

***Amicus curiae* of the United Nations High Commissioner for Refugees¹
in case number UM 2839-20, X
against the Migration Agency before the Migration Court of Appeal
(Kammarrätten i Stockholm, Migrationsöverdomstolen)**

UNHCR's mandate and role

1. The Office of the United Nations High Commissioner for Refugees (hereafter “UNHCR”) has been entrusted by the United Nations General Assembly with a mandate to provide international protection to refugees and, together with Governments, seek permanent solutions for refugees.² According to its Statute, UNHCR fulfils its mandate *inter alia* by “[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto[.]”³ This supervisory responsibility is reiterated in Article 35 of the 1951 Convention and Article II of the 1967 Protocol relating to the Status of Refugees (hereafter collectively referred to as “1951 Convention”).⁴
2. UNHCR’s supervisory responsibility is exercised in part by the issuance of interpretative guidelines on the meaning of provisions and terms contained in international refugee instruments, in particular the 1951 Convention.⁵ UNHCR also provides information on a regular basis to decision-makers and courts of law concerning the proper interpretation and application of the provisions in the 1951 Convention. The status of UNHCR statements and publications, including in particular the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (hereafter “UNHCR Handbook”) and subsequent Guidelines on International Protection, as normative guides, have been acknowledged by numerous Courts and have been found by the Supreme Courts of Canada, the United Kingdom, and of the United States to be a “highly relevant authority,”⁶ “highly persuasive authority,”⁷ providing “significant guidance”⁸ and “should be accorded considerable weight.”⁹

¹ This amicus curiae does not constitute a waiver, express or implied, of any privilege or immunity which UNHCR and its staff enjoy under applicable international legal instruments and recognized principles of international law. See, UN General Assembly, Convention on the Privileges and Immunities of the United Nations, 13 February 1946, www.refworld.org/docid/3ae6b3902.html.

² UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees, 14 December 1950, A/RES/428(V), www.refworld.org/docid/3ae6b3628.html (hereafter “UNHCR Statute”).

³ UNHCR Statute, para. 8(a).

⁴ UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, www.refworld.org/docid/3be01b964.html. According to Article 35 (1) of the 1951 Convention, UNHCR has the “duty of supervising the application of the provisions of the Convention”.

⁵ Such guidelines include UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, April 2019, HCR/1P/4/ENG/REV. 4, www.refworld.org/docid/5cb474b27.html.

⁶ Chan v. Canada (M.E.I.), [1995] 3 S.C.R. 593, Canada: Supreme Court, 19 October 1995, www.refworld.org/cases.CAN_SC.3ae6b68b4.html, paras. 46 and 119; Canada (Attorney General) v. Ward, [1993] 2 S.C.R. 689, Canada: Supreme Court, 30 June 1993, www.refworld.org/cases.CAN_SC.3ae6b673c.html, pp. 713-714.

⁷ R v. Secretary of State for the Home Department, Ex parte Adan, United Kingdom: House of Lords (Judicial Committee), 19 December 2000, www.refworld.org/cases.GBR_HL.3ae6b73b0.html.

⁸ Immigration and Naturalization Service v. Cardoza-Fonseca, 480 U.S. 421; 107 S. Ct. 1207; 94 L. Ed. 2d 434; 55 U.S.L.W. 4313, U.S. Supreme Court, 9 March 1987, www.refworld.org/cases.USSCT.3ae6b68d10.html.

⁹ Al-Sirri (FC) (Appellant) v Secretary of State for the Home Department (Respondent), [2012] UKSC 54, United Kingdom: Supreme Court, 21 November 2012, www.refworld.org/cases.UK_SC.50b89fd62.html, para. 36. Similarly, the Handbook has been found “particularly helpful as a guide to what is the international understanding of the Convention



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3. UNHCR's supervisory responsibility has also been reflected in European Union (hereafter "EU") law, including by way of a general reference to the 1951 Convention in Article 78(1) of the Treaty on the Functioning of the EU (hereafter "TFEU").¹⁰ Secondary EU legislation also emphasizes the role of UNHCR.¹¹
4. Subsequent to the adoption of the UNHCR Statute, the United Nations General Assembly and Economic and Social Committee have extended UNHCR's competence *ratione personae*, to, *inter alia*, encompass beneficiaries of complementary, including subsidiary, forms of protection (in Sweden "alternativt skyddsbehövande"). In such cases, the institutional competence of UNHCR is based on paragraph 9 of its Statute.¹² UNHCR wishes to ensure that subsidiary protection complements and does not undermine refugee status under the 1951 Convention. UNHCR thus has an interest in seeing that State practice related to subsidiary protection adequately reflects international standards, in order to avoid protection gaps.
5. UNHCR provides information on a regular basis to decision-makers and courts of law concerning the interpretation and application of the provisions in the 1951 Convention and has a history of third-party interventions in many national and regional jurisdictions. The Office is often approached directly by courts or other interested parties to obtain UNHCR's "unique and unrivalled expertise"¹³ on particular legal issues. UNHCR has, for example, been granted intervener status by the European Court of Human Rights (hereafter "ECtHR")¹⁴ and has appeared as a third party before the Court of Justice of the EU

obligations, as worked out in practice". R v. Secretary of State for the Home Department, Case No: FC3 96/7394/D, United Kingdom: Court of Appeal (England and Wales), 11 July 1997, www.refworld.org/cases/GBR_CA_CIV_3ae6b72c0.html, para. 11.

