



The Role of ICRC in Establishing Protected Areas

ID No. 1475

(PP 27 - 51)

<https://doi.org/10.21271/ZJIP.22.36.2>

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Received : 02/09/2023

Accepted : 15/10/2023

Published :02/06/2024

Abstract

The protection of civilians and *hors de combat* in armed conflicts has been a paramount concern for the International Committee of the Red Cross (ICRC). In this context, protected area as a protective mechanism has emerged as a significant measure to safeguard civilians and provide safe haven during armed conflicts within the framework of International Humanitarian Law (IHL). This paper explores the ICRC's endeavours in negotiating, establishing and overseeing protected areas during various armed conflicts. The paper is an analytical study, examining the legal basis and practical aspects of the ICRC's role in shaping the concept of protected areas within conflict zones. It examines instances of protected areas aiming to analyse the extent to which the creation of such areas by ICRC contributes to saving civilians' lives, mitigating their sufferings and ensuring access to humanitarian assistance. The paper further discusses the feasibility of establishing protected areas in contemporary armed conflict situations. The evolving contemporary conflicts, marked by complexity, multi dimensions and involving multifarious parties pose substantial obstacles for ICRC to attain agreement for establishing such areas. The main question is to what extent the ICRC can contribute to saving the civilian lives affected by armed conflicts by establishing protected areas? The study's main finding is that although the ICRC's experience in establishing protected areas is seen as valuable in protecting civilians and facilitating access to humanitarian assistance, the ICRC confronted significant challenges within contemporary conflict situations to establish protected areas. Thus, alternative mechanisms such as imposed protected areas and humanitarian corridors emerged. In addition, this paper contributes to enhancing legal understanding of the critical role of the ICRC in humanitarian crises and provides invaluable insights into the evolution of protection measures for civilian populations amidst active conflict zones.

Keywords: Armed Conflicts, Protected Areas, Civilian Protection, ICRC, IHL



1. Introduction

Armed conflicts historically have inflicted endless suffering on civilians, rendering them vulnerable to violence, displacement, and other human rights breaches. To address the civilian suffering and dire humanitarian situation, the International Committee of the Red Cross (ICRC) has been at the forefront of establishing protected areas as a crucial measure to protect civilians and provide necessary humanitarian assistance. The notion of protected areas is long existed and its historical development traced back to ancient Greece where civilians sought shelter in sanctuaries. In 1870, Henri Dunant, the founder of the ICRC called for establishing neutral areas for *hors de combat* outside conflict zones. Over time, protected areas were enshrined as essential legal components within the framework of International Humanitarian Law (IHL) through the provisions of the Geneva Conventions (GCs) of 1949 and their Additional Protocols (APs) of 1977, which specifically devoted to alleviating the negative impact of armed conflicts and protect *hors de combat* and civilians.¹

The ICRC as a guardian of the IHL is mandated to take measures to ensure respect, promote and monitor the implementations of the rules and principles of IHL. It is further mandated under GCs to provide its good offices in assisting the establishment and management of such areas under IHL.²

The ICRC's role is valuable in implementing and supervising protected areas in certain conflict instances such, as the second Sino-Japanese War in 1937, the Palestine War in 1948, the Bangladesh independence war in 1971, the conflicts in Cyprus in 1974, the Falkland Islands in 1982 and Croatia in 1992. Analysing ICRC's experience within the context of such conflict situations is of paramount significance to shed light on the effectiveness and implications of protected areas in protecting civilians during times of conflict.³

The protected areas established by ICRC were generally traditional based-consent protected areas envisaged by IHL, which require the consent of the conflicting parties. Such consent may not be attainable within the context of contemporary armed conflicts. Such conflicts often involve non-state armed groups, who may not recognize or adhere to the rules and principles of IHL. As a result, alternative approaches and strategies may be required in dealing with the protection of civilians in contemporary armed conflicts. This paved the way for the ICRC to consider alternative mechanisms for protecting civilians in active conflict zones. Such mechanisms include imposing protected areas by the United Nations Security Council (UNSC) under Chapter VII of the charter without the consent of concerned parties on the ground. It further includes creating humanitarian corridors for evacuating civilians out of the conflict zones. The ICRC's commitment to safeguarding civilians and enabling their access to essential humanitarian assistance renders it a crucial intermediary in establishing protected areas during various armed conflicts.

1.1 Research Problem and Questions

Despite the persistent ICRC's efforts to advocate and establish protected areas in various conflict situations, yet in certain contemporary armed conflicts, the

¹ Rutger Birnie and Jennifer Welsh, 'Displacement, Protection and Responsibility: A Case for Safe Areas' (2018) 10 (3) *Global Responsibility to protect*, 334.

² Geneva Convention Relative to the Protection of Civilian Persons in Time of War (adopted on 12 August 1949, entered into force on 21 October 1950) 75 UNTS 287 Art 14.

³ Karin Landgren, 'Safety Zones and International Protection: A Dark Grey Area' (1995) 7 (3) *International Journal of Refugee Law* 439.



establishment of protected areas is not attainable due to the changing nature of such conflicts. The contemporary conflict is characterised by complexity, multifaceted dimensions and involving multiple actors that render reaching an agreement between conflicting parties to establish protected areas challenging for the ICRC. Hence, the question is how does the ICRC cope with contemporary conflict situations? What are available alternative mechanisms for protecting civilians in such conflict circumstances? Was it successful in bringing belligerents together to negotiate and establish protected areas? To what extent such protected areas were effective in providing humanitarian assistance and protection for civilian populations during armed conflicts? The paper explores the hypothesis that the creation of protected areas by ICRC can contribute to saving the civilian lives affected by armed conflicts.

1.2 Research Significance:

The paper holds immense significance in exploring the critical role of the ICRC in advocating the creation of protected areas during armed conflicts. Such protected areas provide safe havens for civilians and vulnerable individuals, providing essential protection and assistance amidst the chaos of wartime. Understanding the ICRC's efforts in advocating and establishing protected areas contributes to the broader discussion on IHL and provides valuable perceptions into the evolving notion of protective mechanisms for civilian populations in conflict zones.

1.3 Research Objectives:

The foremost objective of this paper is to examine the ICRC's role in promoting and creating protected areas during armed conflicts. It aims to highlight the legal basis for ICRC's action and its adherence to the IHL. The paper addresses instances of protected areas, from Jerusalem in 1948 and later conflicts in Dhaka in 1971, Cyprus in 1974, Falklands in 1982 and Croatia in 1992. It strives to clarify the ICRC's role in contemporary conflicts and analyse the legal and practical aspects of protected areas within such combat circumstances and their efficiency in safeguarding civilians.

1.4 Research Methodology

To achieve the paper's objectives, the legal and deductive approaches besides the analytical research method are employed. The paper mainly analyses related provisions of IHL, ICRC statute, and arguments made in the literature, including historical, legal documents and case studies of specific instances of protected areas formed by the ICRC in various conflict zones.

1.5 Research Structure

This paper is divided into two core sections. Following this introduction, the second section explains the concept of protected areas by defining the term and exploring its historical background and codification process within the framework of IHL. The third section discusses the theoretical and practical role of ICRC in establishing protected areas. Its first sub-section clarifies the legal basis of ICRC's actions. The second sub-section discusses the theoretical role of ICRC while the third subsection delves into the practical role of ICRC by analysing and assessing instances of protected areas established by ICRC in various conflict situations. Finally, the paper will summarise its findings and present a set of recommendations.



2. The Concept of Protected Areas

Despite extensive use of terms like safe areas, safe zones, and safe havens for protected areas, there is neither internationally agreed terminology nor legal definition for protected areas in customary or treaty law.¹

Some scholars have analysed the notion of protected areas and endeavoured to define the term. According to Wilson, protected areas are any type of geographical area intended to protect civilians from the harms of armed conflict, regardless of their arrangement, purpose or transitory nature.² Mountz, on the other hand, highlights that protected area is an internationally known term allocated to a geographic area intended to provide protection for civilians throughout conflicts.³ Additionally, Harunoğlu, indicates that a protected area is a strictly delimited area, in which civilians and civilian objects can be protected from harm caused by attacks of armed forces either launched from the ground or air.⁴

In the same vein, Ghráinne demonstrates that a protected area is a specific area within an armed conflict zone, designated for protecting civilians from harm and effects of hostilities.⁵ Accordingly, a protected area can be defined as a confined geographical area within a conflict zone in which at least one or all belligerents mutually agree to establish such an area and effectively ensure its protection from threats of armed conflict. The idea is that the people who live in such areas are afforded protection and spared from the negative impacts of hostilities.

