Safe Areas and the Responsibility to Protect

Daniel Jacob
Stiftung Wissenschaft und Politik / German Institute for International and Security Affairs, Germany
daniel.jacob@swp-berlin.org

Abstract

The ‘responsibility to protect’ (RtoP) expresses the moral imperative to respond to genocide, war crimes, ethnic cleansing, and crimes against humanity. So far, the debate on RtoP has focused almost exclusively on conflict resolution through institutional change. Various forms of diplomatic pressure, economic sanctions, and military intervention have been discussed as means to address the institutional roots of violent conflict. What has too often been neglected, however, is the need for more immediate forms of civilian protection. This need emerges from the complexity and uncertainty of conflict resolution: successful conflict resolution takes time, and it is unfortunately rare. Therefore, it is necessary to complement efforts at conflict resolution with more immediate forms of protecting civilians. Traditionally, the right to asylum and humanitarian aid have been the two primary means to provide such protection. In the case of most intra-state conflicts, however, these means are insufficient. When a state engages in genocide, pursues campaigns of ethnic cleansing, or commits war crimes against its own population, it likely has no intention to let people seek the safety of asylum in other countries, or to allow for humanitarian aid. In response to such situations, the community of states has a moral obligation to establish safe areas and provide them with the legal mandate and military resources necessary to offer reliable protection.

Keywords

responsibility to protect – safe areas – Srebrenica – refugees – ethics

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In April 1993, at the height of the Bosnian War, the United Nations Security Council (UNSC) passed Resolution 819, which declared the town of Srebrenica a ‘safe area’ to be protected by UN troops. A month later, UNSC Resolution 824 assigned the same status to Sarajevo, Žepa, Goražde, Tuzla, and Bihać. All six UN safe areas were established in parts of Bosnia that, at the time, were controlled by Bosnian Serb forces. Their purpose was to provide refuge to Muslims and members of other minorities who had become targets of the Bosnian Serb campaign of ethnic cleansing. As we know today, these UN safe areas dramatically failed to fulfill their promise of safety. Indeed, the deadly siege of Sarajevo and the mass murder of more than 7,000 men and boys in Srebrenica in July 1995 have become emblematic of the UN’s failure in Bosnia.¹

While these events unfolded in Bosnia, the UN was confronted with another rapidly escalating conflict in Rwanda, which would eventually culminate in the mass murder of moderate Hutu and the genocidal killings of hundreds of thousands of Tutsi. From 1993 onward, the United Nations Assistance Mission for Rwanda (UNAMIR) had been deployed to Rwanda to oversee the implementation of the Arusha Accords, an agreement among all major Rwandan parties to end the previous civil war. When the Hutu began their attacks on the Tutsi in April 1994, it soon became clear that neither the UN nor any other major international power would intervene to stop the genocide. Desperately struggling for their lives, thousands of Tutsi nonetheless sought the protection of the UN forces in the country. The UN troops, however, were massively outnumbered by the Hutu militants. Despite early reports of the increasing levels of violence, the UN troops received no reinforcements and thus were unable to effectively provide safe refuge.² Indeed, in one particularly horrid instance, Belgian UN troops abandoned a school to which more than 2,000 Tutsi had fled. The commander on site had called for military support to withstand the imminent threat of a Hutu attack, but decision-makers in Belgium and at the UN headquarters in New York instead ordered him and his troops to leave


the building. Once the UN troops had left, almost everyone who had sought refuge at the school was killed.3

The events in Bosnia and Rwanda, as well as the other humanitarian crises of the 1990s, sparked a debate about more robust forms of ‘humanitarian intervention’. This debate eventually came to focus on the concept of the ‘responsibility to protect’ (RtoP). RtoP combines two notions of responsibility: First, it assigns states the primary responsibility to protect their citizens from the four crimes of genocide, war crimes, ethnic cleansing, and crimes against humanity. In addition, it assigns the community of states as a whole the subsidiary responsibility to protect the citizens of states that fail to fulfill their own primary responsibility. RtoP was endorsed by the UN World Summit of 2005 and through a number of subsequent UN Security Council resolutions.4 The exact contours of this norm, its legal status, and its practical implications, however, remain the subject of much controversy. A major point of contention revolves around the legitimacy and efficiency of different measures intended to stop political actors, be it a state’s government or a non-state entity, from perpetrating the four crimes. The measures discussed here range from diplomatic and economic sanctions to military support for opposition groups and outright military intervention.

