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**POLICY BRIEF 5**

# **Creating safe zones and safe corridors in conflict situations: Providing protection at home or preventing the search for asylum?**

**Geoff Gilbert and Anna Magdalena Rüsçh**  
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**Kaldor Centre for  
International  
Refugee Law**

## About the authors

Geoff Gilbert is a Professor of Law in the School of Law and Human Rights Centre at the University of Essex. He was Head of Department between 2000–2003 and 2011–2013. In 2012, he was appointed a Visiting Professorial Fellow at UNSW Sydney. He was Editor-in-Chief of the International Journal of Refugee Law from 2002–2015 and now sits on the Editorial Board. In 2014 he was appointed as a consultant to the United Nations High Commissioner for Refugees (UNHCR) (with Anna Magdalena Rüsç) on *Rule of Law: Engagement for Solutions* and is part of the Solutions Alliance Thematic Group on Rule of Law. Their co-authored report has helped to shape UNHCR's approach to protracted displacement. Professor Gilbert was asked to contribute to the 2015 Note on International Protection by the High Commissioner. In April 2016, the *Konrad Adenauer Stiftung* invited him to present papers in Manila and Canberra on refugee solutions in the region and in September 2016 he was a speaker at the Festival of Dangerous Ideas at the Sydney Opera House. He was Specialist Adviser to the Joint Parliamentary Committee on Human Rights in its inquiry into the treatment of asylum seekers in 2006–2007. He was part of the Essex Human Rights Centre's research programme on human rights in situations of acute crisis that was carried out on behalf of the UK's Department for International Development (DfID) and directed Essex's residential training programme on human rights for DfID staff (2006–2009). In 2009, he was elected a Bencher of the Middle Temple and was called in February 2010. He has published widely on international refugee law and international criminal law.

Anna Magdalena Rüsç, LL.M. is an Associate Refugee Status Determination (RSD) Officer for UNHCR, currently based in Bangkok, Thailand. She holds a Magister in Law from the University of Vienna as well as an LL.M. in International Human Rights and Humanitarian Law from the University of Essex. She was part of the Essex team for the 2013 closed symposium led by UNHCR on the Exclusion Guidelines. In 2014–2015, she was co-author with Professor Geoff Gilbert of a report to UNHCR entitled *Rule of Law: Engagement for Solutions*. She was invited by UNHCR's Division of International Protection to contribute to the drafting of the 2015 Note on International Protection by the High Commissioner to the General Assembly. She has published in the areas of international refugee law and international criminal law.

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## Executive summary

The conflict in Syria has prompted renewed calls for so-called ‘safe zones’ and ‘safe corridors’ to prevent people from needing to seek protection abroad as refugees, and to encourage refugees to return home. Given the inherent dangers that arise from trying to leave a conflict zone and travelling onwards to seek asylum, the idea of creating safe zones within States has been put forward as a positive humanitarian alternative. Yet, there are a number of legal and practical preconditions that must be met for safety to be guaranteed.

The reality of conflict today means that in all but the most extreme circumstances – where flight is impossible – safe zones cannot be a substitute for asylum in another country. They may be the best response to people trapped in a conflict zone, but that is all. They do not provide true ‘protection’ as envisaged by international refugee law. Furthermore, the law is underdeveloped and the practice is too erratic and random for safe zones to be a proper response to a humanitarian crisis. If States in the global north want to spare refugees the dangers of irregular flight, they should establish proper pathways to safety through humanitarian and migration channels, and push for peace in those areas of the world where conflict is rife.<sup>1</sup> Safe corridors could provide that route out – as well as operating to allow those trapped in conflict zones to carry on with their lives by safely accessing work, education, markets and health care, to the extent possible.

This policy brief begins by asking some fundamental questions about safe zones and safe corridors, and sketching the complexity of the international legal frameworks that apply. It then briefly examines the history of the law and practice of safe zones and safe corridors, before analysing the preconditions to their creation, their qualities and character, how they are accessed, and how protection and other human rights can be assured. Finally, it considers the responsibility and accountability of various international actors with respect to safe zones and safe corridors.

The existence of different terms to describe the concepts, and the interplay of several different sub-branches of international law, make the analysis more complicated, but the conclusion reached is that in all but the most extreme circumstances – where flight is impossible – safe zones can never provide a substitute for asylum. They cannot provide the same degree of protection that a safe third country can. By contrast, safe corridors can enable people to flee to a place of safety, and at the very least can help those unable to leave by facilitating access to vital services.

This policy brief makes the following core findings:

- Safe zones are sometimes the only way to guarantee safety to people unable to leave a conflict zone. In those circumstances, drawing on practice that has developed around refugee camps and new ‘protection of civilian’ peacekeeping mandates, safe zones should be neutral, demilitarised and humanitarian in nature. Previous practice indicates that they work best if they are consensual rather than imposed from outside. Where they are the only means of providing people with some level of security, special regard must be had to their creation, to access, to ensuring continued protection, to facilitating the rights of those living there, and to issues of responsibility and accountability of all relevant actors if they are to be at all meaningful.
- Safe zones are, at best, the least worst alternative. They do not provide true protection as envisaged by international refugee law. The law on safe zones is underdeveloped and State practice is too erratic for them to be considered a proper response to humanitarian crises. The idea that States in the global north might seek to impose safe zones as a means of discouraging would-be refugees from fleeing (on the basis that they protect them from the dangers associated with irregular movement) is disingenuous. Active measures to

seek peace must be the objective of States, rather than trapping people in safe zones at the mercy of parties to a conflict. Safe zones should never be seen as places to which refugees could be returned (for example, through the application of the internal flight/protection alternative).

- Safe zones must guarantee the following minimum rights:
  - the right to life (through the principle of distinction);
  - the right to be free from torture and cruel, inhuman or degrading treatment or punishment;
  - freedom from arbitrary recruitment (to participate in the conflict);
  - personal security, particularly in relation to sexual- and gender-based violence;
  - the right to the highest attainable standard of living and health;
  - access to humanitarian relief and assistance, and access by humanitarian organisations; and
  - freedom of movement, including the right to leave the country and seek asylum (with full respect for the principle of *non-refoulement*).
- Safe corridors may provide useful avenues to protection and assistance. They will enable some people to leave the conflict zone as safely as possible. They may also facilitate access to essential services, such as markets, health care, employment and education. However, to be effective all parties to the conflict must uphold the safe corridors.

# 1 Introduction

The first hundred days of 2017 saw 664 people die crossing the Mediterranean trying to reach Europe.<sup>2</sup> It is unknown how many died crossing the Sahara trying to reach the north African coast. It is little wonder, therefore, that the idea of establishing safe zones and safe corridors in the hope that people will not have to risk their lives fleeing conflict and generalised violence came to the political fore. There were discussions between Germany and Turkey;<sup>3</sup> statements by the United States about creating safe zones and ‘interim zones of stability’;<sup>4</sup> and a proposal by Russia, Turkey and Iran as part of the Astana talks on Syria in May 2017 to create ‘de-escalation zones’ inside Syria, which Russian military officials suggested would encourage refugees to return.<sup>5</sup> By contrast, the UN High Commissioner for Refugees, Filippo Grandi, said he could not see how such safe zones would work.<sup>6</sup>

Safe zones, if properly established, allow civilians to remain in a conflict zone and avoid the inherent dangers associated with leaving and then transiting to other countries in search of asylum. The numbers who drown or are abused by people smugglers alone suggests that safe zones could be a humanitarian solution. Alternatively, where flight is the only viable option, safe corridors can reduce the risks of leaving an area of conflict. They can also provide other means to facilitate protection, such as enabling people to move between different parts of safe zones, and to access vital services.

