

It is extremely difficult for the international community to guarantee the safety and well-being of displaced persons fleeing war, catastrophe, massive violence and the violation of their human rights. Armed attacks on refugee camps, the abduction of politically active exiles and assaults on uprooted people making their way to a country of asylum are growing in frequency and scale. The plight of internally displaced people is often much worse than that of refugees. Generally speaking internally displaced persons may not be individually persecuted but are fleeing from an unstable and insecure situation. In a large number of cases even where such large number of persons have crossed international borders they have not been recognised as "Convention refugees" since they do not face persecution as individual in their State of origin.

Simultaneous with the growing international concern for the plight of victims of man-made disasters, massive violence and gross violations of basic human rights there has been an increasing desire to avoid the overloading of the existing mechanism for the protection of the individually persecuted persons—the refugees. The customary principle of asylum too is under great strain.<sup>2</sup> But with the growing emphasis on the concern for the respect for human rights, the international community should be more concerned with the fate of massive repression of persons wherever it occurs particularly when such repression is likely to have international repercussions through mass exodus of refugees and the concomitant burden on neighbouring States.

Consequently new legal measures to assist the displaced persons particularly in the wake of the post cold war need to be taken urgently. In this context the programmes designed to resettle displaced people in their own communities could play a vital role in reconciliation and re-establishment of peace in their country of origin. But as governments adopt more restrictive attitudes towards refugees, and as refugee settlements acquire an unanticipated permanence, work with the displaced is becoming more important and the need is increasing for establishing safety zones for the displaced.

Violations of human rights cannot be disregarded by the peoples of the United Nations as both the UN Charter and the Universal Declaration of Human Rights have affirmed the legitimacy of the concern of the international community for the protection of fundamental rights and freedoms. This concern is not limited to refugees alone but extends equally to all persons including internally displaced persons within their own country. Efforts to improve the situation of the displaced persons may therefore require to be undertaken even if that may lead to some adjustment to the concept of national

2. Amnesty International Report, 1992.

sovereignty in the effort to conform to contemporary humanitarian needs and to effectively protect the rights guaranteed to individuals under international humanitarian conventions. One such means might be found in the concept of the establishment of Safety Zones.

### FREEDOM OF MOVEMENT AND THE RIGHT TO SEEK ASYLUM:

Once they have been uprooted, displaced people are likely to have new restrictions imposed upon their freedom of movement. In a number of cases, displaced people have been prevented from moving out of a general area where they have been shifted or to which they have fled. The conditions in the camps are horrendous, medical facilities are lacking and the residents have to strive hard to secure such basics and essentials as food and fuel. Often there is not enough potable water. Sometimes a dusk to dawn curfew is imposed. There are frequent cases of sex crimes against women while men are attacked and abducted.<sup>3</sup>

Displaced people are confronted with problems additional to those faced by refugees. Once uprooted they are liable to be sent back home against their will and without adequate preparation. In this respect the right to freedom of movement stipulated in Article 13 of the Universal Declaration of Human Rights is violated. Against this bleak backdrop Safety Zone concept while not a panacea is seen as a means of temporary refuge, providing security and safety to the displaced, and organising orderly movement for people desirous to leave the country. But such safety or safe haven zones should not become an impediment or restriction in the exercise of the right to freedom of movement, but should rather function as a regulatory measure to alleviate increasing suffering of innocent civilians.

A Safety Zone to provide humanitarian assistance to victims of man-made disasters should be established with the consent of the State concerned and where applicable, the consent of the parties to the conflict. They should be similar to a "neutralized zone" or a "demilitarized zone" as envisaged in Article 15 of the Fourth Geneva Convention, 1949 and expanded by Article 60 of its Protocol I. The brief<sup>4</sup> prepared by the Secretariat for the Twenty-eighth Session of the Committee had identified a set of 13 principles which could furnish a framework for the establishment of Safety Zones in the country of

