Immigration – Asylum – Kosovan Albanians seeking asylum in the United Kingdom – situation in home state now stabilised – whether claimants falling under Article 1A(2) refugee status can benefit from Article 1C(5) protection – Convention and Protocol relating to the Status of Refugees (1951)(Cmd 9171) and (1967)(Cmd3906)

IN THE HOUSE OF LORDS
ON APPEAL FROM HER MAJESTY'S COURT OF APPEAL (ENGLAND)

BETWEEN:

THE QUEEN
On the application of XHEVDET HOXHA

1st Appellant

- and -

A SPECIAL ADJUDICATOR

Respondent

- and -

THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Intervener

AND BETWEEN:

THE QUEEN
On the application of B

2nd Appellant

- and -

THE IMMIGRATION APPEAL TRIBUNAL

Respondent

- and -

THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Intervener

CASE FOR THE INTERVENER

Introduction

1. The United Nations High Commissioner for refugees ("the Intervener") sought permission and was granted leave to intervene by way of written representations in each of the present proceedings solely in relation to the interpretation of Article 1C(5)

of the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol thereto ("the 1951 Convention"). The Intervener will therefore limit its submissions in this case to the interpretation of that provision. The submissions that follow build upon the written submissions of the United Nations High Commissioner before the Court of Appeal in the case of the 2nd Appellant (dated 25 March 2002) which were communicated to the Court of Appeal through the Appellant's representatives. The Intervener presents a single case in respect of both sets of proceedings as it notes that this is the course also adopted by the Appellants and that the Appellants' cases were heard together before the Court of Appeal[1].

2. Article 1C(5) of the 1951 Convention provides:

   This Convention shall cease to apply to any person falling under the terms of section A if:

   ...

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

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

   ...

3. The Appellants' appeal against the refusal of their asylum applications was brought under section 8(4) of the Asylum and Immigration Appeals Act 1993 and was only concerned with the United Kingdom's obligations under the 1951 Convention. The

[1] UNHCR confines its intervention in the present proceedings to the interpretation of Article 1C(5) of the 1951 Convention. UNHCR would like to note however, that in practice, the application of Article 1 should be looked at in a holistic manner in line with the complex system of defining and protecting refugees as envisaged by the 1951 Convention.

Respondent's obligations under the Human Rights Act 1998 have not yet been considered.

4. The circumstances in which Article 1C(5) arose in the present cases were somewhat unusual. Article 1C(5) was not (expressly) in issue before
   a. the Special Adjudicator, who in dismissing the appeal of the 1st Appellant
      (i) noted the position of the Respondent Secretary of State that in the case of the 1st Appellant "it could be accepted that he was a refugee at the relevant time" when he left Kosovo (§§9); and
      (ii) concluded that, the 1st Appellant no longer had a genuine fear of future persecution, "the burden of proof being on the Secretary of State to demonstrate that it is now safe to return to the country due to a change in circumstances has been discharged" (§§22 and 24);
   b. the Immigration Adjudicator, who in dismissing the appeal of the 2nd Appellant merely
      (i) noted the acceptance by the Respondent Secretary of State that the 2nd Appellant "left as a result of well-founded fear and that he was being persecuted" (§§6.8A(iii) and 9.3); and
      (ii) found that "the appellant does not now claim any fear of persecution if returned to Kosovo but merely fears the state of affairs as they are presently in Kosovo" (§9.6) and that he has failed to show that he has a well-founded fear of persecution (*ibid.*);
   c. the Immigration Appeal Tribunal, which refused permission to appeal to the Court of Appeal.

5. The interpretation of Article 1C(5) of the 1951 Convention and its application (and/or applicability) to the present appeals first arose in their respective applications for judicial review, in which the Appellants argued *inter alia* that "the special adjudicator failed properly to apply article 1C(5) of the Convention and the humanitarian principle which underlies it" (judgment of Jackson J in *R (ota Hoxha) v Special Adjudicator* [2001] EWHC Admin 708, §17).

The Issues

6. The Court of Appeal in its judgment addressed the questions concerning Article 1C(5) by reference to two identified issues:
    a. the recognition issue, which raises the question whether Article 1C(5) only applies where there has previously been official recognition of an individual's refugee status; and
    b. the "scope of the proviso", which focuses on whether the proviso to Article 1C(5) applies solely to statutory refugees under Article 1A(1) or applies to all refugees whether they derive their protection from Article 1A(1) or (2).

