

## دور مجلس الأمن الدولي في إنشاء المناطق المحمية

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## The Role of UNSC in Establishing Protected Areas

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المستخلص: المناطق المحمية هي مناطق محددة ومخصصة يتم فيها تقييد الأعمال العسكرية العدائية من أجل حماية المدنيين من الآثار الضارة للحرب، وعادة يتطلب إنشاء مثل هذه المناطق موافقة أطراف النزاع وهو ما يصعب أو يستحيل الحصول عليه في كثير من الأحيان في النزاعات المسلحة المعاصرة والتي يتم فيها استهداف المدنيين بشكل منهجي، ولذلك ظهرت مناطق محمية مفروضة بإكراه خارجي قوي في إطار القانون الدولي المعاصر. تتناول هذه الورقة البحثية دور مجلس الأمن الدولي التابع للأمم المتحدة في إنشاء المناطق المحمية للمدنيين في النزاعات المسلحة. و تعتمد نهجًا تحليليًا لاستكشاف الاختصاص القانوني لهذا المجلس في إنشاء مثل هذه المناطق المحمية من دون موافقة الأطراف المتحاربة وذلك عبر استخدام الوسائل القسرية كإنشاء مناطق حظر الطيران أو التدخل العسكري البري؛ وتحل هذه الورقة البحثية حالات المناطق المحمية القسرية في العراق والبوسنة والهرسك ورواندا وتقيم مدى فعاليتها وتحدياتها وتداعياتها. وتتعمق البحث أكثر في احتمال إنشاء مناطق محمية في النزاعات المسلحة المعاصرة، مع الأخذ بنظر الاعتبار الطبيعة المعقدة والمتعددة الأبعاد لهذه النزاعات، هذا بالإضافة إلى الإشارة إلى المأزق السياسي داخل مجلس الأمن الدولي في هذا الشأن. ويتعلق التركيز الرئيسي لهذا البحث بالسلطة القانونية الممنوحة لمجلس الأمن الدولي في

إنشاء المناطق المحمية ودوره في حماية حياة المدنيين أثناء النزاعات المسلحة. وتكشف النتيجة الأولية للدراسة أنه على الرغم من أن تجربة مجلس الأمن الدولي في إنشاء المناطق المحمية كانت مفيدة في حماية المدنيين، إلا أنه في الوقت نفسه واجه (ولا يزال يواجه) تحديات ملحوظة في إنشاء مثل هذه المناطق في حالات النزاع المسلح المعاصرة. **الكلمات المفتاحية:** النزاعات المسلحة، المناطق المحمية، حماية المدنيين، ميثاق الأمم المتحدة، مجلس الأمن الدولي.

**Abstract:** Protected areas are defined and dedicated zones where hostile military actions are restrained to safeguard civilians from the harmful effects of war. The establishment of such areas requires the consent of the parties to the conflict, which is often difficult or impossible to obtain in contemporary conflicts where civilians are systematically targeted. Therefore, enforced protected areas with robust external coercion emerged under contemporary international law. This paper examines the role of the United Nations Security Council (UNSC) in establishing protected areas for civilians in armed conflicts. It adopts an analytical approach to explore the legal competence of the UNSC to establish protected areas without the consent of the belligerents, using coercive means such as no-fly zones or ground military intervention. The paper analyses the cases of enforced protected areas in Iraq, Bosnia and Herzegovina, and Rwanda, and evaluates their effectiveness, challenges and implications. The paper delves further into the perspective of establishing protected areas in contemporary armed conflicts considering the complexity and multidimensional nature



of such conflicts, combined with the political impasse within the UNSC. The central focus of the paper pertains to the legal authority of the UNSC in establishing enforced protected areas and its role in safeguarding the lives of civilians in armed conflicts. The primary finding of the study reveals that while the UNSC's experience in establishing protected areas has been instrumental in protecting civilians, it has encountered notable challenges in establishing such areas in contemporary conflict situations.

**eywordsK:** Armed Conflicts, Protected Areas, Civilian Protection, UN Charter, UNSC.

## 1. Introduction

While International Humanitarian Law (IHL) provides a comprehensive legal framework for the establishment of protected areas to safeguard civilians from the harmful consequences of military operations during armed conflicts, the actual reality faced by civilians in conflict-affected areas presents a stark contrast. On one hand, the recent decades have witnessed significant changes in the nature of warfare with civilians increasingly becoming the primary targets. In contemporary armed conflicts, civilians constitute a significant portion of the victims, either as unintended casualties of the fighting or due to deliberate targeting by the warring parties. Even though in situations where the involved

parties claim to uphold their obligations under IHL, military operations often result in a distressing number of civilian casualties and extensive destruction of civilian infrastructure and properties.<sup>1</sup> On the other hand, the establishment of protected areas, as outlined in IHL, necessitates the agreement and consent of the parties involved in the hostilities. However, this requirement presents practical challenges. As negotiating agreements amidst the intensity of active conflict, heightened tension, and a prevailing war mentality is inherently arduous. Under these circumstances, reaching consensual agreements becomes increasingly challenging in contemporary and intrastate conflicts where civilians are targeted based on ethnic, religious, or other communal affiliations. Consequently, the party carrying out the attacks is highly unlikely willing to establish protected areas and it becomes exceedingly difficult, if not impossible, for the belligerents to reach a mutual agreement regarding the establishment of protected areas.

These challenges highlight the necessity of the international community to address the complex realities on the ground considering the alternative mechanisms for civilian protection, which may involve resorting to coercive means to establish protected areas within conflict

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<sup>1</sup> Camilla Waszink, 'Protection of Civilians under International Humanitarian Law: Trends and Challenges' (Norwegian Peace building Resource Centre (NOREF) 2011) <[https://www.regjeringen.no/globalassets/upload/ud/vedlegg/hum/reclaiming\\_background.pdf](https://www.regjeringen.no/globalassets/upload/ud/vedlegg/hum/reclaiming_background.pdf)> accessed 5 July 2023.



zones. Thusly, in the last three decades, the United Nation Security Council (UNSC) on several occasions has established protected areas in response to conflicts characterized by systematic targeting of civilian populations, without securing agreement or explicit consent from the belligerents. Notable examples include the establishment of "Safe Havens" in Northern Iraq in 1991 following the Gulf War, the designation of "Safe Areas" in Bosnia and Herzegovina in 1992 amidst the Yugoslav Wars, as well as the declaration of a "Safe Humanitarian Zone" in south western Rwanda in 1994 during the Rwandan genocide. In each of these cases, the protected areas were instituted through coercive means. This raises the questions of whether the coercive measures by the UNSC are an alternative to consent, and whether the enforcement of protected areas by the UNSC is a viable strategy for safeguarding civilian population caught in armed conflict. These inquiries form the focal points that this paper strives to address.

This paper adopts an analytical and critical approach to explore the role of UNSC in establishing protected areas for civilians in times of armed conflicts. It aims to highlight the legal competence of UNSC to establish protected areas without the consent of belligerent parties. The paper addresses certain instances of enforced protected areas in various conflict situations. It further endeavours to clarify the UNSC's role in contemporary conflicts and analyse the legal and practical aspects of

protected areas and their potential establishment within such combat circumstances. The paper is structured to comprehensively cover three main sections: Following this introduction, the second section explores the evolving concept of enforced protected areas by examining the legal competence of the UNSC to establish such zones. The third section analyses the practice of enforced protected areas established in the 1990s and considering the viability of this approach in contemporary armed conflicts. The paper concludes by summarizing its findings and presenting a series of recommendations.

## **2. The Concept of Enforced Protected Areas**

Protected areas are a concept found under IHL, which means a clearly defined area that is established by mutual agreement between opposing armed forces dedicated for protecting affected civilians. Therefore, within such an area, the parties to the conflict agree to limit their hostile military actions to protect civilian populations from the harmful effects of the conflict.<sup>1</sup> The contemporary conceptualization of "enforced protected areas" as requiring robust coercion by external actors is a relatively recent development under public international law that emerged in the 1990s. Prior to this period, protected areas had a different character

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<sup>1</sup> Wilson Chun Hei Chau, 'Creating Refuge in Hell: The Coming of Age of Safe Areas for the Protection of Civilians in Armed Conflict' (2012) 18 Auckland University Law Review 192.



and means of establishment. The creation of protected areas within the framework of IHL was based on the consent of involved parties. Specifically, they were confined to delimited buildings and their immediate surroundings, such as hospitals or religious sites. Nevertheless, obtaining such consent during conflicts would be challenging, due to the tense nature of the situation and the deep-rooted mistrust between belligerents. Therefore, a limited number of protected areas have been effectively established under IHL.<sup>1</sup>

Given the drawbacks of the consent based protected areas provided by IHL, new mechanism for crating protected areas became inevitable. This situation has prompted the evolution and exploration of alternative approaches within the framework of the United Nations (UN) to establish protected areas, beyond the scope of IHL. This approach is mainly rely upon the enforcement means to establish protected areas rather than the consent of the parties to the conflict. Thus, enforced protected areas emerged as a new type of protected areas. Within this context, the credible enforcement of protected areas along with their protection against attacks, through the utilization of international forces has been recognized as a crucial option in active conflict situations. In the past three decades, in response to numerous conflicts characterized

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<sup>1</sup> Jean-Philippe Lavoyer, 'The International Committee of the Red Cross - How Does It Protect Victims of Armed Conflict?' (1997) 9 (1) *Peace International Law Review* 296.

by the deliberate targeting of civilians, the international community has authorised the UNSC under chapter IV of the UN charter for establishing protected areas without the agreement of the belligerents involved. However, in cases where protected areas are created through enforcement mechanism and managed by a multinational force, additional considerations and questions may arise as to whether it is possible for international community, particularly the UN, to establish protected areas. Thusly, what are the legal bases for UNSC to intervene in establishing the protected area without the consent of concerned state? These pivotal questions need to be addressed when contemplating the feasibility of establishing protected areas by international community. Such an assessment is essential for determining the scope and validity of the UN's role in creating and safeguarding protected areas.

### **2.1 The Legal Competence of UNSC to Establish Protected Areas**

In order to clarify the permissibility of protected areas as a humanitarian and protective measure for civilian in conflict-affected areas, the humanitarian task of the UN must first be clarified before addressing the competence of the UNSC.

It is generally understood that the scope of responsibilities of international organisations is primarily determined by their founding





treaties and how those treaties are interpreted into practice. The UN Charter establishes the maintenance of peace and international security as the organization's main objective, as emphasized in Article 1(1), which defines the UN as a collective security institution.<sup>1</sup> Article 1(3) of the UN Charter outlines the objective of the UN to promote international cooperation in addressing economic, social, cultural and humanitarian challenges, as well as to encourage respect for human rights.<sup>2</sup> This objective formulation only addresses the importance of collaboration in resolving humanitarian issues and does not assign the UN to the explicit responsibility of providing concrete solutions for humanitarian issues.<sup>3</sup> However, Article 55 (c) of the UN Charter<sup>4</sup> establishes a clear humanitarian mandate for the UN. It explicitly enshrines the promotion of universal respect for and observance of human rights as a goal, which is closely linked to humanitarian assistance. Essentially, humanitarian assistance always aims to protect human rights and it is

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<sup>1</sup> Article 1(1) of the UN Charter states: “To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace,...”.

<sup>2</sup> Article 1(3) of the UN Charter states: “To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all...”.

<sup>3</sup> Peter Macalister-Smith, *International Humanitarian Assistance Disaster Relief Actions in International Law and Organization* (Springer Netherlands, 2013) 59.

<sup>4</sup> Article 55(c) of the UN Charter states: “universal respect for, and observance of, human rights and fundamental freedoms for all...”.

therefore generally considered to fall under the human rights mandate of the UN as defined in Article 55 of the Charter.<sup>1</sup>

Furthermore, humanitarian assistance has been repeatedly affirmed by UN organs and member states as a crucial functions of the UN.<sup>2</sup> Therefore, humanitarian measures, such as establishing protected areas, fall within the UN's mandate. Nevertheless, since its primary responsibility remains the maintenance of peace and international security, the UN would solely intervene through UNSC in humanitarian matters when they directly relate to its core responsibility.<sup>3</sup>

The UNSC is a primary organ within the UN. It possesses distinct legal authority, granted by Articles 24 and 25 of the UN Charter, along with the provisions outlined in Chapter VII, to uphold and safeguard international peace and security. With the combined provisions of Chapter VII and Articles 2(5), 2(6), 24 and 25, the UNSC wields extensive powers to implement measures aimed at restoring and

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<sup>1</sup> Monika Sandvik-Nylund, *Caught in Conflicts: Civilian Victims, Humanitarian Assistance and International Law* (Institute for Human Rights, Abo Akademi University, 1998) 82.

<sup>2</sup> UNSC emphasised in resolution 361 in 1974 on Cyprus: "One of the foremost purposes of the UN is to lend humanitarian assistance." Similarly, the UN General Assembly acknowledged in Resolution 2675 (XXV) 1970, Para. 8 "provision of relief ... is in conformity with the humanitarian principles of the Charter..." and reiterated in Resolution 46/182, 1991 "Strengthening of the coordination of emergency humanitarian assistance of the United Nations" as the codification of the principles contained in Article 1(3) of the Charter.

<sup>3</sup> Peter Macalister-Smith, (n 6) 58.



maintaining international peace and security.<sup>1</sup> Although it is claimed that humanitarian matters do not fall within its scope of tasks, however, the humanitarian measures such as protected areas must be in principle included within the competence of the UNSC under Article 24(1)<sup>2</sup> of the Charter if such areas contribute to the preservation of peace and international security.<sup>3</sup> Moreover, it is contended that circumstances characterized by grave infringements upon humanitarian principles, including the deliberate targeting of civilian populations, may constitute breach of international peace and security. It is further argued that the deployment of military sanctions for the purpose of safeguarding human rights is lawful if such human rights violations pose threat to international peace and security.<sup>4</sup> Consequently, the UNSC possesses essential institutional competence within the UN Charter to address humanitarian matters, including the establishment of protected areas, as long as they contribute to the maintenance of global peace and international security.

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<sup>1</sup> Kyle Beardsley, 'UN Intervention and the Duration of International Crises' (2012) 49 (2) *Journal of Peace Research* 237.

<sup>2</sup> The UNSC's responsibility for the maintenance of international peace and security also stems from Art. 24(1) of the UN Charter which states: "In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf".

<sup>3</sup> Peter Macalister-Smith, (n 6) 58.

<sup>4</sup> Rosalyn Higgins, *Problems and Processes: International Law and How We Use It* (Clarendon Press, Oxford, 1994) 255.

