, UNHCR EPAU staff personal files.

108 UNHCR staff, interview by R. Bonoan, Geneva, Switzerland, 1 Dec. 2000.

109 UNHCR staff, interviews by R. Bonoan, Geneva, Switzerland, 15 and 23 Nov. 2000, and 1 Dec. 2000. See also, Department of International Protection, 'Note on the Application of the Cessation Clause 1C(5) Concerning the Residual Cambodian Caseload in Thailand', 1 July 1999, UNHCR EPAU staff personal files.

UNHCR protection.[110] Refugees who wished to return to Cambodia could do so on their own or request UNHCR assistance.[111] Some 150 applications were received from refugees seeking to maintain their status.[112] Drawing again on its extensive contacts with human rights organizations working in Cambodia, UNHCR screened these applications and identified some thirty to forty individuals who still required international protection.[113] Individuals who were screened out were given the opportunity to appeal the results of the process.[114]

In September 1999, further consultations with human rights organizations in Cambodia revealed that the political situation had again deteriorated.[115] The status review process was suspended and the thirty to forty individual cases previously screened in were designated for resettlement.[116] UNHCR also decided to postpone an evaluation of the human rights situation in Cambodia to determine whether the ceased circumstances provisions could be invoked.[117]

C. State practice regarding ceased circumstances cessation

Although frequently considered by UNHCR, the ceased circumstances cessation clauses are 'little used' by States.[118] The reasons vary, but they include the administrative costs of terminating individual grants of refugee status based upon a review of general human rights conditions in the State of origin, the recognition that termination of refugee status may not result in repatriation where the refugee is eligible to remain with another legal status, and State facilitation of naturalization pursuant to Article 34 of the 1951 Convention.[119] In the case of group-based refugee protection, States of refuge may hesitate to declare cessation because of the instability of conditions in the State of origin and because assistance from the international community may be adversely affected.

The texts of Article 1C(5) and (6) of the 1951 Convention and Article I.4(e) of the OAU Refugee Convention have a distinctly individualized aspect. They refer, not to general political or human rights conditions, but to 'the circumstances in connection with which he has been recognized as a refugee' and to individual attitudes and conduct ('[h]e can no longer ... refuse to avail himself of the protection [of the State of nationality or habitual residence]'). Asylum States that

110 UNHCR staff, interview by R. Bonoan, Geneva, Switzerland, 23 Nov. 2000.
111 Ibid. 112 Ibid.
113 UNHCR staff, interview by R. Bonoan, Geneva, Switzerland, 23 Nov. 2000 and 1 Dec. 2000.
114 UNHCR staff, interview by R. Bonoan, Geneva, Switzerland, 1 Dec. 2000.
115 Ibid.
116 Ibid. See also, 'Mission Report, Phnom Penh, 7–9 September 1999', above n. 107.
117 Ibid.
118 UNHCR, 'Summary Conclusions – Cessation of Refugee Status, Lisbon Expert Roundtable 3–4 May 2001' (hereinafter 'Lisbon Summary Conclusions'), 4 May 2001, para. 1.
119 Ibid., para. 2.

provide individual status determination rarely apply ceased circumstances cessation, and when they do the objective appears to be, not necessarily repatriation, but the administrative transfer of responsibility for the refugees from one government entity to another, or the acceleration of status determination for new asylum applicants from the State of origin. The Summary Conclusions of the expert roundtable on cessation in 2001 note the rarity of individualized cessation and recognize the need to 'respect a basic degree of stability for individual refugees'.[120]

Article 1C has been incorporated into some national asylum laws, especially those enacted within the past decade. Unfortunately, these statutes sometimes combine cessation provisions with others concerning revocation (cancellation) of refugee status on grounds of fraudulent procurement, exclusion under Article 1F, and expulsion under Article 33(2). Similar confusion characterizes statutes in some African States implementing Article I.4 of the OAU Refugee Convention. The better practice is to treat cessation separately, and not to combine it with provisions concerning persons undeserving of protection. Distinct treatment of cessation in national law facilitates careful attention to procedural fairness and to compelling circumstances that justify non-return.

Ceased circumstances cessation poses serious difficulties for States Parties, particularly in regard to: (i) assessment of fundamental, durable, and effective change in the State of origin; (ii) fair process; and (iii) provision for exceptions to cessation or to return.

1. *Assessment of conditions in the State of persecution*

Since asylum States do not appear to have applied Article 1C(5) and (6) to recognized refugees frequently, the process for assessing changed circumstances remains underdeveloped. The Summary Conclusions of the expert roundtable on cessation identified the following elements as crucial to a proper application of ceased circumstances cessation:

> (i) assessment of the situation in the country of origin . . . (ii) involvement of refugees in the process (perhaps including visits by refugees to the country of origin to examine conditions); (iii) examination of the circumstances of refugees who have voluntarily returned to the country of origin; (iv) analysis of the potential consequences of cessation for the refugee population in the host country; and (v) clarification of categories of persons who continue to be in need of international protection and of criteria for recognizing exceptions to cessation.[121]

Where an asylum State declares cessation for refugees of a particular nationality, the sources of evidence upon which it draws should be broad and should include

120 Ibid., para. 17. 121 Ibid., para. 12.

information from its foreign ministry, from other diplomatic sources, from non-governmental organizations (NGOs), from specialized bodies (especially UNHCR), from scholars, and from the press. This point is stressed in Executive Committee Conclusion No. 69 (XLIII)[122] and in UNHCR's Guidelines.[123] In the Netherlands, for example, before a declaration of cessation is issued, the Ministry of Foreign Affairs prepares an official report summarizing the changes in the country of origin, an official position is requested from UNHCR, and authorities investigate whether neighbouring countries are applying the cessation clause to refugees of the nationality in question.[124]

Precipitous imposition of ceased circumstances cessation in potentially volatile situations may endanger refugees still in need of international protection. Since predictions of the consequences of political changes often prove overly optimistic, assessment visits by refugees contemplating voluntary repatriation, as well as 'escape clauses' for returned refugees who face renewed persecution or severe privation following return, may provide important information and lessen risks. These 'escape clauses' might take the form of a delay or a set period between return and formal cessation of refugee status, or accelerated procedures for revival of refugee status in the case of renewed flight.

In UNHCR's view, time-limited grants of Convention refugee status would be incompatible with the 1951 Convention. Such measures significantly burden refugees by requiring them to repeatedly prove their continued eligibility for protection. Cessation presupposes open-ended grants of refugee status until a defined set of events has occurred, either specific to the refugee or relating to conditions in the State of origin.

2. *Fair process*

Where an asylum State applies the ceased circumstances clauses to a recognized refugee, an individual process is required. Evidence of general political and human rights conditions is relevant, but the focus must be upon the causes of the individual's flight, whether post-flight change has eliminated the risk of persecution, and whether effective protection from the State of nationality or habitual residence is now actually available in the individual case. Only if such conditions exist is it unreasonable for the refugee to refuse protection from the State of nationality or habitual residence, and to insist upon continued international protection. The refugee may introduce general evidence on country conditions, as well as evidence concerning his or her own situation, such as personal testimony and testimony or letters from friends and family members. The individualized hearing also provides

122 Executive Committee, Conclusion No. 69, above n. 6, para. b.
123 'UNHCR Guidelines on Cessation', above n. 8, para. 35.
124 'Memorandum on the Withdrawal of Refugee Status', above n. 31, section 1.4.

an opportunity to determine whether the refugee is eligible for an exception from the general application of cessation, for complementary protection, or for another legal status in the State of refuge, as noted in section II.C.3 below.

The process for cessation of refugee status should be as formal as the process for grant of status, given the stakes for the individual. This is true both where the refugee's own conduct causes the asylum State to initiate cessation, and where general political change raises the possibility that the refugee's fear of persecution is no longer well-founded.

The minimum requirements of fair process in cessation cases are notice to appear, provided in a language understandable by the refugee; a neutral decision maker; a hearing or interview at which the refugee may present evidence of continued eligibility for refugee status and rebut or explain evidence that one of the cessation grounds applies; interpretation during the interview, if necessary; an opportunity to seek either a continuation of refugee status or alternative relief where compelling reasons exist to avoid repatriation or where the refugee qualifies for another lawful status; and the possibility of appeal. Refugees should be spared 'frequent review' of their continued eligibility, as this may undermine their 'sense of security, which international protection is intended to provide'.[125]

The burden of proof rests with the asylum State authorities where the cessation clauses are applied to an individual recognized refugee.[126] This allocation is justified because of the importance of the refugee's settled expectations of protection, and because the authorities may have greater access to relevant information, especially in ceased circumstances cases.

Notice of intent to apply the cessation clauses should be communicated to individually recognized refugees and a hearing or interview should be provided, wherever feasible. The draft Council Directive on minimum standards for asylum procedures, presented in September 2000 by the European Commission, suggests that procedural minima may be derogated from 'in cases [among others of withdrawal (cessation) of refugee status] where it is impossible for the determining authority to comply'.[127] Where a refugee is reliably believed to have re-established himself in the State of origin but his address cannot be determined, genuine impossibility may exist. Where a refugee has naturalized in the State of refuge or has applied for and received a residence permit, knowing that by operation of law acquisition of these legal benefits terminates his refugee status, then the procedural formalities may be dispensed with. In other cases, however, notice and hearing should be provided, for instance where the authorities can determine the refugee's location in the State of origin or where the refugee is believed to have re-acquired his

125 UNHCR *Handbook*, above n. 5, para. 135.

126 G. S. Goodwin-Gill, *The Refugee in International Law* (2nd edn, Clarendon, Oxford, 1996), p. 87.

127 Commission of the European Communities, 'Draft Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status', COM (2000) 578 final, 20 Sept. 2000, Art. 26(3).

nationality or acquired the nationality of a third State. There may be serious ambiguity concerning voluntariness, intent, and effective protection in such cases, and imposition of cessation without a solid factual grounding is improper. The restrictive interpretation of the cessation clauses demands that an opportunity to contest their applicability be provided unless genuinely impossible.

