

**IRAQI REFUGEES, ASYLUM SEEKERS, AND DISPLACED PERSONS:
Current Conditions and Concerns in the Event of War
*A Human Rights Watch Briefing Paper***

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INTRODUCTION

This briefing paper describes the current humanitarian and security conditions faced by hundreds of thousands of Iraqi residents, refugees, and displaced persons, and examines priority concerns and potential humanitarian consequences in the event of war. It urges relevant governments, including those of Iraq, the United States and its allies, as well as Iraq's neighbors to uphold their obligations to these vulnerable populations and to implement several key measures to minimize harm. In identifying some of the potential humanitarian consequences of war, this briefing paper particularly focuses on the displacement of people both inside and outside of Iraq.

By addressing the possible effects of war in Iraq, Human Rights Watch is not purporting to predict future events nor does Human Rights Watch take a position on the legality of any such war. However, Human Rights Watch does consider it important to raise concerns about the manner in which war might be conducted, and about war's potential humanitarian consequences.

This briefing paper is divided into five sections addressing the potential within Iraq for a humanitarian disaster, the plight of internally displaced Iraqis, the prospects for "safe areas" within Iraq should there be a war, the situation for Iraqi refugees in neighboring countries, including Iran and Turkey, and the situation for Iraqi refugees outside the region. Each section is divided into three parts: current concerns, the background to the issue, and obligations of the relevant actors. The applicable international standards include, among others, the 1951 Geneva Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees ([the Refugee Convention](#)),¹ and Conclusions adopted by the Executive Committee (ExCom)² of the United Nations High Commissioner for Refugees (UNHCR). The concluding section of this briefing paper makes recommendations to key international actors on steps they should be taking now to address the current plight of refugees and displaced persons and to minimize future abuses in the event of war.

A war will bring new hardship to existing civilian and displaced populations within Iraq; produce new refugee outflows to neighboring countries; strain the resources of and possibly prompt a backlash within neighboring countries against Iraqi refugees; and place new demands on donor states to provide increased assistance inside Iraq and to Iraq's neighbors, as well as to open their own doors to a significantly larger number of Iraqi refugees.

In the event of war in Iraq, a mostly urban civilian population already dependent on centralized food, water, and sanitation distribution systems, will be at risk from the disruption of those systems. Depending on the evolution of a potential conflict, internal displacement and refugee flight are likely to result from a humanitarian crisis as well as from the direct effects of war, ethnic or other conflict, or human rights abuse.

Should the United States go to war with Iraq and establish military control and authority over Iraqi territory, it will have responsibilities under international law to meet the humanitarian needs of the inhabitants, including people displaced by the fighting. Human Rights Watch is particularly concerned that Iraqi civilians be protected from forced displacement inconsistent with international humanitarian law, but be allowed to flee voluntarily to safety should conditions so dictate. An occupying power must ensure the security of the civilian population or allow civilians to voluntarily move out of harm's way, both within and outside the state's borders.

Human Rights Watch fears that Iraqis who attempt to seek greater safety across international borders may be

¹ *Convention Relating to the Status of Refugees*, 189 UNTS 150, 1951, entered into force April 22, 1954. In 1967 a Protocol was adopted to extend the Convention temporally and geographically. *Protocol Relating to the Status of Refugees*, 19 UST 6223, 606 UNTS 267, 1967, entered into force October 4, 1967.

² The Executive Committee of the High Commissioner's Program ("ExCom") is UNHCR's governing body. Since 1975, ExCom has passed a series of Conclusions at its annual meetings. The Conclusions are intended to guide states in their treatment of refugees and asylum seekers and in their interpretation of existing international refugee law. While the Conclusions are not legally binding, they do constitute a body of soft international refugee law. They are adopted by consensus by the ExCom member states, are broadly representative of the views of the international community, and carry persuasive authority. Since the members of ExCom have negotiated and agreed to their provisions, they are under a good faith obligation to abide by the Conclusions.

prevented from doing so. Turkey has announced plans in the event of war to establish camps for Iraqis inside Iraq. If such “safe areas” are created, Turkey or any other government in control will have the burden of ensuring that such camps are secure and must make arrangements to provide all necessary humanitarian assistance. Past international experience has shown that “safe areas” often do not remain safe. If “safe areas” become insecure, or whenever individuals arrive at borders seeking protection, Turkey and all other neighboring states will be obliged to allow Iraqi refugees to enter, at least on a temporary basis, and the international community will have an obligation to help such host governments cope with the refugee influx.

