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'Safe' havens: Compromising human rights protection for the
displaced?

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*To Joris Verbeek (as promised) -Without his help and 'persuasion'
this thesis would be quite some time acoming.*

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Abbreviations

<Abbreviation>	<Explanation>
ACHR	American Convention on Human Rights;
AfChHPR	African Charter on Human and People's Rights;
AfCmHPR	African Commission on Human and People's Rights;
AU	African Union
BSA	Bosnian Serb Army;
CAT	Committee against Torture;
CRC	Convention on the Rights of the Child;
DUTCHBAT	Dutch battalion of UNPROFOR;
ECmHR	European Commission of Human Rights;
ECtHR	European Court of Human Rights;
ECHR	European Convention on Human Rights;
e.g.	exempli gratia
et al.	et alii;
etc.	et cetera;
HRC	Human Rights Committee
IACtHR	Inter-American Court on Human Rights;
ibid.	ibidem;
ICCPR	International Covenant on Civil and Political Rights;
ICJ	International Court of Justice;
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for the former Yugoslavia;
i.e.	id est;
IDPs	Internally displaced persons;
IJRL	International Journal of Refugee Law;
ILC	International Law Commission;
ILR	International Law Reports;
IRRC	International Review of the Red Cross
NFZ	No-Fly Zone;
NIOD	Netherlands Institute for War Documentation;
OAS	Organisation of American States
OCHA	UN Office for the Coordination of Humanitarian Affairs
RPA	Rwandese Patriotic Army;
RPF	Rwanda Patriotic Front;
UDHR	Universal Declaration of Human Rights
UNAMIR	United Nations Assistance Mission for Rwanda;
UNAMIS	UN mission in Sudan;
UNCAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
UNHCR	UN High Commission for Refugees;
UNHRC	UN Human Rights Committee
UNITAF	United Nations Task Force on Somalia ;
UNPA	United Nations Protected Areas;
UNPROFOR	United Nations Protection Force;

UNSC	United Nations Security Council;
V.	Versus
VCTL	Vienna Convention on the Law of Treaties 1969
Vol.	Volume
ZHS	Zones Humanitaires Sûres.

1 INTRODUCTION

This thesis evaluates the notion of ‘safe’ areas – an internationally designated and protected space within a conflict zone for internally displaced persons and resident civilians at risk - as a mechanism for human rights protection. It discusses as its context the changes in the global asylum regime since the end of the Cold War, with terms and practices like in-country and preventive protection, temporary protection and the ‘right’ to remain being employed, critics charge, to limit states’ obligations under refugee and human rights law.

A brief discussion covers why such solutions to the ‘refugee problem’ have come to be perceived as preferable. The thesis examines the objectives the international community seeks to achieve by creating protected areas for civilians inside zones of armed conflict, and also the limitations of the concept in relation to human rights law and humanitarian law as a means for providing human rights protection and humanitarian assistance.

The thesis raises questions about the content and effectiveness of protection in the ‘safe areas’ in Rwanda and in Bosnia-Herzegovina designated by the UN and also in the no-fly zones in Northern Iraq, which were not mandated by the UN.

More importantly and primarily, this thesis considers what options had been closed to civilians, either intentionally or inadvertently, by setting up safe areas – evaluating on a comparative basis the protection rendered by the ‘safe areas’ as opposed to the protection essentially taken away by their designation. It ponders the implications for those inside such areas as well as for asylum-seekers from that country.

This thesis debates the concept’s utility – more specifically whether it is the most effective human rights mechanism to ensure protection of IDPs and resident civilians – and whether its use can be justified in future and if so then what must be the minimum criterion for that.

1.1 Demarcation

This thesis does not discuss justifications for humanitarian intervention on one hand and the principles of State sovereignty, territorial integrity and non-intervention/inviolability on the other, as well as the tension between the former and the latter, which merits a separate study in its own right. This thesis evaluates the notion of safe area as a mechanism for human rights protection. As discussed later, numerous words and expressions have been used to refer to internationally protected areas. For the purposes of this thesis, safe area and internationally protected area are the terms used to allude to the post-Cold War areas designated in Rwanda, Bosnia and Iraq. The term safety zone will be used exclusively with reference to the Geneva Convention model. Closed centres for refugees in third countries, labelled ‘safe havens’ by the US, or Britain’s proposal to the EU for setting up ‘safe havens’ outside the EU, entitled ‘transit processing centres’, bear no

relationship to the safe areas this study focuses on, which are essentially locations within the home country of the displaced.

1.2 Presentation

The thesis opens with the first chapter explaining its scope and objective, followed by a brief historical background of the internationally protected safe areas in the last one and a half decade. It presents a brief overview of three ‘internationally protected’ areas – the NFZs in Iraq and the safe areas in Bosnia-Herzegovina and Rwanda, which serve as case studies for this thesis. Subsequent efforts to consider further use of the concept and reception of those efforts by the international community are also briefly recounted.

Chapter 2 searches for a commonly agreed upon understanding of the concept and discusses the context for the lack of a universally accepted definition. It also discusses the attending difficulty of determining the applicable law and relevant rules and searches for a working definition. Chapter 3 discusses the human rights and instruments involved, distinguishing between those relevant to refugees and IDPs and reflecting on the reasons for the distinction. It examines the lack of institutional or instrumental protection for the IDPs and enumerates their rights that are compromised or ignored with the creation of safe areas.

Chapter 4 highlights the human rights dimension of the three safe areas and also compares the protection provided to the IDPs therein vis-à-vis the protection withdrawn in the form of measures limiting access to asylum procedures, such as closure of borders, visa restrictions and perception of safe areas as a viable flight alternative, etc.

Chapter 5 analyses why the world became involved in creating safe areas in Iraq, Bosnia and Rwanda and why such areas were seen as the preferred protection mechanism. The objectives the international community has sought to fulfil by creating safe areas in the three case studies are also briefly discussed. It subsequently evaluates the extent of safety and protection in the safe areas in Iraq, Bosnia and Rwanda and compares implementation of that safety to the stated objectives for which the safe areas were created. It asks whether the designation of safe areas is a means to stem the flow of refugees to industrialized countries. It also examines whether human rights protection was one of the stated objectives and if it was then what measures had been taken to ensure that objective. It highlights the protection offered in the three safe areas and compares that to the stated objectives for which the safe areas were created. It discusses if the withdrawal of protection after the creation of safe areas had been a legitimate trade-off in view of States’ human rights obligations and also whether there needs to be such a swap at all. The chapter further analyses whether safe areas solve the immediate protection and assistance problems and if they help ensure the observance of basic human rights.

Chapter 6 discusses the determination of responsibility for the protection of human rights in safe areas primarily for international organisations like the United Nations. Acknowledging that the duty to protect human rights

resides first and foremost with the home State itself, it discusses the law and implications in cases where an international force mandated by the UN or a regional organisation steps in after express promises of safety and protection. It holds that United Nations and its organs are bound to ensure protection of core human rights in the safe areas they designate by virtue of the purely legal reasons emanating from the Charter itself. Failure to ensure that protection entails responsibility of the UN on its own behalf as well on behalf of its agents.

This thesis concludes that the safe areas established in the 1990s had each been a knee-jerk reaction to a particular crisis. There had not been, or have since been, serious efforts to analyse the merits of safe areas as a protection mechanism for the human rights of IDPs and civilians at risk. It acknowledges the contribution humanitarian assistance made through the safe areas, but concludes that they have at best been an inconsistent and imperfect mechanism for human rights protection and that individual rights have been compromised as the safe area emphasis remained on assistance rather than protection. It holds that the creation of safe areas as a protection mechanism is only justified when physical safety and human rights protection is assured and alternatives like crossing the borders remain available. It observes that in view of past experience, implementing such safe areas without minimum in-built mechanisms for human rights protection violates the UN Charter's own emphasis on human rights.

As regards the UN, it is argued must ensure that its operations must not contravene its own purposes under the Charter. It finds that depending on the degree of control, troops and agents acting under UN authority not securing human rights or at least core human right in the areas is unlawful. Even if international politics excludes a legal framework for safe areas, ensuring a safe area that takes into consideration existing standards and obligations of States under international human rights law regarding refugee rights and under the UN Charter can help remedy many of the protection gaps for IDPs in a safe areas.

1.3 Scope

This thesis analyses the practice of creating internationally designated safe areas to protect IDPs and civilians at risk inside conflict zones.

Three instances of international protection of IDPs in safe areas in the 1990s are taken as case studies – the protected zones created in Rwanda and Bosnia, and the NFZs in Northern Iraq.

The three scenarios chosen each comprises substantial international political and military involvement over a considerable period of time and allows for an analysis of the objectives for designating safe areas and measures employed to achieve those objectives.

1.4 Objective

The objective of this thesis is to evaluate the practicality and limitations of safe areas as a vehicle for providing human rights protection and humanitarian assistance. The existence of provisions for monitoring human rights situation in safe areas is also explored. The concept's conformity with States' human rights obligations is examined. This thesis debates merits to the concept's future utility or the lack thereof, seeking to answer the question whether safe areas are the best mechanism for human rights protection, and if there is a case for a continued use of the concept.

1.4.1 Method and Literature

This thesis adopts a legal approach for research. The development and implementation of safe areas since the end of Cold War is studied in order to make the analysis.

The focus is on evaluation of stated objectives for the creation of those areas and of human rights protection therein. International human rights instruments, relevant cases from international judicial and human rights institutions, UN resolutions and discussions and debates on international fora as well as important discussions in individual countries are perused. Writings by authors and practitioners in refugee, human rights and humanitarian law are consulted.

1.5 Background: Dawn of an imaginative age

The 1990s had been an innovative time in international refugee law because of attempts at new solutions to an old 'problem' – that of refugees. During this period, new terms like preventive protection, in-country protection, right to remain and temporary protection were coined to deal with the destabilizing effects of largescale human displacement in the post-Cold War world.

Almost every development in refugee law, both before and after the Cold War has had a subtext. With the end of the Cold War, refugees lost the strategic role they played during the Cold War when welcoming refugees fleeing countries belonging to the opposite bloc was seen as a failure of that country to protect its own citizens.¹ Refugees do not hold that political advantage any more and are seen more as a nuisance rather than political pawns.²

Coupled with the restrictive post-Cold War admission policies in potential countries of asylum, the 1990s were characterised by efforts to contain

¹ Hathaway, James C., A Reconsideration of the Underlying Premise of Refugee Law, in Harvard International Law Journal, 1990, Vol. 31, 99. pp. 129-183 at pp. 149-150.

² Catherine Phuong, Internally Displaced Persons and Refugees: Conceptual Differences and Similarities, Netherlands Quarterly of Human Rights, Vol. 18 No. 2, 2000, pp. 215-229, at p. 217.

human displacement through the presence of humanitarian workers and provision of material relief to the needy.³ Post-Cold War, the emphasis has been on search for ways to ‘protect’ people *in situ*, (hence the importance attached to IDPs), as well as outside the scope of the 1951 Refugee Washington Post Convention in the recipient countries.⁴ Such efforts have focussed predominantly on keeping the displaced persons contained – preferably inside or as close as possible to the State of origin - hence currency of terms like containment and regionalisation. This approach coincided with more restricted asylum policies and the host States generally becoming less keen to host large flows of refugees. The creation of ‘safe’ or internationally protected areas within a country affected by armed conflict⁵ has been one such innovation in the 1990s, which, as far as one can tell, endures.

1.5.1 Seed of the modern safe area: Preventive protection and the ‘right’ to remain

Before proceeding further, a quick glance at two related labels created in the 1990s will help put the development of the safe areas concept into perspective.

After assuming the office in 1990, one of the three objectives UNHCR High Commissioner Sadako Ogata set herself was to promote “preventive action to reduce the root causes of displacement” at the source of problem.⁶

The idea, as suggested by the then high commissioner, meant “prevention of the circumstances which force people to leave”.⁷ To her, the idea was to prevent the causes for flight, such as persecution and human rights abuses and not – as some analysts have seen its actual objective by the states to be – as a device for states to protect themselves from refugee flows. Ms Ogata

³ Helton, Arthur, C. September 1990. What is Refugee Protection? A Question Revisited: pp. 19-33, at p. 31, Problems of Protection, The UNHCR, Refugees, and Human Rights, Niklaus Steiner, Mark Gibney and Gil Loescher (eds.), New York: Routledge, 2003.

⁴ Joly, Danièle, *Introduction*, pp. 1-14, at p. 7, Global Changes in Asylum Regimes, Joly, D. (ed.) New York: Palgrave Macmillan, 2002.

⁵ An armed conflict exists “wherever there is a resort to armed force between States or protracted armed violence between governmental authorities and organised armed groups or between such groups within a State”. *The Prosecutor v. Dusko Tadic*, Decision of the Appeals Chamber, 2 October 1999, 105 *ILR*, p. 488, § 70.

⁶ Opening statement to the 42nd session of the UNHCR Executive Committee (See report of the Executive Committee, UN doc A/AC.96/783, Annex Aug 1992. Also Statement by Mrs Sadako Ogata, United Nations High Commissioner for Refugees, at the ICRC/UNHCR meeting, Geneva, 19 Feb. 1992. <http://www.unhcr.ch/cgi-bin/texis/vtx/admin/opendoc.htm?tbl=ADMIN&id=3ae68fcd50>, visited 16 February 2006.

⁷ Statement by UN High Commissioner for Refugees to the 48th session of the Commission on Human Rights, 20 Feb. 1992, <http://www.unhcr.ch/cgi-bin/texis/vtx/admin/opendoc.htm?tbl=ADMIN&id=3ae68fc210>, visited 17 February 2006.

also emphasised the right to remain, by which she meant “the right to be allowed to remain in one’s home in safety and dignity”.⁸ However, governments have been accused of using the concept differently. Countries facing refugee flows interpreted the idea in their own terms to protect themselves from refugee flows and legitimised their action partly by referring to the concept.

1.6 Historical overview: The tale of three conflicts

The brief description of the three case studies below does not do justice to the complexity of the conflict in Rwanda, Bosnia or in Iraq. However, it presents similarities and disparities among the cases, shedding light on the factors crucial for the protection of IDPs and civilians at risk and on the overall objective of this study - of gauging the viability of ‘safe’ areas as an instrument for human rights protection.

1.6.1 Iraq

Following an abortive Kurdish uprising in Northern Iraq after the 1991 Gulf War, the Western powers established a safe haven enabling some 400,000 Kurdish refugees who had fled to the Turkish border to return.⁹

The US military established the no-fly zone (NFZs) over southern Iraq in 1991 and over northern Iraq in 1992, claiming to enforce UN resolutions to protect Shiites and Kurds from attack by the Iraqi military and to keep Baghdad from moving its forces toward Kuwait and Saudi Arabia. The UN never recognized the NFZs or the US justification for the creation of NFZs that it was enforcing UN resolutions.¹⁰

Commentators agree that the concept of safe havens in Iraq was initially well implemented in Northern Iraq because Operation Provide Comfort was backed by sufficient force to protect hundreds of thousands of returning refugees. But the safe haven concept failed Iraqi Kurds five years later, in 1996, when the United States proved unwilling to thwart the Iraqi army from invading Kurdish areas.¹¹

⁸ Statement of the UN High Commissioner for Refugees to the International Meeting on Humanitarian Aid for Victims of the Conflict in the Former Yugoslavia, Geneva, 29 July 1992, <http://www.unhcr.ch/cgi-bin/texis/vtx/admin/openssl.htm?tbl=ADMIN&id=3ae68fac1a>, visited 16 February 2006.

⁹ Safety Zones, Adam Roberts, Crimes of War Project, <http://www.crimesofwar.org/thebook/safety-zones.html>, visited 17 February 2006.

¹⁰ Washington Post, Airstrikes in Southern Iraq "No-Fly" Zone Mount January 15, 2003 <http://www.globalpolicy.org/security/issues/iraq/nofly/2003/0115airstrikes.htm>, visited 17 February 2006.

¹¹ USAID, Foreign Aid in the National Interest, January 2003, <http://www.usaid.gov/fani/ch05/innovations.htm>, visited 17 February 2006.

Furthermore, while the NFZs and Operation Provide Comfort provided relative safety for the Kurds of northern Iraq from Iraq's central government for the next several years. But that safety was deemed selective, for Operation Provide Comfort provided no safety from incursions from Turkey, which launched attacks on many occasions directed against its own Kurdish guerrillas operating out of Iraq, on occasion hitting Iraqi Kurds as well.¹² Frelick also quotes a March 23, 1995 article report in Geneva Post: “This week the allies conveniently grounded their overflights of Iraqi Kurdistan to allow Turkish jets to bomb the very territory the allies are committed to protect from Iraqi aggression. It is small comfort to the Kurds of Iraq that the bombs raining down belong to an ostensibly friendly power and of little consequence to the Turkish pilots whether the people below are good Kurds or bad Kurds.”

The legal justification for the NFZs was based on cobbling together a number of Security Council resolutions.¹³ Among these, UNSC Resolution 678¹⁴ invoked Chapter VII of the UN Charter — which authorized member states to use military force — to expel Iraq from Kuwait. Resolution 688,¹⁵ adopted after Iraq suppressed rebellions by Kurds in northern Iraq and Shi'ites in the south, condemned Iraq's repression of its own people. The bid to justify the NFZs was based on a combination of Resolution 678's authorization of force with Resolution 688's condemnation of Iraq's internal actions.¹⁶ Resolution 688 condemned “the repression of the Iraqi civilian population... the consequences of which threaten international peace and security in the region”. It also asked “Iraq [to] allow immediate access by international humanitarian organizations to all those in need of assistance”.¹⁷

However, the latter resolution did not cite Chapter VII and neither resolution nor indeed any relevant UNSC resolution made any reference to the NFZs.

1.6.2 Bosnia-Herzegovina

The roots of the Bosnian conflict are to be found in the disintegration of Yugoslavia. In 1993, UN Security Council adopted resolutions 819¹⁸ and 824¹⁹ to establish six “safe areas” in Bosnia-Herzegovina - Srebrenica,

¹² Frelick, Bill, Precarious Protection in Northern Iraq, Harvard International Review; 1997 Vol: 19 Issue: 2 Pages: 40-45, http://elin.lub.lu.se/cgi-bin/linker/ebsco_local?9710256493, (requires password), visited 17 February 2006.

¹³ Robert Dreyfuss, Persian Gulf—or Tonkin Gulf? December 30, 2002, <http://www.prospect.org/print/V13/23/dreyfuss-r.html>, visited 17 February 2006.

¹⁴ S/RES/678(1990), 29 November 1990.

¹⁵ S/RES/688(1991), 5 April 1991.

¹⁶ Robert Dreyfuss, Persian Gulf—or Tonkin Gulf? December 30, 2002, <http://www.prospect.org/print/V13/23/dreyfuss-r.html>, visited 17 February 2006.

¹⁷ S/RES/688(1991), 5 April 1991, § 3.

¹⁸ S/RES/819(1993), on 16 April 1993.

¹⁹ S/RES/824(1993), on 6 May 1993.

Sarajevo, Tuzla, Zepa, Gorazde, and Bihac - to protect the inhabitants of the six towns from Bosnian Serb forces besieging them.

In July 1995, UNPROFOR troops watched as Bosnian Serb forces entered the safe areas of Srebrenica²⁰ and Zepa,²¹ where they murdered thousands. The 'safe' haven idea failed most memorably in Srebrenica, where Dutch troops were unable to prevent Bosnian Serb militants from capturing and later executing around 8,000 Muslim men and boys between 13 and 19 July 1995, making it the largest massacre in Europe since the Second World War.²² The Serbs were allowed to keep Srebrenica and Zepa in the Dayton Peace Accord concluded in November 1995. The entire Dutch cabinet resigned in April 2002 in the aftermath of a damning government-commissioned report released a week earlier on the Srebrenica massacre.²³ The report²⁴ blamed the Dutch government and senior military officials for failing to prevent the 1995 massacre. The report said the government had sent its peacekeepers on a "mission impossible" to protect Srebrenica, which was supposed to be a UN safe area.

The report also criticised the UN, which it said should share responsibility with the Dutch Government for failing to prevent the tragedy.

1.6.3 Rwanda

After the Rwandan genocide occurred between April and June 1994, large portions of the country's population consisting overwhelmingly of Hutus fled fearing retribution for the genocide by the new Tutsi government that took charge of most of the country including the capital Kigali.

Between 800,000 and two million people were displaced within Rwanda, and another two million fled to neighbouring countries.²⁵

In June 1994, in view of delay in the deployment of an expanded UNAMIR force, the Security Council adopted Resolution 929, establishing a multinational operation for humanitarian purposes in Rwanda with a two-month time limit.²⁶

The French, along with the Senegalese deployed Operation Turquoise with 2,500 troops, setting up *Zones Humanitaires Sûres* (ZHS), 'safe

²⁰ Serbs overrun UN 'safe haven', BBC, 11 July 1995
http://news.bbc.co.uk/onthisday/hi/dates/stories/july/11/newsid_4080000/4080690.stm, visited 17 February 2006.

²¹ Zepa falls to Serbs, CNN, 25 July 1995
<http://edition.cnn.com/WORLD/Bosnia/time/index.html>, visited 17 February 2006.

²² UNHCR, The State of the World's Refugees 2000, p. 224,
<http://www.unhcr.ch/pubs/sowr2000/ch09.pdf>, visited 17 February 2006.