Given the dramatic experiences in Bosnia and Rwanda, it is not surprising that the idea of safe areas is rarely mentioned in these debates.5 In this article, however, I argue that in response to certain situations of extreme humanitarian emergency the community of states has a moral obligation to establish safe areas. As Srebrenica showed, establishing and effectively protecting a safe area is no easy task. Therefore, unlike in the past, future safe areas must be protected by a military force that has a legal mandate to use force against attackers, as well as the military resources necessary to carry out this mandate. This will often require a substantial military deployment. In this sense, the establishment of safe areas is militarily more ‘robust’ than traditional forms of humanitarian

5 A rare exception has been the League of Arab States’ call for safe areas in Libya. See League of Arab States, ‘On the Implications of the Current Events in Libya and the Arab Position’, Resolution 7360, 12 March 2011.
aid. The important difference to other forms of ‘humanitarian’ military intervention, on the other hand, is that safe areas have a more modest, though no less important, purpose. A military mission to establish a safe area does not restore justice, nor can it resolve the underlying conflict. Its purpose, instead, is to provide immediate protection by offering safe refuge to the civilians trying to escape the existential threats of genocide, war crimes, ethnic cleansing, and crimes against humanity.

This article begins by briefly sketching the normative core of the RtoP. I distinguish between two ways for the community of states to respond to occurrences of the four crimes: conflict resolution through institutional change and more limited interventions aimed at protecting civilians. These two approaches are guided by different logics and relate to different moral duties but should be viewed as complementing each other. On the basis of these conceptual clarifications, I then argue that the two traditional forms of protecting civilians in humanitarian emergencies—granting asylum and providing humanitarian aid—are not suited to the specific challenges of those intra-state conflicts that RtoP is meant to address. Therefore, in these situations, RtoP turns into a moral obligation to establish safe areas. Given the particular challenge of intra-state conflicts, in principle safe areas constitute an adequately robust form of protecting civilians. In light of the aforementioned historical experiences, however, the normative and practical implications of this moral obligation need further clarification. When external actors establish a safe area, they thereby make a promise to do whatever is in their power to protect those to whom they are offering refuge. To be able to fulfill this promise, actors establishing a safe area must be authorised to use force to repel attacks, and it must be protected by a military operation that has the resources and capabilities to do so. Moreover, it is important to be clear about the moral limits of safe areas. A safe area cannot solve the underlying conflict and, crucially, should not be construed as a substitute for the right to asylum. Therefore, in addition to providing refuge within conflict zones, safe areas must also provide the option to seek asylum in another country. In the last section of the article, I turn to the practical challenges of safe areas and the risks for those trying to establish them. I argue that the practical challenges are to be taken seriously but that, in the end, it is part of the moral responsibility of the community of states to find answers to these challenges. Indeed, there is only one excuse for not establishing a safe area in a situation where it could offer much needed shelter to civilians in need: namely when attempting to establish a safe area would expose states to ‘excessive’ risks. As I note in the conclusion, this is a demanding condition. In many cases, states could establish safe areas without incurring such risks.
Conflict Resolution and the Protection of Civilians

State sovereignty has always been defined, and in fact restricted, by the norms of international law. Long before the discussion on RtoP emerged, humanitarian law, the UN Charter, various human rights treaties, and *jus cogens* have placed limits on the legitimate exercise of sovereignty. Indeed, as Steven Krasner has shown, since the Westphalian peace treaties of 1648, state sovereignty has never been absolute.6

When the International Commission on Intervention and State Sovereignty (ICISS) first proposed RtoP in 2001, it reaffirmed these norms governing sovereignty and suggested integrating them under the heading of ‘sovereignty as responsibility’.7 The concept of sovereignty as responsibility restates the primary responsibility of states toward their own citizens. The exact contours of this responsibility remain contested, but there is growing consensus in international law that it implies that states must, at the very least, protect their own citizens’ basic human rights.8 RtoP’s genuine novelty, however, is found in the way in which it formulates the international obligations of states. RtoP assigns states the subsidiary responsibility to protect the citizens of other states when these other states are unwilling or unable to fulfill their primary responsibility. The ICISS report distinguishes three dimensions of this responsibility: the responsibility to prevent, the responsibility to react, and the responsibility to rebuild. The ensuing debate, however, has focused almost exclusively on the responsibility to react.9 With regard to this dimension, the ICISS report further holds that exceptional cases of violence ‘which so genuinely “shock the conscience of mankind” or which present such a clear and present danger to international security’ require military intervention by the community.