Iraqis have also been blocked from seeking safety in Australia, Europe and the United States. Restrictions imposed by western governments, including: boat interception, visa restrictions, policies determining that areas within or countries surrounding Iraq are “safe” for Iraqi refugees, and arbitrary detention of Iraqi asylum seekers, have all threatened the human rights of Iraqi refugees in the past, and may do so in the future. Governments outside the immediate region of Iraq must lift these restrictions, and increase their willingness to host new arrivals of Iraqi refugees in the event of a crisis in the region.

I. HUMANITARIAN CONCERNS

A. Current Concerns

Iraq currently faces shortages of food, shelter, clean water, and medicines, and an armed conflict there can be expected to make humanitarian conditions much worse in the short to medium term. For example, one U.N. official told the *Washington Post* in late October 2002, “[t]here could be a few million refugees heading to Iran. There could be six million people in Baghdad without access to clean water or electricity. There could be millions more waiting for someone to give them food because that’s what they’ve come to depend on. . . . Are we and everyone else ready for that? No.”³ Since 60 percent of the Iraqi population is dependent on the monthly food distributions they receive from the central government, to the extent that war disrupts distributions, serious problems with malnutrition will soon arise.⁴ War-related damage to the electrical network, to ports, railroads, bridges, and roads will severely impact the humanitarian situation, as will any restrictions on the work of humanitarian agencies.⁵ The population of Iraq is largely urban. In the event of war, it is likely that people will attempt to remain in their towns and cities, near to the services that they depend on, unless direct hostilities force them to leave or the indirect consequences of war disables life-sustaining services to such an extent that survival in cities becomes untenable.

In the north, a good harvest in 2002 has allowed most Iraqis (particularly Kurds, Assyrians, and Turkmen) to build up a reserve of food sufficient to last them from three weeks to three months should war occur in 2003.⁶ Families in the northern zone also receive their rations from the U.N. World Food Programme (WFP) in accordance with the Oil for Food program (which allows the Iraqi government to trade oil for food and other commodities).

In the central and southern regions of Iraq, where the population is made up of Shi’a Muslims, Sunni Muslims, and Turkmen, the potential for humanitarian crisis is much more acute. There are few NGOs operating and they will have difficulty responding if the current governmental food distribution is disrupted for any reason. Nearly twenty million people in these regions receive rations on a monthly basis from the government.⁷ Possibly tens of thousands of people who are critically dependent on rations will be facing serious food shortages from the very first day a potential conflict interrupts government distributions in central and southern Iraq.

Over the last two months, the Iraqi government has provided the populace with double rations in anticipation of

³ “This Time Around, War Would Hit Iraq Harder,” *The Washington Post*, October 29, 2002.

⁴ See United Nations, “Likely Humanitarian Scenarios,” December 10, 2002 para. 11, available at <http://www.casi.org.uk/info/undocs/war021210.pdf>.

⁵ *Ibid.*

⁶ See “Food Issues of Iraq,” Center for Humanitarian Cooperation, available at <http://cooperationcenter.org/library5.as>.

⁷ *Ibid.*

war. However, information from inside Iraq indicates that these rations will, at best, suffice for a brief time. There are also reports that poorer Iraqis have sold their rations to raise capital for important other needs, including medicine and the cost of possible flight from their cities. As of December 13, 2002, various agencies of the UN had requested U.S. \$37.4 million in order to prepare for 100,000 to 1.2 million displaced persons, food shortages, lack of clean water, and insufficient basic humanitarian supplies in Iraq.⁸ However, humanitarian activities may be restricted especially during the initial phase of a potential war, which will increase the risk of crisis inside Iraq.