3. Amnesty International, 1992.

4. Doc. No. AALCC/XXVIII/993.

origin. The principles identified therein, which in our view remain valid, are as follows:\_\_\_\_\_

- (i) The Safety Zone shall be established with the consent of the state of origin<sup>5</sup> through a resolution or recommendation of the United Nations;
- (ii) The Safety Zone should be akin to a demilitarized zone or a neutral zone immune from hostile activities and a specified geographical area could be demarcated as such by a government notification;
- (iii) The Zone should be under international supervision, control and management to provide among others international protection to the persons residing therein;
- (iv) The United Nations may designate and authorise a international organization or agency for administration and supervision of the Safety Zone;
- (v) A designated international organization or agency shall be responsible for co-ordination and supervision of supply and distribution of food and other essential items and ensure facilities like drinking water, civic amenities and medical care. The cost of operations should be met through voluntary contributions by States, governmental and non-governmental humanitarian organizations;
- (vi) The armed forces of the State of origin should withdraw from the Safety Zone and the status of the zone shall be respected by civilian as well as military machinery of the State of origin;
- (vii) The authority in control of the Safety Zone shall provide international assistance—protection to the individuals seeking asylum therein;
- (viii) The United Nations should provide a multinational security force for the purpose of maintaining law and order within the Safety Zone;

5. The United Nations—Republic of Iraq memorandum of Understanding of November, 24, 1991 concluded after the United States, joined by Britain and France are known to have justified the creation of a Safe Haven Zone in Northern Iraq by citing Security Council Resolution 688 (1991) which framed the Security Council's concern in terms of the "massive flow of refugees towards and across international frontiers."

- (x) Persons seeking asylum in the Safety Zone shall be disarmed and will not be permitted to participate in any military activity or guerilla warfare against any State. Similarly, asylum seekers shall not be a military target for any State party to the conflict;
- (xi) The individuals residing in the Safety Zone shall be provided with facility to seek and enjoy asylum in any other country;
- (xii) If normalization is restored in the State of origin and the international organization or agency in charge of the Safety Zone is satisfied that the conditions are favourable and conducive to return, the persons residing in such zones shall be provided with all facilities to return to their permanent place of residence (This provides a significant departure from the *non-refoulement* rule where the consent of the individual concerned is required.); and
- (xiii) The Safety Zone thus established shall be of temporary nature."

It is imperative in our view that such Safety Zones should be mandated by the Security Council whose decisions are binding on all the member States of the United Nations.

#### ROLE OF THE UNHCR IN SUCH ZONES

A case can be made for clarifying UNHCR's role in assisting and protecting displaced people. UNHCR has normally assisted displaced people only when requested to do so by the United Nations, and permitted to do so by the authorities concerned. Such requests can be said to have hitherto been made in conformity with primacy of the importance of humanitarian assistance for the victims of natural disasters and other emergencies and the consideration that humanitarian assistance must be provided in accordance with the principle of humanity, neutrality and impartiality. The General Assembly has recognised in this regard that the magnitude and duration of many emergencies are beyond the response capacity of the affected countries.<sup>6</sup> International cooperation to address emergency situations and to strengthen the response capacity of affected countries is thus of great importance. Such cooperation should be provided in accordance with international law and solidarity and in conformity with national law. Intergovernmental and non-governmental organisation working impartially and with strictly humanitarian motives shall continue to

6. Paragraph 4 of General Assembly Resolution 46/182 recognised that each State has the responsibility first and foremost to take care of the victims of natural disasters and other emergencies occurring on its territory. Hence, the affected States has the primary role in the initiation, organisation, coordination, and implementation of humanitarian assistance within its territory.

make a significant contribution in supplementing national efforts. The starting point for UNHCR's involvement in the country of origin for the displaced persons is said to have been affirmed in General Assembly Resolution 46/182 of 19 December 1991 on Strengthening the Coordination of Humanitarian Emergency Assistance of the United Nations System. Paragraph 3 of the annex to that Resolution States;