The allocation of the burden of proof may vary in other circumstances where cessation concepts figure. Two other cessation-related situations may arise: (i) cessation of group-based refugee status, with provision for individualized reconsideration of claims of continued persecutory risk; and (ii) withdrawal of temporary protection, with provision for access to the refugee status determination procedure. In these settings, repatriation should be suspended until those unwilling to return have been given an opportunity to establish that they are entitled to continued international protection because of their particular situation. This situation may involve a specific well-founded fear of persecution, eligibility for exemption from cessation, or eligibility for complementary protection or other lawful status. In the context of group declarations of cessation, it can be fair to impose the burden of initiative upon resistant individuals to seek reconsideration of their status.[128]

When UNHCR invokes cessation of its protection role under paragraph 6 of the Statute, it normally gives members of the nationality group in question a chance to show that cessation does not apply to them. UNHCR refers to a 'rebuttable presumption'[129] that the risk of persecution has ceased and to the possibility that individual members of the group might seek 'reconsideration' of their cases, during which they may present evidence that they face a continuing risk.

Religious and ethnic minorities may, for instance, experience lingering hostility and discrimination, despite a formal change of regime. Indeed, the exemption for so-called 'statutory' refugees recognized before 1951, as set out in Article 1A(1) of the 1951 Convention, was specifically intended to cover those who had suffered atrocious forms of persecution by fascist regimes and could not due to trauma reasonably be expected to return to their country of origin.[130] It was also partly intended to make provision for the social reality that formal regime change does not necessarily erase deep-seated prejudices, nor eliminate the risk that persecution will continue at the hands of rogue officials and non-State actors.[131] Where general

128 Executive Committee Conclusion No. 69, above n. 6, para. d.
129 'UNHCR Guidelines on Cessation', above n. 8, para. 33.
130 Ibid., para. 30.
131 A. Grahl-Madsen, *The Status of Refugees in International Law* (Sijthoff, Leyden, 1966), p. 410:

> What the drafters of the Convention had in mind was the situation of refugees from Germany and Austria, who were unwilling to return to the scene of the atrocities which they and their kin had experienced, or to avail themselves of the protection of a country which had treated them so badly. The fact was appreciated that the persons in question might have developed a certain distrust of the country itself and a disinclination to be associated with it as its national.

political developments do not eliminate an individual's fear of persecution, cessation is improper regardless of whether the refugee qualifies for an exemption or some alternate form of international protection or durable status. The person's refugee status remains intact and he or she continues to enjoy the benefits of that status undisturbed.

Political change, whether democratic or violent, may simply substitute a new risk of persecution for a recognized refugee. From an administrative perspective, it makes little sense to expend substantial resources to impose cessation and subsequently to adjudicate a new claim to protection. UNHCR asserts that cessation is improper in this context (citing the situation of Afghanistan),[132] and this is true in the sense that cessation followed by deportation to the State of origin violates the refugee conventions where the individual has a well-founded fear of persecution, whether the fear is of long-standing or new. It would be bad practice to expend resources on formal cessation simply to extend refugee status on new grounds, even if the cessation were technically correct. Such empty rituals expose refugees to 'unnecessary review' discouraged by Executive Committee Conclusion No. 69.

3. Exceptions

Where political conditions in the State of origin have been fundamentally transformed, refugees may eagerly embrace an opportunity to return to a democratic and non-persecutory homeland. Cessation in such cases is a formality, but not all refugees whose States of origin have experienced political change will regard repatriation as an appropriate durable solution.

It is worth emphasizing that cessation of individual or group-based status does not automatically result in repatriation. The refugee may obtain another lawful status in the State of refuge or in a third State in some instances. Cessation thus should not be viewed as a device to trigger automatic return. While refugees cannot be involuntarily repatriated prior to proper cessation, the application of the cessation clauses should be treated as an issue separate from standards for repatriation.

There are several distinct types of 'residual' cases that must be evaluated by States of refuge in deciding whether to apply cessation and, if so, whether to provide some other form of leave to remain. First, there are individuals whose personal risk of persecution has not ceased, despite general changes in the State of origin. These persons remain refugees and may not be subject to cessation of protection by the State of refuge or by UNHCR. Secondly, there are persons who have 'compelling reasons' arising out of previous persecution to avoid cessation. As discussed below, practice has extended the 'compelling reasons' exception beyond its original textual reach to include not only statutory refugees but also Convention refugees. 'Compelling reasons' is a term of variable meaning and continued refugee status is

132 'Note on the Cessation Clauses', above n. 7, para. 20.

not necessarily the only proper disposition of such cases. Continuation of refugee status (non-cessation) is nevertheless the preferable approach because it is simplest and adheres most closely to the Convention text. Thirdly, certain refugees subject to cessation may be eligible for protection against involuntary repatriation under human rights treaties, and States must provide them leave to remain, preferably in a legal status.[133] Fourthly, certain humanitarian claims may be accommodated by States of refuge, including especially vulnerable persons, persons who have developed close family ties in the State of refuge,[134] and persons who would suffer serious economic harm if repatriated.

Articles 1C(5) and 1C(6) refer to 'compelling reasons arising out of previous persecution for refusing to return' to the country of nationality or habitual residence. Article I.4(e) of the OAU Refugee Convention includes no similar exception clause. The textual inadequacies of Articles 1C(5) and 1C(6) concerning residual cases are glaring and, in Guy Goodwin-Gill's description, perverse.[135] Articles 1C(5) and 1C(6) specifically refer to statutory refugees defined in Article 1A(1), rather than to Convention refugees under Article 1A(2). The proviso envisions continuation of refugee status (that is, non-cessation). The severity of persecution that the victims of fascism had suffered was known to the drafters of the 1951 Convention. Statutory refugees comprised the majority of those covered initially by the 1951 Convention.

Practice and principle support the recognition of exceptions to cessation for Convention refugees. Executive Committee Conclusion No. 69 suggests relief for two groups: (i) 'persons who have compelling reasons arising out of previous persecution for refusing to re-avail themselves of the protection of their country'; and (ii) '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 there'.[136] The Conclusion does not mandate that the proper solution is to continue refugee

133 Prominent among the human rights bars to *refoulement* or provisions that may prevent deportation are Art. 3 of the 1984 Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, UN doc. A/RES/39/46; Arts. 3 and 8 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No. 5; Arts. 7 and 17 of the 1966 International Covenant on Civil and Political Rights, 999 UNTS 171; and Arts. 5 and 11 of the 1969 American Convention on Human Rights, OAS Treaty Series No. 35.

134 In some cases, deportation of persons with close family ties in the State of refuge may violate human rights treaties, such as Art. 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such persons fall within the third category, and States have a legal obligation to permit them to remain. Their cases are not 'humanitarian' in the sense that States have discretion to accommodate them, or not. The European Commission's 'Draft Directive on Minimum Standards for Qualification and Status as Refugees', above n. 36, has proposed to extend to persons eligible for 'subsidiary protection' under human rights treaties minimum standards of treatment that are similar to the treatment of recognized refugees, although with shorter residence permits and delayed access to employment, employment-related training, and integration measures (Arts. 21, 24, and 31 of the draft Directive).

135 Goodwin-Gill, above n. 126, p. 87.

136 Executive Committee Conclusion No. 69, above n. 6, para. (e).

status (in other words, that formal cessation not be imposed). Instead, it calls upon States to 'seriously consider an appropriate status, preserving previously acquired rights' for such residual cases, which could include continuation of refugee status.[137] Paragraph 136 of the UNHCR *Handbook* argues that the exception for statutory refugees reflects a 'more general humanitarian principle' for egregious cases of past persecution involving Article 1A(2) refugees. The UNHCR Guidelines correctly observe that 'there is nothing to prevent [the exception from cessation] being applied on humanitarian grounds to other than statutory refugees'.[138] The Summary Conclusions of the expert roundtable on cessation state:

> Application of the 'compelling reasons' exception to general cessation contained in Article 1C(5)–(6) is interpreted to extend beyond the actual words of the provision and is recognized to apply to Article 1A(2) refugees. This reflects a general humanitarian principle that is now well-grounded in State practice.[139]

Statutes implementing the cessation clauses make provision for exceptions concerning severe past persecution.[140] In Switzerland, where the cessation clauses are more frequently applied than in some other States, the exception for persons who suffered severe trauma is often the focus of the case.[141]

Three distinct questions are posed: (i) whether exceptions from cessation should be defined only in terms of severity of past persecution; (ii) if not, how to define additional categories; and (iii) what relief should be accorded to members of these various groups (that is, whether the exception is to formal cessation or gives rise to a claim to some other lawful status and protection against involuntary repatriation).

'Compelling reasons arising out of past persecution' at the very least covers victims suffering from post-traumatic stress whose forced return could trigger debilitating flashbacks. Repatriated refugees might also suffer secondary trauma as a result of family members' past egregious persecution.

The relevant textual exception in the UNHCR Statute is much broader than those contained in Article 1C(5) and (6). It refers to persons who present 'grounds other than personal convenience for continuing to refuse' repatriation, '[r]easons of a purely economic character' being excluded.[142] Thus, traumatized individuals, persons with family ties in the State of refuge, and especially vulnerable persons may be spared cessation of UNHCR protection.[143] The Statute does not limit this exception

137 Ibid.
138 'UNHCR Guidelines on Cessation', above n. 8, para. 31.
139 'Lisbon Summary Conclusions', above n. 118, para. 18.
140 Examples include Germany, Ireland, the Slovak Republic, Ghana, Liberia, Malawi, Zimbabwe, Azerbaijan, Lithuania, Canada, and the United States.
141 Comments of Judge Tellenbach, above n. 30. 142 Statute, above n. 3, Art. 6(e).
143 Grahl-Madsen suggests that some economic-related reasons may suffice, because it cannot be fairly called personal convenience to resist return to a State where the refugee has no abode, no vocation, and no other ties to the State of origin: above n. 131, p. 408.

to refugees as defined in Article 1A(1) of the 1951 Convention, but also extends it to all refugees subject to UNHCR protection.