## **2.2 The Establishment of Protected Areas under Chapter VII**

Within the framework of Chapter VII of the UN Charter (Articles 39–50), the UNSC can adopt measures with binding effect towards the parties to the conflict. The establishment of protected areas can be achieved through various means. For instance, it can be established as provisional measures under Article 40 or as peaceful sanctions under Article 41 of the Charter. However, the authorization to create a protected area by force is possible only as a military sanction under Article 42 of the Charter. It is significant to note that the establishment of protected areas under Chapter VII necessitates prior determination by the UNSC of a threat to peace, breach of peace, or act of aggression, as stipulated in Article 39 of the Charter. This requirement is implicitly applicable even for provisional measures contemplated in Article 40 of the Charter.<sup>1</sup>

This section will explore the legal framework and provisions under the UN Charter relevant to the authorization and establishment of protected areas. Specifically, it discusses issues of threat to or breach of the peace as outlined in Article 39 and provisional measures stipulated in Article 40. It further delves into forcible measures permitted by Article

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<sup>1</sup> Peter Kooijmans, 'Provisional Measures of the UN Security Council' in Erick Denters and Paul J.I.M de Waart (eds) *Reflections on International Law from the Low Countries - in Honour of Paul de Waart* ( The Hague, Nijhoff, 1998) 290.



42 and considerations regarding the prohibition of intervention as stipulated in Article 2(7), as detailed below.

### 2.2.1 Threat to or Breach of the Peace under Article 39 of the UN Charter

The determination of a breach of international peace and security presents certain challenges when applied to the context of protected areas, as these areas are typically established within internal conflicts, whereas the breach of peace traditionally requires conflicts between armed units of states.<sup>1</sup> Nevertheless, in practice, the UNSC has increasingly acknowledged the existence of threat or breach to peace in internal conflicts, in cases involving humanitarian disasters.<sup>2</sup> It has recognized that cross-border effects resulting from emergencies, such as refugee flows,<sup>3</sup> violations of humanitarian law,<sup>4</sup> humanitarian crises,<sup>1</sup>

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<sup>1</sup> Nico Kirsch and J.A. Frowein, 'Chapter VII Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression, Art 39' in Bruno Simma and others (eds) *The Charter of the United Nations: A Commentary* (Oxford University Press, 3rd edition 2013) 606.

<sup>2</sup> The decisive step in this direction was resolution 688 on 04/05/1991, which considered humanitarian situation of the civilian population in Iraq as a threat to the international peace and security in the region, however, without explicitly refer to Chapter VII: "Gravely concerned by the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish populated areas which led to a massive flow of refugees towards and across international frontiers and to cross border incursions, which threaten international peace and security in the region...".

<sup>3</sup> UNSC Res 713 (25 September 1991) UN Doc S/RES/713 on Yugoslavia; UNSC Res 841 (16 June 1993) UN Doc S/RES/841 on Haiti.

<sup>4</sup> UNSC Res 808 (22 February 1993) UN Doc S/RES/808; UNSC Res 827 (15 May 1993) UN Doc S/RES/827; UNSC Res 941 (23 September 1994) UN Doc S/RES/941 on Yugoslavia and UNSC Res 955 (8 November 1994) UN Doc S/RES/955 on Rwanda.

and grave human rights abuses can constitute a threat to international peace and security under Chapter VII of the Charter. The UNSC has authorized the establishment of protected areas on humanitarian grounds in at least two instances. In the Bosnia and Herzegovina case, the UNSC granted authorization for the creation of a safe area in Srebrenica due to grave concerns over the constant and deliberate armed attacks and targeting innocent civilians.<sup>2</sup> Likewise, in the context of Rwandan case, the UNSC determined that the scale of the humanitarian crisis posed a threat to peace and security in the region, leading to the authorization of a protected area.<sup>3</sup> In similar vein, UNSC reaffirms such a stance in resolution 1296, relating to protection of civilians in armed conflict which states that:

*“Notes that the deliberate targeting of civilian population or other protected persons and the committing of systematic, flagrant and widespread violations of international humanitarian and human rights law in situations of armed conflict may constitute a threat to international peace and security, and, in this regard, reaffirms its*

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<sup>1</sup> UNSC Res 757 (30 May 1992) UN Doc S/RES/757; UNSC Res 770 (13 August 1992) UN Doc S/RES/770; UNSC Res 787 (16 November 1992) UN Doc S/RES/787 and UNSC Res 836 (4 June 1993) UN Doc S/RES/836.

<sup>2</sup> UNSC Res 819 (16 April 1993) UN Doc S/RES/819, states in the preamble: “concerned by the patterns of hostilities ...[and] the continued and deliberate armed attacks and shelling of the innocent civilian population by Bosnian Serb paramilitary”.

<sup>3</sup> UNSC Res 929 (22 June 1994) UN Doc S/RES/929, stipulates in the preamble: “the magnitude of the humanitarian crisis ... constitutes a threat to peace and security in the region”.



*readiness to consider such situations and, where necessary, to adopt appropriate steps.”<sup>1</sup>*

As such, the notion of a threat to peace under Article 39 of the Charter is generally applicable, not only to the conflict that occurs between armed forces of states but also in cases where conflicts are initially confined to internal matters.<sup>2</sup>

## **2.2.2 Provisional Measure under Article 40 of the UN Charter**

The enforceability of provisional measures under Article 40 of the UN Charter has been subject to scrutiny due to the use of the phrase ‘call upon’ in the provision. It is argued that this wording implies a non-binding nature of the measures. However, the final clause of Article 40 includes consequences for non-compliance with provisional measures, indicating that such measures are indeed intended to be binding. Therefore, despite the use of the term ‘call upon’, the language of Article 40 implies the obligatory nature of provisional measures.<sup>3</sup>

If there is a possibility of protecting the protected areas from attacks without needing the military force, then UNSC could potentially authorize the establishment of safe zones through the issuance of a

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<sup>1</sup> UNSC Res 1296 (19 April 2000) UN Doc S/RES/1296.

<sup>2</sup> Oswald BM, ‘The Creation and Control of Places of Protection during United Nations Peace Operations’ (2001) 844 *International review of Red Cross* 1017.

<sup>3</sup> Peter Kooijmans (n 15) 298.

neutralization order as a provisional measure under Article 40 of the Charter. The UNSC has previously adopted various measures, including ceasefires, withdrawal of troops from specific areas, demilitarization, and calls to refrain from hostilities. Additionally, under Article 40, the UNSC has, on certain occasions, called for the respect of rights of the civilian population, cessation of attacks against them, and the implementation of measures to alleviate their suffering.<sup>1</sup> These measures bear resemblance to a neutralization order designed to safeguard the civilian population, as demonstrated by the establishment of protected areas in Bosnia, urging parties to refrain from attacking and engaging in hostile acts within the protected areas. This is particularly pronounced in resolution 819 relating to Srebrenica which states: “Demands that all parties and others concerned treat Srebrenica and its surroundings as a safe area which should be free from any armed attack or any other hostile act.”<sup>2</sup>

Therefore, the establishment of protected areas through a neutralization order to the conflicting parties, as exemplified in the case of Bosnia, can be regarded as a legally binding measure under Article 40 of the UN Charter. In such cases, the security and protection of the

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<sup>1</sup> Nico Kirsch and J.A. Frowein, ‘Chapter VII Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression, Art 39’ in Bruno Simma and others (eds) *The Charter of the United Nations: A Commentary* (Oxford University Press, 3<sup>rd</sup> edition 2013) 606.

<sup>2</sup> UNSC Res 819 (16 April 1993) UN Doc S/RES/819.





designated area rely upon the continuing cooperation of the parties involved. However, the forcible safeguarding of the protected area may necessitate subsequent authorization of appropriate coercive measures, including embargoes or military actions. Provisional measures under Article 40 of the UN Charter can be enforced through both military and non-military coercive measures as stipulated in Articles 41 and 42 of the UN Charter, commonly referred to as enforced provisional measures.<sup>1</sup> Such enforcement requires a corresponding decision by the UNSC and a renewed determination of a threat to peace under Article 39 of the UN Charter. In the event that the conflicting parties fail to adhere to the neutralization order regarding the protected area, the UNSC is empowered to authorize non-military and military measures to forcefully ensure the security of the area, in accordance with the provisions set forth under Articles 41 and 42 of the UN Charter. In the case of Bosnia, following the establishment of the protected area, the UNSC granted authorisation to the United Nation Protection Force (UNPROFOR) to defend the area against attacks, besides member states and international organisations were authorised to provide armed air support.<sup>2</sup> It is therefore reasonable to affirm that the establishment

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<sup>1</sup> Nigel D. White, *Keeping the Peace: The United Nations and the Maintenance of International Peace and Security* (Manchester University Press, 1997) 160.

<sup>2</sup> UNSC Res 836 (4 June 1993) UN Doc S/RES/836, para (5) states: “Decides to extend to that end the mandate of UNPROFOR in order to enable it, in the safe areas ( ... ), to deter attacks against the safe areas, to monitor the cease-fire,...”.

of protected areas by the UNSC, in accordance with Article 40, may be deemed permissible.

### **2.2.3 Forcible Measure under Article 42 of the UN Charter**

In situations where conflicting parties are unwilling or unable to cooperate in protecting the civilian population and establishing protected areas, simply issuing a neutralization order by UNSC (a provisional measure under Article 40) may not be sufficient to establish effective protected areas. In such cases, alternative approaches and stronger measures may be required. Hence, protected areas must be forcibly created, as witnessed in the context of Rwanda, to ensure the safety and security of vulnerable populations and secure such areas from armed attacks and other hostile acts. Protected areas established in this manner are not considered provisional measures under Article 40 of the UN Charter rather they are implemented directly as military measures in accordance with Article 42 of the UN Charter.<sup>1</sup>

Indeed, the UNSC possesses the authority to permit the use of military force and delimit a specific zone for the establishment of a protected area. Initially, the UN intended to establish a permanent military force, as outlined in Article 43 of its Charter, with the strategic command entrusted to a Military Staff Committee, as detailed in Articles 46 and

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<sup>1</sup> Oswald BM (n 24).



47. However, the efficacy of this system was undermined during the Cold War period, specifically during Korean War in 1950, due to the ideological divisions and power struggles among the UNSC members representing the major world powers. Consequently, the functioning of the military force was severely hindered and the system never set up.<sup>1</sup> However, due to the lack of its own military means,<sup>2</sup> the UNSC currently has only the option to authorise member states to establish such zones under Article 42, in conjunction with Article 48 of the UN Charter.<sup>3</sup> This is clearly demonstrated in Rwanda where the UNSC authorised the French led operation to protect civilian and establish humanitarian protected area in 1994.<sup>4</sup>

#### **2.2.4 Prohibition of Intervention According to Article 2(7) of the UN Charter**

As discussed earlier, the primary objective of the UN is to safeguard future generations from the devastating consequences of war. The Charter's Objectives do not differentiate between internal conflicts and

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<sup>1</sup> Françoise Bouchet-Saulnier, *The Practical Guide to Humanitarian Law* (Rowman & Littlefield, 2007) 302.

<sup>2</sup> To date, no agreements have been concluded under Article 43 between UNSC and member states to put troops under the control of the UNSC.

<sup>3</sup> Article 48 (1) of the UN Charter states: "The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine."

<sup>4</sup> Alan Lachica, 'Revisiting the Rwandan Genocide: Reflections on the French-led Humanitarian Intervention' (2021) 16 *Geopolitics Quarterly* 108.

conflicts between states. The provisions outlined in Articles 1, 24, 25, as well as Chapter VII of the Charter appear to grant the UN extensive authority to address any threat to or breach of peace.

While the purposes of the UN as stipulated in Article 1 cannot be considered superior to Article 2, as the latter explicitly states that “the Organization and its Members, in pursuit of the purposes stated in Article 1, shall act in accordance with the following principles,” particularly the concept of ‘domestic jurisdiction’ as mentioned in Article 2(7). However, if the occurrences within a particular state have repercussions on other states to an extent that they pose a threat to international peace and security, such matters cannot be solely deemed as falling within the scope of domestic jurisdiction.<sup>1</sup> Therefore, the explicit exception provided in the last clause of Article 2(7) for enforcement measures under Chapter VII do not limit or exclude the jurisdiction of the UNSC to make binding resolutions on matters that do not pertain exclusively to the domestic jurisdiction of a state.<sup>2</sup>

Accordingly, once the UNSC determines the existence of a threat to international peace under Article 39 of the UN Charter, the nature of

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<sup>1</sup> Surya P. Subedi, 'The Doctrine of Objective Regimes in International Law and the Competence of the United Nations to Impose Territorial or Peace Settlements on States' (1994) 37 *German Yearbook of International Law* 202.

<sup>2</sup> J. S. Watson, 'Autointerpretation, Competence, and the Continuing Validity of Article 2(7) of the UN Charter' (1997) 71 *The American Journal of International Law* 66.



the matter automatically changes to an international concern. As a result, any subsequent measure is not subject to the prohibition of intervention in internal affairs as stipulated in Article 2(7) of the UN Charter. Therefore, whether the establishment of a protected area is ordered as a provisional measure under Article 40 or militarily enforced under article 42, following a determination under Article 39, it falls outside the scope of the prohibition of intervention under Article 2(7) and can be considered a permissible humanitarian measure.<sup>1</sup>

It would therefor seem that when a situation within a state has the potential to pose a threat to international peace and security, it becomes a matter of international concern that necessitates international response. Consequently, it can be asserted that UNSC has the legal authority to impose comprehensive measures on states, entities, or belligerent parties in certain situations, thus, such measures are binding on all states. Furthermore, when a state becomes a member of the UN, it acknowledges the constitutional framework of the organization, which grants UN organs, particularly the UNSC, the

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<sup>1</sup> Susan Lamb, 'Legal Limits to United Nations Security Council Powers' in Guy S. Goodwin-Gill (eds) *The Reality of International Law: Essays in Honour of Ian Brownlie* (Oxford University Press, 1999) 368.

authority to address situations that jeopardize international peace and security.<sup>1</sup>

In specific circumstances, such as to protect people against their own rogue government as in Iraq in 1991 the resolution 688 adopted to address the repression of Kurdish people by Iraqi Army of the former Baathist Regime. Further, in cases of extensive internal displacements of people, outflow of refugees and widespread violence, the UNSC may intervene to uphold and re-establish international peace, irrespective of the consent of the state in question. The UNSC has authorized humanitarian intervention in many post-1990 conflict situations. For instance, in Yugoslavia, the widespread and flagrant violations of IHL and in Rwanda, the magnitude of humanitarian crises were considered threat to international peace and security.<sup>2</sup> These interventions are intended to establish designated geographical areas to protect affected civilians, alleviate their suffering, and prevent the exacerbation of the situation in furtherance of the UNSC's responsibilities for restoring and maintaining international peace and security.

### **3. Practice of Enforced Protected Areas**

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<sup>1</sup> Article 25 of the UN Charter.

<sup>2</sup> Monica Lourdes de la Serna Galvan, 'Interpretation of Article 39 of the UN Charter (Threat to the Peace) by the Security Council. Is the Security Council a Legislator for the Entire International Community?' (2011)11*Anuario Mexicano de Derecho Internacional* 167, 168.



This section aims to explore practical instances of enforced protected areas in the 1990s, examining their successes and challenges, followed by an examination of potential protected areas beyond that decade, particularly in the context of contemporary conflicts.

