

**Working Paper # 8**

**When Is International Protection No Longer Necessary?**

The “Ceased Circumstances” Provisions of the Cessation  
Clauses: Principles and UNHCR Practice, 1973-1999

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## **Executive Summary**

### **Principal Findings**

- UNHCR has rarely applied the “ceased circumstances” provisions of the cessation clauses to refugees under its mandate. This reflects the cautious approach taken by UNHCR toward the use of these provisions, the availability of alternative solutions, and the difficulty of ascertaining whether improvements in a country of origin are sufficient to warrant their application.
- UNHCR and the Executive Committee have articulated a series of guidelines to regulate the use of the “ceased circumstances” clauses by States parties to the 1951 Convention and the Office of the High Commissioner. According to these guidelines, improvements in a country of origin must constitute a “fundamental,” “stable,” “durable,” and “effective” change in circumstances to justify the application of these clauses.
- The application of the “ceased circumstances” provisions has received regular consideration within UNHCR. Such deliberations have been instigated by favorable developments in countries of origin, initiatives to identify refugee situations in which general cessation could be declared, and inquiries from asylum countries regarding the applicability of the cessation clauses.
- On 21 occasions since 1973, UNHCR has issued declarations of general cessation for refugee groups under its mandate based on the “ceased circumstances” provisions. These cases have involved three types of developments in the country of origin: 1) the acquisition of independent statehood; 2) a successful transition to democracy; and 3) the resolution of a civil conflict.
- In other refugee situations, UNHCR has refrained from invoking the “ceased circumstances” cessation clauses on a group basis. In such cases, the standard of “fundamental,” “durable” change has not been met. In some of these cases, however, UNHCR has supported the application of Articles I.C(5) and (6) by asylum countries and/or has recognized specific groups of refugees that may no longer require international protection.

### **Issues for Further Discussion**

- Are there ways in which UNHCR can be more proactive in considering the application of the cessation clauses without undermining the international refugee regime established by the 1951 Convention and subsequent instruments? This study suggests three such procedures: 1) taking note of favorable developments in refugee-sending countries in Standing Committee proceedings; 2) promoting the use of Articles I.C(5) and (6) by asylum countries; and 3) specifying the developments necessary to justify a declaration of general cessation by UNHCR.

- Should UNHCR develop additional methods of applying the “ceased circumstances” provisions beyond its traditional approach of declaring general cessation on a group basis? This study finds that it may be worthwhile for UNHCR to develop the practice of targeted and/or individual cessation. These approaches may enable UNHCR to identify additional refugee populations for whom the cessation clauses may be applicable. By demonstrating greater “flexibility,” they may also help strengthen international support for asylum.
- How should the standard of “fundamental” change be interpreted? Traditionally, the concept of “fundamental” change has focused on developments at the national level related to the prospects for democratic governance. However, the situations reviewed in this study suggest that changes throughout the society of the country of origin also merit consideration, such as improvements in the treatment of specific ethnic or political groups or in human rights conditions at the local or regional level. A broader interpretation of the standard may be warranted given the complexities of contemporary refugee situations. It also permits more flexible applications of the “ceased circumstances” provisions.
- Finally, can greater flexibility in the practice of cessation reduce reliance on alternative forms of international protection, especially in situations of mass influx? One possibility may be to establish an explicit linkage between the *prima facie* recognition of refugees and cessation to assure asylum countries of the temporary nature of international protection in such emergencies.

**When Is International Protection No Longer Necessary?  
The “Ceased Circumstances” Provisions of the Cessation Clauses:  
Principles and UNHCR Practice, 1973-1999<sup>1</sup>**

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**I. Introduction**

1. The challenges posed by situations of mass influx and protracted refugee emergencies have prompted a reexamination of the international asylum regime established by the 1951 Convention and subsequent instruments. This has included increasing attention to the cessation clauses of the 1951 Convention and Statute of the Office of the High Commissioner for Refugees. The cessation clauses establish the linkage between the duration of international protection and the basis for recognition of refugee status. To some, the clauses therefore appear to be a potentially useful method of ensuring that international protection is reserved for those who truly need it.
2. The cessation clauses stipulate six conditions under which an individual may no longer require international protection as a refugee. Four of the clauses refer to actions taken by an individual to re-avail himself of the protection of his home country (e.g., by repatriating voluntarily) or to obtain that of another state (e.g., by acquiring citizenship in another country). The final two clauses—referred to as the "ceased circumstances" provisions—focus on changes in a country of origin that remove the basis of an individual’s fear of persecution.
3. The “ceased circumstances” provisions are found in Articles I.C(5) and (6) of the 1951 Convention and Chapter II, Section 6, paragraphs A(ii)(e) and (f) of the Statute. As set forth in Article I.C of the 1951 Convention, the Convention ceases to apply to a refugee if:

*(5) He can no longer, because the circumstances in connection 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; [or]*

*(6) Being a person who has no nationality he is, because of the circumstances in connection 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*

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*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 his formal habitual residence.*

4. States parties to the 1951 Convention possess the exclusive authority to invoke Articles I.C(5) and (6),<sup>3</sup> while UNHCR can "declare that its competence ceases to apply in regard to persons falling within situations spelled out in the Statute."<sup>4</sup> However, Article 35 of the 1951 Convention also assigns UNHCR a supervisory role in the implementation of the Convention. The Office of the High Commissioner should therefore be "appropriately involved" when states are considering the application of the cessation clauses.<sup>5</sup>
5. This study reviews existing UNHCR guidelines, procedures, and practice regarding the application of the "ceased circumstances" cessation clauses. The next section considers the standards and procedures that have been developed by UNHCR and the Executive Committee of the High Commissioner's Programme (Excom) to administer Articles I.C(5) and (6). The third section of the study examines how UNHCR has applied the clauses since 1973. The fourth section explores different approaches to and guidelines for the application of the "ceased circumstances" provisions. The fifth section provides a brief conclusion to the study.