In the 1996 cessation of protection for refugees from Malawi and Mozambique,[144] UNHCR suggested, first, that UNHCR representatives should endeavour to avoid unnecessary individual hardship that would result from loss of residence and disruption of integration. Secondly, it was suggested that asylum States should 'consider new arrangements for those persons who cannot be expected to leave the country of asylum due to long stay . . . resulting in strong family, social or economic links there. Such arrangements may include the granting of legal immigrant status or naturalization.' Thirdly, it was proposed that UNHCR field offices should grant reconsideration under the Statute to persons with a continuing well-founded fear of persecution, and to persons who have compelling reasons arising out of previous persecution to refuse to re-avail themselves of the protection of their country of origin.

One model for relief is the continuation of refugee status for persons who presently lack a well-founded fear of persecution because their situation falls within one of the cessation grounds, but who are victims of severe past persecution or harm. This is the preferred solution, because it is simplest and hews most closely to the textual exception for Article 1A(1) refugees. State practice, although not entirely uniform, supports this model.[145]

Continuation of refugee status could also be extended to a broader set of humanitarian categories, but in such cases the provision of subsidiary/complementary protection is also an option. For example, a refugee might be subject to cessation and ineligible for an exception based on severe past persecution or harm. If, however, it becomes apparent during the consideration of cessation that the refugee is eligible for a human rights bar to *refoulement*, for example because of a present risk of torture (outside the scope of the Convention) or because of an unjustifiable interference with the right to family life, subsidiary/complementary protection must be extended.[146] Executive Committee Conclusion No. 69 refers to an 'appropriate arrangement, which would not put into jeopardy their established situation . . . for those 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 there'.

144 UNHCR, 'Applicability of the Cessation Clauses to Refugees from the Republics of Malawi and Mozambique', 31 Dec. 1996, paras. 6–8.

145 For examples of States codifying such an exception for Art. 1A(2) refugees, see above n. 140; and for Judge Tellenbach's comments on the extensive Swiss practice in this regard, see above n. 30. As an example of best practice, new Canadian legislation continues refugee status for persons with compelling reasons 'arising out of previous persecution, torture, treatment or punishment for refusing to avail themselves of the protection of the country which they left, or outside of which they remained, due to such previous persecution, torture, treatment or punishment' (Immigration and Refugee Protection Act, Part 2, Refugee Protection, Division 2, Convention Refugees and Persons in Need of Protection, Cessation of Refugee Protection, SC 2001, c. 27, s. 108, effective since 28 June 2002).

146 See above, n. 133.

For such persons, subsidiary/complementary protection could at the very least be granted in the course of imposing cessation of refugee status, assuming that previously acquired rights are preserved.

State practice on subsidiary/complementary protection is quite disparate, although the European Union is presently contemplating a significant harmonization of policy that would establish minimum standards for qualification as a refugee or as a beneficiary of subsidiary protection and minimum standards of treatment for the latter which are similar though less than for those with refugee status.[147] The European Commission's Draft Directive also proposes minimum standards for qualification for refugee status, including provisions for cessation. In its commentary on the Draft Directive, the Commission states:

> The Member State invoking [the ceased circumstances] cessation clause should ensure that an appropriate status, preserving previously acquired rights, is granted to persons who are unwilling to leave the country for compelling reasons arising out of previous persecution or experiences of serious and unjustified harm, as well as persons who cannot be expected to leave the Member State due to a long stay resulting in strong family, social and economic links in that country.[148]

Where the cessation clauses are applied, the better practice is to grant relief under an appropriate exception, if the person is eligible, during the same proceeding. Where the refugee is able to secure a residence permit because of the passage of time or family ties, the purposes of a cessation exception may be accomplished (that is, the individual is spared return to the State of persecution and enjoys benefits equivalent to those of a refugee). Refugee status should not terminate, however, if the residence permit could be quickly revoked and the refugee involuntarily repatriated without consideration of continuing risks or hardship.

Codification of exceptions to cessation is desirable, with clear specification of grounds of eligibility for various categories as delineated above. Cessation is distinct from initial status determination, as noted in section IV, but hardship relief for persons who formerly met the refugee definition may be necessary in both contexts. Some asylum seekers whose circumstances have changed since flight, so as

147 'Draft Directive on Minimum Standards for Qualification and Status as Refugees', above n. 36. Art. 15 of the proposed Directive identifies three groups of beneficiaries: persons at risk of torture or inhuman or degrading treatment or punishment; persons at risk of other human rights violations 'sufficiently severe to engage the Member State's international obligations'; and persons facing a threat to life, safety, or freedom from armed conflict or systematic or generalized violations of human rights. See also, European Council on Refugees and Exiles (ECRE), 'Complementary/Subsidiary Forms of Protection in the EU States', April 1999; ECRE, 'Position on Complementary Protection', Sept. 2000; UNHCR, 'Complementary Forms of Protection: Their Nature and Relationship to the International Refugee Protection Regime', UN doc. EC/50/SC/CRP.18, 2000.

148 'Draft Directive on Minimum Standards for Qualification and Status as Refugees', above n. 36, Explanatory Memorandum, Art. 13(1)(e).

to eliminate their well-founded fear of persecution, also deserve to be spared deportation to the State of origin and to be granted a secure legal status. Recognized refugees are, however, situated differently from asylum seekers as a result of their settled expectations and the fact that a long stay in the State of refuge may result in strong family, social, and economic ties that deserve – or the case of family unity require – protection against separation and return.

D. Withdrawal of temporary protection

Where group-based temporary protection has been extended to a mass influx of persons, withdrawal of protection should be governed by the ceased circumstances clauses.[149] Under the OAU Refugee Convention, those menaced by generalized violence qualify for refugee status. Outside the OAU, temporary protection is often extended in situations of mass influx where arrivals include many 1951 Convention refugees.

The process for cessation of temporary protection requires clarification. Sufficient evidence of changed circumstances must be available, and it must be determined who bears the burden of proof. In recent practice, individual States have withdrawn temporary protection at different times, creating an impression that the assessment process is not determined by objective criteria.

The EU has adopted a Directive that establishes a collective mechanism for introducing and terminating temporary protection.[150] The Directive envisions that information received from member States, the European Commission, UNHCR, and other relevant organizations will be considered in decisions on the introduction and ending of temporary protection measures, which will be taken by a qualified majority of the Council.[151] A decision to withdraw temporary protection must be based on an assessment that 'the situation in the country of origin is such as to permit safe and durable return . . . with due respect for human rights and fundamental freedoms and Member States' obligations regarding *non-refoulement*'.[152]

Access to the refugee status determination procedure is sometimes suspended while persons enjoy temporary protection, although State practice varies. When temporary protection is terminated because of general changed conditions in the State of origin, an opportunity to file applications for refugee status and

149 The Lisbon Summary Conclusions observe: 'Since temporary protection is built upon the 1951 Convention framework, it is crucial that in such situations the cessation clauses are respected': above n. 118, para. 20.

150 Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, OJ 2001 L212/12, 7 Aug. 2001.

151 Ibid., Arts. 5 and 6.

152 Ibid., Art. 6(2). The European Parliament shall be informed of the Council Decision.

complementary protection, including the human rights bars to *refoulement*, should be provided.[153] Asylum States tend to regularize the residence of temporary protection beneficiaries after the passage of time. The most difficult of residual temporary protection cases may be those where the right to family life is potentially impaired or where economic hardship will result from repatriation.

Temporary protection has sometimes been granted in lieu of refugee status in order to avoid the costs of individual status determination and in the belief that it could easily be withdrawn in the State's discretion. Where withdrawal of temporary protection is followed by the prospect of mass involuntary repatriation, the prohibition on mass expulsion of aliens must, however, be respected. This norm prohibits discrimination and imposes minimal procedural requirements. Those facing expulsion, including persons who had enjoyed temporary protection, must have the opportunity to give reasons why they should not be expelled. Such reasons would include eligibility for refugee status, the human rights bars to *refoulement*, or other humanitarian exceptions.

III. Cessation based on change in personal circumstances

With respect to Article 1C(1)–(4) of the 1951 Refugee Convention (and the parallel Article I.4(a)–(d) of the OAU Refugee Convention), the elements of *voluntariness*, *intent*, and *effective protection* are crucial, and require careful analysis of the individual's motivations and assessment of the bona fides and capacities of State authorities. Procedural mechanisms requiring States to prove the elimination of persecutory risk prior to cessation will protect against unfounded termination of refugee status. Situations arising under Article 1C(1)–(4) are often characterized by ambiguity. Granting the benefit of the doubt to refugees is consistent with the restrictive interpretation of the cessation clauses. Articles I.4(f) and (g) of the OAU Refugee Convention are essentially expulsion provisions and require separate analysis. They may be applied to refugees who face undiminished, or even heightened, fear of persecution or danger in their State of origin.