7. In its submissions the Intervener will also seek to make its submissions by reference to these broad headings.

Submissions

8. Introduction and background to Article 1C

8.1. While cessation constitutes an important and integral part of the asylum system, the fact that many refugee crises are of a protracted nature and that many refugees successfully integrate and eventually become naturalised (thereby leading to the application of Article 1C(3)) result in a limited use, in practice, of the cessation provisions under Article 1C(5) and (6) by contracting States to the 1951 Convention. As a result there is very little guidance to be obtained from the higher courts of the Contracting States and these submissions are therefore inevitably based primarily on the Intervener's experience of applying the criteria of these provisions to the situation in refugee producing countries and on its appreciation of the academic debate on the issue, in particular in the context of its Global Consultations on International Protection[2].

[2] The Global Consultations on International Protection is a process initiated by UNHCR seeking to examine ways to rise to modern challenges confronting refugee protection, to shore up support for the international framework of protection principles, and to explore the scope for enhancing protection through new approaches. The first substantive meeting in 2001 involved the 56 governments that make up the

8.2. While the Intervener acknowledges that the application of the cessation clauses in Article 1C of the 1951 Convention rests exclusively with the Contracting States[3], the Intervener, as a consequence of its international protection function and, in particular, through fulfilling its supervisory role explicitly recognised under Article 35 of the 1951 Convention has extensive experience in their application both through:

a. Its involvement (through consultation under Article 35 of the 1951 Convention) in the (proposed) application by Contracting States of the provisions in relation to refugees from identified countries; and

b. The exercise of its power, exercised under the Statute of the Office of the United Nations High Commissioner for Refugees (UN GA Resolution 428(V) of 14 December 1950 - "the Statute"), to declare that refugees emanating from an identified country no longer fall within UNHCR's mandate. In the period between 1973 and 1999, the Intervener has used this power on some 21 occasions.[4]

8.3. Historically and structurally, the cessation provisions in Article 1C of the 1951 Convention reflect that fact that the international protection of refugees under the 1951 Convention was foreseen only as a temporary substitute for the protection of their own country of nationality of which they have been deprived. It was always envisaged that, after a certain period of time, a refugee would no longer be in need of international protection, either because he would or could return or re-avail himself of the protection of the country of nationality (or habitual residence in the case of stateless persons), he had

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Executive Committee of UNHCR as well as a further 35 governments in an observer capacity and fifteen major international organisations including the European Commission, Council of Europe, Organization of African Unity, League of Arab States and Organization of American States also participated, along with some 40 non-governmental organizations (NGOs) which, as a group, had the right to address the meeting.

[3] EXCOM Conclusion No 69(XLIII) - 1992

[4] These are described in some detail in Joan Fitzpatrick and Rafael Bonoan, "Cessation of refugee protection", published in *Refugee Protection in International Law – UNHCR's Global Consultations on International Protection*, Erika Feller, Volker Türk, Frances Nicholson (eds), Cambridge University Press, 2003

integrated in the host country which would therefore extend to him the same or similar protection as that enjoyed by citizens, or he had naturalised as a citizen of the host or third country[5].

8.4. This intention is reflected both by the inclusion of the cessation clauses in Article 1C as well as in the substantive rights accorded to recognised refugees under the 1951 Convention, which are designed to facilitate the integration of refugees in their host country, and in particular Article 34 of the 1951 Convention, which provides that:

> *The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.*

9. <u>The recognition issue</u>

9.1. The "recognition issue" raises fundamental questions about the logical place of the assessments carried out under Article 1C(5) in the overall refugee status determination process. On the one hand it might be argued that Article 1C(5) applies to all those who fulfil the requirements of Article 1A and, who are therefore "refugees" within the terms of the 1951 Convention.

9.2. On the other hand, as the courts below held, the use of the phrase "circumstances in connexion with which he has been recognized" in Article 1C(5) could be said to indicate that Article 1C(5) applies solely in relation to those who have been recognised as refugees by the authorities of the host State.