¹⁰ EU, Consolidated version of the Treaty on the Functioning of the European Union, 13 December 2007, OJ C 115/47 of 9.05.2008, www.unhcr.org/refworld/docid/4b17a07e2.html.

¹¹ For instance, Recital 22 of the recast Qualification Directive states that consultations with UNHCR "may provide valuable guidance for Member States when determining refugee status according to Article 1 of the Geneva Convention". European Union: Council of the European Union, Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), 20 December 2011, OJ L 337; December 2011, pp. 9-26, www.refworld.org/docid/4f197df02.html (hereafter "EU Qualification Directive"). The supervisory responsibility of UNHCR is specifically articulated in Article 29(c) of Directive 2013/32/EU on common procedures for granting and withdrawing international protection (recast), which obliges Member States to allow UNHCR "to present its views, in the exercise of its supervisory responsibilities under Article 35 of the Geneva Convention, to any competent authorities regarding individual applications for asylum at any stage of the procedure." European Union: Council of the European Union, Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), 29 June 2013, OJ L 180/60 -180/95; 29.6.2013, 2013/32/EU, www.refworld.org/docid/51d29b224.html.

¹² UNHCR, Statute: "The High Commissioner shall engage in such additional activities, including repatriation and resettlement, as the General Assembly may determine, within the limits of the resources placed at his disposal." para. 9. See also, UNHCR statement in relation to *Elgafaji v. Staatssecretaris van Justitie* before the Court of Justice of the European Union, January 2008, www.refworld.org/docid/479df7472.html; UNHCR, Note on International Protection, submitted to the 45th session of the Executive Committee of the High Commissioner's Programme, UN Doc. A/AC.96/830, 7 September 1994, www.refworld.org/docid/3f0a935f2.html, paras. 31-32 and note 8.

¹³ R (on the application of EM (Eritrea)) v. Secretary of State for the Home Department, [2014] UKSC 12, United Kingdom: Supreme Court, 19 February 2014, www.refworld.org/cases/UK_SC_5304d1354.html, para. 72.

¹⁴ UNHCR intervention before the European Court of Human Rights in the case of *M.S.S. v. Belgium and Greece*, June 2010, www.refworld.org/docid/4c19e7512.html. UNHCR intervention before the European Court of Human Rights in the case of *Abdolkhani and Karimnia v. Turkey*, January 2009, Application No. 30471/08, www.refworld.org/docid/4991ad9f2.html.

(hereafter “CJEU”).¹⁵ UNHCR has also intervened before various domestic courts, such as the US Supreme Court, the UK Supreme Court and former House of Lords, the German Federal Constitutional Court, the Supreme Court of Canada as well as the Supreme Court in Norway. The Migration Court of Appeal in Sweden has also accepted UNHCR’s written submissions.¹⁶

Questions addressed in this submission

6. In light of its mandate as outlined above, UNHCR wishes to provide its views on the question of cessation of international protection and whether a change in personal circumstances, such as, for example, the applicant’s age, is encompassed by the “ceased circumstances” cessation clauses contained in Article 1C (5) and (6) of the 1951 Convention. In doing so, and recalling that the 1951 Convention needs to be taken into account for the purpose of interpreting the relevant domestic legal provisions as well as Articles 16 and 19 of the EU Qualification Directive concerning the loss of subsidiary protection status, UNHCR submits that:
 - (1) the application of the “ceased circumstances” cessation clauses contained in Article 1 C (5) and (6) of the 1951 Convention requires a holistic assessment of the whole situation that led to the recognition of refugee status, as well as the availability of protection in the country of origin. While personal circumstances will play a role in that assessment, “ageing-out”, taken alone, should not lead to cessation.
 - (2) the burden of proof rests on the country of asylum to show that the circumstances which gave rise to the protection needs have ceased.
7. UNHCR also provides information about the current security and human rights situation in Kabul and in Afghanistan more broadly.
8. UNHCR only addresses issues of legal principle arising from these questions and does not address or comment on the particular facts of the present case or positions taken by the parties.

The relevance of the 1951 Convention to cessation of subsidiary protection

¹⁵ UNHCR intervention before the CJEU in the cases of *N.S. v. Secretary of State for the Home Department* in United Kingdom and *M.E. and Others v. Refugee Application Commissioner and the Minister for Justice, Equality and Law Reform* in Ireland, 1 February 2011, www.refworld.org/docid/4d493e822.html; UNHCR intervention before the CJEU in the cases of *Minister voor Immigratie en Asiel v. X, Y and Z*, 28 September 2012, www.refworld.org/docid/5065c0bd2.html; Written Observations of the United Nations High Commissioner for Refugees in the cases of *A and Others* (C-148/13, 149/13 and 150/13), 21 August 2013, www.refworld.org/docid/5215e58b4.html.