2.1 Historical Background of Protected Areas

The historical development of protected areas can be traced back to ancient times. Ancient Greece had holy sanctuaries where civilians sought shelter. Throughout history, certain areas designated as neutral territories or safe havens for civilians during wars.⁶ The concept of protected areas was first presented by Henri Dunant in 1870, the founder of the ICRC, to establish neutral areas in conflict zones.⁷

After World War I, the protection of civilians evolved by establishing rules for sparing non-combatants in all conflict situations and designating specific places for civilians to seek refuge.⁸ In 1929, significant progress began with the proposal for ‘Geneva Places’,

¹ Najam U Din, ‘Safe’ havens: Compromising Human Rights Protection for the Displaced? (Master thesis, University of Lund 2005) 18-20.

² 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.

³ Alison Mountz, ‘Safe Heaven’ (Online Library, 06 March 2017) <<https://onlinelibrary.wiley.com/doi/abs/10.1002/9781118786352.wbieg0771>> accessed 17 June 2023.

⁴ Nur Çetinoğlu Harunoğlu, ‘A Turkish Perspective on the Ethics of ‘Aafe Zone’: the Evolution of the Concept in Turkish–American Relations from Iraq (1991–2003) to Syria (2012–2016)’ (2019) *Journal of Transatlantic Studies* 3.

⁵ Bríd Ní Ghráinne, ‘The Syrian Safe Zone and International Law’ (2020) *Institute Of International Relations Prague* 2.

⁶ Birgit Kruitwagen, *Never Forget, Never Again? An Analysis of How the Lessons from the Srebrenica Safe Area Can Help us Understand the Possibilities of Safe Areas in Syria*, (Master Thesis 2017 Radboud University Nijmegen) 13.

⁷ Rutger Birnie and Jennifer Welsh (n 1).

⁸ Yves Sandoz, ‘The Establishment of Safety Zones for Persons Displaced within their Country of Origin, in Najeeb Al-Nuaimi and Richard Meese (eds), *International Legal*



safe zones for non-combatants. The 1934 ‘Monaco Draft Convention’ proposed creating ‘Hospital Towns’ to provide medical services and protection for the wounded and sick troops.¹ Additionally, during the Spanish Civil War in 1936, Madrid was declared a protected area. Similarly, during the second Sino-Japanese War in 1937, the Jacquinet zone was established in Shanghai.² Moreover, in 1948, the ICRC played a significant role in negotiating the establishment of a protected area in Jerusalem. The success of the aforementioned instances combined with the ICRC's ideas and experiences led to the adoption of the notion of protected areas in the 1949 GCs and their 1977 APs.³

2.3 The Codification of Protected Areas

The codification of protected areas began with the 1949 GCs, which incorporated within three Articles. Article 23 of the Geneva Convention I (GC I) refers to ‘Hospital Zones and Localities’, which affords protection for the sick and wounded of armed forces.⁴ Whilst, Article 14 of the Fourth Geneva Convention (GC IV) includes ‘Hospital and Safety Zones and Localities’ which provide protection not only to sick and wounded but also to categories of civilian, including the aged person, children under fifteen, expectant mothers and the mothers of children under seven.⁵ In addition, Article 15 of the same Convention, defined the ‘Neutralised Zones’ as zones to be established by mutual consent of the concerned parties in an area where fighting is taking place, and the formal agreement between the parties should cover in details the geographical area, management, food supply and duration of the zone.⁶

Similarly, the Additional Protocol One (AP I) of 1977 annexed to the GCs of 1949 also encompasses provisions on protected areas. Article 59 stipulated that certain areas may be declared as ‘Non-Defended Locality’ for the protection of civilians not only the sick and wounded but also the entire population who reside in the concerned locality. Further, Article 60 of the same protocol considers the establishment of a ‘Demilitarized Zone’, which prohibits the extension of military operations to areas that the conflicting parties had agreed to consider as demilitarized zones.⁷

Issues Arising under the United Nations Decade of International Law, (Martinus Nijhoff, The Hague and London, 1995) 901.

¹ Karin Landgren (n 3) 438.

² Ibid.

³ Phil Orchard, ‘The Emergence of Safe Areas and the Role of Normative Contingency’ (2018) 10 (3) *Global Responsibility to Protect* 292.

⁴ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949, entered into force on 21 October 1950) 75 UNTS 31. Art 23 states that: “In time of peace, the High Contracting Parties and, after the outbreak of hostilities, the Parties to the conflict, may establish in their own territory and, if the need arises, in occupied areas, hospital zones and localities so organized as to protect the wounded and sick from the effects of war, as well as the personnel entrusted with the organization and administration of these zones and localities and with the care of the persons therein assembled.”

⁵ Geneva Convention IV, Art 14.

⁶ Ibid, Art 15.

⁷ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (opened for signature 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3. Art 59(1) and 60.



3. The Role of the ICRC in establishing Protected Areas Theoretically and Practically
Over 160 years ago, precisely in 1863, the ICRC was established in Geneva by a group of Swiss citizens led by Henry Dunant, who was inspired to create this organization after witnessing the suffering of wounded soldiers during a battle in Solferino, Italy.¹ Throughout its history, the organization's initial focus was on assisting wounded soldiers on the battlefield. However, its mandate has expanded to cover all victims of armed conflict and other situations of violence. This led to the expansion of the organization to a major humanitarian entity. Currently, the ICRC works globally to support individuals who suffer from the consequences of war.²

3.1 The Legal Basis for ICRC Action

The ICRC's action is predicated upon the GCs, the statutes of the International Red Cross and Red Crescent Movement (the Movement).³ In case of international armed conflicts, the ICRC's activities are governed by GCs of 1949 and AP I of 1977. These conventions grant the ICRC the right to provide relief to wounded and sick military personnel, visit prisoners of war, aid civilians and ensuring compliance with IHL.⁴ For non-international armed conflicts, the ICRC's activities are governed by Article 3 common to the GCs and Additional Protocols two (AP II). The latter stipulates that 'an impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict'.⁵ This Article recognizes the ICRC's right to offer its services to the belligerent with the aim of providing relief and visiting individuals detained in connection with the conflict.

In situations of violence that do not rise to the level of an armed conflict, such as, internal disturbances and violence or in any other situation which warrants humanitarian action, the ICRC relies upon Article 5 of the Movement's statutes which states that:

"... to endeavour at all times – as a neutral institution whose humanitarian work is carried out particularly in time of international and other armed conflicts or internal strife – to ensure the protection of and assistance to military and civilian victims of such events and of their direct results".⁶

This Article outlines the ICRC's right of humanitarian initiative, which may further be invoked in international and non-international armed conflicts.⁷ Moreover, the International Conferences of the Red Cross and Red Crescent have adopted several resolutions,⁸ which serve as the foundation for the ICRC's action.¹

¹ Georges Willemin and Roger Heacock, *The International Committee of The Red Cross* (Martinus Nijhoff, 1984) 19.

² Hans Haug, *Humanity for All: The International Red Cross and Red Crescent Movement* (Paul Haupt, 1993) 421-422.

³ David Weissbrod, 'The Role of International Organizations in the Implementation of Human Rights and Humanitarian Law in Situations of Armed Conflict' (1988) 21 *Vanderbilt Journal of Transnational Law*, 346.

⁴ ICRC, *International Humanitarian Law* (Geneva, 2002) 2.

⁵ Art 3, Para 2. Common to the four Geneva Conventions.

