Are There "Safe Zones" in Syria? The Case of Return Migration for Syrian Refugees under International Law

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Abstract

According to recently published reports, Syrian security forces have subjected Syrians who returned home after seeking refuge abroad to various forms of arbitrary detention, forced disappearance and torture, including rape and other forms of sexual violence. And as the international community discusses the possibility of return for Syrians to what they are deeming "safe areas" inside Syria, these reports come at a time where the livelihoods of Syrians who wish to return are essentially framed under broader themes of International Refugee Law, International Human Rights Law and International Humanitarian Law as well. This article aims to explore the pretenses upon which "safe zones" (or "safe areas") are established under international legal frameworks, how safe they actually are, and whether or not these considerations apply to the Syrian case. Namely, the article will focus on some states' various stances and decisions on the "safe" return of Syrian refugees despite the information that is out there about the threats on both their livelihoods and wellbeing should they return at this stage in the ongoing conflict.

"Safe Zones" and "Safe Areas" under International Law

Under international law, "safe zones" or "safe areas" are areas designated by agreement of parties to an armed conflict whereby military forces will not deploy or carry out attacks in any forms – particularly on civilians.[1] Such areas have in many cases been created by United Nations Security Council resolutions.[2] These areas are proposed to protect the livelihoods and wellbeing of civilians fleeing from the hostilities,[3] as well as to ensure easier access to all forms of humanitarian assistance and aid.[4] Safe zones may be defended by UN peacekeepers or other forces.[5] While the 1949 Geneva Conventions and their additional protocols do not explicitly outline definitions for "safe areas" or "safe zones," they do recognize similar arrangements, notably what they refer to as "protected zones" and "demilitarized areas".[6] The aforementioned areas designated small areas whereby the parties to an armed conflict ensure that civilians may access various forms of protections in addition to those already provided under International Humanitarian Law, or the Laws of War.[7] The Geneva Conventions additionally allow parties to conclude "special agreements" at any point in a protracted conflict that aim to advance civilian protection.[8] Moving from these facts, under what pretense are states claiming there are "safe areas" in Syria? And more importantly, can states make the decision to return people to "safe zones", and when and how is a zone or area considered safe?

The Question of "Safe Return" to Syria

Syria's decade-long war has taken the lives of an estimated 500,000 people, and forced upwards of 6 million to flee abroad as refugees, mostly to neighboring countries in the region such as Lebanon, Jordan and Turkey.[9] According to a now infamous report

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[1] Emanuela-Chiara Gillard (2017), "Safe areas": The international legal framework, International Review of the Red Cross (2017), 99 (3), 1075–1101, Conflict in Syria, doi:10.1017/S1816383118000474

[2] Ibid

[3] It is important to note that the creation of safe zones has no bearing on the prohibition under international humanitarian law of attacks targeting civilians, whether those civilians are inside or outside the designated safe zone.

[4] ICRC (2017), What You Need to Know About "Safe Zones", Retrieved at: https://reliefweb.int/report/world/what-you-need-know-about-safe-zones

[5] Ibid

[6] ICRC (2021), How Does Law Protect in War: Demilitarized Zones, Retrieved at: https://casebook.icrc.org/glossary/demilitarized-zones

[7] ICRC (2016), The laws of war in a nutshell, Retrieved at: https://www.icrc.org/en/document/what-are-rules-of-war-Geneva-Conventions

[8] Ibid

[9] Reuters (2021), U.N. Issues New Syria War Death Toll, Says 350,000 Is an 'Undercount', Retrieved at: https://www.usnews.com/news/world/articles/2021-09-24/un-issues-new-syria-war-death-toll-says-350-000-is-an-

published by Amnesty International in 2021 titled "You're going to your death," a large number of Syrian refugees who returned home have been subjected to everything from detention, to disappearance to torture at the hands of Syrian security forces.[10] The report went on to document what it referred to as "violations committed by Syrian intelligence officers against 66 returnees, including 13 children between mid-2017 and spring 2021".[11] The report additionally discusses five cases in which detainees died in custody, and seventeen cases of forced disappearances that remain unresolved.[12] Most importantly, this report strongly counters claims by a number of states around the world that parts of Syria were now safe to return to.[13] For its part, Amnesty criticizes countries such as Denmark, Sweden and Turkey for restricting protection and pressuring Syrian refugees to go home.[14] It also criticizes Lebanon, who has the highest number of Syrian refugees per capita in world, for the dire living conditions and discrimination the country imposes on the refugee community and for increasing pressure on Syrians to return for years now.[15]