### 3.1 Enforced Protected Areas in 1990s

The establishment of protected areas to safeguard civilian populations within their home countries signifies the increase in global commitment to humanitarian concerns. Traditionally, the responsibility of protecting persecuted individuals within their own state, in collaboration with humanitarian organizations and NGOs, rested solely with the home state. However, since 1950, the politically neutral and humanitarian subsidiary body, the United Nations High Commissioner for Refugees (UNHCR), has assumed the role of safeguarding and providing humanitarian aid to refugees and displaced persons.<sup>1</sup> Whilst, the UNSC has been cautious in humanitarian intervention and assuming the duty of protecting and providing humanitarian assistance to persecuted individuals within their home countries, as measures of conflict

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<sup>1</sup> Richard Plender, 'The Legal Basis of International Jurisdiction to Act with Regard to the Internally Displaced' in Vera Gowlland-Debbas (eds), *The Problem of Refugees in the Light of Temporary International Law* (Martinus Nijhoff Publishers, 1996) 79.

resolution always carry the risk of compromising the impartiality and neutrality required for effective humanitarian actions.<sup>1</sup>

Nevertheless, there has been a notable increase in the involvement of the UNSC in humanitarian matters during the 1990s. The UNSC recognized distinct prospects for proactive involvement, particularly in situations where; states were unwilling or unable to provide humanitarian assistance and humanitarian organizations confronted obstacles impeding their capacity to provide assistance efficiently.<sup>2</sup> These circumstances necessitate the presence and protection afforded by the UN. Hence, in accordance with its responsibility to maintain international peace and security, the UNSC has taken measures by designating protected areas to ensure the safety of civilian populations within certain conflict zones. While these protected areas ostensibly aim to protect all civilians from assaults, concurrently function as refuge and relief centres. The establishment of protected areas has occasionally been coupled with the imposition of no-fly zones, which can be utilized to implement a measure of enforcement. Instances of such areas span from Iraq, Bosnia and Rwanda. Further, the terminology employed varies from 'Safe Havens' to 'Safe Areas' and 'Secure Humanitarian Zones'. The fundamental concept underlying this notion is the

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<sup>1</sup> Cornelio Sommaruga, 'Humanitarian Action and Peace-keeping Operations' (1997) 317 *International Review of the Red Cross* 181.

<sup>2</sup> Monika Sandvik-Nylund (n 8) 125.





establishment of an area within the active conflict zone that remains neutral, devoid of hostile actions and ensuring unhindered humanitarian access, as detailed below.

### **3.1.1 Protected Area in Iraq**

From a legal standpoint, it can be observed that the protected area established in northern Iraq, Kurdistan Region, in 1991 hold historical significance under contemporary international law, as they were the initial endeavour to establish such area beyond the framework of the consent-based protected areas of Geneva Conventions. It is worth noting that this protected area did not conform to traditional UN measures, as the UNSC did not explicitly authorized it. Subsequently, the UN assumed responsibility for the administration of the protected area, thereby necessitating its inclusion within the broader framework of established practices concerning protected areas.

Historically, the Kurds, a stateless people residing as a minority in multiple countries, including Turkey, Iraq, Iran and Syria. The Kurdish population, currently estimated to be between 35 to 40 million, however, obtaining an accurate figure is challenging due to the lack of full recognition by the four countries they reside in,<sup>1</sup> in which they have

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<sup>1</sup> Quil Lawrence, *Invisible Nation: How the Kurds' Quest for Statehood is Shaping Iraq and the Middle East* (Bloomsbury Publishing 2008) 3.

faced a long history of challenges and conflicts. Following the disintegration of the Ottoman Empire, the prospect of a Kurdish state was initially contemplated in the Treaty of Sevres of 1920, but later abandoned and divided in favour of modern-day aforementioned states as outlined in the Treaty of Lausanne in 1923. In Iraq, the Kurds experienced on-going tensions with successive governments since 1920, resulting in rebellions, violence, and displacement. The most infamous atrocities namely, Anfal campaign and Halabja massacre in late 1980s, where thousands of villages were destroyed and hundreds of thousands of Kurdish civilians were mass murdered by burying alive and subjected to chemical attacks, further highlighted the core international crimes committed against the Kurds.<sup>1</sup>

Following Iraq's invasion of Kuwait in August 1990, the UNSC swiftly responded with resolution 660. This resolution unequivocally demanded Iraq's immediate and unconditional withdrawal from Kuwait.<sup>2</sup> Multiple resolutions issued on the situation of Kuwait demanding Iraq to comply with its international obligations. Consequently, the resolution 678 in 1990 authorised the UN member states to take all necessary means to expel Iraq from Kuwait and restore international peace and security in

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<sup>1</sup> Eugene Cotarn, 'Establishment of Safe Haven for Kurds in Iraq' in Najeeb Al-Nauimi and Richard Meese (eds.) 'International Legal Issues Arising Under the United Nations Decade of International Law' (The Hague: Martinus Nijhoff Publishers, 1995) 855.

<sup>2</sup> UNSC Res 660 (12 August 1990) UN Doc S/RES/660, para 2 .



the region.<sup>1</sup> After unsuccessful negotiations and in compliance by Iraq, a coalition formed in response to the resolution 678 and launched Operation Desert Storm. This approach proved significant in relation to the subsequent Kurdish crisis, as it fostered international cooperation and demonstrated the effectiveness of the UNSC in maintaining global peace and security. The Operation Desert Storm severely weakened the Iraqi army and expelled Iraq from Kuwait. This marked the beginning of internal dissent and revolt within Iraq erupted in the south by Shiites and subsequently in north by Kurds seeking freedom.<sup>2</sup>

Kurds initiated an uprising against the repressive rule of Saddam Hussein, the former Iraqi president from 1979 to 2003, on March 4, 1991, swiftly capturing nearly all of Kurdistan Region within three weeks. They also seized the strategically important oil centre of Kirkuk on March 19. Unfortunately, this triumph was short-lived. Iraqi army, having suppressed the rebellion in the south, turned attention northward, deploying operations in a ruthless offensive against the Kurdish uprising. They had recaptured Kirkuk and carried out indiscriminate massacres against Kurds.<sup>3</sup> As a consequence of the perceived threat of violent reprisals and fearing chemical attacks similar

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<sup>1</sup> UNSC Res 678 (29 November 1990) UN Doc S/RES/678, para 2.

<sup>2</sup> Gordon W. Rudd, *Humanitarian Intervention; Assisting the Iraqi Kurds in Operation Provide Comfort, 1991* (Department of the Army, Washington DC, 2004) 29-30.

<sup>3</sup> Carol McQueen, *Humanitarian Intervention and Safety Zones: Iraq, Bosnia and Rwanda* (Palgrave Macmillan, London 2005) 26-27.

to those experienced in 1988, a substantial number of Kurdish civilians embarked on a mass exodus towards the Iranian and Turkish borders. It is estimated that 1.5 to 2 million Kurds were displaced from Iraqi Kurdistan,<sup>1</sup> thus, named the “million–man migration”.

According to the UNHCR data, as of the end of April 1991, there was a recorded presence of approximately half million individuals congregated on the Iraqi side of the Turkish border. Additionally, an equivalent figure was reported to have sought refuge within the territorial boundaries of Iran.<sup>2</sup> Turkish military took measures to bar Kurdish people from entering the country, leaving the world witness to vulnerable population stranded in freezing mountainous conditions, lacking basic necessities such as, clothing, shelter, and food.<sup>3</sup> Regrettably, the actions of Turkish military characterized by abusive conduct, combined with perilous winter conditions prevailing in the mountainous areas, resulted in a distressing rise in mortality rates, ranging from 400 to 1000 fatalities per day. The primary causes of these fatalities attributed to severe hypothermia, exhaustion and lack of adequate potable water sources, which

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<sup>1</sup> David Romano, *The Kurdish Nationalist Movement*(Cambridge University Press, 2006) 206–207.

<sup>2</sup> David Keen, *The Kurds in Iraq: How Safe is Their Haven Now?* (Save the Children Fund, London: 1993) 7.

<sup>3</sup> Eugene Cotarn (44) 856.



consequently gave rise to outbreaks of diarrhoea and cholera.<sup>1</sup> The dire situation faced by the stranded Kurdish population compelled international attention and the immediate need for assistance and support.<sup>2</sup>

The French president Francois Mitterrand addressed the matter, emphasizing to the UNSC that neglecting the protection of the Kurds would have substantial implications for the UNSC's political and moral credibility.<sup>3</sup> Then, France took the lead in facilitating consensus building among the permanent members of the UNSC. This collaborative effort sponsored by Belgium, the UK and the US resulted in the adoption of resolution 688 in 1991, which asserted that the humanitarian situation constitutes threat to international peace and security in the region and called for immediate access by international humanitarian organizations for protecting Kurdish people.<sup>4</sup> This marked a crucial moment in the international community's acknowledgment of the plight of the Kurds and the recognition of their right to protect and aid in the face of displacement and persecution.

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<sup>1</sup> Thomas George Weiss, *Military-civilian Interactions: Humanitarian Crises and the Responsibility to Protect* (Rowman & Littlefield 2004) 44.

<sup>2</sup> Eugene Cotran (44) 856.

<sup>3</sup> Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford University Press 2003) 141.

<sup>4</sup> UNSC Res 688 (5 April 1991) UN Doc S/RES/688

In a positive response to the resolution 688 a coalition of nations, headed by the US and joined by France and Britain, was formed to swiftly offer urgent humanitarian assistance. The initial strategy involved delivering aids through airdrops. Then, in order to safeguard the airdrop operations, the US conveyed a notice to Iraq, indicating that they would enforce no-fly zone over the affected areas. This latter paved the way to establish no-fly zones north of the 36<sup>th</sup> parallel in 1991 and south of the 32<sup>nd</sup> parallel in 1992. Then, the southern zone was further extended to the 33<sup>rd</sup> parallel in 1996.<sup>2</sup>

Nevertheless, the continued military advancements by the Iraqi Army created significant obstacles for the displaced population to safely return to their homes. Under these circumstances, the British Prime Minister, John Major, proposed a two-step plan to establish a protected area for saving Kurdish people. The first step involved bringing the displaced people down from the mountains and relocating them to a relatively small enclave within Iraq under the protection of the UN. The second step aimed to assist the refugees in returning to their places of origin. The authority for implementing this plan derived from Resolution 688. Despite lacking explicit authorization for military intervention, the

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<sup>1</sup> 36<sup>th</sup>, 32<sup>nd</sup> and 33<sup>rd</sup> are imaginary latitude degrees that have been used to indicate the exact location of the no-fly zone in north and south of Iraq.

<sup>2</sup> Alain E. Boileau, 'To the Suburbs of Baghdad: Clinton's Extension of the Southern Iraqi No-Fly Zone' (1997) 3 *Journal of International & Comparative Law* 875, 881.



international coalition justified their actions as consistent with the principles outlined in resolution 688. The British government, similar to the USs' justification for establishing the no-fly zone, relied upon the resolution's ambiguity regarding its implementation of the concept of a safe haven. By interpreting the above resolution, Britain formulated a strategy to create the 'Safe Haven' for the Kurds.<sup>1</sup>

In April 1991, an international coalition of allied forces including the US, Britain, France, and other European countries launched Operation Provide Comfort and their troops were deployed on the ground to deter any further aggression by Iraqi army. The objective of this operation was to provide unimpeded support and protection to the affected population and to establish a safe haven where the Kurdish population could safely return to their homes.<sup>2</sup> Consequently, under the protection of the no-fly zone above the 36<sup>th</sup> parallel, six camps were established, spanning an area of approximately 10,000 square kilometres near Duhok city.<sup>3</sup> Then, the UN involved and took over the area after signing Memorandum of Understanding (MOU) with Iraqi authority. Pursuant to the MOU the 'UN Sub-offices and Humanitarian Centres' (UNHUCs) were established to facilitate the humanitarian action of the UN mission.

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<sup>1</sup> Hikaru Yamashita, *Humanitarian Space and International Politics: The Creation of Safe Areas* (Routledge 2017) 47.

<sup>2</sup> Eugene Cotran (44) 858.

<sup>3</sup> Natalia Gierowska. 'Are Safety Zones a Threat to the Institution of Asylum?' (intechopen, 2022) <<https://www.intechopen.com/online-first/84295>> accessed 12 August 2023.

The UNHUCs were located in major cities across northern Iraq such as, Duhok, Erbil and Sulaymaniyah. These centres were staffed by UN personnel and were responsible for coordinating and overseeing humanitarian efforts in the region. To ensure the safety and security of these centres, they were defended by lightly armed UN contingent guards.<sup>1</sup> However, in order to enhance the protection of civilians and facilitate their safe return, the coalition forces made the decision to expand the protected area. As part of this process, the Iraqi army was compelled to withdraw from the city of Duhok fearing of armed confrontation with coalition forces. Whilst the *Peshmerga*<sup>2</sup> forces pushed Iraqi army back and recaptured Erbil, Sulaymaniyah and certain towns of Kirkuk and Mosul.<sup>3</sup> Ultimately, the Iraqi army completely withdrew from major Kurdish cities. Thus, the protected area expanded to cover all Kurdish populated areas controlled by *Peshmerga*.

As of July 1991, following the conclusion of the urgent humanitarian crisis, the majority of the US and allied forces withdrew from Iraq. The

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<sup>1</sup> Letter of Secretary General addressed to the president of UNSC.UN docs.S/22663 31 May 1993.

<sup>2</sup> *Peshmerga* forces are military forces of the autonomous Kurdistan region in northern Iraq. The word '*Peshmerga*' literally means 'those who face death' in Kurdish. They are primarily composed of ethnic Kurdish fighters who are responsible for the defense of the Kurdistan region. In modern Iraq, the *Peshmerga* forces were officially recognized by the Iraqi Constitution of 2005 as a legitimate military force 'border guards'. They are under command and control of the Kurdistan Regional Government. See Art 121 (5) of the Iraqi Constitution of 2005.

<sup>3</sup> Thamer Ahmed Attia, 'The American-Turkish position towards the Iraqi Kurds' [in Arabic] (2017) 20 *Journal of the College of Education for Girls for Humanities* 421.





responsibility for on-going relief efforts was transferred to the UN agencies and non-governmental organizations. During this transitional stage, the UN security guards and *Peshmerga* forces handled the security of the entire area. To maintain deterrence, the allied forces depended on a no-fly zone over the northern airspace of Iraq. Additionally, for a limited period, a reaction task force comprising 5,000 personnel remained along the Turkish border as a contingency force to respond swiftly if the situation demanded.<sup>1</sup> This initiative, referred to as 'Operation Provide Comfort II', extended until 1996. Subsequently, this mission was succeeded by 'Operation Northern Watch', which continued until 2003. The primary objective of the latter operation was to enforce compliance with UNSC resolutions and prevent any aggression or provocation from Iraqi army.<sup>2</sup>

Initially, the situation in the protected area was relatively stable, with occasional clashes between Iraqi forces and instances of airstrikes by Turkey against Kurdish guerrillas operating in the area.<sup>3</sup> However, the situation took a turn for the worse when an economic blockade was

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<sup>1</sup> John T. Fishel, *Liberation, Occupation, and Rescue: War Termination and Desert Storm* (Strategic Studies Institute, U.S. Army War College, Carlisle Barracks, Pennsylvania 1992) 57.

<sup>2</sup> Alexander Benard, 'Lessons from Iraq and Bosnia on the Theory and Practice of No-Fly Zones' (2004) 27 (3) *Journal of Strategic Studies* 464.