¹⁶ See, e.g., UNHCR, *Amicus curiae of the United Nations High Commissioner for Refugees* in case number UM 1970-17 before the Swedish Migration Court of Appeal (Migrationsöverdomstolen, Kammarrätten) Stockholm, 11 August 2017, www.refworld.org/docid/5b963dde4.html. Case no. MIG 2018:7, Sweden: Migration Court of Appeal, 25 April 2018, www.domstol.se/globalassets/filer/domstol/migrationsoverdomstolen/avgoranden/2018/referat-i-mal-nr-um-1970-17.pdf.



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9. While UNHCR acknowledges that refugee status and subsidiary protection status are legally distinct, the loss of subsidiary protection status may, in UNHCR's view, by analogy usefully be guided by the same principles as those applicable to the termination of refugee status. The wording and the structure of Articles 16 and 19 concerning the loss of subsidiary protection have similarities with Articles 11 and 14 of the EU Qualification Directive relating to the loss of refugee status, which in turn draws on Article 1C (5) of the 1951 Convention:¹⁷

Article 1 C (5) of the 1951 Convention provides that the Convention shall cease to apply to any person falling under the terms of section A if “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”

Article 11 (e) of the EU Qualification Directive sets out that a person shall cease to be a refugee where he or she “can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of nationality”.¹⁸

Article 16 (1) of the EU Qualification Directive provides that a person “shall cease to be eligible for subsidiary protection when the circumstances which led to the granting of subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required”.¹⁹

10. The CJEU has concluded that “the requirements arising under the 1951 Convention must be taken into account for the purpose of interpreting Article 19 of [the EU Qualification] Directive”. As noted by the Court, in this context, documents from UNHCR “are particularly relevant in the light of the role conferred on the UNHCR by the [1951] Convention.”²⁰ The Court also found that “it is apparent from Article 78(1) TFEU²¹ that the common policy which the EU is to develop on asylum, subsidiary protection and temporary protection must be in accordance with the [1951] Convention.”²² Moreover, the

¹⁷ The similarities were acknowledged by the CJEU in *Mohammed Bilali v. Bundesamt für Fremdenwesen und Asyl*, (hereafter “*Bilali*”) which stated that “it must be noted that the EU legislature drew on the rules applicable to refugees in order to define the causes of loss of subsidiary protection status. The wording and the structure of Article 19 of Directive 2011/95, concerning the loss of subsidiary protection status, have similarities with Article 14 of that directive, relating to the loss of refugee status, which in turn draws on Article 1(C) of the Geneva Convention.” C-720/17, CJEU, 23 May 2019, www.refworld.org/docid/5f607b0b4.html, para. 56.

¹⁸ Article 14 (1) of the EU Qualification Directive provides that “Member States shall revoke, end or refuse to renew the refugee status of a third-country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body if he or she has ceased to be a refugee in accordance with Article 11.

¹⁹ Article 19 (1) of the EU Qualification Directive provides that “Member States shall revoke, end or refuse to renew the subsidiary protection status of a third-country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body if he or she has ceased to be eligible for subsidiary protection in accordance with Article 16.”

²⁰ *Bilali*, para. 57 and citing the judgment *Zuheyr Frayeh Halaf v Darzhavna agentsia za bezhantsite pri Ministerskia savet*, 30 May 2013, C-528/11, para. 44.

²¹ *Treaty on the Functioning of the European Union*, Consolidated version of the Treaty on the Functioning of the European Union, 26 October 2012, OJ L. 326/47-326/390; 26.10.2012, www.refworld.org/docid/52303e8d4.html.

²² *Bilali*, para. 54 and citing the judgment of 13 September 2018, See also, *Shajin Ahmed v. Bevándorlási és Menekültügyi Hivatal*, C-369/17, CJEU, 13 September 2018, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=214394&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=14909518>, para. 37.

Court has recalled that the EU legislature drew on the rules applicable to refugees in order to define the causes of loss of subsidiary protection status.²³ This is consistent with Article 18 of the Charter of Fundamental Rights of the EU,²⁴ according to which the right to asylum must be guaranteed with due respect for the rules of the 1951 Convention.