⁶ Statutes of the International Red Cross and Red Crescent Movement (adopted by the 25th International Conference of the Red Cross at Geneva in 1986, amended in 1995 and 2006), Art 5, Para 2(d).

⁷ ICRC, (n 22).

⁸ In particular, resolutions XIV of the 10th International Conference of the Red Cross (Geneva, 1921); XIV of the 16th International Conference of the Red Cross (London, 1938); XX of the 17th International Conference of the Red Cross (Stockholm, 1948); XIX



The ICRC's global mandate endows it with an international legal personality. The UN General Assembly granted official recognition of this mandate in 1990 by conferring the ICRC 'observer status'. This status permits the ICRC to participate actively in international discussions, while safeguarding its independence, which is critical in fulfilling its mission.²

The ICRC is a constituent of the International Red Cross and Red Crescent Movement, which encompasses the 192 formally acknowledged Red Cross and Red Crescent Societies and their corresponding International Federation.³ Each entity within the Movement has designated duties, which work in conformity with the others. The Movement operates under its fundamental principles, which provide a framework for its operations.⁴ Such principles include impartiality, humanity, independence, neutrality, voluntary service, unity and universality.⁵

3.2 The Theoretical Role of the ICRC in Establishing Protected Areas

The ICRC functions as an impartial and independent organization, providing assistance and protection to those affected by armed conflicts. The organization takes swift action in crisis situations, whilst advocating for the adherence to the IHL and its incorporation into national legal frameworks. The core of the ICRC's mission is to provide assistance to victims of both international and non-international armed conflicts. Its services are based on the principles and rules of IHL and are provided after considering the existing or anticipated humanitarian needs.⁶

However, the ICRC played a significant role in the inclusion of provisions concerning protected areas under the IHL. The ICRC particularly suggested the insertion of a Draft Article for the 1929 revised GC on the wounded besides sick and the new Convention on the protection of civilian persons in time of war to promote the creation of protected areas. Moreover, the ICRC proposed a draft agreement, which could serve as a model for States to establish and acknowledge such areas. Ultimately, these proposed drafts were accepted with minimal modifications by the International Conference of the Red

of the 19th International Conference of the Red Cross (New Delhi, 1957); XXXI of the 20th International Conference of the Red Cross (Vienna, 1965) and VI of the 24th International Conference of the Red Cross (Manila, 1981).

¹ Marion Harroff-Tavel, 'Action Taken by the International Committee of the Red Cross in Situations of Internal Violence' (1993) 2494 *International Review of the Red Cross*, 202.

² 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*, 288.

³ At the time of writing, there are 192 National Red Cross or Red Crescent Societies in the world. For updated information. See: 'The International Red Cross and Red Crescent Movement'(ifrc.org) <<https://www.ifrc.org/who-we-are/international-red-cross-and-red-crescent-movement>> accessed 17 April 2023.

⁴ Georges Willemin and Roger Heacock (n 19) 22- 26.

⁵ ICRC, 'The Fundamental Principles of the International Red Cross and Red Crescent Movement' <https://www.icrc.org/sites/default/files/topic/file_plus_list/4046-the_fundamental_principles_of_the_international_red_cross_and_red_crescent_movement.pdf> accessed 28 September 2023.

⁶ Marco Sassòli, Antoine A. Bouvier and Anne Quintin, *How Does Law Protect in War? Cases, Documents and Teaching Materials on Contemporary Practice in International Humanitarian Law* (Volume I, 3rd edn, International Committee of the Red Cross, Geneva 2020) (Part I, Chapter 15) 5.



Cross in Stockholm in 1948, and then by the Diplomatic Conference in 1949, resulting in the inclusion of the notion of protected areas in GCs.¹

All of the provisions regarding the creation of protected areas within the framework of GCs require the consent of involved parties for the establishment of such areas. Nevertheless, obtaining such consent during conflicts would be difficult, due to the tense nature of the situation and the deep-rooted mistrust between belligerents. Consequently, a limited number of protected areas have been effectively established.²

In order to bypass such challenges, a neutral actor is required to act as an intermediary between belligerents to reach a convergence of views on establishing protected areas. The ICRC as a mediator, pursuant to the provisions of the GCs, is invited to lend its good offices in this respect.³ This may imply the possibility of acting proactively and suggesting proposals to concerned parties whenever deemed appropriate, without waiting for the parties' invitation. Accordingly, the ICRC has taken such initiative and had a significant impact in establishing numerous protected areas and often putting them under its own control and supervision.⁴ Notable instances of such protected areas will be discussed in the next sub-section.

Generally, the role of the ICRC in establishing protected areas can be summarized as follows:

3.2.1 Assessment

The first step in establishing a protected area is to conduct a thorough assessment of the situation on the ground. This includes analysing the security and humanitarian situations, identifying the needs of the civilian population, and assessing the feasibility of establishing a protected area in the given context. The ICRC has undertaken such type of assessment in Bosnia and Herzegovina situation. It elaborated that the incidence of mass kidnappings, large-scale forced displacements, widespread killing and executions has resulted in an increasingly dire and tragic situation for the civilian population. Given the highly distressing conditions the ICRC advocated for the establishment of protected areas in Bosnia-Herzegovina, and implored the international community to take immediate action.⁵

3.2.2 Advocacy and Negotiation

The ICRC advocates for the establishment of protected areas with relevant parties, including governments and armed groups. It engages in negotiations with parties to develop and reach into a formal agreement that outlines the scope, purpose, and rules governing the protected area to ensure that they are established in accordance with IHL and are respected by all parties. The ICRC has been at the forefront of initiating

¹ Iris Müller and International Committee of the Red Cross, *Hospital Zones and Localities, Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (Cambridge University Press 2016) 676.

² Jean-Philippe Lavoyer (n 28) 296.

³ Geneva Convention IV, Art 14.

⁴ Francois Bugnion, *The International Committee of the Red Cross and the Protection of War Victims* (ICRC, Geneva, 2003) 749,750.

⁵ 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 May 2023.



negotiations and facilitating the conclusion of agreements for establishing the most protected areas that have been created through mutual agreements.¹

For instance, during the armed conflict in Croatia, a number of protected areas were established. The ICRC assumed the responsibility of bringing the warring parties together for negotiations.² Hence, several agreements were reached under the auspices of the ICRC, including the Memorandum of Understanding signed in 1991 that stipulated the establishment of protected areas. As a result, a protected area was created around the hospital in Osijek.³ Regrettably, the ICRC was not able to establish a protected area in Ukraine. However, it was able to negotiate an agreement between Russia and Ukraine to establish safe passage for the evacuation of civilians in Mariupol and Volnovakha.⁴

3.2.3 Designation and Demarcation

The ICRC identifies areas that are suitable for protected area based on factors, such as security situation, accessibility, and availability of humanitarian assistance. It works with relevant parties to designate certain areas as protected and ensure that such areas are adequately demarcated and communicated to all parties. The ICRC demarcates the boundaries of the protected area and ensures that all parties are aware of such a demarcation. This is usually done through the use of physical barriers or other means of demarcation, such as, the use of large flags that displayed the Red Cross emblem to signify their protected status particularly if the area is established on the basis of Article 23 of the first GC and Article 14 of the fourth GC respectively.⁵ Numerous protected areas that had been established and supervised by the ICRC which demarcated in this way including, Dhaka, Bangladesh in 1971, Nicosia in 1974 and Osijek in Croatia in 1992. These areas were carefully selected and marked with a distinctive emblem.⁶

3.2.4 Monitoring and Protection

Once a protected area is established, the ICRC monitors the situation to ensure that the zone is respected adequately and that civilians are protected regularly. It works closely with relevant parties to ensure that humanitarian assistance can be delivered to those in need and the protected area is not used for military purposes. The protected area around Osijek Hospital serves as a prime example of ICRC supervision. The protected

¹ Emanuela-Chiara Gillard, “‘Safe Areas’-The Legal Framework’ (2017) 99 (3) *International Review of the Red Cross* 1084.

² Karin Landgren (n 3) 440.