*"The Sovereignty, territorial integrity and national unity of states must be fully respected in accordance with the Charter of the United Nations. In this context, humanitarian assistance should be provided with the consent of the affected country and in principle on the basis of an appeal by the affected country". (Emphasis added).*

As a UNHCR Working Group on International Protection rightly observed, the above cited provision argues against the UNHCR's involvement without the consent of the affected State in a Safety Zone created through "humanitarian intervention" by one or more States against another State. The Working Group distinguished "humanitarian intervention in its classical sense from the collective action creating a Safety Zone which may have been sanctioned by the United Nations in line with its responsibilities for the maintenance of international peace and security. It clarified that as a part of the UN system the UNHCR cannot refuse to provide humanitarian assistance in such situations, if it is requested to do so either by the General Assembly or the Security Council.<sup>7</sup> The Working Group while supporting UNHCR's involvement in protecting displaced persons in their own country because of the preventive impact and the humanitarian need, emphasized that the UNHCR should, prior to initiating or accepting a request for involvement ascertain *inter alia* that:

- (i) The parties concerned acquiesce to UNHCR's involvement;
- (ii) The option for seeking asylum abroad remains open at all times, and that the UNHCR's involvement would not lead to or condone *refoulement*;
- (iii) The situation calls for UNHCR's particular expertise in protection and/or assistance and is in line with its humanitarian and non-political character;
- (iv) UNHCR is granted full access and security and other conditions exist to allow it to operate; and
- (v) The political support of the international community and adequate special funds are available.

7. Report of the UNHCR Working Group on International Protection. (Geneva July, 1992).

The establishment of safety zones for the displaced persons in the country of origin should be regarded as a humanitarian measure the application of which would help curtail the creation of "refugee population".

The conditions in the so called "safe areas" in former Yugoslavia have in recent times demonstrated the difficult conditions under which people live when essential services are cut off and adequate medical care unavailable. People compelled to live in enclosed or delimited areas are totally dependent upon humanitarian assistance provided by external sources. The resultant camp like feeling contributes to an overwhelming lack of normalcy in the lives of the residents of such "protected areas". It has therefore been suggested that donor States and international organizations should be urged to support governmental programmes of assistance to displaced people only when certain conditions are fulfilled and that such Inter-government programmes should conform to the stipulations of the Fourth Geneva Convention of 1949 as this guarantees the presence and security of an international organization, prohibits the use of violence against civilians, and specifies the situations in which relocation programme can be implemented. It is however, doubtful whether any conditionality to render assistance would meet the stringent requirements of the cardinal principles of humanitarian assistance viz., neutrality, impartiality and humanity. The realities of a civil strife situation which is typically marked with the absence or breakdown of any Government programme in the recognised and practical sense of the term should also be taken into account.

It has also been suggested that, donors should ensure that relief programmes for the displaced people in Safety Zones are able to function independently of the military factions. There is, however, a danger that the call for the establishment of "Safety Zones" in such situations might provide justification for interventions by military powers. This should be avoided. Where governmental relief agencies are subject to stringent political controls, assistance should be channelled as far as possible through international organizations and non-governmental agencies acceptable to all the parties to the conflict. In this sense, the word "humanitarian access" might be more appropriate than the word "humanitarian intervention" as the concept of the latter term implies or connotes military intervention.

The extent to which assistance programme for the displaced, like those for refugees, should guarantee choices and participation for the people concerned also requires to be considered at some length. Relief aid imposes its own kind of imprisonment, creating conditions of despondent dependence and hopelessness. Many displaced persons may well become like prisoners within the so called "Safety Zone" in their own country. This psychological dimension

of preventing the up swelling feeling of being in an 'open prison' needs always to be taken into account. This issue is closely related to the question of the length of time or the duration for which the safety zones are established.