<sup>3</sup> Najam U Din, 'Safe Havens': Compromising Human Rights Protection for the Displaced? (Master thesis, University of Lund 2005) 8.

imposed by UN on Iraq, leading to severe humanitarian crises due to the severe shortages of food and essential daily supplies.<sup>1</sup>

The Kurdistan Front (KF)<sup>2</sup>, a coalition comprising eight Kurdistan political parties, established in 1988, made the determination to conduct first parliamentary elections in 1992 and lay the foundation for democratic self-governance. The KF acted as an effective quasi-governmental entity, delivering administrative and juridical services, maintaining law enforcement, overseeing tax matters, administering healthcare and social welfare provisions. The KF successfully reinstated utilities and water services, fostered diplomatic ties with certain foreign governments, and undertook responsibilities encompassing law enforcement and political governance. The election for Kurdistan National Assembly was held in May 1992.<sup>3</sup> Hence, formally Kurdistan Regional Government (KRG) established in the Kurdish populated cities

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<sup>1</sup> David Keen, 'Short-term Interventions and Long-term Problems: The Case of the Kurds in Iraq, in John Harriss (eds.) *The Politics of Humanitarian Intervention* (Pinter 1995) 171-173.

<sup>2</sup> The Kurdistan Front, a coalition of political parties, was officially formed on May 2, 1988. This alliance included eight political parties from southern Kurdistan: the Kurdistan Democratic Party, the Patriotic Union of Kurdistan, the Kurdistan Social Democratic Party, the Kurdish Socialist Party, the People's Party, the Kurdistan Toiler's Party, the Kurdistan Communist Party-Iraq, and the Assyrian Democratic Movement. The primary objective of the Kurdistan Front was to collaborate and jointly resist the former Baath Regime in Iraq, which at that time had escalated its inhumane actions against the Kurdish people to extreme levels of brutality. See 'Biography of the President Masoud Barzani' <<https://www.masoudbarzani.krd/ku/%DA%98%DB%8C%D8%A7%D9%86%D9%86%D8%A7%D9%85%DB%95/>> accessed 23 Nov 2023.

<sup>3</sup> Eugene Cotran (n 44) 865.



in northern Iraq, which includes Erbil, as a capital city, Duhok, Sulaymaniyah and Halabja.

In view of the foregoing, the legal status of the established protected area becomes a point of contention within this context. It must to be emphasised that from legal point of view, the establishment of the protected area in Kurdistan is controversial, as it was not explicitly authorised by the UNSC, thus it lacks a clear legal basis due to the ambiguous nature of its creation. The legal justification of international coalition forces was mainly based on the interpretation of resolution 688 in 1991. The UNSC demanded that Iraq cease its oppressive actions and stressed the urgent need for international humanitarian organizations to be granted immediate access to assist those in need within the country. It urged all member states and humanitarian organizations to actively contribute to relief actions.<sup>1</sup> The key actors in the international coalition indicated that the interpretation of the resolution, particularly paragraph 6, implies an enforcement mechanism to compel Iraq to cease its oppression against Kurds, referring that the implementation of no-fly zones and creating protected area serves as an enforcement measure in line with this objective.<sup>2</sup> As discussed earlier, the US warned Iraqi authority that no-fly zone for civilian and

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<sup>1</sup> UNSC Res 688 (n 55) paras 2,3 and 6.

<sup>2</sup> Hikaru Yamashita (n 58) 68.

military plane would be enforced in northern Iraq for facilitating humanitarian relief supplies.

Indeed, these justifications seems untenable as resolution 688 of 1991 neither explicitly authorised the use of force nor the establishment of protected area for the Kurds in Iraq. The justifications were merely relied on interpretation of the provisions of UNSC resolution. Thus, from legal prospective, both the establishment of the no-fly zone and the protected area could be deemed unauthorized. These actions were morally justifiable and obtained tacit international legitimacy and acceptance as they were framed as humanitarian actions aimed at safeguarding the affected civilian population without undermining territorial integrity of Iraq. Hence, European countries supported this endeavour, while the Soviet Union and China opted not to oppose it.

It can be concluded that although this case may lack clear legal grounds, it is crucial not to underestimate its practical success and effectiveness in safeguarding the lives of millions of Kurds by providing protection from the potential threats and oppression of the former Iraqi army. Further, it effectively accomplished both its immediate objective of supplying humanitarian assistance and its permanent objective of repatriating displaced Kurds, ensuring their protection and ultimately facilitating a peaceful transition to a new stable and safe region for the



Kurdish population. This protection assisted to prevent further violence and persecution against the Kurds, ensuring their safety and enabling them to rebuild their lives without fear of reprisals. This success can be attributed to range of factors;

1. Media coverage had a significant role by highlighting the plight of Kurdish civilians stranded in freezing mountain conditions, attracting global public attention and compelling the international community to take decisive action.

2. The response of the international community, notably France, Belgium, the UK, US and later the UN, was immediate and decisive. While the civilian exodus began in late March 1991, the efforts of the international community commenced in early April and resulted in the adoption of Resolution 688 on April 5, 1991.

3. The high interest and willingness of the international key actors in taking measures to mobilize resources, coordinate efforts, protect civilian and provide humanitarian assistance played a significant role in effectiveness of this initiative.

4. The establishment of protected area occurred in the aftermath of defeat of the former Iraqi army in Kuwait during ‘Operation Desert

Storm<sup>1</sup> and the subsequent losses sustained by Iraq following the operation. Further, the Iraqi military were unable to engage in a new confrontation with the coalition forces therefore unable to resist militarily.

5. The area was protected by coalition military forces on the ground with full cooperation with *Peshmerga*, the UN and through air surveillance in the no-fly zone over the area.

Nevertheless, the protected area had certain limitations and shortcoming. Despite the protection provided, it had been attacked in certain instances by Iraq and Turkey. Due to the incompliance with UNSC resolutions, Iraq was sanctioned with economic blockade. Iraq also put protected area under complete blockade. Thus, the Kurdish people suffered double blockades. In one hand, by the UN sanctions on Iraq, on the other hand by Iraq's sever blockade on Kurds leading to devastating situation and mass hunger.

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<sup>1</sup> The operation commenced on 16 January 1991, following the invasion and annexation of Kuwait by Iraqi forces. The Iraqi President, Saddam Hussein, refused to withdraw his forces from Kuwait. In response, the ground war was initiated on 24 February 1991, with US and allied forces making significant inroads. By 28 February 1991, Iraq had been decisively defeated and Kuwait was liberated. See David Vergun, "Nation Observes Anniversary of Operation Desert Storm" (U.S. Department of Defense, 2022) <<https://www.defense.gov/News/News-Stories/Article/Article/2879147/nation-observes-anniversary-of-operation-desert-storm/>> accessed 23 Nov 2023.



Several key lessons can be derived from the experience of protected areas in Iraq, which can be outlined as follows:

1. The legal grounds for the establishment of the protected area in Iraq was questionable, as it did not follow the traditional consent-based approach nor was it explicitly authorized by the UNSC. It was mostly based on interpretations of resolution 688. Despite this, it proved to be crucial in safeguarding the lives of millions of Kurds.
2. A rapid and coordinated action by the international community is crucial for implementing protected areas and protecting vulnerable populations. Mass media proved to be essential tool for raising global awareness and mobilizing such timely international action by exposing the dire situation of civilians.
3. Continuous political commitment and logistical resources by the international community are necessary to ensure the long-term success of protected areas
4. Multifaceted protection involving air and ground military, political commitment and humanitarian efforts enhances the security of civilians within the protected areas.

5. No-fly zones are reasonably effective in safeguarding protected areas. As Operation Northern Watch demonstrated, no-fly zone can supplement ground troops while also providing air support.

6. Another instrumental approach of protecting civilians within protected areas is to rely on local friendly ground forces to defend designated areas and maintain law and order, when external actors withdrew, as was the case with *Peshmerga* forces.

It is therefore reasonable to affirm that the success of protected area initiatives depends on the presence of the aforementioned key elements. Any initiative lacks such elements would face a high risk of failure, deteriorating the plight of civilians and potentially escalating the conflict, leading to a severe humanitarian crisis. The precedent set in Iraq showed that protected areas, despite their flaws, could protect vulnerable stranded populations in times of crisis if they are properly supported and implemented.

To put it briefly, the protected area in Iraq was the most successful instance of enforced protected areas in the 1990s. The experience in Iraq became an international precedent and source of inspiration for subsequent similar protected area in other parts of the world. Most significantly, it marked a turning point in laying the foundation for the





evolving notions of both humanitarian intervention and protected areas in years to come.

### 3.1.2 Protected Areas in Bosnia and Herzegovina

Bosnia and Herzegovina (BiH) was a constituent republic of the former Yugoslavia with multi-ethnic and diverse religious groups of majority Bosnian Muslim (hereinafter Bosniaks<sup>1</sup>), Serbs and Croats. This complex intermingling deemed a core dynamics of the conflict.<sup>2</sup> After the collapse of Yugoslavia in 1991, several republics gained independence. BiH followed a similar path for independence. However, Bosnian Serbs were supporting the unity of Yugoslavia with a strong centralised government whilst other constituent republics particularly Bosniaks pursued independence. The Bosnian Serbs with support of the Yugoslav army engaged in armed conflict against the Bosniaks. The conflict covered one third of the country leading to mass displacement and dire humanitarian conditions. In order to restore peace and stability, the UNSC in resolution 713 imposed arms embargo on Yugoslavia.<sup>3</sup> This embargo had severely affected the military capability of BiH in long

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<sup>1</sup> Bosniaks, the term is used to refer to Muslim Bosnian an ethnic and religious group in southeast of Europe mainly in Bosnia and Herzegovina. They are Sunni Muslims. For more details see: Minority Rights Group International, 'Bosniaks' <<https://minorityrights.org/minorities/bosniaks/>> accessed 9 November 2023.

<sup>2</sup> Steven L. Burg, Paul S. Shoup, *The War in Bosnia-Herzegovina: Ethnic Conflict and International Intervention* (M.E. Sharpe, 2000) 26-27.

<sup>3</sup> UNSC Res 713 (25 September 1991) UN Doc S/RES/713.

term. After gaining control of the relatively large territorial areas, the Bosnian Serbs declared an autonomous Republic of the Serbian People of Bosnia and Herzegovina in January 1992.<sup>1</sup> Given the prevailing circumstances in throughout Yugoslavia, the UNSC considered the situation as threat to international peace and security and decided to establish UNPROFOR aiming at stabilising the situation and ensuring peace and security of region.<sup>2</sup> Nevertheless, Bosniaks held a referendum for independence on 29 February 1992. While the Bosnian Serbs abstained from voting, almost all of the participants voted in favour of independence. As a result, BiH officially proclaimed its independence on 3 March 1992.<sup>3</sup> The Serbs were against the independence and its paramilitary units conducted large-scale war against BiH army. Due to the vicious and organized ethnic cleansing campaigns during the war, hundreds of thousands of Bosnian displaced and sought refuge from neighbouring countries.<sup>4</sup> Within months, the Serbs paramilitary units controlled majority of the Bosnian territory and encircled the capital city of Sarajevo. All humanitarian supplies were

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<sup>1</sup> Carol McQueen (n 48) 55.

<sup>2</sup> UNSC Res 743 (21 February 1992) UN Doc S/RES/743.

<sup>3</sup> Carol McQueen (n 48) 55.

<sup>4</sup> Mark Cutts, 'The Humanitarian Operation in Bosnia, 1992-95: Dilemmas of Negotiating Humanitarian Access' (Working Paper No. 8, Policy Research Unit, UNHCR) <<https://www.unhcr.org/sites/default/files/legacy-pdf/3ae6a0c58.pdf>> accessed 19 August 2023.



impeded rendering civilian in life-threatening condition.<sup>1</sup> The UNSC carefully observed the situation and issued the resolution 761 in 1992, which emphasised the necessity of operating the Sarajevo airport for humanitarian purposes. The resolution called for additional deployment of UNPROFOR in BiH.<sup>2</sup> Furthermore, resolution 770 in 1992 called upon States to take all necessary measures to facilitate the delivery of humanitarian assistance to Sarajevo and other parts of BiH.<sup>3</sup> It further extended the mandate of UNPROFOR to support the humanitarian relief operation on the ground.<sup>4</sup>

Following several months of negotiation on peace plan under the auspices of the UN, Bosniaks accepted the peace plan while Serbs refused it. Conflict further escalated when Serbian forces launched attacks on Srebrenica, the major city of Bosnia. The city was subjected to severe siege by Serbian paramilitary units. The condition of approximately 60.000 of population was unbearable due to the lack of essential basic needs.<sup>5</sup> In order to ensure safety of humanitarian assistance and to support the UNPROFOR on the ground, UNSC in resolution 781 established no-fly zone by banning military flights in the

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<sup>1</sup> Emma Henson, '(Un) Safe Zones: Good Intentions, Bad Logic' (2019) CMC Senior Theses < [https://scholarship.claremont.edu/cmc\\_theses/2210](https://scholarship.claremont.edu/cmc_theses/2210)> accessed 19 August 2023.

<sup>2</sup> UNSC Res 761 (129 June 1992) UN Doc S/RES/761 para 1.

<sup>3</sup> UNSC Res 770 (13 August 1992) UN Doc S/RES/770 para 2.

<sup>4</sup> UNSC Res 776 (14 September 1992) UN Doc S/RES/776. Para 2.

<sup>5</sup> Carol McQueen (n 48) 58.

airspace of BiH.<sup>1</sup> The resolution 816 further authorised state members through international organisation to enforce the no-fly zone and take necessary action in case of any violation of the ban of flight.<sup>2</sup> Resolution 815 asserted that the situation in BIH constitutes threat to the international peace and security, thus authorising UNPROFOR to act under chapter VII of the Charter.<sup>3</sup>

During these distressing circumstances, multiple proposal for enforced protected areas emerged within the UNSC efforts of containment of the situation. In October 1992, the ICRC highlighted the civilian plight, which includes ethnic cleansing, forced evacuation, torture, kidnapping and mass killings. It indicated that hundreds of thousands of Bosniaks were displaced from northern Bosnia and majority of them sought refuge in neighbouring countries. Considering the situations, the ICRC urged the international community to implement the concept of protected areas on ground. It recommended the establishment of protected areas for civilians caught in the conflict in north and central of Bosnia. The ICRC emphasised that the protected areas shall fulfil certain conditions. Notably, such areas shall be adequately protected by

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<sup>1</sup> UNSC Res 781 (9 October 1992) UN Doc S/RES/781 para 1.

<sup>2</sup> UNSC Res 816 (31 March 1993) UN Doc S/RES/816 para 4.

<sup>3</sup> UNSC Res 815 (30 March 1993) UN Doc S/RES/815 preamble.



international forces, such as UNPROFOR, as conflicting parties themselves could not bear the responsibility of such areas.<sup>1</sup>

However, it is important to note that the ICRC's proposed protected areas were not entirely consistent with the criteria outlined in IHL, particularly regarding the responsibility of the parties to protect such areas. While under IHL the protection of protected areas rests with the parties that establish them, the ICRC suggested establishing protected areas under international protection. Hence, this perspective deemed as a departure of the classical IHL approach.