³ ICRC, ‘Special Agreements between the Parties to the Conflicts: Yugoslavia/Croatia, Memorandum of Understanding of November 27, 1991’ (IHL Database) <<https://casebook.icrc.org/case-study/former-yugoslavia-special-agreements-between-parties-conflicts>> accessed 30 May 2023, Article 7 states that ‘The parties agree that for the establishment of protected zones, the annexed standard draft agreement shall be used as a basis for negotiations.’

⁴ Global Protection Cluster, ‘Ukraine Response Protection Snapshot’ (Protection Cluster Ukraine, 2022) <https://www.globalprotectioncluster.org/sites/default/files/2022-05/2022_protection_cluster_snapshot_17-24_march_eng.pdf> accessed 30 September 2023.

⁵ Annex I: Draft Agreement Relating to Hospital Zones and Localities, annexed to the First and Fourth Geneva Convention, Art 6.

⁶ Yves Sandoz (n 11) 909.



area was controlled by ICRC delegates, hospital security personnel, a limited number of Croatian police personnel and a group of Croatian Red Cross volunteers.¹

3.3 Empirical Instances of ICRC's Protected Areas

Throughout its history, the ICRC has been advocating and actively involved in negotiating the establishment of numerous protected areas in various conflict situations worldwide. Most notable instances of such areas are as follows:

3.3.1 Shanghai Protected Area

In the early 20th century several attempts were made to establish protected areas for sparing vulnerable civilian plight of war. Notably, during the conflict between China and Japan in 1937, the so-called the "Second Sino-Japanese War 1937-1945"², the civilian population in Shanghai endured a devastating situation. The focal point of the conflict was Shanghai and its vicinity. Naval vessels and biplanes engaged in indiscriminate shelling and bombing targeting anything that moved, regardless of whether they were military or civilian. The deliberate targeting of unarmed civilians sparked global outrage. Within a month, over half a million residents displaced and became homeless. The death toll included at least 4,000 Chinese soldiers and hundreds of Japanese, making it the deadliest international conflict involving China since 1900. However, this event served as a relatively minor prelude to the much graver horrors that would unfold in the following years.³ Thus, "Father Jacquinet"⁴ proposed establishing a protected area in Shanghai. His reputation in Shanghai was formidable and was widely recognized by Chinese and foreign officials.⁵

Father Jacquinet and Vice President of the ICRC in Shanghai led an initiative to establish a protected area within the city. The objective was to provide a sanctuary for approximately 250,000 Chinese and other non-combatants, shielding them from the ongoing hostilities.⁶ They engaged in intense negotiations that spanned three days with both the Chinese and Japanese authorities. A mutually agreed letter was co-signed by the Chinese and Japanese, delineating the designated area in Shanghai as a protected area exempt from Japanese attacks. The Japanese expressed their commitment to respect the area and minimize harm to non-combatant Chinese as long as three key

¹ Jean-Philippe Lavoyer, "International Humanitarian Law, Protected Zones and the Use of Force", in Wolfgang Biermann and Martin Vadset (eds), *UN Peacekeeping in Trouble: Lessons Learned from the Former Yugoslavia: Peacekeepers' Views on the Limits and Possibilities of the United Nations in a Civil War-like Conflict* (Ashgate, Aldershot, 2000) 269.

² The term "Sino-Japanese War" refers to a series of armed conflicts and hostilities that occurred between Japan and China from the late 19th century to the mid of the 20th century. This war includes two major conflicts: the First Sino-Japanese War, from 1894 to 1895, and the Second Sino-Japanese War, from 1937 to 1945. See: Kyu Hyun Kim, "The Sino-Japanese War (1894-1895): Japanese National Integration and Construction of the Korean 'Other'" (2012) 17 *International Journal of Korean History* 20- 21.

³ Peter Harmsen, *Shanghai 1937: Stalingrad on the Yangtze* (Casemate Publishers) 21.

⁴ Robert Jacquinet de Besange, (1878-1946) was a French priest who was the first to propose the idea of establishing protected area in Shanghai. For more details see: Malcolm Rosholt, 'Father Robert Jacquinet de Besange, Shanghai' <<https://hpcbristol.net/visual/ro-n0091>> 15 July 2023.

⁵ Marica R, Ristanio, *The Jacquinet Safe Zone: Wartime Refugee in Shanghai* (Stanford University Press 2008) 38, 54.

⁶ Wilson Chun Hei Chau (n 5) 192.



conditions fulfilled. Firstly, the Chinese authorities guarantee the demilitarisation of this zone. Secondly, if the area occupied by Japanese forces, it would automatically come under Japanese jurisdiction. Finally, The ICRC shall assume the role of overseeing and monitoring the designated area, ensuring Chinese compliance with the agreed conditions.¹ The Chinese authority agreed to the proposed conditions and the Chinese military pledged to evacuate the zone, while the Japanese authorities committed to refrain from launching any offensive actions against it.² Hence, the protected area in Shanghai was officially established in November 1937.³

The Shanghai protected area provided a measure of safety and protection to hundreds of thousands of Chinese civilians who sought refuge from the conflict in the Shanghai region. Remarkably, even after the Japanese control of the area, the zone continued to offer protection to those within its boundaries until June 1940, at which the circumstances had ameliorated and civilian were repatriated to their homes.⁴

It would seem therefore that, the success and impact of Shanghai's protected area undoubtedly influenced future considerations and approaches to the establishment of protected areas in similar contexts. The remarkable endeavour and intermediary role of the ICRC facilitated greatly in creating protected area in Shanghai providing assurance to the parties that the agreed conditions were being adhered.

3.3.2 Jerusalem Protected Area

Following the adoption of the partition plan for Palestine by the UN, it became evident that hostilities were likely to ensue upon the end of the British Mandate in 1948. During the outbreak of the Palestine conflict, the ICRC proposed protected areas for civilians, which led to the establishment of the first protected area that was entirely under the control and supervision of the ICRC.⁵ With a population of approximately 150,000 consisting of both Arabs and Jews, Jerusalem was highly coveted and faced significant threats during that time.⁶

After protracted negotiations with relevant authorities, the ICRC delegation officially declared the establishment of protected areas in three different zones. The first zone comprised the King David Hotel, the Ymca hostel and the Terra Sancta convent, with the capacity to accommodate approximately 2,000 individuals. The second zone extended from Government House to the Allenby barracks which accommodated between 2,000 to 5,000 people. The third zone consisted of an Italian school and a former Italian hospital. Altogether, these three protected areas offered space for roughly 15,000 individuals, and each was to be demarcated by the emblem of the Red Cross.⁷

Solely women, children, and elderly individuals, without discrimination based on race, religion or nationality were permitted to enter the protected areas and granted provisional shelter during active hostilities. The ICRC assumed the administration and

¹ Marica R, Ristanio (n 48) 63-67.

² Andre Durand, *From Sarajevo to Hiroshima: History of the International Committee of the Red Cross* (Henry Dunant Institute, 1984) 375.

³ Marica R, Ristanio (n 48) 67.

⁴ Ibid 54.

⁵ ICRC, *Hospital Localities and Safety Zones* (Geneva 1952) 24-26.

⁶ Catherine Rey-Schyr, *From Yalta to Dien Bien Phu History of the International Committee of the Red Cross 1945 to 1955* (ICRC, 2017) 413.

⁷ Dominique-D. Junod, *The Imperiled Red Cross and the Palestine-Eretz-Yisrael Conflict, 1945-1952: The Influence of Institutional Concerns on a Humanitarian Operation* (Kegan Paul 1995) 159.



supervision of the zones, and both Arab and Jewish authorities consented to these conditions.¹

The establishment of a protected area in Jerusalem was a momentous initiative that held both practical and conceptual significance during the period leading up to the adoption of the GCs in 1949. This instance laid the groundwork for incorporating the concept of protected areas in the form of neutralized zones into the GCs IV of 1949, specifically Article 14. The Jerusalem zones were under the complete administration of the ICRC, thereby setting a precedent for the possibility of involving the ICRC in establishing and managing protected areas in future situations.²

It should be noted that the Jerusalem protected area was a remarkable success of the ICRC, given the absence of any formal convention on creating protected areas, yet the ICRC succeeded in establishing such protected areas under its auspices and supervision. Although it was established in the midst of a complex conflict and located on the frontline, the area was largely respected by the conflicting parties. This practical implementation of establishing protected areas demonstrates the effectiveness of the ICRC's efforts in providing a safe haven for civilians in challenging conflict situations.

