

A. ICRC, Position Paper, The Establishment of Protected Zones for Endangered Civilians in Bosnia and Herzegovina

N.B. As per the **disclaimer**, neither the ICRC nor the authors can be identified with the opinions expressed in the **Cases and Documents**. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[Source: *ICRC position paper*. Distributed on 30 October 1992 to the governments concerned, the Co-chairmen of the London Conference on the former Yugoslavia and the Office of the UN High Commissioner for Refugees.]

POSITION PAPER

THE ESTABLISHMENT OF PROTECTED ZONES FOR ENDANGERED CIVILIANS IN BOSNIA-HERZEGOVINA

The main aspects of the “ethnic cleansing” process in Bosnia-Herzegovina are well known: intimidation, threats, harassment, brutality, expropriation, torture, large-scale hostage taking and internment of civilians, larger-scale deportations, summary executions, etc.

For months the situation has become more and more tragic and desperate for the civilians belonging either to ethnic minorities or to the defeated sides, as in northern Bosnia-Herzegovina or more recently in the central part of the country (Jajce-Travnik-Prozor area), where the situation is deteriorating daily.

Today there are at least 100,000 Muslims living in the north of Bosnia-Herzegovina, who are terrorized and whose only wish is to be transferred to a safe haven. If the international community wants to assist and protect these people, the “safe haven” concept must be transformed into reality.

As no third country seems to be ready, even on a provisional basis, to grant asylum to one hundred thousand Bosnian refugees, an original concept must be devised to create protected zones in Bosnia-Herzegovina

which are equal to the particular requirements and the sheer scale of the problem.

In view of the extremely alarming situation currently prevailing in the country, the ICRC recommends the international community to set up protected zones in Bosnia-Herzegovina. As a matter of priority, a protected zone should be set up in northern Bosnia-Herzegovina to shelter the endangered civilians. The creation of other such zones might also have to be considered in central Bosnia-Herzegovina in the near future.

The concept of a safety zone is included in international humanitarian law, which provides for various kinds of zones. However, the present situation calls for the creation of zones adapted to its specific requirements and, in particular, which need an international protection.

It is now up to the international community to diligently study the feasibility of protected zones which, as mentioned, could not in the present situation be left under the sole responsibility of the parties controlling the territory in which the zones are located. The setting up of protected zones for tens of thousands of civilians is far beyond the capacity of the ICRC alone.

Conditions to be met

- The protected zone(s) must meet appropriate hygiene standards.
- The protected zone(s) must be in an area where the necessary protection may be assumed.
- The international responsibility for such zone(s) must be clearly established.
- The parties concerned must give their agreement to the concept and to the location of the protected zone(s).
- Duly mandated international troops, such as UNPROFOR, must assure the internal and the external security of this zone(s), as well as for part of the logistics.
- International organizations must help with the entire installation of the zone(s) – housing, shelter, heating, sanitation – and with the logistics. In addition, the organizations involved must take responsibility for the food deliveries, the cooking and the medical services.

The ICRC is willing and ready to offer its services to help with the establishment and running of such zones.

In accordance with its mandate, the ICRC will in particular be in charge of tracing activities in the zone(s) and, at least partly, of their relief and medical infrastructures.

Despite the obvious difficulties and the financial, material and logistical burden, not to mention the whole security aspect, that the establishment of such a zone(s) would entail for the international community, the ICRC is of the opinion that there is currently no alternative to this plan. Winter is approaching and it is likely that it will reach Bosnia-Herzegovina before any peace agreement is signed and implemented.

Forced and unprotected massive transfers of the population to central Bosnia-Herzegovina are totally unacceptable and cannot go on. Too many civilians, while forced to cross the frontlines on foot, have already

been killed either in the crossfire of combatants, as there is no cease-fire, or deliberately by snipers.

In order to establish protected zones, UNPROFOR should be deployed as soon as possible in Bosnia-Herzegovina. The ICRC furthermore strongly hopes that the United Nations Security Council will soon consider extending the UNPROFOR mandate in Bosnia-Herzegovina, thus enabling its troops to guarantee the security of such zones.