Moreover, Tadeusz Mazowiecki, the Special Rapporteur on human rights in the former Yugoslavia, in his report on 27 October 1992 stated that providing security and shelter for affected civilian within BiH, where they can easily access to humanitarian relief and medical care, would reduce the outflow of displaced Bosniaks to neighbouring countries. This can be achieved by implementing the concept of protected areas.<sup>2</sup>

In this vein, the increasing international pressure, constant armed attacks by Serb paramilitary and the tragic humanitarian conditions

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<sup>1</sup> ICRC, 'The Establishment of Protected Zones for Endangered Civilians in Bosnia and Herzegovina' (Position Paper, 30 October 1992) <<https://casebook.icrc.org/case-study/bosnia-and-herzegovina-constitution-safe-areas>> accessed 10 September 2023.

<sup>2</sup> UNGA, 'Report on the Situation of Human Rights in the Territory of the Former Yugoslavia / Submitted by Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights' UN Doc E/CN.4/1992/S-1/10 (27 October 1992) para. 25 (b).

compelled the UNSC to take further actions. Thusly, it adopted resolution 819 in 1993 under chapter VII of the Charter. The resolution strongly denounced the violations of IHL, with specific emphasis on the abhorrent practice of “ethnic cleansing”. As a result, it declared the Srebrenica and its surrounding as safe area and demanded all parties to limit their attacks on such areas aimed at providing protection and security for civilians in the face of on-going conflict. It demanded immediate cease-fire and withdrawal of Serbian paramilitary units from surrounding areas of Srebrenica and demand the Federal Republic of Yugoslavia (Serbia and Montenegro) to cease its military support to Serb paramilitary units. It condemned the deliberate evacuation of civilian population as part of ethnic cleansing campaign by Serb paramilitary units.<sup>1</sup>

However, thousands of Bosniaks were fleeing conflict and repression of Serbian forces had sought refuge in Srebrenica. The responsibility of protecting the city and its surrounding towns was allocated to Dutch military contingent within UNROFOR.<sup>2</sup> Although the aim of declaring Srebrenica as protected area was merely to protect civilian, numerous armed Bosniaks forces were based in the city.<sup>3</sup>

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<sup>1</sup> UNSC Res 819 (16 April 1993) UN Doc S/RES/819, para 1, 3 and 6.

<sup>2</sup> Emma Henson (n 80) 32.

<sup>3</sup> Jan Willem Honig and Norbert Both, *Srebrenica: Record of a War Crime* (New York, Penguin Books, 1997) 6.



It should be noted that the UNSC resolution 819 in 1993 marked a milestone in evolving the notion of enforced protected areas. It introduced a new model of enforced protected areas by designating areas of special protection for civilians in conflict-affected areas without the consent of conflicting parties. This constitutes a notable expansion in the notion of protected areas beyond the traditional consent-based model of IHL, which mainly relied on consent and cooperation of the parties involved in a conflict.

After the adoption of the resolution 819, a UNSC mission arrived at Srebrenica to observe the situation. The mission observed a discrepancy between the demands of the resolution and the actual conditions on the ground. Although resolution 819 had explicitly demanded the Serbian forces to cease shelling and withdraw from the vicinity of the city, they remained in their positions and put the city under a complete siege. They were blocking humanitarian relief and cutting water and power supply, which turned the city to a 'large jail' with catastrophic consequences. The Venezuelan representative described it as 'slow motion genocide'.<sup>1</sup> Further, the UNPROFOR were conducting demilitarisation plan of the city and disarm the Bosnian forces. In their report, the UNSC mission acknowledged that the

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<sup>1</sup> Monica Hanson Green, 'Srebrenica Genocide Denial Report 2020' (Official State Report, May 2020) <<https://weremember.gov.tr/documents/Srebrenica-Genocide-Denial-Report-min.pdf>> accessed 4 September 2023.

situation observed was inconsistent with the objectives and spirit of resolution 819. It recommended expanding the safe area to cover other threatened cities, for instance, Tuzla and Sarajevo. The report acknowledged that implementing such recommendations would require a larger UNPROFOR presence with a modified mandate.<sup>1</sup>

Having considering the report of its mission, the UNSC adopted resolution 824 declaring five more threatened towns as protected areas. It called upon all parties to treat threatened towns and their adjacent as safe area particularly, Sarajevo, Tuzla, Bihac, Zepa, Gorazde and refrain from any hostile acts against them. It demanded the concerned parties to allow full access of humanitarian agencies and unimpeded movement of UNPROFOR into these areas.<sup>2</sup> It is worth mentioning that the resolution did not explicitly define the methods of protecting these areas in case of attacks. It merely called for the deployment of 50 UN military observers to the region a measure that was later found to be insufficient.

Due to the on-going conflict and deteriorating the condition on the ground, numerous UNSC resolutions were adopted. The resolution 636 expanded the UNPROFOR mandate to include preventing further

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<sup>1</sup> Report of the Security Council Mission Established Pursuant to Resolution 819 (1993) on (30 April 1993) UN Doc S/25700. 6-8.

<sup>2</sup> UNSC Res 824 (6 May 1993) UN Doc S/RES/824, Preamble, paras 1, 3 and 4(a).





attacks, supervising the implementation of the cease–fire, facilitating the removal of all non– Bosnian Government armed forces from the area. It also authorised the use of force by UNPROFOR in self–defence. The resolution permitted individual and collective necessary measures under the authority of UNSC including the use of air power to support the UNPROFOR in implementing its mandate. <sup>1</sup>

Throughout the conflict, various efforts and proposals were made to address the situation. France, for instance, suggested to key actors such as the US, the UK and Russia that deployment of more troops is essential to deter further territorial gains by the Serbs and provide protection for protected areas. It advocated for an increase of troops ranging from 10,000 to 45,000.<sup>2</sup> The then UN Secretary–General, Boutros Ghali, nevertheless in his report to the UNSC indicated that in order to implement the objective of the UNSC resolution 836 by UNPROFOR, approximately 34,000 additional troops required.<sup>3</sup> Regrettably, such recommendations were neither implemented, nor significant increase in the number of troops carried out.

In mid–1995, the number of Dutch troops in Srebrenica and its nearby area was roughly 400 distributed in two bases and thirteen observation

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<sup>1</sup> UNSC Res 836 (4 June 1993) UN Doc S/RES/836, paras 5,9 and 10.

<sup>2</sup> Emma Henson (n 80) 33.

<sup>3</sup> Carol McQueen (n 48) 74.

points. However, Serbian forces launched extensive attacks on Srebrenica and impeding humanitarian reliefs.<sup>1</sup> Although the UNPROFOR authorised to use force in self-defence, the Dutch Commander opted not to react and UNPROFOR declined requests for air support, believing that it would further escalate the situation.<sup>2</sup> However, the situation deteriorated significantly as attacks of the Serbian forces intensified on Dutch observation points. Distressingly, some of observation points were occupied and even a number of Dutch troops were taken hostage.<sup>3</sup>

Given the prevailing circumstance, it became evident that the Serbs had real intention to seize control of Srebrenica. The UNPROFOR commander requested air support and limited air strikes were conducted by The North Atlantic Treaty Organization (NATO) with no desired outcome.<sup>4</sup> In response to the air strikes, the Serbs threatened to kill all hostages and indiscriminately shell the city if the air attacks were not ceased immediately. The air strikes were halted by the request of the Dutch Government. Considering the hesitation of

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<sup>1</sup> Jan Willem Honig and Norbert Both (n 92) 6-8.

<sup>2</sup> Gözde Turan, 'Safe Area Theory and Practice: Security for Civilians or Creating New States of Exception during Humanitarian Crises?' (2021) 52 *The Turkish Yearbook of International Relations* 47.

<sup>3</sup> Carol McQueen (n 48) 80.

<sup>4</sup> NATO, 'NATO's Role in Bringing Peace to the Former Yugoslavia' (Press Info, 1997) <<https://www.nato.int/docu/comm/1997/970708/infopres/e-bpfy.htm>> accessed 22 August 2023.



international community to conduct further air strikes, the Serbian forces launched their final offensive in late July 1995, resulting in the fall of Srebrenica.<sup>1</sup> Consequently, the UN and Dutch government concluded agreement with Serbian forces for withdrawal of Dutch troops and simultaneously observed the evacuation of Bosniak women and children from Srebrenica.<sup>2</sup> During this period, it is estimated that over 25.000 women and children had been forcibly evacuated.<sup>3</sup> The remained inhabitants over 8,000 predominantly men and boys were brutally murdered by Serbia forces.<sup>4</sup> This tragic atrocity has deeply shaken the conscience of humanity. The International Criminal Tribunal for the former Yugoslavia (ICTY) in Prosecutor v. Radislav Krstić case concluded that the 1995 Srebrenica massacre amounted to acts of genocide.<sup>5</sup> Following the occupation of Srebrenica, the offensive by Serbian forces extended beyond the city to include Bihac, the other Bosnian protected areas. Due to the relatively limited response by the international community during this period, Serbian forces advanced and intensified their attacks on other protected areas of Zepa and Sarajevo, which was repelled by Bosnian army. This situation had

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<sup>1</sup> Stefano Recchia, 'The Paradox of Safe Areas in Ethnic Civil Wars' (2018) 10 *Global Responsibility to Protect* 370.

<sup>2</sup> Jan Willem Honig and Norbert Both (n 92) 33.

<sup>3</sup> Monica Hanson Green (n 393).

<sup>4</sup> Jennifer Hyndman, Preventive, Palliative, or Punitive? Safe Spaces in Bosnia-Herzegovina, Somalia, and Sri Lanka' (2003) 16 (2) *Journal of Refugee Studies* 170.

<sup>5</sup> Prosecutor v. Radislav Krstić, (Trial Judgment) ICTY-IT-98-33-T (2 August 2001) para 595.

precipitated NATO engagement through air strikes, which was too late to save thousands of lives that had already perished in Srebrenica.<sup>1</sup>

The failure to protect Bosniak civilians and prevent the tragic events highlighted the inadequacy of previous measures and emphasized the need for stronger actions.<sup>2</sup> As a result, the international community responded decisively where NATO initiated extensive air operation referred to as “Operation Deliberate Force”. The operation caused considerable damage to the Serbian targets. The force commander clearly declared that the NATO operation would continue until below conditions is met by Serbian forces.

*“1) The cessation of all attacks and threats of attack by Bosnian Serb forces against the safe areas of Bihac, Gorazde, Sarajevo and Tuzla;*

*(2) The complete withdrawal of Serb heavy weapons from the 20 km exclusion zone around Sarajevo;*

*(3) An immediate and complete cessation of hostilities throughout the country.”<sup>3</sup>*

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<sup>1</sup> UNGA ‘Report of the Secretary-General Pursuant to General Assembly Resolution 53/35: The fall of Srebrenica’ UN GAOR 54th Session No 42 UN Doc A/54/549 (1999) 76.

<sup>2</sup> Jennifer Hyndman (n 106).

<sup>3</sup> UNGA (n 108) 97.



The Serbian leaders agreed to the conditions and peace negotiation began under the UN auspices. Ultimately, the “Dayton Agreement” reached between concerned parties resulting in ending the four-year (1992–1995) bloody war. The agreement outlined commitments from parties to abide by the principles of sovereign equality among themselves and pledged to uphold human rights. The signatories consented to fully cooperating with the UNSC, to implement the peace plan. This included collaborating on investigations and prosecutions for war crimes and other violations of IHL.<sup>1</sup>

It could be argued that the protected areas played significant role in safeguarding civilian Bosniaks at heightening risk. Such areas became anticipated safe haven attract civilians who flee from other endangered parts of Bosnia and Herzegovina. Thus, saved millions of lives and facilitated access to humanitarian relief for civilians throughout the country. Nevertheless, Srebrenica protected area did not achieve its intended objectives of protecting civilian at heightening risk and providing humanitarian assistance. It is crucial that this failure should not be construed as evidence that protected areas are inherently unviable solutions for protecting civilians in conflict situations.

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<sup>1</sup> Ibid 102.

Numerous factors contributed to this specific instance that led to this unfortunate outcome as described and concluded below:

1– The conflict involved distinct ethnic and religious groups. It typically based on the territorial control and expansion, each party aimed to assert dominance at the cost of the other party. Although several cease–fire agreements were concluded, however, they proved to be fragile and easily violated. The multi ethnic nature of the conflict and different political aspiration fuelled the dispute rendered its peaceful settlement challenging.

2– The international community seemed unenthusiastic to take rapid action for preventing further escalation of the conflict. It took several months for UNSC to adopt resolution 752 in 1992, which specifically addressed the situation in BiH. It was over a year into the conflict that protected areas were established by resolution 819. Despite, the conflict commenced in January 1992, the UNSC resolution 819 was adopted in April 1993. Taking immediate action to contain the conflict in its early stages could have effectively de–escalated the situation.

3– Despite the adoption of numerous UNSC resolutions, roughly 46 resolutions from May 1992 to November 1995,<sup>1</sup> which addressed the

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<sup>1</sup> Mark Cutts (79) 2.



situation in BiH, these resolutions proved ineffective in deterring the advance of Serbian forces and their persistent acts of aggression.

4- The ambiguity of the UNSC resolutions regarding the UNOROFOR mandate in BiH, particularly in terms of the using force, dedicated equipment and other military resources, rendered UNOROFOR paralysed. The resolutions underestimated the gravity of the situation in BiH. Whilst, the initial mandate of the UNOROFOR was to protect civilian and ensure delivering of humanitarian assistance, they found themselves embroiled in the midst of conflict and exposed to direct attacks without adequate means of defence. The lack of clear mandate, insufficient numbers and ill-equipped rendered UNPROFOR vulnerable, as evidenced by the capture of number of the Dutch soldiers during the hostilities in Srebrenica. Further, the UNSC appeared reluctant in authorising additional troops despite of the several requests by UN Secretary General and European states.

5- Following deteriorating of the situation and UNPROFOR became increasingly vulnerable, the UNSC authorised the use of force only in self-defence. However, this measure proved ineffective practically as the Serbian forces outnumbered and well equipped, which deterred UNPROFOR from using force due to the fear of Serbian retaliation. Even though, the UNPROFOR was authorised to use of force in self-

defence and had been granted air support by NATO, however, the commanders were hesitant to utilise such options.

6- There was notable inconsistency and discrepancy between the objectives and spirit outlined under the UNSC resolutions and the actual conditions on the ground. While, the resolution 819 had unequivocally demanded cessation of attacks and withdrawal of the Serbian forces from Srebrenica, the UNPROFOR further took uninspected step of disarming Bosnian army in attempt to demilitarise the city. Regrettably, this step rendered the city without adequate protection in confronting the advancing Serbian forces, which occupied the city with minimal resistance.

7- The arms embargo imposed by UNSC on Bosnia had weakened military capability of Bosnian army and effectively deprived the BiH of exercising its right to self-defense.

8- The UNPROFOR, particularly the Dutch battalion withdrew from Srebrenica as they realised that their presence would not effectively deter the advancing Serb forces. Tragically, this withdrawal created an opportunity for encouraging the Serbian forces to carry out their ethnic cleansing agenda. They stood aside as while Serbian forces evacuated women and children from the city, leaving behind men and boys who were subsequently became victims of one of the most heinous





international crimes and tragic events in modern history. Thus, the Srebrenica protected area served as a precedent that should not be emulated elsewhere.