A. Re-availment of national protection

Acquisition or renewal of a passport from the State of origin may raise questions about the refugee's continued need for international protection, and is

153 The EU temporary protection Directive ensures access to the asylum procedure (to use the phraseology of the Directive) no later than the end of temporary protection, the maximum duration of which is limited to three years: above n. 150, Arts. 4(1) and 17. The Directive also requires member States to 'consider any compelling humanitarian reasons which may make return impossible or unreasonable in specific cases': ibid., Art. 22(2).

addressed in the UNHCR *Handbook* and in the 1999 UNHCR Guidelines.[154] Such acts may create false impressions, especially where the reasons for flight remain undiminished. Collateral reasons (such as a demand by the State of refuge that the refugee obtain travel documents, or a desire to travel for family reunification) may predominate over a subjective intent to re-avail oneself of national protection. A renewed passport may not always permit re-entry into the State of origin, as was true of some Chilean refugees under orders of banishment. In such cases, cessation would be both inappropriate and even ineffectual in securing repatriation. Especially in light of the extensive use of carrier sanctions, possession of a passport may be a modern necessity that does not signal a desired link to the State of origin.[155] This may be true whether the passport is obtained to facilitate flight from the State of origin or after obtaining refuge, especially where alternative travel documents are not available or the refugee is unaware of how to procure them.[156] Genuine refugees may not possess the same fear of consular authorities in their State of refuge that they have towards other officials in the State of origin.[157]

Paragraph 119 of the *Handbook* sets out an appropriate analytical framework for the consideration of such cases, identifying three essential factors for analysis of cases arising under Article 1C(1): *voluntariness*, *intent*, and *actual re-availment*. Other contact with State of origin diplomatic missions should also be analyzed under this framework.[158] Since Article 1C(1) anticipates that return to the State of origin may result, the stakes are high for a recognized refugee who has had contact with diplomatic representatives of the State of origin. Proof of the act can permissibly impose an obligation on the refugee to explain his or her conduct, because voluntariness and intent are largely unknowable without the testimony of the individual concerned. The refugee may also possess crucial evidence pertaining to the availability (or not) of effective national protection in the State of origin.

Paragraph 121 of the *Handbook* states that, where a refugee has obtained or renewed a passport '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'. Paragraph 122 similarly refers to 'absence of proof to the contrary' in relation to the

154 UNHCR *Handbook*, above n. 5, paras. 49–50 and 120–5; 'UNHCR Guidelines on Cessation', above n. 8, paras. 6–11.

155 J. C. Hathaway, *The Law of Refugee Status* (Butterworths, Toronto, 1991), p. 192.

156 Art. 28 of the 1951 Convention and Art. VI of the OAU Refugee Convention provide for the issuance of travel documents by asylum States.

157 Grahl-Madsen, above n. 131, p. 379.

158 For example, a choice by a refugee to marry at the diplomatic mission of his State of origin, rather than before officials of the State of refuge, should not result in automatic cessation. The surrounding circumstances, including the person's knowledge of the existence of alternatives and the degree of attachment to the State of origin, should be explored. The UNHCR *Handbook*, above n. 5, para. 120, offers the example of a refugee who must contact officials of the State of origin in order to obtain a legally recognizable divorce. Again, the intent of the refugee and actual availability of national protection from the State of origin should predominate in the analysis of whether refugee protection should be terminated as a consequence of such acts.

actual obtaining of 'an entry permit or a national passport for the purposes of returning'. It should be clarified that, while the refugee may reasonably be expected to explain his conduct, States initiating cessation procedures against recognized Convention refugees should bear the burden of proving re-availment. The benefit of the doubt must be given to the refugee, as is consistent with the restrictive interpretation appropriate to the cessation clauses. The 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.

On the other hand, it is dubious to assert that acts such as renewal of passports are not 'voluntary', even if required by the asylum State.[159] The reason why cessation is inappropriate in such cases is because the refugee's act does not provide reliable proof that effective national protection is now available.

Where a refugee travels through third States on the passport of his or her State of origin, it is inherent in the State system that those States implicitly acknowledge the national protection role of the State of origin. This tacit understanding should not suffice to establish re-availment of protection. The State seeking to impose cessation of refugee status must prove that the refugee in question intended to avail him or herself of national protection and that effective protection is in fact available from the State of origin. Thus, for example, in a rare case a refugee might seek assistance from consular authorities of the State of origin on his travels. If the refugee sought and actually received such protection, re-availament could be established depending on the circumstances, but simple travel on the passport without assistance from the State of origin would not suffice to justify cessation.

B. Re-acquisition of nationality

Re-acquisition of nationality under Article 1C(2) of the 1951 Convention and Article I.4(b) of the OAU Refugee Convention has a contemporary relevance, in light of statelessness resulting from the break-up of States in recent years. Paragraphs 126–8 of the *Handbook* stress voluntariness, but the refugee's intent and the availability of effective protection may also be relevant. Unlike re-availment of national protection, re-acquisition of nationality may be initiated by the State of origin, where a nationality law of broad application is adopted, rather than by the refugee. The same scenario may occur under Article 1C(3) where a third State adopts nationality legislation potentially applicable to a recognized refugee.

Paragraph 128 of the *Handbook* suggests that nationality must be 'expressly or impliedly accepted' before cessation under Article 1C(2) would be appropriate. The UNHCR Guidelines on the application of the cessation clauses similarly suggest

159 'UNHCR Guidelines on Cessation', above n. 8, para. 9.

that 'the mere possibility of re-acquiring the lost nationality by exercising a right of option [is not] sufficient to put an end to refugee status'.[160] These interpretations are consistent with the requirement that the refugee voluntarily re-acquire his lost nationality. Paragraph 128 of the *Handbook* places a burden on refugees to signal their rejection of an offer of restored nationality, if they have full knowledge that it will operate automatically unless they opt out. The authorities in the State of refuge should nevertheless also consider whether the refugee will enjoy effective national protection (and thus may safely be deprived of international protection) prior to applying cessation under Article 1C(2).[161]

Where a refugee has the option of re-acquiring a lost nationality, (whether the loss was due to State disintegration or punitive deprivation of citizenship), and he declines to do so (because he prefers to build a new life in the State of refuge, or he fears that return to his State of origin may be traumatic or that political conditions might worsen there), Article 1C(2) does not permit cessation. The element of voluntary re-acquisition is absent.

A refugee has a right to return to his or her own country, under human rights norms.[162] This right should not be seen as imposing an obligation to do so, especially for those who have been forced to flee from persecution and have been deprived of their citizenship. The voluntariness element of Article 1C(2) suggests that refugees do not have a duty to facilitate their repatriation by re-acquiring a lost nationality they no longer desire to possess. As a practical matter, cessation under Article 1C(6) may not be followed by repatriation if a stateless refugee refuses to comply with the administrative protocol for re-acquisition of the nationality of the State of origin. The legal status of stateless persons experiencing cessation under Article 1C(6) could thus become undesirably irregular, if they cannot be repatriated or sent to a third State, and they are ineligible for human rights bars to expulsion or other forms of complementary or subsidiary protection.

C. Acquisition of a new nationality

Perhaps the least problematic cessation scenario is naturalization in the State of refuge.[163] This alteration in legal status may occur without formal

160 Ibid., para. 14.

161 Grahl-Madsen, above n. 131, pp. 394–5, suggests that placing the burden on the refugee to opt out of such nationality legislation is inappropriate. The process of re-acquisition of nationality by operation of law is sometimes referred to as reintegration.

162 Universal Declaration of Human Rights, Art. 13(2), UNGA Resolution 217 A (III), 10 Dec. 1948, and International Covenant on Civil and Political Rights, Art. 12(4).

163 National law sometimes makes specific provision for this development, for example in Austria (Federal Law Concerning the Granting of Asylum 1997, Art. 14(5)); Bulgaria (Ordinance for Granting and Regulating the Refugee Status 1994, Art. 14(4)); and Ghana (Refugee Act 1992, Part IV, Art. 16(b)).

cessation.[164] Following naturalization, former refugees may engage, without adverse consequence, in activities (such as frequent visits or part-time residence in the State of origin) that previously might have resulted in cessation of their refugee status.

Article 1C(3) includes no explicit requirement of voluntariness. Its application hinges upon the fact that a new nationality has been acquired and a finding that effective national protection is now available. A traditional example concerns women who automatically acquire their husband's nationality upon marriage, even though they do not wish it and have taken no steps to acquire it other than through the marriage itself. Cessation in such cases is questionable under modern human rights norms, including prohibitions on gender-based discrimination. UNHCR properly cautions that cessation should not be ordered if there is no genuine link between the refugee and the third State conferring its nationality by operation of law, drawing upon basic principles of international law.[165]

Article 1C(3) may prove especially troublesome where the third State is a successor State to the refugee's State of origin, and the refugee involuntarily acquires its nationality through passage of a general law. Article 1C(2) envisions that a refugee may avoid cessation simply by refusing the restoration of nationality. Article 1C(3) might be read to permit cessation and presumably deportation to the successor State, if authorities in the State of refuge are satisfied that the refugee will enjoy effective protection there. Fair processes are essential to prevent cessation from resulting in exposure to persecution in the successor State. Just as with ceased circumstances cessation, political conditions in a successor State may be unstable. In assessing whether the refugee will enjoy protection in a successor State, status determination officials should inquire whether the nationality law reflects political change that is fundamental, durable, and effective. The benefit of the doubt should

164 For example, under US law asylees and refugees (persons admitted from a foreign State to the USA on the basis of a fear of persecution) may apply to adjust their status to that of lawful permanent residents after a period of one year, 8 United States Code (USC) §§ 1101(a)(42), and 1157–9. Once they adjust, they no longer possess legal status as asylees or refugees, but they may remain eligible for certain social benefits that are not available to other lawful permanent residents: 8 USC §§ 1613(b)(1), 1622(b)(1), and 1641. Thus, adjustment of status operates as cessation, but without any examination of the grounds set out in Art. 1C of the 1951 Convention and frequently under circumstances where those grounds do not apply. Asylees must in fact prove that they continue to meet the statutory definition of refugee in order to obtain adjustment: 8 USC §§ 1101(a)(42)(A) and 1159(b)(3). Denial of an application for adjustment of status, on grounds that an asylee has ceased to satisfy the refugee definition, could theoretically provide US authorities with an opportunity to terminate the indefinite grant of asylum by invoking procedures under 8 USC § 1158(c), but this does not appear to happen. After a period of lawful permanent residence, former asylees and refugees may become eligible to naturalize: 8 USC §§ 1159 and 1427. The 'Note on the Cessation Clauses', above n. 7, paras. 15–16, observes that in both the cessation and status determination contexts, whether a refugee has the full rights and benefits of a national of the State of refuge should be assessed prior to cessation or initial denial of refugee status premised upon Art. 1C(3).

