

The Dilemma and the Way out of the Security Zone System in International Law in Armed Conflict

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Abstract

Safe havens as humanitarian operations are often found in the midst of armed conflict, providing shelter to people in extreme situations. As a way of responding to mass displacement and protecting lives, they have played an irreplaceable and positive role in armed conflicts. In armed conflict, people in safe havens are provided with physical protection and humanitarian assistance, but in past practice, safe havens have not always been effective and reliable in achieving these goals. Therefore, it is necessary to further understand the security zone within the framework of international law, remove the obstacles that prevent the security zone system from being effective, and enhance the stability and effectiveness of the security zone within the framework of international law.

Keywords: armed conflict, security zone, international law

1. Introduction

There is currently no agreed terminology or precise definition of a security zone in an armed conflict. Safe zones, safe havens, neutral zones, protected areas, de-escalation zones, and open cities have all been used at different times and places, but there is no difference in the way they are constructed, their form and purpose as humanitarian operations. In international law, a similar concept to the security zone is the demilitarized zone¹, which is generally considered an area that the parties to a conflict agree cannot be occupied by either side or used for military purposes. The origin of security zones can be traced back to Henry Dunant, founder of the

International Committee of the Red Cross, who first proposed the concept of specially protected areas, meaning a location within a country or territory in dispute that would be neutral, free of belligerent activity and ensure humanitarian access, which fits the essence of a security zone. Based on the practice of security zones and the limited connotation of international law, a security zone can be defined as a neutral, non-belligerent area designed to protect civilians and ensure humanitarian access in a country or region embroiled in armed conflict or generalized violence. People can live in the zone in safety from the effects of conflict, such as access to jobs, education, and the ability to obtain necessary food

and medicine.

2. The International Law Framework of the Security Zone

Given that different types of armed conflicts may be used for different purposes, whether a situation of armed violence constitutes an armed conflict under international humanitarian law has important consequences in the international legal system. In other words, the role of classification is to identify the applicable legal regime, which in turn helps to identify the applicable substantive rules, hence the need to define armed conflict in international law in the first place. The existence of armed conflicts allows the application of international humanitarian law, which is distinguished between hard application and soft application in international and non-international armed conflicts. Article 2 of the Geneva Conventions establishes the criteria for what constitutes an international armed conflict, namely, “all declared wars or any other armed conflicts between two or more High Contracting Parties, even if a state of war is not recognized by one of them.” The reality, however, is that armed conflicts often occur between non-international actors or States not party to the Geneva Conventions, and the practice of security zones is scattered among armed conflicts between non-international actors. The application of international humanitarian law in non-international armed conflicts is primarily reflected in Article 3 of the Geneva Conventions, which provides for seeking to ensure a minimum level of protection for persons not taking an active part in hostilities in the context of non-international armed conflicts. An important implication is the recognition that the parties to a conflict are not limited to States, but may extend to non-State actors, but rely on “the parties to the conflict to make further efforts to give effect, in whole or in part, to the other provisions of this Convention by special agreement.” Since the practice of security zones is reflected in both international and non-international armed conflicts, in order to show as many facets of the security zone regime as possible, this article refers to both international and non-international armed conflicts. Although current international law does not yet provide clear and unambiguous definitions and rules on security zones, different

branches of international law have given limited criteria for the establishment of security zones in a fragmented manner, mainly in the following areas of international law.

First, the field of the law of armed conflict. As described earlier, international armed conflicts are established on the condition that there is an armed conflict between the High Contracting Parties, in which case international humanitarian law applies directly, and the parties to a non-international armed conflict may negotiate arrangements for civilians or refugees. In international armed conflicts, Article 51 of the Protocol Additional to the Geneva Conventions relating to the Protection of Victims of International Armed Conflicts (Protocol I) provides that “the civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations” and that civilians shall not be the object of attack, which encompasses the basic need for civilians to reside and This includes meeting the basic need for civilians to live and be protected from attack. Article 60 specifically provides for a “demilitarized zone” clause, which specifies the circumstances and elements of demilitarization of a demilitarized zone established by agreement between the belligerents and is an important basis of international law for the establishment of a security zone. In non-international armed conflicts, although the Protocol Additional to the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) is not as enforceable as humanitarian law in international armed conflicts, it provides for the same protection of civilians provisions as Protocol I. Customary International Humanitarian Law, prepared by the International Committee of the Red Cross (ICRC) (Jean-Marie Henkerts & Louise Doswald-Beck, 2007), further elaborates on the demilitarized zones provisions of Protocol I, while noting that the establishment of such zones is largely dependent on agreement and consensus among the parties to the conflict and must be respected by all parties in order to survive. The Law of Armed Conflict can provide some guidance for the establishment of security zones, but its limited legal provisions and standards cannot establish a legal framework and implementation mechanism for security zones,

nor can it clarify the legal nature and status of security zones. In addition to legal principles, the provisions of the demilitarized zones are an important legal basis for the establishment of security zones, but they also suffer from low enforceability, lack of clarity in scope, and inadequate safeguards. (Geoff Gilbert & Anna Magdalena Rüsç, 2017) Indeed, the law of armed conflict is not the only international law that can be specifically applied for the purpose of protecting refugees and civilians in international law, and security zones must have a status supported by international law beyond the provisions of the law of armed conflict.