The situation is more complex, though, not only in terms of the range of different laws that apply, but also in relation to the motivations behind such calls. While finding ways to stop people from having to take perilous journeys in the hope of finding safety is surely positive,<sup>7</sup> it can only be so if protection is actually available in the safe zone. One might also ask to what extent the call for safe zones is motivated by a desire to reduce the number of asylum seekers travelling to Europe and elsewhere, compared to a humanitarian impulse to assist people to remain closer to their homes.<sup>8</sup>

## 1.1 What are ‘safe zones’ and ‘safe corridors’?

There is no agreed terminology, let alone an agreed definition, for ‘safe zones’ (which is the term used in this policy brief). ‘Safety zones’, ‘safe havens’, ‘neutralised zones’ or ‘open cities’ (that is, undefended towns) have all been used at different times. The most recent term is ‘de-escalation zones’.<sup>9</sup> Some of these terms have been described in treaties, but in each case, that has been for a specific purpose. In other words, what makes these areas ‘safe’ is not agreed in international law. The same is true of ‘safe corridors’.

A ‘safe zone’ suggests an area within a country engulfed in armed conflict or generalised violence that is made safe from military attack. The idea is that those within the zone can live there safely, protected from the impacts of the conflict (such as accessing work or education and being able to obtain necessary foodstuffs and medicines).

A ‘safe corridor’ refers either to a route out of the conflict for civilians and non-fighters, or, in the midst of conflict, a way to move around (such as a corridor that allows people to go to a market once a week or to reach a hospital from a village).

Safe corridors may be a necessary concomitant to safe zones: otherwise, how can safety be assured for those within the zone if humanitarian organisations cannot get in and provide essential supplies and services? The corridor may also provide a means of escape if the zone ceases to be safe. Nevertheless, even if there is no safe zone, it may be possible to establish safe corridors.

This policy brief deals with both safe zones and safe corridors. While there are theoretical and practical linkages between the two, there are also several distinctions. Part 2 begins by setting out fundamental questions regarding safe zones and safe corridors, particularly the complexity of the legal frameworks that apply in international law. Part 3 then briefly examines the history of the law and practice of safe zones and safe corridors. Part 4 explores their creation, qualities and character, how they are accessed, and the means of ensuring protection and other human rights. Finally, Part 5 considers the responsibility and accountability of various international actors with respect to safe zones and safe corridors.

## **2 Fundamental questions and challenges**

Before discussing the policy questions relating to safe zones and corridors, it is necessary to set out the various legal frameworks at play. Their interaction should lead to the complementary provision of protection rather than limiting the guarantees under each of the different sub-branches of international law.

As stated above, there is no accepted definition of a ‘safe zone’ or a ‘safe corridor’ in international law. Different sub-branches of international law give indications of the criteria necessary for a safe zone to be established, but none provides a clear set of principles. However, since people flee armed conflicts and generalised violence in search of protection, a safe zone should offer a minimum level of protection if it is to meet the needs and rights of those living there.

### **2.1 International refugee law**

The Refugee Convention predicates refugee status on people being unable to avail themselves of the protection of their country of nationality.<sup>10</sup> In theory, that still allows for the possibility of an internal flight/protection alternative (i.e. relocating to another part of the country). Given that safe zones are posited as places to which would-be refugees could go in the first place instead of fleeing abroad, and as places to which refugees abroad might return, they must by analogy meet the criteria for an internal flight/protection alternative. Among other things, this means that people must be able to ‘lead a relatively normal life without facing undue hardship’.<sup>11</sup> If that is not possible, then it is not reasonable to expect a person to remain or return to a safe zone. In particular, it is unclear how permanent safe zones are meant to be.

While international refugee law does not provide much guidance about what else is required for a zone to be considered safe, other sub-branches of international law help to fill this gap – especially human rights law, considered below.

As for safe corridors, international refugee law has little to say that is directly on point. However, the right to seek asylum in article 14 of the Universal Declaration of Human Rights (UDHR) necessarily requires that States do not close their borders to those seeking protection as refugees.<sup>12</sup>

### **2.2 The Guiding Principles on Internal Displacement**

In this context, it is also important to mention the Guiding Principles on Internal Displacement.<sup>13</sup> Although themselves non-binding, they ‘reflect and are consistent with international human rights law and international humanitarian law’.<sup>14</sup> They set out a useful set of minimum standards that apply when people are displaced within their own country, and are therefore relevant where people have been forced to move to a safe zone. These standards are relevant not only in relation to actions taken by States, but also to those by ‘all other authorities, groups and persons in their

relations with internally displaced persons' and '[i]ntergovernmental and non-governmental organisations when addressing internal displacement'.<sup>15</sup>

## **2.3 The law of armed conflict**

The law of armed conflict has had the greatest influence on safe zones and safe corridors.<sup>16</sup> Prior to World War II, there were examples of safe havens created for civilians, albeit without a legal framework to regulate them.<sup>17</sup> Between 1949 and 1977, the limited law that did exist related only to conflicts between two or more countries (international armed conflicts), although parties to so-called civil wars (non-international armed conflicts) could negotiate similar arrangements.

Additional Protocol 1 (AP1) of 1977 to the Geneva Conventions advanced the law by providing for the general protection of civilians, requiring that in international armed conflicts, *all* civilians 'enjoy general protection against dangers arising from military operations' and shall not be the object of attack.<sup>18</sup> This is clearly relevant to safe zones. While the protection of civilians in non-international armed conflicts under Additional Protocol 2 (AP2) – which applies to non-international armed conflicts – is not as strong, the International Committee of the Red Cross (ICRC) has asserted that the principal elements of AP1 and Geneva Convention IV are recognised as customary international law and are therefore applicable, for the most part, in non-international armed conflicts as well.<sup>19</sup>

Indeed, for the purposes of the analysis below, the ICRC's Customary International Humanitarian Law Rules best set out how safe zones and safe corridors might be established more generally in the context of refugee protection. As with all other aspects of the law of armed conflict in this context, it is as much about the set of conditions necessary for safe zones and corridors to be respected by the parties, as it is about the specific rule. The law of armed conflict can provide guidance for safe zones and corridors in the context of refugee protection, but it is not, on its own, the only applicable law. Therefore, for the purposes of refugee protection under international law, safe zones and safe corridors must have an autonomous meaning that goes beyond what the law of armed conflict provides.

## **2.4 International human rights law**

International human rights law also establishes parameters for safe zones and safe corridors – a zone can only be safe if certain human rights are ensured to those within it, including: the right to life; the right to an adequate standard of living; the right to be free from torture and cruel, inhuman or degrading treatment; and the right to the highest attainable standards of health. Nevertheless, with respect to certain rights contained in the International Covenant on Civil and Political Rights (ICCPR), while the threshold is high, States can, if publicly declared, derogate 'in time of public emergency which threatens the life of the nation ... provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin'.<sup>20</sup> By contrast, the International Covenant on Economic, Social and Cultural Rights and the almost universally ratified Convention on the Rights of the Child contain no derogation clause for national emergencies.<sup>21</sup>

One particular human right that is pertinent in cases of displacement, safe zones and safe corridors is the right to freedom of movement.<sup>22</sup> This is a right from which States can derogate in time of emergency. However, if other States – such as those not involved in the conflict but possibly receiving refugees from it – were to impose a safe zone in the conflict zone, those States could never rely on Article 4 to limit freedom of movement – there is no threat to the life of the nation in those States.