165 'UNHCR Guidelines on Cessation', above n. 8, para. 17.

be extended to the refugee, especially where he or she belongs to a racial, ethnic, political, or social group that is in a minority in the successor State, and this minority status is asserted as an explanation for resisting acquisition of the new nationality.

Tension may exist between the impulse to impose cessation and States Parties' responsibilities under Article 34 of the 1951 Convention 'as far as possible to facilitate the . . . naturalization of refugees'. This tension is resolved in those Article 1C(3) cases where the refugee naturalizes in the State of refuge – both provisions are simultaneously respected, and the refugee gains durable protection. The historical willingness of asylum States to naturalize or to grant other durable legal status to recognized refugees created the sometimes criticized 'exilic bias' of the refugee regime. Article 34 and the social and economic guarantees of the international refugee instruments strongly suggest that integration of recognized refugees is desirable. The possibility of cessation does not negate or contradict in any way the suitability of local integration as a durable solution.

Time-limited refugee status, with a requirement that status be renewed within a timeframe shorter than that necessary to qualify for naturalization, could seriously undermine refugee protection. Fair application of the cessation clauses in a time of political instability is extremely difficult, and refugees should not bear the burden of repeatedly proving their fear of persecution.

D. Re-establishment

Paragraphs 133–4 of the *Handbook* address Article 1C(4) in spare terms. What constitutes re-establishment in the State of origin has taken on increasing contemporary importance, as refugees participate in organized repatriations into situations of instability and danger. New outflows or renewed flight may result.[166] While Article 1C(4) turns on the actions and intentions of the individual refugee, the potential volatility of the political situation and the danger of continuing persecutory risk are also important factors that cause application of this provision to resemble that of the ceased circumstances clauses in some respects.

As Grahl-Madsen notes, refugee status could logically terminate upon re-establishment in the State of origin, simply because the individual no longer meets the criterion in Article 1A(2) of being outside one's country of origin.[167] Automatic termination as a penalty for any physical return to the State of persecution is,

166 For example, Sweden has attracted Bosnian asylum seekers who have either been repatriated by other States (specifically Germany and Switzerland that have terminated temporary protection for Bosnians and deny asylum applications on the premise of an internal flight alternative), despite the fact that they cannot return safely to their own homes in Republika Srpska, or who have been displaced from temporary housing in Bosnia and Herzegovina by other repatriated refugees and who similarly cannot return to their original homes. See 'Sweden Has Become Attractive for Bosnians', *Migration News Sheet*, No. 215/2001-2, Feb. 2001, p. 15.

167 Grahl-Madsen, above n. 131, pp. 370–1 ('If he abandons his flight and goes home, it is only natural that he ceases to be considered a refugee').

however, inappropriate. Article 1C(4) requires proof that return is voluntary, and re-establishment denotes both a subjective reaffiliation as well as an objectively durable presence.

Cases in which cessation is inappropriate include those involving situations where the refugee does not voluntarily choose to return, such as deportation, extradition, kidnapping, or unexpected travel routes by transport services. Similarly, where a refugee anticipates a brief visit that was prolonged for reasons beyond his control (most obviously, where he is imprisoned in the State of persecution but also for lesser reasons), cessation is inapplicable. A murkier group of cases involves brief but repeated visits by a refugee to the State of origin, with no adverse consequences. These visits may be for family, political, or economic reasons, or a combination thereof. So long as the visits are of short duration and the refugee's primary residence remains in the asylum State, invocation of Article 1C(4) is inappropriate.

Article 1C(4) should not be invoked unless the refugee has shifted his primary residence to the State of persecution with an intent to do so. Refugees may choose such a path even where the risk of persecution has not been reliably eliminated. Re-establishment in the State of origin in such circumstances poses serious difficulties for an asylum State which seeks to fulfil its international protection role. These can be overcome if the refugee maintains a primary residence in the asylum State and makes only brief visits to the State of persecution. Where Article 1C(4) has been invoked and the choice to re-establish goes badly for the former refugee (in that he or she is again at risk of persecution), renewed flight may permit the filing of a new claim to refugee status. Alternatively, if the refugee returns to the former asylum State, refugee status could be revived under an accelerated procedure.

Since the situation in States of origin is frequently volatile, asylum States should factor delay into procedures for invoking Article 1C(4). The practice of permitting or even promoting assessment visits envisions that refugees may physically return to their State of origin for the purpose of gathering information that will enable them to make an informed and reasoned choice concerning voluntary repatriation. Such visits clearly provide no basis for the immediate application of Article 1C(4). An 'escape clause' for repatriated refugees, granting repatriation assistance but extending or renewing refugee status if an attempt at re-establishment fails for valid reasons, is highly desirable and may encourage voluntary repatriation. Formal cessation should be suspended until the durability and safety of re-establishment can be determined. Delay in cessation under Article 1C(4) is consistent with the normal sequence of events of flight: status determination, recognition, voluntary repatriation, cessation.

E. Cessation issues specific to the OAU Refugee Convention

Although structurally treated as cessation clauses, Articles I.4(f) and (g) of the OAU Refugee Convention functionally impose expulsion, because they apply

without regard to the cessation of the risks of persecution or violence in the State of origin. Little can be discerned regarding State practice, aside from the occasional incorporation of these provisions into national law.[168]

Article I.4(f) imposes cessation where the refugee commits a serious non-political crime in another State after his recognition as a refugee. This provision seems quite anomalous as a ground for cessation, and imports a concept borrowed from the exclusion clauses (with an alteration in the timing of the crime). It appears designed to strip refugee status from the undeserving, and perhaps also to reduce tension among OAU States by facilitating removal of criminal elements enjoying residence as refugees. It is doubtful that return to persecution or serious danger is the optimal response to such criminal activity, especially if the refugee has been duly punished by the State where the crime was committed.

Article I.4(g) is perhaps best interpreted as an implementation measure for the rule of conduct imposed by Article III of the OAU Refugee Convention, prohibiting subversive activities against other OAU States. Article III appears to envision direct control by the asylum State of certain activities by refugees, through criminalization and other limits on violent or expressive activities. Article I.4(g) would permit cessation of refugee status as a consequence of this prohibited conduct, although it needs to be interpreted in a manner complementary to the 1951 Convention.

The terminology of Article I.4(g) is reminiscent of exclusion concepts, such as those reflected in Articles I.5(c) and (d), which suffer from vagueness and should be given a narrow interpretation. The operation of Article I.4(g), however, resembles that of expulsion, with some differences. While the references to national security in Articles 32(1) and 33(2) of the 1951 Convention pertain to the security of the asylum State, the concern of Article III of the OAU Refugee Convention is the security of other States. And expulsion under Articles 32 and 33 of the 1951 Convention does not entail cessation of refugee status, but simply loss of protection against *refoulement*. Persons subject to cessation under Articles I.4(f) and (g) may be entitled to the human rights bars to *refoulement*.

IV. Cessation concepts and initial refugee status determination

Serious confusion may arise where elements usually associated with cessation figure during refugee status determination. In some asylum States that generally do not impose cessation on recognized refugees, the volume of recent cases involving changed circumstances between flight and initial adjudication is extensive.[169] As the Summary Conclusions of the expert roundtable on cessation

168 For example, Liberia's Refugee Act 1993, section 3(5)(f); and Tanzania's Refugees Act 1998, Art. 3(f) and (g).

169 The cases cited by Hathaway, above n. 155, pp. 199–205, generally arise in the initial status determination context. The Immigration and Refugee Board of Canada issued guidelines in

state, 'refugee status determination and cessation procedures should be seen as separate and distinct processes'.[170]

One disturbing development is the allocation of asylum claims to an accelerated procedure, when presented by nationals of a State under a declaration of cessation, even though cessation applies to recognized refugees.[171] In addition, under the accelerated procedures, the applicant may have insufficient time to gather evidence, consideration by authorities may be cursory and without an interview, and deportation is not suspended during appeal.[172]

Where changed conditions are relevant, the focus of the inquiry is whether political and social changes are fundamental, durable, and effective in eliminating the well-founded fear of persecution possessed by the asylum seeker at the time of flight. Whether or not he or she is a refugee depends upon whether in reality he or she meets the Convention definition, which encompasses not just the inclusion but also the cessation clauses.

National practice suggests that confusion exists between cessation proper and the application of cessation concepts during initial status determination. The term cessation should be restricted to the termination of status of recognized refugees. The asylum State bears the onus of initiation and the burden of proof where cessation is applied to a recognized refugee.

In States that regard the refugee definition as exclusively forward looking, the asylum seeker bears the burden of proving that he or she has a well-founded fear of persecution. States vary in their treatment of cases involving victims of past persecution who may no longer possess a well-founded fear of persecution because of post-flight changed conditions in the State of origin. Some, for example the United States, establish a presumption of continuing persecution and require the authorities to prove that changed conditions have eliminated the applicant's risk of persecution.[173] The Summary Conclusions of the expert roundtable on cessation

Sept. 1992 on 'Change in Circumstances in a Refugee Claimant's County of Origin: Suggested Framework of Analysis'. See also J. Fitzpatrick, 'The End of Protection: Standards for Cessation of Refugee Status and Withdrawal of Temporary Protection', 13 *Georgetown Immigration Law Journal*, 1999, pp. 343, 356–63 (discussing changed circumstances cases from the USA).

170 'Lisbon Summary Conclusions', above n. 118, para. 26.

171 Under the Law on Entry and Residence of Aliens and Right to Asylum of 11 May 1998, French authorities have subjected a growing number of asylum seekers to accelerated procedures on the basis that their State of origin is subject to a declaration of cessation. In 1998, 2,225 asylum applicants were so treated and 2,232 on provisional figures for 1999. P. Delouvin, 'The Evolution of Asylum in France', 13 *Journal of Refugee Studies*, 2000, pp. 61, 65–6. Many of those affected are Romanian.