8 ICISS, ‘Responsibility to Protect’, 2.15.

of states.\textsuperscript{10} The report defines these exceptional cases by referring to two scenarios:

large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or large scale ‘ethnic cleansing,’ actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.\textsuperscript{11}

In 2005, the UN World Summit adopted a resolution endorsing the concept of RtoP. In this resolution, cases of violence that warrant military intervention were defined by reference to the four crimes of genocide, war crimes, ethnic cleansing, and crimes against humanity.\textsuperscript{12} This understanding of the RtoP has since been confirmed through a number of UNSC resolutions, although its exact legal status remains controversial.\textsuperscript{13}

So far, the debate on how to react to occurrences of the four crimes has focused primarily on various forms of conflict resolution through institutional change. The underlying rationale is that the best way to protect the victims of these crimes is to ensure that their state refrains from further committing these crimes and also prevents other actors on its territory from doing so. In moral terms, this understanding of RtoP points to what John Rawls famously described as the natural duty of justice. As Rawls writes, we all have a duty ‘to support and to comply with just institutions that exist and apply to us,’ and ‘to further just arrangements not yet established, at least when this can be done without too much cost to ourselves.’\textsuperscript{14} This duty is ‘natural’ because, like the duty not to harm others, it does not depend on particular relations but instead is a universal duty that we all owe each other. As Rawls clarified in the \textit{The Law of Peoples}, the natural duty of justice also extends to the relations among states.\textsuperscript{15} RtoP’s emphasis on conflict resolution through institutional change, then, can be understood as formulating one particularly crucial

\begin{footnotesize}
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\item ICISS, ‘Responsibility to Protect’, §4.13.
\item ICISS, ‘Responsibility to Protect’, §4.19.
\item See A/RES/60/1, 24 October 2005, §138–§140.
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element of this duty: it assigns the community of states the responsibility to ensure that the citizens of all states have access to institutions that, while far from being fully just, at least do not expose them to the most serious forms of injustice. In practice, the community of states aims to fulfill this responsibility by resorting to diplomatic pressure, economic sanctions, and, as a last resort, military intervention.16 In exceptional circumstances, the community of states even temporarily seeks to replace a state’s government with an international administration, thereby itself assuming the primary responsibility of the state toward its citizens.17 If successful, efforts such as these directly address the institutional roots of the conflicts that lead to occurrences of the four crimes and thus offer the prospect of sustainable peace. Moreover, conflict resolution through institutional change fits well with a state-centered world order and the interests of states: although it interferes with states’ internal affairs, it does so in a way that ultimately reaffirms the central role of states as the primary political unit.

It is also possible, however, to understand RtoP in a way that focuses more directly on protecting civilians. The underlying rationale here is that the community of states has a direct responsibility to offer life-saving protection to civilians suffering from the four crimes. This understanding of RtoP can be conceived of as applying the natural duty to help others in need to the relations among states. Rawls describes this as ‘the duty of helping another when he is in need or jeopardy, provided that one can do so without excessive risk or loss to oneself’.18 Whereas the natural duty of justice emphasises what we all owe each other in terms of just institutions, the duty to help others in need focuses on more immediate responses to the suffering of others. In the context of the four crimes, the most prominent form of such direct protection of civilians is to grant them asylum in other countries. Traditional humanitarian aid presents another way of protecting civilians. Humanitarian aid organisations, such

18 Rawls, Theory of Justice, p. 114.
as the International Committee of the Red Cross (ICRC) or Oxfam, cannot offer protection against military attacks. By providing food, shelter, or medical services, however, they protect civilians from non-military threats to their lives. Their mere presence in a war-zone, moreover, serves as a powerful reminder of the legal protections afforded to civilians by international humanitarian law, and often attracts international media coverage.

At first sight, these forms of protecting civilians might seem opposed to the logic of institutional conflict resolution. Whereas the former aims for a long-term solution to the military conflict, the latter’s focus is on mitigating the short-term effects on the lives of civilians. Moreover, efforts to address the institutional roots of violent conflicts often cannot avoid taking sides. Although external actors may seek some kind of compromise among the warring factions, their intention is to stop the actors perceived to be the perpetrators of the four crimes and sometimes even to hold them accountable for their wrongdoing. Efforts to protect civilians, on the contrary, usually try to remain neutral. This is particularly pronounced in the case of humanitarian aid organisations. Their ability to reach civilians in war-zones often crucially depends on their being perceived as neutral. It is therefore understandable that many humanitarian aid organisations are wary of being associated with more politicised attempts at conflict resolution.19

And yet, without dismissing the different logics of these two approaches, the protection of civilians should be an integral element of RtoP. To reduce RtoP to efforts at conflict resolution through institutional change would lead to an impoverished notion of the responsibility we have toward victims of the four crimes.20 To be sure, the effective and sustainable protection of civilians always requires some form of conflict resolution in the long run. As history has shown repeatedly, however, finding political solutions to complex violent conflicts always takes time. Even under the best circumstances, therefore, efforts at conflict resolution cannot be a response to the pressing needs of the affected civilian population. They must be complemented with forms of more direct civilian protection that address the short-term needs of those affected. At the same time, attempts to protect civilians by providing humanitarian aid or granting asylum will remain insufficient without additional efforts to solve the

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larger conflict. Their strength in providing short-term help, after all, turns into a weakness without a larger perspective of conflict resolution. Therefore, the short-term protection of civilians is not an alternative to more long-term oriented conflict resolution; rather, the two approaches complement each other.