With respect to safe corridors, the right to freedom of movement is one that can bolster the argument for ensuring access to goods and services for those trapped, and even for the right to seek protection abroad.

## **2.5 Peacekeeping operations**

The international law relating to peacekeeping operations also has a direct bearing on protection in safe zones. Sometimes consensual, sometimes imposed, the UN has, almost since its inception, put third States' troops on the ground to maintain international peace and security. For instance, in 1991, the UN Security Council insisted Iraq 'allow immediate access by international humanitarian organizations' and requested 'the Secretary-General to use all the resources at his disposal, including those of the relevant [UN] agencies, to address urgently the critical needs of the refugees and displaced Iraqi population'.<sup>23</sup> This does not conform to the traditional model of safe zones where the parties to the conflict agree that a particular location will not be subject to attack. The UN-created safe areas in Bosnia and Herzegovina simply trapped Bosnian Muslim males – 7000 were murdered in Srebrenica alone despite the UN Protection Force and member States possessing a mandate to deter attacks through the use of force.<sup>24</sup> There was a similar experience with 'secure humanitarian areas' in Rwanda.<sup>25</sup> The 'Protection of Civilians' sites set up in South Sudan, even with authorisation by the UN Mission in the Republic of South Sudan (UNMISS) to use 'all necessary means' to protect civilians, create conditions for the delivery of humanitarian assistance, and monitor and investigate violations of international human rights and humanitarian law, are attacked regularly.<sup>26</sup>

## **2.6 The responsibility of States and international organisations**

Finally, underpinning the discussion above is the international law pertaining to State responsibility and the responsibility of international organisations. Ultimately, the protection of individuals depends on the State and other international actors upholding the substantive laws examined. Where they fail to do so, the rule of law demands that they are held accountable and that remedies are available to those affected. For instance, how can individuals who commit international crimes against those in safe zones be prosecuted, how can the victims obtain reparations, and should reparations be available from rebel groups and the UN if they are at fault? A lack of accountability by any of the relevant actors undermines the protection that safe zones should accord.

## **2.7 Concluding remarks**

Given this broad legal framework, several overarching questions emerge. Are they a temporary measure until flight across a border (or to somewhere safe internally) can be achieved, or are they an effective form of long-term protection? Are calls by States in the global north to establish safe zones wholly humanitarian, or motivated by a desire to protect their own borders? Given the political character of some safe zones, how far does that challenge the non-political, neutral mandate of the United Nations High Commissioner for Refugees (UNHCR)?<sup>27</sup> For instance, if a safe zone were created by the Security Council without a State's consent, that could lead to operational difficulties for UNHCR. And if a safe zone were to obstruct the individual's right to seek asylum elsewhere, then this could be seen as inherently inimical to UNHCR's mandate to provide international protection to refugees.

### **3 An overview of safe zones and safe corridors**

This part of the policy brief should be read in light of two basic premises.

First, safe zones and safe corridors are only as safe as the parties to the conflict allow them to be. They are not, and never can be, a guarantee of safety, but for various reasons, they may be the best that is available, especially if the international community is not succeeding in promoting peace.

Secondly, declaring an area as a 'safe zone' does not reduce the protection owed to individuals located outside it. In other words, the existence of a safe zone should not imply that other localities are necessarily 'unsafe'. The law pertaining to the protection of civilians in armed conflicts or generalised violence is ubiquitous: safe zones and safe corridors are areas where one can expect heightened levels of protection akin to what one might expect in peacetime.

One of the fundamental tenets of the law of armed conflict is the principle of distinction, namely that civilians and non-fighters – that is, those not participating in the conflict – cannot be the object of an attack. The parties to the conflict should instead target military objectives. While collateral damage cannot be wholly avoided, the aim is always to minimise this risk. If these rules were followed at all times, then safe zones might be effective – when coupled with a guarantee of access for humanitarian assistance, relief and supplies, and the fulfilment of human rights standards for those in the zone. To this end, lessons can be learned from past examples of safe zones which highlight certain criteria that ought to be met to achieve the greatest chance of protection for those within them.<sup>28</sup>

#### **3.1 Enhancing safety**

One way of enhancing security within safe zones and safe corridors is to establish them consensually. This means that the parties to the conflict mutually agree to their establishment, with agreed conditions and a sense that the safe zone or corridor creates benefits for all concerned. A safe zone or corridor might also be declared unilaterally, and if that call is adopted by other parties to the conflict, then the prospect of success is greater.

Success will also depend on lines of communication being maintained throughout the conflict, which is more difficult in multi-party conflicts (and particularly in non-international armed conflicts). The role of protecting powers or international humanitarian organisations (such as the ICRC or UNHCR, both of which have extensive field presences and should have access to all individuals of concern) will also be crucial.

Where safe zones were declared in the past by the Security Council in Bosnia and Herzegovina and Rwanda, there were significant shortcomings – a lesson that should be borne in mind given proposals by the European Union (EU), the United States and the Astana process, referred to above. Indeed, when safe zones are imposed on a State *without* its consent, the lives of civilians as well as international humanitarian officials may be put at risk: international humanitarian actors have no right of access to a State (or even to all parts of the State where they are lawfully operating), even if they are meant to be able to reach all affected individuals of concern.

If safe zones are to be created consensually, then they need to fulfil criteria that are seen as posing little or no risk to the parties to the conflict. Clearly, they must be humanitarian in character, and relief and assistance should be provided in an impartial manner. But many other questions remain unclear. Do they need to be demilitarised? Can they be neutral? Can strategic locations ever be safe zones, such as a town that straddles a river? Is it ever possible to guarantee absolutely that a

safe corridor will at all times be demilitarised, or are there acceptable degrees of demilitarisation? Is a politically-motivated safe zone, such as one established to reduce the number of people seeking protection in the global north, ever more than an internment camp wrapped up in pious hope?

Against this backdrop, the following section considers the law and practice relating to the creation of safe zones and corridors; access to these areas; ensuring that safe zones are protected; ensuring access to rights in safe zones; and issues of responsibility and accountability.

## **4 The characteristics of safe zones and safe corridors**

### **4.1 Creation**

The legal characteristics of safe zones and safe corridors were discussed above, drawing on the principles of the law of armed conflict. In addition, ideas such as neutrality, humanitarian character and demilitarisation can be derived from international refugee law and the Guiding Principles on Internal Displacement. Indeed, at one level, safe zones resemble refugee camps, so the linkages possess a practical validity. UNHCR's Executive Committee (ExCom), comprised of States, has established criteria for refugee camps to ensure refugees' safety.<sup>29</sup> The starting point is ExCom Conclusion No 48 (XXXVIII) of 1987:

*Predicating* this Conclusion on the assumption, *inter alia*, that refugee camps and settlements have an *exclusively civilian and humanitarian character* and on the principle that the grant of asylum or refuge is a peaceful and humanitarian act that is not to be regarded as unfriendly by another State; hoping to assist in guaranteeing the safety of refugees and asylum-seekers, as well as to reinforce their rights, obligations and responsibilities and those of States and international organizations pursuant to relevant rules and principles of international law; and underlining that the rights and responsibilities of States pursuant to the Charter of the United Nations and relevant rules and principles of international law, including international humanitarian law, remained unaltered.<sup>30</sup>

While the Conclusion assumes that refugee camps are located across a border and that the people in it are refugees, the same principles apply by analogy to safe zones within a State where an armed conflict is occurring. While it is certainly easier to maintain the non-political and neutral character of a camp when it is located beyond a conflict zone in another country, decades of experience with camps for internally displaced persons (IDPs) suggests that the ideas are transposable.