In December 1992 the International Committee of the Red Cross (ICRC) issued an unusual statement calling for the creation of safe haven zones in Bosnia. The ICRC is understood to have issued the call because it was convinced there was no alternative to the plan. It observed that:

"as no third country seems to be ready even on a provisional basis to grant asylum to one hundred thousand Bosnian refugees (the group under immediate threat in the north of Bosnia—Herzegovina) an original concept must be devised to create protected zones.... which are equal to the particular requirements and the sheer scale of the problem".<sup>8</sup>

This statement refers to safe havens in the country of origin not as the preferred way to protect would-be refugees, but rather as a last resort to save the individuals concerned since denial of asylum by outside countries had closed the option of asylum. The ICRC faced with the stark reality of prevention of refugee outflow by other governments turned to "safe haven" idea as an act of desperation to protect the trapped after international refugee regime had failed. The conditions which the ICRC listed and which would have to be met to establish such safe haven zones included *inter alia* the consent of the parties concerned to the concept and location of such zones and duly mandated international troops to assure security of such protected zones. The ICRC's safe haven proposals were based on the *a priori* assumption that asylum outside Bosnia is not an option. However, it should be recalled that in her Note on International Protection the United Nations High Commissioner for Refugees emphasized that "prevention is not.... a substitute for asylum."<sup>9</sup>

Consequently in our view any proposal for the establishment of a safe haven zone should not preclude the options of seeking asylum outside the country of origin. Thus admission to or residence in the zone should not affect the right to seek asylum, nor should it restrict the right to freedom of movements of the person in and out of the Safety Zone. "Operation provide comfort" launched in northern Iraq following upon the adoption of Security Council Resolution 688 of April 5, 1991 was not an effort to address the root causes of the refugee flow so that potential refugees would feel secure enough

8. Bill Frelick "Preventing Refugee Flows: Protection or Peril?" in *World Refugee Survey 1993*.

9. See *Note on International Protection*, submitted by the High Commissioner, Executive Committee of the High Commissioner's Programme, Forty-third session, August 25, 1992.

to choose not to flee. On the contrary they had no choice since asylum in neighbouring countries was denied. While such zones or areas ought to provide sufficient security to convince displaced persons that they can be adequately protected without crossing an international border, they should not be used as a pretext for barring the movement of those who still feel endangered to seek refuge outside their countries.

A major consideration in the creation of a Safety Zone is its effectiveness in actually providing Safety to those in need. The UNHCR takes the view that guarantees for safety need to be explicitly and effectively underwritten as clearly as possible. "They will depend on the actual circumstances, including the degree and nature of the threat as well as the methods used to establish the Safety Zone. If a Safety Zone is created with the consent of the parties" their assurances may provide a basis for safety. If it results from multilateral action, international supervision by a UN peacekeeping force may be an option. The presence of international observers or monitoring by organisations, including UNHCR may also be important additional methods. But experience has shown that such operations are cumbersome and very expensive.

While the humanitarian law stipulations envisage the creation of various types of areas under special protection, they do not provide for the physical protection of such areas. It may be stated in this regard that Article 5 of The Draft Agreement Relating to Hospital and Safety Zones and Localities, attached as Annex 1 to the Fourth Geneva Convention, stipulates *inter alia* that hospitals and safety zones "shall in no case be defended by military means". This restriction is also extended to localities under Article 13 of the Draft Agreement. Yet, where parties do not respect an area under special protection, protection cannot be assured to the persons therein without the use of military means. The safety of the security zone in Iraq as opposed to the lack of security in the protected areas and safe areas in the former Yugoslavia highlight this aspect.

Furthermore, a multitude of questions arise in connection with the necessity to ensure the safety of those in the area under special protection. What type of legal framework would be effective in guaranteeing the security of persons in the area—municipal law and structures, regional or universal regimes? While applicable human rights and humanitarian law obligations would, perhaps, continue to apply refugee law as such would be inapplicable since such persons remain in their country of origin. Who would be most effective in enforcing the rules governing the area under special protection including those prohibiting violation of the security of the area? Also, how will the safety of those in the area be ensured—by the police or paramilitary forces of the State or by an international peacekeeping force? How will entry and exit