B. Security Council, Resolution 819 (1993)

[Source: UN Doc. S/RES/819 (April 16, 1993), available online :
[http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/819\(1993\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/819(1993))]

The Security Council,

[...] *Reaffirming* the sovereignty, territorial integrity and political independence of the Republic of Bosnia and Herzegovina,

Reaffirming its call on the parties and others concerned to observe immediately the cease-fire throughout the Republic of Bosnia and Herzegovina,

Reaffirming its condemnation of all violations of international humanitarian law, including, in particular, the practice of "ethnic cleansing",

Concerned by the pattern of hostilities by Bosnian Serb paramilitary units against towns and villages in eastern Bosnia [...]

Deeply alarmed at the information provided by the Secretary-General to the Security Council on April 16, 1993 on the rapid deterioration of the situation in Srebrenica and its surrounding areas, as a result of the continued deliberate armed attacks and shelling of the innocent civilian population by Bosnian Serb paramilitary units,

Strongly condemning the deliberate interdiction by Bosnian Serb paramilitary units of humanitarian assistance convoys,

Also strongly condemning the actions taken by Bosnian Serb paramilitary units against UNPROFOR, in particular, their refusal to guarantee the safety and freedom of movement of UNPROFOR personnel,

Aware that a tragic humanitarian emergency has already developed in Srebrenica and its surrounding areas as a direct consequence of the brutal actions of Bosnian Serb paramilitary units, forcing the large-scale displacement of civilians, in particular women, children and the elderly,

Recalling the provisions of resolution 815 (1993) on the mandate of UNPROFOR and in that context acting under Chapter VII of the Charter of the United Nations,

[see footnote]

1. *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;
2. *Demands also* to that effect the immediate cessation of armed attacks by Bosnian Serb paramilitary units against Srebrenica and their immediate withdrawal from the areas surrounding Srebrenica;
3. *Demands* that the Federal Republic of Yugoslavia (Serbia and Montenegro) immediately cease the supply of military arms, equipment and services to the Bosnian Serb paramilitary units in the Republic of Bosnia and Herzegovina;
4. *Requests* the Secretary-General, with a view to monitoring the humanitarian situation in the safe area, to take immediate steps to increase the presence of UNPROFOR in Srebrenica and its surroundings; demands that all parties and others concerned cooperate fully and promptly with UNPROFOR towards that end; and requests the Secretary-General to report urgently thereon to the Security Council;
5. *Reaffirms* that any taking or acquisition of territory by threat or use of force, including through the practice of “ethnic cleansing”, is unlawful and unacceptable;
6. *Condemns* and rejects the deliberate actions of the Bosnian Serb party to force the evacuation of the civilian population from Srebrenica and its surrounding areas as well as from other parts of the Republic of Bosnia and Herzegovina as part of its overall abhorrent campaign of “ethnic cleansing”;
7. *Reaffirms its condemnation* of all violations of international humanitarian law, in particular the practice of “ethnic cleansing” and reaffirms that those who commit or order the commission of such acts shall be held individually responsible in respect of such acts;
8. *Demands* the unimpeded delivery of humanitarian assistance to all parts of the Republic of Bosnia and Herzegovina, in particular to the civilian population of Srebrenica and its surrounding areas and recalls that such impediments to the delivery of humanitarian assistance constitute a serious violation of international humanitarian law;
9. *Urges* the Secretary-General and the United Nations High Commissioner for Refugees to use all the resources at their disposal within the scope of the relevant resolutions of the Council to reinforce the existing humanitarian operations in the Republic of Bosnia and Herzegovina in particular Srebrenica and its surroundings;
10. *Further demands* that all parties guarantee the safety and full freedom of movement of UNPROFOR and of all other United Nations personnel as well as members of humanitarian organizations;
11. *Further requests* the Secretary-General, in consultation with UNHCR and UNPROFOR, to arrange for the safe transfer of the wounded and ill civilians from Srebrenica and its surrounding areas and to urgently report thereon to the Council;
12. *Decides* to send, as soon as possible, a mission of members of the Security Council to the Republic of Bosnia and Herzegovina to ascertain the situation and report thereon to the Security Council; [...]