²³ Dutch government quits over Srebrenica.
<http://news.bbc.co.uk/1/hi/world/europe/1933144.stm>

²⁴ Srebrenica - a 'safe' area: Reconstruction, background, consequences and analyses of the fall of a Safe Area, Netherlands-commissioned report by Netherlands Institute for War Documentation (NIOD), <http://213.222.3.5/srebrenica/>, visited 17 February 2006.

²⁵ RWANDA: 'Genocidal slaughter' claims as many as 1 million - UN authorizes 'Operation Turquoise' to protect displaced persons, UN Chronicle Online Edition, 1994
<http://www.un.org/Pubs/chronicle/1994/issue4/0494p4.asp>, visited 17 February 2006.

²⁶ S/RES/929(1994), on 22 June 1994, § 1.

humanitarian zones,²⁷ in Southwest Rwanda that covered a fifth of the Rwandan territory.²⁷ Many observers saw the French intervention as a device to allow the perpetrators of genocide to escape unpunished rather than protecting humanitarian interests.²⁸

Kibeho, the largest IDP camp in the ZHS was a cause for the government's concern straight away. The new government feared that the ZHS was being used to fuel an uprising against Kigali and that it also protected some of the architects of the 1994 genocide. It was also fearful of rearming in Kibeho where military training was observed.²⁹ On 6 March 1995, it was officially noted that there remained 250,000 IDPs, of which 120,000 were in Kibeho.³⁰ An Independent Inquiry Commission found that in early 1995, Kibeho appeared to be a centre of hostility and a threat to internal security and the government wanted it closed.³¹

The government of Rwanda decided on 15 April 1995 to close the displaced persons camps, which "owing to the infiltration of militiamen and soldiers from Rwanda's former armed forces, were becoming a 'threat to the security of the region'."³²

Rwandese Army (RPA) troops surrounded the camp on 18 April, 1995, prompting the IDPs to panic and take refuge around the buildings controlled by UNAMIR. Scores of deaths occurred on 18, 19, 20 and 21 April following the jostling caused by the soldiers surrounding the camp as well as by bands of civilians attacking IDPs to discourage them from leaving.³³

Of the massacre in Kibeho on the night of 22 April, the Special Rapporteur of the Commission on Human Rights says:

"It seems that it was in the night of 22 April that the worst occurred; many shots were heard and, next morning, the road between the two UNAMIR posts was strewn with countless bodies. It should be made clear that some were killed by APR [Rwandan Patriotic Army], others were trampled or crushed by the crowd in the general panic, and still others were

²⁷ Cited in Landgren, K., *Safety Zones and International Protection: A Dark Grey Area*, IJRL, Vol. 7 No. 3, pp. 436-458, at p. 449.

²⁸ See Prunier, Gerard, *The Rwanda Crisis: History of a Genocide*, New York: Columbia University Press, 1995.

²⁹ Report of the Independent International Commission of inquiry into the events at Kibeho in April 1995, Annex to letter of the Secretary-General to the Security Council, S/1995/411, 23 May 1995, § 11.

³⁰ Report of the Independent International Commission of inquiry into the events at Kibeho in April 1995, Annex to letter of the Secretary-General to the Security Council, S/1995/411, 23 May 1995, § 20.

³¹ Report of the Independent International Commission of inquiry into the events at Kibeho in April 1995, Annex to letter of the Secretary-General to the Security Council, S/1995/411, 23 May 1995, § 12.

³² Report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Rwanda. A/50/709-S/1995/915, 2 November 1995, § 101.

³³ Report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Rwanda. A/50/709-S/1995/915, 2 November 1995, § 101.

executed by militiamen in reprisal against displaced persons who had expressed their intention of leaving the camp.”³⁴

Estimates of the number of IDPs killed that night in the safe area’s Kibeho camp remain undetermined to date. The Rwandan government recorded 300 deaths while other sources put the number in excess of 8,000³⁵ and spoke of a group of UNAMIR forces and NGO workers witnessing the killing of several thousand people.³⁶ UNAMIR put the toll between 1,500 and 2,000.³⁷

1.7 The move towards more safe havens

Even though the safe area concept is nowhere near established after the three case studies under review, the call to use safe areas as a mechanism to prevent or address largescale displacement has been made a number of times since the tragic events at Kibeho, Srebrenica and in Northern Iraq. The more notable of those developments are enumerated.

1.7.1 Developments in Africa’s Great Lakes region

The Great Lakes region of Africa comprises Burundi, the Central African Republic, Democratic Republic of Congo (DRC), Kenya, Rwanda, Tanzania and Uganda. In late November 1994, Rwandan President Pasteur Bizimungu, Burundian President Sylvestre Ntibantunganya and Zairian President Mobutu Sese Seko, met at Gbadolite, Zaire (now the DRC) and called for the creation of internationally supervised ‘security zones’ in Rwandan territory to facilitate the return of Rwandan refugees from Burundi and Zaire. The three presidents concluded that these zones would be placed under UN supervision.

A letter in the same month from the UN Secretary General to the Canadian Minister for Foreign Affairs concerning efforts to improve security in the camps for Rwandan refugees also mentioned that conclusion by the three presidents.³⁸

³⁴ Report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Rwanda. A/50/709-S/1995/915, 2 November 1995, § 102.

³⁵ Report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Rwanda. A/50/709-S/1995/915, 2 November 1995, § 103.

³⁶ USAID, Foreign Aid in the National Interest, January 2003, <http://www.usaid.gov/fani/ch05/innovations.htm>, visited 17 February 2006. Human Rights Watch has cited estimated casualties as high as 8,000. See Human Rights Watch, “Rwanda,” in World Report 1996 (New York: Human Rights Watch, 1996).

³⁷ Report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Rwanda. A/50/709-S/1995/915, 2 November 1995, § 103.

³⁸ Letter (§ 4) dated 30 Nov 1994 from the Secretary General to the Canadian Minister for Foreign Affairs concerning efforts to improve security in the camps for Rwandan refugees and to promote rehabilitation and reconstruction in Rwanda. This letter was not issued as UN document. The United Nations and Rwanda, 1993-1996, The United Nations Blue Book Series Volume X, p. 408.

The idea of creating “safe zones” was part of a Plan of Action adopted at the Inter-governmental Regional Conference on Assistance to Refugees, Returnees and Displaced Persons in the Great Lakes in February 1995 for the “voluntary repatriation” of refugees in the region.³⁹

A policy paper issued by the Government of Tanzania in November 1995 advocated the creation of safe zones, citing several advantages over the granting of asylum in neighbouring countries:

“Firstly, it serves as a constant reminder to their Governments that the refugees are in fact their citizens and therefore, they have a natural duty towards them. Secondly, it relieves the refugees’ host countries of a problem which is not of their own making. Thirdly, “safe zones” make it easy for the refugees to return to their homes when the situation stabilizes. Fourthly, “safe zones” serve as a confidence building measure because the situation in their countries would be gauged on a first hand basis. Lastly, it causes least disruption on the part of refugees in terms of language, culture, weather etc.”⁴⁰

In 2001, the Tanzanian government urged embrace of the “safe zone” concept at the level of the UN Security Council, urging that it be relieved from hosting its massive Burundian refugee population. Although the OAU Ministerial Meeting accepted the plan it was not approved because of lack of international support.⁴¹

In 2003 “safe zones” found their way into Tanzania’s first written refugee policy and then later were advocated at a three-day regional conference on refugee protection. At that session the Tanzanian home affairs minister urged the international community to “work out a strategy through which safe havens will be created for refugees within the borders of a country in civil strife”.⁴² He declared that “the solution indeed lies in the countries of origin rather than in the countries of asylum.”⁴³

In September 2003, Tanzanian President Benjamin Mkapa issued a public statement blaming refugees for the increase in small arms to the country. He also called on the international community to establish safe havens in war-torn countries to prevent refugees from entering neighbouring countries. In

³⁹ Human Rights First, *A Decade of Unrest - Unrecognized Rwandan Refugees in Uganda and the Future of Refugee Protection in the Great Lakes*. 2004, p. 56, <http://www.humanrightsfirst.org/refugees/reports/Decade-of-Unrest.pdf>, visited on 17 February 2006.

⁴⁰ Policy paper, Government of Tanzania, 1995, § 12; cited in UNHCR Working Papers, Bonaventure Rutinwa, Working Paper No. 5 (May 1999) *New Issues in Refugee Research, The end of asylum? The Changing Nature of Refugee Policies in Africa*. p. 9. <http://www.unhcr.ch/cgi-bin/texis/vtx/research/opendoc.pdf?tbl=RESEARCH&id=3ae6a0c34>, visited on 17 February 2006.

⁴¹ Human Rights First, *A Decade of Unrest - Unrecognized Rwandan Refugees in Uganda and the Future of Refugee Protection in the Great Lakes*. 2004, <http://www.humanrightsfirst.org/refugees/reports/Decade-of-Unrest.pdf>, visited on 17 February 2006.

⁴² IRIN, “TANZANIA: Call to Review Laws, Conventions,” September 15, 2003.

⁴³ IRIN, “TANZANIA: Call to Review Laws, Conventions,” September 15, 2003.

addition, he asked regional leaders to consider replacing international asylum and refugee protections for victims of conflict with a system of safe havens.⁴⁴

1.7.2 Safe areas in Sudan

The UN called Darfur one of the world's worst humanitarian crises in April 2004.⁴⁵ Two years of fighting between rebels and Arab militias had left at least 180,000 people dead and forced more than two million to flee their homes. The Sudanese government was accused of arming Arab militias who raided mostly non-Arab villages, raping and murdering civilians.

UN Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator Jan Egeland said in April 2004 that an organized, forced depopulation of entire areas was taking place, resulting in the displacement of hundreds of thousands.⁴⁶ Some governments called the conflict genocide and the International Criminal Court is currently investigating charges of alleged war crimes in the area.

The Security Council passed Resolution 1556 in July 2004,⁴⁷ giving Sudan 30 days to curb pro-government Arab militias known as the Janjaweed, accused of attacking black African farmers in Darfur, and to improve security and humanitarian access.

On 5 August 2004, the UN Secretary-General's special representative to Sudan, Jan Pronk, and the Sudanese government agreed to a Plan of Action that would establish "safe areas" for displaced and resident civilians in Darfur.

The "Plan of Action for Darfur"⁴⁸ called for halting all military operations by government forces, militias, and rebel groups in these safe areas, set up in camps where thousands of Sudanese had taken refuge and around towns and villages which still had large populations.

Sudan named twelve safe areas in Darfur and sent thousands of police to the area, saying they were there to protect the displaced civilians. The African Union (AU) has about 6,000 troops spread over a vast region the size of France, responsible for monitoring an often-violated ceasefire.⁴⁹

The safe areas in Sudan have not been particularly safe. Frequent attacks and killings are reported. An estimated 70,000 people were displaced attacks

⁴⁴ Tanzania - Country Reports on Human Rights Practices 2003, Released by US Bureau of Democracy, Human Rights, and Labor on 25 February 2004
<http://www.state.gov/g/drl/rls/hrrpt/2003/27756.htm>, visited on 17 February 2006.

⁴⁵ Press briefing on humanitarian crisis in Darfur, Sudan 2 April 2004,
<http://www.un.org/News/briefings/docs/2004/egelandbrf.DOC.htm>, visited on 17 February 2006.

⁴⁶ Press briefing on humanitarian crisis in Darfur, Sudan 2 April 2004,
<http://www.un.org/News/briefings/docs/2004/egelandbrf.DOC.htm>, visited on 17 February 2006.

⁴⁷ S/RES/1556(2004), 30 July 2004.

⁴⁸ BBC, Text of the Plan of Action for Darfur, 7 August 2004,
<http://news.bbc.co.uk/2/hi/africa/3543740.stm>, visited on 17 February 2006.

⁴⁹ Reuters, Enterprising locals profit from Darfur conflict, 9 November 2005.

in South Darfur as recently as the last week of January 2006. At least 50,000 were displaced in a series of attacks on camps for internally displaced people IDPs in Mershing town.⁵⁰

Following the attack, UN Secretary-General Kofi Annan expressed serious concern about "the major escalation of violence in the Jebel Marra region of Darfur, particularly the heavy fighting in the Golo and Shearia areas that has forced humanitarian agencies to evacuate."⁵¹ He called on the parties to the conflict to respect their agreements and the provisions of international humanitarian law.

While this was one of the more recent attacks, similar attacks have not been a rarity.

1.7.3 Continued exploration of the concept by the UN

In Resolution 1296 (2000) on the protection of victims of armed conflict, the Security Council stated that it would "consider the appropriateness and feasibility of temporary security zones and safe corridors for the protection of civilians and the delivery of assistance in situations characterized by the threat of genocide, crimes against humanity and war crimes against the civilian population".⁵²

On 7 March 2000, the UN Secretary-General convened a panel, chaired by Lakhdar Brahimi, to review UN peace and security activities. That the United Nations continues to explore in-country protection to safeguard civilians from the effects of armed conflict could be gathered from the *Report of the Panel for United Nations Peace Operations* (the Brahimi Report).⁵³ The report states:

"The Security Council has ... established, in its resolution 1296 (2000), that the targeting of civilians in armed conflict and the denial of humanitarian access to civilian populations afflicted by war may themselves constitute threats to international peace and security and thus be triggers for Security Council action.

If a United Nations peace operation is already on the ground, carrying out those actions may become its responsibility, and it should be prepared."⁵⁴

⁵⁰ IRIN, SUDAN: Thousands displaced by recent attacks in South Darfur, 1 February 2006 http://www.irinnews.org/report.asp?ReportID=51476&SelectRegion=East_Africa&SelectCountry=SUDAN, visited on 17 February 2006.

⁵¹ Statement issued Spokesman for UN Secretary-General Kofi Annan, 27 January 2006, <http://www.un.org/News/Press/docs/2006/sgsm10327.doc.htm>, visited on 17 February 2006.

⁵² S/RES/1296(2000), 19 April 2000, § 15.

⁵³ The Panel's report to the Secretary-General is attached to "The identical letters dated 21 August 2000 from the Secretary-General to the President of the General Assembly and the President of the Security Council", UN Doc. A/55/ 305-S/2000/809, 21 August 2000.

⁵⁴ The Brahimi Report, UN Doc. A/55/ 305-S/2000/809, 21 August 2000, § 50.

In his address to the Security Council regarding the protection of civilians in conflict, UN Secretary-General Kofi Annan said in April 2000:

“In future conflict situations, it may be necessary to consider temporary security zones and safe corridors for the protection of civilians, and I welcome the [Security] Council’s readiness to consider the feasibility of such measures. However, I must emphasize that in situations where the consent of the parties is not forthcoming, such security zones require the presence of a credible force.”⁵⁵

Such developments suggest that the safe areas concept is still on the table and is seen as at least one of the solutions to largescale displacement. Proceeding from this perspective, the following chapter looks for a better understanding of internationally protected safe areas and searches for a legal definition of the concept as well as applicable rules.

⁵⁵ UN Secretary-General Kofi Annan’s address to the Security Council on Protection of Civilians in Conflict, 19 April 2000, <http://www.unis.unvienna.org/unis/pressrels/2000/sg2548.html>, visited on 17 February 2006.

2 SAFE HAVENS: LOOKING FOR A DEFINITION

2.1 A rudimentary concept

What is a safe area in the post-Cold War world? And more importantly what does it mean for the displaced persons and resident civilians inside one and for troops supposedly guarding those areas?

Any attempt at an answer to the second question will inevitably begin with the first. Therefore a search for what the concept entails literally, a search for a definition, will be an obvious starting point. It is by reference to its definition in international law that this term must be interpreted.

Only subsequently can one begin to investigate the particulars of the notion's status, content and implementation. However, efforts to peer through the label for a definition do not get one far.

Despite extensive use of terms like safe areas and safe havens for protected areas, there is no internationally agreed legal definition for a safe area either in customary or treaty law, much less what constitutes safety or protection in such an area.

The lack of a commonly accepted definition can perhaps be explained by the relatively recent involvement of the international community with the creation of safe areas for the protection of IDPs and because of the concept being in a flux, still being shaped in response to field experiences. However, given the continued reference to safe areas as an answer to displacement, lack of efforts to thrash out a definition is unexpectedly surprising to say the least.

2.1.1 Proliferation of grand titles

Lack of a definition notwithstanding, safe haven, as they have commonly been referred to, is not even a constant label. Similar zones have been entitled variously as safe areas (Bosnia), neutral zones, UN protected areas (Croatia 1992), secure humanitarian areas, security corridors, security zones (between Ethiopia and Eritrea), no-fly zones (Iraq) and confidence zones (Ivory Coast).

Negotiation and creation of other areas mainly for the rapid provision of emergency assistance is not rare either and such areas have been called humanitarian corridors⁵⁶ (Chechnya 13 Aug 1996), corridors of peace (Bosnia 1994, DRC July 1999), Lebanon 1987, Sudan 1989, Uganda 1986

⁵⁶ UN envoy to discuss humanitarian corridors from Chad with Sudanese authorities, 11 March 2004, http://www.darfurinformation.com/hc_un_envoy.asp, visited on 17 February 2006.

and Guatemala 1990s), zones of tranquility,⁵⁷ (UN supervised-Operation Lifeline in 1989 in Sudan) safe corridors (Sierra Leone May 1999) and temporary relief corridors.⁵⁸ However, such spaces designated exclusively for emergency assistance are not the focus of this thesis. The preceding few lines are meant to show the range of labels employed for more or less identical situations. This brings us to the next question. Why are there different names for similar spaces? Do different names for such areas mean that they refer to different concepts? Prima facie, it is evidence of a loose and imprecise use of words denoting a similar concept. To Landgren, the use of various terms like safe havens, safety zones, safety corridors, open relief centres and humanitarian zones – referring to the same or similar arrangements – indicates uncertainty surrounding the notion.⁵⁹ The lack of a common terminology to define protected zones can have other implications as well. Landgren says that without a consistent and uniform terminology the fine distinction between the emerging principles of humanitarian law and the customary principles of human rights and refugee law will not be discernable where the two aforementioned branches of law overlap.⁶⁰

2.1.2 Safety zone – the humanitarian law concept

The closest one comes to a legal definition of a similar area is in international humanitarian law, with the Fourth Geneva Convention and its Additional Protocol I providing for three categories of narrowly defined safety zones: hospital zones,⁶¹ neutralized zones,⁶² and demilitarized zones.⁶³ The last expand the safety zone concept to the entire civilian population, not just the sick, wounded or otherwise vulnerable. The provisions in the Geneva Convention depend upon consent between belligerents and demilitarization of the protected areas, which must be civilian in nature. Strictly speaking, both these conditions have not been a prerequisite for the creation or maintenance of the post-Cold War safe areas.

⁵⁷ General Assembly Resolution 46/182, UN Doc A/RES/46/182 § 35 (d), 19 December 1991, http://www.reliefweb.int/ocha_ol/about/resol/resol_e.html, visited on 17 February 2006.

⁵⁸ General Assembly Resolution 46/182, UN Doc A/RES/46/182 § 35 (d), 19 December 1991, http://www.reliefweb.int/ocha_ol/about/resol/resol_e.html, visited on 17 February 2006.

⁵⁹ Landgren, K., *Safety Zones and International Protection: A Dark Grey Area*, IJRL, Vol. 7, No. 3, 1995. pp. 436-458, at p. 432.

⁶⁰ Landgren, K., *Safety Zones and International Protection: A Dark Grey Area*, IJRL, Vol. 7, No. 3, 1995. pp. 436-458, at p. 432.

⁶¹ Art. 14, *Convention (IV) relative to the Protection of Civilian Persons in Time of War*. Geneva, 12 August 1949. Art. 23, *Convention (I) for the Amelioration of the Condition of the Wounded and the Sick in Armed Forces in the Field*.

⁶² Art. 15, *Convention (IV) relative to the Protection of Civilian Persons in Time of War*. Geneva, 12 August 1949.

⁶³ Art. 60, *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977.

Many authors⁶⁴ see the safe areas in the 1990s as an imperfect instance of safety zones à la Geneva Conventions and hold that any shortcomings and flawed protection in such areas are commensurate with the extent to which the safe areas model employed in the 1990s departs from the Geneva Convention parameters. Their solution: ensuring demilitarisation and consent-based safe areas.

The implementation of safety zones is based on the concept of consent. According to Article 14 the parties concerned may "conclude agreements on mutual recognition of the zones and localities they have created".⁶⁵

The safety zones under the Geneva Convention do not specify any arrangements for defending the areas. Ironically, that has been one of the main similarities between the two models so far. Theoretically, however, arrangements for defending the zones envisaged by the Geneva Convention would not have been warranted because consent of parties to the conflict would ensure respect for them in all probability. The Geneva Conventions based model however is based on humanitarian law and not human rights-centric. The ICRC has noted that there has not been proliferation of protected zones subsequent to the Geneva Conventions and those which have been created "fall only very roughly into the categories envisaged in the Geneva Conventions, if at all".⁶⁶

2.2 What's in a name

So why is a definition important? To ascertain the precise meaning of the concept is more than a mere academic exercise. It can lead to specific entitlements and obligations. The various names used for protected areas are used as terms that are supposed to have a meaning but what exactly is that meaning and how is that to be interpreted? Literally? Probably not, or so the last three experiences should suggest.