172 Ibid., p. 66.

173 The USA is a noteworthy example of a State that sometimes grants asylum or *non-refoulement* (withholding of removal) on the basis of past persecution. The circumstances under which asylum will be granted in the absence of a continued risk of persecution are the subject of recently revised regulations at 8 CFR, paras. 208.13 and 208.16. Essentially, these regulations create a presumption of continuing persecution that the immigration authorities may rebut by proof of a fundamental change in circumstances that eliminates the original well-founded fear or by

similarly recommend that 'the asylum authorities should bear the burden of proof that such changes are indeed fundamental and durable'.[174]

A separate issue is whether compelling reasons arising out of past persecution justify granting refugee status, or whether some alternate protection should be provided to those whose return to the State of origin would cause significant hardship. The United States is a noteworthy example of a State that sometimes grants asylum on the basis of past persecution, and in the absence of a continuing well-founded fear of persecution. To qualify for asylum based on past persecution, the applicant must demonstrate an unwillingness to return arising out of the severity of past persecution or a reasonable possibility that he or she may suffer 'other serious harm' upon repatriation.

For those States that apply exclusively a forward-looking definition of eligibility of refugee status, this option does not appear to be available. This may be the case even where the asylum seeker qualified for refugee status at the time of flight but ceased to have a well-founded fear prior to status determination, and even where the past persecution was severe. An asylum seeker denied refugee status might nevertheless qualify for subsidiary/complementary protection if the individual would face significant hardship upon return.

As UNHCR has noted, the safe country of origin concept is not congruent with cessation.[175] The safe country of origin concept is raised by some States of refuge during initial status determination. While it may involve an assessment of general conditions in the State of origin, it is not linked to change (as are the ceased circumstances cessation clauses). Nor is it applicable to recognized refugees.

V. Recommendations regarding UNHCR and State practice

The recommendations which follow concern both UNHCR practice and State practice with regard to cessation. The latter involves ceased circumstances cessation, withdrawal of temporary protection, and cessation based on the refugee's actions. Issues relating to fair processes and exceptions to cessation will be summarized in relation to State practice under the ceased circumstances clauses.

proof that the applicant has a reasonable internal flight alternative. The applicant bears the burden of proof concerning a well-founded fear of persecution that arises following fundamental political change (e.g. in the Afghan situation where one persecutor is replaced by another). Asylum may, however, also be granted under 8 CFR para. 208.13(b)(1)(iii) if the applicant demonstrates an unwillingness to return arising out of the severity of past persecution or a reasonable possibility that he or she may suffer 'other serious harm' upon repatriation. 174 'Lisbon Summary Conclusions', above n. 118, para. 27. 175 'Note on the Cessation Clauses', above n. 7, para. 7. For more information on the safe country of origin concept and its application, see UNHCR, 'Asylum Processes (Fair and Efficient Asylum Procedures)', UN doc. EC/GC/01/12, 31 May 2001, paras. 38–40; and J. van Selm, 'Access to Procedures: "Safe Third Countries", "Safe Countries of Origin" and "Time Limits"', June 2001, pp. 35–41; both documents are available at http://www.unhcr.org.

A. UNHCR practice

Certain procedural mechanisms may enable UNHCR to administer the cessation clauses more flexibly without undermining the international refugee protection regime. For example, UNHCR regularly receives inquiries from the governments of asylum countries regarding developments in States of origin and the applicability of the ceased circumstances provisions. This represents a reactive approach to considering changes in circumstances in a country of origin and the implications of such changes for the status of refugees from that country. Instead, UNHCR could adopt a more proactive strategy, formulating and presenting its assessment of improvements in conditions in countries of origin and their implications for the relevance of Article 1C(5) and (6) at meetings of the Standing Committee. UNHCR could pursue such a strategy through an annual review, similar to the surveys of refugee situations it conducted in the mid-1990s.

UNHCR could also make greater use of its authority under its Statute and in conjunction with Article 35 of the 1951 Convention to assist asylum States with the application of the ceased circumstances provisions on an individual or group basis. This approach poses less risk of jeopardizing the status or claims of refugees in other asylum countries than a more proactive effort by UNHCR itself to employ Article 1C(5) and (6). Governments that invoked the cessation clauses with respect to Chilean refugees did so responsibly from the perspective of UNHCR. Whether other countries of asylum would also pursue a careful approach to cessation on a group basis, however, is less clear. Indeed, some asylum States have sought to use the cessation clauses to bypass status determination procedures for new claims.

When advising asylum countries on the use of Article 1C(5) and (6), UNHCR can provide a more detailed explanation of its position. UNHCR could specify the additional measures needed to satisfy the standard of fundamental and durable change, as it did in the case of Romania, when developments in a country of origin are insufficient to justify the administration of the ceased circumstances provisions. In addition, UNHCR could suggest an appropriate timeframe in a given situation for evaluating circumstances in the country of origin. Asylum countries may be willing and able to help promote the changes in the country of origin necessary to justify the application of the cessation clauses.

UNHCR can also develop additional methods of applying the ceased circumstances provisions. The cases of Bosnia and Herzegovina, Afghanistan, and Cambodia described above suggest that the traditional approach of administering Article 1C(5) and (6) on a group basis remains too blunt an instrument for such complex refugee situations. New practices for invoking Article 1C(5) and (6) can, however, facilitate UNHCR efforts to achieve durable solutions for specific caseloads of refugees under its mandate who may no longer require international protection,

as well as to respond to States' concerns about safeguarding the right of asylum for those who truly need it.

First, UNHCR could target the cessation clauses at a specific group of refugees within a larger refugee population by specifying precise dates and particular changes in circumstances, as it did in the case of pre-1991 refugees from Ethiopia. Targeting specific groups of refugees still raises the risk of jeopardizing the status or claims of asylum seekers residing in some host countries. Given the protracted nature of many refugee emergencies and the complexity of post-conflict situations, it may nevertheless represent the most viable approach to the application of Article 1C(5) and (6) by UNHCR in the future.

Secondly, UNHCR could develop the practice of individual cessation. Although the ceased circumstances provisions have traditionally been invoked by UNHCR on a group basis, their application to individuals is not precluded by the Convention or the Statute. UNHCR has occasionally supported the application of Article 1C(5) and (6) on an individual basis by its own offices as well as by countries of asylum. Individual cessation also poses less risk of unduly influencing status determination procedures in asylum countries than a declaration of general cessation for an entire group of refugees.

The situation involving the residual caseload of Cambodian refugees described above illustrates the potential utility and risks of establishing procedures for individual cessation. The 'status review' exercise in Cambodia provides some useful lessons in this regard. One such lesson is the need for detailed information about developments in the country of origin and their implications for individual cases. Another is the importance of the procedure for notifying refugees that their status may be re-examined in light of changes in circumstances in the country of origin. Refugees who may have their status withdrawn through the application of Article 1C(5) and (6) on an individual basis should be informed in advance of the process of individual cessation and provided with an opportunity to present their cases. These cases can be heard and, if necessary, alternative durable solutions found for these individuals. Individuals who no longer require international protection can then be given time to regularize their status and/or receive voluntary repatriation assistance.

Thirdly, the cessation clauses could be employed as part of a comprehensive response to a mass influx situation. Given the rights and benefits that are associated with refugee status, situations of mass influx can and should be addressed within the framework of the 1951 Convention. UNHCR should therefore seek to encourage the group recognition of refugees in these situations. UNHCR could commit to review the status of such refugees and consider the application of the ceased circumstances provisions when changes in the country of origin suggest that international protection may no longer be warranted.[176] Drawing such an explicit

176 UNHCR staff, interviews by R. Bonoan, Geneva, Switzerland, 27 and 30 Nov. 2000.

linkage between recognition and cessation can demonstrate to asylum countries that refugee status in situations of mass influx may be temporary, depending of course on the circumstances of the situation in question.[177]

Additional standards for the use of Article 1C(5) and (6) may also need to be formulated. The authors of the 1951 Convention seem to have envisioned a transition to democracy as the archetypal change in circumstances that would lead to the cessation of refugee status.[178] Subsequent UNHCR and Executive Committee guidelines on the cessation clauses have reflected this interpretation of the ceased circumstances provisions, tending to associate fundamental change with developments at the national level that remove the basis of a refugee's fear of persecution. UNHCR has implemented these guidelines by conducting comprehensive assessments of conditions in a country of origin focusing on national political and judicial institutions and the degree of compliance with international human rights principles.

Current guidelines and standards for evaluating change in a country of origin reflect a 'top-down' view of democratization. Targeted or individual cessation, however, would require a 'bottom-up' perspective. An evaluation of conditions in the country of origin would focus on local and provincial ordinances, elections, political institutions, courts, and law enforcement agencies, as well as the treatment of political parties and social groups under such laws and institutions. Evidence of fundamental and durable change at the local and regional level would then be balanced against improvements in the human rights situation at the national level.

The UNHCR *Handbook* asserts that the status of refugees should not be subject to arbitrary or frequent review. Measures can be taken, however, to ensure that new standards and procedures for administering the ceased circumstances provisions do not infringe upon this principle. For example, UNHCR could develop a 'checklist' outlining the conditions under which it could consider targeted or individual cessation. Based on the cases examined above, some of the questions that might be included on such a checklist include:

1. Can the affected individual refugees or group of refugees be distinguished from a larger refugee population?
2. Are durable solutions available to those who would be affected by the application of the cessation clauses?
3. Have other refugees similarly affected by the changes in circumstances in the country of origin already repatriated voluntarily and, if so, what is their status?
4. How extensive is the information available about the developments in the country of origin?

177 Ibid.

178 See UNGA, 'Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons: Summary Record of the Twenty-Eighth Meeting', UN doc. CONF.2/SR.28, 19 July 1951.

5. Is there general agreement among local and international observers about the significance of these developments and their implications for the protection needs of affected refugees?
6. Are the changes (national, regional, or local) that affect the refugees in question fundamental and durable?
7. To what extent is the international community supporting and promoting the consolidation of these changes?
8. Can the situation in the country of origin be independently monitored by UNHCR, other international agencies, and/or NGOs?
9. Can the cooperation of asylum States and the country of origin be obtained?
10. Will the application of the cessation clauses to these individuals unduly influence the claims or status of asylum seekers who do not belong to the targeted group?