B. Background

During forty-three days of air strikes in 1991, the United States and its allies bombarded more than 700 targets in Iraq. The electrical grid, generating plants, several bridges, and key government ministries such as the ministry of justice were destroyed.⁹ Civilians suffered due to the severe lack of electricity, refrigeration, water purification, and sewage treatment.¹⁰ Cholera, typhoid and other diseases increased.¹¹ An estimated 110,000 Iraqi civilians died in 1991 from the health effects of the war.¹²

Humanitarian conditions severely worsened in Iraq after the imposition of economic sanctions in 1991.¹³ Starting in December 1996, the Iraqi government has been able to trade oil for food.¹⁴ But even under this program, Iraqis face severe hardships. In 1999, researchers with UNICEF found that infant mortality rose from forty-seven per 1000 live births during 1984-89 to 108 per 1000 in 1994-99, and under-five mortality rose from fifty-six in 1984-89 to 131 per 1000 live births in 1994-99.¹⁵ In addition, the Oil for Food program has led to “increased dependence on the government as almost the sole provider,” and the government has not consistently delivered as promised.¹⁶ More than 60 percent of the population is dependent on monthly rations of flour, rice, tea, cooking oil, beans and other commodities.¹⁷ The northern Kurdish population has fared better than those in the central or southern areas.¹⁸ WFP supplies food to the north, recent harvests have been good, and the local population has been able to retain much of what it grows because the central government refuses to purchase grain from northern farmers.¹⁹

A joint NGO visit to Iraq in 2000 found that the southern internally displaced persons’ camps, built in the 1980s, had running streams of raw sewage between housing blocs, and untreated standing sewage water.²⁰ In the north, a U.N. Habitat survey found in 2001 that about 40 percent of internally displaced persons in the region under Kurdish administration lived in settlements with standards of drinking water and electricity supplies, sanitation, drainage, and road access that were below average for the area.²¹ On October 7, 2002, UNICEF stated that “child malnutrition remains a major concern, with almost one-third of all children in the south and center of Iraq suffering from chronic malnutrition.”²²

⁸ See “U.N. Braces for Possible Iraq Conflict Fearing Mass Exodus,” Agence France-Presse, December 23, 2002 (citing UNHCR sources).

⁹ See William Arkin, “Baghdad Bombing,” *The Washington Post*, July 30, 1998.

¹⁰ Ibid.

¹¹ See “This Time Around, War Would Hit Iraq Harder,” *The Washington Post*, October 29, 2002

¹² See W. Arkin, D. Durrant and M. Cherni, *On Impact: Modern Warfare and the Environment: A Case Study*, Greenpeace, 1991.

¹³ See e.g. Richard Garfield, “Health and Wellbeing in Iraq: Sanctions and the Oil for Food Program,” *Transnational Law and Contemporary Problems*, 1999.

¹⁴ See “U.N. Agencies to Meet on Difficulties in Iraq,” Agence France-Presse, October 16, 2000.

¹⁵ See Mohamed M. Ali and Iqbal H. Shah, “Sanctions and Childhood Mortality in Iraq,” *The Lancet*, 2000, p. 1851-57.

¹⁶ See United Nations, “Likely Humanitarian Scenarios,” December 10, 2002 para. 2, available at <http://www.casi.org.uk/info/undocs/war021210.pdf>.

¹⁷ Ibid.

¹⁸ See “Collateral Damage: the Health and Environmental Costs of War on Iraq,” *Medact*, November 12, 2002.

¹⁹ See “Food Issues of Iraq,” Center for Humanitarian Cooperation, available at <http://cooperationcenter.org/library5.as>.

²⁰ See “Internal Displacement in Iraq: New Profile Summary,” *Norwegian Refugee Council*, February 6, 2001.

²¹ UNCHS-Habitat, *IDP Site and Family Survey*, January 2001.

²² “Urgent Needs in Health, Nutrition, Water/Sanitation and Child Protection,” *UNICEF Humanitarian Action: Donor Update*, October 7, 2002.