A definition in this context is indispensable for understanding the concept and determining the degree to which it provides legal and actual protection. A sufficiently well defined concept will ensure certainty of what the creation of a safe area entails. One of the implications for lack of such a definition is the absence of a benchmark against which a safe area can be measured in terms of protection promised and protection actually delivered. Lack of a definition becomes all the more stark against the backdrop of uncertainty surrounding the content of such areas and the continued use of the concept with slightly different title each time. Without any ascertainable parameters how does one gauge if a future safe area, or one in the past for that matter, meets the required criterion or what the required criterion is to begin with. Any settled parameters of the concept would be particularly

⁶⁴Haspesslagh, Sophie, Safe Havens,

http://www.beyondintractability.org/m/safe_havens.jsp, visited 17 February 2006.

⁶⁵ Art. 14, *Convention (IV) relative to the Protection of Civilian Persons in Time of War*. Geneva, 12 August 1949.

⁶⁶ The Establishment of Safety Zones for Persons Displaced Within Their Country of Origin, Presentation by Yves Sandoz, ICRC, Doha Qatar, March 1994. p. 11.

relevant in instances like the United Nations' agreement with Sudan to designate 'safe' areas for resident civilians and displaced persons in Darfur or similar scenarios of internal displacement.

2.3 Law applicable to safe havens

Ascertaining the origin and definition of the notion is important because it leads to more particular questions like which branch of law applies to which aspects of a safe area and to what extent. Is it humanitarian law, human rights law, or a combination of both? What role, if any, would international refugee law play? Determination of *lex specialis* will become relevant in the first case because the primacy of rules applicable in a specific situation must be established.

If there is a legal framework or at least an agreed legal definition in place, there will be more consistency and predictability, as that would elaborate the status and content of the safe areas. Which description the notion answers to would naturally also determine the related applicable principles and allow one to ascertain if the practices in safe areas are consistent with human rights principles.

2.3.1.1 Applicability of humanitarian law

The law designed to regulate the conduct of hostilities in armed conflict is humanitarian law and in view of creation of safe areas inside conflict zones would be the *lex specialis*. More specifically, humanitarian provisions of the Fourth Geneva Convention⁶⁷ will primarily regulate the protection of civilians. Common Article 3 of the Geneva Conventions and Protocol II contain generally applicable humanitarian rights related to internal armed conflicts. They require parties to the Conventions and the Protocol to respect the integrity of persons who are not directly involved in the hostilities. The Geneva Convention model has its basis in humanitarian law and not human rights law. In contrast to human rights law, provisions of international humanitarian law already take into account the principles of humanity, military necessity and proportionality and therefore do not allow for derogation.⁶⁸ The rights not covered completely or partially by humanitarian law would be regulated by human rights law, as *lex generalis*, which continues to operate during the conflict despite the *lex specialis* status of humanitarian law.⁶⁹ The extent of applicability of human rights law in safe areas is discussed in chapter 6.

⁶⁷ Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949.

⁶⁸ Human Rights Reference Handbook by Magdalena Sepúlveda, Theo von Banning, Gudrun D. Gudmundsdóttir, (eds.), third edition, Ciudad Colon, Costa Rica: University for Peace, 2004, p. 425.

⁶⁹ *Legal Consequences of the Construction of a wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004 ICJ 136, at p. 178 § 106; *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 ICJ Reports 226, at p. 240, § 25.

2.3.2 A working definition

In the absence of a generally accepted definition, one could refer to a working definition to ascertain the content of a safe area. However, the search for a generally accepted working definition also proves equally futile. The WHO refers to safe havens as a “term used in the Balkans conflict to identify villages that were only for civilian inhabitants and not to be attacked.”⁷⁰ There are hints of a general understanding that a safe area should be a “location within the disputed country of territory, neutral, free of belligerent activity, to which humanitarian access is ensured”.⁷¹ However, a generally accepted working definition in international law or in the UN terminology is conspicuous by absence. It seems that the term has been used without any consideration as to its actual meaning. Even the UNSC resolutions designating safe areas do not elaborate the full content of a safe area or offer any definition of the phrase. Relevant Security Council resolutions are analysed in chapter 5 with a view to ascertain the objectives for designating safe areas, and gather the meaning of a ‘safe’ area. It is singularly because of lack of a definition of the concept that one has to work one’s way back from UNSC resolutions and other documents to get even the most basic sense and content of the concept. Writing in 1995, Karin Landgren referred to internationally protected safety zones as a “dark gray area”;⁷² it has certainly not become any clearer since.

⁷⁰ World Health Organisation, http://www.who.int/hac/techguidance/hbp/cease_fires/en/, visited on 17 February 2006.

⁷¹ Landgren, K., *Safety Zones and International Protection: A Dark Grey Area*, IJRL, Vol. 7, No. 3, 1995. pp. 436-458, at p. 438

⁷² Landgren, K., *Safety Zones and International Protection: A Dark Grey Area*, IJRL, Vol. 7, No. 3, 1995. pp. 436-458, at p. 432.

3 Comparative protection

This chapter discusses the international instruments and frameworks relevant to the displaced – both refugees and IDPs. Comparing the protection available, it reflects on the reasons for distinctions between the two categories of the displaced.

3.1 Protection for refugees and IDPs

There is general agreement that IDPs and indeed all persons are entitled to the right to leave their own country, the right to seek and enjoy asylum from persecution if they meet one of the five Convention grounds, as well as to protection from *refoulement*. Being recognized as a refugee entitles those fleeing persecution to international protection, with the application of the 1951 Refugee Convention and with the UNHCR overseeing its application.⁷³ While internal displacement is often a precursor to refugee outflows,⁷⁴ there is no similar coherent institutional and instrumental approach to deal with IDPs. Unlike refugees, IDPs are not covered by any one specific body of law either.

3.1.1 Instruments, institutions and definitions

The general dictionary meanings of the word ‘refugee’ refer to a person who flees in search of refuge or who has been forced to leave his home in times of war, political oppression, or religious persecution, irrespective whether he has left his country or not.⁷⁵ In terms of international law, however, the concept is defined much more narrowly, on the basis of persecution on account of either group membership or belief. In that sense, the word ‘refugee’ denotes a person who is outside his countries of nationality and who has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion in his country of nationality, and who is unable or unwilling to avail himself of the protection of his countries of nationality.⁷⁶ The term was defined in the 1951 Refugee Convention⁷⁷ while the 1967 Protocol⁷⁸ deleted the temporal and geographical limitations that restricted the application of

⁷³ Art. 35, 1951 Convention; Art. 2, 1967 Protocol.

⁷⁴ Report of the Secretary-General’s Representative on IDPs submitted pursuant to Commission on Human Rights resolution 1997/39, UN Doc. E/CN.4/1998/53, 11 February 1998. § 1.

⁷⁵ Oxford Advanced Learner’s Dictionary, sixth edition, Oxford University Press, 2000.

⁷⁶ Convention Relating to the Status of Refugees, July 28, 1951, Art. 1 A (2), 189 U.N.T.S. 137, 152 [hereinafter 1951 Convention].

⁷⁷ 1951 Convention, Art. 1 A (2).

⁷⁸ Protocol Relating to the Status of Refugees, Jan. 31, 1967, Art. 1, 2,606 U.N.T.S. 267, 268 [hereinafter 1967 Protocol].

the Convention only to the people fleeing events occurring in Europe before 1 January 1951.

The Guiding Principles on Internal Displacement⁷⁹ provide a definition for IDPs, describing them as “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural- or human-made disasters, and who have not crossed an internationally recognized State border.”⁸⁰

3.1.2 Specific legal frameworks for protection

Besides the 1951 Convention and its Protocol, refugees are also protected under regional instruments such as the 1969 OAU Convention Concerning the Specific Aspects of Refugee Problems in Africa;⁸¹ the 1969 Refugee Convention of the Organization of the American States (OAS); and other instruments such as the 1984 Cartagena Declaration,⁸² adopted by 10 Latin American States.

An individual who does not meet the requisites of the refugee definition under the 1951 Convention is not entitled to protection under the Convention or its Protocol. Those fleeing across a border from generalized threats posed by war or civil disturbance are generally outside the ambit of refugee law, as they are not considered to have a sufficiently individualized fear of persecution. However, the 1969 OAU Convention and the Cartagena Declaration subscribe to a broader refugee definition, containing a more extensive list of causes forcing a person to leave his or her country. Unlike the 1951 Refugee Convention, they also recognise as additional grounds situations of “external aggression, occupation, foreign domination or events seriously disturbing public order”⁸³ and “generalized violence, foreign aggression, internal conflicts, massive violations of human rights or other circumstances which have seriously disturbed public order”.⁸⁴

The protection envisaged by the 1951 Convention includes at the very least the range of legal rights for refugees stipulated by the Convention itself.⁸⁵ Further protection comes from human rights law, which is the prime source of refugee protection principles and also works to compliment them.⁸⁶

⁷⁹ Guiding Principles on Internal Displacement UN Doc. E/CN.4/1998/53/Add. 2 of 17 April 1998. [hereinafter Guiding Principles]

http://www.reliefweb.int/ocha_ol/pub/idp_gp/idp.html, visited on 17 February 2006.

⁸⁰ Guiding Principles on Internal Displacement, Introduction § 2.

⁸¹ Concluded September 10, 1969, 1001 U.N.T.S. 45 (No. 14691), entered into force June 20, 1974, ratified by 42 States as of 1 January 1995. Art. 1 (2).

⁸² Cartagena Declaration, approved by the 1985 General Assembly of the Organisation of American States.

⁸³ 1969 OAU Convention, Art. 1 (2).

⁸⁴ 1984 Cartagena Declaration, Conclusion 3.

⁸⁵ 1951 Convention Arts. 3, 4, 15, 16, 17, 18, 19, 21, 24, 25, 31 and 34.

⁸⁶ Note on International Protection 1998 (submitted by the High Commissioner), UN Doc. A/AC.96/98 of 3 July 1998.

Article 5 of the 1951 Convention specifically enumerates that the Convention provides the minimum standards for treatment of refugees. This entails that nothing impairs any additional rights and benefits granted to a refugee by a contracting State and that any broader rights granted under international human rights treaties to which a host State is party also apply. Countries not bound by treaty obligations are still bound to uphold the obligations reflected in those treaties in so far as they reflect customary international law.

A host state is also obliged to provide legal protection to and respect basic human rights of individuals seeking asylum. In this regard, the standard of treatment applying to non-citizens is the same as that applying to nationals of the host State. Equality of such treatment is also an established principle of international law, and countries not signatory to the 1951 Convention remain obliged to protect refugees on their soil.⁸⁷ The ICJ has also held that a State is bound to protect individuals admitted to its territory.⁸⁸

On the other side of the spectrum, protection needs of internally displaced persons are also beyond dispute. They have been termed as being “at least as vulnerable” as refugees but receiving less attention,⁸⁹ and being “amongst the most vulnerable populations, desperately in need of protection and assistance”.⁹⁰

Unlike refugees and asylum seekers, the internally displaced are exposed to armed attack and violation of their human rights; their fate is aggravated by the fact that they have no clear rights under international law while the refugees are assured certain rights in the country of refuge. Since they do not cross international borders they bear the brunt of violence and war. The UNHCR has acknowledged the need to protect IDPs in the country of origin, stating:

“A particular challenge for UNHCR in this regard, [protection of IDPs to prevent refugee flows] is how to devise methods to meet the security and protection concerns of individuals prior to departure so as to obviate the need for flight.”⁹¹

While such acknowledgements abound, there is still no binding legal instrument or supervisory institution covering IDPs. A comparison between the characteristics of refugees and IDPs yields many similarities and both

⁸⁷ See I. Brownlie, 1973, *Principles of Public International Law*, 3rd ed. p. 504

⁸⁸ *Case Concerning the Barcelona Traction, Light and Power Company, Ltd.* (Belgium v. Spain), 1970 ICJ 3, at p. 32 § 33; Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in Which They Live. UNGA res. 40/144, 13 December 1985

⁸⁹ Weiss, Thomas G., *Whither International Efforts for Internally Displaced Persons?*, *Journal of Peace Research*, Vol. 36, No. 3 (May, 1999) , pp. 363-373, at p.363.

⁹⁰ Introductory Note to the Guiding Principles, § 1, Report of the Representative of the Secretary-General, Francis M. Deng, submitted pursuant to Human Rights Commission resolution 1997/39, Addendum UN Doc. E/CN.4/1998/53/Add.2, 11 February 1998.

⁹¹ Note on International Protection 1991 (submitted by the High Commissioner), § 47, UN Doc. A/AC.96/777.

share similar fears and can have largely the same needs in terms of protection,⁹² particularly protection of their physical integrity.

Some authors have criticized the narrowness of the refugee definition and argued that displacement of millions of people across the world “inevitably calls into question the soundness of a refugee definition that continues to exclude more than half of them”.⁹³

Referring to the benefits granted by their legal status, some analysts hold that in some ways, refugees constitute almost a privileged category among the displaced.⁹⁴ The following analysis looks at the instruments relevant to refugees and IDPs, distinguishing between protection mechanisms for both categories and reasons for the distinctions.

3.1.3 The hows and whys of protection

The numbers of refugees have been diminishing and those of IDPs increasing in the last two decades. According to UNHCR statistics, the global refugee population dropped for the fourth consecutive year during 2004, from 9.7 million to 9.2 million, the lowest in nearly a quarter century. In 2004, there were an estimated 25 million IDPs worldwide. However, the refugee agency helped 5.6 million of the 25 million IDPs, a 21 percent jump compared with the figure of 4.4 million the previous year.⁹⁵

Most of the displaced in the world today are IDPs. There two reasons for that: civil wars, or internal conflicts, have become more prevalent than interstate wars in the post Cold War era; and most governments today are not willing to receive large numbers of refugees.

Despite being forced to leave their habitual places of residence and similarity of their needs to those of refugees, IDPs remain beyond the protective umbrella of the international refugee law regime. That is so mainly because the international system in vogue since the end of World War II provides protection to those becoming refugees by crossing international borders.

There was likewise no commitment to grounding refugee law in the promotion of international human rights: French efforts to link refugee status to violations of fundamental human rights and to the general human right to seek asylum were summarily rejected as ‘theoretical’ and ‘too far removed from reality’. In sum, neither a holistic view of humanitarian need

⁹² For a detailed analysis, see Phuong, Catherine, *Internally Displaced Persons and Refugees: Conceptual Differences and Similarities*, *Netherlands Quarterly of Human Rights*, Vol. 18 No. 2, 2000, pp. 215-229.

⁹³ Lee, L. T. *Internally Displaced Persons and Refugees: Toward a Legal Synthesis?* *Journal of Refugee Studies*, 1996, Vol.9, No. 1, pp.27-42, at p. 27.

⁹⁴ Hathaway, James. C., *Reconceiving Refugee Law as Human Rights Protection*, pp. 659-678 in Mahoney K. E., and Mahoney P., (eds.) *Human Rights in the Twenty-First Century: A Global Challenge*, Dordrecht: Martinus Nijhoff Publishers, 1993.

⁹⁵ UNHCR, *Refugees by Numbers*, 2005 edition, <http://www.unhcr.org/cgi-bin/texis/vtx/basics/opendoc.htm?tbl=BASICS&id=3b028097c>, visited 17 February 2006.

nor of human rights protection was seen as the appropriate foundation for the new convention.⁹⁶

Those remaining in their own countries neither have an international treaty or agency to turn to nor any systematic recourse to international protection. Because they, in effect, fall between the cracks of current humanitarian law and assistance, it has been debated for several years how best to assist them and who should be responsible for their well-being.⁹⁷

UNHCR has extended its humanitarian expertise to assist a fraction of IDPs on specific requests by the UN Secretary General in situations of active conflict without consent of States, as was the case in Iraq and the former Yugoslavia. There has been both support⁹⁸ for and opposition⁹⁹ to the UNHCR's involvement with IDPs.

But even in the best case, the protection or assistance for IDPs in safe areas has not been comparable to that afforded to refugees. The Guiding Principles on Internal Displacement,¹⁰⁰ developed by the UN Secretary-General's Representative on IDPs, are the only international instrument directly relevant to the internally displaced. While they have been hailed as incorporating elements of three branches of public international law - international humanitarian law, human rights law, and refugee law - in a single document,¹⁰¹ they have, as the name suggests, no binding effect. They have not been iterated in a treaty and for now remain a list of 30 'guiding' principles identifying rights and guarantees relevant to IDPs' protection. In the absence of any binding instrument, the international response to internal displacement has been 'selective, uneven, and in many cases, inadequate'.¹⁰²

Additionally, and more specifically for the purposes of this thesis, the Guiding Principles leave untouched the designation or status of safe areas or institutional arrangements to provide protection and assistance to IDPs, or the essential role of the Security Council in situations of internal

⁹⁶ Hathaway, James C., A Reconsideration of the Underlying Premise of Refugee Law, in *Harvard International Law Journal*, 1990, Vol. 31, 99. pp. 129-183, at p. 148.

⁹⁷ UNHCR, *Refugees by Number, 2003*, Introduction, p. 9, <http://www.unhcr.org.uk/info/briefings/statistics/documents/numb2003.pdf>

⁹⁸ Roberts, Adam, More Refugees, Less Asylum: a Regime in Transformation, *Journal of Refugee Studies* Vol. 11, No 4, 1998, pp. 375-96.

⁹⁹ Rudge, Philip, Reconciling State Interests with International Responsibilities: Asylum in North America and Western Europe, *IJRL*, Vol. 10, 1/2, 1998 pp. 7-21; Goodwin-Gill, Guy, Refugee's Identity and the Fading Prospects of International Protection, Conference on refugee rights and realities, Nottingham, 30 November 1999, cited by Joly, Danièle, *Introduction*, pp. 1-14, at p. 8, *Global Changes in Asylum Regimes*, Joly, D. (ed.) New York, Palgrave Macmillan, 2002.

¹⁰⁰ Guiding Principles, UN Doc. E/CN.4/1998/53/Add. 2 of 17 April 1998.

¹⁰¹ Lavoyer, Jean-Philippe, Guiding Principles on Internal Displacement, *International Review of the Red Cross*, 1998 No 324, p.467-480, <http://www.icrc.org/Web/Eng/siteeng0.nsf/iwpList128/2B7B10C17B8F1A07C1256B66005C4550>, visited 17 February 2006.

¹⁰² Human Rights Reference Handbook by Magdalena Sepúlveda, Theo von Banning, Gudrun D. Gudmundsdóttir, (eds.), third edition, Ciudad Colon, Costa Rica: University for Peace, 2004 p. 351.

displacement amounting to a threat to international peace and security.¹⁰³ The Guiding Principles' omission to even mention safe areas is surprising in view of the continued reference to safe areas in the context of mass displacement.

3.1.3.1 On the wrong side of the border

Despite internal displacement and persecution by the authorities, IDPs find themselves without recourse to an effective international protection mechanism comparable to the one under the international refugee law regime. That is so because according to general international law, the primary responsibility for meeting the protection and assistance needs of IDPs lies with their own government due to IDPs' presence within national territory¹⁰⁴ on the basis of the principle of sovereignty and non-intervention. The Guiding Principles also reiterate that.¹⁰⁵

Particular protection problems faced by IDPs require special protection measures. The principle of sovereignty is crucial to this discussion because IDPs remain under the domestic jurisdiction of their home State, and in the absence of that State's consent, beyond the reach of protection or assistance from international community. Internal conflicts or violence are the 'most common and particularly formidable' causes of internal displacement, and often have mass population displacements as an explicit objective.¹⁰⁶

http://www.alsa.asn.au/files/acj/2000/_ftn16 Since they do not cross international borders, IDPs often bear the brunt of violence and war as a consequence.

Hathaway lists two major reasons for the exclusion of IDPs from the 1951 Convention definition. Firstly, because it is the primary responsibility of the State to cater to its citizens; and secondly because it would constitute a violation of national sovereignty as the problems raised by the IDPs are part of the internal affairs of the State.¹⁰⁷

A refugee is an object of concern under international refugee law because of having lost or having been deprived of protection under law in his or her own country and being in need of another source of protection.¹⁰⁸

Refugees have a well-founded fear that recourse to their own governments is futile and are in addition situated within the reach of the international community. Being outside their State of nationality, protection of a refugee

¹⁰³ International Law Association, London Conference 2000, Committee on IDPs, Introduction to the Report on Draft Declaration for Consideration at the 2000 Conference, § 3, p. 792.

¹⁰⁴ Report of the Representative of the Secretary-General, Francis Deng, UN Doc. E/CN.4/1996/52/Add.2, December 5, 1995

¹⁰⁵ Guiding Principles on Internal Displacement, Principle 3.

¹⁰⁶ Deng, Francis, Internally Displaced Persons: Report of the Representative of the UN Secretary-General, Mr Francis Deng, Commission on Human Rights, January, 1994, (1994) 6 IJRL 293.

¹⁰⁷ Hathaway, J., *The Law of Refugee Status*, Toronto: Butterworths, 1992, p. 29.

¹⁰⁸ Helton, Arthur, C., September 1990. What is Refugee Protection? A Question Revisited: pp. 19-33, at p. 20, *Problems of Protection, The UNHCR, Refugees, and Human Rights*, Steiner, Gibney and Loescher (eds.), New York: Routledge, 2003.

does not challenge the principle of sovereignty. The distinction between the two categories of displaced persons of border-crossing, and consequently of being within the reach of the international community, effectively determines the source and extent of their protection or the lack thereof.

