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**Non-State Actors of Protection and Refugee
Status: Interpreting Articles 1A(2) and 1C of
the 1951 Refugee Convention**

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1. INTRODUCTION

This paper examines whether and to what extent non-state actors may be considered ‘actors of protection’ for the purpose of qualification and/or cessation of refugee status under the 1951 Convention relating to the Status of Refugees (1951 Convention).¹ The concept of ‘protection’ is central to the refugee definition. It is an essential element of establishing whether an individual has a “well-founded fear of being persecuted” and is unable or unwilling to avail themselves of the protection of their home country under Article 1A(2) of the 1951 Convention,² and is also relevant to assessing the availability of an internal flight alternative (IFA).³ The term also appears in the cessation clauses of Articles 1C(1), (3) and (5), which provide for cessation of refugee status when the individual is deemed to have (re)acquired, or could acquire, the protection of a country.⁴

Whilst the precise contours of the concept of ‘protection’ is subject to debate,⁵ it is well-accepted that the primary ‘actor of protection’ for the purpose of qualification or cessation of refugee status is the State.⁶ More contested is the question of whether non-state actors such as international organisations, inter-governmental military or peacekeeping forces, clans, tribes, civil society or even family, may be considered ‘actors of protection’ in this context. Even if it is accepted that, in principle, (some) non-state actors may constitute ‘actors of protection’ for the purpose of qualification and/or cessation of refugee status, questions remain about the ability of such actors to offer sufficient protection in practice.

The primary focus of this paper is on the interpretation of this aspect of Article 1A(2) and 1C of the 1951 Convention, but significant reference is also made to associated legislation and jurisprudence under the European Union (EU) asylum *acquis*, as the interpretation of this concept in the European

¹ UN General Assembly, 1951 Convention relating to the Status of Refugees, 189 UNTS 137, 28 July 1951.

² Although there is some debate as to the proper location of the ‘protection’ analysis, be it within the concept of being persecuted, analysis of well-founded fear, or the ‘availment’ clause of Art 1A(2). This is beyond the scope of this paper but for more please see James C Hathaway and Hugo Storey ‘What is the meaning of state protection? A debate’ (2016) 28(3) International Journal of Refugee Law 480–92, 484 (hereafter ‘Hathaway and Storey debate’).

³ Whereby an individual may be considered able to avail themselves of protection in another part of their home country, otherwise known as the Internal Protection Alternative (IPA). ‘Home country’ here refers to country of nationality or, in the case of a stateless person, former habitual residence.

⁴ Under Art 1D, it is also one of two bases to deny refugee status to those receiving “protection and assistance” from “organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees”, namely the UN Relief and Works Agency for Palestine (UNRWA). As noted by Hathaway. Hathaway and Storey debate, 484 (Hathaway).

⁵ See part 3 below.

⁶ As Storey notes, “it is clear that the paradigm of the protection envisaged in Article 1A(2) is state protection.” Hugo Storey, *The Refugee Definition in International Law* (OUP 2023), 449. See also European Union Agency for Asylum (EUAA), ‘Qualification for International Protection: Judicial analysis, Second edition’ (2023), 122, available at <https://euaa.europa.eu/publications/judicial-analysis-qualification-international-protection-directive-201195eu>; European Council on Refugees and Exiles (ECRE) et al, ‘Actors of Protection and the Application of the Internal Protection Alternative - European Comparative Report’ (2014), 53, available at <https://www.refworld.org/reference/regionalreport/ecre/2014/en/101862>.

Union (EU) Qualification Directive and Regulation has attracted significant judicial and scholarly attention.⁷

The paper begins by examining arguments for and against the notion that non-state actors may be considered ‘actors of protection’ in principle (part 2), before considering the necessary conditions of such ‘protection’ and the extent to which certain non-state actors are able to meet these requirements in practice (part 3). Despite significant scholarly opinion that non-state actors should not in principle be considered ‘actors of protection’, most states appear to accept this premise in principle. However, acceptance of sufficiency of protection in practice is much rarer, particularly in more recent jurisprudence. Recent legislative and jurisprudential developments in the EU have provided useful parameters in this respect in relation to the level of control and authority required by entities to be considered ‘actors of protection’ under the Qualification Directive and Regulation. More often, non-state actors such as inter-governmental peacekeeping and military forces have been considered to provide relevant *supporting* protection to that provided by the State when operating with the consent of the State. Recent regional jurisprudence has rejected the relevance of assistance provided by actors such as local clans, family and civil society, although there is some debate surrounding the activities of civil society actors who have a formal relationship with or are otherwise acting as ‘contracted out mechanisms of the State’. Outside the issue of actors of protection but relevant for the present discussion, there is also debate surrounding the relevance of the activities of civil society and other private actors for the well-founded fear assessment.

2. CAN NON-STATE ACTORS BE CONSIDERED ‘ACTORS OF PROTECTION’ IN PRINCIPLE?

Non-state actors play an increasingly important role in the international refugee protection regime today. UNHCR, local and international NGOs and organisations such as the ICRC play an important role providing assistance to refugees and displaced persons across the globe. UN-mandated and multinational military forces are deployed to support humanitarian and peacekeeping efforts in volatile contexts. Non-state militia groups, clans and other entities may in practice control significant areas of territory in weak or failed states and undertake government-like functions. In tandem, it is also increasingly recognised that different non-state entities can, to varying degrees, be considered

⁷ This includes the 2004 Directive and the 2011 recast Directive. 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), OJ L. 337/9-337/26; 20.12.2011, 2011/95/EU, 20 December 2011 (hereafter EU Qualification Directive recast), available at <https://www.refworld.org/legal/reglegislation/council/2011/en/84781>.

The most contemporary source in this context is the Qualification Regulation, which as per its Art 41 repeals the 2011 Qualification Directive with effect from 12 June 2026. European Parliament, Regulation (EU) 2024/1347 of the European Parliament and of the Council of 14 May 2024 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, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European Parliament and of the Council (hereafter EU Qualification Regulation), 32024R1347, 14 May 2024, available at <https://www.refworld.org/legal/reglegislation/council/2024/en/148003>.

subjects of international law with distinct legal personality and can be bound to some extent by international law obligations.⁸

In the field of refugee law, it is now well-established that non-state actors can be considered ‘actors of persecution’ for the purpose of qualification for refugee status.⁹ However, whether such actors can be considered ‘actors of protection’ is more controversial.¹⁰ This concept is pertinent for examining whether an individual has sufficient protection so as not to be considered to have a well-founded fear of persecution under Article 1A(2) of the 1951 Convention, or whether refugee status should be ceased under Article 1C(5) of the 1951 Convention, as sufficient protection means “the circumstances in connection with which he has been recognized as a refugee have ceased to exist” and the person can no longer refuse to avail themselves of the protection of their country of nationality.¹¹ The 1951 Convention itself is silent on the issue of non-state actors, and the notion of non-state actors of either persecution or protection was not referred to by the drafters in the *travaux préparatoires* which therefore offer limited guidance in this respect.¹²

A number of experts maintain that non-state actors cannot, in principle, be considered ‘actors of protection’ for the purpose of the 1951 Convention. For some, this position is based on a textual analysis of the terms of the Convention. Such arguments are often buttressed by drawing attention to the object and purpose of the Convention and the limited accountability of non-state actors in international law.

Scholars such as Hathaway and Foster, and O’Sullivan, argue that a textual interpretation of the terms of Article 1A(2), informed by its context and the object and purpose of the Convention,¹³ requires that the reference to “protection of that country” in Article 1A(2) should be interpreted as meaning

⁸ Ben Saul, ‘The Responsibility of Armed Groups concerning Displacement’, in C Costello, M Foster and J McAdam (eds), *The Oxford Handbook of International Refugee Law* (OUP 2021), 1138–1156, 1142. Saul notes there is growing support for the view that, under customary international law, at least some international human rights obligations apply to non-state armed groups in certain contexts, particularly where they *are de facto* State authorities with stable control over territory and a population. For more on the human rights obligations of non-state armed groups see Daragh Murray, *Human Rights Obligations of Non-State Armed Groups* (Hart, 2016) and on the obligations of non-state actors more generally see Andrew Clapham, *Human Rights Obligations of Non-State Actors* (OUP 2006).

⁹ Andreas Zimmermann and Franziska Herrmann, ‘Article 1 A, para. 2 1951 Convention’, in Andreas Zimmermann, Terje Einarsen and Franziska M Herrmann (eds) *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol* (2nd edn, OUP 2024), 359–555, at 441–442, reviewing regional practice. The authors conclude that “On the whole, the analysis therefore leads to the conclusion that non-State persecution is, as a matter of principle, covered by the notion of ‘persecution’ as used in Art. 1 A, para. 2.” (p 442). See also EUAA, ‘Qualification for International Protection’, 118; EU Qualification Directive recast, Art 6(c) and EU Qualification Regulation, Art 6(c), which recognise non-state actors of persecution.

¹⁰ Guy S Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (4th edn, OUP 2021), 78.

¹¹ Art 1C(6) makes equivalent provision in the case of a person who has no nationality, but without explicit recognition of availability of ‘protection’ in the home state.

¹² Maria O’Sullivan, ‘Acting the Part: Can Non-State Entities Provide Protection Under International Refugee Law?’ (2012) 24 *International Journal of Refugee Law* 85, 98. Some have argued the fact that non-state actors of protection were not contemplated at the time of drafting should, arguably, inform the interpretation of the term today. See ECRE et al ‘Actors of Protection’, 28: “At the time of its drafting only states were considered actors in international law and therefore, arguably, this understanding should inform its interpretation.” See also, University of Michigan Law School, *International Refugee Law: The Michigan Guidelines on Protection Elsewhere*, 12 November 2006, 2: “the Convention does not contemplate the devolution of protection responsibilities to a non-state entity”.

