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Lokman B. Çetinkaya

Safe Zone

A Response to Large-Scale Refugee Outflows
and Human Suffering

 Springer

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Foreword

The unilateral establishment and military enforcement of a ‘safety zone’ or ‘safe zone’ in another State constitutes a violation of that State’s sovereignty, as it is a prohibited intervention or use of force incompatible with the UN Charter and the corresponding customary international law. This will also hold true, if such zone is established for humanitarian reasons. At first glance, without the consent of the target State such conduct would be justified only as either an enforcement measure decided upon by the UN Security Council under Chapter VII UN Charter or a measure of self-defense. Self-defense, however, requires an (imminent) armed attack by the target State or by a non-State organized armed group operating from the target State’s territory and the unwillingness or inability of the target State to terminate attacks by the non-State actors against the State relying on self-defense. In the view of these rather strict requirements, which are not necessarily unanimously accepted either, the right of individual or collective self-defense will therefore serve as a legal basis in exceptional situations only. Neither the inability or unwillingness of the target State to terminate the cross-border flow of migrants and refugees nor the fact that the target State’s conduct that has contributed to mass migrations into the other State’s territory will qualify as armed attacks. Of course, the UN Security Council would have the power to authorize member States to establish and enforce a safety zone in another State’s territory. In the view of the current geopolitical situation it is, however, unlikely that the Council’s permanent members will agree with, or acquiesce in, a Chapter VII decision to that effect.

Despite the difficulties surrounding the legality or justification of unilaterally established (and militarily enforced) safety zones, a considerable number of governments do not seem to have abandoned plans to make use of them. In particular, the humanitarian situation in Syria and its effects on neighboring States are considered to be so exceptional in nature that the lack of an armed attack or of a UN Security Council authorization would not as such prove an obstacle to the unilateral establishment and enforcement of such zones against the will of the target State. Then, however, the question as to the legal justification arises.

With this book, Lokman B. Çetinkaya departs from the futile approach that is aimed at justifying the establishment and enforcement of ‘safety zones’ by reference to the *jus ad bellum*. Instead he provides an in-depth analysis of the legality of ‘safety zones’ with a focus on the law of State Responsibility, but also in light of the highly contested concept of ‘humanitarian intervention’, in order to establish whether the respective rules and principles could serve as a legal basis. He focuses on the situation in Syria for two reasons. First, the Turkish government continues to consider the unilateral establishment and enforcement of a safety zone in Syrian territory against the will of the Assad government. At least some other governments do seem to sympathize with this idea. Second, and in the view of the dysfunctional UN system of collective security, he provides this analysis because of its practical, political, and legal relevance not only for Turkey but also for the member States of the European Union. Its objective is to provide legally convincing arguments in support of the unilateral establishment and military enforcement by Turkey of a safe zone in Syria that would prevent a further cross-border large-scale migration into Turkey and provide a safe haven for the people driven from their homes by the atrocities of the armed conflict that has been continuing for some years. Naturally, his findings may not be shared by others who are strictly opposed to accepting justifications for a limited use of force other than those explicitly regulated in the UN Charter. Lokman B. Çetinkaya does not ignore the arguments provided by those opposed to the establishment and enforcement of a safety zone but pays due regard to them. He provides arguments based not only on legal writings but also on international jurisprudence and State practice. He discusses the opposing views and only in some instances relies also on rather political arguments. Hence, his book is an important contribution to the current international legal discourse and it may serve as a guideline for political decision-makers.

November 2016

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