Second, refugee Law Field. The Refugee Convention presumes refugee status to mean that people cannot avail themselves of the protection of their country of nationality, that safe havens are places where refugees in places of armed conflict and refugees abroad can go to live, that the criteria of internal flight or resettlement alternatives need to be met, and that refugees “can reasonably expect to be personally can reasonably expect to be able to stand on their feet and lead a normal life.”² Furthermore, Article 14 of the Universal Declaration of Human Rights (UDHR) provides for the right to seek asylum, i.e., “everyone has the right to seek and enjoy asylum in other countries in order to avoid persecution,” which encompasses the right of States not to close their borders to those seeking refugee protection and to respect the refugee’s right of passage, i.e., the right to arrive without violation, i.e., the requirement to reach safe areas without infringement.

Third, the field of human rights law. Closely related to security zones is the right to freedom of movement and the right to residence, and an important legal norm in the field of international human rights law is the International Covenant on Civil and Political Rights, which provides that “Everyone lawfully within the territory of a State party has the right to freedom of movement and freedom to choose his or her residence within that territory”, so it is appropriate to establish security zones that guarantee the right to residence and the right to movement of civilians, but also provides that “A State Party may, in time of emergency, take measures derogating from its obligations under the present Covenant” as long as such measures “are not inconsistent with its other obligations

under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin” may be derogated from. By contrast, the Convention on the Rights of the Child establishes a non-derogable right to protection and humanitarian relief, which also implies a requirement for subjects of armed conflict to protect children in conflict and create a safe zone for them.

3. Deficiencies of the Legal System of Safety Zones

The humanitarian attributes and purpose of security zones should be clear, and in many armed conflicts they have provided an irreplaceable role in protecting civilians from abuse and killing. The construction of safe zones is considered to be a more effective humanitarian program in armed conflicts, yet factors such as dangerous battlefields, irreconcilable conflicts, and complex international political environments have predisposed safe zones to be flawed, thus making their effective operation fraught with obstacles, and fragile safe zones usually face a dangerous environment.

First, safe zones may impede the exercise of the right to asylum. Limiting the possibility of refugee flows to neighboring or other countries has historically been one of the main reasons for the establishment of safe zones. A clear example of this is the safe zones in northern Syria and northern Iraq, which were established in large part as an alternative to Turkey hosting Syrians and Iraqi Kurds. The Bosnian safe zone is also seen as an alternative to mass asylum in the West. A key motivation for establishing three open relief centers in Sri Lanka is India’s desire to limit the flow of refugees into Tamil Nadu and reduce the number of Sri Lankan refugees within India (Keen, David, 2017). If the purpose of establishing the safe zones is to stop the outflow of refugees, it would undermine the international law rights of refugee groups to legally seek asylum in foreign countries.

Second, security zones are vulnerable to manipulation by different subjects. First, they are manipulated by all parties to the conflict. In South Sudan, the government encourages people to leave rural areas for government-defined safe zones, and those who do not are treated as rebels.

Peacekeepers providing protection in the safe zones have also been kidnapped by the political intentions of different forces, and in the context of a major peacekeeping operation by the UN Mission in South Sudan, the government of South Sudan has threatened to retaliate against UN staff if the international community imposes an arms embargo or sanctions. In Bosnia, the possibility of capturing peacekeepers was used by parties to the armed conflict to pressure the international community to deny access to the international community's air power to protect the security zone (Keen, David, 2017). Second, manipulation by international subjects. In northern Syria, where safe zones are used for military purposes, Turkey has used the construction of safe zones as an opportunity to expand its military presence in Syria, expand its strategic buffer zone with Kurdish forces in northern Syria, and demand that the United States reduce or stop its support for the Kurds.

Third, it is difficult to achieve demilitarization of the security zone. The presence of weapons in the security zone is controversial and there is concern that the zone could be used for military purposes. In Bosnia, the UN was criticized for not fully demilitarizing the safe zone, which was seen as a provocation to the Bosnian Serbs. In South Sudan, getting rid of weapons was also very difficult because of the porous perimeter of the safe zone. If a safe zone is successfully demilitarized, it is much more likely to be attacked in the future and will have to rely on international protection for self-defense. However, if international protection is inadequate, the consequences of the Bosnian safe zone of Srebrenica are a classic example (Keen, David, 2017). In addition, progress in demilitarization of a given region has the potential to alter the balance of military power, while allowing conflict to intensify.