¹³ As per Art 31, 1969 Vienna Convention on the Law of Treaties UNTS 1155:331, 23 May 1969.

'protection of the state', rather than protection within the geographical entity of the country.¹⁴ Hathaway argues "[t]he fact that all but one textual reference to 'protection' in the refugee definition are relevantly qualified by reference to 'country of nationality' thus argues strongly for a view of 'protection' limited to protection by a 'country of nationality'."¹⁵ This, it is argued, "connotes a relationship involving citizenship, thereby indicating it is a state entity that must provide protection to its citizens, rather than merely indicating protection provided by other entities on the territory of a country."¹⁶ Proponents of this textual analysis have furthermore highlighted that, because Article 1D identifies a specific non-state actor of protection ("organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees"), "the principle *expressio unius* suggests that other exceptions should not be inferred".¹⁷ It is further contended that extending the concept of 'actors of protection' to non-state actors would be contrary to the object and purpose of the 1951 Convention, be that formulated as "to provide at-risk individuals with surrogate or substitute *national* protection",¹⁸ or to advance the protection provided by the Convention.¹⁹

This textual analysis is supported by the view that 'protection' for the purpose of Article 1A(2) is to be interpreted as referring to *diplomatic protection*, provided by the state outside its geographic territory to its nationals abroad, activities that non-state actors could hardly achieve.²⁰ However, such an approach has "fallen away",²¹ and been critiqued as contrary to the ordinary meaning and the

¹⁴ O'Sullivan, 'Acting the Part'; James C Hathaway and Michelle Foster, *The Law of Refugee Status*, (2nd edn, CUP 2014), 291-2, citing Hemme Battjes, *European Asylum Law and International Law* (Martinus Nijhoff 2006). See also Hathaway's position in Hathaway and Storey debate. See also contra position in *Dyli*, fn 24 below and surrounding text, which holds that the reference to "country" in Art 1A(2) refers to the *geographic* rather than the legal entity, of the state. *Fadil Dyli v. Secretary of State for the Home Department* [2000] HX5171700(00TH02186).

¹⁵ Hathaway and Storey debate, 485 (Hathaway). O'Sullivan argues that an holistic assessment of Art 1A(2) in light of other limbs of Article 1 reveal numerous references to protection by the "country of nationality" as a disqualifier for (continued) refugee status under Article 1C(1)-(4), and rights corresponding with possession of nationality (Article 1E). O'Sullivan, 'Acting the Part', 9. Battjes observes "The Refugee Convention employs the term "territory" where a geographical designation is contrast to the institutional entity "country" is meant". Battjes, *European Asylum Law*, 248. See also Hathaway and Foster, *The Law of Refugee Status*, 291; Jessica Schultz, *The Internal Protection Alternative in Refugee Law* (Brill/Nijhoff 2019), 209.

¹⁶ O'Sullivan 'Acting the Part', 99. She also argues the individual-state relationship is pertinent for the interpretation of 'protection' in Art 1C.

¹⁷ Hathaway and Storey debate', 485 (Hathaway). Agreed with by Schultz, *The Internal Protection Alternative in Refugee Law*, at 209. However, Storey takes the opposite view that "Article 1D stands as a clear testament to the fact that States are not the only entities that can afford protection under the Refugee Convention". Hathaway and Storey debate, 482 (Storey). See also Storey, *The Refugee Definition*, 458-9; Hugo Storey, 'The Meaning of "Protection" within the Refugee Definition' (2016) 35(3) *Refugee Survey Quarterly* 1-34, 23.

¹⁸ Hathaway and Foster, *The Law of Refugee Status*, 291. See also Hathaway and Storey debate, 485-6 and at 491 (Hathaway): "It is completely at odds with the object and purpose of the [1951 Convention] to require an individual to entrust his or her welfare to the efforts of some entity that, whatever its past record or *de facto* authority or power, bears no ongoing legal duty to protect anyone."

¹⁹ Which, it is argued, is not furthered by such expansion of the notion of actors of protection. O'Sullivan, *Acting the Part*, 108: "the extension of protection to include non-state actors does not achieve this purpose and, in fact, may result in the return of refugees to situations of precarious security and the real chance of persecution."

²⁰ Antonio Fortin, 'The Meaning of "Protection" in the Refugee Definition' (2000) 12(4) *International Journal of Refugee Law* 548-576, 548-551. See also Antonio Fortin, 'More on the Meaning of 'Protection' in the Refugee Definition' (2025) 37(1) *International Journal of Refugee Law*, 8-35.

²¹ Storey, 'The Meaning of "Protection" within the Refugee Definition', 6.

object and purpose of Article 1A(2).²² Others have contended that an interpretation of ‘protection’ to mean ‘protection of the state’ entails reading into the terms of Article 1A(2) words which are not there: ‘State protection’.²³ An alternate line of reasoning holds that the references in Article 1A(2) to the applicant’s “country” refers to the *geographic* rather than the legal entity, of the state. Thus, protection for the purpose of the provision can be provided by an actor within the geographic territory of the state.²⁴ Under this view, as long as the necessary protection is available within those borders, the actor of protection is irrelevant: it is the fact of protection which is important. Further, it has been highlighted that reliance on the concept of ‘state’ protection does not itself necessarily equate to the notions of effective government or political community as suggested. Storey highlights that the international law criteria for recognition of statehood are so minimalistic that the concept is not necessarily sufficient to meet the requirements of effective protection as per the terms of Article 1A(2), nor can it be equated with the idea of effective government or ‘political community’ as suggested.²⁵ Reliance on the concept of statehood would therefore appear erroneous.

One circle that has been difficult to square regards the limited accountability of non-state actors in international law. Whilst there is increasing recognition that at least some non-state actors are bound to some extent by international law, such entities bear far fewer obligations than states.²⁶ Furthermore, even where international obligations are said to exist, it is often difficult to hold such entities to account for violations of human rights.²⁷ This lack of, or limited ability of non-state actors to provide legal protection, has led a number of commentators to argue that non-state actors should not be

²² Zimmermann and Hermann, ‘Article 1 A, para. 2 1951 Convention’, 531. McAdam notes that although older definitions of refugee formally referred only to a lack of juridical (or diplomatic) protection, “they reflected older notions of asylum granted on the basis of a disjuncture between the individual and the state”. Jane McAdam, ‘Rethinking the Origins of ‘Persecution’ in Refugee Law’ (2014) 25(4) *International Journal of Refugee Law* 667–692, 673.

²³ Hathaway and Storey debate, 489 (Storey).

²⁴ The most commonly cited example here is the UK decision of *Fadil Dyli v. Secretary of State for the Home Department* [2000] HX5171700(00TH02186), para 12. See also Storey, ‘The Meaning of “Protection” within the Refugee Definition’, 6; Zimmermann and Hermann, ‘Article 1 A, para. 2 1951 Convention’, 549 (footnote omitted): “Moreover, considering the object and purpose of protection under the 1951 Convention and given the surrogate nature of protection abroad, the lack of need for international protection can equally be derived from the presence of protection by other entities within the country of origin, particularly in the case of such other entities *de facto* replacing the authorities of the latter, as may be the case in situations of occupation or specific peace-keeping contexts, given that it can hardly be ruled out that there may be several established authorities in the same country, each eventually being able to provide protection”.

²⁵ Storey points out that the international law criteria of statehood are intended to facilitate inter-state relations, rather than being concerned with a state’s willingness or duty to protect, or whether it is accountable for its conduct. Storey, *The Refugee Definition*, 452-3. See also. Storey, ‘The Meaning of “Protection” within the Refugee Definition’, 18-20; Hugo Storey, ‘EU Refugee Qualification Directive: A Brave New World?’ (2008) 20(1) *International Journal of Refugee Law*, 1–49, 25; Hathaway and Storey debate 482-4 and 489 (Storey).

²⁶ See n 8 above. Particularly in relation to positive obligations, which may be necessary for conceptions of protection which require more than negation of well-founded fear of persecution (see discussion in Section 3 below). However, it has been considered that *de facto* state entities and international organisations can in certain circumstances have a duty to protect against human rights violations. Storey gives the example of the UN Interim Administration Mission in Kosovo, which was held to be responsible for the human rights situation in that part of Serbia. Storey, *The Refugee Definition*, 462.