To illustrate these thoughts, consider the ongoing war in Syria. It has been well documented that war crimes and crimes against humanity have been committed by both the Syrian state and many of its opponents, most notably the group that calls itself the ‘Islamic State’.21 As noted before, it is widely held that RtoP assigns the community of states the responsibility to attempt to find some form of political solution to this conflict, difficult as it may be. Based on the broader understanding of RtoP that I have just advocated, however, the community of states also has a responsibility to provide more immediate protection to the civilians suffering from this war. Such efforts to protect the individual victims of the Syrian war cannot substitute for conflict resolution; nonetheless, they are necessary if we want to take seriously our responsibility to protect. So far, the community of states has been unable to find a solution to the conflict or to adequately protect the affected civilians.

Safe Areas as a Robust Form of Protecting Civilians

Coming from the perspective of international law, Brian Barbour and Brian Gorlick arrive at a similar conclusion when they hold that granting asylum should be seen as a core element of the RtoP.22 They argue that whatever else states do, in order to adequately protect the victims of the four crimes they must grant them asylum. The crucial problem, however, is that the right to asylum can only provide protection to those who have managed to leave their home country. Traditional humanitarian aid, for example the provision of medical services, targets those unable to flee and is often able to provide crucial help. The problem, however, is that humanitarian aid usually depends on the official consent of the state and often on some form of informal consent from the other warring parties as well. This becomes problematic exactly in those


situations that RtoP is meant to address. Humanitarian law was developed against the backdrop of inter-state conflict. The assumption, or at least the hope, was that in these conflicts states would be willing to agree on ‘humanitarian’ measures to protect non-combatants. Yet, when a state engages in genocide or ethnic cleansing, or commits war crimes against its own population, this state explicitly negates the distinction between combatants and non-combatants. It frequently has no intention to let people seek the safety of asylum in other countries, or to allow for the distribution of humanitarian aid.

In response to such situations of extreme humanitarian emergency, RtoP turns into a moral obligation to establish safe areas. As noted before, the community of states has a duty not only to address the institutional roots of such conflicts but also to directly help the civilians who are threatened by these conflicts. When civilians are deliberately kept from fleeing a conflict zone, or do not have the means to do so, offering them asylum abroad is not enough. When, moreover, they are denied access to humanitarian aid, or that aid cannot be provided safely, the natural duty to help others in need turns into a moral obligation to establish safe areas on the respective state’s territory.

The size, number, and locations of these safe areas will depend on the circumstances of the conflict, as well as the number of civilians affected. Wherever possible, these safe areas should be established with the consent of the respective state. If necessary, however, it is also legitimate to establish safe areas against the will of the state in question, especially if the state itself has become a threat to its citizens. Indeed, as the experiences in Bosnia and Rwanda in the 1990s demonstrated all too clearly, the community of states must be able to protect safe areas against all potential threats, including those emanating from state actors. The extent and character of the military deployment necessary to achieve this level of protection will again depend on the specifics of the conflict. What is clear, though, is that the establishment of a safe area requires a clear legal mandate that authorises the use of force, and the deployment of military troops capable of projecting a credible military threat.

*The Need for a Clear Legal Mandate*

Historically, the idea of safe areas originated within the context of international humanitarian law. The fourth Geneva Convention of 1949 on the ‘Protection of Civilian Persons in Time of War’ introduces the legal instruments of ‘hospital and safety zones and localities’ and ‘neutralized zones’. Hospital zones are, rather narrowly, intended to ‘protect from the effects of war, wounded,
sick and aged persons, children under fifteen, expectant mothers and mothers of children under seven’. Neutralized zones go beyond that and are meant to provide refuge not only to wounded combatants but also to ‘civilian persons who take no part in hostilities, and who, while they reside in the zones, perform no work of a military character’. Like international humanitarian law more generally, these instruments are supposed to regulate warfare in order to maintain at least some basic humanitarian standards.