## **II. UNHCR Guidelines and Procedures for Invoking Articles I.C(5) and (6)**

6. Over the past decade, UNHCR and the Excom have promulgated a series of guidelines to regulate the application of the cessation clauses. These guidelines outline standards and procedures for evaluating developments in the country of origin and define the role of UNHCR in the process of invoking the "ceased circumstances" provisions.
7. The regulations issued to guide the use of Articles I.C(5) and (6) by UNHCR and States parties to the 1951 Convention are based upon UNHCR's *Handbook on Procedures and Criteria for Determining Refugee Status*, which contains a detailed interpretation of the term "circumstances." 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."<sup>6</sup> Changes in the details of an individual refugee's case neither satisfy this definition nor suffice to justify the application of the cessation clause. Moreover, the status of a refugee "should not in principle be subject to frequent review to the detriment of his sense of security."<sup>7</sup> The

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<sup>3</sup> Executive Committee of the High Commissioner's Programme. Conclusion No. 69 (XLIII). *Cessation of Status* (1992).

<sup>4</sup> Executive Committee of the High Commissioner's Programme, Standing Committee, *Note on the Cessation Clauses*, EC/37/SC/CRP.30, May 30 1997, ¶31.

<sup>5</sup> Ibid.

<sup>6</sup> *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, ¶135.

<sup>7</sup> Ibid.

*Handbook* also explains in greater detail the exception to the cessation clause based on “compelling reasons arising out of previous persecution.”<sup>8</sup>

8. UNHCR and the Excom have subsequently elaborated upon these concepts to develop a set of standards for ascertaining whether events in a country of origin may be sufficient to warrant the application of Articles I.C(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.
9. UNHCR and Excom have used various terms to describe the degree of change necessary to justify a declaration of general cessation. They all suggest that any developments must be comprehensive in nature and scope. According to Excom 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 way that the situation which justified the granting of refugee status has ceased to exist [emphasis added].*<sup>9</sup>

Subsequent guidelines have sought to outline the factors that should be considered when evaluating the human rights situation in a country of origin.

10. According to UNHCR, 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.<sup>10</sup> Evidence of such a transformation may include “significant reforms altering the basic legal or social structure of the State...democratic elections, declarations of amnesties, repeal of oppressive laws and dismantling of former security services.”<sup>11</sup> 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.<sup>12</sup> Changes in these areas must also be “effective” in the sense that they “remove the basis of the fear of persecution.”<sup>13</sup> It is therefore necessary to assess these developments “in light of the particular cause of fear.”<sup>14</sup>

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<sup>8</sup> Ibid, ¶136.

<sup>9</sup> Conclusion Number 69 (XLIII), adopted by the Executive Committee at its forty-third session (A/AC.96/804, paragraph (a)).

<sup>10</sup> 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* (EC/SCP/1992/CRP.1), 20 December 1991, ¶11.

<sup>11</sup> *Note on the Cessation Clauses*, ¶20.

<sup>12</sup> *Discussion Note*, ¶11.

<sup>13</sup> *Note on the Cessation Clauses*, ¶19.

<sup>14</sup> Ibid.

11. How should the "general human rights situation" in a country of origin be evaluated? UNHCR has cited adherence to international human rights instruments and the ability of national and international nongovernmental organizations to 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*<sup>15</sup>

Although observance of these rights need not be "exemplary," "significant improvements" in these areas and progress toward 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.<sup>16</sup>

12. Large-scale, voluntary repatriation may also provide evidence of a "fundamental" change in circumstances.<sup>17</sup> The repatriation and reintegration of refugees can promote the consolidation of such developments.<sup>18</sup> 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 *prima facie* evidence that changes of a "fundamental" nature have occurred.
13. Positive developments in a country of origin must also be "stable" and "durable." The *Note on the Cessation Clauses*, for example, states that "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."<sup>19</sup> Time is required to allow any such improvements to consolidate. UNHCR thus advocated a minimum "waiting period" of 12-18 months before assessing developments in a country of origin.<sup>20</sup> 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."<sup>21</sup> Conversely, when developments in the country of origin occur in the context of violence, warring groups remain unreconciled, effective governance has not been established, and human rights guarantees are lacking, a longer waiting period will be necessary to confirm the durability of such change.<sup>22</sup> Subsequent internal guidelines on the application of the cessation clauses

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<sup>15</sup> Ibid, ¶23.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid, ¶21.

<sup>18</sup> Ibid, ¶29.

<sup>19</sup> *Note on the Cessation Clauses*, ¶21.

<sup>20</sup> *Discussion Note*, p. 5, ¶12; *Note on the Cessation Clauses*, ¶21.

<sup>21</sup> *Note on the Cessation Clauses*, ¶22.