9.3. The first position would place the requirements of Article 1C(5) both within the initial refugee status determination process and outside it (in the sense of a subsequent application to those recognised as refugees). This reflects the reality that:

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[5] see also §111 of the *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* ("the Handbook")

Cessation of refugee status may be understood as, essentially, the mirror of the reasons for granting such status found in the inclusion elements of Article 1A(2). When those reasons disappear, in most cases so too will the need for international protection.[6]

9.4. As such, of course, the elements that flow into any assessment of whether the cessation clause should be invoked also form an integral part of the assessment whether an individual is a "refugee" within the terms of Article 1A(2). A strict separation is therefore impossible.

9.5. This difficulty is also reflected, most recently, in the terms of the EC Council Directive 2004/83/EC of 29 April 2004 "On minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted",[7] which will have to be implemented by Member States (including the United Kingdom) by 10 October 2006. The cessation provisions are contained in Article 11, which is part of Chapter III "Qualification for being a refugee", and appears to be one of the pre-conditions for the grant of refugee status under Article 13 of the Directive. However, Article 14(1) of the Directive also provides for the revocation of refugee status where the requirements of Article 11 are met.

9.6. This dilemma is further reflected in the drafting history of the cessation clauses in Article 1C. Nehemiah Robinson, Representative of Israel at the Conference of Plenipotentiaries negotiating the 1951 Convention, wrote in his *Convention Relating to the Status of Refugees – Its History, Contents and Interpretation*:

Section C is the result of the conditions described in par. A for a person to become a "refugee" within the meaning of the Convention. Once any of

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[6] UNHCR Geneva, *Interpreting Article 1 of the 1951 Convention Relating to the Status of Refugees*, April 2001, §54

[7] Official Journal 30 September 2004 L304/12

the cumulative conditions disappear, the basis for his special status ceases to exist.[8]

9.7. However, while the Intervener clearly acknowledges the role of the concepts of "well-founded fear of persecution" and the unwillingness or inability to avail himself of the protection of the protection of his country of nationality in the context of both Article 1A(2) and Article 1C(5), it has always been UNHCR's position that cessation, i.e. the formal loss of refugee status on the basis of Article 1C, only applies to those who have been "determined to be a refugee"[9]. This ensures the stability of the status enjoyed by refugees, and is reflected in §112 of the *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* ("the Handbook"):

> *Once a person's status as a refugee has been determined, it is maintained unless he comes within the terms of one of the cessation clauses. This strict approach towards the determination of refugee status results from the need to provide refugees with the assurance that their status will not be subject to constant review in the light of temporary changes-not of a fundamental character--in the situation prevailing in their country of origin.*

as well as the Intervener's Guidelines on International Protection: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees of February 2003[10].

9.8. In this context it is, however, important to stress that the general position of the Intervener, as expressed in §28 of the Handbook, is that the recognition of

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[8] Institute of Jewish Affairs, New York 1953 (Reprinted by the Division of International Protection of the UNHCR in 1997), p. 49

[9] UNHCR *Guidelines on International Protection: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees*, 10 February 2003, §1 and, the previous guidelines, *The Cessation Clauses: Guidelines on their Application*, April 1999, §2;

[10] *ibid.*

an individual as a refugee under Article 1A(2) is declaratory of an existing state of affairs rather than constitutive of the person's status as a refugee:

> *A person is a refugee within the meaning of the 1951 Convention as soon as he fulfils the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined. Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognized because he is a refugee.*

9.9. Accordingly, in cases where the refugee's eligibility for international protection under Article 1A(2) at the time of arrival is accepted by the host state, protection under the cessation clauses should not be denied because of the failure of the host state to conduct refugee status determination procedures in an efficient and timely manner. This argument is strongest in the case where the asylum application is still pending but all the circumstances of the case indicate acknowledgment by the authorities of the host country that the applicant fulfilled the refugee criteria at an earlier stage. Such a differentiation between the situation of refugees formally recognised and those awaiting formal recognition is potentially arbitrary and may be in breach of the principle of non-discrimination set out in the 1951 Convention.