The idea of hospital zones and neutralized zones, however, faces the same limitations as humanitarian aid more generally. Crucially, the Geneva Convention requires agreement among the warring parties on the establishment of these forms of refuge. While always difficult to achieve, in a war between two states there is at least some chance for such an agreement. After all, both states have an interest in protecting their wounded troops and may be receptive enough to international pressure to allow some protection for civilians. As noted before, however, in the context of the kind of intra-state conflicts that the RtoP is meant to address, this cannot be expected.

It does not come as a surprise, therefore, that the more recent history of safe areas marks a gradual departure from this model of consensual safety zones. In 1991, in retaliation for an attempted Kurdish rebellion, the Iraqi government launched a massive military campaign against the Kurdish minority living in Northern Iraq. Responding to the violence and the growing numbers of refugees, the United States, supported by a coalition of states including Great Britain and France, established ‘safe havens’ in Northern Iraq to protect the Kurdish population there. These ‘safe havens’ were protected by military forces on the ground as well as through the establishment of a ‘no-fly zone’. The mandate for these ‘safe havens’, however, was unclear. While UN Security Council Resolution 688 had called for ‘immediate access by international humanitarian organizations to all those in need of assistance’ and had appealed to ‘all Member States and to all humanitarian organizations to contribute to these humanitarian relief efforts’ it did not refer to UN Chapter VII to authorise a military operation against the will of the Iraqi state.

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25 Ibid., article 15.
26 For a historical overview, see Adeed Dawisha, Iraq: A Political History from Independence to Occupation (Princeton, NJ: Princeton University Press, 2009). For details of the safe area in Northern Iraq, see Hikaru Yamashita, Humanitarian Space and International Politics: The Creation of Safe Areas (Farnham, UK: Ashgate, 2004), Ch. 2.
and its allies referred to Resolution 688 to legitimise their decision to establish the ‘safe havens’ in Northern Iraq.28

Two years later, when the UN Security Council created the safe areas in Bosnia, it made explicit reference to Chapter VII.29 As described in the introduction, however, the safe areas in Bosnia did not receive military protection adequate to this robust legal mandate. Despite many differences, the same can be said about the attempts by the UN to protect the civilian population in Rwanda. The United Nations Assistance Mission for Rwanda (UNAMIR) had a general mandate to ‘contribute to the security of Kigali’.30 In his rules of engagement, UN force commander Romeo Dallaire interpreted this mandate to include the use of force to ‘defend persons under [UN] protection against direct attack’, and even more broadly to ‘take the necessary action to prevent any crime against humanity’.31 Ultimately, however, the UN forces lacked the resources to fulfill this mandate. In May and June of 1994, the violence in Rwanda intensified ever further and eventually culminated in the genocidal killing of Tutsi by members of the Hutu majority. In late June, the French government proposed the establishment of a ‘safe zone’ in southwestern Rwanda, and on June 22 the UN authorised a military mission for this purpose by explicitly invoking Chapter VII.32 The actual military operation to establish the safe area, Opération Turquoise, was carried out primarily by the French government; after the first two months, however, UNAMIR was assigned responsibility for maintaining and eventually dissolving the safe area. The French intervention was criticised by many for coming too late and being motivated more by strategic considerations than humanitarian concern. Closely related, it has been criticised that some of the Hutu who had organised and actively participated in the genocide found refuge in this French safe area. Yet, today it is also acknowledged that Opération Turquoise did indeed save thousands of lives.33

Phil Orchard describes the UN’s attempts to establish safe areas in Bosnia and the UNAMIR deployment in Rwanda as instances of a ‘hybrid model’ of safe areas.34 He contrasts this model with the conventional, consent-based model as envisaged by international humanitarian law and a third model based on a

29 See s/RES/819, 16 April 1993; s/RES/824, 6 May 1993.
credible military threat, as exemplified by the US intervention in Northern Iraq and the French intervention in Rwanda. The UN-led safe areas established in Bosnia and Rwanda were neither based on the consent of the conflict parties, nor supported by a credible military threat. Instead, as Orchard notes, the hope was that the legitimacy of the UN would suffice to protect them. This, unfortunately, turned out to be a dramatic misjudgment.

Indeed, the lesson from the more recent history of safe areas is that if they are to fill the gap left by the right to asylum and humanitarian aid, they require a clear and robust mandate. In a few rare cases, it may be possible to get the respective state to consent to the establishment of safe areas on the basis of such a robust mandate, in line with Chapter VI of the UN Charter. In most cases, however, because the states themselves are part of the conflict, it will be necessary to authorise the establishment of safe areas on the basis of Chapter VII of the UN Charter.