However, as for the lesson learned from the experience of protected areas in BiH, it can be summarised as follows:

1- The establishment of protected areas in BiH was not in accordance to the traditional consent based model under the IHL rather established by forcible manner. Since protected areas are established without the consent of the conflicting parties, they must be supported by deterrent air and ground military forces. These forces need to have adequate resources and a clear mandate to successfully achieve their objectives.

2- The protected areas shall be clearly identified and delimited on the ground, so that the conflicting parties can easily distinguish them. The UNSC failed to do so as it used expression “Srebrenica and its surrounding” and “towns... and their surroundings” in resolutions 819 and 824.

3- Any deployment of forces to establish and administer protected areas shall be clearly mandated to authorise use of force and adequately armed to carry out their task effectively. The states that contribute troops and participate in the UNSC protected areas initiatives

should understand that their involvement extends beyond purely humanitarian tasks, as it may involve armed confrontations when the situation demands. This understanding is crucial in tackling the intricate challenges of future protected areas.

4- The notion of protected areas in conflict situation shall be regarded as temporary measure for protection of civilian and facilitate peace and stability pending political solution.

5- It is therefore reasonable to affirm that, protected areas established by the UNSC can lead to unfavourable consequences in terms of casualties and the impact on human lives, when compared to consent-based protected areas. The latter, established through agreements between involved parties, often result in lower harm to civilians compared to unilaterally enforced protected areas by the UNSC. The enforced protected areas are more susceptible to violations and attacks. This underscores the potential vulnerabilities and risks associated with enforced protected areas, which may compromise the safety of civilians within those areas if they are not properly established with a clear mandate and a credible military deterrent.

These practical lessons, along with others, must be considered in the implementation of any future protected areas endeavours under the UNSC's mandate.



### 3.1.3 Protected Area in Rwanda

Rwanda is the small African country with roughly 7.5 million of population prior to bloody conflict of 1994.<sup>1</sup> It consisted of three ethnic groups: Hutu, Tutsi and Twa. Approximately 84 per cent of population was Hutu while Tutsi and Twa were minority with 15 per cent and one per cent respectively.<sup>2</sup> The root cause of the Rwandan conflict is attributed to the internal disputes of ethnic hatred between Hutu and Tutsi fuelled with external interventions as art of divide and rule policy. It dates back to post Belgium decolonisation in 1960s. Following decolonisation of Rwanda, the Hutu took control of the country resulted in protracted political and military unrest.<sup>3</sup> Subsequently, widespread attacks on Tutsi civilians spread across the country, resulting in the death of thousands and the displacement of tens of thousands to neighbouring countries, particularly Uganda.<sup>4</sup>

In 1979, Tutsi exiles formed the Rwandan Alliance for National Unity, later renamed the Rwandan Patriotic Front (RPF), which included both Tutsis and moderate Hutus seeking ethnic reconciliation and the return

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<sup>1</sup> Christopher C. Taylor, *Sacrifice as Terror: The Rwandan Genocide of 1994* (Oxford: Berg, 1999) 35.

<sup>2</sup> Human Rights Watch, 'Leave None to Tell the Story: Genocide in Rwanda' (Report 1999) <<https://www.hrw.org/reports/1999/rwanda/Geno1-3-09.htm>> accessed 10 September 2023.

<sup>3</sup> Bruce D. Jones 'Intervention without Borders: Humanitarian Intervention in Rwanda, 1990-1994' (1995) 24 (2) *Millennium: Journal of International Studies* 227.

<sup>4</sup> Gözde Turan (n 100) 48.

of Rwandan refugees. In 1990, RPF launched extensive military operation from Uganda border and invaded most Rwandan territory.<sup>1</sup> The Rwandan army repelled the RPF forces with military support from France, Belgium and Zaire.<sup>2</sup> Consequently, Rwanda experienced the outbreak of a civil war between government forces and the RPF, a Tutsi militia group. In order to quell this civil conflict, the Organisation of African Unity (OAU), which later became the African Union (AU), and UN facilitated a peace agreement known as the “Arusha Accords” in 1993. The Arusha Accords were designed to outline a roadmap towards a new unified government. This new government granted official recognition to the RPF as a legitimate political party. Furthermore, the Arusha Accords mandated the integration of members of the RPF militia within the ranks of the Hutu government forces.<sup>3</sup>

The UN became actively engaged in Rwanda in 1993 at the request of Rwanda and Uganda. This request aimed to deploy military observers to address the concern of the military utilization of the border by the RPF.<sup>4</sup> In response, the UNSC established the United Nations Observer Mission Uganda–Rwanda (UNOMUR) in June 1993. The UNOMUR

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<sup>1</sup> Howard Adelman and Astri Suhrke, *Early Warning and Response: Why the International Community Failed to Prevent the Genocide* (1996) 20 (4) *Disasters* 297.

<sup>2</sup> Nicholas J. Wheeler (n 54) 211.

<sup>3</sup> Howard Adelman and Astri Suhrke, *The path of Genocide: the Rwanda Crisis from Uganda to Zaire* (Transaction Publishers, New Brunswick, 1999) 124.

<sup>4</sup> The United Nations, *The United Nations and Rwanda 1993-1996*(the United Nations Department of Public Information, New York, 1996) 18.



was tasked to monitor and prevent military assistance to be provided to Rwanda across the border.<sup>1</sup> However, in order to assist in implementing the Arusha Accords, the UNSC established United Nations Assistance Mission for Rwanda (UNAMIR) in 1993.<sup>2</sup> The mandate of the UNAMIR encompassed a wide range of responsibilities. These included observing the power-sharing arrangement between the government and the RPF, maintaining the ceasefire, ensuring the security of the capital city, Kigali, and monitoring the integration of a new national army. Furthermore, ensuring compliance with the Arusha Accords, monitoring human rights, facilitating the return of refugees, assisting with landmine clearance, coordinating the delivery of humanitarian aid and supporting preparations for upcoming elections.<sup>3</sup>

Despite the Arusha Accord and the presence of both the OUA (currently AU) and UN, the political and security of the country witnessed an on-going deterioration. This situation was marked by the systematic assassination of political opponents and the targeting innocent civilians.<sup>4</sup> After the death of President Habyarimana<sup>5</sup> in a plane crash on the 6<sup>th</sup> of April 1994, Rwanda engulfed in widespread

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<sup>1</sup> UNSC Res 846 (22 June 1993) UN Doc S/RES/846, paras 2 ,3.

<sup>2</sup> UNSC Res 872 (5 October 1993) UN Doc S/RES/872, para 2.

<sup>3</sup> Lise Morje Howard, *UN Peacekeeping in Civil Wars*(Cambridge University Press, 2008) 31.

<sup>4</sup> Howard Adelman and Astri Suhrke, 'Early Warning and Response' (n 117).

<sup>5</sup> Juvenal Habyarimana was the second president of the Rwanda from 1973 until 1994.

unrest and instability. The presidential guard forces engaged in acts of violence against Tutsis as a means of seeking retribution for the death of Habyarimana. Initially, political leaders who opposed extremist ideologies were targeted, along with their families, regardless of their Tutsi or Hutu ethnicity. Roadblocks were set up throughout the capital, Kigali to apprehend and kill Tutsis. The mass killings were initially concentrated in Kigali, but later spread across the entire country. Since it became evident that the UN's intervention to halt the slaughter would not be effective, the RPF advanced from north and conflict reignited between government forces and the RPF led to a renewed outbreak of violence and armed conflict. The scope and nature of the killings were immense, with civilians deliberately targeted on basis of their identity in a massive scale.<sup>1</sup> These horrific events were believed to constitute genocide as the US secretary of state Warren Christopher labelled the scale of the massacre as "tantamount to genocide".<sup>2</sup> Additionally, in the case of *Prosecutor v. Jean Kambanda*, the International Criminal Tribunal for Rwanda (ICTR) recognized that genocide took place within the conflict in Rwanda. The ICTR reached the conclusion that Jean Kambanda, the former prime minister of Rwanda, was guilty of

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<sup>1</sup> Carol McQueen (n 48) 103.

<sup>2</sup> Samantha Power, *A Problem from Hell: America and the Age of Genocide* (Basic Books, New York, 2002)298.



committing genocide.<sup>1</sup> Within a matter of weeks, the full enormity of the human tragedy was revealed, as estimates indicated that between 500,000 to 800,000 individuals had been brutally and systematically exterminated. The genocide ended shortly after the RPF achieved victory over the government forces on the 18<sup>th</sup> of July.<sup>2</sup>

In facing the genocide, the UNAMIR was not in a position to prevent the atrocity and was helpless. It was a traditional peacekeeping mission its mandate essentially limited to monitoring the implementation of the Arusha Accords and only allowed to use of force in self-defence. Their number before the genocide was approximately 2500 lightly armed personnel.<sup>3</sup> Further, the UNAMIR was not even fully capable of protecting itself. Its personnel came under attack where ten of Belgian soldiers who were tasked to protect Prime Minister, Agathe Uwilingiyimana, were killed along with other cabinet ministers by presidential guard.<sup>4</sup> The Belgian Government directly withdrew its contributing troops with UNAMIR. This withdrawal had sharply dropped the size of the force and weakened the mission.<sup>5</sup> Roméo Dallaire, the

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<sup>1</sup> Prosecutor v. Jean Kambanda (Judgement and Sentence), ICTR 97-23-S ( 4 September 1998) para 40 (1).

<sup>2</sup> Carol McQueen (n 48) 103.

<sup>3</sup> Hikaru Yamashita (n 58) 140.

<sup>4</sup> Astri Suhrke, 'Dilemmas of Protection: The Log of the Kigali Battalion' (1998) 5 (2) *International Peacekeeping* 6.

<sup>5</sup> Lise Morje Howard (426).

UNAMIR Force Commander, stated that UNAMIR should be expanded by 5000 troops to prevent crimes against humanity.<sup>1</sup>

In light of the practical weakening of the UNAMIR, the UN Secretary-General without considering Dallaire's request presented three options to the UNSC regarding the future of UNAMIR. The first option involved an immediate and substantial reinforcement of UNAMIR, accompanied by a modification of its mandate. This would transform UNAMIR into the UN Chapter VII peace enforcement operation with the capacity to restore law, stability and effectively halt the on-going killings. The second option entailed a reduction in the size of UNAMIR to 270 personnel, with solely a small contingent remaining stationed in Kigali. Their role would be to act as a mediator between the conflicting parties, aiming to facilitate a ceasefire. The third option which not preferred by Secretary General, included a complete withdrawal of UNAMIR from Rwanda.<sup>2</sup> Surprisingly, the UNSC chose the second option and reduced the size of the UNAMIR through resolution 912 in 1994.<sup>3</sup> It is important to mention that despite its small number presence, it protected political individuals of the opposition parties and thousands of civilian who sought shelter at protected areas under UNAMIR control in Kigali. Such

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<sup>1</sup> Linda Melvern, *A People Betrayed: the Role of the West in Rwanda's Genocide* (London and New York, Zed Books, 2009) 169.

<sup>2</sup> Special Report of the Secretary-General on the United Nations Assistance Mission for Rwanda, UN Doc S/1994/470 (20 April 1994) 3,4.

<sup>3</sup> UNSC Res 912 (21 April 1994) UN Doc S/RES/912, para 8 (c).





areas became *de facto* protected areas which include the Arriahoro stadion, the King Faisal Hospital and the Hotel Mille Collines. These protected areas saved approximately 20,000 lives.<sup>1</sup>

The situation had deteriorated considerably, Rwanda remains in a state of complete instability and insecurity, characterized by widespread violence. The conflict between the government forces and the RPF persisted. The capital city, Kigali, divided between the government forces and the RPF. Although the government forces maintain control of the airport, its operation was disrupted by hostilities in its vicinity. Armed militias engaged in widespread violence, targeting and terrorizing innocent civilians. The situation has resulted in the displacement of approximately 2 million individuals. These circumstances have resulted in significant humanitarian crisis, posing challenges for the delivery of essential relief aids.<sup>2</sup> After careful consideration of the situation, the UNSC recognised that the magnitude of the human suffering constitutes a threat to peace and security in the region. It adopted resolution 918 in 1994 and approved the expansion of UNAMIR, authorizing a total of 5,500 troops and modifying its mandate. The revised mandate aimed to enhance UNAMIR's role in ensuring the safety and protection of displaced civilians at heightening danger in Rwanda. This encompassed

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<sup>1</sup> Astri Suhrke (n 131) 12.

<sup>2</sup> Report of the Secretary-General on the Situation in Rwanda, UN Doc S/1994/565 (13 May 1994) 2.

the establishment and maintenance of secure humanitarian areas.<sup>1</sup> However, the implementation of resolution 918 had limited support. The UN Secretary General stated that the expanded UNAMIR required several months to be deployed due to the lack of cooperation and necessary resources provided by member states. Consequently, finding suitably equipped troops for the mission proved challenging.<sup>2</sup>

Due to the delay in deployment of UNAMIR, the on-going daily atrocities and the extensive media coverage highlighting the brutal slaughter of civilians, France offered to lead a multinational mission as an interim solution until the full deployment of UNAMIR personnel. The French Foreign Minister expressed the intention to intervene in order to halt the massacres and protect populations facing the threat of extermination. The idea was to create a protected area in south-western Rwanda near Zaire border. As pressure mounted on the UN for action to halt the genocide, intervention by France presented an opportunity for the UN to be perceived as responding to the crisis.<sup>3</sup> Owing to the magnitude of the civilian plight and negative impact of the situation on the peace and security of the region, the UNSC clearly highlighted that the prevailing crisis pose significant threat to

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<sup>1</sup> UNSC Res 918 (17 May 1994) UN Doc S/RES/918, para 3 (a).

<sup>2</sup> Karin Landgren, 'Safety Zones and International Protection: A Dark Grey Area'(1995) 7 (3) *International Journal of Refugee Law* 448.

<sup>3</sup> Nicholas J. Wheeler (n 54) 231.



international peace and security, thus authorized France intervention. In June 1994, resolution 929 adopted under Chapter VII of the UN Charter which authorised member state (France) to undertake a multinational humanitarian operation to contribute to the safety and protection of displaced persons and civilians at heightening risk by establishing secure humanitarian areas.<sup>1</sup>

In July, France led operation called “Operation Turquoise” which was launched by a force consisting of 2,500 French and Senegalese troops. The objective was to establish a ‘safe humanitarian zone’ in the most affected areas of Cyangugu, Kibuye and Gikongoro in southwest of Rwanda, covering approximately one-fifth of the territory.<sup>2</sup> This designated area received substantial displaced population with approximately 800,000 in Cyangugu, an additional 600,000 in Gikongoro, and 300,000 in Kibuye.<sup>3</sup> The UNHCR further reported similar number that roughly 1.2 million Internally Displaced Persons (IDPs) were present in the protected areas controlled by French.<sup>4</sup> Such a protected area intended to facilitate humanitarian assistance and provide shelter for vulnerable populations fleeing the on-going violence

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<sup>1</sup> UNSC Res 929 (22 June 1994) UN Doc S/RES/929, preamble, paras 2, 3.