9.10. The construction adopted by the courts below on this issue has some important structural and procedural consequences (at least in relation to those who are covered by the provisions of Article 1C(5)):

a. The invocation of the cessation clause under Articles 1C(5) or (6) will, by definition, interfere with the life, security and integration process of a refugee previously considered deserving of protection and who has built or is in the process of building his new life in the host State;

b. As such the cessation clauses may only be invoked where the changes in the country of origin are "of such a profound and enduring nature that refugees

from that country no longer require international protection"[11], both collectively and individually. As was confirmed by ExCom, in its Conclusion No 69(XLIII), using mandatory rather than recommendatory language[12]:

> *The Executive Committee,*
>
> *...*
>
> *(a) Stresses that, in taking any decision on application of the cessation clauses based on "ceased circumstances", States must carefully assess the fundamental character of the changes in the country of nationality or origin, including the general human rights situation, as well as the particular cause of fear of persecution, in order to make sure in an objective and verifiable way that the situation which justified the granting of refugee status has ceased to exist;*
>
> *(b) Underlines that an essential element in such assessment by States is the fundamental, stable and durable character of the changes, making use of appropriate information available in this respect*, inter alia*, from relevant specialized bodies, including particularly UNHCR;*
>
> *(c) Emphasizes that the "ceased circumstances" cessation clauses shall not apply to refugees who continue to have a well-founded fear of persecution;*
>
> *(d) Recognizes therefore that all refugees affected by a group or class decision to apply these cessation clauses must have the possibility, upon request, to have such application in their cases reconsidered on grounds relevant to their individual case;*

c. In applying these considerations Contracting States (and UNHCR) should always be guided by the need to find durable solutions for the refugees in

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11 EXCOM Conclusion No 69(XLIII) - 1992

12 Although ExCom Conclusions are not formally binding, they are highly relevant to the interpretation of the international protection regime. ExCom Conclusions constitute expressions of opinion by the States Parties which are members of ExCom (including the United Kingdom) which are broadly representative of the views of the international community. The specialist knowledge of ExCom and the fact that its Conclusions are taken by consensus add further weight.

question which explains the need for the changes relied upon to be durable.[13] The return of a refugee to a volatile situation carries with it a significant risk that the refugee will be subjected to additional and/or renewed instability and potential future flight.

d. In terms of the fundamental nature of the required change an indication of the magnitude of change envisaged by the drafters of the 1951 Convention can be obtained from the statement of the French representative to the Conference of Plenipotentiaries drafting the 1951 Convention, Mr Rochefort, who envisaged that the need for international protection ceased "if their country reverted to a democratic regime".[14] By way of example, the ExCom Sub-Committee, in a Discussion Note published on 20 December 1991, set out the following considerations as relevant to the consideration of the fundamental nature of the changes in the refugee's country of origin:

> *Circumstances are normally deemed to have ceased when fundamental changes have taken place which remove the causes of the refugee's fear of persecution and offer the guarantee of safety on return. What constitutes "safe" conditions in a country is rarely an easy judgement to make. Factors which have been given special weight in this regard have included the level of democratic development in the country, its adherence to international human rights (including refugee) instruments and access allowed for independent national or international organizations freely to verify and supervise the respect for human rights. More specific factors which have significance in the context of cessation include declarations of amnesties, repeal of repressive legislation, 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. Such elements taken together will form the basis for a decision on whether the*

[13] see §§13 to 14 of UNHCR's 2003 *Guidelines*

[14] UN Doc A/CONF.2/SR.28 (28 November 1951), pages 9 to 12

circumstances giving rise to refugee status can be considered to have ceased.[15]

e. The focus of any assessment of changed circumstances is, almost by necessity, general in nature and concerns the general political and legal situation in a country. However, acknowledging the need that recognition and cessation must match, and must provide a common framework to establish international protection needs and the personal scope of the application of Article 1 of the 1951 Convention, the application of the cessation provisions is, as such by its very nature, specific to an individual refugee. This is also reflected in the focus of the second part of the first sentence of Article 1C(5), namely the individual's ability to avail himself of the protection of his country of origin. As a result, any application of the cessation provisions in Articles 1C(5) and (6), which are not dependent on any voluntary act of the refugee, requires a procedural mechanism by which the individual refugee can challenge the application of the cessation provision to his (personal) situation. After all, such individuals may well have an on-going well-founded fear of persecution despite the changes in their country of origin or may have other reasons why it would not be reasonable to expect them to avail themselves of the protection of their country of origin.

f. The legal position within the host State of the refugee before the application of the cessation clause and the inherent aim of the 1951 Convention for durable solutions also mean that cessation should only be invoked where the refugee can and will, in fact, be returned to his country of origin. Where that is unlikely to occur, the application of the cessation clause to that refugee would unjustifiably deprive him of lawful status in the host country (where he would remain) without any fault of his own.