<sup>22</sup> Ibid.



have reiterated this more contingent approach toward establishing the durability of changes in a country of origin.<sup>23</sup>

14. UNHCR and Excom have also begun to address the specific issue of cessation of status for refugees who have fled internal conflict. More recent, internal guidelines have considered how to measure the extent and durability of change in these situations. According to these, 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, UNHCR has suggested that a longer waiting period may be necessary to establish the durability of changes in circumstances in post-conflict situations.<sup>24</sup> Seemingly conflicting guidelines regarding the applicability of Articles I.C(5) and (6) when peace, security, and effective national protection have been restored to portions of a country of origin have also been issued.<sup>25</sup>
15. UNHCR and Excom instructions have also addressed the issue of how the cessation clauses are administered. UNHCR guidelines indicate that the cessation clauses can be applied to groups or individuals (whether the refugee status of individuals in the group has been formally determined or not).<sup>26</sup>
16. Finally, the guidelines examine the role of UNHCR in the application of the cessation clauses. The Executive Committee has observed that

*any declaration by the High Commissioner that the competence accorded to her by the Statute of her Office with regard to certain refugees shall cease to apply, may be useful to States in connection with the application of the cessation clauses as well as the 1951 Convention.*<sup>27</sup>

In particular, 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."<sup>28</sup>

17. 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

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<sup>23</sup> Office of the United Nations High Commissioner for Refugees, *Inter-Office Memorandum No. 17/99, Field-Office Memorandum No. 17/99, Guidelines on the Application of the Cessation Clauses*, 26 April 1999, ¶28.

<sup>24</sup> It is worth noting that 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 ¶¶39-44).

<sup>25</sup> The 1997 *Note on the Cessation Clauses* stated 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. However, IOM 17/99 issued in April 1999, suggests 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."

<sup>26</sup> *Note on the Cessation Clauses*, ¶37.

<sup>27</sup> Conclusion No. 69 (XLIII), *Cessation of Status* (1992).

<sup>28</sup> *Note on the Cessation Clauses*, ¶34.

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, favorable developments in a country of origin have often led asylum countries to consult UNHCR regarding the applicability of the “ceased circumstances” provisions.

18. In some cases, positive changes in a country of origin have enabled UNHCR to promote the voluntary repatriation of refugees. After the completion of a voluntary repatriation program, UNHCR has considered invoking Articles I.C(5) and (6) to facilitate the termination of its assistance programs 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. 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 in 1990. Finally, the administration of the cessation clauses to Albanian refugees was considered in 1992 after significant improvements in the human rights situation and substantial progress toward democratic reform occurred during the previous year.
19. 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 review, for example, recommended the invocation of Articles I.C(5) and (6) to refugees from South Africa, Slovakia, Albania, Bulgaria, and Romania. 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.
20. UNHCR has frequently advised the governments of asylum countries about the applicability of Articles I.C(5) and (6) to specific refugee populations. In some cases, UNHCR has taken the initiative to provide asylum states with its assessment of whether changes in a country of origin warrant the use of the “ceased circumstances” provisions. For example, in June 1996, UNHCR contributed to deliberations within the Panamanian government regarding the application of the cessation clauses to Haitian refugees.
21. 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, the Peruvian government submitted a *note verbale* to UNHCR calling for the application of the “ceased circumstances” provisions to Bolivian refugees, three months after the establishment of a democratic government in Bolivia. More recently, UNHCR received an inquiry from the government of South Africa in November 1999 about the possibility of invoking Articles I.C(5) and (6) in the case of Nigerian refugees, six months following the transition to civilian rule in Nigeria.
22. 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 whether improvements in a country of origin affect claims of refugee status. UNHCR has advised in this manner in U.S. status determination proceedings for asylum-seekers from the Democratic Republic of the Congo, Haiti, and Guatemala, among others, in recent years.

### III. The Application of the “Ceased Circumstances” Provisions: UNHCR Practice, 1973-1999

23. Although the “ceased circumstances” provisions have received regular consideration within UNHCR, they have only been applied to refugees under UNHCR mandate on 21 occasions since 1973 (see Table I). According to UNHCR, the cessation clauses have not been used extensively for two reasons.<sup>29</sup> First, the availability of alternative solutions, such as voluntary repatriation, has usually obviated the need to invoke the cessation clauses. Second, it has often been difficult to determine whether developments in a country of origin warranted the application of the cessation clauses. Rather, Articles I.C(5) and (6) have been employed 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.”<sup>30</sup>
24. The cases in which UNHCR has ultimately invoked Articles I.C(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 changes in circumstances can be identified: 1) accession to independent statehood; 2) achievement of a successful transition to democracy; and 3) resolution of a civil conflict.
25. In seven cases, the application of Articles I.C(5) and (6) was related to the achievement of independence by the country of origin (Mozambique, Guinea-Bissau, Sao Tome, 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 part, this reflects the political constraints imposed by the Cold War. Because of the U.S.-Soviet rivalry, any statement (direct or implied) by UNHCR about the human rights situation of a country of origin occurred in a highly politicized context. The acquisition of independence, therefore, constituted the least controversial justification for applying Articles I.C(5) and (6).
26. In 12 cases, UNHCR has invoked the “ceased circumstances” provisions based upon a change in the regime (typically involving a transition to democracy) of the country of origin. These cases, which occurred over the period 1980-1999, 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) are examined below in greater detail. In these cases, invoking the “ceased circumstances” provisions has consisted of a three-stage process: 1) consulting with the country of origin and/or asylum countries; 2) conducting a

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<sup>29</sup> *Discussion Note*, ¶¶3,11.

<sup>30</sup> *Note on the Cessation Clauses* ¶31.

comprehensive evaluation of conditions in the country of origin; and 3) issuing a memorandum declaring the application of Articles I.C(5) and (6) to refugees from the country of origin in question.