<sup>2</sup> Karin Landgren (139) 449.

<sup>3</sup> David Millwood, *The International Response to Conflict and Genocide: Lessons from the Rwanda Experience* (Copenhagen, 1996) 43.

<sup>4</sup> Linda Melvern (n 133) 335.

and atrocities.<sup>1</sup> Furthermore, it aimed to prevent both retaliatory actions by the RPF against Hutus and a massive influx of refugees to the neighbouring countries.<sup>2</sup> It should be noted that the multinational force deployed under Operation Turquoise was granted authorization to utilize “all necessary means” to accomplish humanitarian objectives. The phrase “all necessary means” indicated that the force had the authority to use force if required. Further, the operation was conducted under Chapter VII of the UN Charter, which allows for the use of force to maintain or restore international peace and security. The resolution limited the duration of the operation to a period of two months, serving as an interim measure until the full deployment of UNAMIR.<sup>3</sup>

The Operation Turquoise played a crucial role in safeguarding approximately 1.5 to 2 million civilians who were at risk within the protected area.<sup>4</sup> Alongside its security operations, the mission actively provided relief support, with a particular focus on medical assistance efforts. The protection of humanitarian convoys to the zone was also a significant responsibility of the operation. As a result of these combined efforts, the mortality rate notably decreased, reflecting the positive

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<sup>1</sup> Karin Landgren (139) 449.

<sup>2</sup> Thomas G. Weiss, *Military-Civilian Interactions: Intervening in Humanitarian Crises*, (Oxford: Rowman&Littlefield Publishers, 1999) 151.

<sup>3</sup> UNSC Res 929 (n 141).

<sup>4</sup> Barry R. Posen, ‘Military Responses to Refugee Disasters’ (1996) 21(1) *International Security* 97.



impact and effectiveness of Operation Turquoise in addressing the humanitarian crisis.<sup>1</sup> Although, the farce led intervention undoubtedly saved countless lives and prevented a further mass influx of refugees from Rwanda, it occurred quite belatedly more than two months after the onset of the genocide.<sup>2</sup> In July 1994, RPF forces gained control of Rwanda, effectively ending the civil war. Following their victory, the RPF unilaterally declared cease fire and established a broad-based Government. However, the Operation Turquoise concluded in August 1994 and French forces withdrew following the late deployment of UNAMIR to Rwanda, by which time the genocide had already concluded, and the need for protected areas was no longer present. Subsequently, the UNAMIR assumed the responsibility in the protected area.<sup>3</sup> The RPF accused the French operation of providing shelter and support for the Hutus who committed genocide in ten camps. Furthermore, the French forces did not make significant efforts to disarm the Hutus within the protected area. The presence of armed Hutus within protected area could pose future security challenges.<sup>4</sup> Consequently, the interim government made the decision to relocate IDPs to their original homes with the cogent of UNAMIR and forcefully

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<sup>1</sup> Thomas G. Weiss (n 146) 152.

<sup>2</sup> Howard Adelman and Astri Suhrke 'Early Warning and Response' (n 117) 300.

<sup>3</sup> The United Nations ( n 120) 57.

<sup>4</sup> Hikaru Yamashita (58) 158.

close the camps within the protected areas. The Kibeho camp, which accommodated a significant population ranging from 84,000 to 120,000 people was perceived by the Government as a source of hostility. The closure of the Kibeho camp resulted in a tragically event led to hundreds of casualties. Subsequently, by April 1995, all remaining camps for IDPs were emptied.<sup>1</sup>

There have been extensive discussions and debates regarding France's perceived motives for its intervention. Criticisms have been raised that France had significant connections with the Hutu government. Thus, it intervened to support the Hutu government and prevent the complete victory of the RPF. It is evident that, however, it aimed to prevent the escalation of refugee flows into northern Zaire.<sup>2</sup> Another valid criticism is that France could have offered its initiative earlier, which would potentially prevented the occurrence of genocide. Additionally, instead of leading its own intervention, France could have offered its support by providing troops to the expanded UNAMIR mission.

It can be argued that despite all the criticisms, the France led operation played a significant role in filling the gap of UN intervention during the Rwandan conflict. In spite of the UN Secretary General's request for

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<sup>1</sup> Karin Landgren (139) 450.

<sup>2</sup> Gerard Prunier, *The Rwanda Crisis: History of a Genocide*, (New York: Columbia University Press, 1995) 281.



allocating troops for UNAMIR, the member states were unwilling to offer troops and military resources. This had created a vacuum that needed to be addressed. In this vein, Operation Turquoise emerged as significant effort that filled the gap and effectively saved hundreds of thousands civilian lives by establishing protected area in the south of the Rwanda. It facilitated the delivery of humanitarian assistance to the region and enabled humanitarian agencies to conduct their activities. Therefore, the role of Operation Turquoise in establishing protected areas deserves recognition due to its substantial impact in safeguarding civilian lives and mitigating humanitarian crises, particularly in addressing the void created by the international community's hesitancy to intervene. Indeed, the UN encountered numerous deficiencies and challenges in its response to the genocide in Rwanda. The international community, including the UN, has to acknowledge and carefully examine such shortcomings. A number of the key shortcomings that need to be recognized include *inter alia*:

1- The lack of rapid and decisive response within the UN to the reports of early warning signs of the dire humanitarian situation, particularly the genocide in Rwanda.

2- The decision-making structures and the process of mobilizing troops were arduous. Despite the UN Secretary General's request for

additional troops, the member states were reluctant to provide adequate support. The inefficiency of the current system became evident when it took several months to deploy troops while genocide was unfolding.

3- Notwithstanding, UNAMIR's limited size and ill-equipped to respond effectively in Rwandan conflict, its mandate was restrictive merely allowed to use the force in self-defence that limiting its ability to protect civilians and prevent genocide.

In short, the aforementioned challenges necessitate the need for more effectiveness and expedited mechanisms for deploying military forces in crises situations. In order to improve the capacity of UN to respond decisively, certain core recommendations merit consideration as follows:

1- Setting up an independent UN force consisted of troops directly recruited by the UN, rather than solely relying on contributions from member states, could be a viable strategy. It would be subject to proper military command and control systems within the UN. The financial costs for establishing and maintaining this force would be distributed among member states.

2- The establishment of a multinational UN Stand-By Force which would integrate national stand-by units from various countries into a larger multinational force. These units would undergo coordinated





training programs before deployment, ensuring better coordination among the participating forces.

3- It is essential to furnish UN missions with flexible and robust mandates that authorise them to use necessary force for protecting civilian populations and uphold peace. The mandates should possess sufficient flexibility to adapt to evolving situations on the ground.

Hence, implementing these suggestions would require collective commitment, political will, and financial support from member states and the international community to strengthening the protected areas.

To conclude, it is evident that the success or failure of protected areas in the 1990s was influenced by numerous intricate and interconnected factors. Therefore, any future attempts to utilize similar methods to safeguard civilians in their respective countries should be approached with caution, taking into consideration the specific circumstances of each case individually. In general, protected areas seem more likely to succeed, particularly when established without the consent of the warring parties, if they are well-designed, mandated properly and coherent. Furthermore, their implementation should be carried out as a clear temporary measure, with clearly defined rules of engagement. Additionally, safety zones are more likely to be effective if integrated into a broader conflict resolution strategy. Eventually, ensuring the

willingness of states to enforce protected areas through credible military deterrence is likely improves the chances for success. While careful consideration of context remains essential, these factors offer some guidance that could assist protected areas in achieving their objectives when judiciously applied based on specific conflict dynamics.

### **3.2 Enforced Protected Areas in Contemporary Armed Conflicts**

Since the Operation Turquoise in Rwanda in 1994, no more protected areas of similar kind have been established, probably due to the difficulties associated with their implementation and enforcement. However, protected areas still hold a prominent position in on-going discussions concerning the protection of civilians during times of conflict and warfare. There have been numerous calls and attempts to establish protected areas in various conflict situations aimed at protecting civilians. For instance, following the series of uprisings known as the 2011 Arab Spring<sup>1</sup>, there have been continuous appeals for international community to establish protected areas within countries

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<sup>1</sup> The Arab Spring refers to a series of pro-democracy protests and uprisings against authoritarian governments demanding political reforms, social justice, and an end to authoritarian rule that occurred across several Arab countries in the Middle East and North Africa, starting in late 2010. It began in Tunisia in December 2010 then quickly spread to other countries such as Egypt, Libya, Yemen and Syria. See, Wan Kamal Mujani and Siti Nurul Izah Musa, 'The Phenomenon of Arab Spring in the Middle East' (2015) 6(4) *Mediterranean journal of social sciences* 152. See also, Ali Onur Özçelik, 'A Litmus Test for Europe: EU Mediterranean Politics After the Arab Spring' in Cenap Çakmak and Ali Onur Özçelik (eds) *The World Community and the Arab Spring* (Palgrave Macmillan Cham, 2018) 41.



that are experiencing conflicts. This is particularly relevant in the cases of Syria, Libya, and Iraq, where the need for safeguarding the civilian population is of utmost importance,<sup>1</sup> including recent conflicts of Ukraine and Palestine. In the Syrian case, various editorials and opinion pieces in media and platforms have urged the US and NATO to take a leading role in deploying international forces and establish protected areas to protect civilians in predominantly Kurdish areas.<sup>2</sup> However, since the Syrian civil war that began in March 2011, Turkey has strongly advocated for creating a safe zone in northern Syria. Turkey called on the UN to take action to prevent refugee outflows by establishing protected area within Syria. Turkey has also emphasized the consequences of delay in actions for the UNSC members, by referring to past tragedies of Srebrenica, Halabja, and Gaza where inaction led to humanitarian crises.<sup>3</sup> The Turkish President Erdogan submitted a safe zone proposal during the UN General Assembly (UNGA) meeting

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<sup>1</sup> Stefano Recchia, 'The Paradox of Safe Areas in Ethnic Civil Wars' (2018) 10 *global responsibility to protect* 363.

<sup>2</sup> See for instance, Nicholas Burns and James Caffrey, 'The Diplomatic Case for America to Create a Safe Zone in Syria' (*Washington Post*, 4 February 2016)

<<https://www.washingtoninstitute.org/policy-analysis/diplomatic-case-america-create-safe-zone-syria>> accessed 31 October 2023. See also Kori Schake, 'Safe Zones Proved Their Value after the Gulf War' (*New York Times* 19 July 2016)

<<https://www.nytimes.com/roomfordebate/2016/02/22/is-there-action-the-us-should-take-in-syria/safe-zones-proved-their-value-after-the-gulf-war>> accessed 31 October 2023.

<sup>3</sup> Ministry of Foreign Affairs of Turkey. "Address by Mr. Ahmet Davutoğlu, Minister of Foreign Affairs of Turkey at the 67th United Nations General Assembly, (28 September 2012, New York)" <[https://www.mfa.gov.tr/address-by-mr\\_-ahmet-davutoglu\\_-minister-of-foreign-affairs-of-turkey-at-the-67th-united-nations-general-assembly\\_-28-september.en.mfa](https://www.mfa.gov.tr/address-by-mr_-ahmet-davutoglu_-minister-of-foreign-affairs-of-turkey-at-the-67th-united-nations-general-assembly_-28-september.en.mfa)> accessed 9 November 2023.

in September 2019. The initial concept outlined a safe zone spanning 480 kilometers in length and 30 kilometers in depth. This zone was intended to stretch from the Syrian–Iraqi border to the western city of Manjib, encompassing the provinces of Aleppo, Hassakah, and al–Raqqah.<sup>1</sup> Nonetheless, the fragmented and divergent views in UNSC especially among the permanent members and prevailing geopolitical considerations obstructed an appropriate response Turkey's request. Additionally, then–US President Barack Obama refused to support the proposal. Meanwhile, during his presidential campaign, Donald Trump made a commitment to establish a "beautiful, safe zone" in Syria. However, following his election, this proposed safe zone was not implemented.<sup>2</sup> Consequently, Turkey unilaterally took action and launched a military campaign in Northern Syria in 2019 with the aim of pushing back Kurdish fighter groups from its border and establishing a safe zone to accommodate up to two million Syrian refugees. However, it could be argued that the establishment of such as zone was solely driven by humanitarian concerns rather influenced by political motivations. As such, it is deemed illegal since it was established without the consent of concerned parties, including Syria and Kurdish

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<sup>1</sup> MA Natalia Gierowska 'Are Safety Zones a Threat to the Institution of Asylum? The Changing Tide of Immigration and Emigration during the Last Three Centuries' *IntechOpen* <<http://dx.doi.org/10.5772/intechopen.106148>> accessed 9 November 2023.

<sup>2</sup> George Graham, 'Syrian Safe Zones: the Dangers'(Chatham House, 2017) <<https://www.chathamhouse.org/publications/the-world-today/2017-04/syrian-safe-zones-dangers>> accessed 9 November 2023.



armed groups. More significantly, this military action was without authorisation of the UNSC. Regrettably, the safe zone proved to be perilous, leading to the displacement of over 150,000 individuals and the loss of nearly 100 civilian lives. Additionally, Turkish forces were accused of committing severe human rights violations and war crimes that have caused numerous casualties among the civilian population.<sup>1</sup> This zone established unilaterally and given tacit green light by key actors in Syria including Russia and the US.

As for Libya in 2011, following unfolding demonstrations across the county, the Libyan government under the former president Muammar Al-Qadhafi had responded with attacks against protesters using artillery and air strikes. The Arab League made an appeal for the UNSC to fulfil its responsibility in addressing the situation in Libya and to promptly take the necessary actions to enforce a no-fly zone on Libyan military aviation and to establish protected areas in vulnerable locations that at risk of aerial and artillery attacks.<sup>2</sup> Then, the UNSC Resolution 1973

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<sup>1</sup> Brid Ni Ghrainne, 'The Syrian Safe Zone and International Law' (2020) 23 *Institute of International Relations Prague, Centre of International Law 2*.

<sup>2</sup> 'The outcome of the Council of the League of Arab States Meeting at the Ministerial Level in its Extraordinary Session on the Implications of The Current Events in Libya and the Arab Position' (Cairo 2011) <<https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Libya%207360.pdf>> accessed 31 October 2023.

authorized member states “to take all necessary measures” including the use of force and enforcing no-fly zone to protect civilians in Libya.<sup>1</sup>

In 2014 when the Islamic State in Iraq and Levant (ISIL) controlled North-west of Iraq, the Iraqi minority communities including Yazidis, Christians, Turkmen, Kakayis and Shabaks faced intense persecution, prompting appeals for the creation of secure zones to safeguard these vulnerable groups. Analysts and human rights practitioners have urged the US and its allies to institute safe areas specifically for Christian and Yazidi minorities.<sup>2</sup> Additionally, there have been recent calls for the establishment of protected areas in other conflict regions, such as in Myanmar's Rakhine State. In the same context, in Myanmar in 2017, the military operation carried out against Rohingya Muslims resulted in the mass exodus of hundreds of thousands who sought refuge across the border in Bangladesh. The UN subsequently characterized this military operation as a clear instance of ethnic cleansing.<sup>3</sup> Bangladesh

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<sup>1</sup> UNSC Res 1973 (17 March 2011) UN Doc S/RES/1973, paras 4 and 6.