3.3.3 Dacca Protected Area

The state of Pakistan emerged after the British parliament enacted the Indian Independence Act in 1947, resulting in the creation of two separate states, India and Pakistan. Pakistan was divided into two distinct regions, West Pakistan and East Pakistan, determined by significant differences in geography, culture and language.³

Over time, disputes arose in various spheres, such as economy, politics, and governance leading to hostility and unrest in the region.⁴ Ultimately, in March 1971 the East Pakistanis declared independence with the support of India. This support led to the border clashes between Pakistan and India, which later escalated resulting in the declaration of war against India.⁵

During the conflict, the situation in Dacca (now Dhaka) became deeply distressing. The ICRC took proactive measures by proposing the establishment of protected areas in three steps: Firstly, seeking the consent of the Pakistani authorities in Dacca; secondly, designating three protected zones within Decca. Finally, informing the Indian authorities about the situation and urging them to respect the established protected zones.⁶

Following the agreement with Pakistani authorities, the ICRC successfully established three protected zones at a college, a hospital and a hotel, which all identified by the Red

¹ Francois Bugnion, 'The International Committee of the Red Cross and the Development of International Humanitarian Law' (2004)5 (1) *Chicago Journal of International Law* 206.

² Yves Sandoz (n 11) 906.

³ The Secretariat of the International Commission of Jurists, *The Events in East Pakistan, 1971* (Geneva 1972) 7-9.

⁴ European Foundation for South Asian Studies, '1971 Liberation War, Birth of Bangladesh and comparison with present day Pakistan' (EFSAS, Amsterdam 2017) <<https://www.efsas.org/Bangladesh%20Research%20Dossier-%20Final.pdf>> accessed 23 July 2023.

⁵ Sheikh Fakhar-e-Alam, 'Fall of Dhaka 16 Dec, 1971: Causes, Concocted Myths & Lessons Learnt' (Modern Diplomacy 2021) <<https://moderndiplomacy.eu/2021/12/18/fall-of-dhaka-16-dec-1971-causes-concocted-myths-lessons-learnt/>> accessed 23 July 2023.

⁶ Yves Sandoz (n 11) 909



Cross emblem. These designated areas were subject to strict control measures to prevent any infiltration of weapons and were effectively administered by ICRC delegates who collaborated with local medical personnel and foreign civilians, primarily journalists. During the period leading up to Dacca's surrender to the Indian army in December 1971, the designated protected zones were notably respected by the belligerents.¹

It could be concluded that the ICRC played a significant role in safeguarding civilians during this conflict by establishing protected areas. Such areas served as crucial and effective humanitarian spaces, successfully fulfilling their role in providing assistance and protection to civilians caught in the midst of the hostilities. Respecting the sanctity of the protected areas by the belligerents facilitated the ICRC's safeguarding of civilians during this critical phase of the conflict.

3.3.4 Nicosia Protected Area

The Greek junta's overthrowing of the elected government of President Makarios on July 15, 1974, offered Turkey an opportunity to execute its plans concerning Cyprus.² Subsequently, on July 20, 1974, Turkey launched a military operation, occupying the northern part of the Republic of Cyprus.³ As a result of the Turkish ongoing occupation, 180,000 Greek-Cypriots were forced to abandon their homes, becoming internally displaced within their own country.⁴

As fighting flared up again, the ICRC expressed particular concern for the safety of civilians who were caught in conflict. The head of the ICRC delegation took the initiative to establish three protected areas in Nicosia, namely Hilton Hotel, ICRC headquarters in Cleopatra Hotel and Dr. Kibis Hospital.⁵ The ICRC delegate engaged in negotiations with the relevant authorities, including those from Greece, Turkish, British and the USA.⁶

Ultimately, both parties (Greek and Turkish) agreed to this initiative. The Cyprus authorities issued orders for the removal of all military personnel and installations from the designated zones and adjacent areas. Additionally, the authorities in Ankara provided assurances to the ICRC that the protected areas would be respected by the Turkish army.⁷ The ICRC formally notified the established protected areas to the conflicting parties emphasizing that such areas were under ICRC administration and demarcated by the Red Cross emblem. The ICRC successfully ensured the functioning and operation of these protected areas throughout the most intense period of fighting. The designated areas effectively provided refuge to nearly 2,000 civilians.⁸ It seems therefore that the actions of the ICRC in Nicosia, particularly the designation of specific

¹ Ibid.

² Chares Demetriou, 'Greek Identity in Cyprus 1960-2003' in Bill Kissane (edn) *After Civil War: Division, Reconstruction, and Reconciliation in Contemporary Europe* (University of Pennsylvania Press, 2014) 136.

³ Theodora Christodoulidou, 'The Legal Status of the Buffer Zone in Cyprus' (2008) 2 *The Cyprus Review* 116.

⁴ Chares Demetriou (n 64).

⁵ Stella Soulioti, Report of the Cyprus Red Cross Society for the Year 1974' (Redcross.org) <<https://www.redcross.org.cy/images/media/file/1974AnnualReport.pdf>> accessed 24 July 2023.

⁶ Yves Sandoz (n 11) 909.

⁷ International Committee of the Red Cross, 'The International Committee in Cyprus' (1974) 14 (162) *International Review of the Red Cross* 458.

⁸ Yves Sandoz (n 11) 910.



areas as protected, were crucial in safeguarding civilians and alleviating their suffering by providing safe spaces and medical care amidst the on-going conflict.

3.3.5 Falklands Protected Area

Falklands is an archipelago located in the South Atlantic. Argentina asserted its claim to the Falkland Islands (Islas Malvinas) following the dissolution of the Spanish Empire.¹ However, Britain disregarded this claim and repopulated the island in the 1830s to become Crown Colony of the British Empire. Despite this, Argentina maintained its claim, leading to on-going disputes over the sovereignty of the islands throughout the 20th century.²

In late April 1982, Argentina launched full-scale invasion operation. In response, the British authorities deployed its force to retake control of the islands. Military operations commenced in May 1982 between the two parties.³ During the conflict, new challenges arose in the context of maritime warfare. The long-range missiles posed safety concerns for hospital ships and other vessels providing relief and assistance to the wounded, sick, and shipwrecked.⁴ To address this emerging challenge, the parties to the conflict with the intermediary and good offices of the ICRC, formulated an innovative approach of protected areas in the sea. Consequently, Argentina and Great Britain agreed to establish a neutralized zone at sea exclusively for hospital ships, known as the 'Red Cross Box'.⁵

The 'Red Cross Box', established in north of the archipelago, with a diameter of approximately 20 nautical miles served as a protected area enabling hospital ships and vessels to provide medical care to wounded individuals. Hospital ships were used to retrieve the wounded from the combat zones. Furthermore, the Red Cross Box facilitated the exchange of wounded between adversaries and saved many lives.⁶ The ICRC carried out regular inspections during the course of the conflict to ensure that both parties were adhering to the rules and principles set forth in the GCs.⁷

It can be concluded that pursuant to Article 23 of GC I and Article 14 of GC IV, the protected areas can be established as hospital zones for wounded and sick on land. Additionally, the ICRC proved the viability of creating such areas at sea as well, where hospital ships could operate with immunity from attacks and provide medical care for the wounded and sick on the high seas. It seems therefore that, in terms of purpose and

¹ Carig Alexander Snyder, 'The Falkland Island War 1982: A legal, Diplomatic and Strategic Evaluation' (Master Thesis, Brock University, Ontario 1989) 17-19.

² Peter J. Beck, 'The Anglo-Argentine Dispute Over Title to the Falkland Islands: Changing British Perceptions on Sovereignty since 1910' (1983) 12 (1) *Millennium: Journal of International Studies* 11.