11. This understanding is further supported by the fact that the criteria that the change(s) be of a “significant and non-temporary nature” as set out in the EU Qualification Directive is very similar to the criteria of “fundamental and durable” relevant under the 1951 Convention and as explained in the UNHCR Guidelines on International Protection No. 3: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention (hereafter “Cessation Guidelines”).²⁵
12. The above requirements are also reflected at the domestic level. For example, it follows from the preparatory works to the *Swedish Aliens Act*, Chapter 4, Section 5(a), that “significant and non-temporary changes” has the same meaning as in Chapter 4, Section 5 p. 5, which relates to cessation of refugee status.²⁶ The preparatory works²⁷ further explain that when interpreting what constitutes “compelling reasons” in the second paragraph of Chapter 4, Section 5(a) on subsidiary protection status, weight should be afforded to UNHCR Cessation Guidelines.
13. In light of the above, UNHCR respectfully submits that beneficiaries of subsidiary protection, just as refugees, may lose their status only if certain conditions are met and that these criteria are the same in character as provided for by Article 1C (5) of the 1951 Convention.

The scope of the “ceased circumstances” cessation clause in Article 1C (5)

14. The 1951 Convention recognizes that refugee status ends under certain clearly and exhaustively defined conditions. Article 1C sets out provisions for cessation of refugee status where refugee status is no longer needed or justified. In line with the *Vienna Convention on the Law of Treaties*,²⁸ when interpreting the cessation clauses, it is important to bear in mind the broad durable solutions context of refugee protection informing the object and purpose of the 1951 Convention, including the cessation clauses contained in Article 1C (5). “[C]essation practices should be developed in a manner consistent with the goal of durable solutions”²⁹ and not result in persons being compelled to return to a volatile

²³ *Bilali*, para. 55.

²⁴ European Union: Council of the European Union, Charter of Fundamental Rights of the European Union (2007/C 303/01), 14 December 2007, C 303/1, www.refworld.org/docid/50ed4f582.html.

²⁵ UNHCR, Guidelines on International Protection No. 3: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (hereafter “UNHCR Cessation Guidelines”), 10 February 2003, HCR/GIP/03/03, www.refworld.org/docid/3e50de6b4.html.

²⁶ Prop. 2009/10:31, <https://data.riksdagen.se/fil/57A5ABA8-9A09-4FF0-9781-4B5CD331DF8E>, pp. 123f. and 264.

²⁷ Prop. 2013/14:248, www.regeringen.se/49bb7b/contentassets/2300bc2decd1483e8f8efc8e67bf51b30/genomforande-av-det-omarbetade-skyddsgrundsdirektivet-prop.-201314248, p. 40.

²⁸ *Vienna Convention on the Law of Treaties*, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331: www.refworld.org/docid/3ae6b3a10.html, Article 31(1).

²⁹ UNHCR, Cessation Guidelines, para. 6. “Human rights factors should be taken into account as well as previously acquired rights of refugees, particularly in regard to those who, due to their long stay in the country of asylum, have

situation, as this would undermine the likelihood of a durable solution.³⁰ Once a person's status as a refugee has been determined, it is maintained unless he or she comes within the terms of one of the cessation clauses.³¹

15. As stressed in the UNHCR Handbook: “the cessation clauses are negative in character and exhaustively enumerated. The clauses should therefore be interpreted restrictively, and no other reasons may be adduced by way of analogy to justify the withdrawal of refugee status”.³² UNHCR underlines in this respect the grave consequences flowing from the unjustified or premature application of the cessation clauses, which includes the loss of protection for persons previously recognized as in need of international protection, “depriving them of existing rights and possibly resulting in their return to a State in which they experienced persecution”³³ or other serious harm, which could lead to further displacement, as well as risks to life and personal security.³⁴ This is also consistent with the principles of legal certainty and legitimate expectations.³⁵
16. UNHCR would also like to recall that cessation requires a specific assessment of the nature of the changes, which goes beyond the inclusion criteria contained in Article 1A of the 1951 Convention. The cessation criteria of Article 1C (5), including the availability of protection (as discussed below in paragraphs 18-28), constitute distinct criteria and are to be understood in a broad sense which is not limited to protection against persecution but rather encompasses all relevant factors and circumstances, be these armed conflict, serious violations of human rights, severe discrimination against minorities, or the absence of good governance.³⁶ Furthermore, while in UNHCR's view the application of the ceased circumstances cessation clauses on an individual basis is not precluded, it should not be done for the purposes of a re-hearing *de novo* or a re-assessment of the refugee's well-founded fear of persecution.³⁷

developed strong family, social and economic links there.” UNHCR, Note on Cessation Clauses, 30 May 1997, EC/47/SC/CRP.30: www.refworld.org/docid/47fdaf1d.html (hereafter “Note on Cessation”), para. 9.

³⁰ UNHCR statement in relation to Salahadin Abdulla and Others v. Bundesrepublik Deutschland before the Court of Justice of the European Union, August 2008, C-175/08; C-176/08; C-178/08 & C-179/08: www.refworld.org/docid/48a2f0782.html, (hereafter “UNHCR statement in relation to Salahadin Abdulla and Others”), p. 15.

³¹ UNHCR, Handbook, para. 112.

³² UNHCR, Handbook, para. 116.

³³ Joan Fitzpatrick and Rafael Bonoan, Cessation of Refugee Protection, in *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (edited by Erika Feller, Volker Türk and Frances Nicholson), Cambridge University Press, June 2003, www.refworld.org/docid/470a33bc0.html, (hereafter “Fitzpatrick, Cessation of Refugee Protection”), p. 542.