ExCom Conclusion No 94 (LIII) of 2002 provides the greatest guidance on the nature of refugee camps and, by analogy, the characteristics of safe zones. Promulgated after UNHCR's experience in the former Yugoslavia and in the Great Lakes Region of Africa, it provides 'that all actors, including refugees themselves, have the obligation to cooperate in ensuring the peaceful and humanitarian character of refugee camps and settlements'.<sup>31</sup> Furthermore, camps, and thus safe zones, can best demonstrate their humanitarian, neutral, demilitarised and civilian character if there are no armed elements in the camp, if no recruitment or training by any party to the conflict takes place, and if they are not mixed with populations of internees or prisoners of war. All this might seem obvious, but in an on-going armed conflict, it may prove difficult to preserve these important preconditions in safe zones.<sup>32</sup>

Most recently, States emphasised in the New York Declaration for Refugees and Migrants of 2016 that:

host States have the primary responsibility to ensure the civilian and humanitarian character of refugee camps and settlements. We will work to ensure that this character is not compromised by the presence or activities of armed elements and to ensure that camps are not used for purposes that are incompatible with their civilian character. We will work to strengthen security in refugee camps and surrounding local communities, at the request and with the consent of the host country.<sup>33</sup>

These ideas are complemented by the obligations of parties to the conflict in relation to neutralised zones, non-defended localities and demilitarised zones.<sup>34</sup> In neutralised zones, civilians may take no part in hostilities or perform work of a military character. Non-defended localities and demilitarised zones must be free from all combatants and ‘no acts of hostility shall be committed ... by the population’.<sup>35</sup> More generally, according to the ICRC, there is customary international law that prohibits parties to a conflict ‘directing an attack against a zone established to shelter ... civilians from the effects of hostilities’.<sup>36</sup> The obligation not to attack zones, however described, or any civilian population anywhere<sup>37</sup> lies at the core of the law of armed conflict that would make safe zones a viable alternative to flight along insecure pathways to distant places of protection. As will be seen, however, the possibility to seek asylum must never be denied, and these criteria for safe zones must be recognised for what they are: a second best alternative to obtaining protection outside the conflict zone.

As for safe corridors, there is little express law. As such, the minimum preconditions for safety must be derived from obligations to permit access (discussed below) and general rules on the protection of the civilian population, as set out in AP1. As noted above, safe corridors perform a separate function from safe zones: they allow for the movement of people (possibly those living in safe zones) to other areas. This may enable them to access markets or health care services, for instance. Safe corridors may be accessible all the time or only at certain times of the day or on certain days of the week (such as market day). Given their more ephemeral, less regulated nature, it would be more difficult to enforce them being *wholly* civilian or demilitarised, although their humanitarian character should be evident lest they become a military target. With greater access to mobile technology and the internet,<sup>38</sup> it is possible that safe corridors could be remotely monitored and controlled so as to ensure their humanitarian character (with proper respect for privacy and data management).

Safe corridors can also help safe zones to function more effectively, since it is clear that the more that people in safe zones can access services and goods as normal, the more one can accept their utility where there is no secure alternative outside the conflict zone.

## **4.2 Access to safe zones and safe corridors**

### **4.2.1 Humanitarian assistance**

Safe zones can only be sustained if there are safe corridors that guarantee access for humanitarian organisations providing protection and assistance. For a safe zone to be able to function and provide any acceptable degree of protection, humanitarian actors need to be able to reach individuals of concern, including by being able to deliver humanitarian aid and assistance. However, no binding international law instrument expressly guarantees a right to the delivery of food, medical supplies or other basic essentials. AP1 and AP2 both make limited provision in relation to humanitarian assistance,<sup>39</sup> but neither establishes a right to access such supplies. Under AP1, relief actions are ‘subject to the agreement of the Parties concerned’.<sup>40</sup> Under AP2, where a civilian population is suffering ‘undue hardship’, exclusively humanitarian and impartial relief actions should be undertaken ‘subject to the consent of the High Contracting Party concerned’.<sup>41</sup> The ICRC asserts that customary international humanitarian law applicable in non-

international armed conflicts reflects the same obligation, with the same limitation: 'The parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, *subject to their right of control*.'<sup>42</sup> In practice, of course, humanitarian organisations seeking to deliver humanitarian assistance in non-international armed conflicts will also need the consent of any non-State actors who are party to the conflict.<sup>43</sup> Thus, since the consent of parties to the conflict (whether international or non-international) is required and conditions can be imposed under both Additional Protocols, access could potentially be denied. Furthermore, to ensure that only humanitarian relief supplies were being transported along a safe corridor, a party to the conflict could legitimately dismantle a refrigerated lorry carrying medicines and foodstuffs, even if that meant that those supplies were damaged.<sup>44</sup>

It is therefore questionable whether a safe zone could ever be considered 'safe' without unimpeded access by humanitarian actors with relief supplies. This would demand that the specific agreement creating the zone went beyond the minimum guarantees established by the law of armed conflict. In this context, it is noteworthy that the Guiding Principles on Internal Displacement provide that there is an obligation to grant free access to those providing humanitarian assistance: 'All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.'<sup>45</sup> Practice, however, gives no examples of such unhindered free passage as of right.

#### **4.2.2 Access to 'protection'**

Access is also relevant in a different context. If someone manages to leave the conflict zone and travel to another country in search of asylum, his or her claim to refugee status may be denied if there is considered to be an internal flight/protection alternative in the home country. Safe zones should never be automatically regarded as providing this,<sup>46</sup> since the lack of clear protection guarantees (legal and practical), and the essentially temporary nature of such zones, mean that they cannot provide the requisite level of protection, that is, the ability to lead a relatively normal life without undue hardship.<sup>47</sup> However, practice suggests that if there were a UN-administered territory in part of a State incorporating the safe zone, that might be sufficient, especially if there were only low-level intensity fighting.<sup>48</sup> It is also implicit in the 2011 EU Qualification Directive (recast), where Article 7(1)(b) provides for non-State actors of protection.<sup>49</sup> Nevertheless, it would be necessary to show that the individual could safely access the safe zone; that, if necessary, there was a safe corridor to it from the point of entry to the State; and that the individuals' human rights would be upheld.

#### **4.2.3 Access to essential services and resources**

Safe corridors are also a means to provide people otherwise trapped in a conflict zone with access to services and resources. The ability to move around in relative safety is necessary to survival, whether it is to access medical services or essential provisions. While there may be no explicit laws to cover this, *ad hoc* arrangements negotiated with the parties to the conflict, usually by humanitarian actors, can make it possible for those trapped to survive, at least until they can find greater safety elsewhere.

### **4.3 Ensuring that safe zones are protected**

This section examines how safe zones can be protected; who should be denied access so as to enhance the safety of those within the zone; and how to ensure that traditional avenues for protection (through the right to seek asylum and the principle of *non-refoulement*) are not undermined.