3.1.4 Benchmarks for international involvement in internal displacement

The astronomical rise in the numbers of IDPs worldwide has fueled an extensive debate whether they should enjoy a special protection regime distinct from other victims of human rights within their own State.¹⁰⁹ Some authors say that rights and obligations similar to refugees' under the 1951 Convention would not make sense vis-à-vis IDPs because refugee law aims at putting refugees on equal footing with nationals of the country of asylum,¹¹⁰ and that would be a ridiculous proposition in the case of IDPs who are already in their home country. Others argue against distinguishing between IDPs and victims of other human rights violations. Hathaway questions the IDPs forming a privileged caste in comparison with other internal human rights victims.¹¹¹

Granted that the primary responsibility for the protection and assistance of IDPs lies with their own government, but what happens when governments fail in that duty? Referring to the dilemmas arising with regard to in-country humanitarian assistance for the displaced, UNHCR High Commissioner Sadako Ogata said in 1992:

“If the government turns against its people and the people leave the country, then the international community takes over and protects them. That is exactly the mandate I have; but when the government turns against their own people within the country, it's a very difficult thing for the international community to intervene. A lot of discussion has been going on these days, a question of humanitarian intervention, how far can you go, what is the right of an international community intervening. I take a rather pragmatic approach, short of military intervention. It's very hard for an international to go into another country when it is in a state of civil conflict or massive violation of human rights. The intervention is limited. What has evolved these days is something like getting humanitarian corridors or zones of tranquillity where for humanitarian reasons the international community would

¹⁰⁹ Geissler, Nils, *The International Protection of IDPs*, Vol. 11 No. 3, 1999, IJRL pp. 451-478 at pp. 452-458.

¹¹⁰ Art. 7, 1951 Convention; Catherine Phuong, *Internally Displaced Persons and Refugees: Conceptual Differences and Similarities*, *Netherlands Quarterly of Human Rights*, Vol. 18 No. 2, 2000. pp. 215-229, at p. 226.

¹¹¹ Hathaway, James. C., *Reconceiving Refugee Law as Human Rights Protection*, p. 660 in Mahoney K. E., and Mahoney P., (eds.) *Human Rights in the Twenty-First Century: A Global Challenge*, Dordrecht: Martinus Nijhoff Publishers, 1993.

negotiate... with the government to allow certain protection of a limited sort. I think there is still a minimum need for government acquiescence in order to move into any country.”¹¹²

When analysing the possibility of assisting IDPs, the UNHCR pointed to the limitations of its mandate, the tension between protection inside a country of origin against the principles of State sovereignty and the inviolability of territorial integrity.¹¹³

However, in 1992, the UNHCR High Commissioner acknowledged that “certain responsibilities have to be assumed on behalf” of IDPs and named some “baselines criteria” that included the option of asylum remaining open; the UNHCR being given full access, security and other conditions to allow it to operate; the situation in question calling for UNHCR’s particular expertise; and the Office’s involvement being based on the consent of all parties involved, and enjoying the political support of the international community.¹¹⁴

However, in 1993, Secretary General Boutros Boutros-Ghali listed the circumstances under which he believed the international community could intervene to assist the IDPs.

“It is the State that the international community should principally entrust with ensuring the protection of the individuals. However, the issue of international action must be raised when States prove unworthy of this task, when they violate the fundamental principles laid down in the Charter of the United Nations, and when – far from being protectors of individuals – they become tormentors... In these circumstances, the international community must take over from the States that fail to fulfill their obligations. This is a legal and institutional construction that has nothing shocking about it and does not ... harm our contemporary notion of sovereignty.”¹¹⁵

While this stance has not found widespread acceptance among States for obvious reasons, the mere fact that the international community, the UNSC or a regional organization deems it necessary to intervene by providing a specific mechanism in the shape of “internationally guaranteed” safe areas speaks volumes about the utter inability or unwillingness of the home State to either protect or assist its citizens or in circumstances where the home State is the persecutor itself or is patronizing the agents of persecution. There are obvious protection deficiencies in both the application and the content of international law relating to IDPs. They certainly do not have protection under international humanitarian law or international human

¹¹² Sadako Ogata’s interview by Harry Kressler, 1 April 1992,

<http://globetrotter.berkeley.edu/Elberg/Ogata/ogatacon4.html>, visited 17 February 2006.

¹¹³ Note on International Protection 1991 (submitted by the High Commissioner), § 47, UN Doc. A/AC.96/777.

¹¹⁴ Note on International Protection (August 1992), UN Doc. A/AC.96/799.

¹¹⁵ Boutros-Ghali, B. Statement at the opening of the World Conference on Human Rights, Vienna, 14 June 1993.

rights law in situations not amounting to an armed conflict. In short, IDPs are left with no protection from international law in many internal conflicts. Francis Deng has also acknowledged the awareness for IDPs' rights by international law but found a lack of adequate protection for them. "While existing law provides substantial coverage for the internally displaced, there are significant areas in which it fails to provide an adequate basis for their protection and assistance."¹¹⁶

International politics further aggravate such deficiencies in international law. The UNHCR Executive Committee has stated that the most serious problems facing IDPs "result not from an absence or deficiency of legal norms but from the failure of the parties concerned to respect and to enforce those norms".¹¹⁷

While so many debates concerning assistance to IDPs converge on some form of in-country protection, it is interesting to note the precise content of protection and the effect the designation of safe areas has had on basic refugee rights and human rights in general. They are the subject of discussion in the following chapter.

¹¹⁶ Report of the Representative of the Secretary-General, Francis Deng, submitted pursuant to resolution 1997/39 of Commission on Human Rights, 11 February 1998, E/CN.4/1998/53/Add.2.

¹¹⁷ UNHCR Executive Committee Sub-Committee on International Protection, 'Protection Aspects of UNHCR Activities on Behalf of Internally Displaced Persons' (1994) 6 IJRL, pp. 485-500, at p. 494.

4 Human rights and ‘Safe’ Areas

4.1 Protection offered and protection withdrawn

The following analysis examines the effect of the safe areas on the rights of IDPs and refugees as well as obligations of States towards displaced persons.

A substantial part of this chapter looks at how a combination of basic refugee rights and guarantees plays out in the displacement-safe areas context. It focuses in particular on which rights the creation of safe areas affects or threatens violation of. The chapter concludes with a brief overview of the effect safe areas have had on the full canopy of basic human rights.

4.2 Basic refugee rights

This part analyses how basic refugee rights play out in the displacement-safe area interface. These include the right to leave one’s country, the right to seek and enjoy asylum from persecution, and protection from *refoulement*. This part also includes a brief reflection on the so-called ‘right to remain’ and the concept of ‘preventive protection’.

4.2.1 The right to flight

The right to leave one’s own country, or the so-called right to flight, is one aspect of the right to freedom of movement and is central to the concept of international protection for those fleeing persecution. It is an established human right recognized in several international instruments.¹¹⁸ Of course, the existence of such a right does not entail an automatic right to enter other states. However, the right to leave is not absolute. It allows for derogation in the ICCPR but such derogation is allowed only when it “threatens the life of the nation and the existence of which is officially proclaimed”.¹¹⁹ Therefore, in the absence of such express derogation the right continues in force. The HRC observed that measures taken under Article 4 should be of “an

¹¹⁸ UDHR Art. 13, ICCPR Art. 12 (2), American Convention Art. 22 (7), African Charter Art. 12 (3).

¹¹⁹ Art. 4 (1) ICCPR.

exceptional and temporary nature and may only last as long as the life of the nation concerned is threatened”¹²⁰.

Any restrictions on the right in the context of ICCPR must only be for the permissible purposes, i.e. only to protect national security, public order (ordre public), public health or morals and the rights and freedoms of other.¹²¹ The Human Rights Committee has held that not only must the restrictions be for permissible purposes; they must also be necessary to protect them.¹²² Guiding Principles on Internal Displacement also guarantee the right of all IDPs to flee from areas where their lives, security or freedom are threatened (including, if necessary, the right to seek asylum in other countries) and the right not to be forcibly returned to such areas.¹²³

There had been calls for caution even in the early 1990s that the creation of safe areas should not compromise this right. Landgren held that “the overall conditions in enforced safety zones are unlikely to fulfill basic human rights standards, not least in respect of freedom of movement”¹²⁴.

The creation of safe areas can potentially violate the right to leave one’s country directly and indirectly and also force those at risk to remain in areas where their lives or freedom are at risk. Such violations might be in the form of restrictions on the free movement of those inside the safe areas as well as being “surrounded by hostile populations through which movement is impossible and the refusal by the leadership within the zones to let the captive population depart”¹²⁵.

Writing apparently in the context of Bosnia, Posen had cautioned that safe areas might turn into dangerous jails.¹²⁶ Even though there has not been evidence that the people were kept inside safe areas against their will, the creation of such spaces has been seen at times as compromising the right to leave one’s country. Inviting the displaced and resident civilians to live in an area that stands out as a potential target because of the population it houses and because of all the attending threats for being surrounded by belligerents has drawn criticism.

Referring to the Bosnian Serb authorities denying the people living in the safe areas freedom of movement through Serb-controlled territory, UNHCR observed: “The safe areas became crowded - predominantly Muslim - ghettos. While they provided some refuge for vulnerable civilians, they also became areas of confinement where civilians were trapped: in essence, open detention centres.

¹²⁰ Human Rights Committee’s General Comment No. 4 (1981) on derogation of rights, (Art. 4, ICCPR), § 3.

¹²¹ Art. 12 (3), ICCPR.

¹²² Human Rights Committee’s General Comment No. 27 on freedom of movement (Art.12 ICCPR), § 14.

¹²³ Guiding Principles on Internal Displacement, Principle 15.

¹²⁴ Landgren, K., Safety Zones and International Protection: IJRL, Vol. 7, No. 3, 1995. pp. 436-458, at p. 456.

¹²⁵ Landgren, K., Safety Zones and International Protection: IJRL, Vol. 7, No. 3, 1995. pp. 436-458, at p. 456.

¹²⁶ Posen, Barry, Military Responses to Refugee Disasters Vol. 21, No. 1 (1996), International Security, pp. 72-111, at p. 101.

Even before the Srebrenica massacre, there were calls for caution and outright distrust in the safe areas established in Bosnia and dismissal of the concept. The Bosnian President, Alija Izetbegovic said the safe areas would become death traps, where refugees, thinking they were safe, would instead become easy targets for Bosnian Serb forces.¹²⁷

Meanwhile, as the international community focused on the safe areas, little attention was given to the plight of any remaining non-Serbs living in Serb-held territory. As a result these people became even more vulnerable to 'ethnic cleansing'.¹²⁸

It is not always the receiving State that tries to contain refugee flows. Sometimes the State of origin can also try and do that to avoid negative publicity of its citizens fleeing abroad. Another reason for the home State might be the fear of losing its claim to a territory, as was the case for Bosnia-Herzegovina in the UN protected town of Srebrenica. The Bosnian government did not wish to see the Muslim populations leave the areas it controlled because their presence would make it more difficult for the Bosnian Serbs to gain control of those territories.¹²⁹

Also in the Bosnian context, reference has been made to abuses of safe areas including refusal by the governments to give asylum as a way to refuse encouraging "ethnic cleansing",¹³⁰ in contrast to facilitating the departure of those threatened with death and persecution.¹³¹

In late 1992, High Commissioner Sadako Ogata spoke of the dilemmas for the UNHCR in Bosnia. "If you take these people, you are an accomplice to ethnic cleansing. If you don't, you are an accomplice to murder."¹³² "You cannot win for losing,"¹³³ Goodwin-Gill write, commenting on the difficult choices in situations where protection equals getting people out and seems merely to facilitate ethnic persecution or helping people stay on and obstructs their right of everyone to seek asylum.

¹²⁷ BBC, 1993: UN makes Srebrenica 'safe haven', 16 April 1993,

http://news.bbc.co.uk/onthisday/hi/dates/stories/april/16/newsid_4253000/4253441.stm

¹²⁸ The State of the World's Refugees, 2000, p. 224.

¹²⁹ Catherine Phuong, Internally Displaced Persons and Refugees: Conceptual Differences and Similarities, Netherlands Quarterly of Human Rights, Vol. 18 No. 2, 2000, pp. 215-229, at p. 220, http://elin.lub.lu.se/cgi-bin/linker/kluwer_local?01693441/2000_18_2/271340.pdf.

¹³⁰ Dubernet, Cécile, The International Containment of Displaced Persons – Humanitarian Spaces Without Exit, p. 36. Ashgate Publishing, 2001.

¹³¹ Landgren, K., Safety Zones and International Protection: IJRL, Vol. 7, No. 3, 1995. pp. 436-458, at p. 444:

¹³² High Commissioner for Refugees Sadako Ogata, cited Young, Kirsten, UNHCR and ICRC in the former Yugoslavia: Bosnia-Herzegovina, pp. 781-805, at p. 799, International Review of the Red Cross, September 2001, Vol. 83 No. 843.

¹³³ Goodwin-Gill, Guy S., Editorial, IJRL, Vol. 5, No. 1, 1993. p. 2.

4.2.2 Preventive protection and the ‘right’ to remain

With the demise of the Soviet bloc, crossing an international border and claiming asylum as a refugee was contended to be no longer the only way to receive assistance and/or protection from the international humanitarian regime. Kathleen Newland states that, “A determination was made to bring safety to people rather than people to safety, by force if necessary.”¹³⁴

Post-Cold War, the so-called ‘right to remain’ in one’s own country was mentioned as a right to which all people are entitled. This ‘right’ refers to an apparent preference for encouraging displaced people to stay within their countries of origin by providing assistance to them there, rather than have them seek protection through asylum across an international border.¹³⁵

When UNHCR High Commissioner Sadako Ogata advocated preventive protection in early 1990s,¹³⁶ she consistently reiterated that ‘prevention is not ... a substitute for asylum; the right to asylum ... must continue to be upheld’.¹³⁷

Explaining the right to remain to the Commission on Human Rights in March 1993, the High Commissioner put it as the right not to be forced into exile:

“In speaking of ‘the right to remain’, I mean to underline the need to protect the basic right of the individual not to be forced into exile and to emphasize an aspect of human rights that deserves further development in connection with our efforts to address the causes of refugee flight. The right to remain is implicit in the right to leave one’s country and to return there. In its simplest form it could be said to include the right to freedom of movement and residence within one’s own country. It is inherent in Article 9 of the Universal Declaration of Human Rights that no one shall be subjected to arbitrary exile. It is linked also to other fundamental human rights because when people are forced to leave their homes, a whole range of other rights are threatened, including the right to life, liberty and security of the person, non-discrimination, the right not to be subjected to torture or degrading treatment, the right to privacy and family life.”¹³⁸

¹³⁴ Kathleen Newland, *World Refugee Survey 1999, A Decade in Review*, 17.

¹³⁵ Hyndman, J., *Blurring Borders: the Significance of Humanitarian Safe Spaces*, p. 4 <http://www.queensu.ca/snid/jennifer.doc>, visited 16 February 2006.

¹³⁶ Opening statement to the 42nd session of the Executive Committee (See report of the Executive Committee UN doc A/AC.96/783, Annex Aug 1992). Also Statement by Mrs Sadako Ogata, United Nations High Commissioner for Refugees, at the ICRC/UNHCR meeting, Geneva, 19 Feb 1992. <http://www.unhcr.ch/cgi-bin/texis/vtx/admin/opedoc.htm?tbl=ADMIN&id=3ae68fcd50>, visited 16 February 2006.

¹³⁷ Note on International Protection, submitted by the UN High Commissioner for Refugees, Executive Committee of the High Commissioner’s Programme, (43rd session) UN Doc. A/AC.96/799, 25 Aug 1992.

¹³⁸ Statement by Mrs. Sadako Ogata, UN High Commissioner for Refugees, to the 49th session of the Commission on Human Rights, Geneva, 3 March 1993, <http://www.unhcr.ch/cgi->

Acknowledging the limitations of assistance the UNHCR could provide, the High Commissioner explained why she favoured the 'right':

"If I, as the High Commissioner for Refugees, emphasize the right not to become a refugee, it is because I know that the international protection that my Office, in cooperation with countries of asylum, can offer to refugees is not an adequate substitute for the protection that they should have received from their own Governments in their own countries. The generosity of asylum countries cannot fully replace the loss of a homeland or relieve the pain of exile. In this period of heightened tensions between various groups within countries and growing threats of conflicts whose primary aim is to force one group of people to leave territory shared with another, the question of how to enforce people's right to remain, to have their rights respected where they are, and not have to flee to find protection, has become urgent. I invite you to consider human rights situations from the standpoint of the right to remain because I am convinced that there will be no end to the plight of refugees until the international community has found ways to deal effectively with the root causes of forced displacement.

The basic right not to be forced into exile implies the concomitant duty of the State to protect people against coerced displacement."¹³⁹

An interplay between 'preventive protection', and 'the right to remain' led to the designation of safe areas within conflict areas in the 1990s. The 'right to remain' has been controversial because the context of its use since the 1990s has been seen as "superficially attractive",¹⁴⁰ based on a fallacy¹⁴¹ and detrimental to basic refugee rights.¹⁴² Bill Frelick holds that a "host country logic" introduced preventive protection in Iraq on the basis that refugees from Iraq pose a threat to international peace and security.¹⁴³ Some commentators see it as an unrecognized right while others maintain that it is already included in the right not to be exiled from one's own country.

bin/texis/vtx/admin/opendoc.htm?tbl=ADMIN&page=home&id=3ae68fad1c, visited 17 February 2006.

¹³⁹ Statement by Mrs. Sadako Ogata, United Nations High Commissioner for Refugees, to the 49th session of the Commission on Human Rights, Geneva, 3 March 1993, <http://www.unhcr.ch/cgi-bin/texis/vtx/admin/opendoc.htm?tbl=ADMIN&page=home&id=3ae68fad1c>, visited 17 February 2006.

¹⁴⁰ Hathaway, James C., *Can International Refugee Law be Made Relevant Again?* p. xxi, in *Reconceiving International Refugee Law*, Hathaway (ed), Kluwer, 1997.

¹⁴¹ Hathaway James & Neve, Alexander, *Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection* in *Harvard Human Rights Journal*, Vol. 10, pp. 115-212 (1997).

¹⁴² Goodwin-Gill, Guy S., 'The Right to Leave, the Right to Return and the Question of a Right to Remain', pp. 93-108, at p. 103. in *Gowlland-Debbas V. (ed.), The Problem of Refugees in the Light of Contemporary International Law Issues*, Martinus Nijhoff, 1995.

¹⁴³ Frelick, Bill, (1999) *Down the Rabbit Hole: the Strange Logic of Internal Flight Alternatives*, in *World Refugee Survey, 1999*, US Committee for Refugees, pp. 27-9.

Countries facing refugee flows have been accused of interpreting the idea in their own terms to protect themselves from refugee flows and legitimising their action partly by referring to the concept. Croatia is one case in point which closed its borders to would-be refugees from Bosnia-Herzegovina, citing in part the idea of preventive prevention.¹⁴⁴

Some analysts also emphasise that a focus on root causes has sometimes stifled immediate actions necessary to ensure protection and that the UNHCR should avoid using the term altogether because it was given to misinterpretation and manipulation by governments.¹⁴⁵

Frelick writes that while there was little response to a German call on governments in 1992 to accept a certain quota of refugees from Bosnia in their countries, there was far greater interest in a Slovenian proposal to establish four safe havens in Bosnia¹⁴⁶ that would “avert new flows of refugees and displaced persons from Bosnia and Herzegovina” and facilitate provision of humanitarian assistance.¹⁴⁷

Ironically, while the High Commissioner argued for the ‘right to remain’ because of its link to basic human rights, the emphasis of governments shifted to using it as a pretext to preventing refugee flows and creation of safe areas has threatened many of the rights the High Commissioner had suggested would be better protected by emphasising the ‘right’ to remain. Because of the inherent dangers of the strategy of creating ‘safe zones’ within conflict areas, authors have called the right to remain, the “right to be toast”.¹⁴⁸

The crucial centrality of human rights protection to any reference to the ‘right’ to remain has not been lost on scholars. As Goodwin-Gill notes:

“The right to remain comprises the common or garden sense of not having to become a refugee, not having to flee, not being displaced by force or want, together with the felt security that comes with being protected. It is another way of expressing, in concrete terms, the connection between individual, community, and territory, but its effective realization depends upon human rights and development considerations that are staggering in their breadth. Perhaps this is the sort of challenge that we need for the next century.”¹⁴⁹

¹⁴⁴ Insert exact page number from Dubernet, Cécile, *The International Containment of Displaced Persons – Humanitarian Spaces Without Exit*, 2001, Ashgate Publishing Ltd.

¹⁴⁵ Bill Frelick, ‘Preventive Protection’ and the Right to Seek Asylum, *IJRL*, Vol. 4, No. 4 (1992) pp. 439-453, at p. 451.

¹⁴⁶ Bill Frelick, ‘Preventive Protection’ and the Right to Seek Asylum, *IJRL*, Vol. 4, No. 4 (1992) pp. 439-453, at p. 443.

¹⁴⁷ Proposal Concerning the Measures for Voluntary Return Home of the Displaced Persons and Refugees from Bosnia and Herzegovina, quoted by Bill Frelick, ‘Preventive Protection’ and the Right to Seek Asylum, *IJRL*, Vol. 4, No. 4 (1992) pp. 439-453, at p. 443.

¹⁴⁸ Hathaway, James (1994), Cited by Jennifer Hyndman in ‘Blurring Borders: the Significance of Humanitarian Safe Spaces’ <http://www.queensu.ca/snid/jennifer.doc>, visited 17 February 2006.