27. 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 17 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 Articles I.C(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.
28. 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. 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.
29. 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. The latter issue had emerged as the principal obstacle to a declaration of general cessation for Chilean refugees. Attempts to resolve the issue by developing a comprehensive list of refugees who faced such proceedings, however, were unsuccessful. 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.<sup>31</sup>
30. 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.

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<sup>31</sup> The exemption stated that “[s]pecial 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.” Office of the United Nations High Commissioner for Refugees, *Applicability of the Cessation Clauses to Refugees from Chile*, UNHCR/IOM/31/94, UNHCR/FOM/31/94, March 28, 1994.

31. In May 1995, however, the French government notified UNHCR of its intention to apply the “ceased circumstances” provisions to Romanian refugees. France had continued to receive large numbers of asylum-seekers from Romania since 1989. According to 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. 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.<sup>32</sup>
32. 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 individual basis. 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. UNHCR also indicated, however, that it would continue to monitor the situation in Romania and consider the application of the “ceased circumstances” if progress were made in these areas.
33. In June 1995, France proceeded to administer the cessation clauses to Romanian refugees. UNHCR publicly expressed satisfaction with its consultations with the French government and the safeguards that had been adopted by French authorities to protect the rights of refugees and asylum-seekers. UNHCR also reiterated its willingness to consider the application of the “ceased circumstances” provisions if the situation in Romania improved and urged European governments to encourage Romania to strengthen its human rights practices. The French government agreed to pursue such efforts and the possibility of a demarche by the European Union was also explored.
34. By 1997, a number of positive developments had occurred in Romania. These included a second round of national elections in 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. A cut-off date of 1990 was specified in the declaration of cessation issued by UNHCR in October 1997 to avoid the implication that the pace of democratization in Romania and Bulgaria had differed significantly.<sup>33</sup> A special provision was also included for refugees who had lost their personal documentation.
35. 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

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<sup>32</sup> 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 arguably being the gradual improvement of conditions in Romania. However, the application of the cessation clause may have deterred additional flows of asylum-seekers from Romania and thereby contributed to the decline.

<sup>33</sup> Office of the United Nations High Commissioner for Refugees, *Applicability of the Cessation Clauses to refugees from Bulgaria and Romania*, UNHCR/IOM/71/97, UNHCR/FOM/78/97, October 1, 1997. See paragraphs 1 and 7 of the attached “UNHCR Note on the applicability of the cessation clauses of the UNHCR Statute and the 1951 Convention to refugees from Bulgaria and Romania.”

asylum country. The military regime of Lt. Col. Mengistu Haile Mariam had collapsed in 1991 after 17 years in power. From 1993 to 1998, UNHCR conducted a voluntary repatriation program for Ethiopian refugees who had fled persecution by the Mengistu regime. As the voluntary repatriation program 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 subsequently endorsed at a Standing Committee meeting in February 1999.

36. A comprehensive review of developments in Ethiopia since 1991 concluded that the invocation of Articles I.C(5) and (6) was justified. However, 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. 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).<sup>34</sup>
37. However, the governments of Ethiopia and Sudan both sought to postpone the administration 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. 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.
38. 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 (RSD) procedures for all Ethiopian refugees. 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.
39. The third and final category of circumstances in which UNHCR has invoked Articles I.C(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.
40. In February 1972, a peace agreement was reached between the government of Sudan and the Liberation Movement for the South Sudan 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. UNHCR was formally assigned responsibility for the voluntary repatriation, relief, and resettlement of refugees from July 1972 to June 1973. The reconstruction and development phase of the United Nations emergency relief program would then begin in July 1973 under the leadership of UNDP.

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<sup>34</sup> This measure has proven ineffective, however, in the case of Sudan, which has proceeded to deny automatically the claims of asylum-seekers from Ethiopia.

41. By July 1973, the voluntary repatriation of Sudanese refugees from the Central African Republic and Ethiopia had been completed. Furthermore, the repatriation of refugees from Zaire and Uganda was expected to be finished by October of that year. UNHCR therefore proceeded to issue a declaration of general cessation, arguing that the circumstances upon which the *prima facie* recognition of Sudanese refugees had been based no longer existed.<sup>35</sup> 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. However, given the “reality of national reconciliation” in Sudan, UNHCR called for a restrictive approach to the granting of such exemptions.
42. The Sudanese government nevertheless requested that UNHCR extend its role as coordinator of the U.N. emergency relief program for southern Sudan until the end of 1973. The request raised concerns within UNHCR that any delay would complicate the transition from the relief to the development phase of the U.N. program and mire the organization in development activities outside its competence and mandate. The High Commissioner therefore limited the extension of UNHCR involvement to October 1973, when the voluntary repatriation operation was scheduled to be completed, and called for the launch of the development phase on 1 July 1973 as originally planned.
43. In December 1996, UNHCR issued its second declaration of general cessation for **Mozambican** refugees. In 1992, the government of Mozambique and the RENAMO rebel movement had signed a peace accord, bringing an end to a costly civil war. In October 1994, successful multiparty elections were then held. Finally, the repatriation and reintegration of 1.7 million Mozambican refugees was completed in June 1996. UNHCR cited these 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.<sup>36</sup>
44. 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 Excom meeting that UNHCR would terminate its repatriation and reintegration operation by the middle of 1996.<sup>37</sup> 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

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<sup>35</sup> Office of the United Nations High Commissioner for Refugees, *Protection and Assistance for Sudanese Refugees*, UNHCR/IOM/26/73, UNHCR/BOM/26/73, 12 July 1973.

<sup>36</sup> Office of the United Nations High Commissioner for Refugees, *Applicability of the Cessation Clauses to Refugees from the Republics of Malawi and Mozambique*, UNHCR/IOM/88/96, December 31, 1996, ¶2.