### **4.3.1 Protecting safe zones**

Safe zones and safe corridors rely on parties to the conflict upholding the principle of distinction – namely, that civilians and non-fighters must not be the object of an attack. This age-old principle applies regardless of whether safe zones exist, but it is obviously fundamental to the idea that safe zones could constitute an alternative to flight. However, the fact that civilians frequently flee conflicts because their fundamental rights are under threat suggests that the principle of distinction has proven inadequate.

Since 1999, the Security Council has included Protection of Civilian (POC) mandates in its peacekeeping operations.<sup>50</sup> These require peacekeepers to protect civilians when they are under attack, rather than simply hope that their presence will deter such attacks. The situation in South Sudan is a good example of the problem with POC mandates and the security of those within safe zones: the Security Council's unanimously established mandate has not been respected by the Transitional Government of National Unity, let alone its opponents. Security Council Resolution 2327 (2016) presents a series of problems, ranging from external attacks, to security within POC sites, to restricting delivery of aid and assistance by humanitarian actors<sup>51</sup> – and that is notwithstanding UNMISS's authorisation to use all necessary means to uphold its mandate. As such, a POC mandate is not enough to justify reliance on a safe zone.

### **4.3.2 Limiting access to safe zones?**

Another key issue is how to ensure that those living within a safe zone are protected from violence perpetrated by others residing there. How should zones and corridors be policed? Ordinarily, the State is responsible for security and policing within its borders, but safe zones may be protecting those within them against the State itself (especially if the zone has been established by the Security Council under Chapter VII). Are peacekeepers to take on this role? If so, this could potentially give rise to a conflict of interest, since the same actors would be providing protection as well as enforcing the law. In a similar vein, if safe zones are meant to be civilian and humanitarian in character, should peacekeepers disarm those entering the safe zone?

Further, by analogy with refugee camps, where people are seriously suspected to have committed war crimes, crimes against peace (aggression), crimes against humanity or serious non-political crimes, or are guilty of acts contrary to the purposes and principles of the UN, they are excluded from refugee protection.<sup>52</sup> The law on exclusion thus helps to ensure safety within refugee camps and maintain their civilian character. Could this concept be applied similarly in safe zones within the territory of a country in conflict, since safe zones may at times be envisaged as a substitute for seeking refugee status across an international border? While the Guiding Principles on Internal Displacement do not have an exclusion clause, and most persons in a safe zone will be internally displaced, in order to enhance the civilian and humanitarian character of safe zones, they should not be seen as providing sanctuary for those who have previously committed such serious crimes. Such persons also make it more likely that parties to the conflict will want to enter the safe zone to arrest them, too. Alternatively, given the seriousness of these crimes, could it be argued (by analogy with Article 6(5) AP2<sup>53</sup>) that no amnesty would ever be appropriate for such crimes and that their perpetrators should not be protected in safe zones? If so, who would police that and how?

There are manifold difficulties in guaranteeing protection within safe zones, both in relation to hostile forces outside the zone and perpetrators of violence within it. Safe zones must offer real protection to those within them; they must not be a way to 'warehouse' people in remote locations out of sight.<sup>54</sup>

### **4.3.3 Ensuring the right to seek asylum and the principle of *non-refoulement***

International refugee law and international human rights law provide that the principle of *non-refoulement* (which protects people from being returned to a real risk of persecution or other serious harm) must be respected for those who seek protection abroad.<sup>55</sup> There are real concerns that safe zones might be proposed, at least in part, as a means to prevent or reduce the number of refugees seeking protection elsewhere (especially in the global north).

While safe zones are the least worst alternative to staying in the middle of a conflict, guaranteeing the right to seek asylum offers better prospects for protection. It is interesting to note in this connection that in the refugee context, law and policy dealing with camps emphasises that individuals retain a continuing right to seek asylum.<sup>56</sup> Just because people are in a safe zone does not mean that they lose this entitlement.

Given the difficulties outlined above in ensuring effective protection, safe zones are, at best, a temporary fix while the means are found – either by the individuals themselves or with the assistance of the international community – to leave the conflict area and obtain international protection elsewhere.

### **4.3.4 Ensuring access to rights**

Safe zones cannot offer full protection akin to peacetime. They may, however, be all that is available in a situation of conflict. In such circumstances, what should people living in them expect in terms of rights? For the most part, such people will be nationals of the country in which the zone is located (and within its jurisdiction). As such, they are entitled to the full complement of human rights which the State has agreed to uphold under international law, subject to any emergency derogations that may be in place.

Additionally, two useful starting points for any consideration of what further rights ought to be guaranteed are the Guiding Principles on Internal Displacement, and the Comprehensive Refugee Response Framework contained in annex I of the New York Declaration of 2016.<sup>57</sup>

The Guiding Principles on Internal Displacement reiterate rights to be found in international human rights treaties but also tailor some specifically to the needs of IDPs (such as them not being ‘interned in or confined to a camp’ and having ‘the right to move freely in and out of camps’<sup>58</sup>). Moreover, IDPs have the right ‘to leave their country’ and ‘seek asylum in another country’.<sup>59</sup> The Comprehensive Refugee Response Framework in the New York Declaration also lists rights that should be available to those in need of protection and assistance after fleeing armed conflict, some of which repeat those in the Guiding Principles on Internal Displacement. As such, people in safe zones should be guaranteed ‘access to adequate safe drinking water, sanitation, food, nutrition, shelter, psychosocial support and health care, including sexual and reproductive health’,<sup>60</sup> but also able to ‘make the best use of their skills and capacities’.<sup>61</sup>

In addition, the New York Declaration’s focus on international solidarity and responsibility-sharing provides a framework for considering the viability of safe zones where people cannot cross an international border. Protection of people in safe zones can only be effective where the international community contributes assistance through troops, aid and/or financial contributions, and those responsible for establishing such zones should be willing to receive that assistance and the services of impartial humanitarian actors.<sup>62</sup> By utilising safe corridors, those living in safe zones should also be able to access health care, education, employment and legal services.

If States in the global north seek to promote safe zones as an alternative to flight, then the full range of civil, political, economic, social and cultural human rights of those who are expected to

remain in them must be guaranteed, subject to any emergency derogations (which must, as always, be publicly declared by the State in which the conflict is occurring, and be both necessary and proportionate). It is not enough simply for a safe zone not to be subject to military attack.

## **5 Issues of responsibility and accountability**

The responsibility of individuals, States, non-State actors and international organisations is too large a topic in its own right for more than a very brief overview here, but this overview helps to highlight some of the problems that must be addressed if safe zones are to be viable.

Twenty years on, Srebrenica is still a byword for when safe zones go wrong. International criminal law may have provided a partial response after the event, but the convictions of the individuals concerned have not sent a message around the world that safe zones must be respected. Furthermore, the immunity of the UN meant that those murdered in Srebrenica could not have their deaths attributed to the organisation's failure to provide protection in the zones it had established.<sup>63</sup> Whether the new POC mandates in peacekeeping operations will change the UN's approach so that it establishes internal compensation mechanisms, as the corollary of immunity before domestic courts, remains to be seen.