²⁷ Goodwin-Gill and McAdam, *The Refugee in International Law*, 79, fn 171: “Recent experience in Kosovo and elsewhere illustrates the difficulty of holding international organizations and even UN-authorized entities and operations to account for violations of human rights”. Also noted by Eeva Nykänen, *Fragmented State Power and Forced Migration: A Study on Non-State Actors in Refugee Law* (Nijhoff 2012), 197.

considered ‘actors of protection’ for the purpose of the 1951 Convention.²⁸ This is also the position adopted by UNHCR, which has noted that:

It would be inappropriate to equate national protection provided by States with the activities of a certain administrative authority, which may exercise some level of de facto—but not de jure—control over territory. Such control is often temporary and without the range of functions and authority of a State. Importantly, *such non-State entities and bodies are not parties to international human rights treaties, and therefore cannot be held accountable for their actions in the same way as a State.* In practice, this generally means that their ability to enforce the rule of law is limited. Specifically in respect of international organisations, such as organs and agencies of the United Nations, they enjoy privileges and immunities.²⁹

However, such arguments regarding the accountability of non-state actors are not entirely convincing. They appear akin to the (now largely discredited)³⁰ ‘accountability approach’, which focused on whether the home State could be considered directly accountable or responsible under international law for the harm feared. Yet, as noted by Zimmermann and Hermann, “in refugee law the decisive question is not whether a State may be held responsible for human rights violations or not ... but rather whether a certain individual needs protection by a third State”.³¹ Storey further argues that approaches which focus on the accountability (or not) of actors of protection under international law “appear[] to depend on the highly dubious notion that protection can only be afforded to citizens by liberal democratic states, or at least those that have agreed to be bound by major international human rights treaties.”³² As Storey highlights, accountability has never been a condition of statehood, nor the ratification of human rights instruments (or indeed the 1951

²⁸O’Sullivan, Acting the Part, 93; ECRE, Information Note on the 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), October 2013, 7; Jane McAdam, ‘The Qualification Directive: An Overview’ in K Zwaan (ed), *The Qualification Directive: Central Themes, Problem Issues, and Implementation in Selected Member States* (Wolf Legal Publishers 2007), 1; Christel Querton, ‘Non-State Actors of Protection and the Sliding Scale of Protection for Refugee Women’ (2022) 41(3) *Refugee Survey Quarterly* 444–47, 452. According to Hathaway and Foster, the fundamental problem is that: “none of the proposed protectors—whether it is ethnic leaders in Liberia, clans in Somalia, or embryonic local authorities in portions of northern Iraq—is positioned to deliver what Article 1A(2) of the Refugee Convention requires, namely the protection of a state accountable under international law.” Hathaway and Foster, *The Law of Refugee Status*, 410–411.

²⁹ ‘UNHCR comments on the European Commission Proposal for a Qualification Regulation—COM(2016)466’ (Feb 2018), 14 (emphasis added), cited in Goodwin-Gill and McAdam, *The Refugee in International Law*, 79. See also ‘UNHCR comments on the European Commission’s proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted COM(2009)551 (21 October 2009)’, 5, in which the agency states: “non-state actors in principle should not be considered actors of protection. Parties and organizations, including international organizations, do not have the attributes of a state and do not have the same obligations under international law. In practice, this means that their ability to enforce the rule of law is limited, and thus their ability to render protection, especially according to the proposal’s amended definition, would not qualify an international body as capable of providing protection.”

³⁰ As Storey notes, the theory “found no purchase internationally and was formally rejected by the terms of Art 6 [Qualification Directive]”. Storey, ‘The Meaning of “Protection” within the Refugee Definition’, 19.

³¹ Zimmermann and Hermann, ‘Article 1 A, para. 2 1951 Convention’, 440.

³² Storey, ‘EU Refugee Qualification Directive’, 25. See also Hathaway ad Storey debate, 482–4 and 489 (Storey).

Convention).³³ Equally, the concept of state protection under the 1951 Convention has never been conditional on the state's ratification of international instruments.³⁴ An approach which centres on the accountability of the actor is also difficult to reconcile with the view that applicants from failed states can establish refugee eligibility.³⁵ Rather, the view of some scholars is that it is not the legal obligation of the actor(s) of protection which is relevant, but rather whether the protection is effective in practice. Nykanen argues that, whilst "situations where NSAs [non-state actors] could be regarded as capable of offering protection that would be truly efficient and durable ... are in practice very rare. If such truly efficient protection would, nevertheless, be available, there are no legal obstacles for recognizing this state of affairs."³⁶

This view would appear to accord with state practice. While it has been noted that state practice is inconsistent and reveals "no coherent line of authority that supports [...] the interpretation of 'protection' to encompass non-state actors",³⁷ the possibility that non-state actors can be considered actors of protection in certain circumstances has been accepted to some extent in a considerable body of state practice and in EU law.³⁸ Indeed, it is difficult to find state practice which rules out the potential of non-state actors of protection entirely.³⁹

The concept is reflected in Article 7 of the EU Qualification Regulation, which defines "actors of protection" and explicitly provides that "[p]rotection against persecution or serious harm can only be provided by: (a) the State; or (b) stable, established *non-State authorities, including international organisations, which control the State or a substantial part of the territory of the State*".⁴⁰ Under the Regulation, Article 7 informs the analysis of sufficiency of protection and the availability of an internal flight alternative when considering qualification for refugee status.⁴¹ It has also been used as a standard by which to assess whether refugee status can be ceased "because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist" under Article

³³ Storey highlights that recognition of statehood in international law could at a minimum only mean accountability in respect of customary international law obligations that are *erga omnes*, and further that "refugee law has never seen the thresholds of serious harm and effective protection to vary depending on whether or not the relevant home state is or is not a signatory to international human rights treaties". Storey, *The Refugee Definition*, 454-5, 463. See also Storey, 'The Meaning of "Protection" within the Refugee Definition', 25.

³⁴ Though as considered in part 3, the general human rights situation in the country is a relevant consideration.

³⁵ Storey, *The Refugee Definition*, 460-1. Rather, as Storey notes, "[i]t is not the identity of the actors as either state or de facto state actors that is determinative, but the overall inability of the state to protect".

³⁶ Nykänen, *Fragmented State Power and Forced Migration*, 200-201. Indeed, Nykänen argues that "This recognition can be seen as a natural extension of the recognition of non-state agents as actors of persecution and harm." See also Zimmerman and Hermann in n 24 above.

³⁷ O'Sullivan, *Acting the Part*, 101. Cited in ECRE et al, 'Actors of Protection', 28. O'Sullivan observes court decisions range from describing "the nature of the body providing the protection under the Convention [to be] 'irrelevant'", to limiting non-state actors of protection to those with particular types of UN mandates, to recognising only entities empowered to "act 'like a state'", to denying entirely the legitimacy of non-state actors of protection."

³⁸ Schultz, *The Internal Protection Alternative in Refugee Law*, 204.

³⁹ The case of *Gardi* which is cited by some legal experts to this effect has been held void. *Gardi v SSHD*, [2002] EWCA Civ 750. Cited in O'Sullivan, 'Acting the Part', 101; Hathaway and Foster, *The Law of Refugee Status*, 291. Decided without jurisdiction as confirmed in *Gardi v SSHD (No 2)* [2002] EWCA Civ 1560; [2002] 1 WLR 3282. Although this approach has been agreed with by the Scottish Court of Session in *Saber v SSHD* [2003] 2003 SLT 1409. Hathaway and Foster also concede the tribunal in *Gardi* considered non-state actors of protection relevant to the well-founded fear assessment.

⁴⁰ Emphasis added.

⁴¹ See EU Qualification Regulation, Art 8.

11.⁴² In the European region, the potential for non-state ‘parties or organisations’ to be considered actors of protection is thus explicitly recognised, albeit specific parameters are placed around the necessary conditions for such actors to be considered ‘actors of protection’, as examined in the following section. The concept of non-state actors of protection has also been recognised in jurisprudence of non-EU Member States such as Canada, Australia and Norway. Indeed, as examined in Section 3 below, review of state practice indicates that many consider certain non-state actors may be considered actors of protection *in principle* for the purpose of qualification for, or cessation of, refugee status, even if in individual cases there has been limited instances of such actors meeting the test of ‘sufficiency’ of protection in practice.

3. CAN NON-STATE ACTORS PROVIDE SUFFICIENT PROTECTION IN PRACTICE?

At the outset, it must be noted that there is a presumption that non-state actors of protection should not be considered when the actor of persecution is the state. The higher standard of scrutiny required in cases of state persecution is recognised in Article 8(2) of the Qualification Regulation, which provides that in such cases “the determining authority shall presume that effective protection is not available to the applicant”. Although this provision concerns the availability of protection for the purpose of assessment of an internal flight alternative, the presumption it sets out would appear to apply a fortiori in the applicant’s region of origin and should therefore be taken into account in all cases.⁴³ The question of whether non-state actors can be considered capable of providing protection for the purpose of the refugee definition therefore only comes to the fore in cases involving non-state actors of persecution.

Although ‘protection’ is central to the refugee definition, some uncertainty remains as to the precise content of this term. For the purpose of qualification for refugee status, there is debate as to whether ‘protection’ must simply address the harm feared and “bring the probability of persecution or serious harm faced by the individual below the threshold of well-founded fear or that of real risk”.⁴⁴ Or conversely, whether protection must go beyond the eradication of the feared persecution, to ensure a broader suite of rights protection in the home country.⁴⁵ There is also debate as to whether the standard of protection for the purpose of cessation of refugee status should ‘mirror’ that for

⁴² Court of Justice of the European Union (CJEU) in *Abdulla and OA*, as considered below. *Salahadin Abdulla and Others v Bundesrepublik Deutschland*, C-175/08, C-176/08, C-178/08 and C-179/08, CJEU, 2 March 2010 (hereafter *Abdulla*); *Secretary of State for the Home Department v. OA*, C-255/19, CJEU, 20 January 2021 (hereafter *OA*). Although this judicial consideration concerned Art 11 of the Qualification Directive, the approach is equally applicable to the Qualification Regulation.

⁴³ EUAA, ‘Qualification for International Protection’, 123, with reference to equivalent presumption contained in the EU Qualification Directive (recast). See also notes 71-72 below and surrounding text.

⁴⁴ Nykänen, *Fragmented State Power and Forced Migration*, 197-8.