4. The Safety Zone Legal System to Improve the Path

Overall, international law imposes legal responsibilities and obligations on all parties to a conflict to safeguard the fundamental rights, such as the lives and safety of civilians, in times of armed conflict, and the establishment of security zones is also a potential legal and moral responsibility of the parties to the conflict. The relevant provisions of IHL and human rights law

provide the guiding framework and important parameters for the establishment of security zones, but it has to be admitted that there are few mandatory provisions and complete standards. The maintenance of the security zone regime and framework is mostly dependent on the compliance of the parties to the conflict with their agreements. Security zones can be maintained if the parties to the conflict comply with the rules of international law on security zones and the agreements they have reached with each other, while guaranteeing access to humanitarian aid, relief and supplies and meeting the human rights standards of the civilians in the zone. If the parties to a conflict fail to reach consensus on the establishment of a security zone or break the agreement, they cannot be held accountable under international law for refusing to establish the corresponding security zone and can only be punished based on acts of war such as harming civilians. For this reason, the security zone system needs to be improved from the following points.

First, improve the international legal system. Improving the relevant rules on the establishment of safe zones in accordance with international humanitarian law, human rights law and refugee law. The construction and operation of safe zones involves a complex international legal system, including but not limited to the following aspects: first, clarifying the conditions for assessing whether a safe zone is an appropriate alternative in a given situation; second, clarifying the security options that enable safe zones, so that if there are insurmountable obstacles to reaching a safe zone or if a safe zone cannot guarantee security, then the zone is not an asylum or resettlement. Third, to clarify the conditions of access to the safe zone, under what circumstances which groups are allowed to enter the safe zone, and legitimate subjects must have the right to enter, stay, reside, and receive humanitarian assistance; fourth, to clarify the scope of the rights of individuals in the safe zone, including non-derogable rights and other political and socioeconomic rights, and to provide support and guarantees for the realization of their rights; fifth, the criteria and modalities for achieving demilitarization in the safe zone criteria and modalities for achieving demilitarization in the security zone; and other relevant procedural and physical norms for the construction and

operation of the security zone.

Second, strengthen the collective security mechanism. The establishment of the security zone requires strong international coordination and the formation of international pressure. First is to strengthen the UN-led global collective security mechanism, the UN is not only a platform, but also a body with the authority to further improve the UN's coordination and deliberative functions, as well as to enhance the UN's ability to deal more actively in armed conflicts. Secondly, the strengthening of regional collective security mechanisms, with national and regional international subjects deeply embedded in regional mechanisms, will greatly increase the political costs and geopolitical costs of waging armed conflicts. Under the UN Charter and the international legal system, improving the prevention, response, and disposition capabilities of collective mechanisms creates strong international pressure to avert armed conflict or facilitate consenting authorizations by belligerents. The establishment of security zones requires enforceable monitoring mechanisms to ensure ceasefires within the zones, as well as effective humanitarian relief efforts.

Third, promote belligerent authorization. Authorization based on the consent of the belligerents will greatly increase the possibility of the establishment of the security zone and the stability in its operation, and in order to promote the authorization of the belligerents, we can start from two aspects. The first is to insist on the consent of the parties as an important principle for the establishment of the security zone, which is an important manifestation of adherence to the basic norms of international relations such as the principle of non-interference in internal affairs, and to promote the belligerents' settlement of disputes within the framework of dialogue and consultation. The second is to promote the formation of pressure to make the belligerents make authorization, on the one hand, to form political and economic pressure, actively promote the implementation of global security mechanisms such as the United Nations and regional security mechanisms and promote strong international consultation. On the other hand, it will exert legal pressure, improve international humanitarian law, international human rights law and refugee law

rules, and strictly apply international criminal law.

5. Concluding Remarks

How to protect civilians in armed conflict and respond to displacement is not a fully effective response for the international community in situations of ongoing conflict. The establishment of security zones has experienced setbacks and developments in practice as a not entirely reliable way of responding. Currently, the concept of security zones is not fully developed in international law, and the rules for security zones are not fully developed. The inherent flaws of security zones also make it impossible to establish and operate them smoothly, and how to construct them effectively has always been a difficult issue for the international community. In general, security zones are extremely fragile, and their existence depends on the complex and changing goals of participants in armed conflicts and international actors. The elimination of these deficiencies requires a multifaceted effort to build a more comprehensive body of international law under the collective security mechanism, as well as to promote belligerent authorization for the establishment of security zones.

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¹ Article 60 of the Protocol Additional to the Geneva Conventions relating to the Protection of Victims of International Armed Conflicts (Protocol I) sets out the conditions and international law effects of demilitarized zones.

² UN High Commissioner for Refugees (UNHCR), Guidelines on International Protection No. 4: Internal Flight or Relocation Alternative Within the Context of Article 1A (2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees, 23 July 2003, HCR/GIP/03/04, available at: <https://www.refworld.org/docid/3f2791a44.html> [accessed 23 March 2022].