<sup>37</sup> United Nations High Commissioner for Refugees, *Mozambique: Repatriation and Reintegration of Mozambican Refugees, Progress Report and 1995 Reintegration Strategy*, “Addendum: UNHCR Reintegration Strategy for 1995” (Geneva, September 1994), ¶20.

[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.”<sup>38</sup>

45. The successful October 1994 elections led UNHCR to suggest in March 1995 that the cessation clauses would be invoked in the near future. However, an August 1995 analysis recommended that UNHCR wait a minimum of an additional 12 months before proceeding with a declaration of general cessation. 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. 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.
46. The cases examined in the preceding paragraphs have involved the formal application of Articles I.C(5) and (6) to an entire group of refugees by UNHCR. However, UNHCR has demurred from issuing a declaration of general cessation for other refugee populations 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 United States 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. Similarly, in November 1998, UNHCR counseled the Dutch government against the application of the “ceased circumstances” provisions to Bosnian refugees because of the absence of “fundamental,” “durable” change in Bosnia.
47. In other situations, UNHCR has supported the application of Articles I.C(5) and (6) on an individual rather than a group basis. UNHCR employed this approach in 1992 for Albanian refugees under its care in Yugoslavia. In 1996, UNHCR advised the government of Panama that Articles I.C(5) and (6) could be invoked on an individual basis with regard to Haitian refugees. Similarly, in response to a 1997 inquiry from the Swedish government, UNHCR suggested that the cessation clauses could be applied individually to Vietnamese refugees.
48. UNHCR has also endorsed the use of Articles I.C(5) and (6) on a group basis by asylum countries rather than invoke the “ceased circumstances” provisions itself, 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 Nicaraguan and El Salvadoran refugees began in 1995, following the successful conclusion of the CIREFCA initiative in June 1994.<sup>39</sup> 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. These included fragile economic conditions in both countries as well as continued concerns about the human rights

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<sup>38</sup> *Mozambique: Repatriation and Reintegration of Mozambican Refugees, Progress Report and 1995 Reintegration Strategy*, ¶43.

<sup>39</sup> CIREFCA (International Conference on Central American Refugees) was a comprehensive, regional program for the repatriation and reintegration of refugees and the removal of the root causes of displacement.



situation in El Salvador. Moreover, the status determination process for El Salvadoran and Nicaraguan asylum-seekers in the United States had been delayed by litigation to ensure that the claims of El Salvadoran refugees were fairly adjudicated as well as by legislative efforts to protect Central American refugees. A declaration of general cessation by UNHCR could thus unduly influence these proceedings.

49. UNHCR therefore elected not to apply the “ceased circumstances” provisions to refugees from El Salvador and Nicaragua. However, in May 2000, UNHCR did provide technical assistance to the Panamanian government regarding the administration of Articles I.C(5) and (6) to El Salvadoran and Nicaraguan refugees. This included the submission of a comprehensive evaluation of developments in El Salvador and Nicaragua that drew on previous UNHCR assessments. 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.
50. Finally, the issue of cessation has also 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. However, UNHCR has sought to identify those in continued need of international protection while also acknowledging that certain groups may no longer require refugee status. For example, in the case of **Bosnia and Herzegovina**, UNHCR has identified specific categories of refugees whose status should be maintained as well as certain groups for whom the Convention may have ceased to apply. These include refugees who originally resided in areas in which they constituted a majority and, more recently, those from particular minority areas.”<sup>40</sup>
51. Similarly, in February 2000, UNHCR reached an agreement with the Iranian government regarding the voluntary repatriation of refugees to **Afghanistan**. The agreement establishes a screening procedure to identify refugees in continued need of international protection as well as those who may no longer need refugee status.<sup>41</sup> Conditions in Afghanistan, including the absence of effective national protection,<sup>42</sup> an ongoing civil war, extensive human rights problems, and economic collapse still preclude a declaration of general cessation. However, particular categories of Afghan refugees may no longer require international protection because of the changes that have occurred over the past decade. Since 1991, for example, the Najibullah regime has collapsed and the Taliban has gradually established control over most of the country. Such changes may have therefore removed the basis for providing refugee status to Afghans who belong to the same ethnic group as the Taliban (i.e., those of Pashtun ethnicity) and fled persecution by the Najibullah regime.

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<sup>40</sup> United Nations High Commissioner for Refugees, *Update of UNHCR’s Position on Categories of Persons from Bosnia and Herzegovina in Need of International Protection*, August 2000, p. 2. 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.”

<sup>41</sup> *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*, Tehran, February 2000.

<sup>42</sup> The Taliban has not been recognized by the international community as the legitimate government of Afghanistan.

52. The case of **Cambodian** refugees in Thailand provides another example of this approach. Although conditions in Cambodia have improved significantly over the past decade, continuing political instability and human rights violations have demonstrated that these changes remain neither fundamental nor durable in nature. Nevertheless, positive developments in Cambodia in 1999 prompted the government of Thailand to approach UNHCR about resolving the status of a small group of Cambodian refugees that had remained in Bangkok after the completion of a UNHCR voluntary repatriation program. 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. Monitoring of returnees in Cambodia indicated that those who had voluntarily repatriated had been able to reintegrate successfully. In addition, extensive consultations with the 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.
53. Because 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 Excom Conclusion 69, and a formal declaration of cessation. Such an assessment was unlikely, however, to conclude 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.
54. Rather than formally invoke the cessation clauses, UNHCR launched a “status review” exercise for this group of Cambodian refugees in March 1999. 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 UNHCR protection. Refugees who wished to return to Cambodia could do so on their own or request UNHCR assistance. Some 150 applications were received from refugees seeking to maintain their status. Drawing again on its extensive contacts with human rights organizations working in Cambodia, UNHCR screened these applications and identified some 30-40 individuals who still required asylum. Individuals who were screened out, however, were given the opportunity to appeal the results of the process.
55. In September 1999, further consultations with human rights organizations in Cambodia revealed that the political situation had again deteriorated. The status review process was suspended and the 30-40 individual cases previously screened in were designated for resettlement. UNHCR also decided to postpone an evaluation of the human rights situation in Cambodia to determine whether the “ceased circumstances” provisions could be invoked.