The executive director of the U.N. Office of the Iraq Program (OIP) told the Security Council in December 2000 that he was "greatly concerned with the increasing number of internally displaced persons," whose living conditions in some cases were "abominable."²³ Other humanitarian agencies have voiced serious concern about the overall humanitarian situation in Iraq. In a December 2000 report, the International Committee of the Red Cross (ICRC) said that "despite the increased availability of food, medicines and medical equipment, following a rise in oil prices and the extension of the Oil for Food programme, suffering remained widespread."²⁴ Earlier that year, the U.N. secretary general had highlighted the important responsibility that remains with the government of Iraq, stating that the Oil for Food program "should not. . .be confused with a development programme. .[as it] was never intended to meet all the humanitarian needs [of the Iraqi people]."²⁵

C. Human Rights Obligations

A government is ultimately responsible for the humanitarian needs of the population under its authority, including those who are internally displaced. Iraq has failed to fulfill its obligations in important respects, most egregiously through policies that themselves have uprooted particular populations, such as the Marsh Arabs in the south and Kurds, Turkmen and Assyrians in the north. In other contexts, Iraq has been unable to fulfill its obligations because the international community has imposed economic sanctions, and has created two flight exclusion zones. The responsibility of the international community to help meet the needs of the Iraqi population is heightened because the Iraqi government is unable or unwilling to provide sufficient assistance and protection.²⁶

Human Rights Watch²⁷ and other organizations have pointed to the human rights and humanitarian consequences of a poorly-tailored sanctions regime that does not give adequate exemptions for non-military trade and investment necessary to address Iraq's continuing humanitarian crisis. Sanctions that impact the availability of life-sustaining medicines and food raise serious concerns under the right to life (ICCPR, article 6), the rights to food and health care (ICESCR, articles 11 and 12), and the right of the child to the enjoyment of the highest attainable standard of health (Convention on the Rights of the Child, article 24).

During international armed conflict there are a series of principles in international humanitarian law governing the provision of humanitarian relief to civilian populations. Civilians—persons taking no active part in hostilities—are protected by international humanitarian law, which includes the four [Geneva Conventions](#) of 1949 and customary international humanitarian law. While Iraq and the United States are both party to the 1949 Geneva Conventions, neither is party to the First Additional Protocol of 1977 (Protocol I), covering international armed conflicts, although it is increasingly recognized that certain aspects of this Protocol constitute customary law.²⁸

If the United States goes to war with Iraq and becomes an occupying power, the Fourth Geneva Convention requires: "[t]o the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate." (Fourth Geneva Convention,

²³ See Benon V. Sevan, Executive Director of the Iraq Programme, "Introductory Statement to Report of the Secretary-General Pursuant to Paragraph 5 of Security Council Resolution 1302," December 4, 2000.

²⁴ See International Committee of the Red Cross, Annual Report, 2000.

²⁵ Report of the United Nations Secretary General on Oil for Food Programme, U.N. Doc. S/2000/208, October 3, 2000.

²⁶ For an analysis of the responsibilities of the international community in the context of Operation Provide Comfort see, e.g. Oscar Schacter, "United Nations Law in the Gulf Conflict," *American Journal of International Law*, July 1991, p. 469.

²⁷ See e.g. "Restructure Embargo, Try Leaders for War Crimes," Human Rights Watch, January 5, 2000; "Explanatory Memorandum Regarding the Comprehensive Embargo on Iraq Humanitarian Circumstances in Iraq," Human Rights Watch, January 4, 2000.

²⁸ See, e.g. Theodore Meron, *Human Rights and Humanitarian Norms as Customary Law*, 1989, p.62-70, 74-78 (discussing the customary law character of certain aspects of Protocol I). In 1987, the U.S. State Department Deputy Legal Advisor gave a speech in which he enumerated many of the principles enshrined in Protocol I that the U.S. considers customary international law. See "The Sixth Annual American Red-Cross Washington College of Law Conference on International Humanitarian Law: A Workshop on Customary International Law and the 1977 Protocols Additional to the 1949 Geneva Conventions," *The American University Journal of International Law and Policy*, Vol. 2, No. 2, Fall 1987, pp. 419-427 (containing remarks of Michael J. Matheson).

article 55).