Amnesty's report documents severe violations committed by the Syrian government against former refugees who returned to Syria from Lebanon, Jordan, France, Germany, Turkey and the United Arab Emirates between 2017 and 2021.[16] Findings were based on interviews with more than forty Syrians, including returnees, lawyers, humanitarian staff and other key informants.[17] Chiefly, Syria's government has targeted returnees to Syria based on accusations that those who fled the country were guilty of "treason" or of supporting "terrorism" and terrorist acts.[18] In many cases, human rights violations encompassed rape or other forms of sexual violence, arbitrary detention, torture and other ill-treatment.[19]

Early on in 2021, countries such as Denmark and Sweden began revoking the residency permits of Syrian refugees, arguing that Damascus and neighboring regions were now safe.[20] While the security situation has stabilized in government-controlled areas and many parts of central Syria previously held by opposition rebels, forced

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undercount#:~:text=The%20Syrian%20Observatory%20for%20Human,group%2C%20told%20Reuters%20in%20Beirut.

[10] Amnesty International (2021), Syria: Former refugees tortured, raped, disappeared after returning home, Retrieved at: https://www.amnesty.org/en/latest/news/2021/09/syria-former-refugees-tortured-raped-disappeared-after-returning-home/

[11] Ibid

[12] Ibid

[13] Human Rights Watch (2021), Denmark: Flawed Country of Origin Reports Lead to Flawed Refugee Policies, Retrieved at: https://www.hrw.org/node/378521/printable/print

[14] Ibid

[15] David Enders (2018), Pressure to return builds on Syrian refugees in Lebanon, The New Humanitarian, Retrieved at: https://www.thenewhumanitarian.org/news-feature/2018/08/20/return-syrian-refugees-lebanon-hezbollah

[16] Ibid

[17] Ibid

[18] Ibid

[19] Ibid

[20] Ibid

conscription, arbitrary detentions and forced disappearances continue to be reported.[21] On a more operational level, entire areas are completely destroyed, and a large number of Syrians essentially have no homes to return to.[22] As per the US Department of State's Syria Travel Directory, "[…] no part of Syria is safe from violence. Kidnappings by armed groups, unjust arrests and/or detentions, the use of chemical warfare, shelling, and aerial bombardment of civilian centers pose significant risk of death or serious injury. The destruction of infrastructure, housing, medical facilities, schools, and power and water utilities has also increased hardships inside the country".[23] The US government insists that it is unable to provide any emergency services to US citizens who choose to reside in Syria.[24]

If There Are "Safe Zones," Do They Typically Remain Safe?

According to Human Rights Watch (HRW), international experience has shown that "safe zones" and "safe areas" rarely remain safe.[25] Such areas often pose significant dangers to the civilian population, particularly when sufficient safeguards are not upheld, and when these areas come under deliberate attack.[26] In these areas, pressures on humanitarian actors to cooperate with military forces that control access to safe zones in ways that compromise their humanitarian principles of neutrality, impartiality, and independence. As HRW depicts, "[…] parties establishing safe zones may intend to use them to prevent fleeing civilians from crossing borders, rather than to genuinely provide protection. Such zones have been used as a pretext for preventing asylum seekers from escaping to neighboring countries and as a rationale for returning refugees to the country they fled".[27]

Furthermore, the presence of military personnel alongside civilian may render the location a military target, as opposed to a genuinely safe zone.[28] Safe zones and safe areas often encounter similar challenges to the ones faced by camps for internally displaced persons (IDPs).[29] Residents become dependent on assistance for food, water

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[21] Hosam Al-Jablawi (2019), Forced conscription continues despite amnesty by Syrian Government, Retrieved at: https://www.atlanticcouncil.org/blogs/syriasource/forced-conscription-continues-despite-amnesty-by-syrian-government/

[22] EASO (2021), Syrian Situation of Returnees from Abroad: Country of Origin Information Report, Retrieved at: https://www.easo.europa.eu/sites/default/files/publications/2021_06_EASO_Syria_Situation_returnees_from_abroad.pdf

[23] US Department of State (2021), Syria Travel Advisory, Retrieved at: https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/syria-travel-advisory.html

[24] Ibid

[25] Human Rights Watch (2017), Q & A: Safe Zones and the Armed Conflict in Syria, Retrieved at: https://www.hrw.org/news/2017/03/16/q-safe-zones-and-armed-conflict-syria

[26] Lama Fakih (2019), Turkey's 'Safe Zone' Would Be Anything But, Retrieved at: https://www.hrw.org/news/2019/10/11/turkeys-safe-zone-would-be-anything

[27] Ibid

[28] Ibid

[29] Ibid

and health care because of barriers to access.[30] International humanitarian organizations and UN agencies have additionally highlighted that women may face greater sexual and gender-based violence (SGBV) due to overcrowding and tense social dynamics.[31] UN peacekeeping forces have in many contexts been unable to comprehensively and effectively enforce law and order.[32]

Can States Withhold Refugee Protection under International Law by Returning People to "Safe Zones"?