⁴⁵ A number of experts maintain that the concept of ‘protection’ requires positive attributes rather than mere negation of a well-founded fear of persecution. See e.g. O’Sullivan, ‘Acting the Part’, 89; Storey, ‘The Meaning of Protection’, 12.

qualification (such that the refugee no longer meets the refugee definition), or whether protection here must encompass a broader notion of change of circumstances in the home country.⁴⁶

This question was addressed by the Court of Justice of the European Union (CJEU) in *Abdulla*. In this case, the Court held that the standard of protection for the purpose of cessation of refugee status under Article 11(1)(e) of the Qualification Directive (which reflects Article 1C(5) of the 1951 Convention) was identical to that for qualification: the eradication of the source of persecution.⁴⁷ However, the Court appeared to endorse a broader conception of protection than mere eradication of (a risk of) persecution. Referring to Articles 4(3) and 7(2) of the Directive, the court noted that in determining whether the risk of persecution had been addressed, authorities must verify that the actor or actors of protection in the country of origin take reasonable steps to address the (risk of) persecution and operate inter alia “an effective legal system for the detection, prosecution and punishment of acts constituting persecution and that the national concerned will have access to such protection”, and further that authorities should take into account “the laws and regulations of the country of origin and the manner in which they are applied, and the extent to which basic human rights are guaranteed in that country”.⁴⁸ This would appear to reflect a more expansive understanding of protection than mere absence of persecution, and entail a broader assessment of rights protection in the country of origin, secured through the operation of an effective legal system and other relevant measures of protection.⁴⁹ This broader conception of protection would appear to align with much scholarly authority on the issue⁵⁰ and has since been endorsed by the CJEU in the later *OA* decision,

⁴⁶ As discussed in more detail by Maria O’Sullivan, ‘Legal Note on the Cessation of International Protection and Review of Protection Statuses in Europe’, European Council on Refugees and Exiles (ECRE), Revised Note April 2025, 5. When considering refusal or cessation of refugee status, states must also be mindful of the *non-refoulement* obligations they owe under international instruments outside the 1951 Convention, including human rights treaties, which may preclude return of the individual to their home country. This assessment may also include specific obligations in respect of women and minority groups. See *ibid*, 30-33, drawing attention to *non-refoulement* obligations in contexts of dire humanitarian conditions and specific obligations for groups such as women and children under relevant treaty regimes.

⁴⁷ *Abdulla*, 69.

⁴⁸ *Abdulla*, 70-71 (emphasis added).

⁴⁹ O’Sullivan, ‘Legal Note on the Cessation of International Protection’, 9. Georgia Cole, “Cessation”, in Cathryn Costello, Michelle Foster and Jane McAdam (eds), *The Oxford Handbook of International Refugee Law* (OUP 2021), 1029–1045, 1038-9. Storey also notes Art 7 of the recast Qualification Directive “can be said to evince a strong state practice, at least in Europe, of requiring protection for the purposes of the refugee definition to denote not just the negation of persecution or serious harm but a positive contents in the form of securement of basic human rights.” Storey, ‘The Meaning of “Protection”’, 13.

⁵⁰ See Hathaway and Storey debate. Storey grounds this in minimum human rights standards, while Hathaway refers to 1951 Convention standards as a guide. See also UNHCR Department of International Protection (DIP), ‘Summary Conclusions on the Concept of “Effective Protection” in the Context of Secondary Movements of Refugees and Asylum-Seekers (Lisbon Expert Roundtable, 9-10 December 2002)’, February 2003, which outlines ‘critical factors’ for the appreciation of ‘effective protection’ including eradication of persecution, respect for fundamental human rights, protection against onwards or ‘chain’ *refoulement* and means of subsistence sufficient to maintain an adequate standard of living. O’Sullivan argues, “the concept of ‘protection’ involves positive attributes such as, inter alia, the provision of physical security and safety, the existence of a functioning government and basic administrative structures, including a functioning legal and judicial system, and an adequate infrastructure to enable residents to exercise their rights.” O’Sullivan, “Acting the Part”, 89. The argument that ‘protection’ goes beyond mere eradication of persecution is also supported by some with reference to the interpretation of ‘protection and assistance’ to obviate the need for international protection under Art 1D of the 1951 Convention (reflected in Article 12(1)(a) of the Qualification Directive), which the CJEU has interpreted to require “dignified living conditions or minimum security conditions”. *SN, LN v Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite*. CJEU, Judgment of the Court (Fourth Chamber) of 13 June 2024 (Case C-563/22), 2. Cited in ECRE et al, ‘Actors of Protection’, 17.

in which the court held that “[m]ere social and financial support ... is inherently incapable of either preventing acts of persecution or of detecting, prosecuting and punishing such acts and, therefore, cannot be regarded as providing the protection required.”⁵¹

It is widely recognised that protection must be effective and accessible.⁵² This is reflected in the Qualification Regulation, which qualifies ‘actors of protection’ in Article 7 with the requirement such entities “able and willing to provide effective and non-temporary protection”, and that “the applicant has access to such protection”.⁵³ It is therefore clear that in order to be effective, the applicant must have access to protection and that protection actually be available to the particular applicant.⁵⁴ The assessment of effectiveness concerns the ability of an actor to eradicate the threat of persecution and “implies that there are no well-founded fears of being exposed to acts of persecution amounting to severe violations of basic human rights”.⁵⁵ This includes assessment of the “reasonable steps to prevent persecution or the suffering of serious harm” taken by the actor, including through the operation of an “effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm”.⁵⁶ The Court of Appeal of England and Wales took a slightly narrower conception of protection, holding that beyond verifying whether the grounds for recognition of refugee status continue to exist, “[t]he recognising state does not in addition have to be satisfied that the country of origin has a system of government or an effective legal system for protecting basic human rights”. However, the Court conceded that “the absence of such systems may of course lead to the conclusion that a significant and non-temporary change in circumstances has not occurred”.⁵⁷

The protection must also be durable (non-temporary) in nature.⁵⁸ In *Abdulla*, the CJEU interpreted the requirement of non-temporariness as requiring the permanent eradication of the source of

⁵¹ OA, 46.

⁵² O’Sullivan, ‘Legal Note on the Cessation of International Protection’, 6.

⁵³ See also Qualification Directive recast, recital 26: “Protection can be provided, where they are willing and able to offer protection, either by the State or by parties or organisations, including international organisations, meeting the conditions set out in this Directive, which control a region or a larger area within the territory of the State. Such protection should be effective and of a non-temporary nature.”

⁵⁴ Battjes, *European Asylum Law and International Law*, 247. Noting this addresses to some extent the “troublesome” reference to “reasonable steps” in the Directive. See also Nykänen, who states “Only truly effective, not merely ‘reasonable’ protection would satisfy the requirements flowing from the Refugee Convention and Qualification Directive read as a whole.” Nykänen, *Fragmented State Power and Forced Migration*, 198. Schultze notes that reliance on a non-state actor of protection is only legitimate under EU law if it provides actual, long-term protection to the particular claimant. Schultz, *The Internal Protection Alternative*, 205.

⁵⁵ “[W]ithin the meaning of Art 9(1) of the Directive.” *Abdulla*, 73.

⁵⁶ EU Qualification Regulation, Art 7(2). *Abdulla*, 71. See also *Horvath v SSHD* [2000] UKHL 37, in which the UK House of Lords held that for there to be sufficient protection there must be a legal system which does not necessarily protect against all harm, but the assessment of its effectiveness is judged by a practical standard, taking into account the state’s duty to its own nationals. There must also be a reasonable willingness to enforce it.

⁵⁷ *SSHD v MA (Somalia)* [2018] EWCA Civ 994, 2. See also House of Lords *Horvath* reference to the existence of a legal system in n 56 above.

⁵⁸ See Qualification Regulation, Art 7 “Protection against persecution or serious harm must be effective and of a non-temporary nature”. Art 11(2) refers to a change of circumstances being ‘significant and non-temporary’.

persecution.⁵⁹ Together with the requirement of the Regulation that actors of protection be “stable” and “established” in nature and control “the State or a substantial part of the territory of the State”,⁶⁰ this implies a level of durability that would appear to preclude any but state or quasi-state actors meeting this definition.⁶¹ UNHCR highlights that the exercise of authority and control over territory by international organisations or non-state actors is “often transitional or temporary and without the range of functions required of a state”.⁶² UNHCR thus advises a higher standard of durability: “Protection must be provided by an organized and stable authority exercising full control over the territory and population in question”.⁶³

These requirements together would appear to preclude the classification of certain actors as actors of protection. Indeed, few non-state actors may be considered to operate an “effective legal system” and be able to effectively guarantee basic human rights.⁶⁴ Notably, NGOs, family or community groups would not meet the threshold.⁶⁵ Wouters highlights that for entities such as administrative and UN peacekeeping missions which exercise elements of governmental authority and control and/or administer a State or a part thereof, the situation is less clear, but in many cases they will not be considered to operate an “effective legal system” and therefore do not meet the requirements laid

⁵⁹ Abdulla, 73. Ní Ghráinne notes that this very high standard “implies that the body providing protection need not be present permanently, but rather that it has the ability to completely eradicate the persecution feared.” Bríd Ní Ghráinne, “The Internal Protection Alternative”, in Cathryn Costello, Michelle Foster and Jane McAdam (eds), *The Oxford Handbook of International Refugee Law* (OUP 2021), 695–710, 704.

⁶⁰ EU Qualification Regulation, Art 7(1)(b). This is not defined but recital 32 makes reference to control of “the State or a substantial part of the territory of the State”.