¹⁴⁹ Goodwin-Gill, Guy S., ‘The Right to Leave, the Right to Return and the Question of a Right to Remain’, pp. 93-108, at p. 104. in Gowlland-Debbas V. (ed.), *The Problem of Refugees in the Light of Contemporary International Law Issues*, Martinus Nijhoff, 1995.

According to Hathaway:

“[N]o international commitment exists to deliver dependable intervention to attack the root cause of refugee flows, clearly a condition precedent to the exercise of any genuine right to remain. There is no credible evidence that intervention will ever evolve into more than discretionary response to the minority of refugee-generating situations that is of direct concern to powerful States.”¹⁵⁰

Hathaway says that interventions in Iraq and in the Former Yugoslavia “to enforce the ‘right to remain’ suggest that this so-called ‘right’ is essentially a means to rationalise denying at-risk persons the option to flee.”¹⁵¹

4.2.2.1 Duty to remain

The way the ‘right’ to remain was formulated and advocated, some scholars referred to it as the duty to remain in one’s country and others apprehended that enforcing such a right would not only endanger lives of the people forced to stay inside a conflict zone but would also be contrary to the principles of human rights.

Some authors say the concept violates the right to leave one’s country outlined in the Universal Declaration of Human Rights. Goodwin-Gill noted,

“[T]he ‘prevention of refugee movements,’ in particular where the emphasis is on stopping flight rather than removing causes, is no solution and, so far as it follows from the actions of other States, will often amount to an abuse of rights.”¹⁵²

In view of the circumstances in the three case studies where promotion of such a ‘right’ to remain has been taken to mean that populations at risk be forced to remain in areas where their lives or freedoms are threatened and they are exposed to an unjustified risk of serious harm. The insistence at such a right in the absence of effective protection of basic human rights, in preference over other refugee rights is contrary to principles of refugee law and of human rights law in general.

4.2.3 Right to seek and enjoy asylum

The right to seek and enjoy asylum¹⁵³ is “an indispensable instrument for the international protection of refugees”.¹⁵⁴

¹⁵⁰ Hathaway, James C., *Can International Refugee Law be Made Relevant Again?* p. xxi, in *Reconceiving International Refugee Law*, Hathaway (ed), Kluwer, 1997.

¹⁵¹ Hathaway, James C., *Can International Refugee Law be Made Relevant Again?* p. xxi, in *Reconceiving International Refugee Law*, Hathaway (ed), Kluwer, 1997.

¹⁵² Goodwin-Gill, Guy S., ‘The Right to Leave, the Right to Return and the Question of a Right to Remain’, pp. 93-108, at p. 103. in *Gowlland-Debbas V. (ed.)*, *The Problem of Refugees in the Light of Contemporary International Law Issues*, Martinus Nijhoff, 1995.

¹⁵³ Art. 14, UDHR.

¹⁵⁴ GA Res. 48/116, 20 December 1993.

Under international refugee law there is no categorical right to receive asylum, however, a fair status determination in the country of reception is a critical element of refugee protection. There have been warnings both before and since the implementation of the safe areas concept of the governments using the creation of safe areas as a pretext to refuse asylum,¹⁵⁵ and calls for caution that in-country protection “should not amount to a pre-emptive denial of the possibility to seek asylum abroad”.¹⁵⁶

There has been frequent reiteration by the UN General Assembly that activities on behalf of IDPs “must not undermine the institution of asylum”.¹⁵⁷ Writing after all three case studies had unfolded; Landgren also cautioned that safety zones should not be sold as an alternative to asylum.¹⁵⁸ Guiding Principles on Internal Displacement also emphasise their status as being “without prejudice to the right to seek and enjoy asylum in other countries”.¹⁵⁹

However, the fear expressed by UNHCR in 1991 with respect to safe areas being seen by governments as an alternative to asylum seems to have come true as displaced persons from countries where safe areas have been established were refused access to potential countries of refuge and denied asylum.

It has also been argued that hindering would-be refugees from seeking asylum outside is actually the aim of safe areas to a certain extent.¹⁶⁰ There have been particular assertions of safe areas policy in Rwanda greatly eroding the Rwandans’ right to flee.¹⁶¹ France was rejecting asylum demands from Rwandans as the killings at Kibeho were taking place, stating that the asylum-seekers were being protected in Rwanda.¹⁶² It was trends like these that lead one to determine that the international community deemed safe areas to replace rather than compliment the asylum regime. Landgren says, “Refugee protection would be seriously devalued if governments were to insist that refugees had a reasonable protection option in safety zones...”¹⁶³

¹⁵⁵ Landgren, K., *Safety Zones and International Protection: A Dark Grey Area*, IJRL, Vol. 7, No. 3, 1995. pp. 436-458, at p. 438.

¹⁵⁶ Catherine Phuong, *Internally Displaced Persons and Refugees: Conceptual Differences and Similarities*, Netherlands Quarterly of Human Rights, Vol. 18 No. 2, 2000. pp. 215-229, at p. 219.

¹⁵⁷ GA Res. 50/195, 22 December 1995.

¹⁵⁸ Landgren, K., *Safety Zones and International Protection: IJRL*, Vol. 7, No. 3, 1995. pp. 436-458, at p. 456.

¹⁵⁹ Guiding Principles on Internal Displacement, Principle 2 (2).

¹⁶⁰ Haspelslagh, Sophie *Safe Havens*, November 2003, http://www.beyondintractability.org/essay/safe_havens/, visited 17 February 2006.

¹⁶¹ Haspelslagh, Sophie, *Safe Havens in Rwanda: Operation Turquoise*, p. 2, http://www.beyondintractability.org/iweb/docs/Safe_Havens-Rwanda.pdf, visited 17 February 2006.

¹⁶² Hathaway James & Neve, Alexander, *Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection* in Harvard Human Rights Journal, Vol. 10, p. 115 (1997).

¹⁶³ Landgren, K., *Safety Zones and International Protection: IJRL*, Vol. 7, No. 3, 1995. pp. 436-458, at p. 457.

The UN resolutions designating these areas did not acknowledge that it was for the individuals at risk to decide whether areas close to their homes were sufficiently “safe” or whether they felt compelled to seek protection abroad. The option to make such a choice was never available to those in the designated safe areas.

Referring to the safe areas in Bosnia and Rwanda and the NFZs in Iraq, Sophie Haspeslagh noted that the establishment of safe areas hindered the right to flee as third countries along with UNHCR rejected demands for asylum, based on the claim that the asylum-seekers were being protected in their own countries.¹⁶⁴ In such instances, the creation of safe havens impeded IDPs’ right to flee, without offering adequate protection in safe areas. Frelick says that during 1992, the idea of preventive assistance was introduced “sometimes without adequate preventive protection”. He said that the right to seek asylum was denied through use of humanitarian assistance in countries of origin.¹⁶⁵

UNHCR Guidelines on Internal Protection say that the application of the principle of internal flight alternative is relevant only in certain cases, and particularly when the source of persecution emanates from a non-state actor.¹⁶⁶ However, State practice concerning the interpretation and application of this principle remains inconsistent.¹⁶⁷

UNHCR's Information Note on Article 1 of the 1951 Convention (Mar 1995) states:

“A decision concerning the existence of an internal flight alternative should be based on a profound knowledge and evaluation of the prevailing security, political and social conditions in that part of the country. An effective internal flight alternative can only exist when the conditions correspond to the standards deriving from the 1951 Convention and other major human rights instruments. Above all, an internal flight alternative must be accessible in safety and durable in character. The possibility to find safety in other parts of the country must have existed at the time of flight and continue to be available when the eligibility decision is taken and the return to the country of origin is implemented.”

¹⁶⁴ Haspeslagh, Sophie Safe Havens, November 2003,

http://www.beyondintractability.org/essay/safe_havens/, visited 17 February 2006.

¹⁶⁵ Bill Frelick, ‘Preventive Protection’ and the Right to Seek Asylum, *IJRL*, Vol. 4, No. 4 (1992) at pp. 439-453, at p. 451.

¹⁶⁶ UNHCR, Guidelines on International Protection: “Internal Flight or Relocation Alternative” within the Context of Article 1 A (2) “of the 1951 Convention and/or 1967 Protocol, p. 8, § 38, 23 July 2003, <http://www.unhcr.ch/cgi-bin/texis/vtx/home/openssl.pdf?tbl=RSDLEGAL&id=3f2791a44>, visited 17 February 2006.

¹⁶⁷ UNHCR, Guidelines on International Protection: “Internal Flight or Relocation Alternative” within the Context of Article 1 A (2) “of the 1951 Convention and/or 1967 Protocol, p. 2, § 1, 23 July 2003, <http://www.unhcr.ch/cgi-bin/texis/vtx/home/openssl.pdf?tbl=RSDLEGAL&id=3f2791a44>, visited 17 February 2006.

Accommodating hundreds of thousands of displaced Kurds in an enclave in Northern Iraq after they were turned away from the Turkish border set a precedent for other attempts at in-country protection later in the decade. Bill Frelick says that Operation Provide Comfort - the first post-Cold War situation where military force was used to ensure assistance for the displaced inside the country of origin – taught governments that the right to seek asylum could be denied through the use of humanitarian assistance in the country of origin and that “the right [to seek asylum] could be violated if a ‘safe haven’ was declared, however imperfect.”¹⁶⁸

Landgren wrote in 1995 that “safety zones have been established under conditions which interfere with the right to seek asylum, including the outright refusal of asylum by neighbouring countries.”¹⁶⁹

There has been harsh criticism of the creation of safe areas in Bosnia and Herzegovina on the basis that it amounted to an implicit refusal of European States to allow the persecuted Muslim populations to seek asylum abroad.¹⁷⁰

4.2.3.1 The ‘least worst’ solution

There have been assertions that safe areas were advocated often not because they were the ideal solution to a particular displacement scenario but because nothing better could be offered. So safe areas were the “least worst solution” in the face of unwillingness by other States to provide asylum and thus protection to refugees fleeing violence. Sophie Haspeslagh has noted that in the case of Iraq, Bosnia and Rwanda.¹⁷¹

With access to asylum outside Bosnia almost completely restricted in view of closure of borders by neighbouring States and the imposition of visa requirements, international humanitarian agencies found themselves with so few options that they promoted the designation of ‘safe haven zones’ inside Bosnia to provide some medium of protection inside Bosnia, even though many had grave doubts as to the political will of the international community to guarantee their safety.

The ICRC advocated such a zone inside Bosnia as a last attempt to wrest some form of protection on behalf of Bosnians. The original proposal to create such areas was made in August 1992 by then president of the International Committee of the Red Cross (ICRC), Cornelio Sommaruga, and contained numerous provisions – demilitarization, continued negotiations, and well-defined geographic areas adequately protected with military force – that were ignored in the actual implementation.

Frelick recounts that when all neighbouring states closed their borders to Bosnian IDPs, humanitarian organisations explored establishment of safe

¹⁶⁸ Bill Frelick, ‘Preventive Protection’ and the Right to Seek Asylum, *IJRL*, Vol. 4, No. 4 (1992) pp. 439-453, at p. 451.

¹⁶⁹ Landgren, K., *Safety Zones and International Protection*: *IJRL*, Vol. 7, No. 3, 1995. pp. 436-458, at p. 456.

¹⁷⁰ Michael Barutciski, *The Reinforcement of Non-Admission Policies and the Subversion of UNHCR: Displacement and Internal Assistance in Bosnia-Herzegovina, 1992-1994*, *IJRL*, 1996, Vol. 8, p. 49.

¹⁷¹ Haspeslagh, Sophie, *Safe Havens*, http://www.beyondintractability.org/m/safe_havens.jsp, visited 17 February 2006.

area on the Bosnian side of the border seeing no alternative to effectively help displaced persons in Bosnia.¹⁷²

The creation of such areas was suggested at times when potential host States attempted to avoid expressly undermining the right to seek asylum abroad by preventing the border-crossing of the populations necessary to activate the State obligations contained in the 1951 Convention.

In May 1992, Germany re-imposed visa restrictions for Bosnians in a bid to limit access to the German territory. Subsequently, it closed its borders altogether after failure to convince its European partners to share its burden under “refugee quota policies”. Sweden refused newcomers after June 1992. Towards the end of the same month, Hungary refused entry to refugees deported by Serbian authorities.

Imposition of visa requirements by most European governments on people from former Yugoslavia, including nationals of Bosnia-Herzegovina made it extremely difficult for most Bosnia Muslim refugees to leave Croatia for other European countries. Such an approach prompted non-EC states to follow a similar restrictive approach, partly because they feared receiving a disproportionate number of refugees following closure of borders elsewhere in Europe.¹⁷³ Croatia closed its borders to Bosnian refugees in the summer/autumn 1992, announcing that it would no longer welcome Bosnian refugees, and offered to be only a transit station for Bosnian refugees to be resettled in third countries. Slovenia announced its border closure in August 1992. Greece rebuffed all asylum seekers from the Former Yugoslavia on grounds of national security.¹⁷⁴

In case of Iraq, Turkey closed its borders to hundreds of thousands of displaced Iraqi Kurds stranded on its border in April 1991.

The ICRC’s statement in the Bosnian context reflect the exasperation of humanitarian organisations in the face of restricting asylum to the displaced and persecuted and lack of any options to assist them. The ICRC stated:

“As no third country seems to be ready, even on a provisional basis, to grant asylum to one hundred thousand Bosnian refugees, an original concept must be devised to create protected zones ... which are equal to the particular requirements and the sheer scale of the problem.”¹⁷⁵

¹⁷² Bill Frelick, ‘Preventive Protection’ and the Right to Seek Asylum, *IJRL*, Vol. 4, No. 4 (1992) at pp. 439-453, at p. 443.

¹⁷³ Amnesty International USA, Refugee Protection at Risk, Amnesty International’s recommendations to the 44th session of the Executive Committee of UNHCR, <http://www.amnestyusa.org/interfaith/document.do?id=4EEC4511DF8552B3802569A600603AB5>, visited 17 February 2006.

¹⁷⁴ Cited by Dubernet, Cécile in *The International Containment of Displaced Persons – Humanitarian Spaces Without Exit*, 2001, Ashgate Publishing Ltd. p. 65.

¹⁷⁵ Chimni, B.S. (1995) “Incarceration of Victims: Deconstructing Safety Zones” in Al-Nauimi, Najeeb and Meese, Richard (1995) *International legal issues arising under the United Nations decade of international law*. Martinus Nijhoff Publishers. The Hague, p. 841.

4.2.4 *Non-refoulement*

Non-refoulement is the fundamental principle for refugee protection, prohibiting the return of a refugee “in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”. The principle is codified in Article 33 of the 1951 Convention and Art 3 of the UN Convention against Torture, however, its customary law status binds even the States that have not ratified the relevant treaties.

The European Court¹⁷⁶ and the Committee against Torture¹⁷⁷ have upheld this principle in relation to asylum seekers.

The prohibition of *refoulement* includes non-rejection at the border or shore.¹⁷⁸ The UNHCR has also stated:

“As a principle of customary international law, *non-refoulement* prohibits both the return of refugees to the frontiers of territories in which they may face persecution, *and* the rejection of persons at the frontiers of the country in which they fear persecution (the principle of non-rejection at the frontier).”¹⁷⁹

Academics have been wary of activities aimed at securing in-country protection for IDPs that it should not amount “to a disguised form of *refoulement*”¹⁸⁰ of the population targeted. Using the term *refoulement* in its original French sense, Catherine Phuong takes it to mean not only as the act of sending someone back to his country but also of preventing him from actually entering the country where he wants to seek refuge.

In the context of States’ obligations in line with the principle of *non-refoulement*, the case of war victims – as most of the IDPs and resident civilians in safe areas are – meeting the requirements of the refugee definition is also relevant. The UNHCR holds that the 1951 Convention does not prevent victims of war from acquiring refugee status, if they can demonstrate a “well-founded fear” on the basis of any of the five Convention grounds.

In its *Handbook on Procedures and Criteria for Determining Refugee Status*, the UNHCR says:

¹⁷⁶ *Chahal v UK* (1997) 23 EHRR 413.

¹⁷⁷ *Mutombo v Switzerland* CAT/C/12/S/13/1993.

¹⁷⁸ Helton, Arthur, C. September 1990. What is Refugee Protection? A Question Revisited: pp. 19-33, at p. 22, *Problems of Protection, The UNHCR, Refugees, and Human Rights*, Niklaus Steiner, Mark Gibney and Gil Loescher (eds.), New York: Routledge, 2003.

¹⁷⁹ The amicus curiae brief filed by UNHCR in the *R (ex parte European Roma Rights Centre et al) v. Immigration Officer at Prague Airport and another* (UNHCR intervening). § 39. <http://ijrl.oxfordjournals.org/cgi/content/full/17/2/427>.

¹⁸⁰ Catherine Phuong, *Internally Displaced Persons and Refugees: Conceptual Differences and Similarities*, *Netherlands Quarterly of Human Rights*, 2000, Vol. 18/2, pp. 215-229, at p. 219, http://elin.lub.lu.se/cgi-bin/linker/kluwer_local?01693441/2000_18_2/271340.pdf

“Persons compelled to leave their country of origin as a result of international or national armed conflicts are not normally considered refugees under the 1951 Convention or 1967 Protocol.¹⁸¹ They do, however, have the protection provided for in other international instruments, e.g. the Geneva Conventions of 1949 on the Protection of War Victims and the 1977 Protocol additional to the Geneva Conventions of 1949 relating to the protection of Victims of International Armed Conflicts.”¹⁸²

While many fleeing an armed conflict might not fulfil the refugee definition requirements, there may be many who might, particularly in conflicts with ethnic or religious basis. Against this backdrop the practice of closing borders and effectively snatching en masse the right to seek asylum from those threatened with persecution violates the principle of *non-refoulement*. Refugee status must be determined by considering the personal circumstances of a claimant and not by the mere existence of a safe area in the home country. In that sense, it might not be relevant for status determination that a safe area exists in any part of the home country, even if that area actually delivered the protection that the UN-designated safe areas have only promised so far.

The UNHCR Guidelines provide:

“International law does not require threatened individuals to exhaust all options within their own country first before seeking asylum; that is, it does not consider asylum to be the last resort. The concept of internal flight or relocation alternative should therefore not be invoked in a manner that would undermine important human rights tenets underlying the international protection regime, namely the right to leave one’s country, the right to seek asylum and protection against *refoulement*. A consideration of internal flight or relocation necessitates regard for the personal circumstances of the individual claimant and the conditions in the country for which the internal flight or relocation alternative is proposed.”¹⁸³

¹⁸¹ Article 1 (2) of the OAU Convention concerning the Specific Aspects of Refugee Problems in Africa, 1969, however, applies the term “refugee” to “every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence”.

¹⁸² UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, § 164. <http://wwwserver.law.wits.ac.za/humanrts///instree/refugeehandbook.pdf>, visited 17 February 2006.

¹⁸³ UNHCR, Guidelines on International Protection: “Internal Flight or Relocation Alternative” within the Context of Article 1 A 8 “of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, p. 2, § 4, 23 July 2003, <http://www.unhcr.ch/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=RSDLEGAL&id=3f2791a44>, visited 17 February 2006.

In view of the risks and incidents of States deeming safe areas as a de facto internal flight alternative, the decision to return an asylum seeker or civilian at risk to a safe area must be determined on the scope of actual protection available to the individual in the safe area and keeping in view the principle of *non-refoulement*.

4.3 Basic human rights in general

In addition to potential effect on the aforementioned rights, other rights relevant to the IDPs and resident civilians which are threatened with violation in a safe area include the right to life, liberty, physical, mental and moral integrity and security of the person, non-discrimination, the right not to be subjected to torture or degrading treatment, the right to privacy and family life. Landgren held that “the overall conditions in enforced safety zones are unlikely to fulfil basic human rights standards...”¹⁸⁴ The UNHCR has also corroborated that when people are displaced such rights are at risk of being violated.¹⁸⁵ In the context of internal displacement in conflict, the right of all civilians to physical and mental integrity is protected by international humanitarian law. It is often during armed conflicts that basic human rights are infringed the most. Confining individuals and families to places of insecurity or to places that lack basic economic, social and cultural rights may breach a range of human rights standards, not least the rights that apply in situations of internal displacement.

The creation of safe areas themselves, practices like closure of borders, imposition of visa requirements, and reference to internal flight alternative all have a bearing on refugee rights and human rights in general. Innovative solutions to ameliorate IDPs’ misery are admirable but must be in keeping with the principles of international human rights law.

This discussion is furthered by the following chapter which examines what the safe areas set out to achieve and what they add to the physical and human rights protection of IDPs. It explores what the concept of protection entails and should entail in the IDP context and analyses the reasons to expect the use of safe areas as a protection mechanism for human rights. Thereafter the human rights emphasis of a safe area is perused.

¹⁸⁴ Landgren, K., Safety Zones and International Protection: IJRL, Vol. 7, No. 3, 1995. pp. 436-458, at p. 456.

¹⁸⁵ Statement by Mrs. Sadako Ogata, United Nations High Commissioner for Refugees, to the Forty-ninth Session of the Commission on Human Rights, Geneva, 3 March 1993, <http://www.unhcr.ch/cgi-bin/texis/vtx/admin/opedoc.htm?tbl=ADMIN&page=home&id=3ae68fad1c>, visited 17 February 2006.

5 Why does the world become involved?

While the last chapter analysed what the safe areas can take away in terms of protection from the displaced, the following discussion examines what safe areas set out to achieve and what they add both in terms of the physical and human rights protection for IDPs.