Additionally, humanitarian relief agencies must be allowed access to provide for the civilian population during occupations. Protocol I expands the right of any civilian population in the territory of a party to the conflict access to relief assistance. It provides that “relief actions which are humanitarian and impartial in character and conducted without any adverse distinction shall be undertaken, subject to the agreement of the Parties concerned in such relief actions.” An occupying power “shall facilitate, as much as possible, visits to protected persons [including all persons in an occupied territory] by the representatives of other organizations whose object is to give spiritual aid or material relief to such persons.” (Fourth Geneva Convention, article 30).

Warring parties must respect the neutrality of relief organizations and their personnel and permit humanitarian agencies to operate independently from any military or political authority. Parties to a conflict that directly provide humanitarian assistance should distinguish their efforts from those of humanitarian agencies, so as to avoid confusion about the latter's neutrality.

Finally, applicable in war as in peacetime, the Guiding Principles on Internal Displacement²⁹ offer relevant standards of human rights and humanitarian law relating to humanitarian assistance. The Guiding Principles are based on international laws that bind states and insurgent groups, and they have acquired authority and standing in the international community. According to Principle 18 of the Guiding Principles, authorities are obliged to provide displaced persons with food, water, shelter, clothing and medical services or to ensure their access to these necessities. Government action to interrupt such services provided by U.N. agencies or NGOs would also contravene Principle 25 which requires granting free passage to personnel of humanitarian agencies. Principle 22 provides that displaced persons shall be able to seek employment and participate in economic activities.

II. INTERNALLY DISPLACED IRAQIS

A. Current Concerns

As of late 2002, estimates of the numbers of displaced persons in Iraq varied from 700,000 to one million.³⁰ This number reflects not only the continued effects of past wars, but also official policies of the Iraq government targeting particular populations, such as the Marsh Arabs (described below).

U.N. agencies predicted in December 2003 that war could displace an additional 1.1 million people inside Iraq and 900,000 would become refugees outside the country.³¹ Military attacks from the air and on the ground can be expected to uproot civilians. Actions by the Iraqi government targeting particular populations, including the possible use of chemical or biological weapons, could bring still further waves of displacement. People already displaced and with a shaky support system may be forced to flee from their homes again. Recurring displacement complicates the post-war situation, when people seek to return to their homes and find them occupied by others.³²

There is also the risk that internally displaced Iraqis may be trapped in a “refugee-like situation” inside the borders of their own country. In the 1991 Gulf War, some internally displaced Iraqis were unable to cross international borders to safety and instead remained in the northern “safe area” under the aegis of Operation

²⁹ The Guiding Principles on Internal Displacement (the Guiding Principles), adopted in September 1998 by the U.N. General Assembly, reflect international humanitarian law as well as human rights law, and provide a consolidated set of international standards governing the treatment of the internally displaced. Although not a binding instrument, the Guiding Principles are based on international laws that do bind states as well as some insurgent groups, and they have acquired authority and standing in the international community.

³⁰ The Global IDP Project estimates that there are 1 million IDPs Iraq; the U.S. Committee for Refugees estimates between 600-700,000; UNHCR cites a figure of 830,000 and the Brookings Institution estimates between 900,000 and 1.1 million.

³¹ See United Nations, “Likely Humanitarian Scenarios,” December 10, 2002 para. 11, available at <http://www.casi.org.uk/info/undocs/war021210.pdf>. Iraq also currently hosts 130,000 mostly Palestinian, Turkish and Iranian refugees. Given their current location in the south and their vulnerable status, these refugees may be among the first to be internally displaced and will be in acute need of physical protection.

³² C.J. Chivers, “Uprooted Iraqis See War as Path to Lost Homes,” *New York Times*, December 4, 2002.

Provide Comfort.³³ Lessons learned from Operation Provide Comfort and other examples of “safe areas,” described in Section III below, raise serious questions about whether displaced Iraqis will be able to make free choices about which location is safest for them and their families inside Iraq, about whether they will be able to exercise their human right to seek asylum in other countries, and about whether any future “safe area” they might reach would be truly safe.