⁶¹ It has been suggested that this is “something few non-state actors can do”. Schultze, *The Internal Protection Alternative in Refugee Law*, 210. Zimmermann and Herrmann suggest level of control should meet the standard to establish extra-territorial jurisdiction under international human rights law. Zimmermann and Herrmann, ‘Article 1 A, para. 2 1951 Convention’, 550. In Australia, the Migration Act 1958 provides protection can be provided by ‘a party or organisation... that controls the relevant State or a substantial part of the territory of the relevant State’ who is ‘willing and able to offer such protection’ (section 5LA(1)). However, there is no qualification the protection be stable, effective or durable, a point which has been critiqued. Natalia Brkic, ‘The Nationality and Borders Bill: Lessons from Australia on the (re)interpretation of persecution and protection’, RLI blog on Refugee Law and Forced Migration, 20 October 2021, available at <https://rli.blogs.sas.ac.uk/2021/10/20/the-nationality-and-borders-bill-lessons-from-australia-on-the-reinterpretation-of-persecution-and-protection/>.

⁶² 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, HCR/GIP/16/12, 2 December 2016, 41.

⁶³ Ibid. See also UNHCR, Guidelines on International Protection No. 4: “Internal Flight or Relocation Alternative” Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees, HCR/GIP/03/04, 23 July 2003, 17.

⁶⁴ While the term ‘basic human rights’ is not conclusively defined in scholarship or relevant international instruments, it is commonly considered to apply to broadly accepted international human rights (Hathaway and Foster, *The Law of Refugee Status*, 195), particularly those rights “from which derogation cannot be made” (Qualification Directive/Regulation, Art 9(1)(a)). Beyond the negation of a well-founded fear of persecution, this would at a minimum include the rights not to be arbitrarily deprived of life or subjected to torture, inhuman or degrading treatment or punishment, or slavery or servitude, including the positive obligations such rights entail.

⁶⁵ O’Sullivan, “Legal Note on the Cessation of International Protection”, 11-12; Cornelis Wouters, *Legal Standards for the Protection from Refoulement: a legal analysis of the prohibitions on refoulement contained in the Refugee Convention, the European Convention on Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture* (Intersentia 2009), 104. See also discussion in section 3.4 below.

down in the Directive.⁶⁶ By extension, this would apply to the stricter standards laid out in the Qualification Regulation. As Hathaway and Foster note, “It is in truth difficult to conceive many situations in which a non-state entity could actually afford protection on the terms of the Directive”.⁶⁷ Importantly, the Qualification Regulation also stresses the necessity of accurate and up to date information when assessing such factors. Article 7(3) provides the decision-maker must have reference to “precise and up-to-date information on countries of origin” as part of the evidentiary assessment.

3.1. Special considerations for the Internal Flight Alternative and cessation

The requirements of effective and durable protection should be given particular scrutiny when assessing the availability of an Internal Flight Alternative (IFA), as such consideration necessarily means a finding of lack of effective protection in the home area has already been made.⁶⁸ As well as obviating the risk of well-founded fear in the home region, internal relocation must not expose the individual to new risks upon relocation, including from non-state actors.⁶⁹ There is a presumption that an IFA assessment should not feature when the state is the actor of persecution,⁷⁰ and that non-state actors of protection should not be considered sufficient when the state is the actor of persecution.⁷¹

Similar considerations arise when considering the potential for cessation of refugee status due to ceased circumstances under Article 1C(5), as this concerns individuals who have previously been granted refugee status on the basis they had a well-founded fear of persecution and lacked protection in their home country. In these cases, a higher degree of scrutiny is warranted.⁷² As noted by UNHCR,

⁶⁶ Wouters, *Legal Standards for the Protection from Refoulement*, 104; Nykänen, *Fragmented State Power and Forced Migration*, 199.

⁶⁷ Hathaway and Foster, *The Law of Refugee Status*, 289.

⁶⁸ Storey, ‘The Meaning of “Protection” within the Refugee Definition’, 15. Hathaway and Foster, *The Law of Refugee Status*, 130.

⁶⁹ Hathaway and Foster, *The Law of Refugee Status*, 347-50.

⁷⁰ UNHCR, *Guidelines on International Protection No. 4*, 3. See EU Qualification Regulation, Art 8(2): “Where the State or agents of the State are the actors of persecution or serious harm, the determining authority shall presume that effective protection is not available to the applicant”. See also recital 35: “Where the State or agents of the State are the actors of persecution or serious harm, there should be a presumption that effective protection is not available to the applicant.” As further specified by Qualification Regulation Art 8: “The determining authority may only carry out an examination as referred to in paragraph 1 where it is clearly established that the risk of persecution or serious harm stems from an actor whose power is clearly limited to a specific geographical area or where the State itself only has control over certain parts of the country.”

⁷¹ UK Home Office, ‘Assessing credibility and refugee status in asylum claims lodged on or after 28 June 2022’, 28 September 2023, 42 and 60, available at

<https://assets.publishing.service.gov.uk/media/650c698227d43b0014375b40/Assessing+credibility+and+refugee+status+post+28+June+2022.pdf>.

⁷² As noted by Cole, “Due to the significant consequences of the cessation of refugee status for individuals and States, legal experts and UNHCR promote a ‘strict’ and ‘restrictive’ approach to the interpretation of Article 1C.” Cole, ‘Cessation’, 1030. *R v Special Adjudicator, Ex parte Hoxha* [2005] UKHL 19, [2005] 1 WLR 1063, 65: “The reason for applying a “strict” and “restrictive” approach to the cessation clauses in general and 1C (5) in particular is surely plain. Once an asylum application has been formally determined and refugee status officially granted, with all the benefits both under the Convention and under national law which that carries with it, the refugee has the assurance of a secure future in the host country and a legitimate expectation that he will not henceforth be stripped of this save for demonstrably good and sufficient reason.”

“a premature or insufficiently grounded application of the ceased circumstances clauses can have serious consequences. It is therefore appropriate to interpret the clauses strictly and to ensure that procedures for determining general cessation are fair, clear, and transparent.”⁷³ The Qualification Regulation requires that the change in circumstances be “significant and non-temporary” in nature such that the individual’s fear of persecution can no longer be regarded as well-founded.⁷⁴ However, others argue the 1951 Convention’s terms “ceased to exist” is a more demanding standard than mere eradication of well-founded fear and requires “more complete and definite transformation”.⁷⁵ The Supreme Court of Norway held in 2018 that the cessation test is not simply whether a person has a well-founded fear of persecution, because “[a] person who has been recognised as a refugee has obtained a slightly higher level of safety than a person who has not”.⁷⁶ This approach appears to accord with the position of commentators that the test of protection under Article 1C(5) is not simply an absence of well-founded fear of persecution but entails a broader assessment of effective protection in the home country.⁷⁷

State practice in this respect has been mixed, and courts for example in the UK, Australia and Germany have held the cessation decision is the “mirror image” of a decision determining refugee status and does not require a higher degree of protection.⁷⁸ It should however be noted that even those states that adhere to the ‘mirror image’ approach tend to adopt a high level of assessment of sufficiency of protection in practice. Similarly, the CJEU in *Abdulla* advised that the test for cessation was the ‘mirror’ of qualification for refugee status, however as considered above the Court endorsed a broader analysis of protection to include factors such as an effective functioning legal system and securement of basic human rights.⁷⁹ It is contended that, despite apparent difference in approach, there is not a significant contradiction between these positions; in practice, even those states which adhere to the ‘mirror image’ approach and do not mandate a higher level of scrutiny for cessation cases appear to do so on the basis of broader concept of protection than mere eradication of well-

⁷³ 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 (the “Ceased Circumstances” Clauses), HCR/GIP/03/03, 10 February 2003, 3.

⁷⁴ See EU Qualification Regulation, Art 11(2).

⁷⁵ Hathaway and Foster, *The Law of Refugee Status*, 478-480. See UNHCR, Guidelines on International Protection No. 3, 15: “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 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.”

⁷⁶ Supreme Court of Norway judgment of 23 March 2018, HR-2018-572-A, (case no. 2017/1659), 44. The Court held that “the conditions for revoking a refugee status and residence permit pursuant to section 37 subsection 1 e, are not a direct mirroring of the conditions for granting the same pursuant to section 28”. Cited in O’Sullivan, ‘Legal Note on the Cessation of International Protection’, 18. See also *Hoxha* n 74 above.

⁷⁷ Maria O’Sullivan, *Refugee Law and Durability of Protection: Temporary Residence and Cessation of Status* (Routledge, 2019). Susan Kneebone and Maria O’Sullivan, ‘Article 1C’ in Andreas Zimmermann, Terje Einarsen and Franziska M Herrmann (eds) *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol* (2nd edn, OUP 2024), 620-621. Kneebone and O’Sullivan also note that UNHCR has made a number of amicus curiae submissions to national cases arguing that the test under Article 1C(5) is not simply a test of well-founded fear.

⁷⁸ See e.g. *SSHD v MA (Somalia)*, [2018] EWCA Civ 994 (UK), 2, endorsed in *SSHD v MS (Somalia)*, [2019] EWCA Civ 1345; *MIMIA v QAAH* [2006] HCA 53; (2006) 231 ALR 340 (Australia); *A and R v Federal Republic of Germany*, 24 February 2011, 10 C 3.10 (Germany, cited in O’Sullivan, ‘Legal Note on the Cessation of International Protect’, 18).

⁷⁹ See notes 47-48 above and accompanying text.

founded fear. This might be considered to meet the cessation standard advocated by UNHCR and others.