The difficulty encountered in evaluating the parameters and essential features of internationally designated safe areas has been mentioned earlier. For want of anything else to turn to to grasp the content of up safe areas, one must inevitably refer to the relevant Security Council resolutions to get a better sense of what the international community wanted to achieve by designating them.

5.1 UNSC resolutions - Stated Objectives

The mandate of two of the three protected areas this study focuses on was expressly provided for by UNSC resolutions. As far as the NFZs in Iraq are concerned, the US, UK and France claimed to have inferred the NFZs in Iraq from Security Council resolutions, but the UN never recognized the assertion that they were enforcing UN resolutions by creating and enforcing NFZs.¹⁸⁶

Safe areas can be and indeed have been designated for diverse reasons, ranging from ensuring humanitarian assistance to the displaced to ending threats to international peace and security due to massive flows of displaced persons. Before assessing whether the specific mandate and the measures taken in the three safe areas were adequate to realize the stated aims, it is imperative to ascertain what the international community had originally set out to achieve by designating the safe areas.

The relevant Security Council resolutions are important in both what they say and what they do not. The bid to justify the NFZs in Iraq was based on a combination of Resolution 678's authorization of force with Resolution 688's condemnation of Iraq's internal actions.¹⁸⁷ Resolution 688 condemned “the repression of the Iraqi civilian population... the consequences of which threaten international peace and security in the region”. It asked “Iraq [to] allow immediate access by international humanitarian organizations to all those in need of assistance”.¹⁸⁸

¹⁸⁶ Washington Post, Airstrikes in Southern Iraq "No-Fly" Zone Mount January 15, 2003 <http://www.globalpolicy.org/security/issues/iraq/nofly/2003/0115airstrikes.htm>, visited 17 February 2006.

¹⁸⁷ Robert Dreyfuss, Persian Gulf—or Tonkin Gulf? December 30, 2002, <http://www.prospect.org/print/V13/23/dreyfuss-r.html>, visited 17 February 2006.

¹⁸⁸ S/RES/688(1991), 5 June 1991, § 3.

Though the engagement in Iraq was not authorized by the UN, the argument Britain and the US used and the modus operandi they employed was to be imitated by the Security Council in designating safe areas in Bosnia and Rwanda.

In the case of Bosnian safe area of Srebrenica, the stated objective for the designation of the area was humanitarian assistance and the protection of the civilian population in so far as the resolution demanded “unimpeded delivery of humanitarian assistance” and that the area “should be free from any armed attack or any other hostile act”.¹⁸⁹

While extending safe areas status to the Bosnia towns of Sarajevo, Tuzla, Zepa, Gorazde and Bihac, the UNSC demanded that the five “threatened towns and their surrounding areas should be treated as safe areas by all the parties concerned and should be free from armed attacks and from any other hostile act”.¹⁹⁰ The resolution expressly stated that the safe areas were in response to “urgent security and humanitarian needs faced by several towns in the Republic of Bosnia and Herzegovina as exacerbated by the constant influx of large numbers of displaced persons including, in particular, the sick and wounded”.¹⁹¹

The Security Council also demanded “the withdrawal of all Bosnian Serb military or paramilitary units from these towns to a distance wherefrom they cease to constitute a menace to their security and that of their inhabitants”.¹⁹²

In Rwanda, France was given the mandate under Chapter VII of the UN Charter after expressing its willingness to send troops to Rwanda,¹⁹³ for “contributing to the security and protection of the displaced persons, refugees and civilians in danger in Rwanda by means including the establishment and maintenance, where possible of safe humanitarian areas”.¹⁹⁴

The Secretary General had informed¹⁹⁵ the Security Council in June 1994 that the deployment of an expanded UNAMIR could not take place before the first week of July 1994 in the best of circumstances. Mentioning the ongoing killings, the Secretary-General suggested that until that time the UNSC should consider the French offer to conduct a multinational operation

¹⁸⁹ S/RES/819(1993), 16 April 1993, §§ 1, 8, <http://www.nato.int/ifor/un/u930416a.htm>

¹⁹⁰ S/RES/ 824(1993), 6 May 1993, preamble. <http://www.nato.int/ifor/un/u930506a.htm>

¹⁹¹ S/RES/ 824(1993), 6 May 1993, § 3. <http://www.nato.int/ifor/un/u930506a.htm>

¹⁹² S/RES/ 824(1993), 6 May 1993, § 4 (a). <http://www.nato.int/ifor/un/u930506a.htm>

¹⁹³ Letter from the Permanent Representative of France to the UN addressed to the Secretary-General, requesting adoption of a resolution under Chapter VII of the Charter as a legal framework for the deployment of a multinational force to maintain a presence in Rwanda until the expanded UNAMIR is deployed. 20 June 1994, UN Doc. S/1994/734.

¹⁹⁴ Letter from the Permanent Representative of France to the UN addressed to the Secretary-General, requesting adoption of a resolution under Chapter VII of the Charter as a legal framework for the deployment of a multinational force to maintain a presence in Rwanda until the expanded UNAMIR is deployed. 20 June 1994, UN Doc. S/1994/734.

¹⁹⁵ Letter dated 19 June 1994 from the Secretary-General to the President of the Security Council, UN Document S/1994/728.

under Chapter VII of the UN Charter “to assure the security and protection of displaced persons and civilians at risk in Rwanda”.¹⁹⁶ France also stated: “The Franco-Senegalese forces would seek to ensure, within their mandate, that no activities threatening the security of the population in question were carried out within or from the zone.”¹⁹⁷

Through Resolution 929, the Security Council authorized France to use “all necessary means” to achieve the humanitarian objectives set out in SC resolution 925.¹⁹⁸ Those objectives included contributing to the “security and protection of displaced persons” and the provision of “security and support for the distribution of relief supplies and humanitarian relief operations”.¹⁹⁹

The Security Council also acknowledged Rwanda as a scenario that “constitutes a unique case which demands an urgent response by the international community”.²⁰⁰ Furthermore, it recognised “that the magnitude of the humanitarian crisis in Rwanda constitutes a threat to peace and security in the region”.²⁰¹

The French deployed Operation Turquoise with 2,500 troops, setting up *Zones Humanitaires Sûres* (ZHS), ‘safe humanitarian zones,’ in Southwest Rwanda that covered a fifth of the Rwandan territory.²⁰² On 21 August 1994, UNAMIR troops assumed responsibility in the [humanitarian protection] zone from the French troops after the latter’s withdrawal from Rwanda.²⁰³

An analysis of the resolutions in all three cases finds some reference to humanitarian assistance and, at least in the case of Rwanda and Bosnia, to security and protection of the displaced persons. It shows that the designation of the safe areas in Iraq and Rwanda came about following threats to international peace and security by “the magnitude of the humanitarian crisis”²⁰⁴ and “a massive flow of refugees towards and across international frontiers” respectively.²⁰⁵ Commentators have found in the safe areas a device to contain the displaced in their own countries.²⁰⁶ The express language of Security Council resolutions shows that the urgent

¹⁹⁶ Letter dated 19 June 1994 from the Secretary-General to the President of the Security Council, § 12, UN Document S/1994/728.

¹⁹⁷ Letter 2 July 1994 from the Secretary-General to the President of the Security Council, transmitting a letter from the Permanent Representative of France to the UN dated 1 July 1994 concerning the establishment of a safe humanitarian zone in Rwanda, UN Doc. S/1994/798, 6 July 1994.

¹⁹⁸ S/RES/929(1994), 22 June 1994, § 3.

¹⁹⁹ S/RES/925(1994), 8 June 1994, § 4 (a), (b).

²⁰⁰ S/RES/929(1994), 22 June 1994, Preamble.

²⁰¹ S/RES/929(1994), 22 June 1994, Preamble.

²⁰² Cited in K. Landgren, *Safety Zones and International Protection: A Dark Grey Area*, IJRL, Vol. 7 No. 3, pp. 436-458, at p. 449.

²⁰³ Progress Report of the Secretary-General on UNAMIR for the period from 3 August 1994 to 6 October 1994. § 24-25, UN Document S/1994/1133, 6 October 1994.

²⁰⁴ S/RES/929(1994), on 22 June 1994, Preamble.

²⁰⁵ S/RES/688(1991), 5 April 1991, preamble and § 1.

<http://www.globalsecurity.org/wmd/library/news/iraq/un/sres0688.htm>

²⁰⁶ Dubernet, Cécile, *The International Containment of Displaced Persons – Humanitarian Spaces Without Exit*, 2001, Ashgate Publishing Ltd; Haspelslagh, Sophie, *Safe Havens*, http://www.beyondintractability.org/m/safe_havens.jsp, visited 17 February 2006,

security needs of the displaced were acknowledged and cited as a reason for setting up safe areas. It remains to be seen what measures were taken to realize and implement these objectives.

5.2 The crucial thing called mandate

A list of the usual pious expectations notwithstanding, the relevant resolutions gave little by way of details of what would make the designated areas actually safe and how the international community planned to live up to the grand titles it had promised. The UNPROFOR troops deployed in Bosnia for instance were permitted to use force only in self-defence, and not in defence of the civilians they had been sent to protect.²⁰⁷

The UNHCR also acknowledged that the safe areas were established without the belligerents' consent and without the provision of 'any credible military deterrent'.

“Although the UN Secretary-General had warned that an additional 34,000 troops would be required ‘to obtain deterrence through strength’, governments were not willing to provide this number of troops and the Security Council therefore adopted an alternative ‘light option’ in which only 7,500 peacekeepers were to be deployed for this task.”²⁰⁸

Secretary General Boutros Boutros-Ghali announced that the troops would not “guarantee the defence of the safe area, but would provide a basic level of deterrence, assuming consent and cooperation of the parties.”²⁰⁹

5.2.1 Mission impossible or all out war?

Assuming such consent and overstating the value of such deterrence has drawn calls for caution against the belief that the use of military resources for humanitarian purposes would fall short of war. Warning against taking military action lightly, Barry Posen wrote:

“The complexity of the problems resists broad conclusions but most plausible measures are serious military operations that require substantial, diverse capabilities. If ‘rescuers’ cannot in fact, muster such capabilities and the will to use them, it is improbable that scattered air attacks and diffuse threats will convince the assailant – the party whose actions precipitated the refugee flight – to cease its depredations.”²¹⁰

²⁰⁷ UNHCR, *The State of the World's Refugees 2000*, p. 224, <http://www.unhcr.ch/pubs/sowr2000/ch09.pdf>, visited 17 February 2006.

²⁰⁸ UNHCR, *The State of the World's Refugees 2000*, p. 224, <http://www.unhcr.ch/pubs/sowr2000/ch09.pdf>, visited 17 February 2006.

²⁰⁹ UN High Commissioner for Refugees, Sadako Ogata, cited by Bill Frelick, *Safe Havens, Broken Promises*, United States Committee for Refugees.

²¹⁰ Posen, Barry, *Military Responses to Refugee Disasters* Vol. 21, No. 1 (1996), *International Security*, pp. 72-111, at p. 73.

“What good-hearted people are proposing is war,” Posen concludes.²¹¹ When the international community offers these places in the midst of armed conflicts and in the face of predictability and awareness of the nature of threats, the possibility of armed attacks against the displaced is not unexpected by any means. There had been no lack of warnings that the mandate and the available resources were not sufficient to meet even the stated objectives of the resolutions. In fact, the UN Secretary General himself referred to the dilemmas facing the UN troops in Bosnia more than a month before the tragedies in Srebrenica and Zepa unfolded.

“The question of whether UNPROFOR is about peacekeeping or enforcement is not one that can be avoided ... nothing is more dangerous for a peacekeeping operation than to ask it to use force when its existing composition, armament, logistic support and deployment deny it the capacity to do so. The logic of peacekeeping flows from political and military premises that are quite distinct from those of enforcement; and the dynamics of the latter are incompatible with the political process that peacekeeping is intended to facilitate. To blur the distinction between the two can undermine the viability of the peacekeeping operation and endanger its personnel ... Peacekeeping and the use of force (other than in self-defence) should be seen as alternative techniques and not as adjacent points on a continuum, permitting easy transition from one to the other.”²¹²

Landgren cautioned against the impossibility of humanitarian work by the UN being perceived as neutral under an enforcement umbrella also adopted by the UN.²¹³ The Secretary General also noted similar difficulties for UN troops in Bosnia.

“UNPROFOR remains deployed in a war situation where, after more than three years, there is still no peace to keep. Its position is further complicated by the fact that its original peace-keeping mandate, which cannot be implemented without the cooperation of the parties, has gradually been enlarged to include elements of enforcement, which cause it to be seen as a party to the conflict. The safe-areas mandate, for instance, requires it to cooperate and negotiate daily with a party upon whom it is also expected to call air strikes in certain circumstances. Similarly, the United Nations has imposed sanctions on one party but at the same time has sent out a Force that is obliged to work with the consent and cooperation of that party. The result is that Bosnian Serb leaders have now largely withdrawn their consent and cooperation from

²¹¹ Posen, Barry, *Military Responses to Refugee Disasters* Vol. 21, No. 1 (1996), *International Security*, pp. 72-111, at p. 111.

²¹² Report of the Secretary-General to the Security Council S/1995/444, 30 May 1995, § 62.

²¹³ Landgren, K., *Safety Zones and International Protection: IJRL*, Vol. 7, No. 3, 1995, pp. 436-458, at p. 455.

UNPROFOR, declaring that they are applying their own "sanctions" to the United Nations in response to United Nations sanctions on them."²¹⁴

In Rwanda, UNAMIR II troops, or troops under the French-led Operation Turquoise before them, failed to take measures to allay Kigali's fears about militias regrouping in the IDP camps, especially Kibeho, about rearming of those militias or about architects of the 1994 genocide hiding among the IDPs. It was partially these failures that led to the RPA taking these matters in their own hands, leading to the massacre at Kibeho.

Even ignoring the lack of resources, a glance at the mandate begs the question if mere provision of assistance and presence of international troops with a mandate to defend themselves and/or the humanitarian workers is enough to label an IDP camp a safe area. However, those looking for objectives outside the Security Council resolutions have found other motives for designating these areas as well. Haspesslagh says that to a certain extent safe areas were aimed at stopping refugee outflows.²¹⁵ To Frelick, safe areas were meant to "keep refugees close to home and to keep the pressure on human rights violators to clean up their act and to restore the rights and security of their own citizens."²¹⁶ If protection of IDPs was not the primary objective of the establishment of safe areas, as it seems also from the UN resolutions, it is hardly surprising that such protection was not forthcoming in the three areas.

5.3 Assessing human rights dimension of safe areas

This following analysis examines the extent of attention paid to basic human rights in the formulation or implementation of safe areas. It also looks at how the formulation or implementation of safe areas, or their versions designated so far, leaves gaps in protection.

Since this thesis analyses the potential of safe areas from human rights protection perspective, it is relevant to ask if basic human rights can be effectively protected and/or monitored in an internationally guaranteed safe area. Again, the first documents to look at to gather that intention, objective or capacity would be the UNSC resolutions designating such spaces. Safety of the Bosnian safe areas was guaranteed by two Security Council resolutions. It is interesting to note that UNSC Resolutions 819 and 824 never once used the words human rights or any specific measures for the protection or monitoring of human rights of the occupants of these areas, except an oblique acknowledgement of the "urgent security and

²¹⁴ Report of the Secretary-General to the Security Council pursuant to SC Resolution 982 (1995) and 987 (1995), S/1995/444, 30 May 1995, § 68.

²¹⁵ Haspesslagh, Sophie, Safe Havens, http://www.beyondintractability.org/m/safe_havens.jsp, visited 17 February 2006.

²¹⁶ B. Frelick, Safe Havens, Broken Promises, U.S. Committee for Refugees.

humanitarian needs”²¹⁷ and “a tragic humanitarian emergency”.²¹⁸ Neither was the word ‘protection’ used to refer either to human rights or to those inside the ‘safe’ areas.

Similarly, in case of Rwanda, Resolution 929 did not use those words and while the words occur thrice in Resolution 925, they were used twice to refer to United Nations Commission on Human Rights and once to the UN Commissioner on Human Rights.

On 25 May 1994, the Commission on Human Rights designated a Special Rapporteur to investigate the human rights situation in Rwanda.²¹⁹

However, a specific analysis of human rights conditions in the ZHS was not included in the three purposes the Special Rapporteur cited in pursuance of his mandate. In fact, IDPs inside camps and the ZHS in general found a very brief mention in his report.²²⁰ The Rapporteur mentioned the plight of the IDPs in general in Rwanda who were “herded into so-called displaced persons’ centres or camps where they all eked out an extremely difficult existence, dominated by total insecurity – physical and moral insecurity and insecurity as regards their food and health”.²²¹

In a concise reference to the ZHS, the Special Rapporteur said:

“[A]s the fighting drew nearer, the camps [housing IDPs] would empty and some or all of their occupants would simply be massacred. However, large numbers of people were able to flee and settle in the south-west of the country, in the area covered by the former ‘Operation Turquoise’”.²²²

However, the Rapporteur did not dwell at any length about the human rights conditions of the camps inside the ZHS. The tragic incidents at Kibeho camp inside the so-called safe area in April 1995 were an exception.

As regards the killing of IDPs in Kibeho, the inquiry report by the Independent International Commission concluded that during the events at Kibeho camp between 18 and 23 April 1994 unarmed IDPs were “subjected to serious human rights abuses, including arbitrary deprivation of life and serious bodily harm by Rwandese Patriotic Army ... [and] by armed elements among the internally displaced persons themselves.”²²³

The inquiry report found that the massacre was neither “a planned action by the Rwandan authorities to kill a certain group of people, nor was it an accident that could not have been

²¹⁷ S/RES/824(1993) 6 May 1993, preamble, <http://www.nato.int/ifor/un/u930506a.htm>

²¹⁸ S/RES/819(1993) 16 April 1993, preamble, <http://www.nato.int/ifor/un/u930416a.htm>

²¹⁹ Commission on Human Rights resolution S-3/1 of 25 May 1994, (E/CN.4/1995/7 and Corr.1); § 20.

²²⁰ Report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Rwanda. A/50/709-S/1995/915, 2 November 1995.

²²¹ Report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Rwanda. A/50/709-S/1995/915, 2 November 1995, § 38.

²²² Report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Rwanda. A/50/709-S/1995/915, 2 November 1995, § 39.

²²³ Report of the Independent International Commission of inquiry into the events at Kibeho in April 1995, Annex to letter of the Secretary-General to the Security Council, S/1995/411, 23 May 1995, § 60-61.

prevented.”http://www.murdoch.edu.au/elaw/issues/v6n3/obote-odora63_notes.html - n35²²⁴

However, because of the specific scope of the inquiry being limited to the Kibeho massacre, it did not deal with general human rights conditions in the camp. The limitations for the inquiry commission are understandable, and the Special Rapporteur certainly had his hands full with the genocide of 800,000 people and conditions of IDPs in Rwanda in general and Rwandan refugees in neighbouring countries. However, with the presence of close to one million people in a safe zone authorised by the UN in conditions of acknowledged misery, their human rights conditions must surely have merited a more detailed look.

Moving on to Iraq, neither of the two UNSC resolutions on Iraq mention human rights. Though Resolution 688 “[c]ondemns the repression of the Iraqi civilian population... the consequences of which threaten international peace and security in the region”²²⁵.

As far as Resolution 688 is concerned, the plight of the IDPs was only indirectly of issue and the main concern of the Security Council and particularly of Iraq’s neighbouring countries²²⁶ was ending threats to international peace and security deemed to be caused by “a massive flow of refugees towards and across international frontiers”²²⁷.

Neither resolution dealing with the three ‘protected’ areas used the word ‘protection’ in reference either to human rights or to the IDPs and civilians at risk inside the safe areas. Neither called for evaluation or monitoring of human rights of those who seek shelter in a safe area. Even a cursory look at these resolutions shows that human rights protection was not one of the objective for designating safe areas and human rights protection was not the primary or even secondary concern for the creation the safe areas in the 1990s. Against this backdrop, saying that safe areas so far have not added anything discernable to human rights protection would be a generous statement.

5.3.1 Protecting whom and from what

One of the expressly stated objectives for creating safe areas appears to be ensuring humanitarian assistance to would-be refugees inside the State of

²²⁴ Report of the Independent International Commission of inquiry into the events at Kibeho in April 1995, Annex to letter of the Secretary-General to the Security Council, S/1995/411, 23 May 1995, § 56.

²²⁵ S/RES/688(1991), April 5, 1991, § 1,
<http://www.globalsecurity.org/wmd/library/news/iraq/un/sres0688.htm>

²²⁶ Letters by the representatives of Turkey and France to UN dated 2 April 1991 and 4 April 1991, respectively (S/22435 and S/22442), and the letters sent by the Permanent Representative of the Islamic Republic of Iran to the United Nations dated 3 and 4 April 1991, respectively (S/22436 and S/22447).

²²⁷ S/RES/688(1991), 5 April 1991, preamble and § 1.
<http://www.globalsecurity.org/wmd/library/news/iraq/un/sres0688.htm>

origin. References to measures for IDPs' safety and security do not make as regular an appearance.