The Need for Effective Military Deployment

In addition to a clear and robust legal mandate, the establishment of a safe area requires the deployment of a military mission capable of effectively carrying out this mandate. In particular, the military mission must be able to fulfill three functions: to protect a safe area from external attacks, to demilitarise the safe area, and to ensure security within the safe area.

First, since the very purpose of a safe area is to provide safe refuge, protection against external attacks is paramount. Once external actors have established a safe area, they assume a moral obligation toward all who seek refuge there. By designating a certain area a ‘safe area,’ external actors make a promise to protect those fleeing there, and they have an obligation to do everything they can to keep their promise. Crucially, this promise implies that the external actors have to militarily confront all state and non-state actors attacking the safe area. Since the purpose of a safe area is ‘merely’ to protect the civilians within the safe area, the military objective is not to engage the warring factions in an attempt to solve the conflict. Instead, the military objective is essentially defensive. Importantly, however, it is this defensive objective that legitimises the use of force against attackers. Without having to take sides within the larger conflict, it is clearly morally wrong—and prohibited by international humanitarian law35—to attack unarmed civilians. In principle, therefore, using force to repel such an attack is legitimate.

35 See International Committee of the Red Cross, ‘Geneva Convention (IV)’; International Committee of the Red Cross, ‘Protocol Additional to the Geneva Conventions of 12 August
In this context, it is important to emphasise that offering refuge does not imply a moral evaluation of the individuals seeking refuge. In fact, some of those seeking protection may themselves be guilty of having participated in the four crimes. As noted, this was the case in Rwanda, where many of the genocidaires sought refuge with Operation Turquoise.\textsuperscript{36} From a moral perspective, those suspected to have been involved in such crimes should be prosecuted, but seeking justice is not the purpose of a safe area. To clarify this point, one might draw an analogy to a police officer protecting a group of people from a mob wanting to kill them. The police officer may be convinced that some of the persons seeking her protection have committed the wrongs that the mob accuses them of. And yet, it is not up to the police officer to judge them, and it would be wrong for her to just leave those under her protection to their own fate.

Second, a robust military operation is also necessary to ensure the strict demilitarisation of a safe area. The idea of a safe area is to protect civilians by creating an area that is close to the conflict zone but not part of it. The purpose is not to militarily support one of the warring factions by providing it with a safe place to recover from combat or stage new attacks. In practice, however, the problem is that in many intra-state wars the distinction between civilians and combatants gets blurred; the state itself often relies on unofficial forces, and its opponents rarely have any formal military structures at all. It comes as no surprise, then, that all three of the recent examples of safe areas faced the problem of combatants entering the safe areas. As Orchard notes in his remarks on Srebrenica, ‘Bosnian Muslim forces continued to stage attacks out of Srebrenica’.\textsuperscript{37} The problem in these conflicts is that it is often difficult and sometimes entirely impossible for external actors to distinguish between combatants and civilians and thus to decide on this basis who should be allowed to enter a safe area. It is possible, however, to enforce strict demilitarisation within safe areas and thereby to ensure that none of the conflict parties misuses them for military purposes.

Third, a robust military operation is necessary in order to ensure security within the safe area. Again, this follows from the implicit promise of establishing a safe area. When large groups of often traumatised people come together under the difficult conditions of a safe area, it is to be expected that tensions

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\item[\textsuperscript{36}] See Carol McQueen, \textit{Humanitarian Intervention and Safety Zones: Iraq, Bosnia, and Rwanda} (Basingstoke: Palgrave Macmillan, 2005), pp. 141–45.
\item[\textsuperscript{37}] Orchard, ‘Revisiting Humanitarian Safe Areas’, p. 63. See also Power, \textit{Problem from Hell}, p. 398.
\end{itemize}
will arise even if the external actors have been able to demilitarise everyone entering the safe area. Therefore, the external actors operating the safe area also have a responsibility to ensure the safety of those under their protection from internal threats. In this regard, the military mission has to fulfill basic police functions.

The Moral Limits of Safe Areas

In the previous section I argued that the RtoP turns into a moral obligation to establish safe areas when traditional forms of protecting civilians do not reach civilians trapped in a conflict. To clarify the implications of this obligation, and to beware of unrealistically high expectations, it is important to emphasise the moral limits of safe areas. Safe areas do not provide a means to resolve a conflict or to restore justice. The goal of a safe area is to offer protection to civilians fleeing from a situation of genocide, war crimes, ethnic cleansing, or crimes against humanity. Offering them refuge, however, does not solve the conflict. Therefore, safe areas cannot be more than a short-term solution. They can protect people against imminent threats and provide them with basic means of subsistence. Beyond that, however, safe areas cannot provide a morally acceptable permanent living environment. Like in ‘regular’ refugee camps, those living in safe areas are entirely dependent upon those offering them refuge. They cannot earn their own livelihood; even basic liberties such as freedom of movement or freedom of speech are severely restricted; and they have no say whatsoever in the larger political questions that shape their lives. For a short time, and to escape existential threats, this is certainly acceptable. No one, however, should have to live under such circumstances for extended periods of time.