#### **IV. New Approaches to Cessation Based on “Ceased Circumstances”**

56. UNHCR has traditionally pursued a cautious approach toward the use of Articles I.C(5) and (6). Recent developments in state practice, however, suggest the need to explore new ways of employing the “ceased circumstances” provisions. The protracted nature of numerous

refugee crises has fostered the perception of international protection for refugees as a permanent, rather than a temporary, measure. Some host countries have become increasingly reluctant to grant refugee status to asylum-seekers, particularly in situations of mass influx. With growing frequency, these asylum countries have instead resorted to protection mechanisms outside the framework of the 1951 Convention. More “flexible” procedures, approaches, and standards for administering the “ceased circumstances” provisions, however, may help mitigate the perception of refugee status as a permanent condition and reduce the incentives for asylum countries to employ complementary forms of international protection.

57. Because of its restrictive interpretation of Articles I.C(5) and (6), UNHCR has become perceived by some as either unwilling or unable to recognize major developments in refugee-sending countries in a timely manner and to assist countries of asylum in combating abuses of the refugee regime. The preceding review of UNHCR practice suggests, however, that this is largely a misperception. Whenever significant changes have occurred in a country of origin, the empirical record indicates that UNHCR has considered the application of Articles I.C(5) and (6) in a timely manner. In the cases of Sudan in 1973 and Mozambique in 1996, declarations of general cessation were issued by UNHCR within two years of major changes in these countries. Moreover, UNHCR has not been solely responsible for prolonging the process of applying the “ceased circumstances” provisions. As the cases of Romania, Chile, and Ethiopia illustrate, countries of origin and asylum have also contributed to delays in invoking Articles I.C(5) and (6) .
58. Ensuring that international protection is reserved for those who truly need it, however, can strengthen support for the asylum regime at the national and international levels. The case of Romania indicates that the cessation clauses can play a role in helping the governments of asylum countries respond to domestic political pressures that threaten to undermine national systems for protecting refugees. Declarations of cessation signal that governments are working to address abuses of the institution of asylum, and greater flexibility toward the use of the “ceased circumstances” provisions on the part of UNHCR can help demonstrate support for such efforts. Asylum countries may then become less inclined to resort to protection measures outside the framework of the 1951 Convention, such as temporary protected status (TPS). For example, one country of asylum that regularly applies Articles I.C(5) and (6) on an individual and group basis rarely makes recourse to alternative forms of international protection. Moreover, this asylum state consults closely with UNHCR when considering cessation based on the “ceased circumstances” clauses. Whether other countries of asylum would follow this example, however, is uncertain. It is conceivable that other states may instead continue to employ TPS and exploit any modifications in the standards and procedures for invoking the “ceased circumstances” provisions.
59. The following counterfactual illustrates some of the issues that are raised by a more “flexible” approach to cessation. UNHCR’s position that the cessation clauses should not be applied to Bosnian refugees in 1998 (while accepting the return of those only granted temporary protection) is said to have led one asylum country to assign TPS rather than refugee status to Kosovar Albanian asylum-seekers in March 1999. Had UNHCR supported a declaration of cessation for Bosnian refugees in 1998, would Kosovar Albanians have been granted refugee status or would they have still been assigned TPS? Could adequate provisions have been made in a declaration of cessation for Bosnian refugees who still

required asylum? How would a declaration of cessation have affected the treatment of Bosnian refugees in other asylum countries? Finally, would this hypothetical scenario have constituted a net gain or loss for the international refugee regime?

60. Although a more proactive approach to cessation may enhance UNHCR credibility and strengthen support for the protection of refugees, there are also numerous reasons for UNHCR to maintain its cautious approach toward the use of the “ceased circumstances” provisions. First, there remains the danger of misapplying these clauses (by UNHCR and/or asylum countries), which can have severe consequences for the affected refugees. For example, some countries of origin have continued to experience instability despite significant progress toward the establishment of democratic institutions and human rights guarantees. The absence of durable change has then produced additional outflows of refugees requiring UNHCR assistance. Given the persistent uncertainty about conditions in these countries, UNHCR must remain careful about declaring cessation and relinquishing its authority to conduct protection and assistance activities.
61. Second, any declaration of cessation by UNHCR — whether group-based, targeted, or individual — will continue to require the cooperation of the country of origin and asylum states. Countries of origin and asylum play a critical role in the application of the “ceased circumstances” provisions. Their cooperation may be required to address specific obstacles to the administration of Articles I.C(5) and (6). Moreover, countries of origin and asylum may also have specific concerns that need to be taken into account when UNHCR is considering the cessation of refugee status.
62. Third, apprehension about the potential effects of cessation on status determination procedures remains warranted. Carefully targeting the application of the “ceased circumstances” provisions and clearly identifying any necessary exemptions can mitigate such risks. However, there is still ample evidence to suggest that UNHCR must continue to practice 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.
63. Nevertheless, this study finds that certain procedural mechanisms may enable UNHCR to administer the cessation clauses more flexibly without undermining the international refugee regime. For example, UNHCR regularly receives inquiries from the governments of asylum countries regarding developments in refugee-sending states and the applicability of the “ceased circumstances” provisions. This represents a reactive and seemingly inefficient method of 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 Articles I.C(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, or by responding to developments in countries of origin as they occur on a case by case basis. One advantage of the latter procedure is that, unlike an internally supervised

review, an ad hoc response might address not only refugee populations under UNHCR mandate but also those of concern primarily to asylum countries.