Courts have also emphasised the change in circumstances must be fundamental and durable in character.⁸⁰ The requirement of durability would also preclude consideration of effective protection in only part of the territory (such as an IFA assessment would imply). As UNHCR notes, “not being able to move or to establish oneself freely in the country of origin would indicate that the changes have not been fundamental.”⁸¹ In assessing whether a fundamental and durable change in circumstances has taken place, UNHCR advises reference is made to the general human rights situation in the country, “illustrated at least by respect for the right to life and liberty and the prohibition of torture; marked progress in establishing an independent judiciary, fair trials and access to courts: as well as protection amongst others of the fundamental rights to freedom of expression, association and religion.”⁸² This would preclude any but stable, established state or quasi-state authorities being considered sufficient actors of protection for the purpose of cessation of refugee status.

3.2. International organisations and inter-governmental/state military forces

International organisations are explicitly cited as potential non-state actors of protection under Article 7 of the EU Qualification Regulation (and its predecessor the Qualification Directive). The legitimacy of considering international organisations, including multinational forces, as potential actors of protection under the Qualification Directive was confirmed by the CJEU in *Abdulla*: “the Directive does not preclude the protection from being guaranteed by international organisations, including protection ensured through the presence of a multinational force in the territory of the third country”.⁸³ This does not mean such entities have to exercise sole control over territory,⁸⁴ and most consideration in state practice has attached to multinational forces *supporting* the state rather than as sole actors of protection.⁸⁵

The CJEU in *Abdulla* did not give further specification on the type of multinational force that may be considered within the scope of the Directive, but there has been some consideration in state practice.

⁸⁰ The Court of Appeal of England and Wales in *MS (Somalia)* noted its approach was “subject to the qualification that the requisite “strict” and “restrictive” approach to cessation clauses means that it must be shown that the change in circumstances is fundamental and durable” *SSHD v MA (Somalia)*, [2018] EWCA Civ 994, 48. Bundesverwaltungsgericht (Federal Administrative Court, Germany), 10 C 33.07, 7 February 2008, para. 39; Though this is not uniform. The High Court of Australia in *QAAH* refused to endorse this test. *MIMIA v QAAH* [2006] HCA 53; (2006) 231 ALR 340, 122. Cited in Kneebone and O’Sullivan, ‘Article 1C’, 617.

⁸¹ UNHCR, Guidelines on International Protection No. 3, 5.

⁸² *Ibid.* See also the ‘critical factors’ outlined in UNHCR Department of International Protection (DIP), ‘Summary Conclusions on the Concept of “Effective Protection”’ (n 50 above).

⁸³ *Abdulla*, 75. Article 7(1)(b) refers to “parties or organisations, including international organisations”.

⁸⁴ EUAA, ‘Qualification for International Protection: Judicial analysis’, 125. As per the EU Qualification Regulation, actors of protection must control “the State or a substantial part of the territory of the State”. See notes 60-61 above and accompanying text.

⁸⁵ Although see Court of Appeal of England and Wales, which held in 2001 that UNMIK supported by KFOR was discharging international protection duties with the host country’s consent, and providing sufficient protection for Albanian Kosovars to return. *R (on the application of Vallaj) v Special Adjudicator and Canaj v SSHD* [2001] INLR 342. Cited in ECRE et al, ‘Actors of Protection’, 51.

For example, in France it has been found that UN forces established by the UN Security Council under its Chapter VII powers can potentially be considered actors of protection, the rationale being that such UN missions have administrative and coercive powers.⁸⁶ Such a distinction was also made by Advocate General Mazák in his Advisory Opinion in *Abdulla*, where it was noted “a State may only rely on the assistance of multinational troops provided such troops operate under the mandate of the international community, for example under the auspices of the United Nations”.⁸⁷ That the CJEU did not address this point in more detail has been criticised.⁸⁸ Article 7(1)(b) of the Qualification Regulation specifies that such entities must be “stable, established” authorities “which control the State or a substantial part of the territory of the State”.

A range of multinational forces have been considered potential actors of protection, such as the UN Interim Administration Mission in Kosovo (UNMIK) and the Kosovo Force (KFOR), African Union Mission in Somalia (AMISOM) and the International Security Assistance Force (ISAF) in Afghanistan. Research on state practice in Europe has shown that, in practice, while a number of states have considered the potential of such actors of protection, they have not generally been found sufficient sole actors of protection but rather complementary actors when operating with the consent of the state.⁸⁹ For example, a recent cessation decision by the Immigration Appeals Board of Norway found that ‘significant’ changes had taken place in Mogadishu and Somali authorities had regained control of the city with the help of AMISOM.⁹⁰

Historically, in the European region it seems there has been some reference to UNHCR camps, or organisations such as the Red Cross as actors of protection.⁹¹ In a more recent decision in Poland, the authority asserted that a stateless Palestinian from Iraq could upon return “benefit from the

⁸⁶ ECRE et al, ‘Actors of Protection’, 32, citing ECRE/ELENA, ‘The Impact of the EU Qualification Directive on International Protection’, October 2008, 95. This is in contrast to UN forces established under Chapter VI such the United Nations Mission for the Stabilization of Haiti.

⁸⁷ Opinion of Advocate General Mazák in Joined Cases C-175/08, C-176/08, C-178/08 and C-179/08 *Salahadin Abdulla and others*, 15 Sept 2009, 54.

⁸⁸ O’Sullivan, ‘Acting the Part’, 97. Although Errera argues “The Advocate General’s mention of ‘the international community’ is not helpful. The meaning of this expression is not, to say the least, clear.” He notes it is “regrettable” the CJEU did not elaborate further on the inclusion of international organisations as actors of protection. Roger Errera, ‘Cessation and Assessment of New Circumstances: A Comment on *Abdulla*, CJEU, 2 March 2010’ (2011) 23(3) *International Journal of Refugee Law* 521–537, 535.

⁸⁹ In its 2007 review of implementation of the Qualification Directive in five European countries, for example, UNHCR found that potential non-state actors of protection were declared inadequate in all of the decisions. UNHCR, ‘Asylum in the European Union: A Study of the Implementation of the Qualification Directive’, November 2007, 48–49. The later study by ECRE et al of 11 EU Member States similarly noted: “The findings show that decision makers do not usually treat non-state entities as stand-alone protection actors. If they are referenced, it is as reinforcement for state-provided protection, as for example with protection with the aid of multinational forces.” ECRE et al, ‘Actors of Protection’, 50. See similar comments by the EUAA, ‘Qualification for International Protection: Judicial analysis’, 122: “In practice, while courts and tribunals of Member States have considered the state the prime actor of protection, they have not excluded the complementary protective role played by the other actors referred to in Article 7(1)(b).”

⁹⁰ Immigration Appeals Board of Norway (‘Grand Board’), Decisions on Cessation, June 2017. Cited in O’Sullivan, ‘Legal Note on the Cessation of International Protection’, 19. See also decision of the UK Upper Tribunal in *MOJ and Others (Return to Mogadishu) Somalia* CG [2014] UKUT 00442. In assessing sufficiency of protection against threats by al-Shabaab in Somalia, the Upper Tribunal took into account armed operations carried out not only by or at the invitation of the Somali National Army, but also by the African Union Mission in Somalia. For more see EUAA, ‘Qualification for International Protection: Judicial analysis’, 125.

⁹¹ ECRE/ELENA, ‘The Impact of the EU Qualification Directive on International Protection’, 16.

protection of UNRWA” alongside the Iraqi state authorities.⁹² Such approaches appear misplaced and are largely absent since the recast of the Qualification Directive.⁹³ Statutory UN bodies such as UNHCR and UNRWA assist a significant proportion of the world’s refugees. However, UNHCR cannot be considered to provide ‘protection’ in sense of the Convention “as it is not empowered to demand of states the administrative and civic resources necessary to fulfil refugees’ rights under the Convention”, and cannot be said to operate an effective legal system.⁹⁴ The same can be observed in respect of UNRWA which additionally has a limited mandate *vis a vis* Palestinian refugees.⁹⁵ The International Organisation for Migration (IOM) has also been rejected as a potential actor of protection and is only generally considered relevant to the extent the organisation assists in returns.⁹⁶

Outside Europe, caselaw in Canada and Australia has accepted that military support from neighbouring countries can constitute effective protection.⁹⁷ As noted above, however, there are concerns about the transitional or temporary nature of military forces which lack an international mandate, and, particularly in volatile conflict contexts, it is difficult to see how they could meet the requirements of durability. It has been noted that even international peacekeeping operations struggle to institutionalize their security mandates.⁹⁸ Garlick explains that “while international organizations continue to provide the best level of support and protection that they can, limited resources and legal authority may systematically handicap their efforts. This renders unrealistic the suggestion that international organizations can ‘control’ territory and ‘protect’ people in the same way that a State can.”⁹⁹

The position of the UNHCR Guidelines on the Internal Flight or Relocation Alternative does not completely rule out protection provided by international organisations, but stresses that protection of such entities must not be presumed:

⁹² ECRE et al, ‘Actors of Protection’, 51.

⁹³ There was, for example, no reference made to UNHCR camps in ECRE et al, ‘Actors of Protection’ (2014).

⁹⁴ ECRE et al, ‘Actors of Protection’, 32; Wouters, *Legal Standards for the Protection from Refoulement*, 104.

⁹⁵ Though the ‘protection and assistance’ provided by UNRWA is recognised in Art 1D of the 1951 Convention, see n 4 above. See also discussion of the CJEU decision in *AB and NB v Secretary of State for the Home Department*, C-349/20, CJEU, 3 March 2022 (hereafter ‘AB and NB’), notes 122-123 below and accompanying text.

⁹⁶ ECRE et al ‘Actors of Protection’, 51. Cited in Storey, ‘The Meaning of “Protection”’, 27. See e.g. consideration of the role of the IOM in *AS (Safety of Kabul) Afghanistan* CG [2018] UKUT 00118.