³ Jason McClure, 'The Falklands War: Causes and Lessons' (2004) 3 (11) *Strategic Insights* 6,7.

⁴ Yves Sandoz (n 11) 915.

⁵ Christopher Greenwood, 'Scope of Application of Humanitarian Law' in Dieter Fleck (edn) *The Handbook of International Humanitarian Law* (Oxford University Press 2008) 60.

⁶ Sylvie-Stoyanka Junod, *Protection of the Victims of Armed Conflict Falkland-Malvinas Islands (1982): International Humanitarian Law and Humanitarian Action* (International Committee of the Red Cross, 1984) 26.

⁷ IHL in Action, 'Falkland/Malvinas Islands, Medical Treatment for Wounded Combatants' (Case Study) <<https://ihl-in-action.icrc.org/case-study/falklandmalvinas-islands-medical-treatment-wounded-combatants>> accessed 27 July 2023.



practice, the Red Cross Box bore similarities to the hospital zone as outlined in Article 23 of GC I.

3.3.6 Protected Areas in Croatia

The conflict that unfolded in Croatia during the 1990s was part of the wars following the collapse of the Socialist Federal Republic of Yugoslavia. In Croatia, the quest for independence led to a vicious and prolonged war from 1991 to 1995.¹

As the conflict escalated, heinous core international crimes were perpetrated, resulting in severe human rights violations, including crimes against humanity, war crimes, and ethnic cleansing which deliberately targeted civilians.² Given the highly critical circumstances, the ICRC proactively pursued the establishment of protected areas and took on the responsibility of convincing the conflicting parties to engage in negotiations in this respect.³ Following a series of communications and meetings, a Memorandum of Understanding (MOU) was signed in November 1991 between the Federal Executive Council, the Republics of Croatia and Serbia, and the Yugoslav People's Army under the auspices of the ICRC.⁴ Article 7 of the MOU clearly referred to the establishment of protected areas and outlined its modalities and beneficiaries.⁵

Pursuant to the framework of the MOU with the ICRC's support, an agreement concerning the establishment of a protected area in the hospital of Osijek was signed in December 1991. The agreement stipulated two key provisions: Firstly, placing the protected area under the supervision and control of the ICRC; secondly, the presence of permanent delegates of ICRC within the zone.⁶ Additionally, only medical and administrative personnel, ICRC delegates and local ICRC staff were permitted to enter the zone.⁷

The agreement became effective in January 1992. The Osijek Hospital comprised several buildings, providing a total capacity of 1,600 beds, creating a secure area to accommodate approximately 2000 people. While the Osijek protected zone was exceptionally well organized, it was not the sole instance. In response to the intensity of hostilities in the Dubrovnik area, the ICRC proposed in December 1991 to designate the Franciscan monastery and Medarevo hospital as protected area. These protected areas ultimately ceased in July 1992.⁸

¹ Erin D. Mooney, 'Presence, Ergo Protection? UNPROFOR, UNHCR and the ICRC in Croatia and Bosnia and Herzegovina' (1995) 7 (3) *International Journal of Refugee Law* 407.

² Tadeusz Mazowiecki, 'Report on the Situation of Human Rights in the Territory of the Former Yugoslavia' paras. 1 and 6: UN doc. E/CN.4/1992/S-I /10 (27 October 1992) <<https://digitallibrary.un.org/record/152801?ln=en>> accessed 15 August 2023.

³ Marion Harroff-Tavel (n 27) 219.

⁴ Karin Landgren (n 3).

⁵ ICRC (n 40).

⁶ Agreement Relating to the Establishment of a Protected Zone Around the Hospital of Osijek, Between the Federal Republic of Yugoslavia and Croatia, Pècs, 27 December 1991, Arts 2 (1) and 2(2) <<https://www.peaceagreements.org/viewmasterdocument/1880>> accessed 27 August 2023.

⁷ Jean-Marie Henckaerts and Louise Doswald-Beck (ed), *Customary International Humanitarian Law Volume II: Practice* (Cambridge University Press, 2005) Volume II: Practice 672.

⁸ Jean-Philippe Lavoyer, 'International Humanitarian Law, Protected Zones' (n 44) 268-9.



To sum up, during the armed conflict in Croatia, two main protected areas were established based on the ICRC initiative, which were placed under the supervision of the ICRC. Although the life span of these protected areas was relatively short, they contributed to protecting civilians and provided safe shelter, medical care and assistance for numerous vulnerable groups.

3.3.7 The Role of ICRC in Forming Protected Areas in Contemporary Armed Conflicts

As discussed earlier, the ICRC is mandated to protect and assist the civilians and *hors de combat* who are victims of armed conflicts. In order to fulfil this mandate, the ICRC resorts to establishing protected areas, where those affected by conflicts can find refuge and receive medical care. Generally, under IHL the establishment of protected areas requires agreement and commitment of all concerned parties. However, such agreement and cooperation between belligerents often is not achievable in contemporary armed conflicts.¹ Changing the nature of conflicts from interstate war to mostly intrastate conflict 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 ICRC's actions.²

Contemporary Armed conflicts are characterized by multiple armed groups, fluid alliances, with varying interests, allegiances and incentives. Such conflicts are often protracted and the involved armed groups are rarely organised under steady command and control.³ The fragmentation of armed groups and intermingling hierarchy, coupled with diverse motivations and interests of political, religious or ethnic further complicate the situation.⁴

This complexity creates several challenges for the ICRC. Firstly, it is challenging for the ICRC to obtain consent from all involved parties to establish protected areas. Such consent is an essential prerequisite for establishing protected areas and ensures the respect and protection of these areas. Numerous involved actors such as state and non-state actors make it difficult for the ICRC to negotiate with each actor who may have various interests, allegiances, and motivations.

Secondly, the establishment and sustainment of protected areas can be operationally and logistically challenging. The implementation and management necessitate sufficient security measures such as the deployment and presence of well-equipped forces to monitor and maintain security. These requirements are not foreseen without securing the consent and cooperation of the conflicting parties as they exceed the capacity of the ICRC. Thus, international community involvement becomes essential. The ICRC has

¹ Mohamed S. Elewa, 'Genocide at the Safe Area of Srebrenica: A Search for a New Strategy for Protecting Civilians in Contemporary Armed Conflict' (2001) 10 *Michigan State University-Detroit College of Law's Journal of International Law* 451.

² Majekodunmi, *Protection in Practice: The Protection of Children's Rights in Situations of Armed Conflict UNICEF Experience in Burundi* (UNICEF Innocenti Research Centre Florence, Italy 1999) 1-5.

³ ICRC, 'ICRC Statement: The Impact of Diversion and Trafficking of Arms on Peace and Security' (ICRC, 23 November 2021) < <https://www.icrc.org/en/document/icrc-statement-impact-diversion-and-trafficking-arms-peace-and-security>> accessed 28 August 2023.

⁴ ICRC, 'International Humanitarian Law and the Challenges of Contemporary Armed Conflicts' (ICRC, October 2019) < <https://www.icrc.org/en/document/icrc-report-ihl-and-challenges-contemporary-armed-conflicts>> accessed 28 August 2023.



specifically advocated for international intervention in cases like the ethnic-based conflict in Bosnia and Herzegovina.¹

Thirdly, as a neutral humanitarian organisation, the ICRC strives to conduct its humanitarian actions in accordance with its core principles. Given that contemporary armed conflicts stem from ethnic, political, religious or territorial disputes, presents a significant obstacle for the ICRC to intervene in such conflict scenarios that its action could be misconstrued as a biased interference with the political or military inspirations and objectives of any involved party. One example of this challenge is the conflict in Syria where the ICRC has been steadfastly adhering to its core principles to minimize the risk of its actions being misinterpreted as taking sides.²

In relation to the above, it can be inferred that the establishment of consent-based protected areas in contemporary conflicts is far beyond the ICRC's capability. Thus, the ICRC has sought alternative mechanisms to establish protected areas. One such mechanism involves enforcement means by calling upon the international community to take necessary actions to forcefully establish protected areas in situations where parties to the conflict are unwilling to cooperate and consent to establish such areas. The ICRC had advocated for this mechanism within the context of the Bosnia and Herzegovina conflict in 1992.³ The ICRC's endeavour in this respect has paved the way to emerging the notion of enforced or imposed protected areas within the realm of the UNSC. The UNSC resolutions particularly resolutions 819⁴ and 824⁵ in 1993 established several protected areas without the consent of the concerned parties in Bosnia and Herzegovina. Resolution 836 allowed the deployment of international protection forces and authorised to use of force to implement protected areas.⁶

Another alternative mechanism for protecting civilians and *hors de combat* during conflicts is creating humanitarian corridors. This approach provides a safe route for evacuating endangered civilians who are caught in conflict to a safer location. The ICRC supervised the establishment of safe passage for civilians in active conflict zones.