A broader interpretation of fundamental change would also help close the gap between the standards of voluntary repatriation and cessation. UNHCR has maintained the position that the standards for voluntary repatriation and cessation are different and that the former may occur at a lower level of change than is sufficient to warrant a declaration of general cessation. Questions have been raised, however, about the discrepancy between the conditions in which UNHCR is prepared to *promote* voluntary repatriation and the changes needed to justify the application of the ceased circumstances provisions. This gap may be exaggerated by the emphasis on developments at the national level in determining the applicability of Article 1C(5) and (6). A more inclusive notion of fundamental change, however, may help reduce any perceived discrepancy between UNHCR principles and practice in these areas.

Finally, UNHCR should further develop existing guidelines regarding the application of Article 1C(5) and (6) in cases involving the settlement of civil wars. Efforts by UNHCR to establish a framework of principles for evaluating post-conflict situations implicitly acknowledge that the traditional interpretation of the concept of fundamental change as a transition to democracy is inadequate in such cases. For example, the recommendation that a longer waiting period is necessary to determine the durability of change in countries that have experienced civil war seems valid, especially when viewed from the perspective of developments at the national level. Given the complexity of these situations, however, circumstances at the subnational level may also deserve consideration and may require less time to consolidate than those at the national level. In this regard, it is noteworthy that UNHCR has moved more quickly to declare cessation in the two cases of post-conflict settlement (Sudan in 1973 and Mozambique in 1996) compared to situations of democratic transition (such as Chile in 1994).

More generally, an approach to cessation based solely on a transition to democracy may overlook important differences in the nature of persecution in situations

of internal conflict and state-sponsored repression. In the case of the former, persecution may be broader and more intense over a shorter time period and may affect large groups of people, but such persecution may be less systematic and institutionalized than in the case of state-sponsored repression. These differences in the breadth and depth of persecution suggest the need to develop supplemental standards for evaluating changes in circumstances following the settlement of civil conflicts.

In formulating additional guidelines for evaluating post-conflict situations, UNHCR may wish to draw on a growing body of literature on internal conflicts. The latter may offer some additional indicators for determining the significance and durability of change in the aftermath of civil wars. Such research has found, for example, that outside intervention plays an important role in shaping the outcome of negotiated settlements of internal conflicts.[179]

More 'flexible' procedures, approaches, and standards for administering the ceased circumstances provisions are sometimes suggested as a device to mitigate the perception of refugee status as a permanent condition and to reduce the incentives for asylum countries to employ complementary forms of international protection. The Global Consultations expert roundtable meeting in May 2001 nevertheless concluded that:

> State practice indicates that there is not necessarily a basis for the view that more flexible interpretation and/or more active use of the 'ceased circumstances' cessation clauses would lead States to extend full Convention refugee status to those who would otherwise benefit from temporary protection.[180]

The Summary Conclusions also caution against targeted or partial application of ceased circumstances cessation, noting that, although this approach might be suitable for discrete groups such as victims of the former Mengistu regime in Ethiopia, its use to return refugees to safe areas in the State of origin could create or aggravate situations of internal displacement.[181]

Carefully targeting the application of the ceased circumstances provisions and clearly identifying any necessary exemptions can mitigate some of these risks. Apprehension about the potential effects of cessation on status determination procedures remains warranted, however, and UNHCR must continue to practise cessation in a careful manner. Countries of asylum have tended to inquire about cessation almost immediately after positive developments have occurred in a country of origin. In addition, some governments have inappropriately cited such developments to justify the rejection of pending claims as well as the automatic denial of refugee status to new applicants.

179 B. Walter, 'The Critical Barrier to Civil War Settlement', 51 *International Organization*, 1997, pp. 335–64.

180 'Lisbon Summary Conclusions', above n. 118, para. 7.

181 Ibid., paras. 15–16.

B. State practice

The disinclination of asylum States to apply the cessation clauses to recognized refugees has persisted despite renewed interest in the concept and its statutory codification in some States. Attitudes towards the link between asylum and immigration and towards the desirability of full integration of non-citizen residents also shape cessation practice.

The incentives for an asylum State to terminate refugee protection, with or without a solid factual basis, may be heightened where it is heavily burdened by a mass influx. Details concerning individuals in a mass influx may be largely unknown to asylum State authorities, and thus harm may result from generalizations concerning changed conditions. An acute need exists to refine substantive benchmarks for withdrawal of protection, to establish an objective and preferably collective process for assessing relevant political and/or social change, and to provide continued protection to individuals facing persecution and to other vulnerable persons.

Separate provision should be made in national law and in regional standards for cessation of recognized refugee status. Matters such as revocation for fraudulent procurement, exclusion, and expulsion should be addressed separately.

Fair process should include:

1. notice;
2. hearing or interview;
3. a neutral decision maker;
4. examination of evidence from a wide range of sources;
5. consideration of potential threats to the refugee's fundamental rights;
6. burden of proof on the asylum State;
7. particularized inquiry into the relevance of changed conditions to the refugee's personal situation; and
8. a delay for the purposes of assessing the durability of change.

A general finding of changed circumstances in the State of origin does not justify a blanket pronouncement of cessation, shifting the burden to individual recognized refugees to seek reconsideration of their claims and an opportunity to prove that they face a continuing risk of persecution or that they qualify for an exemption. Only where refugee status has been granted on a group basis may it be terminated on such a basis, and only where procedures exist to permit individuals to establish continued eligibility for international protection either as refugees or as candidates for some other lawful status or complementary/subsidiary protection.

Where a new persecutor has displaced the old in the State of origin, it is theoretically permissible to cease refugee status and provide a new status determination procedure. Termination of refugee status in such cases is inappropriate unless an

immediate grant of new status is provided. Such refugees continue to be entitled to international protection, by virtue of the new risk. To terminate an existing grant of refugee status, simply to issue that status anew, is administratively wasteful and should be discouraged.

States should be encouraged to codify exceptions to cessation. The preferred, and most consistent, legal approach is to permit continuation of refugee status for persons with compelling reasons, arising out of previous persecution or other serious harm, to refuse to return to their State of origin. Where cessation is imposed, persons eligible for human rights protection against return must be given an appropriate legal status. Those with special vulnerabilities, family ties, or risk of economic loss should at the very least also be eligible for a humanitarian status.

States should be encouraged to codify exceptions and to integrate an approval process into the cessation procedure. Those suffering severe past persecution or the prospect of return to serious human rights violations should receive status and standards of treatment at least equivalent to refugee status, in substance if not in name. Those with special vulnerabilities, family ties, or risk of economic loss should be treated humanely and not be forced into a quasi-legal status, but treatment as refugees may not be necessary.

The differences between cessation proper and denial of refugee status because post-flight developments have undermined an asylum claim should be emphasized. The tendency of asylum States to apply cessation concepts during initial status determination creates confusion that may undermine the development of clear and fair substantive and procedural standards for cessation.

Where a post-flight change of circumstances figures in initial status determination, some States have announced 'cessation' declarations for applicants of certain nationalities. The result is a transfer of cases to an accelerated procedure disadvantageous to the applicant (involving a presumption against persecution, the lack of suspensive effect during appeal, and so forth). This misuse of the cessation concept should be discouraged. Functionally, these measures resemble the controversial safe country of origin concept, which also may place genuine refugees at risk and add unnecessary complexity to the status determination process.

Some States establish a presumption of continuing fear of persecution upon proof of past persecution. This may have the effect of shifting the burden of proof concerning the relevance of post-flight change in circumstances from the asylum applicant to the asylum State officials. In such cases, asylum may be granted if the applicant has suffered severe past persecution or has reason to fear other serious harm. These are not actual cessation cases, but this practice illustrates two policies that should be encouraged in cessation: (i) placement of the burden of proof of the existence and relevance of changed circumstances in the State of origin on the asylum State officials, giving the refugee/asylum applicant the benefit of the doubt in these uncertain situations; and (ii) explicit statutory provision for exceptional cases, with relief commensurate to that enjoyed as a refugee.

With respect to cessation premised upon changes in personal circumstances under Articles 1C(1)–(4) of the 1951 Convention and Article I.4(a)–(d) of the OAU Refugee Convention, the key criteria are *voluntariness*, *intent*, and *effective protection*.

Refugees should receive notice and a hearing or interview prior to cessation, unless it is genuinely impossible to locate them or they have obtained another secure status in the asylum State (citizenship or durable residence with rights at least equivalent to those enjoyed as a refugee) and cessation is a mere formality. During cessation proceedings, refugees may be required to explain ambiguous conduct, and adverse inferences may be drawn from unreasonable silence or non-cooperation.

Concerning re-availment of national protection (generally, the acquisition or renewal of a passport, other contact with diplomatic and consular authorities of the State of origin, or travel to third States on a State of origin passport), the refugee's conduct will generally be voluntary. The focus should instead be placed upon the refugee's intent, to determine if he or she has signalled a desire to re-establish a formal link to the State of persecution. The refugee's ignorance of alternatives (such as asylum State travel documents, possibilities to marry or divorce without resort to State of origin officials, etc.) is relevant to intent. An objective inquiry into the prospect that the State of persecution will now provide effective protection is also necessary.

Paragraphs 121–2 of the *Handbook* suggest that conduct such as acquisition or renewal of a State of origin passport creates a presumption of intent to re-avail oneself of national protection. This phrasing is unfortunate, as it may suggest that the burden of proof concerning the inapplicability of cessation is on the refugee. Rather, since conduct and conditions are so frequently ambiguous or uncertain, refugees should be given the benefit of the doubt in cessation matters.