B. Background

Hundreds of thousands of Iraqis have been internally displaced in the past, for a variety of reasons. Large-scale displacements occurred as a result of the 1991 Gulf war. In addition, since the mid-1970s the government of Iraq has also displaced the so-called Marsh Arabs and other Shi'a Muslim groups in the south and ethnic Kurds, Turkmen and Assyrians in the central and northern areas. In these latter cases, the government of Iraq has displaced groups assumed to be in opposition to it and those residing in oil-rich territories, such as the northern city of Kirkuk.

In southern Iraq, approximately 300,000 people are displaced.³⁴ At least 100,000 of these are Marsh Arabs displaced from the southeastern marshlands. Government repression of the Marsh Arabs in the early 1990s included diversion of water from the marshes near the Tigris and Euphrates rivers through the use of dams and canals. Officially, the government claimed people were displaced from the marshes in order to offer them better living conditions. These deliberate policies deprived the Marsh Arabs of food, destroyed their agricultural traditions, and forced them from their homes. One reason for the government's assault on the marshes was the presence of Iranian soldiers inside the marshes, which began in 1984 during the Iran-Iraq war. In addition, army deserters and political opponents from central and southern Iraq were believed to be present in the marshes. Moreover, the government had had plans for the drainage of the region and long-term plans for the exploitation of untapped oil reserves since the 1980s. Finally, the Marsh Arabs were forced from their homes because these Shi'a Muslim people had themselves revolted against the Sunni Muslim-based government of Iraq in 1991.

In the north, estimates for the number of internally displaced persons range from 600,000 to 805,505.³⁵ Iraqi armed attacks and fighting between Kurdish factions have caused forced displacement, the destruction of important infrastructure, villages, and agricultural land, and the laying of landmines. The displaced in the north also include individuals who tried to leave Iraq in the aftermath of the Gulf war, but were prevented from doing so and therefore became internally displaced (see below).

Since the mid-1970s, the government has expelled Kurds, Turkmen, and Assyrians from their homes in oil-rich areas such as Kirkuk, Tuz Khormatu, Khaniqin, and other districts as part of its "Arabization" program. Most have been expelled to areas controlled by Kurdish opposition forces and a smaller number to central and southern Iraq. Individuals who refuse to sign so-called "nationality correction" forms are among those displaced in this manner. These forms were introduced by the authorities prior to the 1997 population census, and required members of ethnic groups residing in these districts to relinquish their Kurdish, Turkmen, or Assyrian identities and to register officially as Arabs.³⁶ Underlying the Arabization campaign is the government's desire to reduce the political power and literal presence of ethnic minorities in certain areas, and to retain control of areas rich in oil. Motivated by these reasons, the government of Iraq displaced approximately 120,000 persons from Kirkuk and other cities under government control from 1991 to 2000.³⁷ On September 6, 2001, Iraq's Revolution Command Council issued Decree 199, “enabling” Iraqis aged eighteen or over registered as non-Arab to change their ethnicity to Arab.³⁸

³³ See discussion of “Operation Provide Comfort” in Part IIIB, below.

³⁴ See John Fawcett and Victor Tanner, “The Internally Displaced People of Iraq,” October 2002, The Brookings Institution-SAIS Project on Internal Displacement, p. 33.

³⁵ See UNCHS-Habitat, IDP Site and Family Survey, January 2001 (estimating 805,505 internally displaced in the north); U.S. Committee for Refugees, *World Refugee Survey 2002* (estimating 600,000 internally displaced in the north).

³⁶ Human Rights Watch, *World Report 2001*, p. 385.

³⁷ Based on statistics gathered by ongoing Human Rights Watch research, including a mission to Iraq in late 2002.

³⁸ Human Rights Watch, *World Report 2002*, p. 432. See also *Situation of Human Rights in Iraq*, Report of the U.N. Special Rapporteur on Iraq, U.N. Doc. A/57/325, August 20, 2002.