⁹⁷ See e.g. the Canadian decision *Chebli- Haj- Hassam v. Canada (Minister of Citizenship and Immigration)* (1996) 36 Imm. L.R. (2d) 112, para 4: “In the circumstances where there is a legitimate government *supported by* the forces of another government, and there is no difference in interest between the two governments in relation to a refugee claimant, the protection given to the claimant is adequate to establish an internal refuge.” (emphasis added). See also the Australian decision *Siaw v Minister for Immigration and Multicultural Affairs* [2001] FCA 953: there is “no difference” between cases where protection is provided “entirely by government force” and those where protection is provided by, for example, “forces from a neighbouring country or ally” or “mercenaries”. Cited in Hathaway and Foster, *The Law of Refugee Status*, 298.

⁹⁸ Schultz, *The Internal Protection Alternative in Refugee Law*, 210.

⁹⁹ Madline Garlick, ‘UNHCR and the Implementation of Council Directive 2004/83/EC on Minimum Standards for the Qualification and Status of Third Country Nations or Stateless Persons as Refugees or as Persons who Otherwise Need International Protection and the Content of the Protection Granted (The EC “Qualification Directive”)’ in K Zwaan (ed), *The Qualification Directive: Central Themes, Problem Issues, and Implementation in Selected Member States* (Wolf Legal Publishers 2007), 65. Cited in O’Sullivan, ‘Acting the Part’, 98.

The facts of the individual case will be particularly important. The general rule is that it is inappropriate to equate the exercise of a certain administrative authority and control over territory by international organisations on a transitional or temporary basis with national protection provided by States. Under international law, international organisations do not have the attributes of a State.¹⁰⁰

A more definite approach was taken more recently by UNHCR in its comments on the recast Qualification Directive. The agency recommended deleting the reference to 'international organizations' entirely from provision on actors of protection, noting "[i]t is neither realistic nor practical to equate the protection generally provided by states with the exercise of a limited administrative authority and control over a territory by international organizations."¹⁰¹

3.3. Clans, tribes and irregular militias

The potential for entities such as clans, tribes or irregular military groups to offer sufficient protection has also been considered by a number of states. Canadian decisions have considered a clan capable of providing protection if it is acting as the 'de facto government agent of protection'.¹⁰² Similarly, within Europe some states have recognised clans and tribes as actors of protection, when such clans exercise *de facto* authority over regions, as in the case of Puntland and Somaliland.¹⁰³ However, ECRE notes that in Europe "there remains little precedent for state action to return refugees to situations where they must depend on a clan, tribe or other non-state actor to provide the protection their home state fails to provide."¹⁰⁴

In order to meet the requirements of the Qualification Regulation, such entities must control either the state or a substantial part of the state's territory, and such control must have an element of durability. Indeed, when introducing the proposal for a recast Qualification Directive, the European Commission raised concerns of practice that had "considered clans and tribes as potential actors of protection despite the fact that these cannot be equated to States regarding their ability to provide

¹⁰⁰ UNHCR, Guidelines on International Protection No. 4, para 16.

¹⁰¹ UNHCR, 'UNHCR comments on the European Commission's proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted (COM(2009)551, 21 October 2009), 29 July 2010', 5. See also UNHCR, Guidelines on International Protection No. 12, 91: "It would be inappropriate to equate the exercise of a certain administrative authority and control over territory by international organisations or non-state actors, with national protection provided by a state. Such control is often transitional or temporary and without the range of functions required of a state, including the ability to readmit nationals to the territory or to exercise other basic functions of government. Specifically, non-state entities and bodies do not have the attributes of a state. Their ability to enforce the law is limited." This is quite a distinct change in position from earlier 'defeasible' positions taken by the agency commented on by Storey, 'The meaning of "Protection"', 27, fn 95.

¹⁰² *Elmi v Minister of Citizenship and Immigration*, IMM-580-98, Canada: Federal Court, 12 Mar 1999, 17. Cited in O'Sullivan, 'Acting the Part', 101. O'Sullivan notes Canadian courts have required that there be a type of 'agency' relationship established whereby the non-state entity undertakes the powers and responsibilities of a state. See also the decision in *Talil* which implicitly refers to the relevance of clan protection in Somalia. *Tahlil v. Canada (Citizenship and Immigration)*, 2011 FC 817.

¹⁰³ EUAA, 'Qualification for International Protection: Judicial analysis', 125. See e.g. *AM and AM (Armed conflict: risk categories)* [2008] UKAIT 91 and *DM (Majority Clan Entities can Protect) Somalia* [2005] UKAIT.

¹⁰⁴ ECRE et al, 'Actors of Protection', 33.

protection”.¹⁰⁵ The Commission emphasised that it was therefore “necessary to specify that protection should be effective and durable and that non-state actors of protection should be willing and able to enforce the rule of law”.¹⁰⁶

The requirements of the Qualification Regulation would exclude control over portions of territory by armed groups in volatile contexts, as such control is often temporary and transitional.¹⁰⁷ Furthermore, the requirement that such an entity take reasonable steps to ensure human rights through inter alia operation of an effective legal system would preclude any but State-like authorities for being considered an actor of protection. In this sense, non-state entities that are exercising a form of de facto governmental authority over a large proportion of the territory will be most likely to be able to provide such protection.¹⁰⁸ Indeed, the UNHCR Guidelines on the Internal Flight Alternative implicitly accepts this in noting “it is inappropriate to find that the claimant will be protected by a local clan or militia in an area where they are not the recognised authority in that territory and/or where their control over the area may only be temporary.”¹⁰⁹ In the absence of meeting this threshold, any support functions offered by such groups should not be considered as part of the protection assessment. As specified by the CJEU in *OA*, “any such protection in terms of security cannot, in any event, be taken into account in order to ascertain whether State protection meets the requirements that arise [under the Directive]”.¹¹⁰ The Court also specified that the assessment of effective protection must be distinguished from local entities merely providing “social and financial support”, as considered further below.¹¹¹

¹⁰⁵ European Commission, ‘Proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted COM(2009) 551 (21 October 2009)’, 6.

¹⁰⁶ *Ibid*, 7.

¹⁰⁷ Saul, ‘The Responsibility of Armed Groups concerning Displacement’, 1142.

¹⁰⁸ Indeed, Querton notes that the drafting history of Art 7 Qualification Directive shows that the provision was significantly enlarged by adopting the term “parties” rather than “quasi-State authorities who control a clearly defined territory of significant size and stability” and “who are able and willing to give effect to rights and to protect an individual from harm in a manner similar to an internationally recognised State”. She suggests that the European Commission’s original intention was for protection to be interpreted as State protection or at the very least protection by State-like authorities. Christel Querton, ‘Non-State Actors of Protection and the Sliding Scale of Protection for Refugee Women’ (2022) 41 *Refugee Survey Quarterly* 444–471, 452. Citing European Commission, ‘Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection (2002/C 51 E/17) COM(2001) 510 final’. See also O’Sullivan, ‘Acting the Part’, 94. She suggests that the original formulation of Art 7 required a level of *effectiveness* of protection and attributes similar to a state.

¹⁰⁹ UNHCR Guidelines on International Protection No. 4, 17: “clans and tribes, unless they are the recognised authority in a region, cannot provide effective and durable protection, which requires “an organised and stable authority exercising full control over the territory and population in question”. As O’Sullivan notes, clans and militias are typically more vulnerable to overthrow by opposing clans and militias and may only have tenuous hold on power. O’Sullivan, ‘Acting the Part’, 107. Storey cites some examples of non-state actors which would potentially meet this threshold: “one only has to think in recent times of entities that seek to operate as de facto regimes such as the authorities in control of Somaliland in Somalia or the Kurdistan region of Iraq which according to reputable country reports have in recent times (arguably) proved at least relatively stable and durable”. Storey, *The Refugee Definition*, 460 (footnotes omitted).

¹¹⁰ *OA*, 52-53.

¹¹¹ *OA*, 64.

3.4. Civil society, family and other private actors

Private entities such as civil society groups, family, and other private individuals would appear most removed from the necessary qualities to be considered actors of protection, as they lack control over territory, a legal system or other elements which would indicate de facto control equivalent to a State. Nevertheless, within Europe, ECRE notes that “NGOs were the types of “*other parties or organisations*” most often referenced as protection actors.”¹¹² Jurisprudence in Canada has considered protection can be provided by NGOs which receive state funding,¹¹³ although this has been disputed in more recent cases.¹¹⁴ The issue is of particular import as the protection that may be offered by civil society, family or other private actors most often pertains to protection against ‘private’ harms, most notably sexual and gender-based violence experienced by women.¹¹⁵ When introducing the proposal for a recast Qualification Directive, the European Commission noted concerns that “authorities have considered non-governmental organisations as actors of protection with regard to women at risk of female genital mutilation and honour killings, despite the fact that such organisations can only provide temporary safety or even only shelter to victims of persecution.”¹¹⁶ Recent state practice has rejected the notion that NGOs, family members and other private actors can be considered actors of protection.¹¹⁷

This question of protection by non-state civil society actors such as local clans or family was addressed by the CJEU in *OA*. In this case, the court differentiated between “social and financial support” provided by private actors such as family or local clan, and effective protection as required by the Directive.¹¹⁸ The Court considered such “social and financial support” to be incapable of constituting protection for the purpose of the Directive, as it is “inherently incapable of either preventing acts of persecution or of detecting, prosecuting and punishing such acts and, therefore, cannot be regarded as providing the protection required by [the Directive].”¹¹⁹ The Court stressed that such support “is

¹¹² ECRE et al, ‘Actors of Protection’, 52. But note more recent analysis: “In the practice of Member States, non-governmental organisations (NGOs) have not been considered actors of protection for the purpose of Article 7.” EUAA, ‘Qualification for International Protection: Judicial analysis’, 125.