Resolution 824 demanded full respect of the rights of the UNPROFOR and the international humanitarian agencies to free and unimpeded access to all safe-areas in Bosnia and respect for the safety of the personnel engaged in these operations.²²⁸

A similarly clear distinction was noted by Jon Bennet, who coined the term 'protection drift', to describe the tendency to ensure the protection of aid and humanitarian personnel rather than that of local civilians.²²⁹

Humanitarian assistance taking precedence over the security and protection of the population in the protected areas has been a common thread in the three case studies. In Bosnia, it was precisely treating need as an entirely humanitarian issue that led to the international community, "in an almost obscene way, to focus on feeding people until they were slaughtered".²³⁰

5.4 What constitutes protection?

When the creation of safe areas can potentially be seen as a de facto alternative to asylum with references to protection coming to the displaced instead of vice versa, one must determine if the protection and safety in safe areas is comparable to asylum. This part seeks to access the content of security and protection in a "safe area". The concept of protection in a safe area has never been interpreted, neither has it been clarified whether presence in safe areas translates into actual legal claim to physical protection and assistance. One must therefore struggle to ascertain the meaning of the term from the attending circumstances and documents. Besides providing a definition for a safety zone, humanitarian law provides a source of protection for non-combatants under the 1949 Geneva Conventions. Protection under the Conventions in situations of internal displacement would of course depend upon the cooperation and tolerance of the government and insurgent forces.

One of the difficulties in the absence of a clearly defined safe area has been in identifying concomitant applicable rules. Consequently, mechanics of protection and assistance activities for IDPs in a safe area have been uncertain in the absence of any systematic attempts to establish standards against which one can measure the success of a safe area in terms of human rights protection or otherwise. The UNHCR had acknowledged in 1991 the

²²⁸ S/RES/824(1993) 6 May 1993, § 4 (b). <http://www.nato.int/ifor/un/u930506a.htm>

²²⁹ Bennett, Jon, 1998, *Internal Displacement in Context: The Emergence of a New Politics*, In Davies, Wendy (ed.) *Rights Have No Borders: Internal Displacement Worldwide*, http://www.nrc.no/global_idp_survey/rights_have_no_borders/bennett.htm#Internal%20Displacement%20in%20Context, visited 17 February 2006.

²³⁰ Dubernet, Cécile, *The International Containment of Displaced Persons – Humanitarian Spaces Without Exit*, 2001, Ashgate Publishing Ltd. p. 36.

need “to devise methods to meet the security and protection concerns of individuals prior to departure so as to obviate the need for flight.”²³¹

The obvious questions to ask in such circumstances include: What is the form that ‘protection’ or ‘security’ takes in safe areas? Which standards apply in a safe area and are there any guarantees of certain minimum standards of treatment to those in need of internal protection? Whether they include ensuring the preservation of basic human rights of IDPs and resident civilians? Would evaluation of human rights form part of the overall consideration of safety and protection? What would be seen as the failure of a safe area?

These are crucial questions because a large part of reasoning for in-country protection had been to offer security and “protection” to the displaced. Safe areas focusing on humanitarian assistance rather than security and protection needs of those who seek shelter in the ‘safe’ areas has been a common thread in the three case studies. As Dubernet puts it, “In Bosnia, it was precisely treating need as an entirely humanitarian issue that led to the international community, in an almost obscene way, to focus on feeding people until they were slaughtered.”²³²

Through Resolution 819, the UNSC asked the Secretary-General “to take immediate steps to increase the presence of UNPROFOR in Srebrenica and its surroundings” but the objective was “monitoring the humanitarian situation in the safe area”.²³³ None of the UN resolution made any reference to the use of military force to defend the designated areas. Practically no measure was enumerated for the protection of those inside the safe area. The worth of mere assistance to IDPs has been questioned in the 1990s in the face of a clear link between patterns of violence and the movement of those who leave their countries for reasons that even States themselves accept as valid.²³⁴

It has been acknowledged that the military protection put in place to protect the safe areas in Bosnia, for one, was not sufficient to be effective, not least because of the Security Council went for ‘light options’ such as deploying 7,500 peacekeepers instead of 34,000 to protect the Bosnian safe areas.²³⁵

This assertion is borne out by UN Secretary General Boutros Boutros-Ghali saying that UNPROFOR troops would not “guarantee the defence of the [Bosnian] safe area, but would provide a basic level of deterrence, assuming consent and cooperation of the parties.”²³⁶ The Secretary General said so

²³¹ Note on International Protection 1991 (submitted by the High Commissioner), § 47, UN Doc. A/AC.96/777 <http://www.unhcr.ch/cgi-bin/texis/vtx/excom/opendoc.htm?tbl=EXCOM&id=3ae68c050>, visited 17 February 2006.

²³² Dubernet, Cécile, *The International Containment of Displaced Persons – Humanitarian Spaces Without Exit*, 2001, Ashgate Publishing Ltd. p. 36.

²³³ S/RES/819(1993) 16 April 1993, § 4, <http://www.nato.int/ifor/un/u930416a.htm>

²³⁴ Goodwin-Gill, Guy S., *Asylum: The Law and Politics of Change* IJRL, Vol. 7, No. 3, 1995. pp. 1-18, at p. 10.

²³⁵ *The State of the World’s Refugees*, 2000, p. 224. <http://www.unhcr.ch/pubs/sowr2000/ch09.pdf>, visited 17 February 2006.

²³⁶ UN High Commissioner for Refugees, Mme. Sadako Ogata, cited by Bill Frelick, *Safe Havens, Broken Promises*, United States Committee for Refugees.

even though the safe areas in Bosnia were not designated after securing consent from the parties to the conflict. It is against this backdrop that some analysts referred to the Bosnian safe areas as “the most dangerous place in Bosnia”.²³⁷

Subjective variations aside, there is a common theme in lapses in protection of individuals in the protected areas in Rwanda, Bosnia and Northern Iraq. Stripped bare of the context, it really is as simple as the following: individuals were desperate for protection and instead of having to flee for protection they were promised that protection would come to them. To use a much clichéd phrase, the rest is history.

In 1991, the refugee agency’s opinion was that “the protection of persons inside their country of origin is feasible, when accompanied by necessary guarantees fully consonant with international human rights standards. In-country protection, e.g. through the establishment of internationally guaranteed safety zones, needs to be weighed against the rights of individuals to leave their own country, to seek and enjoy asylum or return on a voluntary basis, and not to be compelled to remain in a territory where life, liberty or physical integrity is threatened.”²³⁸

Having started with a clear human rights perspective, it would seem obvious that the actual materialization of safe areas would be informed by the apprehensions that arose post-Cold War as soon as the idea of in-country protection was suggested.

The direct correlation between the level and severity of human rights violations in countries of origin and the number of persons seeking asylum from those countries has also been highlighted since. Mark Gibney has stated that the most violent countries in the world produce almost all of the world’s refugees.²³⁹

While Gibney was writing to dispel the myth that the majority of asylum seekers in the world are abusing the system, the point is made that violations of human rights are at the heart of flight to seek international protection. The urgent need for protection is also quite often human rights protection. Gibney also shows that a significant majority of refugees fled to countries where human rights practices were better than in their own respective countries.²⁴⁰

The determination of refugee status requires an assessment of risk to basic human rights. Protection in the safe areas then would be missing the point of bringing protection to the displaced if it does not at least ensure the protection of basic human rights.

Physical security is the main form of protection that all displaced persons need. People become refugees in order to escape from threats to their

²³⁷ Bill Frelick, *Safe Havens, Broken Promises*, United States Committee for Refugees.

²³⁸ Note on International Protection 1991 (submitted by the High Commissioner), § 47, UN Doc. A/AC.96/777 <http://www.unhcr.ch/cgi-bin/texis/vtx/excom/opendoc.htm?tbl=EXCOM&id=3ae68c050>, visited February 17.

²³⁹ Gibney, Mark, *Certain Violence, Uncertain Protection*, pp. 15-37, at p. 16, in Joly, D. (ed.), *Global Changes in Asylum Regimes*, New York, Palgrave Macmillan, 2002.

²⁴⁰ Gibney, Mark, *Certain Violence, Uncertain Protection*, pp. 15-37, at p. 18, in Joly, D. (ed.), *Global Changes in Asylum Regimes*, New York, Palgrave Macmillan, 2002.

fundamental rights or security; protection is a benefit that is not available to the refugee in his own country. Safe areas notwithstanding, nothing has changed in that department.

The question to ask then is what exactly changes with the designation of a safe area that justifies asking IDPs to stay on. Is that military presence inside safe areas to ensure protection? That seems unlikely, since the human rights protection or even physical protection from attacks inside safe areas is non-existent not only in practice but even a mention of that is not included in the UNSC resolutions. There were no details of what would make the designated areas actually safe and no mention how the international community planned to live up to the grand title it had promised. There was also no mention of defence of the safe areas mandated by the UN, despite the well known threats to them. As far as can be ascertained, protection inside such places would depend almost exclusively on any deterrent effect the presence of an international force would have on the belligerents.

While in the three case studies, safe areas facilitated the provision of emergency relief and assistance to some extent,²⁴¹ the safety offered in the three safe areas was nowhere near comparable to the protection provided by asylum. Whereas the whole concept of in-country protection emerged with a specific focus on human rights, that perspective seems to have been jettisoned both in the designation and implementation of the concept.

The designation of an area as safe or internationally protected entails more than the provision of basic material provisions. In view of the link between human rights violations and the need to address the reasons for flight, the concept of protection can be taken to mean at least the act of respecting and upholding fundamental human rights, such as the core rights declared in the Covenant on Civil and Political Rights. Designation of such areas without a mechanism to verify human rights indicators, much less to protect those rights, is unjustifiable to say the least and perverts human rights obligations of states by confining the displaced to stay in such spaces by denying them access to other states' territory.

²⁴¹ Incomplete footnote Dubernet, Cécile, *The International Containment of Displaced Persons – Humanitarian Spaces Without Exit*, 2001, Ashgate Publishing Ltd.

6 RESPONSIBILITY FOR HUMAN RIGHTS PROTECTION IN SAFE AREAS

A crucial element in the safe areas discourse is the question of responsibility for preserving basic human rights in such safe areas.

The term responsibility is used here in terms of accountability for actions during multilateral activities under an organizational umbrella and not in the narrow inter-state sense.

Determination of such responsibility would decide how and if the rationale and arguments for creating safe areas to ensure safety and security for IDPs and civilians at risk translate into actual protection and a legal claim to that protection. As vouched by the Guiding Principles, the international community and the United Nations recognise the need to protect the IDPs.²⁴² However, creation of a minimum standard of responsibility by which States and de facto authorities including the UN may be expected to implement those aspirations remains murky.²⁴³

6.1 International obligations towards IDPs

It has been stated that whereas under the 1951 Convention the international community must care for refugees, it does not have a similar obligation towards IDPs. That is so because the responsibility to protect human rights of citizens resides first and foremost with the home State.²⁴⁴ It has also been argued that States other than the home State are not bound to assist in internal displacement situations, their duties towards IDPs being “moral rather than legal”.²⁴⁵

Because of the tension between the principle of state sovereignty and human rights of individuals, there is much disagreement about when and to what extent outside countries can intervene to protect human rights in another State. The ground of human rights violations does not entitle other States to intervene militarily. The ICJ has also affirmed that the use of armed force cannot be the appropriate method to ensure respect for human rights.²⁴⁶

²⁴² Guiding Principles on Internal Displacement.

²⁴³ International Law Association, London Conference 2000, Committee on IDPs, Draft Declaration of International Law Principles on IDPs, Commentary to Article 2, p. 800.

²⁴⁴ Report of the Representative of the Secretary-General, Mr. Francis M. Deng, UN Doc. E/CN.4/1996/52/Add.2, December 5, 1995; Guiding Principles on Internal Displacement, Principle 3.

²⁴⁵ Dubernet, Cécile, *The International Containment of Displaced Persons – Humanitarian Spaces Without Exit*, 2001, Ashgate Publishing Ltd. p. 45

²⁴⁶ *Military and Paramilitary Activities in and Against Nicaragua*, (Nicaragua v. United States of America), Merits, 1986 ICJ Reports 14, at p. 134, § 268.

However, the Security Council has the competence under narrowly defined conditions to intervene, for instance by creating safe areas.²⁴⁷ The competence of the Security Council to authorize the creation of places of protection even without the belligerents' consent is based primarily on Chapter VII of the UN Charter to end threats to international peace and security.²⁴⁸

6.1.1 Safe areas and the international community's reach

Without taking anything away from primacy of the home State's responsibility to protect human rights, the three safe areas under review had been set up and an international force mandated by the UN stepped in where the State was either dysfunctional and incapable of affording protection to its citizens or was itself the persecutor, involved in violations of human rights leading to displacement.

As discussed earlier, one of the restraints on international assistance to IDPs has been the fact of their being beyond the reach of the international community.²⁴⁹ However, it will be questionable to argue that those inside an internationally designated safe area still remain beyond the reach of the international community.

It is the concept of internationally designated safe areas inside a conflict zone that begs a clearer demarcation of obligations of the international community towards IDPs. One can argue that the international community must surely have obligations towards IDPs and resident civilians when it invites them to, or encourages them to stay on in, designated areas inside conflict zones with promises of assistance and protection.

6.1.2 Responsibility of the UN

The protection of human rights and the role of the United Nations and international troops in that regard are relevant because human rights hold a special place in the scheme of the UN Charter. Not only does the Charter reaffirm "faith in fundamental human rights",²⁵⁰ it also proclaims "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion",²⁵¹ as one of the purposes of the world body.

Admitted that a general reference to human rights in the Charter does not bind UN in the same way as it does States under specific human rights

²⁴⁷ Subedi, Surya P., The Legal Competence of the International Community to Create 'Safe Havens' in 'Zones of Turmoil', *Journal of Refugee Studies*, Vol. 12. No. 1, 1999, pp. 23-35, at pp. 32-33.

²⁴⁸ Oswald, Bruce M., The creation and control of places of protection during UN peace operations, [http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/57JRLK/\\$FILE/1013-1036_Oswald.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/57JRLK/$FILE/1013-1036_Oswald.pdf), visited 17 February 2006.

²⁴⁹ See above 3.1.3.

²⁵⁰ Charter of the United Nations, Preamble.

²⁵¹ Charter of the UN, Art. 1 (3).

treaties such as the ICCPR. However, in view of such explicit reference in the Charter, the relevance of human rights to UN-mandated activities cannot be denied. In view of the emphasis that the Charter itself lays on the promotion and realization of human rights, it can be argued that internationally recognized human rights standards must be upheld in the safe areas designated by the UN. Particularly, those rules of international human rights law which have attained the character of customary international law -- such as the rights enumerated under the UDHR and most rights provided under the ICCPR for instance -- would bind the UN. The Charter confers the primary responsibility for the maintenance of international peace and security on the Security Council.²⁵² Under the Charter, the Council is bound to act in accordance with the purposes and principles of the UN in discharging these duties.²⁵³ Not catering to human rights concerns would lead to a mission authorised by the Security Council being in contravention of the Charter and an international force working under that mandate acting in a manner inconsistent with the purposes of the UN. It can be argued that in view of the Charter, the UN and its organs are under an obligation not to raise any obstacle to affect such human rights such as the right to flight and to seek asylum abroad.

It has been argued that “where enforcement action is taken by the UN – one of the major promoters of human rights in the international arena – an exemplary respect for human rights can be legitimately demanded”.²⁵⁴

The issue of responsibility has recently arisen in the context of UN peacekeeping operations and liability for the activities of the members of such forces. In such circumstances, the UN has accepted responsibility and offered compensation for wrongful acts.²⁵⁵ While such responsibility has been with regard to negative obligations, i.e. to respect such rights, the protection of human rights is a more specific issue, there is no reason why the UN should not be liable for a lack of protection for core human rights and for injuries occurring by virtue of its oversights and omissions as much as any actions by personnel acting on its behalf.

6.1.3 Individual States’ responsibility for human rights violations

The question of individual State’s responsibility is comparatively straightforward. As stated earlier, safe areas have been criticised for their impact on positive human rights obligations of States, specifically under refugee law, which are considered customary international law now.²⁵⁶ Closure of borders by neighbouring states to prevent flows of displaced

²⁵² Charter of the UN, Art. 24 (1).

²⁵³ Charter of the UN, Art. 24 (2).

²⁵⁴ Reinisch, August, 1995, *Das Jugoslawien-Tribunal der Vereinte Nationen an nicht-ratifiziertes Vertragsrecht*, 47 Austrian Journal Publ. Int’l Law pp. 173-213, at p. 213 (1995).

²⁵⁵ See *M v. Organisation des Nations Unies et L’État Belge*, 45 ILR, p. 446.

²⁵⁶ See above 4.2.2 to 4.3.

persons across the borders certainly violates a state's human rights obligations, not least because it amounts to *refoulement*.²⁵⁷ The potential impact of focusing on in-country protection leading to undermining of the right to seek asylum abroad has also been highlighted,²⁵⁸ as has the impact on the right to leave one's country.²⁵⁹ Undermining such rights by closing borders and imposing visa restrictions violates express obligations taken on by States under specific human rights treaties.

6.1.3.1 UN Charter

Provisions of the UN charter also bind member States to observe human rights obligations. A general mention of human rights in the Charter obviously cannot be used to impose specific human rights obligations on States that they never took on, for instance by choosing not to sign or ratify specific human rights treaties. However, member States that consented to be bound by the UN Charter must ensure that their decisions do not render null and void their human rights and Charter commitments by acting in a manner expressly contrary to the Charter.

According to Article 26 VCLT, parties to a treaty are subject to the principle of *pacta sunt servanda*, i.e. they are under an obligation to honour a binding treaty in good faith. This obligation essentially requires them not to act in a manner incompatible with the obligations entered into at an earlier stage.

Customary international law regarding interpretation of treaties as expressed in Article 31 of the Vienna Convention on the Law of Treaties 1969 fortifies that view. According to Article 31, a treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose.²⁶⁰

Though any human rights obligations of the UN and those of its organs in operations on the territory of a member state have not been judicially analysed in any great detail, a look at international law norms regarding extraterritorial application of human rights by States can be informative.

6.1.3.2 ECHR

In the European context, the ECtHR assumed Turkey to be bound by European Convention on Human Rights in respect of Northern Cyprus.²⁶¹ In the first *Loizidou* judgment, the Court found that in view of the object and purpose of the Convention, Turkey's responsibility was capable of being engaged "when as a consequence of military action (lawful or unlawful) it exercised effective control of an area outside its national territory. The obligation to secure, in such an area, the Convention rights and freedoms was found to derive from the fact of such control whether it was exercised

²⁵⁷ See above 4.2.4.

²⁵⁸ See above 4.2.3.

²⁵⁹ See above 4.2.1.

²⁶⁰ VCTL, Art. 31 (1).

²⁶¹ *Loizidou v. Turkey*, judgment of 18 December 1996 (*Merits*), *Reports of Judgments and Decisions* 1996-VI, No. 26 and *Cyprus v. Turkey* [GC], No. 25781/94, ECHR 2001.

directly, through the respondent State's armed forces, or through a subordinate local administration.²⁶²

In *Banković v. Belgium*, however, the Court did not extend the ECHR's extraterritorial application to those killed in the bombing of a Serbian TV station by NATO warplanes. The Court held that the Convention was not designed to be applied all over the world, even in respect of states parties' conduct. The court did not find any jurisdictional link between the victims of the bombings and the respondent states and observed that the applicants and their deceased relatives were not capable of coming within the jurisdiction of the respondent states because of the extraterritorial nature of the bombings.

However, even in *Banković* the Court did not shut the door completely on extraterritoriality of states' human rights obligations, observing that "its "[the Court's] recognition of the exercise of extra-territorial jurisdiction by a Contracting State is exceptional: it has done so when the respondent State, through the effective control of the relevant territory and its inhabitants abroad as a consequence of military occupation or through the consent, invitation or acquiescence of the Government of that territory, exercises all or some of the public powers normally to be exercised by that Government."²⁶³

Banković can be distinguished on many grounds. Firstly, it determined only the preliminary issue of admissibility. Secondly, the European Court has applied the guarantees under the Convention to Kenya and Iraq in *Issa* and *Öcalan* respectively, thus parting from the idea of human rights obligations only in Europe.

In the case of *Issa*, Turkish forces had crossed into northern Iraq during an four-week-long operation and allegedly arrested and killed a number of Iraqi shepherds. The Turkish government confirmed that an operation of Turkish military forces had taken place in northern Iraq at the relevant time, but denied Turkish soldiers' presence in the area indicated by the applicants. The Court noted that the alleged killings had taken place outside Turkish territory, but found that there were no grounds for declaring the application inadmissible.²⁶⁴

Abdullah Öcalan, leader of the PKK (Kurdistan Workers' Party), was arrested in Kenya by Turkish security forces and transferred to Turkey. He lodged a complaint with the Strasbourg Court, claiming *inter alia* that Articles 3 and 5 (1) of the ECHR were violated by his abduction in Kenya and the circumstances in which his arrest had been carried out. The Court declared the application admissible despite the extra-territorial dimension of the case.²⁶⁵

²⁶² *Loizidou v. Turkey*, (preliminary objections). § 62, ECtHR 23 March 1995.

²⁶³ *Banković and others v. Belgium and 16 Other Contracting States*, ECtHR Grand Chamber decision as to the admissibility. Application No. 52207/99, § 71, 12 Dec. 2001.

²⁶⁴ *Issa and others v. Turkey*, ECtHR, Application No. 31821/96, 30 May 2000.

²⁶⁵ *Öcalan v. Turkey*, ECtHR, Application No. 46221/99, pp. 21 and 25. 14 Dec. 2000.