Not only is the Iraqi government forcing specific ethnic groups to flee their homes, but it is also adopting measures intended to prevent the return of those displaced.³⁹ The government has built new housing in villages around Altun Kopri and Tuz Khormatu to accommodate Iraqi Arab families, and substituted Arabic for Kurdish, Turkmen, and Assyrian place names. The Arab settlers are given title deeds of property owned by those expelled. Military checkpoints have been established around Kirkuk, Kurdish sites have been demolished, and Kurds and other minorities in the area have been prohibited from constructing or inheriting property in the area.⁴⁰ Those refusing to comply with these measures have been intimidated, arrested, and have had their ration cards revoked.⁴¹

C. Human Rights Obligations

International law protecting the right to freedom of movement exists during both peacetime and during armed conflict. Under international human rights law, individual decisions to seek safety in another part of one's own country are protected by the human right to freedom of movement, set out in the International Covenant of Civil and Political Rights (ICCPR),⁴² to which Iraq is a party. Although the ICCPR does permit derogation (that is, limits) on freedom of movement during times of public emergency or armed conflict, those limits must be only those strictly required by the situation at hand and under no circumstances may the limits be imposed on a discriminatory basis. Therefore, a government may not limit the movements of only a specific ethnic group during a time of public emergency unless other concerns (such as specific threats to the safety of that group) required such limits to be imposed.

The legality under international law of displacements during armed conflict largely hinges on whether the intent of the party causing displacement is to provide better protection for civilians or whether it is to attack civilians, terrorize them, or otherwise seek to use them to achieve military objectives. According to international humanitarian law,⁴³ warring parties must distinguish between combatants and civilians. Civilians are protected from deliberate attack and lawful attacks that disproportionately affect them; nor can civilians be used to shield military objectives. Civilian objects, such as houses, must also be spared attack, unless such an object is being used by the opposing side for military purposes. Whenever possible, attacks must be planned to minimize civilian displacement and there must be warning of attacks that may displace or otherwise harm civilians. Such warnings implicitly allow for civilians to decide for themselves whether or not to remain in the area. Under Protocol I, warnings cannot be used to terrify the population into evacuation (article 51(2)).

Protocol I prohibits armed forces from attacking, destroying or rendering useless items necessary for the survival of the civilian population for whatever motive, including to cause people to move away from their homes (article 54). The Protocol permits a derogation of this provision - the destruction of objects indispensable to the survival of the civilian population - by a party to the conflict in the defense of its own national territory against invasion, "where required by imperative military necessity" (article 54(5)). It is not clear whether such "scorched earth" tactics are permissible under customary international law.

International humanitarian law prohibits individual or mass forcible transfer to other countries. Transfers are only permitted internally if the security of the population or imperative military reasons so require (article 49). An unlawful deportation or transfer of a protected person is a grave breach of the Fourth Geneva Convention, that is, a war crime (Geneva Convention IV, article 147). Forcible transfers of population may be crimes against humanity when they are part of a widespread or systematic attack against any civilian population.⁴⁴ Should the

³⁹ Human Rights Watch, World Report 2002, p. 432.

⁴⁰ United Nations High Commissioner for Human Rights, February 26, 1999.

⁴¹ *Internally Displaced People: A Global Survey*, Global IDP Project, November 2002, p. 173.

⁴² See Article 12, *International Covenant on Civil and Political Rights*, GA Res. 2200 A(XXI), U.N. GAOR, 21st Sess., Supp. No. 16, p. 52, U.N. Doc. A/6316, 999 U.N.T.S. 171, 1966, entered into force March 23, 1976. Iraq ratified this treaty on January 25, 1971; Iran ratified it in 1975; Kuwait acceded in 1996; Syria acceded in 1969 and Saudi Arabia is not a signatory.

⁴³ See text accompanying note 28, above for a description of international humanitarian law.

⁴⁴ See Rome Statute of the International Criminal Court, 1998, Article 7, para. 1(d).