¹¹³ *Karoly, Szalo v. M.C.I.* (F.C., no. IMM-1566-04), Blais, March 24, 2005; 2005 FC 412. See also *Carrera Mendez, Luz Maria Sonia v. M.C.I.* (F.C., no. IMM-1806-08), Pinard, December 22, 2008; 2008 FC 1385.

¹¹⁴ *Aurelien, Eyon v. M.C.I.* (F.C., no. IMM-10661-12), Rennie, June 26, 2013; 2013 FC 707, at 16: “Shelters, counsellors and hotlines may be of assistance, but they have neither the mandate nor the capacity to provide protection.” This case was followed in *Davidova, Dana v. M.C.I.* (F.C., no. IMM-6542-12), Noël, September 5, 2013; 2013 FC 908, where the Court noted that “... there is extensive case law supporting the proposition that non-state actors, which include NGOs, may not replace the protection that should primarily be provided by the state.”

¹¹⁵ Though it has also been relevant in cases of men fleeing harm from private actors. See e.g. consideration by Irish High Court in *W.T. v Minister for Justice and Equality* [2016] IEHC 108, where the court rejected the relevance of an NGO as actor of protection in the case of a young man fleeing local custom regarding tribal succession.

¹¹⁶ European Commission, Proposal for a Council Directive, 6.

¹¹⁷ EUAA, ‘Qualification for International Protection: Judicial analysis’, 125-126, citing decision of the Czech Supreme Administrative Court and the Belgian Council for Alien Law Litigation. See also Irish decision *W.T. v Minister for Justice and Equality* [2016] IEHC 108, 69-71, and recent Canadian jurisprudence cited in n 115 above.

¹¹⁸ *OA*, 64.

¹¹⁹ *OA*, 46.

of *no relevance* to the assessment of the effectiveness or the availability of the protection provided by the State".¹²⁰

A slightly different approach was taken by the CJEU when considering the relevance of assistance from civil society actors, including NGOs, to the assessment of sufficiency of 'protection and assistance' provided by UNRWA in the context of Article 12(1)(a) of the Directive / Article 1D of the 1951 Convention. In this case, the court stressed that NGOs are different entities from UNRWA and cannot provide 'protection and assistance' within the meaning of Article 1D.¹²¹ However, the Court noted that the cooperation of civil society actors may be essential to enable UNRWA to carry out its mission, and thus that account must be taken of the assistance provided by civil society actors with which UNRWA has a "formal relationship" of a "stable nature, in which they assist UNRWA in carrying out its mandate".¹²² For the purpose of the assessment of protection under Article 1A(2) or 1C(5), consideration of such assistance might be considered akin to the relevance of NGOs which receive state funding or otherwise act as 'contracted out mechanisms of protection' of the state. For example, Hathaway considers an assessment of protection "may reasonably include contracted-out mechanisms of protection, which are genuinely accessible and for which the State remains fully accountable."¹²³ However, the relevance of assistance provided by such local actors to the protection analysis has been rejected by the CJEU in *OA*, which calls this approach into question at least in the EU region.

Storey takes a slightly different slant to the issue. While accepting that civil society actors cannot be considered 'actors of protection' within the meaning of the Qualification Directive, he argues that the actions of civil society actors *can* be relevant to the holistic assessment of protection in the home country and existence of a well-founded fear. As he notes, "[g]iven the state and civil society actors operate within the same system, it is almost inevitable that the actions of each sphere will affect the other and that their interaction will affect the overall level of protection".¹²⁴ In this context, Storey argues, "[the] ability of a State to protect is a threshold question and if civil society bodies like families, community associations, tribes, clans, or women's shelters and so forth serve to reduce the need for State actors to actively take protective steps, the simple result may well be that there is effective and durable protection and the State has proved able and willing to achieve it."¹²⁵ However, others have argued that this approach seems to disregard the risks of compelling individuals to rely on the

¹²⁰ *OA*, 48 (emphasis added), 62: "To adopt an interpretation to the effect that the protection existing in that third country may rule out a well-founded fear of persecution even though that protection does not satisfy those requirements would be liable to call into question the minimum requirements laid down by Article 7(2)."

¹²¹ *NB and AB*, para 77.

¹²² *Ibid*, para 84. See more generally paras 76-84.

¹²³ Hathaway and Storey debate, 486 (Hathaway).

¹²⁴ Storey, *The Refugee Definition*, 470. As he notes at 469: "the question of whether the protection test is satisfied is a factual one that does not relate to whether the state has conducted itself according to certain standards, but is rather about the result".

¹²⁵ Hathaway and Storey debate, 489 (Storey). See also Storey, *The Refugee Definition*, 466-471. As he explains at 461: "it is possible to hypothesise situations where social and financial support and/or security functions performed by civil society actors might play a role in at least preventing persecution". See also Storey, "The Meaning of "Protection"", 31-32.

protection of private actors, which can expose them to further victimization and harm.¹²⁶ Querton argues the trend in judicial decision making and status determination practices to include reference to private actors such as male family members, a clan, community or other social networks, as relevant to assessing the well-founded-ness of an individual's fear of persecution, has "indirectly contributed to the unjustified development of the concept of non-State actors of protection in international refugee law."¹²⁷

4. CONCLUSIONS

The concept of non-state actors of protection has proven controversial. Whilst a number of commentators argue the concept of protection must be limited to activities of the state, in practice a number of non-state entities have been considered potential actors of protection for the purpose of qualification and/or cessation of refugee status in principle.¹²⁸ This has most notably been the case in respect of international organisations and inter-governmental/third state military forces, but has extended to clans, irregular military groups, NGOs and even family and private individuals. Reference to such non-state entities as potential actors of protection has, however, narrowed in recent years. The parameters set by the recast Qualification Directive and Qualification Regulation have proven useful in this respect in the European region.

Although multinational and third state military forces have been most commonly considered as potential actors of protection, in practice they have not been found sufficient sole actors of protection but rather relevant to the extent they are complementary actors when operating with the consent of the state.¹²⁹ The relevance of statutory UN bodies such as UNHCR, UNRWA or international organisations such as IOM are absent from, or have been rejected in, more recent jurisprudence.¹³⁰ As discussed above, the requirements of effectiveness and durability of protection would preclude from consideration any but state or quasi-state authorities with effective control over territory and the ability to secure basic human rights. The sufficiency of non-state groups such as clans, tribes or irregular military groups as actors of protection has thus largely been rejected, unless they are considered to act as a *de facto* government authority.¹³¹ Even in this case, however, there is little precedent in practice.¹³² The relevance of civil society groups, family, and other private individuals as actors of protection has been rejected in recent jurisprudence,¹³³ though there is some debate about

¹²⁶ Lore Roels, 'Rape Myths in the European Court of Human Rights' Non-Refoulement Case Law on Sexual and Gender-Based Violence' (2024) 36(1-2) International Journal of Refugee Law, 77-92.

¹²⁷ Querton, 'Non-State Actors of Protection'. Querton argues this is evident in the framing of risk categories in some countries, such as "women without a male network" or risk enhancing factors such as "family status" or "support network (family or other) and the reasoning adopted is that no well-founded fear of being persecuted arises because the person can turn to those entities for effective protection. Ibid.

¹²⁸ The possibility that non-state actors can be considered actors of protection in certain circumstances has been accepted to some extent in a considerable body of state practice, and it is difficult to find state practice which rules out the potential of non-state actors of protection entirely. See notes 38-39 above and accompanying text.

¹²⁹ See notes 90 and 98 above and accompanying text.

¹³⁰ See notes 94 and 97 above, and accompanying text.

¹³¹ See text accompanying notes 103-104 above.

¹³² See text accompanying n 105 above.

¹³³ See e.g. discussion of the CJEU decision in OA in the text accompanying notes 119-121, and n 115.

the relevance of civil society organisations that are funded by the State or otherwise act as “contracted-out mechanisms of protection”, and the relevance of civil society activities to the assessment of well-founded fear.¹³⁴

This paper has examined the concept of actors of protection under the 1951 Convention. Although beyond the scope of this paper, it is worth noting that ‘protective’ activities of non-state entities may entail different conclusions under the broader regional refugee definitions of the Convention Governing the Specific Aspects of Refugee Problems in Africa and the Cartagena Declaration on Refugees.¹³⁵ For example, the deployment of UN-mandated forces or other military interventions in a state may be considered evidence of state fragility and the existence of ‘events seriously disturbing public order’, and thus support rather than mitigate against a protection claim.¹³⁶

¹³⁴ See conflicting Canadian jurisprudence cited in notes 114 and 115 above and surrounding text; discussion surrounding notes 122-124 on NGOs with a formal relationship with the authority; and notes 128-135 on relevance of the activities of civil society and other private actors for the well-founded fear assessment.

¹³⁵ Organization of African Unity (OAU), 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa, 1001 UNTS 45, 10 September 1969 (OAU Convention), Art I(2); Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, adopted by the Colloquium, held at Cartagena, Colombia, 19–22 November 1984, III(3).

¹³⁶ Hansen-Lohry cites these factors as relevant to assessing disturbance to public order for the purpose of Art I(2) of the OAU Convention. Cleo Hansen-Lohrey, ‘Assessing serious disturbances to public order under the 1969 OAU Convention, including in the context of disasters, environmental degradation and the adverse effects of climate change’, UNHCR Legal and Protection Policy Research Series, September 2023, 57-58.