³⁴ UNHCR, Note on Cessation, paras. 8 and 40.

³⁵ UNHCR, Cancellation of Refugee Status, March 2003, PPLA/2003/02, www.refworld.org/docid/3f4de8a74.html, para. 12. The principles of legal certainty and legitimate expectations are also among the fundamental principles of the EU, see for example, *ISD Polska and Others v Commission*, C-369/09 P, CJEU, 24 March 2011, <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-369/09%20P>, para. 122.

³⁶ UNHCR, Handbook, para. 135. See also, UNHCR statement in relation to Salahadin Abdulla and Others, note 27 *supra*.

³⁷ UNHCR, Cessation Guidelines, para. 18. “[C]eased to exist” is a more demanding standard than risk below a well-founded fear; and the additional requirement of ability to access protection limits cessation to cases in which there is evidence of access to an affirmative relationship with the home country, not simply the absence of a negative.” J.C. Hathaway and M. Foster, *The Law of Refugee Status* (Cambridge University Press, 2nd edn, 2014), p. 478.

17. The application of cessation in Article 1C (5)³⁸ is based on the consideration that international protection is no longer justified because

“the circumstances in connexion with which he [she] has been recognized as a refugee have ceased to exist, [he (she) can no longer] continue to refuse to avail himself [herself] of the protection of the country of his [her] nationality”.

Thus, the core of the ceased circumstances clauses lies in two parts: first the circumstances in connexion with which he or she has been recognized have ceased to exist, and second, the person is able to access protection in their country of origin.

“The circumstances in connexion” with which s/he has been recognized as a refugee have ceased to exist

18. Despite the limited guidance provided by the *travaux préparatoires* of the 1951 Convention,³⁹ there is a long-standing consensus across many jurisdictions and among leading refugee scholars that for the clause to be applicable, there must have been a change in the refugee's country of origin which is fundamental, durable, and effective. As reflected in paragraph 135 of the UNHCR Handbook:

“Circumstances” refer to fundamental changes in the country, which can be assumed to remove the basis of the fear of persecution. A mere – possibly transitory – change in the facts surrounding the individual refugee’s fear, which does not entail such major changes of circumstances, is not sufficient to make this clause applicable. A refugee’s status should not in principle be subject to frequent review to the detriment of his sense of security, which international protection is intended to provide.

19. UNHCR’s Executive Committee (ExCom)⁴⁰ Conclusion No. 69 (XLIII) similarly refers to an assessment of the changes in the country of origin:

[I]n taking any decision on application of the cessation clauses based on “ceased circumstances”, States must carefully assess the fundamental character of the changes in the country of nationality or origin, including the general human rights situation, as well as the particular cause of fear of persecution, in order to make sure in an objective and verifiable way that the situation which justified the granting of refugee status has ceased to exist.

... [A]n essential element in such assessment by States is the fundamental, stable and durable character of the changes, making use of appropriate information

³⁸ The cessation clauses of Article 1C (1) – (4) relate to a change in personal circumstances of the refugee, brought about by the refugee's own act, and which results in the acquisition of national protection so that international protection is no longer necessary. These clauses are not addressed in the present *Amicus Curiae*.

³⁹ Apart from a reference to the restoration of democracy, the *travaux préparatoires* of the 1951 Convention do not shed much light on the drafters’ intended meaning to be given to the terms in Article 1C (5).

⁴⁰ ExCom Conclusions are adopted by consensus by the States which are Members of the Executive Committee and can therefore be considered as reflecting their understanding of legal standards regarding the protection of persons in need of international protection. At present, 106 States are Members of the Executive Committee, including Sweden which joined in 1958: www.unhcr.org/excom/announce/40112e984/excom-membership-date-admission-members.html.

available in this respect, inter alia, from relevant specialized bodies, including particularly UNHCR.⁴¹

20. Furthermore, the UNHCR Cessation Guidelines, which were developed in consultation with State Parties,⁴² as well as numerous other documents, have also been developed based on the common understanding at the time that “circumstances” refer to changes in the country of origin.⁴³ Subsequent emerging practice, however, indicate that States are adopting both wide and restrictive interpretations of “ceased circumstances”, some encompassing personal circumstances while others do not.⁴⁴
21. In UNHCR’s view, it follows from Article 1C (5) that the personal circumstances cannot be ignored in the context of cessation since they have contributed to the recognition of the need for international protection. In fact, the circumstances in connection with which a person has been recognised as a refugee are likely to be a combination of the general conditions in the country of origin and his or her personal circumstances or characteristics.⁴⁵
22. While focusing on country conditions, the UNHCR Handbook and Cessation Guidelines do not prevent personal circumstances from being taken into account, bearing in mind the context in which the cessation clauses were drafted and the evolution of State practice, i.e. to apply Article 1C (5) in individual cases. As noted in the UNHCR Cessation Guidelines:

Where indeed a “particular cause of fear of persecution” has been identified, the elimination of that cause carries more weight than a change in other factors. Often, however, circumstances in a country are inter-linked, be these armed conflict, serious violations of human rights, severe discrimination against minorities, or the absence of good governance, with the result that resolution of the one will tend to lead to an improvement in others. All relevant factors must therefore be taken into consideration.⁴⁶

23. In UNHCR’s view, personal circumstances may play a role in the context of cessation. In cases of a refugee or beneficiary of subsidiary protection who has turned 18 years of age since protection was initially granted, and where the young age of the applicant was a

⁴¹ UNHCR ExCom Conclusion No. 69 (XLIII), Cessation of Status (1992); UNHCR, Conclusions on International Protection Adopted by the Executive Committee of the UNHCR Programme 1975 – 2017 (Conclusion No. 1 – 114), October 2017, HCR/IP/3/Eng/REV. 2017: www.refworld.org/docid/5a2ead6b4.html.

⁴² Fitzpatrick, Cessation of Refugee Protection, note 30 supra, p. 542.

⁴³ See, UNHCR, Interpreting Article 1 of the 1951 Convention Relating to the Status of Refugees, April 2001: www.refworld.org/docid/3b20a3914.html; UNHCR’s Discussion Note on the Application of the “ceased circumstances” Cessation Clauses in the 1951 Convention: www.refworld.org/docid/3ac68ccf10.html; Current Issues in Cessation of Protection Under Article 1C of the 1951 Refugee Convention and Article I.4 of the 1969 OAU Convention [Global Consultations on International Protection/Second Track], 1 May 2001: www.unhcr.org/3b3889c28.pdf.

⁴⁴ See, e.g., *SSHD v. Appellant KN*, Upper Tribunal (Immigration and Asylum Chamber), <https://tribunalsdecisions.service.gov.uk/utiac/rp-00077-2016>, and *Alfarsy v. Canada* (Minister of Citizenship and Immigration), [2003] F.C.J. No. 1856; 2003 FC 1461, Canada: Federal Court, 12 December 2003: www.refworld.org/cases.CAN_FC.412f3d244.html, and *UK - The Secretary of State for the Home Department v MM* (Zimbabwe), 22 June 2017: www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWCA/Civ/2017/797.html.

⁴⁵ See, *UK - The Secretary of State for the Home Department v MM* (Zimbabwe), 22 June 2017: www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWCA/Civ/2017/797.html, paras. 22-24. See also, *Alfarsy v. Canada* (Minister of Citizenship and Immigration), [2003] F.C.J. No. 1856; 2003 FC 1461, Canada: Federal Court, 12 December 2003: www.refworld.org/cases.CAN_FC.412f3d244.html.

⁴⁶ UNHCR, Cessation Guidelines, para. 11.

relevant factor for the granting of protection, it is important to note that the protection risks which gave rise to the granting of protection status do not necessarily end because childhood ends. The consequences of having previously belonged to a risk group might not end even if the key factor of that identity (that is, the applicant's status as a minor) is no longer applicable.⁴⁷

24. However, a change in the personal circumstances cannot be considered in isolation and needs to be considered holistically together with a careful assessment of the situation in the country of origin as a whole.⁴⁸ Status can be ceased only when the situation in the country of origin – together with the personal circumstances – have led to changes that are *fundamental and durable*. Before it can be said that the circumstances have ceased, an assessment of the key elements of the extent and durability of the change is required⁴⁹ and in doing so, it is important to take into account the fluctuating character of many contemporary situations of armed conflict and violence.⁵⁰ Fundamental changes are considered as effective only if they remove the basis of the fear of persecution; therefore, such changes must be assessed in light of the particular cause of fear, so as to ensure that the situation which warranted the grant of international protection has ceased to exist.⁵¹

25. Similarly, when interpreting Article 16 of the Qualification Directive, the Court of Justice of the EU has concluded that changes in circumstances generally arise from a change in the factual circumstances in the country of origin. However, personal circumstances of the applicant may be considered.⁵²

Can no longer refuse to avail themselves of the protection of their country of nationality

26. As stated above, the second part of a cessation assessment under Article 1C (5) requires an assessment of whether the person is able to access protection in their country of origin, as international protection can only end when that protection is available. As highlighted in UNHCR's Cessation Guidelines:

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

⁴⁷ UNHCR, Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, 22 December 2009, HCR/GIP/09/08: www.refworld.org/docid/4b2f4f6d2.html, para. 51.

⁴⁸ UNHCR, ExCom Conclusion No 69(a); UNHCR Cessation Guidelines, para. 11; UNHCR, Handbook, para. 135.

⁴⁹ UNHCR, Cessation Guidelines, paras. 8-16.

⁵⁰ UNHCR, *Guidelines on International Protection No. 12: Claims for refugee status related to situations of armed conflict and violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees and the regional refugee definitions*, 2 December 2016, HCR/GIP/16/12: www.refworld.org/docid/583595ff4.html, para. 25.