64. UNHCR could also make greater use of its Article 35 authority to assist asylum states with the application of the “ceased circumstances” provisions on an individual or group basis when changes of a “fundamental” and “durable” nature have occurred. 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 Articles I.C(5) and (6). It would also help the governments of some asylum countries maintain public support for the provision of asylum. Diminished domestic pressure would presumably reduce incentives for governments to resort to alternative forms of international protection, and thereby help strengthen the international refugee regime as a whole. Advising states of the relevance of the cessation clauses is already a large component of UNHCR practice. Moreover, asylum countries appear to implement Articles I.C(5) and (6) in a manner consistent with UNHCR guidelines. In the case of Romanian refugees, for example, the French government applied the cessation clauses flexibly, taking into consideration the factors that might warrant exemptions from the “ceased circumstances” provisions. Governments that invoked the cessation clauses with respect to Chilean refugees also did so responsibly from the perspective of UNHCR. Whether other countries of asylum will also pursue a careful approach to cessation on a group basis is less clear. Asylum states have traditionally been reluctant to make greater use of Articles I.C(5) and (6) because of the administrative burden of individual screening required to implement these provisions. There also remains the danger that countries of asylum will use the cessation clauses to bypass status determination procedures for new claims.
65. Finally, when advising asylum countries on the use of Articles I.C(5) and (6), UNHCR can provide a more balanced explanation of its position. When the administration of the “ceased circumstances” provisions on a group basis remains premature because the standard of “fundamental” change has not been met, UNHCR should specify the additional measures needed to satisfy this standard. If more time is necessary to establish the durability of changes that have occurred in a country of origin, UNHCR should suggest an appropriate time frame for evaluating circumstances in the country of origin. Apprising governments of such requirements is likely to have a number of benefits. 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. Providing such information can also enhance UNHCR credibility by demonstrating that the Office is not automatically predisposed against cessation, but rather prepared to consider invoking the “ceased circumstances” provisions under a reasonable set of conditions.
66. In addition to these procedural mechanisms, UNHCR can also develop additional approaches to the application of the “ceased circumstances” provisions. As noted above, new practices for invoking Articles I.C(5) and (6) can help mitigate the perception of refugee status as a permanent condition and demonstrate greater “flexibility” to the governments of asylum countries. Different approaches to cessation may also be required because of the changing nature of refugee situations confronting UNHCR and countries of asylum. The cases of Bosnia, Afghanistan, and Cambodia suggest that UNHCR’s traditional approach of administering Articles I.C(5) and (6) on a group basis may be too blunt an instrument for

determining the applicability of the cessation clauses in complex refugee situations. However, UNHCR practice in these and other cases also indicates that new methods of employing the “ceased circumstances” provisions may deserve consideration.

67. First, UNHCR can target the cessation clauses at a specific group of refugees within a larger refugee population by specifying precise dates and particular changes in circumstances. UNHCR has already employed this approach for Ethiopian refugees and succeeded in identifying other groups of refugees within larger refugee populations that may no longer require international protection. Targeting specific groups of refugees still raises the risk of jeopardizing the status or claims of asylum-seekers residing in some host countries. However, given the protracted nature of many refugee emergencies and the complexity of post-conflict situations, it may represent the most viable approach to the application of Articles I.C(5) and (6) by UNHCR in the future.
68. Second, UNHCR can 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.<sup>43</sup> Moreover, as noted earlier, cessation can be declared on an individual basis for refugees whose status has been formally determined as well as those who have been recognized on a *prima facie* basis. UNHCR has occasionally supported the application of Articles I.C(5) and (6) on an individual basis by its own offices as well as countries of asylum. Finally, individual cessation poses less risk of unduly influencing status determination procedures in asylum countries than a declaration of general cessation for an entire group of refugees.
69. The situation involving the residual caseload of Cambodian refugees described above illustrates the potential utility of establishing procedures for individual cessation. In this case, events in the country of origin were insufficient to justify invoking the “ceased circumstances” provisions on a group basis, but also indicated that certain refugees might no longer require international protection. In such situations, UNHCR and/or asylum states may wish to explore the possibility of practicing individual cessation.<sup>44</sup> 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 reexamined in light of changes in circumstances in the country of origin. Refugees who may have their status withdrawn through the application of Articles I.C(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. UNHCR can then proceed to reexamine the status of those who choose not to come forward and apply the “ceased circumstances” provisions, as appropriate, to these cases. Individuals who no

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<sup>43</sup> Some have argued that a proper interpretation of Articles I.C(5) and (6) suggests that the “ceased circumstances” provisions should *only* be applied individually. See Arthur Helton, “The Relationship of Human Rights and Humanitarian law to the Cessation Clauses of the 1951 Convention relating to the Status of Refugees: Withdrawal of International Protection,” unpublished paper.