Several humanitarian corridors were established under ICRC auspices providing safe passage for hundreds of thousands of civilians out of conflicts, for instance in Aleppo, Syria and more recently in Mariupol, Ukraine.⁷ In this context, the ICRC has played a pivotal role as a guarantor and monitor of ceasefires during evacuation operations in

¹ ICRC (n 37).

² ICRC 'Syria And Countries Affected By The Conflict: Humanitarian Situation, Needs And Response' (ICRC, December 2013) <<https://www.icrc.org/en/doc/assets/files/2013/syria-sarc-icrc-ifrc-newsletter-december-2013.pdf>> accessed 30 September 2023.

³ ICRC (n 37).

⁴ UNSC Res 819 (16 April 1993) UN Doc S/RES/819. It declared the Srebrenica and its surrounding as protected area.

⁵ UNSC Res 824 (6 May 1993) UN Doc S/RES/824. It declared towns of Sarajevo, Tuzla, Bihac, Zepa, Gorazde and its surroundings as protected area.

⁶ UNSC Res 836 (4 June 1993) UN Doc S/RES/836.

⁷ 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 30 August 2023.



different humanitarian situations in Ukraine. By fulfilling this role, the ICRC has been instrumental in ensuring the safety of besieged civilians.¹

It can be argued that although the humanitarian corridor poses fewer financial and logistical burdens compared to the protected areas, it requires some sort of agreement and understanding of the concerned parties. However, this agreement is not difficult to be achieved, as it is only for a strip of territory aimed at opening safe routes out of the conflict zone, unlike protected areas that involve delimitating large geographical areas with detailed agreements on security, logistics and humanitarian arrangements. Further, humanitarian corridors are temporary measures with a short span of only several hours or even a couple of days. It does not raise any sovereignty or territorial integrity concerns, unlike the protected areas. In light of these factors, the ICRC has been successful in managing agreements for establishing humanitarian corridors in various conflict situations, notably in Ukraine and Syria.

Overall, while the ICRC recognizes the importance of protected areas in safeguarding civilians, the involvement of numerous parties, deep-rooted historical disputes, and diverse motivations of contemporary armed conflicts pose significant difficulties in establishing such areas without the consent and cooperation of the conflicting parties. Thus, it advocated for alternative mechanisms in contemporary conflicts, which effectively saved hundreds of thousands of lives.

4. Conclusion

The ICRC has proven itself as a key humanitarian organisation advocating for establishing protected areas during armed conflicts worldwide, indicating its solid commitment to protecting the lives and dignity of civilians and *hors de combats*. Guided by the legal framework provided in the 1949 GCs and the 1977 APs and adhering to its seven principles, the ICRC has successfully established several protected areas for civilians amidst the chaos of wars. The ICRC's efforts have spanned across different historical conflicts, from Jerusalem in 1948 to Dhaka in 1971, Cyprus in 1974, Falklands in 1982, and Croatia in 1992. These protected areas were significantly effective and have successfully saved millions of civilian and *hors de combats* lives worldwide.

Nevertheless, it is crucial to acknowledge that the establishment of conventional protected areas were strictly limited, particularly in contemporary armed conflicts. The last instance was established in 1992 during the Croatia conflict. This is attributed to the complexities of such conflicts and the unwillingness of warring parties to cooperate and respect their agreements.

However, in complicated contemporary armed conflict situations where agreement between parties to establish protected areas is deemed a daunting task, the ICRC used alternative mechanisms to provide protection for civilians caught in the conflict. It has advocated for enforced protected areas under international protection through the UNSC. Such protected areas have been implemented particularly in several areas in Bosnia and Herzegovina in 1993. Moreover, another alternative mechanism is humanitarian corridors, which create a safe passage in the midst of the conflict. The ICRC supervised the establishment of safe passages for civilians in active conflict zones. Several humanitarian corridors established under ICRC auspices to provide safe routes for hundreds of thousands of civilians out of conflict, for instance in Aleppo, Syria and more recently in Mariupol, Ukraine. Thus, the ICRC's endeavours have played a

¹ International Information Group, 'People Being Evacuated from Mariupol Via Humanitarian Corridors' (Interfax, 5 March 2022) <<https://interfax.com/newsroom/top-stories/75602/>> accessed 30 September 2023.



substantial role in alleviating human suffering and providing indispensable support to those most affected by armed conflicts and violence.

In this context, despite all the challenges, the ICRC's determinations in incorporating the concept of protected areas into the 1949 GCs remain praiseworthy. Indeed, the ICRC remains a beacon of hope and compassion for those affected by conflict and upheavals.

In keeping with the foregoing, the authors recommend that the ICRC continue its endeavours in collaboration with other international organizations, governments, and armed groups to advocate for establishing and addressing related challenges of protected areas during armed conflicts.

The study suggests that the ICRC as a neutral humanitarian organisation endeavours to actively engage as a mediator in diplomatic efforts to prevent conflicts from further escalating where civilian protection becomes imperative. Thusly, conflict prevention initiatives can assist in decreasing the need for creating protected areas during armed conflicts.

It is significant for the ICRC to recognise the changing nature of armed conflicts and adopt an approach to cope with the complexities and challenges presented by contemporary warfare. This may include innovative approaches that provide protection for civilians, for instance, effectively implementing humanitarian corridors. Humanitarian corridors can be a double-edged sword. They can indeed be used as safe passage for the evacuation of civilians out of conflict zones. However, their potential misuse for political and military agendas necessitates a careful and comprehensive assessment of the implementation of such corridors in order to be used solely for their intended purpose of protecting civilians. Thus, the ICRC has to ensure its involvement is not perceived as biased interference or support for the political objective of any party.

The imposed protected areas by the UNSC under Chapter VII of the charter is another alternative option to the consent-based protected areas. Such an option may not always be viable considering the lack of agreement and the political deadlock within the UNSC. In such circumstances, a traditional Chapter VI peacekeeping mission authorized by the UN General Assembly 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. Thus, it is suggested that the ICRC strive to convince the General Assembly to take necessary action in this respect.

It is preferred that the ICRC prioritize and concentrate on other strategies including, raising public awareness regarding the importance of protected areas, advocating the rights of civilians during armed conflicts and the respect of IHL. Intensified advocacy can produce international support for the creation and preservation of such areas.

It is further recommended to conduct additional researches by academic circles to explore the applicability and effectiveness of alternative mechanisms such as humanitarian corridors and peacekeeping missions authorized by the UN General Assembly within the context of contemporary armed conflicts.