⁵¹ UNHCR, Note on Cessation, para. 19.

⁵² *Bilali*, paras. 49-52.

system of law and justice, as well as the existence of adequate infrastructure to enable residents to exercise their rights, including their right to a basic livelihood.⁵³

UNHCR’s interpretation of this concept similarly requires not only safety from persecution but also the possibility for the individual to exercise their rights, including their right to a basic livelihood.⁵⁴ UNHCR provides updated country of origin information to address this below at paragraphs 32-33.

27. As with all provisions which take away rights or status, the cessation clauses must be carefully applied, after a thorough assessment, to ensure that in fact protection is no longer necessary.⁵⁵ Their negative character, as discussed above at paragraph 15, warrants a restrictive construction of the term “circumstances” in Article 1 C(5), which, in UNHCR’s view, prevents the cessation of refugee status solely on the basis of a change in personal circumstances and without assessing the fundamental character of the changes in the country of origin.
28. In light of the above, UNHCR respectfully submits that a change in personal circumstances must be assessed in relation to circumstances in connection with which the person has been recognized as a refugee, as well as the effectiveness and availability of protection. Protection can be ceased only when the personal circumstances *together* with the situation in the country of origin have led to changes that are *fundamental and durable*. Therefore, “ageing-out”, taken alone, should not lead to cessation.

The burden of proof for showing that the circumstances have ceased

29. UNHCR respectfully submits that it is the State which has granted subsidiary protection status that must demonstrate that the person concerned has ceased to be in need of international protection. In this regard, the usual standard must continue to apply, that is, the burden of proving an allegation rests on the one who asserts it. As stated in the UNHCR Handbook, it is a general legal principle that the burden of proof lies on the person submitting a claim.⁵⁶ In other words, the burden of proof rests on the country of asylum to demonstrate that the criteria for cessation are met.
30. This would also be consistent with Article 16 (4) of the EU Qualification Directive which provides that, without prejudice to the duty of the third-country national or stateless person

⁵³ UNHCR, Cessation Guidelines, para. 15.

⁵⁴ UNHCR, Cessation Guidelines, para. 15. See also, UNHCR statement in relation to Salahadin Abdulla and Others: “The context and the object and purpose of international protection demonstrate that the effective protection required for applying the “ceased circumstances” clause encompasses not only protection against persecution but also respect for human rights, including the right to a basic livelihood, which implies access to a subsistence minimum.”, p. 14.

⁵⁵ UNHCR, ExCom Conclusion No. 69, Preamble, para. 4.

⁵⁶ UNHCR, Handbook, para. 196. See also *F.G. v. Sweden*, Application no. 43611/11, Council of Europe: European Court of Human Rights, 23 March 2016, www.refworld.org/cases_ECHR_56fd485a4.html, para. 127; *J.K. and Others v. Sweden*, Application no. 59166/12, Council of Europe: European Court of Human Rights, 23 August 2016, para. 98; *Bahtiyar Fathi v. Predsedatel na Darzhavna agentsia za bezhantsite*, C-56/17, CJEU, 4 October 2018, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=206431&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1718546>, para. 90, and *E. v. Staatssecretaris van Veiligheid en Justitie*, C-635/17, CJEU, 13 March 2019, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=211670&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1721130>, para. 63ff.

in accordance with Article 4(1) to disclose all relevant facts and provide all relevant documentation at his or her disposal, the Member State which has granted the subsidiary protection status shall, on an individual basis, demonstrate that the person concerned has ceased to be or is not eligible for subsidiary protection in accordance with paragraphs 1, 2 and 3 of Article 19.

Article 1C (5) and Conditions in Afghanistan

31. UNHCR has extensive experience with regard to assessing conditions in countries of origin, including in the context of the application of the “ceased circumstances” clause.⁵⁷ In August 2018, based on a detailed assessment of the security and human rights situation in Afghanistan, UNHCR concluded that “the current situation in Afghanistan does not warrant cessation of refugee status on the basis of Article 1C(5) of the 1951 Convention.”⁵⁸ UNHCR considers that this conclusion continues to apply. The armed conflict in Afghanistan is ongoing and continues to result in large numbers of civilian casualties.⁵⁹ While an agreement was signed in February 2020 between the United States and the Taliban, intra-Afghan negotiations between the Government of Afghanistan and the Taliban only commenced in September 2020 following a six-months delay, with the Taliban refusing to agree to a ceasefire at the outset of the talks.⁶⁰ Both the Taliban and Islamic State continue to carry out attacks against civilians.⁶¹ Other security threats include criminal networks involved in killings and kidnappings.⁶²
32. In terms of the situation in Kabul, in the August 2018 *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan* UNHCR drew attention to specific concerns about the security situation in the city, as well as concerns

⁵⁷ A “ceased circumstances” clause is contained in Article 6(A)(e) of UNHCR’s Statute; supra footnote note 2. On UNHCR’s practice regarding cessation through 1999 see: Fitzpatrick, Cessation of Refugee Protection, p. 502. Since 1999, the ceased circumstances clause has been invoked by UNHCR in four cases: Eritrea (for specific groups), Timor Leste, Tajikistan and Sierra Leone. Since 1973, UNHCR has found it appropriate to invoke the “ceased circumstances” clause on 25 occasions.