Under international law, governments cannot defend keeping their borders closed off to refugees on the grounds that internal "safe areas" have either been set up, or areas are now rendered "safe" across the border. Moreover, states have obligations under International Human Rights Law and International Refugee Law to keep their borders open to individuals fleeing countries where their livelihoods, wellbeing, safety or freedom are threatened.[33] Accordingly, states must "[…] always admit asylum seekers at least on a temporary basis and provide them with protection without any discrimination," while other governments are required to "[…] take all necessary measures" to assist such host countries in times of international crises and protracted conflicts.[34] It is crucial for neighboring governments to open their borders to refugees and asylum seekers. Furthermore, other governments should meet the funding appeals of international UN and humanitarian agencies in order to ensure that host countries have the resources to cope with any refugee influx and maintain safe and legal pathways to resettlement for the refugees it hosts.[35]

"Safe zones" additionally raise a number of refugee and human rights law-related questions, even if legal texts outline legal practices more generally. Most importantly, there remains legitimate concerns that in many cases the creation of safe areas is not driven by a real desire to create zones of protection for vulnerable groups; rather, that the principal intention is to reduce or end refugee flows across borders, or for political reasons, to return refugees at instances where the conditions on the ground do not warrant this. Under international law, the position on this remains that: (1) the existence of safe areas must not be utilized to hinder or limit individuals' entitlement

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[30] Ibid

[31] OHCHR (2021), Women's human rights and gender-related concerns in situations of conflict and instability, Retrieved at: https://www.ohchr.org/en/Issues/Women/WRGS/Pages/PeaceAndSecurity.aspx

[32] Jean-Pierre Lacroix (2018), Peacekeeping faces challenges: here's how we can meet them, UN Peacekeeping, Retrieved at: https://unpeacekeeping.medium.com/peacekeeping-faces-challenges-heres-how-we-can-meet-them-73ea4701eec

[33] ICJ (2020), Greece: Government's decision to close border violates international law – ICJ, Retrieved at: https://www.icj.org/greece-governments-decision-to-close-border-violates-international-law-icj/

[34] Ibid

[35] UNHCR (2021), WFP, UNHCR appeal for funding for over 3 million refugees hit by ration cuts in Eastern Africa, Retrieved at: https://www.unhcr.org/news/press/2021/3/603dec5f4/wfp-unhcr-appeal-funding-3-million-refugees-hit-ration-cuts-eastern-africa.html

under International Refugee Law to seek asylum, nor (2) to promote returns of refugees before areas are truly safe and under various forms of monitoring and international protection.[36] In practice, the establishment of safe zones has raised intersectional questions for humanitarian actors, most notably for the UNHCR which finds itself sensitively-placed between pushing for respect for the principles of refugee law, including access to asylum and *non-refoulement*, and needing to carry out activities for people in safe areas whether they support these arrangements that undermine the essence of refugee protection or not.

Conclusion

Regardless of the political intentions behind establishing them, "safe zones" often create a renewed security challenge that may be difficult to overcome. Safe zones have historically led large numbers of civilians, often of a particular ethnicity or religion, to assemble in a single region, making them a clear and exposed target for parties to a conflict that wish to attack them. Safe zones by their very nature are lay the foundation for armed groups looking for new recruits – putting civilians and minors at additional risk.[37] In the case of Syria, as Amnesty International's report indicates, this has been the case on multiple accounts.[38] At this point, the Syrian conflict has assumed an intersectional and layered character against which a "safe zone" (or the assumption that "safe" regions exist) would essentially prevent adequate access to assistance and protection. Civilians in Syria are not solely fleeing regime or government forces, but are also fleeing opposition armed groups, as well.[39] The violence in Syria remains highly fragmented and unpredictable, with various forces within the conflict exerting their influence in the regions they control.[40] What Syria needs today, is a de-escalation of violence, a true political will to end the protracted conflict and the development of long-term solutions. And while this may come across as idealistic, it is no more idealistic than the assumption that there are "safe" regions in Syria that are capable of bringing about durable peace, or that "safe zones" will protect Syrians within their own borders.

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[36] Ibid

[37] Ibid

[38] Ibid

[39] University of Illinois (2021), The Syrian Conflict: Main Combatants, Retrieved at: https://guides.library.illinois.edu/Syria/Combatants

[40] Ibid