Another problem is that while consensually-established safe zones offer the best hope of creating viable protection, it may not be easy for the international community to enforce standards against the country in which they are located, given that its continuing cooperation is essential. Relations with the State need to be maintained, since it is effectively guaranteeing the safety of the zone in the midst of conflict, and these relations could be jeopardised if the international community is not diplomatic in the way it raises concerns about the State's activities. While there is no straightforward answer here, UNHCR's experience of providing assistance in countries, at the same time as having supervisory functions over those countries under Article 35 of the Refugee Convention, may be instructive. UNHCR treads a fine line between ensuring that it has a continued presence and can maintain access to persons of concern, and still being able to criticise the State. Access to safe zones, like access to displaced persons in camps, is central to ensuring protection: only though access can the parties to the conflict be held accountable for any violations.

## **6 Conclusion**

Safe zones do not provide a complete solution to displacement. They should not be viewed as safe locations for returning refugees, except in the rarest of circumstances.<sup>64</sup> They may be the best outcome for people otherwise trapped in conflict zones, but that is all. They do not provide true protection as envisaged by international refugee law.

The law on safe zones is underdeveloped and State practice is too erratic and random for them to be considered a proper response to humanitarian crises. Safe zones constrain protection, although safe corridors may facilitate it. If States in the global north want to spare refugees the dangers of irregular flight, then they should establish proper pathways to safety through humanitarian and migration channels, and push for peace where conflict is rife. Safe corridors may provide that route out, and can also operate to allow people trapped in conflict zones to carry on with their lives, accessing work, education, markets and health care.

While safe zones are the least worst alternative in some cases, practice suggests that those established consensually by the parties have the greatest chance of providing protection. Experiences in Bosnia and Herzegovina and South Sudan show why externally-imposed safe

zones are less likely to succeed.<sup>65</sup> The Syrian de-escalation zones proposed by Russia, Turkey and Iran are also problematic, and the idea that refugees might be encouraged to return there seems faintly ludicrous at this point in time.<sup>66</sup> To succeed, safe zones must have a civilian, humanitarian and neutral character, and humanitarian actors must have access to them to ensure protection through respect for international human rights and humanitarian law, and to facilitate delivery of relief and assistance.

At a minimum, safe zones need to guarantee:

- the right to life (through the principle of distinction);
- the right to be free from torture and cruel, inhuman or degrading treatment or punishment;
- freedom from arbitrary recruitment (to participate in the conflict);
- personal security, particularly in relation to sexual- and gender-based violence;
- the right to the highest attainable standard of living and health;
- access to humanitarian relief and assistance, and access by humanitarian organisations; and
- freedom of movement, including the right to leave the country and seek asylum (with full respect for the principle of *non-refoulement*).

Finally, it is important to note that safe zones created by parties to a conflict, by their own initiative, are of a different character from those established at the behest of third States seeking to reduce the need for people to seek asylum. Safe zones created for the latter purpose are disingenuous when one has regard to the risks to life, personal security and other fundamental rights that arise when people are confined to a particular area.

This policy brief has set out the minimum criteria under international law for safe zones to be viable and effective. It has shown that even these low-level demands are impossible to guarantee. Safe zones, as an alternative to flight, must at least approximate the degree of safety and rights-accessibility that refugees should receive if they are granted protection across an international border – and that is never going to be the case in practice. If States in the global north want to avoid the dangers of irregular flight, then they should establish proper pathways to safety through humanitarian and migration channels, and press for peace in those areas of the world where conflict is rife. As a final note, it is worth bearing in mind that the same States that send aid and assistance are the ones that profit from the sale of arms and which wish to benefit from the purchase of raw materials that are so often at the root of the conflict.

## Endnotes

<sup>1</sup> See the New York Declaration for Refugees and Migrants, GA Res 71/1, UN GAOR, 71<sup>st</sup> sess, 3<sup>rd</sup> plen mtg, UN Doc A/RES/71/1 (3 October 2016, adopted 19 September 2016) paras 12, 43, 44, 58, 80, 84 ('*New York Declaration*'), as well as its annex I, ('*Comprehensive refugee response framework*'), paras 7(a), 11, 12. The draft Global Compact should be available in March 2018.

<sup>2</sup> International Organization for Migration, 'Mediterranean Migrant Arrivals Reach 31,993, Deaths: 664' (Press Release, 11 April 2017) <<https://www.iom.int/news/mediterranean-migrant-arrivals-reach-31993-deaths-664>>. See also UNICEF, 'A deadly Journey for Children: The Central Mediterranean Migration Route', February 2017 <[https://www.unicef.org/publications/files/EN\\_UNICEF\\_Central\\_Mediterranean\\_Migration.pdf](https://www.unicef.org/publications/files/EN_UNICEF_Central_Mediterranean_Migration.pdf)>.

<sup>3</sup> See Constanze Letsch, 'Human rights groups sound alarm over safe zones for Syrian refugees', *The Guardian* (online), 12 April 2016 <<https://www.theguardian.com/world/2016/apr/12/human-rights-groups-sound-alarm-over-safe-zones-for-syrian-refugees>>, regarding Turkey and the EU; Ercan Gurses and Andreas Rinke, 'Germany seeking 'safe zones' in Syria to shelter refugees', *Reuters World News* (online), 23 April 2016 <<http://www.reuters.com/article/us-europe-migrants-turkey-germany-idUSKCN0XK0BS>>; cf Hamish de Bretton-Gordon, 'Safe zones give Europe a chance to rebuild Syria', on *Europe's World* (15 March 2017) <<http://europesworld.org/2017/03/15/safe-zones-give-europe-a-chance-to-rebuild-syria/#.WPCVVVI-LDQ>>.

<sup>4</sup> 'Trump seeks plan for refugee safe zones', *Australian Associated Press* (online), 26 January 2017 <<http://www.news.com.au/world/breaking-news/trump-seeks-plan-for-refugee-safe-zones/news-story/b8b33807373dfc4b9fc0bec847261f04>>; 'Rex Tillerson says US will set up safe zones for refugees from Isis', *The Guardian* (online), 22 March 2017 <<https://www.theguardian.com/us-news/2017/mar/22/rex-tillerson-us-safe-zones-refugees-isis>>; Draft Executive Order, '*Protecting the Nation from Terrorist Attacks by Foreign Nationals*' <<http://apps.washingtonpost.com/g/documents/world/read-the-draft-of-the-executive-order-on-immigration-and-refugees/2289/>>, s 6, which required the US Secretaries of State and Defense to draw up a plan for safe zones in Syria – however, that provision was not included in the Order as published on 27 January 2017.

<sup>5</sup> See 'Russia: Syrian safe zones plan comes into effect', *Al Jazeera News* (online), 6 May 2017 <<http://www.aljazeera.com/news/2017/05/russia-syrian-safe-zones-plan-takes-effect-midnight-170505185444598.html#>>. The details of the de-escalation zones remained unconfirmed at the time of writing.

<sup>6</sup> See 'UNHCR chief says safe zones would not work in Syria', *Reuters World News* (online), 3 February 2017 <<http://www.reuters.com/article/us-mideast-crisis-syria-unhcr-idUSKBN15I2CO>>. For an overview and a critique of the various proposals, see News Deeply, 'Safe Zones' <<http://safezones.newsdeeply.com/>>.

<sup>7</sup> International Organization for Migration, 'IOM Learns of "Slave Market" Conditions Endangering Migrants in North Africa' (Press Release, 11 April 2017) <<https://www.iom.int/news/iom-learns-slave-market-conditions-endangering-migrants-north-africa>>.