⁵⁸ UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, 30 August 2018, www.refworld.org/docid/5b8900109.html, p. 39.

⁵⁹ UNAMA, Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2019, February 2020, www.ecoi.net/en/document/2025015.html; UNAMA, Afghanistan: Protection of Civilians in Armed Conflict Midyear report 1 January - 30 June 2020, July 2020, www.ecoi.net/en/file/local/2034915/unama_poc_midyear_report_2020_-_27_july-revised_10_august.pdf.

⁶⁰ International Crisis Group, Intra-Afghan Negotiations Set to Begin, 11 September 2020, www.crisisgroup.org/asia/south-asia/afghanistan/intra-afghan-negotiations-set-begin; Council on Foreign Relations, A Failed Afghan Peace Deal, 1 July 2020, www.cfr.org/report/failed-afghan-peace-deal.

⁶¹ Voice of America, Kabul Criticizes Taliban for Rejecting Government Teams for Peace Talks, 29 March 2020, www.voanews.com/south-central-asia/kabul-criticizes-taliban-rejecting-government-teams-peace-talks; International Crisis Group, What Will Happen if the U.S. Military Pulls Out of Afghanistan Without a Peace Deal?, 26 March 2020, www.crisisgroup.org/asia/south-asia/afghanistan/what-will-happen-if-us-military-pulls-out-afghanistan-without-peace-deal.

⁶² UNAMA, Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2019, February 2020, www.ecoi.net/en/document/2025015.html, p. 50; Afghanistan Analysts Network, Kabul’s Expanding Crime Scene (Part 2): Criminal Activities and the Police Response, 21 February 2020, www.afghanistan-analysts.org/en/reports/economy-development-environment/kabuls-expanding-crime-scene-part-2-criminal-activities-and-the-police-response/; Inside over, Child Kidnapping in Kabul on the Rise, 11 July 2019, www.insideover.com/society/child-kidnapping-in-kabul-on-the-rise.html; The Diplomat, Afghanistan’s Other War, 4 June 2019, <https://thediplomat.com/2019/06/afghanistans-other-war/>; France 24, Never Mind the War: Kabul Residents Fear Surge in Violent Crime, 22 May 2019, www.france24.com/en/20190522-never-mind-war-kabul-residents-fear-surge-violent-crime.

relating to shelter; access to essential services including potable water, sanitation, health care and education; and access to livelihoods. In December 2019, UNHCR provided an updated overview of relevant information in respect of each these concerns.⁶³ In October 2019 the International Organization for Migration (IOM) concluded that Kabul is “potentially susceptible to social instability induced by large influxes of returnees and IDPs, who face limited access to basic services and livelihoods, jeopardizing reintegration prospects and fueling secondary displacement.”⁶⁴

33. UNHCR, therefore, considers that the conditions for the application of Article 1C (5) of the 1951 Convention with respect to beneficiaries of international protection from Afghanistan are not met. UNHCR’s position, established in UNHCR’s *Eligibility Guidelines for Assessing the International Protection needs of asylum-seekers from Afghanistan* of August 2018, that the current situation in Afghanistan does not warrant cessation of refugee status on the basis of Article 1C(5) of the 1951 Convention thus continues to be valid.⁶⁵

Conclusions

34. In light of the above, in UNHCR’s view, the mere fact of turning 18 years of age cannot in and of itself, without reference to other individual circumstances and the situation in the country of origin, constitute such a significant change that it would lead to cessation of protection status. To justify the application of the “ceased circumstances” cessation clauses, the criteria contained in Article 1C (5) of the 1951 Convention (and the equivalents in the EU Qualification Directive) must be met.
35. In view of prevalent human rights violations in Afghanistan, it cannot be said that ‘fundamental, stable and durable’ changes have taken place and that protection is available. Hence, UNHCR considers it premature to justify the application of Article 1C (5) of the 1951 Convention with respect to beneficiaries of international protection from Afghanistan as the prerequisites for applying the cessation clauses have not been met.

All of which is respectfully submitted.

UNHCR
21 September 2020

⁶³ UNHCR, Afghanistan: Compilation of Country of Origin Information (COI) Relevant for Assessing the Availability of an Internal Flight, Relocation or Protection Alternative (IFA/IRA/IPA) to Kabul, December 2019, www.refworld.org/docid/5def56204.html.

⁶⁴ IOM, Afghanistan: Baseline Mobility Assessment – Summary Results, Round 8, Mar – Jun 2019, 15 October 2019, <https://bit.ly/2Csjqak>, p. 6.

⁶⁵ UNHCR, Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, 30 August 2018, www.refworld.org/docid/5b8900109.html.