Footnotes

- [1] The only paragraph in resolution 815 (1993) pertinent to our concern reads as follows: “The Security Council [...] *determined* to ensure the security of UNPROFOR and its freedom of movement

for all its missions, and to these ends *acting* under Chapter VII of the Charter of the United Nations [...]”. Later, Security Council resolution 836 (1993) of June 4, 1993 however authorized UNPROFOR “acting in self-defence, to take the necessary measures, including the use of force, to reply to bombardments against the safe areas by any of the parties [....].”

C. Security Council Resolution 824 (1993)

[Source: UN Doc. S/RES/824 (May 6, 1993), available online :
[http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/824\(1993\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/824(1993))]

The Security Council,

[...]

Having considered the report of the Mission of the Security Council to the Republic of Bosnia and Herzegovina (S/25700) authorized by resolution 819 (1993), and in particular, its recommendations that the concept of safe areas be extended to other towns in need of safety,

Reaffirming again its condemnation of all violations of international humanitarian law, in particular, ethnic cleansing and all practices conducive thereto, as well as the denial or the obstruction of access of civilians to humanitarian aid and services such as medical assistance and basic utilities, [...]

Taking also into consideration the formal request submitted by the Republic of Bosnia and Herzegovina (S/25718),

Deeply concerned at the continuing armed hostilities by Bosnian Serb paramilitary units against several towns in the Republic of Bosnia and Herzegovina and *determined* to ensure peace and stability throughout the country, most immediately in the towns of Sarajevo, Tuzla, Zepa, Gorazde, Bihac, as well as Srebrenica,

Convinced that the threatened towns and their surroundings should be treated as safe areas, free from armed attacks and from any other hostile acts which endanger the well-being and the safety of their inhabitants,

Aware in this context of the unique character of the city of Sarajevo, as a multicultural, multi-ethnic and pluri-religious centre which exemplifies the viability of coexistence and interrelations between all the communities of the Republic of Bosnia and Herzegovina, and of the need to preserve it and avoid its further destruction, [...]

Convinced that treating the towns referred to above as safe areas will contribute to the early implementation of the peace plan, [...]

Recalling the provisions of resolutions 815 (1993) on the mandate of UNPROFOR and in that context acting under Chapter VII of the Charter, [...]

1. *Declares* that the capital city of the Republic of Bosnia and Herzegovina, Sarajevo, and other such threatened areas, in particular the towns of Tuzla, Zepa, Gorazde, Bihac, as well as Srebrenica, and their surroundings should be treated as safe areas by all the parties concerned and should be free from armed attacks and from any other hostile act;
2. *Further declares* that in these safe areas the following should be observed:
 - a. The immediate cessation of armed attacks or any hostile act against these safe areas, and the withdrawal of all Bosnian Serb military or paramilitary units from these towns to a distance wherefrom they cease to constitute a menace to their security and that of their inhabitants to be monitored by United Nations military observers [Later Security Council Resolution 836, para. 5 is even more explicit: “5. *Decides to extend (...) the mandate of UNPROFOR in order to enable it (...) to promote the withdrawal of military or paramilitary units other than those of the Government of the Republic of Bosnia and Herzegovina...*”];
 - b. Full respect by all parties of the rights of the United Nations Protection Force (UNPROFOR) and the international humanitarian agencies to free and unimpeded access to all safe-areas in the Republic of Bosnia and Herzegovina and full respect for the safety of the personnel engaged in these operations;
3. *Demands* to that end that all parties and others concerned cooperate fully with UNPROFOR and take any necessary measures to respect these safe areas;
4. *Requests* the Secretary-General to take appropriate measures with a view to monitoring the humanitarian situation in the safe areas and to that end, authorizes the strengthening of UNPROFOR by an additional 50 United Nations military observers [...];
5. *Declares* its readiness, in the event of the failure by any party to comply with the present resolution, to consider immediately the adoption of any additional measures necessary with a view to its full implementation, including to ensure respect for the safety of the United Nations personnel; [...]