<sup>44</sup> Such an opportunity may now exist, for example, in the case of Yemeni refugees in Egypt who fled the civil war of April/July 1994.

longer require international protection can then be given time to regularize their status and/or receive voluntary repatriation assistance.

70. Third, the cessation clauses can be employed as part of a comprehensive response to a mass influx situation. These emergencies merit separate consideration because of their distinct scope and nature. However, 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 *prima facie* recognition of refugees in these situations. To do so, UNHCR should outline the basis for *prima facie* recognition at the outset of an emergency (as it did in the Bosnia crisis). It should then commit to review the status of *prima facie* 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. Drawing such an explicit linkage between recognition and cessation can demonstrate to asylum countries that refugee status in situations of mass influx will be temporary.
71. Additional guidelines for the use of Articles I.C(5) and (6) may also need to be formulated. The authors of the 1951 Convention originally conceived of a “fundamental” change in circumstances as a transition to democracy in the country of origin.<sup>45</sup> Subsequent UNHCR and Excom 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.
72. A broader conception of “fundamental” change may be necessary, however, to facilitate the pursuit of more “flexible” approaches to the “ceased circumstances” provisions. As the cases of Bosnia and Cambodia illustrate, some refugees may no longer require international protection as a consequence of changes in circumstances that are more limited in their nature and scope. These situations suggest that targeted or individual cessation involves broadening the concept of “fundamental” change to include developments throughout the society of the country of origin. In Bosnia, UNHCR noted that conditions in particular municipalities may have improved sufficiently in terms of the physical security, economic welfare, and the legal protection of minority returnees to obviate their need for international protection. In Cambodia, UNHCR focused on improvements in the treatment of individuals belonging to a particular political party. Sub-national indicators such as these will vary across cases, but they may still be useful for ascertaining the significance of developments in a country of origin. These factors should then be weighed, in addition to the “general human rights situation” and progress toward democracy, to determine the applicability of the “ceased circumstances” provisions, especially on a targeted or individual basis.
73. The *Handbook* stipulates that any changes in circumstances used to justify the application of the cessation clauses must go beyond the immediate facts of an individual’s fear of persecution. Broadening the concept of “fundamental” change in the manner recommended

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<sup>45</sup> See UN Doc/Conf.2/SR28 19 July 1951.

above does not, however, require violating this provision. The cases examined above suggest that, between this threshold and the developments at the national level that have traditionally formed the basis of a “fundamental” change in circumstances, there lie intermediate — yet sufficiently far-reaching — events that may justify the application of Articles I.C(5) and (6) to specific groups or individuals. They also indicate that such events should be taken into consideration, in addition to the factors already identified by UNHCR and Excom guidelines, in assessing conditions in the country of origin.

74. The *Handbook* also asserts that the status of refugees should not be subject to arbitrary or frequent review. Measures can be taken, however, to ensure that the development of additional standards and procedures for administering the “ceased circumstances” provisions does not infringe upon this principle. For example, applying the cessation clauses to particular groups of refugees and/or to individuals requires information about conditions throughout the society of the country of origin as well as an overall assessment of the situation at the national level. UNHCR can therefore recommend that the practice of targeted or individual cessation be limited to cases in which comprehensive, detailed information about the country of origin is available. In addition, UNHCR may offer to assist asylum states with obtaining such information to ensure that the “ceased circumstances” clauses are properly employed.
75. 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 Articles I.C(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.
76. Finally, UNHCR should further develop existing guidelines regarding the application of Articles I.C(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 notion of “fundamental” change as a transition to democracy is inadequate. 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 sub-national 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, 1973 and Mozambique, 1996) compared to situations of democratic transition (such as Chile in 1994).
77. 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, affecting large groups of people (which then accounts for the correlation between civil wars and the mass influx of refugees). However, such persecution may be less systematic and institutionalized than in the case of state-sponsored repression. Such 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.

78. In formulating additional guidelines for evaluating post-conflict situations, UNHCR may wish to draw on its experience in Sudan (1973) and Mozambique (1996) as well as 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.<sup>46</sup>

## **V. Conclusion: Future Directions for the Application of Articles I.C(5) and (6)**

79. This study has reviewed UNHCR guidelines, procedures, and practice regarding the “ceased circumstances” provisions of the cessation clauses. It has found that UNHCR has interpreted Articles I.C(5) and (6) in a restrictive manner and adopted a cautious approach toward their application. Such caution, however, has not precluded UNHCR from actively considering the use of the “ceased circumstances” provisions in a timely manner when positive developments have occurred in refugee-sending countries. Moreover, UNHCR has taken a broader approach toward the application of the “ceased circumstances” provisions than its declarations of general cessation alone indicate. However, more flexible methods of practicing cessation (such as targeted and individual cessation) and the guidelines necessary to regulate these approaches require further development. There is some evidence to suggest that new ways of employing the cessation clauses can strengthen support for the international refugee regime. In addition, some of these methods can be structured to mitigate the risk of undermining international protection. Nevertheless, cessation should continue to be administered in cautious manner. Perhaps most importantly, however, different approaches to the practice of Articles I.C(5) and (6) are needed because of the changing nature of refugee situations confronting the international community.

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<sup>46</sup> Barbara Walter, “The Critical Barrier to Civil War Settlement.” *International Organization*, 51, 3, (Summer 1997), pp. 335-364.

**Table 1. “Ceased Circumstances” Cessation Clause Cases**

<b>Country of Origin</b>	<b>Date of IOM/FOM</b>	<b>IOM No.</b>	<b>Nature of Fundamental Change</b>
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
Sao Tome	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