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[15] EC/SCP/1992/CRP.1, §11; see also UNHCR's 2003 *Guidelines* at §§15 and 16

10. <u>The Scope of the Proviso</u>

10.1. The second issue raised by this case and the judgment of the Court of Appeal is the scope of the proviso contained in the second sentence of Article 1C(5):

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

10.2. UNHCR's well-established position on the proviso is set out in para 136 of the Handbook:

> *The second paragraph of this clause contains an exception to the cessation provision contained in the first paragraph. It deals with the special situation where a person may have been subjected to very serious persecution in the past and will not therefore cease to be a refugee, even if fundamental changes have occurred in his country of origin. The reference to Article 1 A (1) indicates that the exception applies to "statutory refugees". At the time when the 1951 Convention was elaborated, these formed the majority of refugees. The exception, however, reflects a more general humanitarian principle, which could also be applied to refugees other than statutory refugees. It is frequently recognized that a person who--or whose family--has suffered under atrocious forms of persecution should not be expected to repatriate. Even though there may have been a change of regime in his country, this may not always produce a complete change in the attitude of the population, nor, in view of his past experiences, in the mind of the refugee.*

10.3. The difficulty with the scope of this proviso arises out of two features, namely the express reference in the proviso to Article 1A(1) (apparently to the exclusion of those recognised under 1A(2)) and the fact that, unlike in the other cessation categories, cessation here arises out of events wholly independent of any voluntary acts of the refugee.

10.4. The terms of the proviso need to be seen in their historic context. As Nehemiah Robinson, the representative of Israel to the Conference of Plenipotentiaries drafting the Convention, explained in 1953:

> *Par. C(5) refers to persons who became "refugees" as a result of persecutory measures which at a given time had ceased to be applied, for instance refugees from Germany, Austria, or Italy. The framers of the Convention assumed that, if such a "refugee" still retained his nationality, there is no reason for him to continue refusing to avail himself of the protection of his former government, which does not persecute him and is willing to accord him the same protection as any other of its nationals. However, the framers of the Convention had to take into account the psychological factor connected with the existence of previous persecution: having been persecuted by the government of a certain country, the refugee may have developed a certain distrust of the country itself and a disinclination to be associated with it as its national. For this reason the framers of the Convention inserted the second part of par. C(5): a former persecutee need not avail himself of the protection of the country of his nationality if he can cite "compelling reasons" justifying the refusal, which stem from his previous experience. This exemption is accorded only "statutory" refugees because they alone – in the view of the framers of the Convention could have been subjected to "previous persecution".*[16]

10.5. However, he also notes that:

> *The introductory words to section C are of a categorical nature ("shall cease to exist") and refer to all categories enumerated in (1) to (6). Nonetheless, there may be a difference in the treatment of these various groups. Persons in categories (1) to (3) become "ordinary" foreigners who cannot be treated as "refugees", while persons in category (4) are ordinarily out of reach of the countries which granted them the status of*

[16] *Convention Relating to the Status of refugees – Its History, Contents and Interpretation*, pp. 51

refugee. The two other categories, if they refuse to avail themselves of protection or to return to their habitual residence, are aliens without state protection to whom Resolution (E) may apply.[17]

10.6. The "Resolution (E)" referred to is one of the resolutions adopted unanimously by the Conference of Plenipotentiaries on 28 July 1951 in connection with the adoption of the 1951 Convention. This resolution reads:

THE CONFERENCE,

EXPRESSES the hope that the Convention relating to the Status of Refugees will have value as an example exceeding its contractual scope and that all nations will be guided by it in granting so far as possible to persons in their territory as refugees and who would not be covered by the terms of the Convention, the treatment for which it provides.

10.7. It is submitted that the state practice in relation to the application of the proviso to all refugee, and not only those recognised under Article 1A(1)[18], must be viewed in light of this historical context and the clear desire of the drafters of the Convention that those who are within a Contracting State as refugees but who would not be covered by the Convention, e.g. because of the narrow formulation of the proviso, should nevertheless be granted equivalent status.