The three criteria of voluntariness, intent, and effective protection also govern the application of Article 1C(2) of the 1951 Convention and Article I.4(b) of the OAU Refugee Convention, relating to re-acquisition of nationality. Where the restoration of nationality occurs as a result of conduct initiated by the refugee, the analysis is very similar to that in cases involving re-availment of protection. Where restoration of nationality through action or legislation initiated by the State of origin occurs, careful analysis of the situation is required. Voluntariness is crucial, as a refugee may not be stripped of international protection if he or she refuses to re-acquire the lost nationality of the persecuting State. Paragraph 128 of the *Handbook* suggests that, where refugees are given the choice to opt out of general nationality-restoration measures, cessation may be applied if they fail to act. Such a categorical approach is not justified, because an inquiry into the third element, the likelihood that the State will actually provide effective protection, is also necessary.

The least problematic cessation scenario is acquisition of the nationality of the State of refuge, as provided for in Article 1C(3) of the 1951 Convention and Article I.4(c) of the OAU Refugee Convention. The refugee enjoys legal rights at least

equivalent to those guaranteed by these conventions and is secure against forced return to the State of persecution. In many cases, the grant of naturalization will result in cessation of refugee status without the necessity of a separate and formal cessation proceeding. Where a non-refugee residence permit, rather than citizenship, is granted, a similar automatic loss of refugee status may result. In this second situation, States must take care to ensure that legal rights at least equivalent to those guaranteed by the 1951 and OAU refugee conventions are conferred with the residence permit in order to justify automatic cessation. If this is not the case, refugee status should be maintained until the conclusion of a formal cessation proceeding and a finding that one of the cessation grounds applies to the individual.

Acquisition of third State nationality is also envisioned as a basis for cessation under Article 1C(3) of the 1951 Convention and Article I.4(c) of the OAU Refugee Convention. Where legal rights at least equivalent to those enjoyed as a refugee and security against forced return to the State of persecution accompany the acquisition of the third State nationality, cessation may be imposed. Article 1C(3) and Article I.4(c) notably do not include a requirement of voluntariness. In situations where nationality is conferred without specific application by the refugee, asylum States must engage in three inquiries prior to the imposition of cessation: (i) whether effective protection is available from the new State of nationality; (ii) whether there is a genuine and effective link between that State and the new citizen; and (iii) whether the nationality law itself contravenes human rights norms, for example concerning gender discrimination.

Where the new State of nationality is a successor State to the State of persecution, inquiries into the prospects for effective protection are crucial and automatic cessation would pose unacceptable risks. Since conditions in the successor State may be unstable, the benefit of the doubt should be given to the refugee who resists acquisition of successor State nationality. Fair hearings will ensure that, for example, members of racial, ethnic, and religious minorities are not forcibly sent to a successor State willing to confer its nationality by operation of law but unlikely to offer effective protection.

The risk that country conditions may be volatile is present in many cases involving re-establishment in the State of origin under Article 1C(4) and Article I.4(d). Fair proceedings, granting the benefit of the doubt to refugees, and built-in delay in the application of the cessation clauses are appropriate. Prospects for sustainable voluntary repatriation are enhanced where refugees have the option to undertake assessment visits or to attempt re-establishment into uncertain conditions, without having to forfeit their refugee status upon departure. The elements of voluntariness, intent, and effective protection are vital in re-establishment cases. Re-establishment denotes transfer of primary residence with a subjective re-affiliation to the State of origin, rather than brief visits.

Articles I.4(f) and (g) of the OAU Refugee Convention are treated structurally as cessation clauses but they operate functionally as expulsion clauses because they apply without regard to the cessation of the risks of persecution or violence in the

State of origin. Article I.4(f) (commission of a serious non-political crime in a third State following grant of refugee status) appears to be intended to deter abuse of asylum by criminal elements. Return to persecution appears an ill-suited response, however, especially where the refugee has been duly punished by the State in which the crime was committed. Where the refugee has escaped punishment, extradition to the third State may represent a possible solution to avoid return to an unchanged risk of persecution or other violence. Moreover, refugees may be entitled to the human rights bars to expulsion. Article I.4(g) (serious infringement of the purposes and objectives of the OAU Refugee Convention) could nevertheless be appropriate in some circumstances, for instance, where militarized elements have infiltrated refugee camps, although it would need to be applied in a manner complementary to the 1951 Convention. It likewise needs to be given a narrow interpretation when used as a vehicle to implement the Article III ban on subversive activities against other OAU States.[182]

VI. Conclusions

Application of the cessation clauses involves the loss of protection for previously recognized refugees, depriving them of existing rights and possibly resulting in their return to a State in which they experienced persecution. There seems to be substantial agreement among UNHCR and States Parties that the cessation clauses should be interpreted in a restrictive manner and administered with great caution.

In consultation with States Parties, UNHCR has developed a series of guidelines for the application of the ceased circumstances provisions. They outline an exhaustive set of criteria for determining whether developments in the country of origin constitute a fundamental and durable change in the conditions that led to the provision of international protection. UNHCR procedures for applying the ceased circumstances provisions are similarly comprehensive, involving a detailed evaluation of the situation in the country of origin and extensive dialogue with the country of origin, countries of asylum, and local and international NGOs. Thus, even in cases that readily seem to meet the standards of fundamental and durable change, UNHCR has taken a cautious approach towards declaring cessation based on ceased

182 Art. III of the OAU Refugee Convention needs likewise be interpreted narrowly in order to prevent violations of refugees' freedom of expression. The 'Key Conclusions/Recommendations of the UNHCR Regional Symposium on Maintaining the Civilian and Humanitarian Character of Asylum, Refugee Status, Camps and other Locations (26–27 Feb. 2001, Pretoria, South Africa)', UN doc. EC/GC/01/9, 30 May 2001, suggested the following list of prohibited subversive activities: (i) propaganda for war; (ii) incitement to imminent violence; and (iii) hate speech. Suggested responses to such activities included informing refugees of their obligations under international law, working regionally to stem subversive influences, and promoting democracy and peace in the region.

circumstances. A careful interpretation and application of the cessation clauses has not, however, precluded UNHCR from actively considering the use of the ceased circumstances provisions in Article 1C(5) and (6) in a timely manner when positive developments have occurred in countries of origin.

Although Article 1C envisions cessation based both on the individual acts of a recognized refugee and also on a general change in conditions in the State of origin, it is ceased circumstances cessation that has been the focus of UNHCR practice and appears to be of greatest contemporary concern to States. As the preceding review of UNHCR and State practice suggests, UNHCR and asylum States may be confronted with situations in which refugee populations – or particular segments of those populations – under their care may no longer require international protection, but to whom Article 1C(5) and (6) cannot be applied under existing standards and procedures. New approaches to cessation may be able to address this problem and ensure that refugee status is reserved for those who truly need it. These might include targeted cessation for discrete groups of refugees whose specific shared risk of persecution has been eliminated by durable changes in political conditions in the State of origin. Clearer standards concerning exceptions to cessation may provide reassurance that cessation will not inflict undue trauma on refugees, result in violations of their human rights, or impose excessive hardship relating to such matters as separation of family members. Any new procedures must still be designed to mitigate the risk of undermining international protection and continue to be administered with great caution.

The cessation clauses do not negate the importance of facilitating naturalization under Article 34, nor undermine the suitability of local integration as a durable solution for refugees. Recognition of the settled expectations of refugees is reflected in the continuing paucity of State practice regarding the termination of individual grants of refugee status. The best assimilated and long-resident refugees do not present a likely target for public discontent, and the termination of their protection would entail a substantial drain on scarce enforcement resources. The administrative costs of instituting proceedings against refugees before they have acquired some alternate durable legal status, the obligation to prove that general changed circumstances enable safe return for the individual refugee, and the probability that safe conditions may independently induce voluntary return, combine to deprioritize individualized cessation. The difficulties States have faced in removing failed asylum seekers suggest that cessation is even less likely to result in automatic return.[183]

Nevertheless, a refinement of standards to guide State cessation practice is both feasible and desirable. Group-based refugee protection has been terminated by

183 G. Noll, 'Rejected Asylum Seekers: The Problem of Return', in *Migration and Development* (ed. R. Appleyard, United Nations Population Fund/International Organization for Migration, Geneva, 1999), pp. 267–87.

States of refuge, often in collaboration with UNHCR declarations of cessation under its Statute. Criteria for evaluating fundamental, durable, and effective change in the State of origin are shared by UNHCR and States in applying the similar ceased circumstances clauses of the Statute and Convention. Refugees who face cessation of group-based refugee status must be permitted to contest whether a general change in conditions in the State of origin has eliminated their own well-founded fear of persecution. While States rarely apply ceased circumstances cessation to individual recognized refugees, States must, in an objective and verifiable manner, establish that the situation that justified the granting of refugee status has ceased to exist. The burden is on the State of asylum to demonstrate that the criteria for cessation have been met.

Cessation premised on the individual acts and situations of recognized refugees pursuant to Articles 1C(1)–(4) is guided by the elements of voluntariness, intent, and effective protection. State practice involving termination of previously granted refugee status remains rare under these Articles.

Procedures for cessation by States must include safeguards based on ordinary rules of fairness and natural justice. The elements of a fair cessation process include notice, an opportunity to present and to contest evidence, and placement of the burden of proof on the State seeking to impose cessation.

Refugees must be given an opportunity not only to contest the applicability of cessation criteria to their situation, but also for consideration of their eligibility for exceptions to cessation. State practice as well as a dynamic interpretation of the exception in light of the object and purpose of the 1951 Convention support an extension of the proviso of Article 1C(5) and (6) to refugees facing cessation under any of the cessation clauses. Severe past persecution justifies the continuation of refugee status. Cessation does not equate with return, where refugees qualify for complementary/subsidiary protection or where their long stay resulting in strong family, social, and economic links calls for appropriate arrangements to be made on their behalf, as recommended by Executive Committee Conclusion No. 69.

Termination of temporary protection calls for application of cessation criteria, especially where the beneficiaries include many Convention refugees whose determination of status has been delayed. They must be given an opportunity to apply for refugee status and to establish their eligibility for the exception to cessation or other forms of protection against involuntary return.