<sup>8</sup> The border fences built in Europe and across the southern United States are testimony to a desire to keep refugees out and safe zones can be seen as another 'string' in that bow.

<sup>9</sup> These are not equivalent to traditional safe zones, especially since Russia, Turkey and Iran have said they will continue tackling "terrorism" wherever it exists': 'Russia: Syrian safe zones plan comes into effect', above n 5.

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<sup>10</sup> *Convention relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954) art 1A(2) ('*Refugee Convention*'), read in conjunction with the *Protocol Relating to the Status of Refugees*, opened for signature 31 January 1967, 606 UNTS 267 (entered into force 4 October 1967).

<sup>11</sup> *Januzi v Secretary of State for the Home Department* [2006] UKHL 5 [20] (Lord Bingham), citing UNHCR, 'Guidelines on International Protection: "Internal Flight or Relocation Alternative" within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees', HCR/GIP/03/04 (23 July 2003) <<http://www.refworld.org/docid/3f2791a44.html>>.

<sup>12</sup> *Universal Declaration on Human Rights*, GA Res 217A (III), UN GAOR, 3<sup>rd</sup> sess, 183<sup>rd</sup> plen mtg, UN Doc A/810 (10 December 1948) ('*UDHR*').

<sup>13</sup> 'Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39, Addendum, Guiding Principles on Internal Displacement', UN Doc E/CN.4/1998/53/Add.2 (11 February 1998) annex ('*Guiding Principles on Internal Displacement*').

<sup>14</sup> *Ibid*, 'Introductory Note to the Guiding Principles' [9].

<sup>15</sup> *Ibid*, annex [3(c)–(d)].

<sup>16</sup> See generally, Dieter Fleck (ed), *The Handbook on International Humanitarian Law* (Oxford University Press, 3<sup>rd</sup> ed, 2013).

<sup>17</sup> See Karin Landgren, 'Safety Zones and International Protection: A Dark Grey Area' (1995) 7 *International Journal of Refugee Law* 436, 438–9, referring to safe zones in Madrid during the Spanish Civil War and Shanghai in the Sino-Japanese War.

<sup>18</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I), adopted 8 June 1977, 1125 UNTS 3 (entered into force 7 December 1978) art 51 ('AP1'). Civilian objects shall not be the object of attack (art 52) and 'starvation of civilians as a method of warfare is prohibited' (art 54). Article 59 prohibits attacks on non-defended localities and art 60 provides for demilitarised zones. Article 70 AP1 establishes a framework for safe corridors, at least with respect to the delivery of relief consignments. A similar provision is made for non-international armed conflicts: see Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II), adopted 8 June 1977, 1125 UNTS 609 (entered into force 7 December 1978) art 18(2) ('AP2').

<sup>19</sup> See Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law* (Cambridge University Press, 2005), vol 1, Rules 35–7, 53–6 and 129–33.

<sup>20</sup> *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 4 ('*ICCPR*'). Relevant non-derogable rights are: right to life; freedom from torture, cruel, inhuman or degrading treatment or punishment; freedom from slavery or servitude; non-retroactivity of criminal law; right to recognition before the law; and freedom of thought, conscience and religion.

<sup>21</sup> *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) and *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

<sup>22</sup> *ICCPR* art 12.

<sup>23</sup> SC Res 688, UN SCOR, 46<sup>th</sup> sess, 2982<sup>nd</sup> mtg (5 April 1991).

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<sup>24</sup> SC Res 819, UN SCOR, 48<sup>th</sup> sess, 3199<sup>th</sup> mtg, UN Doc S/RES/819 (16 April 1993); SC Res 824, UN SCOR, 48<sup>th</sup> sess, 3208<sup>th</sup> mtg, UN Doc S/RES/824 (6 May 1993); and especially SC Res 836, UN SCOR, 48<sup>th</sup> sess, 3228<sup>th</sup> mtg, UN Doc S/RES/836 (4 June 1993), paras 5, 9 and 10. See, Erin D Mooney, 'Presence, ergo protection? UNPROFOR, UNHCR and the ICRC in Croatia and Bosnia and Herzegovina' (1995) 7 *International Journal of Refugee Law* 407. The reference to Srebrenica would indicate that international criminal law might also be a relevant sub-branch of international law – e.g. *Prosecutor v Krstić (Judgement)* (International Criminal Tribunal for the Former Yugoslavia, Appeals Chamber, Case No IT-98-33-A, 19 April 2004). Nevertheless, the threat of prosecution for violating safe zones or safe corridors is too remote to provide protection.

<sup>25</sup> SC Res 912, UN SCOR 49<sup>th</sup> sess, 3368<sup>th</sup> mtg, UN Doc S/RES/912 (21 April 1994); SC Res 918, UN SCOR 49<sup>th</sup> sess, 3377<sup>th</sup> mtg, UN Doc S/RES/918 (17 May 1994); and SC Res 929, SCOR 49<sup>th</sup> sess, 3392<sup>nd</sup> mtg, UN Doc S/RES/929 (22 June 1994) dealing specifically with refugees and internally displaced persons (IDPs).

<sup>26</sup> See SC Res 2327, UN Doc S/RES/2327 (16 December 2016), para 7. See also, Daniel van Oudenaren, 'Politicised humanitarian aid is fuelling South Sudan's civil war', *IRIN* (online), 27 February 2017 <<https://www.irinnews.org/opinion/2017/02/27/politicised-humanitarian-aid-fuelling-south-sudans-civil-war>>.

<sup>27</sup> UNHCR's mandate is set out in GA Res 428 (V), UN GAOR, 5<sup>th</sup> sess, 325<sup>th</sup> plen mtg (14 December 1950) annex ('*Statute of the Office of the United Nations High Commissioner for Refugees*') para 2 ('*UNHCR Statute*').

<sup>28</sup> See Landgren, above n 17, and Kristy Siegfried, 'Look back and learn: Safe zones in Iraq and Bosnia', *IRIN* (online), 15 March 2016 <<http://www.irinnews.org/analysis/2016/03/15/look-back-and-learn-safe-zones-iraq-and-bosnia>>.

<sup>29</sup> ExCom currently consists of 101 States, not only parties to the 1951 Convention but also those most affected by refugee movements. Amongst other things, ExCom adopts by consensus Conclusions proposed by UNHCR on refugee protection, which means that the Conclusions carry a great deal of authority. UNHCR's 'entirely non-political [and] humanitarian' character (see *UNHCR Statute* para 2) is an asset that will support its credibility and legitimacy with the parties to the conflict.

<sup>30</sup> ExCom, 'Military or Armed Attacks on Refugee Camps and Settlements' No 48 (XXXVIII) (12 October 1987) (emphasis added) <<http://www.refworld.org/type,EXCONC,UNHCR,,,0.html>>. See also, SC Res 1208, 62<sup>nd</sup> sess, 3945<sup>th</sup> mtg, UN Doc S/RES/1208 (19 November 1998) para 3.

<sup>31</sup> ExCom, 'Conclusion on the civilian and humanitarian character of asylum' No 94 (LIII) (8 October 2002) Preamble.

<sup>32</sup> See the need for the UN to establish in 1982 the UN Border Relief Organization on the Thai–Cambodian border because the camps there were being used by the Khmer Rouge to continue the armed conflict with the government in Phnom Penh. For UNBRO's principles, see Thai / Cambodia Border Refugee Camps 1975–1999 Information and Documentation Website, *UNBRO: The United National Border Relief Operation* (2 August 1989) <<http://www.websitesrcg.com/border/UNBRO.html>>.