10.8. The historical explanation for the focus in the proviso on refugees recognised under Article 1A(1) provided by Mr Nehemiah Robinson is further underlined by the fact that the original 1951 Convention was limited in its temporal scope to events occurring before 1 January 1951 (i.e. more than six months before the 1951 Convention was adopted by the UN Conference of Plenipotentiaries charged with drafting the Convention). As a result, as Mr Robinson explains,

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17 *ibid.*, p. 53

18 namely that referred to in §§27 to 32 of the *Report on behalf of the Applicant*, prepared by Professor Guy Goodwin-Gill in the appeal brought by Appellant B to the Court of Appeal and dated 26 March 2002, and that set out in *The applicability of the "compelling reasons" exception to cessation for refugees and asylum-seekers*, UNHCR, November 2004, prepared for the purposes of this appeal

the drafters of the 1951 Convention would have been aware of all major refugee producing events covered by the original 1951 Convention and would have had primarily in mind those refugees already recognised under previous instruments or arrangements and therefore within Article 1A(1), who had been subject to such serious "previous persecution" as to warrant the application of the proviso.

10.9. In the Intervener's respectful submission, no significance should be attached to the fact that the 1967 Protocol did not expressly amend the proviso. After all, the preamble to the 1967 Protocol makes it clears that the States Parties to the Protocol considered that

> *... it is desirable that equal status should be enjoyed by all refugees covered by the definition in the Convention irrespective of the dateline 1 January 1951.*

10.10. As Nehemiah Robinson explained, the differential treatment inherent in the proviso is solely based upon the perception of the persecution that had occurred up to 1 January 1951. However, both Resolution (E) and the aim of the 1967 Protocol suggest that this is anomalous and that the proviso does indeed

> *... extend beyond the actual words of the provision to apply to Article 1A(2) refugees. This reflects a general humanitarian principle that is now well-grounded in State practice.*[19]

10.11. Whilst the wording of the proviso to Article 1C(5), for purely historical reasons, appears to exclude those falling within Article 1A(2), the Intervener is most concerned to stress

a. the general humanitarian principles underlying this provision (as explained by the early commentators) and inherent in all the other relevant international human rights instruments; and

[19] UNHCR's February 2003 *Guidelines*, §21

b. the need for States Parties to the 1951 Convention to give effect to those underlying principles in relation to all refugees through the appropriate means.

10.12. The comparative research conducted by the Intervener (and that referred to by Professor Goodwin-Gill in his report) show that the vast majority of States Parties accept this need and make provision for it in their national law (either through legislation or through developing jurisprudence). This general humanitarian principle underlying both the Convention and other international human rights instruments should not be lost sight of in what otherwise might appear as an over-technical construction of one provision of this one particular humanitarian Convention.

10.13. While State Parties to the 1951 Convention may have other legal bases through which the general humanitarian principle expressed in the proviso could be realised, it is respectfully submitted that the continuation of the existing and previously recognised and protected refugee status (with all its rights and obligations) is the most appropriate action in relation to a refugee whose return to the country of origin will not, in fact, be able to take place because of compelling reasons arising out of his past persecution. After all, anything less would deprive the refugee of a legal status previously held or reduce or extinguish his legal rights and thereby "penalise" him for something over which he has no control.

Conclusion

11. On the basis of the above submissions, the Intervener humbly submits that:

a. Host States should not deprive refugees of the protection provided by Article 1C(5) on the sole basis that there has been no formal "recognition" of that individual's refugee status, where the authorities of that State have in fact accepted that the individual in question qualified for such recognition at the time of his arrival. This is particularly so where the lack of formal recognition is due

to that State's failure to conduct the refugee status determination procedures in an efficient and timely manner;

b. In cessation cases under Article 1C(5), the general humanitarian principle expressed in the proviso to that provision as well as in a large number of other relevant international human rights instruments should be applied as broadly as necessary to ensure that there is no gap in the protection sought to be provided according to the rationale of these provisions, and should not be lost sight of through an overly narrow focus on the construction of the words of this one particular provision.

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5 January 2005

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CASE FOR THE INTERVENER

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