This has two consequences: First, it becomes clear once more that efforts to directly protect civilians should be understood not as an alternative but rather as a complement to conflict resolution. Second, the actors establishing a safe area must provide those seeking refuge there with the option to seek asylum elsewhere. In practice, states tend to treat safe areas as a means to prevent large-scale refugee flows. This was most obvious in the case of the safe area established in Northern Iraq in 1991; in particular, neighboring Turkey wanted to avoid a further influx of Kurdish refugees. In some situations, the interests of states to avoid large refugee numbers may converge with the interests of refugees to stay close to home. This, however, cannot generally be assumed.

The right to seek asylum in another country is a human right and offers far more comprehensive protection than temporary refuge in a safe area. Establishing a safe area, thus, must not serve as an excuse to deny people this fundamental human right. As UN Secretary General Kofi Annan noted in his report on the ‘Protection of Civilians in Armed Conflict’, safe areas must include an option to evacuate and seek asylum in another country.39

The requirement to provide an evacuation option highlights the conceptual link between safe areas and humanitarian corridors. While safe areas and humanitarian corridors serve the same general purpose of protecting civilians, they have different practical implications. A safe area provides temporary refuge within a conflict zone, thus sparing people the dangers and difficulties of seeking asylum in another country. A humanitarian corridor provides immediate protection as well, but as a ‘corridor,’ it also leads somewhere else. This can—but does not necessarily—mean escape to another country; sometimes it already suffices to help people reach another part of their home country where they are more secure. One might object that in cases of ‘ethnic cleansing’ establishing a humanitarian corridor inadvertently helps those dreaming of ethnic purity achieve their goals. Indeed, while safe areas and humanitarian corridors provide basic protection, they offer no remedy for the moral wrong of expulsion. Yet, it would be wrong to construe protecting refugees from violence as a form of ‘complicity’.40 Doing so may, in the short run, benefit those dreaming of ethnic purity. Primarily, however, it benefits those who thereby become able to escape from violence and threats to their lives. This does not in any way imply condoning the acts of those who made such an intervention necessary in the first place. The long-term goal, moreover, remains to restore justice and to make it possible for all those who had to flee from their homes to return.

Practical Challenges and ‘Excessive’ Risks

As the experiences of the 1990s made all too clear, an ill-conceived safe area is likely to turn into a real danger for those seeking refuge there, as well as for


the protection force itself. The moral obligation to establish a safe area thus implies that the community of states has to provide the legal mandate and material resources necessary for safe areas to effectively provide protection. In some cases, this will be easier to achieve than in others. In small-scale conflicts with territorially concentrated fighting, it will be less demanding to establish and protect safe areas than when a whole country has been turned into a conflict zone. Likewise, the more military power the belligerents possess, or the more they are determined to attack potential safe areas, the more difficult it will become to defend these areas. Moreover, it is possible that the establishment of a safe area will impact, in often unpredictable ways, the dynamics of the larger conflict. Not the least, providing a whole set of basic public services to large numbers of people within a war-zone poses a considerable logistical challenge in itself.

All these difficulties must be taken seriously when planning the establishment of a safe area. They can be a reason to reconsider whether a safe area is the appropriate response to a given situation. If there is no other means available to provide protection to civilians facing existential threats, however, these difficulties are no excuse for inaction. The duty to rescue people in need does not lose its moral force only because it is difficult to fulfill, or because doing so requires substantial resources. If we conceive of the RtoP as formulating some of the most fundamental moral obligations of the community of states, then part of these obligations is to make available the necessary resources.

There is, in fact, only one consideration that can provide an excuse for not establishing a safe area. An excuse is not the same as a justification. As Michael Walzer writes in his discussion of the dirty hands problem, ‘an excuse is typically an admission of fault; a justification is typically a denial of fault and an assertion of innocence’. This distinction is controversial. For present purposes,
however, it is helpful for it captures a specific normative ambivalence: when we accept a person’s excuse with regard to a certain action, we remain critical about the action itself but accept that mitigating factors reduce the person’s blameworthiness. A similar thought applies to the actions of states: In principle, it constitutes a grave moral wrong if the community of states does not establish a safe area when doing so is the only adequate means to provide much needed shelter to civilians. States can, however, be excused for not establishing a safe area if doing so would likely expose them to ‘excessive’ risk. However, even when such an excuse can plausibly be made, it remains highly problematic that, in the end, the community of states leaves the affected civilians to their own fate. To some extent, states cannot remain ‘innocent’ while doing nothing in the face of massive human suffering.