Discussion

Please assume for the discussion of questions 1 to 5 that the IHL of international armed conflicts is applicable, at least thanks to the agreement between the parties of May 23, 1992 [See Former Yugoslavia, Special Agreements Between the Parties to the Conflicts [Part B.]]

1.
 - a. Which humanitarian problems prompted the ICRC to suggest the establishment of protected zones and the UN Security Council to establish safe areas? How does IHL normally deal with those problems?
 - b. What are the special reasons and the particular dangers of establishing any kind of safety zones in a situation of “ethnic cleansing” such as that in Bosnia and Herzegovina?
2.
 - a. Does the ICRC suggest the establishment of one of the types of protected zones foreseen by IHL? Does IHL provide for international supervision of such a zone? Does IHL provide for international protection of such a zone? Is such protection compatible with IHL? Why does the ICRC suggest international military protection? (GC I, Art. 23; GC IV, Arts 14, 15 and Annex I; P I, Arts 59 and 60)

- b. Does the ICRC suggest that the protected zone be demilitarized (exclusion of Bosnian government forces)? Is this condition implied in the spirit of IHL on protected zones? Would such a condition have been realistic? Would a zone without such demilitarization have been realistic? (GC I, Art. 23; GC IV, Arts 14, 15 and Annex I; P I, Arts 59 and 60)
 - c. Were the zones suggested by the ICRC open to occupation by the adverse party? Is a requirement to that effect inherent in protected zones under IHL? Would such a requirement have been realistic? (GC I, Art. 23; GC IV, Arts 14, 15 and Annex I; P I, Arts 59 and 60)
 - d. Does the ICRC proposal come under *jus ad bellum* or *jus in bello*? Does it respect the Red Cross principles of neutrality and impartiality? Doesn't it suggest the use of force against one side in the conflict? What is the legal basis for the ICRC's proposal?
3. On which essential points do the safe areas established by the Security Council differ from the protected zones suggested by the ICRC?
 4.
 - a. Does the Security Council establish one of the types of protected zones provided for by IHL? Does IHL provide for international protection of such a zone? Is such international protection compatible with IHL? (GC I, Art. 23; GC IV, Arts 14, 15 and Annex I; P I, Arts 59 and 60) What is the mandate of UNPROFOR in the safe areas? Does the Security Council give UNPROFOR the mandate to defend the safe areas? Are 50 additional military observers sufficient to monitor the situation in the safe areas? To protect the safe areas? To defend the safe areas?
 - b. Are the zones established by the Security Council to be demilitarized? May Bosnian government forces stay in the safe areas? May they, under the resolutions and IHL, launch attacks from the safe areas against Bosnian Serb forces? (GC I, Art. 23; GC IV, Arts 14, 15 and Annex I; P I, Arts 59 and 60)
 - c. Are the safe areas established by the Security Council open to occupation by the Bosnian Serb forces?
 - d. Do the safe areas established by the Security Council come under *jus ad bellum* or *jus in bello*? Is it appropriate for peacekeeping forces to be given the mandate assigned to them under the resolutions?
 - e. What impression do the Security Council resolutions give to the Bosnian Muslim inhabitants of the safe areas? To the government of Bosnia and Herzegovina? Are those impressions justified?
 5. Which elements of Resolutions 819 and 824 recall or implement *jus in bello*? Which do so for *jus ad bellum*? How do you qualify in particular operative para. 5 of Resolution 819?
 6. *Please answer the following questions by applying alternatively the law of international and the law of non-international armed conflicts.*
 - a. Do deliberate acts by the Bosnian Serbs to force the evacuation of the civilian population from (Bosnian government-controlled) Srebrenica constitute a violation of IHL? (GC IV, Art. 49; P II, Art. 17)
 - b. Is the impeding of humanitarian assistance to the civilian population of Srebrenica a violation of IHL? Under IHL, are UNPROFOR and the international humanitarian agencies entitled to have free access to all safe areas? (GC IV, Arts 23, 30 and 59; P I, Arts 70 and 81; P II, Art. 18.)
 - c. Do the Bosnian Serbs have an obligation under IHL to allow the evacuation of wounded and sick civilians from Srebrenica? (GC IV, Art. 17)