<sup>33</sup> *New York Declaration*, UN Doc A/RES/71/1, para 73.

<sup>34</sup> See *Geneva Convention relative to the Protection of Civilian Persons in Time of War*, opened for signature 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950) art 15; *AP1* arts 59–60.

<sup>35</sup> *AP1* arts 59(2)(c) and 60(3)(c).

<sup>36</sup> Henckaerts and Doswald-Beck, above n 19, Rule 35; see also Rules 36 and 37.

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<sup>37</sup> AP1 art 51.

<sup>38</sup> See 'Phones are now indispensable for refugees', *The Economist* (online), 11 February 2017 <<http://www.economist.com/node/21716637/print>>. And see the University of Essex Economic and Social Research Council funded 'Human Rights, Big Data and Technology' project and its work in this area: <<http://www.essex.ac.uk/hrc/research/bigdata.aspx>>.

<sup>39</sup> See AP1 art 70 and AP2 art 18.2. Similarly, the International Law Commission's *Draft articles on the protection of persons in the event of disasters* (2016) <[http://legal.un.org/docs/?path=../ilc/texts/instruments/english/draft\\_articles/6\\_3\\_2016.pdf&lang=E](http://legal.un.org/docs/?path=../ilc/texts/instruments/english/draft_articles/6_3_2016.pdf&lang=E)>, again provide for State consent: arts 8–15; but see also, Christy Shucksmith, 'Methods to Incorporate Human Rights Law into Disaster Prevention and Reduction Strategies', on *EJIL: Talk!* (28 February 2017) <<https://www.ejiltalk.org/methods-to-incorporate-human-rights-law-into-disaster-prevention-and-reduction-strategies/>>.

<sup>40</sup> AP1 art 70(1).

<sup>41</sup> AP2 art 18(2).

<sup>42</sup> Henckaerts and Doswald-Beck, above n 19, Rule 55 (emphasis added).

<sup>43</sup> See 'Syria conflict: Russia proposes safe corridors for Aleppo', *BBC News* (online), 1 December 2016 <<http://www.bbc.co.uk/news/world-middle-east-38172477>>.

<sup>44</sup> See generally, Henckaerts and Doswald-Beck, above n 19, 193–200. The only case in which there might be an absolute obligation on parties to the conflict to provide humanitarian access would be if there were a siege and a civilian population were starving.

<sup>45</sup> *Guiding Principles on Internal Displacement*, UN Doc E/CN.4/1998/53/Add.2, annex, Principle 25.3. It may be that by reading the Additional Protocols with obligations under international human rights law, to the extent that that is binding not only on States parties but also rebel groups in non-international armed conflicts, such a duty can be derived.

<sup>46</sup> See *Sufi and Elmi v United Kingdom* (European Court of Human Rights, Fourth Section, Application Nos 8319/07 and 11449/07, 28 June 2011).

<sup>47</sup> See UNHCR, 'Guidelines On International Protection: "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', above n 11. It may be that if the safe zone were a UN-administered territory, akin to that established in Kosovo in 1999, one could envisage it as a place for internal relocation, but it would require that high degree of externally-provided security.

<sup>48</sup> See *Dyli v Secretary of State for the Home Department* [2000] UKIAT 00001 (30 August 2000).

<sup>49</sup> Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) [2011] OJ L 337/9.

<sup>50</sup> See SC Res 1270, 44<sup>th</sup> sess, 4054<sup>th</sup> mtg, UN Doc S/RES/1270 (22 October 1999) para 14.

<sup>51</sup> SC Res 2327, UN Doc S/RES/2327 (16 December 2016) para 7.

<sup>52</sup> *UNHCR Statute*, para 7(d), read in the light of the subsequent definition in the *Refugee Convention* art 1F. There is no equivalent in the *Guiding Principles on Internal Displacement*, which are more likely to apply in the context of safe zones.

<sup>53</sup> AP2 art 6(5) calls for the State to grant an amnesty at the end of the conflict, but it was only ever intended for those taking up arms, not for war crimes or crimes against humanity.

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<sup>54</sup> See van Oudenaren, above n 26: 'Humanitarian assistance is political action. For Western countries providing the vast majority of funding for relief aid, humanitarian intervention is a stand-in for other forms of political action'.

<sup>55</sup> See also, UNHCR, 'Guidelines on International Protection No. 12: Claims for refugee status related to situations of armed conflict and violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees and the regional refugee definitions', HCR/GIP/16/12 (2 December 2016) <<http://www.refworld.org/docid/583595ff4.html>>.

<sup>56</sup> See, eg, the right to seek asylum (*UDHR* art 14) and the right to leave any country (*ICCPR* art 12). ExCom, 'Conclusion on the civilian and humanitarian character of asylum' No 94 (LIII) (8 October 2002), makes this clear: '(c) *Recommends* that action taken by States to ensure respect for the civilian and humanitarian character of asylum be guided, *inter alia*, by the following principles; i. Respect for the right to seek asylum, and for the fundamental principle of *non-refoulement*, should be maintained at all times'.

<sup>57</sup> *Comprehensive refugee response framework*, UN Doc A/RES/71/1, annex I. While this is intended for those who have crossed an international border, it can be used by way of analogy here.

<sup>58</sup> *Guiding Principles on Internal Displacement*, UN Doc E/CN.4/1998/53/Add.2, annex Principles 12.2, 14.2.

<sup>59</sup> *Ibid* Principle 15.

<sup>60</sup> *Comprehensive refugee response framework*, UN Doc A/RES/71/1, annex I para 5(c).

<sup>61</sup> *Ibid* para 13(c).

<sup>62</sup> *Ibid*, paras 6–8 and 12–14.

<sup>63</sup> *Mothers of Srebrenica Association v The State of The Netherlands and the United Nations* (Supreme Court of the Netherlands, 10/04437, 13 April 2012) [4.3.14], available at <<http://www.asser.nl/upload/documents/20120905T111510-Supreme%20Court%20Decision%20English%2013%20April%202012.pdf>>. The Hague District Court went on to find the Dutch government liable for deaths of 300 at Srebrenica, but not another 7000. The 300 had been handed over by DutchBat from the UN base at Potocari, but the 7000 had not been handed over – the Dutch had just failed to protect them giving rise to no liability.

<sup>64</sup> See Kosovo example, above n 47.

<sup>65</sup> The final version of President Trump's first Executive Order failed to include a previously envisaged plan for safe zones in Syria, probably because they were seen as being an unattainable goal: see 'Executive Order: Protecting the Nation from Foreign Terrorist Entry into the United States' (27 January 2017) <<https://www.whitehouse.gov/the-press-office/2017/01/27/executive-order-protecting-nation-foreign-terrorist-entry-united-states>>. The subsequent attempt of 6 March 2017 also failed to include any reference to safe zones: 'Executive Order Protecting The Nation From Foreign Terrorist Entry Into The United States' (6 March 2017) <<https://www.whitehouse.gov/the-press-office/2017/03/06/executive-order-protecting-nation-foreign-terrorist-entry-united-states>>.

<sup>66</sup> Although humanitarian access is to be guaranteed, movement is highly restricted, the signatories have agreed they can tackle "terrorism" wherever it exists', and the largest rebel group has rejected the plan outright (see above n 5).