This consideration is already alluded to by Rawls in noting that one only has a natural duty to help others ‘provided that one can do so without excessive risk or loss to oneself’:46 Clearly, with this proviso a lot depends on how one defines ‘excessive’ risk or loss, and indeed there has been an intense debate on this question.47 What seems uncontroversial is that the loss (or risk thereof) to a state incurred by an action to fulfill its moral obligations can be considered excessive if it is greater than the loss (likely) to be averted by that action. To take a drastic example, if there was a credible threat that a state would use weapons of mass destruction against a neighboring state’s population to ward off attempts to establish a safe area on its territory, then it would be excessive to demand that the neighboring state partake in such an effort. There may also be situations in which the loss (or risk thereof) to a state incurred by an attempt to establish a safe area is smaller than the loss (likely) to be averted by that action, but still of such normative significance that it could be considered ‘excessive’. For instance, there may be situations in which participation in such a mission would bear a considerable risk of severely destabilising a state’s domestic political situation. In cases like these, there is no clear line to draw, and a lot will depend on the specifics of each case. The ‘burden of justification’, however, lies with the states that decide not to participate in an effort to establish a safe area. These states have to explain why fulfilling their moral obligations towards the civilians affected by the four crimes would expose them to an unbearable loss (or risk thereof).

Conclusion

RtoP reaffirms the primary responsibility of states to protect their own citizens and, in addition, emphasises their responsibility to protect the citizens of other states from the four crimes of genocide, war crimes, ethnic cleansing, and crimes against humanity. As argued above, this responsibility has two dimensions: The first emphasises the need to address the institutional roots of the conflict leading to occurrences of the four crimes. The primary goal here is to ensure, by force if necessary, that states fulfill the responsibility they have toward their citizens. The second dimension highlights the need to offer more immediate protection to the civilian victims of the four crimes. Resolving deep-seated conflicts is a complex task, and one that always takes time. It is therefore necessary to complement attempts at conflict resolution with adequate forms of protecting civilians. However, traditional forms of civilian protection—granting asylum and providing humanitarian aid—are not suited for the kind of intra-state conflicts with which the RtoP is mostly concerned.

In these situations, the community of states has a moral obligation to offer protection to the affected civilians by establishing safe areas on the territory of the state in which the conflict takes place, so as to help those who cannot seek asylum abroad. These safe areas cannot solve the underlying conflict, nor can they restore justice. They do, however, offer much-needed temporary refuge to those suffering the most. In order to fulfill this purpose, a safe area must be protected by a military force authorised and effectively able to protect the safe area against external and internal threats. Part of the moral obligation to establish safe areas is ensuring that they can command all resources necessary to actually provide protection and to face the many operational difficulties of such interventions. The mere fact that it may be difficult and costly to establish a safe area is no excuse for failing to do so. Indeed, it is only excusable for states not to establish a safe area if doing so would expose them to ‘excessive risk’. This is a demanding condition, and one that is not often met.

Even taking into account prudential calls for caution that emphasise the dangers and practical challenges of safe areas, there are cases in which the establishment of a safe area is clearly called for. Indeed, although usually cited as an example of failed safe areas, the experiences in Bosnia in the 1990s can actually illustrate their potential. From what we know, it would have been possible for the UN, NATO, or the Dutch government, whose soldiers formed the core of the UN troops in Srebrenica, to militarily defeat the Bosnian Serb attacks on Srebrenica. While the Dutch military contingent alone was unable to protect the safe area against the larger and better equipped Bosnian Serb forces, NATO fighter jets were on stand-by and ready to attack. For several days, however, as
the Bosnian Serb forces gained ever more control over the safe area, decision-makers in New York, Brussels, and The Hague were hoping to avoid such a direct military confrontation. When they finally decided to attack, the Bosnian Serb forces threatened to kill Dutch soldiers whom they had taken as captives in the previous days, and the attack was aborted.\footnote{See Honig and Both, \textit{Srebrenica}, Ch. 1.} It is not necessary to doubt the sincerity with which decision-makers at the time tried to respond to a difficult and quickly developing situation. And yet, it is because the major international actors could have saved the people in Srebrenica without exposing themselves to ‘excessive risk’ that we blame them for failing to do so.