6.1.3.3 ICCPR, ICESCR and CRC

More recently and much more explicitly than the European court, the ICJ ruled in 2004 about the extent of extraterritorial application of human rights in the *Palestinian Wall advisory opinion*. The court considered the circumstances under which international human rights instruments have extraterritorial application.²⁶⁶ The elements it discussed include the effectiveness of control over the territory and the object and purpose of a human rights instrument. The Court observed with regard to the ICCPR that “while the jurisdiction of States is primarily territorial, it may sometimes be exercised outside the national territory. Considering the object and purpose of the International Covenant on Civil and Political Rights, it would seem natural that, even when such is the case, States parties to the Covenant should be bound to comply with its provisions.”²⁶⁷

The Court stated that unlike the ICCPR, the ICESCR did not contain any provisions on its scope of application. However, in view of Israel’s control over Palestinian territories as the occupying Power, the court held that Israel had both positive and negative obligations with regard to the ICESCR.²⁶⁸

The Court also found the Convention on the Rights of the Child applicable within the Occupied Palestinian Territory because according to Article 2, “States Parties shall respect and ensure the rights set forth in the... Convention to each child within their jurisdiction...”²⁶⁹

6.1.3.4 Analysis

Even though the ICJ’s reasoning regarding the ICESCR is not sophisticated, an argument can be made that at least the core rights under the ICCPR and the CRC apply in safe areas with regard to the states contributing troops or the UN for troops acting on its behalf when recourse could not be had to local guarantees because of non-existence or inability of authorities of the home State.

In the *Palestinian Wall advisory opinion*, the ICJ also referred to the Human Rights Committee’s constant practice and observation that the ICCPR is applicable where the State exercises its jurisdiction on foreign territory.²⁷⁰

The Committee for its part has concluded that effective control on the territory obliged a State to respect and ensure the rights provided in the ICCPR. More specifically, the Committee stated:

“States parties are required by article 2 (1) to respect and to ensure the Covenant rights to all persons who may be within their territory and to all persons subject to their jurisdiction.

²⁶⁶ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 ICJ 136 at pp. 178-181, § 107-113.

²⁶⁷ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 ICJ 136, at p. 179 § 109.

²⁶⁸ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 ICJ 136, at p. 181 § 112.

²⁶⁹ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 ICJ 136, at p. 181 § 113.

²⁷⁰ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, at p. 179 § 109.

This means that a state party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that state party, even if not situated within the territory of the state party. As indicated in General Comment 15 adopted at the twenty-seventh session (1986), the enjoyment of Covenant rights is not limited to citizens of states parties but must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the state party. This principle also applies to those within the power or effective control of the forces of a state party acting outside its territory, regardless of the circumstances in which such power or effective control was obtained, such as forces constituting a national contingent of a state party assigned to an international peace-keeping or peace-enforcement operation.”²⁷¹

The enumerated situations concern individual State and not an organisation like the UN, which is not a party to international human rights treaties, however, in view of Charter provisions it cannot very well ignore core human rights obligations emanating from customary international law in activities mandated by it. In this respect, there is no reason why the areas discussed in terms of States’ responsibility should not apply to troops acting on behalf of the UN in territory over which only those troops have some form of control. In a discourse about the responsibility of the UN, Reinisch has stated, “If the UN acts with official authority in a state-like manner ... then there is no reason why the organization ... should not be bound by the same international rules as its members.”²⁷²

Though Reinisch was arguing vis-à-vis international criminal law, there is no reason why a similar argument cannot be made for UN’s responsibility for human rights protection in safe areas designated by it.

Whether UN troops’ control in such areas needs to be effective or not remains yet another matter. One can argue that in view of the admitted control of the UNAMIR troops in the Rwandan safe zone²⁷³ and in view of the ICJ observation in the *Palestinian Wall Advisory Opinion* and observations by the Human Rights Committee, the troops acting under the UN authority were under an obligation to ensure observance of at least core human rights such as the right to life, liberty and physical integrity. Whether UN troops’ numbers, resources and mandate allowed them to ensure those

²⁷¹ General Comment No 31 (“The Nature of the General Legal Obligation Imposed on States Parties to [the International Covenant on Civil and Political Rights]”) of the UN Human Rights Committee adopted on 29 March 2004: § 10.

²⁷² Reinisch, August, 1995, *Das Jugoslawien-Tribunal der Vereinte Nationen an nicht-ratifiziertes Vertragsrecht*, 47 Austrian Journal Publ. Int’l Law pp. 173-213, at p. 211-212.

²⁷³ Progress report of the Secretary-General on UNAMIR for the period from 3 August 1994 to 6 October 1994. § 23, UN Doc. S/1994/1133, 6 October 1994.

concerns is equally crucial. Against the backdrop of the UN Security Council going for the ‘light option’ in Bosnia,²⁷⁴ effective control would seem an unlikely prospect at the outset. In fact, UNPROFOR numbers in Bosnia had decreased overtime instead of being augmented as the crisis worsened, making their control of the area increasingly unlikely. Furthermore, despite frequent references to safe areas as a tool in mass displacement situations,²⁷⁵ the United Nations has failed to agree on or even suggest legal regulation of this area.

In view of one of the prominence human rights and fundamental freedoms get in UN’s purposes, an ostensibly apparent lack of mandate to follow through on lofty promises can not very well be said to be fulfilling that purpose.

6.1.4 The possible responsibility of States derived from UN membership

The issue, of course, has as many legal as political dimensions. It can be argued that by acting in a manner that leaves core human rights seemingly protected but still glaringly vulnerable, the states giving the mandate are at least violating their obligations under the Charter, and depending on the applicability of human rights treaties, their positive human rights obligations as well. After all, the positive nature of states’ obligations to promote and respect human rights is marked by member States’ pledge to take joint and separate action in cooperation with the UN, to achieve that purpose.²⁷⁶ Questions of the extent of human rights obligations of Security Council members abstaining from or voting for Chapter VII resolution and allowing deficient mandate to enforce those resolutions might well have political aspects.

Furthermore, consideration of the relationship of responsibilities of an organization and its member states and agents of the UN is a vague area. Such relationship was excluded from the scope of the Articles on State Responsibility,²⁷⁷ but has since been considered by the ILC. Draft Article 3 adopted during the Commission’s 55th session provides:

1. Every internationally wrongful act of an international organisation entails the international responsibility of the international organisation.
2. There is an internationally wrongful act of an international organisation when conduct consisting of an action *or omission*:
 - a. *Is attributable* to the international organisation under international law; and

²⁷⁴ See above 5.2

²⁷⁵ See above, 1.7.

²⁷⁶ Charter of the UN, Arts. 55, 56.

²⁷⁷ Articles on Responsibility of States for Internationally Wrongful Acts, 2001, Art. 57.

- b. Constitutes a *breach of an international obligation* of that organisation.²⁷⁸ [My italics]

The ILC's commentary to this Article notes that the legal relationship between states and international organizations resulting from an internationally wrongful act need not be bilateral but may implicate the international community as a whole. "Thus in appropriate circumstances more than one subject may invoke, as an injured subject or otherwise, the international responsibility of an international organization."²⁷⁹

Whether member states are concurrently responsible with the UN or have residual responsibility for acts of an international organization are issues as yet unaddressed. The ICJ has recently had the occasion to rule on member states' liability vis-à-vis an international organization's acts. However, in both *the Certain Phosphate Lands in Nauru*²⁸⁰ and the *Legality of the Use of Force*²⁸¹ cases, the court did not decide the issue because of a settlement between Australia and Nauru and lack of jurisdiction respectively.

Scobbie has noted affirmation by the UN of its international responsibility for an internationally wrongful act.²⁸² He argues that that is an attribute of the organisation's international personality and its capacity to bear international rights and obligations.²⁸³

ILC's Commentary to Article 3 argues that as in the case of States the attribution of conduct to an international organization and conduct constituting the breach of an obligation under international law are the essential elements to attract responsibility.²⁸⁴

However, the Commission has been quick to note that "the responsibility of international organizations is governed by rules which are not necessarily the same as those governing the responsibility of States".²⁸⁵ Special Rapporteur Giorgio Gaja has observed that an organization may assume an

²⁷⁸ Report of the ILC's 55th Session, UN Doc.A/58/10 (5 May-6 June and 7 July-8 August 2003), at pp. 45-46.

²⁷⁹ Report of the International Law Commission 55th session UN Doc.A/58/10, at 47, § 7, <http://untreaty.un.org/ilc/reports/2003/english/chp4.pdf>, visited 17 February 2006.

²⁸⁰ *Certain Phosphate Lands Case: (preliminary objections judgment)*, 1992 ICJ Rep 240, at p. 258, § 48.

²⁸¹ The applications against Belgium, Canada, France, Germany, Italy, the Netherlands, Portugal, and the UK were dismissed in the *Legality of the use of force cases: (preliminary objections) judgments of 15 December 2004: the Serbia and Montenegro v Belgium judgment* is reproduced at 44 ILM (2005) 299. The court dismissed the applications against Spain and the US at the interim measures stage due to manifest lack of jurisdiction. *Orders of 2 June 1999, Yugoslavia v Spain 1999 II ICJ Rep 761; and Yugoslavia v the United States 1999 II ICJ Rep 916.*

²⁸² UN Secretary General's Report on Administrative and Budgetary Aspects of the Financing of UN Peacekeeping Operations, UN Doc. A/51/389 (20 September 1996), 37 ILM (1998) 700, at p. 702, § 4.

²⁸³ Scobbie Iain, *Unchart(er)ed Waters?: Consequences of the Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory for the Responsibility of the UN for Palestine*, *European Journal of International Law*, Vol. 16, No. 5, pp.941-61.

²⁸⁴ Report of the ILC's 55th Session, UN Doc.A/58/10 (5 May-6 June and 7 July-8 August 2003), at p. 46.

²⁸⁵ ILC commentary to 1996 draft Art. 13, § 9.

obligation whose compliance depends on the conduct of its member states. Should they fail to discharge this obligation, the organization would be responsible for the resultant breach without the need to attribute member states' conduct to it.²⁸⁶

The implications for United Nations' responsibility to carry out obligations under the Charter or assumed by the organisation include the obvious consequence of liability for a breach of a primary obligation. In that respect the United Nations' immunity and member states' activities behind their organisational veil have complicated things but the ICJ has held that:

“... the question of immunity from legal process is distinct from the issue of compensation for any damages incurred as a result of acts performed by the United Nations or by its agents acting in their official capacity. The United Nations may be required to bear responsibility for the damage arising from such acts.”²⁸⁷

As stated earlier,²⁸⁸ the United Nations and its organs are bound to ensure protection of core human rights in the safe areas designated by the world body not only because of basic moral reasons but also by virtue of the purely legal reasons emanating from the Charter itself.

Failure to ensure that protection entails responsibility of the UN on its own behalf as well on behalf of its agents or any derelict member State.

²⁸⁶ Second Report on Responsibility of International Organizations by Mr. Giorgio Gaja, Special Rapporteur, UN Doc.A/CN.4/541, at p. 6, § 11.

²⁸⁷ Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, 1999 ICJ 62, at pp. 88-89 § 66.

²⁸⁸ See above 6.1.2.

7 CONCLUSIONS AND ANALYSIS

By whatever name they may be called, the main argument for the safe areas has been that the displaced would not feel obliged to flee their country to find protection. Human rights, humanitarian assistance, plight of the displaced, safety, security and protection -- all the buzz words have been used in advocating these areas. However, many of those considerations had fallen by the wayside even before a document designating such safe areas had been drafted.

7.1 ... between the cup and the lip

The consistent practice in safe areas with publicly stated objectives not finding their way into Security Council resolutions, or the mandate not ensuring any realistic chances of meeting those objectives, makes one question the worth of toothless spaces, safe and secure only in name. The protection of human rights goes missing somewhere between the grand rhetoric for international intervention and the UN resolutions designating and implementing a safe area. From the use of the actual language of the resolutions designating safe areas, to voting in the Security Council, to the mandate for such safe areas, there can be many phases where a lapse might have tragic consequences for those seeking protection in a safe area.

7.1.1 Balancing gains and losses - a catch-22

But where does that leave us. Knowing what we know today, should safe areas still have been designated in Bosnia or Rwanda? Would they be set up in future Bosnias and Rwandas? They probably would be, but perhaps again as the 'least-worst solution'.

Safe areas have had their uses. They have been seen as an attempt at doing something when neighbouring States close their borders or impose visa requirements on those displaced across the border. Use of safe areas for humanitarian assistance has been acknowledged. They have allowed humanitarian organisations to assist the vulnerable inside conflict zones from what was a situation for relative safety at least for humanitarian workers. Secondly, civilian victims of the conflict, or at least some of them, did not have to flee and living in their houses and communities, they did not need as elaborate accommodation arrangements.

However, the concept has had impact on acknowledged refugee rights and core human rights.²⁸⁹ Protection has been one of the angles, if not the angle,

²⁸⁹ See above, 4.2.

of in-country protection discourse since early 1990s.²⁹⁰ Humanitarian assistance cannot substitute the lack of physical protection, or it will continue inviting tags like “Feed them until they are killed” as Dubernet refers to the mission in the Bosnian safe area of Srebrenica.

So the idea has its advantages but protection has not been one of them so far, even if protection was mentioned as a justification at least in the rhetoric for the creation of such zones. As long as humanitarian assistance is part of the safe area concept, it is not controversial, but when it becomes the whole, problems arise. Would such assistance be legal if it is at the cost of core human rights and established flight alternatives enumerated by the asylum regime? The answer has to be no. And this is where the most stark problem arises because the concept starts to fiddle with States’ human rights obligations.

The experiences in the three case studies obviously did not do much to advertise safe areas as a human rights protection mechanism and the concept needs to recover from setbacks. Though they have been credited with varying degrees of success in humanitarian assistance, the case studies show a failure in human rights protection, but that might not come as a surprise, as protection was never an objective for their designation. In view of these findings, the creation of safe areas as a protection mechanism is only justified when physical safety and human rights protection is assured and alternatives like crossing the borders remain available. From the outset, the rationale for promoting safe areas has been protection at the place of displacement.²⁹¹ If the safe area cannot even ensure that then the mere act of advocating for civilians at risk and IDPs to stay in such an area instead of seeking protection elsewhere would be both illegal and immoral.

The right questions must be asked before the next safe area is created. The first of those questions might be whether we are saying that safe areas are a sphere where we can develop solutions to displacement and offer internal protection? If we are, then that begs a discourse that looks at previous trends and analysis and what emerges from that can help draw up policy. Short of a clear and coherent policy, any safe areas-centric approach to displacement would just be a sum of a few ad-hoc and random measures incapable of comprehension without analysts having to work their way backwards to find any content.

Safe areas inside the home state should not be an either/or option regarding refugee rights because creation of such an area does not absolve states from their original human rights obligations.

Regard for human rights has been the principle distinction between the protection provided in a post-Cold War safe area and the protection under refugee law. The three case studies also bear witness that basic human rights are not only highly vulnerable to abuse in safe zones but are also not as high a priority as provision of emergency assistance. The safe area concept requires integration of protection with the assistance element, and the former has been virtually non-existent in the instances examined so far. Safe

²⁹⁰ See above, 4.2.2.

²⁹¹ See above, 4.2.2.

areas must not block flight alternatives, for the simple reason that such options relate to independent customary law and treaty-based obligations of States, and resolutions of the Security Council could not justify distortion of such express positive obligations.

7.1.2 Regulation of the area

With states increasingly reluctant to handle largescale influx of the displaced, safe area could be a tool that might be around for some time. And here is the case for a clearly defined concept with ascertainable parameters. For now, there is precious little except a label out there, with scant details. Ideally, some criteria should be identified for situations in which safe areas can be designated to avoid them being more than mere selective and largely reactive responses. A mention of what the average safe area will contain, and how and to whom will it provide protection would also add certainty. It must obviously not be a one-size-fits-all straightjacket but at least minimum criteria must be enumerated. In this respect, a legal framework has obvious benefits, however, if the international community had been this inclined towards that then the present thesis might not have been warranted. If an instrument would lead to too much squabbling, the least the Security Council could do is better define the parameters and contents of a safe area in its resolutions with mechanisms to comply with human rights standards in the safe areas.

The diversity of labels is certainly a thing that needs fixing. Merely because an internationally guaranteed safe area is entitled slightly differently does not make it more secure. Instead of putting a litany of labels on the table, the language should be made clear and sophisticated and precise meaning associated with expressions. The expression must be clearly defined and processes put in place to determine whether actual implementation meets the theoretical definition. A sufficiently well defined concept will ensure certainty of what the creation of a safe area entails.

The last three experiences should inform the concept and lead to in-built human rights monitoring, evaluation and protection mechanisms, the last being backed by sufficient deterrence. Having said that, safe area is not a durable solution and selling it as one would only lead to protracted suffering for the IDPs and resident civilians. There is a case for going back to the roots of the safe areas discourse to refocus attention on dealing with displacement at both causes and effects and not on looking for new excuses to renege on old pledges under international refugee and human rights law by denying access to the territory and *refoulement*.

7.1.3 Learning lessons

Safe areas do not exist in a vacuum and if the home state was doing such an excellent job of protection in general or human rights protection then where would be the sense in creating safe areas. Hence the need to have the arrangements to protect and defend the area if need be.

Some of the lessons learnt from the three case studies should inform better strategy in future. Sifting war criminals from the displaced inside the safe area, ensuring militias and weapons stay out of such areas as well as disarmament of belligerent forces will ensure that the safety afforded by safe areas does not lead to armed attacks conducted from inside such area. Components of the safety zone under the Geneva Conventions can add to the safe areas concept in this regard. Until there is a broader mandate and resolve to carry it through, safe areas would not live up to the ambitious label.

7.1.4 Law, politics and safe areas

States' unwillingness to mention human rights or protection in UN resolution might have political reasons, or might result from a genuine belief that not everything could or should be legislated for. While that assertion might have some merit, the absence of a consistent framework of in-built human rights standards might be allowing the designation of unsafe areas for the fear that an emphasis on such standards might deter States from even offering such token 'safe' places.

International decision-making has a lot to do with things other than international law – political and strategic consideration but to name a few. A glimpse of that appeared in the last session of the UN General Assembly when the world body was criticised for watering down its reform proposals. On the occasion, incoming General Assembly President Jan Eliasson of Sweden said, “Multilateral discussions lead to compromises. We can only go as far as member states want to go.”²⁹²

Sergio Vieira de Mello, UN Under-Secretary General for Humanitarian Affairs at the OCHA noted in 1999 that the idea of protected areas raised as many questions as it appeared to resolve. He enumerated the element of consent, effectiveness of areas created using international forces, apprehensions of such areas contributing to ethnic cleansing and undermining the right to asylum. Hyndman commented that such questions about safe areas could only be asked in hindsight, “after well-intentioned experiments in deploying safe spaces had been tried with mixed results.” She says if such questions could have been posed and answered at the beginning of the 1990s, patterns of humanitarian response may well have looked very different.²⁹³ Yet would they have been so different after all? Safe areas in Darfur already seem to be an instance of history repeating itself.

At the end of the day, however, even existing international legal standards for displacement mean little without effective enforcement. Deficiencies in international law are compounded by deficiencies in international politics. The UNHCR Executive Committee rightly argues that the most serious

²⁹² UN reform agenda watered down, CNN, 14 September 2005,

<http://edition.cnn.com/2005/US/09/14/un.reform/>, visited 17 February 2006.

²⁹³ Hyndman, Jennifer, Blurring Borders: the Significance of Humanitarian Safe Spaces, <http://www.queensu.ca/snid/jennifer.doc>.

problems IDPs face “result not from an absence or deficiency of legal norms but from the failure of the parties concerned to respect and to enforce those norms”.²⁹⁴

At the risk of being repetitive, there are abundant gaps both in protection for the internally displaced and for a legal regime concerning safe areas.

However, with political, human rights and humanitarian dimensions, safe areas present an interesting and perhaps exciting interface, one full of potential, which needs to be exploited at both policy and political level. The policy, security and economic barriers to effective protection in a safe area can only be removed as part of a wider process backed by political will and a coherent, perhaps institutional, approach. However, the absence of such a debate and a failure to learn from experience in past safe areas raises the likelihood that similar zones would be set up in future, again giving the displaced people a false sense of security, without actually making them any safer from human rights abuses and armed attacks than they were outside ‘internationally protected’ zones.

Irrespective of a lack of legal regulation of safe areas, existing human rights standards and obligations as well as Charter commitments could help refine the concept sufficiently.

Of course, general references to human rights in the Charter cannot be used to justify extending to member states specific human rights obligations that they never intended to assume. But in view of the Charter provisions and in accordance with the principle of *pacta sunt servanda* member states have an obligation under such core human rights norms which have attained customary law status. And obviously these States remain bound by their treaty and customary law human rights commitments, which must not be undermined anyhow. The creation of safe areas notwithstanding, blocking flight alternatives is always unlawful. Core human rights obligations must always be respected in line with the UN Charter and asylum as an alternative must not be prejudiced by the safe areas.

As regards the UN, it must ensure that its operations do not contravene its own purposes under the Charter. Depending on the degree of control, troops and agents acting under UN authority not securing human rights or at least core human right in the areas is unlawful. Respect for human rights must always be drafted into such areas as well as securing and ensuring as much of protection as possible, again depending on the degree of control. Even if international politics excludes a legal framework for safe areas, ensuring a safe area that takes into consideration existing standards and obligations under international human rights law and the UN Charter can help remedy many of the protection gaps for IDPs in a safe areas.

²⁹⁴ UNHCR Executive Committee Sub-Committee on International Protection, ‘Protection Aspects of UNHCR Activities on Behalf of Internally Displaced Persons’ (1994) 6 IJRL 485, 494.

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