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رۆلی لیژنه‌ی نێوده‌وله‌تی خاچی سوور له دامه‌زراندنی ناوچه پارێزراوه‌کان

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پوخته

پاراستنی کهسانی سڤیل و ته‌وانه‌ی توانای شه‌رکردنیان نه‌ماوه یان وازیان له‌شه‌رکردن هیناوه له‌ناکۆکيه چه‌کداریه‌کاندا هه‌رده‌م جینگای سه‌رنجی سه‌ره‌کی لیژنه‌ی نێوده‌وله‌تی خاچی سوور بووه. له‌م روانگه‌یه‌وه ناوچه‌ی پارێزراو وه‌ک میکانیزمیکی پاراستن و ڕیوشوئینیکی گونجاو بۆ پاراستنی کهسانی سڤیل و دایینکردنی په‌ناگه‌یه‌کی سه‌لامه‌ت له‌کاتی ناکۆکيه چه‌کداریه‌کاندا سه‌ریه‌له‌داوه. ئەم توێژینه‌وه‌یه له‌ هه‌وله‌کانی لیژنه‌ی نێوده‌وله‌تی خاچی سوور ده‌کۆلیتته‌وه له‌ دانوستاندن، دامه‌زراندن و سه‌ره‌رشته‌یکردنی ناوچه پارێزراوه‌کان له‌ ناکۆکيه چه‌کداریه‌ جیاوازه‌کاندا. ئەم توێژینه‌وه‌یه توێژینه‌وه‌یه‌کی شیکاریه‌ که بنه‌مای یاسایی و لایه‌نه‌ پراکتیکیه‌کانی به‌شداریکردنی لیژنه‌ی نێوده‌وله‌تی خاچی سوور له‌ دارشتنی چه‌مکی ناوچه پارێزراوه‌کان بۆ کهسانی سڤیل له‌نێو ناکۆکيه چه‌کداریه‌کاندا شیده‌کاته‌وه. له‌هه‌مانکاتدا له‌ چه‌ندین نمونه‌ی دیاریکراوی ناوچه پارێزراوه‌کان ده‌کۆلیتته‌وه به‌ ئامانجی شیکردنه‌وه‌ی ته‌وه‌ی که تا چه‌ند دروستکردنی ئەو جوړه‌ ناوچانه له‌لایه‌ لیژنه‌ی نێوده‌وله‌تی خاچی سوور به‌شداریکردنی هه‌یه له‌ ڕزگارکردنی ژبانی کهسانی سڤیل، که‌مکردنه‌وه‌ی تازاره‌کانیان و دلبابوون له‌ ده‌سته‌راگه‌یشتن به‌ هاوکاریه‌ مرۆیه‌کان. ئەم توێژینه‌وه‌یه هه‌روه‌ها باس له‌ ئەگه‌ری دامه‌زراندنی ناوچه پارێزراوه‌کان ده‌کات له‌ بارودۆخی مملاتیکی چه‌کداري هاوچه‌رخدا. مملاتیکی هاوچه‌رخه‌کان، که به‌ ئالۆزی، فره‌ په‌هه‌ند و به‌شداریکردنی فره‌ لایه‌نه‌ ده‌ناسریت، به‌ربه‌ستی گه‌وره‌ بۆ لیژنه‌ی نێوده‌وله‌تی خاچی سوور دروست ده‌کەن بۆ گه‌یشتن به‌ ڕیککه‌وتن بۆ دامه‌زراندنی ناوچه پارێزراوه‌کان. پرسیاری سه‌ره‌کی ئەم توێژینه‌وه‌یه ته‌وه‌یه که تا چه‌ند لیژنه‌ی خاچی سووری نێوده‌وله‌تی ده‌توانیت به‌شداري بکات له‌ ڕزگارکردنی ژبانی خه‌لکی سڤیل له‌ ناکۆکيه چه‌کداریه‌کاندا له‌ریگای دامه‌زراندنی ناوچه‌ی پارێزراوه‌وه؟ ده‌رته‌نجامی سه‌ره‌کی توێژینه‌وه‌که ته‌وه‌یه که هه‌رچه‌نده ئەزموونی لیژنه‌ی نێوده‌وله‌تی خاچی سوور له‌ دامه‌زراندنی ناوچه پارێزراوه‌کاندا به‌ گرنگ و پڕ به‌ها داده‌نریت بۆ پاراستنی کهسانی سڤیل و ئاسانکاری ده‌سته‌راگه‌یشتن به‌ هاوکاریه‌ مرۆیه‌کان، به‌لام لیژنه‌ی نێوده‌وله‌تی خاچی سوور له‌ چوارچێوه‌ی بارودۆخی مملاتیکی هاوچه‌رخدا پووبه‌رووی ئاسته‌نگی به‌رچاو بووه‌ته‌وه له‌ دامه‌زراندنی ناوچه پارێزراوه‌کان. بۆیه میکانیزمی جینگه‌وه‌ی تر وه‌ک ناوچه‌ی پارێزراوی سه‌پینراو و پڕپه‌وی مرۆیی سه‌ریان هه‌لدا. سه‌ره‌پای ته‌وه، ئەم توێژینه‌وه‌یه به‌شداریه‌کی ناوازه‌ ده‌کات له‌ به‌رزکردنه‌وه‌ی تینگه‌یشتنی یاسایی له‌ رۆلی سه‌ره‌کی لیژنه‌ی نێوده‌وله‌تی خاچی سوور له‌ قه‌یرانه‌ مرۆیه‌کان وه هه‌روه‌ها شێوازی په‌ره‌سه‌ندنی ڕیوشوئینی پاراستنی کهسانی سڤیل له‌ مملاتیکی چه‌کداریه‌کاندا ده‌خاته‌ پوو.

ووشه سه‌ره‌تاییه‌کان: ناکۆکی چه‌کداري، ناوچه پارێزراوه‌کان، پاراستنی کهسانی سڤیل، لیژنه‌ی خاچی سووری نێوده‌وله‌تی، یاسای نێوده‌وله‌تی مرۆیی

دور اللجنة الدولية للصليب الأحمر في إنشاء المناطق المحمية

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ملخص

ان حماية المدنيين والعاجزين عن القتال في النزاعات المسلحة كانت ولا زالت موضع اهتمام. وفي هذا السياق، ظهرت مناطق المحمية كآلية حماية ذات أهمية بالغة للحفاظ على سلامة المدنيين وتوفير الملاذ الآمن لهم أثناء النزاعات المسلحة في اطار القانون الدولي الإنساني. تتناول هذه الورقة البحثية جهود اللجنة الدولية للصليب الأحمر في التفاوض بشأن إقامة المناطق المحمية والرقابة عليها أثناء حدوث مختلف النزاعات المسلحة. يعتبر هذا البحث دراسة تحليلية يتم من خلالها تحليل الأساس القانوني والجوانب العملية لمساهمة هذه اللجنة في تشكيل المناطق المحمية للمدنيين في مناطق النزاع. ويدرس البحث مدى مساهمة إنشاء هذه المناطق من قبل اللجنة الدولية للصليب الأحمر في إنقاذ حياة المدنيين وتخفيف معاناتهم وضمان وصولهم إلى المساعدات الإنسانية، كما يناقش البحث كذلك جدوى إنشاء المناطق المحمية في سياق النزاعات المسلحة المعاصرة. ان النزاعات المعاصرة التي تتسم بالتعقيد وتعدد الأبعاد وإشراك الأطراف المتعددة، تشكل تحديات كبيرة أمام اللجنة للحصول على موافقة جميع الأطراف المتنازعة لأجل إنشاء المناطق المحمية. السؤال الرئيسي للبحث هو إلى أي مدى يمكن للجنة الدولية للصليب الأحمر أن تساهم في إنقاذ حياة المدنيين في إطار إقامة المناطق المحمية؟ والاستنتاج الرئيسي للبحث هو أنه على الرغم من أن تجربة اللجنة في إقامة المناطق المحمية تُعد قيمة في حماية المدنيين وتسهيل الوصول إلى المساعدات الإنسانية، إلا أن اللجنة واجهت عقبات كبيرة في سياق النزاعات المعاصرة لتشكيل تلك المناطق، وبالتالي ظهرت آليات بديلة كالمناطق المحمية المفروضة والممرات الإنسانية وغيرها. إضافة إلى ذلك يساهم هذا البحث في تعزيز الفهم القانوني للدور الأساسي الذي تلعبه اللجنة في الأزمات الإنسانية ويقدم نظرة و رؤى قيمة حول تطور تدابير الحماية الإنسانية لسكان المدنيين في مختلف مناطق النزاع.

الكلمات المفتاحية: النزاعات المسلحة، المناطق المحمية، حماية المدنيين، اللجنة الدولية للصليب الأحمر، القانون الدولي الإنساني.