<sup>2</sup> See for instance, Dominique Soguel, ‘A Sanctuary for Iraqi Yazidis’ (Christian Science Monitor, 12 August 2014) < <https://www.csmonitor.com/World/Middle-East/2014/0812/A-sanctuary-for-Iraqi-Yazidis-and-a-plea-for-Obama-s-intervention> > accessed 31 October 2023; and Andrew Doran, Robert Nicholson, Stephen Hollingshead, and Robert Destro, ‘Safe Zone: Security in the Aftermath of Isis’ (The American Interest, 2 March 2017) < [https://www.law.edu/media/DestroRobert-scholarship/2017\\_Security\\_in\\_the\\_Aftermath\\_of\\_ISIS-The\\_American\\_Interest.pdf](https://www.law.edu/media/DestroRobert-scholarship/2017_Security_in_the_Aftermath_of_ISIS-The_American_Interest.pdf) > accessed 31 October 2023.

<sup>3</sup> Meheebub Sahana, Selim Jahangir and Md. Anisujjaman, ‘Forced Migration and the Expatriation of the Rohingya: A Demographic Assessment of Their Historical Exclusions and Statelessness’ (2019) 39 *Journal of Muslim Minority Affairs*, 44.



has put forward a proposal to establish protected area in Rakhine state. The objective of this initiative was to protect civilian and prevent the mass influx of refugees into Bangladesh, which has occurred as a result of a military crackdown in Myanmar.<sup>1</sup>

As for Russo–Ukraine war in 2022, no significant initiatives have been put forward to establish protected areas through UNSC resolution. As any such initiative would be fruitless considering the Russia is a permanent member of the UNSC and veto wielding country, which can prevent any UNSC resolutions aiming at establishing enforced protected areas in the conflict affected areas. As Russia has vetoed numerous resolutions, the last two vetoes were in February and September 2022.<sup>2</sup> Thus, other less ambitious mechanism as alternative to the protected areas has been undertaken such as humanitarian corridors in Mariupol, Ukraine.<sup>3</sup> With regards to recent escalation of the conflict in Gaza, on October 7, 2023, Hamas militants initiated an unprecedented cross–border attack on Israel, resulting in the death of approximately

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<sup>1</sup> Serajul Quadir, Ruma Paul and Krishna N. Das, ‘Bangladesh Wants “Safe Zones” to Ease Rohingya Crisis’ (Reuters, 8 September 2017) <<https://www.reuters.com/article/us-myanmar-rohingya-bangladesh-analysis-idUSKCN1BJ1C6>> accessed 31 October 2023.

<sup>2</sup> UN, Russia Vetoes Security Council Resolution Condemning Attempted Annexation of Ukraine Regions’ < <https://news.un.org/en/story/2022/09/1129102>> accessed 9 November 2023.

<sup>3</sup> Françoise Duroch Maelle L'Homme, ‘Humanitarian Corridors in Ukraine: the Illusion of an Ideal Solution’ (Geneva Solutions 19 May 2022) <<https://genevasolutions.news/peace-humanitarian/humanitarian-corridors-in-ukraine-the-illusion-of-an-ideal-solution>> accessed 9 November 2023.

1,200 people and the capture of over 200. In response, Israel declared war and two days later, on October 9, Israel implemented a blockade on the Gaza Strip, cutting off essential supplies such as electricity, water and fuel. Since the conflict began, Gaza has been subjected to extensive bombardment through Israeli airstrikes and artillery attacks, resulting in horrific death toll. As of the date of writing, on 13 November 2023, the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) has reported that more than 11,000 individuals, including nearly 4,000 children. Additionally, over 27,500 people have been injured and approximately 1.6 million people have been displaced from Gaza.<sup>1</sup> The death toll has attracted international condemnation and promoting demands for protecting civilian and immediate cease-fire. The ICRC called for urgent actions for protecting civilian caught in fighting including establishing protected areas.<sup>2</sup> The US took initiative in partnership with the UN to establish protected zones within Gaza. Additionally, discussions have taken place between the U.S. President's National Security Advisor and Israeli officials regarding the potential

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<sup>1</sup> United Nations Office for the Coordination of Humanitarian Affairs, 'Hostilities in the Gaza Strip and Israel - reported impact | Day 38' <<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-38>> accessed 13 November 2023.

<sup>2</sup> ICRC, 'Israel and the Occupied Territories: The ICRC Urges Protection for Gaza Civilians Evacuating and Staying Behind' (ICRC, 12 November 202) <<https://www.icrc.org/en/document/israel-and-occupied-territories-icrc-urges-protection-gaza-civilians-evacuating-and-staying>> accessed 13 November 2023.





creation of protected areas in Gaza.<sup>1</sup> Consequently, Israel without resorting to the UNSC unilaterally designated the southern part of Gaza as a safe zone and urged civilian to evacuate the north of Gaza towards this zone. However, this zone has been continuously targeted and bombarded by Israel, including Al Ahli Hospital and Jabalia refugee camp, intensifying the fear among civilians that no place is truly safe in Gaza strip.<sup>2</sup> This is evident that the establishment of protected areas without the UNSC authorization poses a significant risk to civilians, as it increases their vulnerability. Additionally, this unilateral action raises legitimate concerns about the feasibility of ensuring safety and security in such situations. One could make the argument that, similar to the situation in Ukraine, the chances of establishing enforced protected area in Gaza through UNSC resolutions are dim. This is primarily due to the US' unwavering support of Israel and its willingness to veto any resolutions related to this issue. The US has even exercised its veto power against draft resolutions that called for a ceasefire in Gaza.<sup>3</sup> Therefore, it is evident that the US would likely block any potential

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<sup>1</sup> Daryo, 'USA works with UN to create safe zones for civilians in Gaza' <<https://daryo.uz/en/2023/10/13/usas-efforts-towards-establishing-secure-zones-in-gaza-sector>> accessed 13 November 2023.

<sup>2</sup> Najib Jobain, Samya Kullab and Ravi Nessman, 'As Israel's Bombing Hits Declared 'Safe Zones', Palestinians Trapped in Gaza Find Danger Everywhere' <<https://www.pbs.org/newshour/world/as-israels-bombing-hits-declared-safe-zones-palestinians-trapped-in-gaza-find-danger-everywhere>> accessed 13 November 2023.

<sup>3</sup> UN, 'Israel-Gaza Crisis: US Vetoes Security Council Resolution' <<https://news.un.org/en/story/2023/10/1142507>> accessed 11 November 2023.

resolution aimed at establishing protected area in Gaza without Israel's consent. It is important to note further that this assessment reflects the current situation at the time of writing.

In keeping with the foregoing, since the 1990s, no enforced protected areas authorized by the UNSC have been established. This can be attributed to several factors. Firstly, the complexity of recent conflicts, characterized by the presence of multiple armed groups, shifting alliances, and varying interests, allegiances, and incentives amongst the UNSC's members. Moreover, there has been a shift from interstate wars to predominantly intrastate conflicts including civil wars, insurgencies and low-intensity armed conflicts as well as changes in the means and tactics of warfare have considerable negative consequences on UNSC actions in protecting civilians. Secondly, the diverse motivations and interests of political, religious, or ethnic nature further complicate the situation, making it difficult to achieve unanimity within the UNSC. This is evident in the use of veto power by permanent members competing to veto various draft resolutions, which has resulted in a deadlock. For example, Russia has exercised its UNSC veto power in support of the Syrian regime on 28 occasions, 15 of which were joint votes with China.<sup>1</sup> Similarly, within only three days 16-

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<sup>1</sup> UN Documentation Research Guides, 'UN Security Council Meetings & Outcomes Tables' < <https://research.un.org/en/docs/sc/quick> > accessed 13 November 2023.



18 of October, two resolutions regarding Gaza have been vetoed by Russia and US respectively. In 25 October, China and Russia jointly vetoed a resolution on Gaza.<sup>1</sup> These instances highlight how divergent interests among UNSC members can hinder the establishment of enforced protected areas. These actions have paralysed the UNSC and have undermined its credibility and effectiveness. This situation has a negative impact on the overall reputation and standing of the UN. It conveys the message that resolutions adopted by the UNSC are primarily influenced by the national interests of its permanent members, thus raising concerns about impartiality and fairness in decision-making processes.

#### 4. Conclusion

Essentially, the establishment of protected areas necessitates the consent of the belligerent parties, which may not always be attainable under certain circumstances. However, the UNSC as the principal organ of the UN with the responsibility to uphold international peace and security can play a vital role in intervening to safeguard civilians. This intervention can involve authorising the coercive establishment of protected areas in conflict situations characterised by severe human

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<sup>1</sup> UN, 'Gaza Crisis: Deadlock Deepens as Security Council Rejects Competing Resolutions by US And Russia' <<https://news.un.org/en/story/2023/10/1142817>> accessed 13 November 2023.

rights violations with significant humanitarian crises, which pose a threat to the international peace and security. This signifies a departure from the traditional consent-based model envisaged under IHL. The enforced protected areas represent innovative endeavours initiated by the UNSC to safeguard civilians facing direct threats of extermination or ethnic cleansing. Such areas have been established in various conflict zones, including in Iraq, Bosnia and Herzegovina, and Rwanda. As extensively discussed, the Iraqi safe haven stands out as the most effective safety zone implemented during the 1990s by international coalition and enabling the Kurds to return to their homes and reside in relative security. Additionally, the establishment of a no-fly zone in Kurdistan acted as a deterrent against any retaliatory actions by Saddam Hussein's Regime. In the same vein, France's led protected area in Rwanda under UNSCs' resolution 929 in 1994 demonstrated notable effectiveness in certain critical aspects. It directly saved hundreds of thousands of lives by offering refuge to civilian population within the designated area. The implementation of the zone mitigated mass outflow of displaced people and allowed unimpeded humanitarian access to areas that had previously been unreachable. Lastly, notwithstanding the unfortunate fall of Srebrenica and its subsequent massacres, the protected areas established in BiH under resolution 819 in 1993 were not devoid of value. The deterrent effect of NATO's air



power played a pivotal role in safeguarding the other protected areas, such as Sarajevo, Tuzla, Bihac, Zepa and Gorazde from falling under Bosnian Serb control. Thus, the protected areas in BIH were instrumental in saving the lives of millions of civilians and effectively curbing further ethnic cleansing attempts. While protected areas established through UNSC mandates demonstrated potential for saving civilian lives in past conflicts, no such zones have been authorized over the last three decades. This is largely due to the challenges associated with establishing and implementing protected areas as well as the complexity and multidimensional nature of recent conflicts. Additionally, diverging state interests and the voting system of the UNSC that resulted in the lack of consensus and political deadlock within the UNSC are further challenges that have rendered the UNSC incapable of taking action and authorising the establishment of protected areas. Notable instances that illustrate the UNSC's paralysis induced by these obstacles include, the situations in Syria, Ukraine and most recently the on-going conflict in Palestine. Although current international conditions entirely disregarded as a mechanism for civilian protection. Subsequently, the protected areas remain a valuable tool for protecting civilian populations in conflict zones. In view of the foregoing, this paper offers several key recommendations, which include *inter alia*:

1. It is suggested that the UNSC continue its endeavours in collaboration with UNGA and other international organizations persist in their efforts to engage proactively in diplomatic initiatives to prevent conflicts from escalating to a point where the protection of civilians becomes a pressing necessity. In doing so, these conflict prevention measures could potentially reduce the need of establishing protected areas during times of armed conflict.

2. For the UNSC's protected areas to be successful, they need to be quickly established and enforced by a reliable military deterrent with a clear mandate. Additionally, there should be a strong willingness from the concerned state to enforce these areas, and they should be a part of wider conflict resolution strategy.

3. The paper proposes that the UNSC, as a primary organ of the UN, should strive to advocate for the establishment of protected areas and address the associated challenges. Key issues to address include measures to deter attacks on these areas, ensuring access to humanitarian relief, and maintaining safety and security within the safe areas. To ensure the effective implementation of these measures, it is imperative to have credible military forces with a strong mandate.

4. Due to the permanent members' obstructionist policies within the UNSC, no protected areas have been established since 1994. The veto



system poses a significant obstacle to the UNSC's endeavours to establish protected areas. Thus, it is recommended that the application of veto should be excluded from any decision pertaining to collective measures and the use of military force. Instead, the researchers advocate for the adoption of a majority voting system in such cases. the UNSC tend to wield their veto power in favour of themselves and their allies, driven by their own vested interests. This was evident in the case of Syria, where Russia and China supported Bashar al-Assad Regime, and in the current situation of Palestine, where the US wielded its veto to support Israel.

5- The adoption of a code of conduct pertaining to the UNSC's mandated response to core international crimes including genocide, crimes against humanity, and war crimes is recommended. This code would include a commitment from the permanent members to abstain from exercising their veto power in situations where there is substantial and verifiable evidence of on-going mass atrocities or large-scale human rights violations.

6- Stringent consequences ought to be imposed on permanent members who are implicated in large-scale and repeated human rights abuses. It is crucial to contemplate the suspension and potential removal of such states from their permanent membership in the UNSC

to prevent the exercise of veto power in UNSC decision-making processes. This consideration arises in light of current allegations against Russia, a permanent member of the UNSC, regarding severe violations of human rights and IHL in Ukraine.

7- Given the on-going lack of consensus and political deadlock currently observed within the UNSC, no enforceable protected areas for civilian protection have been agreed upon in recent conflict situations. Therefore, consideration of alternative options and mechanisms is prudent. A potential mechanism may involve convening an emergency special session of the UNGA utilizing the "Uniting for Peace" resolution procedure. This provides a viable approach when a UNSC resolution faces a veto by at least one permanent member. In such situations, the UNGA promptly reviews the matter and may issue recommendations to UN members concerning collective measures, including if necessary the deployment of military force or establishment of protected areas. Further, a traditional Chapter VI peacekeeping mission authorized by the UNGA could indeed be a feasible alternative to the UNSC resolution. The peacekeeping mission acting as mediator and impartial monitors could assist the establishment of protected areas, and ensure the compliance of the parties to their commitments.





8- It is of paramount importance for the international community to recognise the political impasse within the UNSC as well as the intricate and dynamic nature of contemporary armed conflicts. In order to address these complexities and challenges, it becomes necessary to embrace other approaches that can effectively address the protection of civilians. One such innovative approach involves the implementation of humanitarian corridors, as secure pathways for the evacuation of civilians from conflict zones.

9- To mitigate further civilian casualties in the on-going Palestine conflict, The researchers hold the view that Israel should collaborate with the UN and international organizations, including the ICRC to establish a temporary protected area for Gaza civilians on the Israeli side of the border. The UN and the ICRC would administer this area, with financial support from the international community. This proposed area would offer essential provisions such as shelter, food, water, and medical assistance. Once the conflict ends, the displaced individuals from Gaza would be able to safely return to their homes in Gaza. Such a protected area would not only fulfil Israel's legal responsibility to protect Palestinian civilians but also reduce the number of civilians directly affected by the conflict.

10–It is further suggested to conduct additional researches by academic circles to explore the applicability and effectiveness of alternative mechanisms such as activating the “Uniting for Peace” resolution and resorting to peacekeeping missions authorized by the UNGA within the context of contemporary armed conflicts.

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