United States go to war with Iraq and become an occupying power, U.S. forces must ensure the security of the civilian population or allow civilians to move voluntarily out of harm's way, both within and outside of Iraq.⁴⁵

Principle 21 of the Guiding Principles on Internal Displacement⁴⁶ sets out the prohibition against pillage of the property of displaced persons and the requirement for protecting property left behind at the time of their displacement. The Iraqi government's failure to protect the property of displaced persons, such as those from Kirkuk, is a continuing concern that may prove particularly troublesome in a post-war environment when displaced persons seek to return home.

Finally, according to Principle 28 of the Guiding Principles, authorities are required to establish conditions and to provide the means for displaced persons to return voluntarily, "in safety and with dignity" to their homes or to resettle voluntarily elsewhere. Property disputes, the Arabization campaign, and the proliferation of landmines all currently prevent Iraqis from returning to their homes.⁴⁷ If an international conflict were to occur in Iraq, dispersed family members must be reunited in accordance with Article 74 of Protocol I.

III. THE PROSPECTS FOR "SAFE AREAS" FOR INTERNALLY DISPLACED IRAQIS

A. Current Concerns

As noted above, the north of Iraq is currently home to several hundred thousand internally displaced persons, most of whom are Kurds. In 1991 large numbers of civilians attempted to flee beyond the reach of Iraqi government violence by leaving the country altogether. Some crossed into Turkey, others were held back on the Iraqi side when Turkey closed its borders. There was a grave humanitarian crisis and the loss of an estimated 1,500 lives (mainly the very young and the very old) as the displaced accumulated in the mountainous border area in cold winter weather without food, shelter or health provision. The U.S. and the U.N. intervened to establish a so-called "safe area" in which the displaced trapped in northern Iraq were to be protected from further attack while receiving aid to meet their humanitarian needs.

In the event that one or more of Iraq's neighbors prevent a massive flight across national boundaries, the U.N., the United States or other international actors may decide to establish "safe areas" in Iraq for persons who are in "refugee-like situations." While the concept of a "safe area" is not recognized under international humanitarian law, such areas were created in northern Iraq in 1991 and in Bosnia-Herzegovina in 1993 with some success and much tragedy. Evidence that they are being contemplated anew surfaced in November 2002 when the government of Turkey announced a plan to send troops into northern Iraq in order to set up thirteen camps for displaced persons inside Iraqi territory. Only if these camps became full would the Turkish authorities consider allowing some Iraqis to cross the border to five additional camps. Turkey claimed that such a plan was necessary "to take measures to keep [displaced Iraqis] away from our border."⁴⁸ Since this announcement, the Turkish Red Crescent has been working to prepare for the arrival of 500,000 displaced Iraqis to Turkish-run camps in northern Iraq.⁴⁹

B. Background

Recent history gives reason to be concerned about prospects for "safe areas" in Iraq. Following Iraq's defeat in the Gulf War in 1991, Kurds in northern Iraq staged an uprising that was brutally crushed by the central

⁴⁵ According to the ICRC commentary for the Fourth Geneva Convention, article 27, an occupying power may restrict the freedom of movement of civilians if circumstances so require. But while parties to a conflict retain a great deal of discretion in their actions, "[w]hat is essential is that the measures of constraint they adopt should not affect the fundamental rights of those concerned."

⁴⁶ See footnote 29, above for a description of the Guiding Principles on Internal Displacement.

⁴⁷ In November 1998, the U.N. Security Council stated that mine clearance in Iraq could take between thirty-five and seventy-five years.

⁴⁸ Dexter Filkins, "Turks, Fearing Flow of Refugees, Plan Move Into Iraq," *New York Times*, November 23, 2002 (citing regional governor of southeastern Iraq).

⁴⁹ See "Turkey's Iraq Decision Still Pending," *Turkish Daily News*, December 25, 2002.

government. Approximately 450,000 Kurds attempted to flee Iraq to Turkey.⁵⁰ Those who managed to reach Turkey were held in the mountainous border or were pushed back into Iraq by Turkish soldiers, in violation of the fundamental international refugee law principle of *nonrefoulement*, which is now an accepted principle of customary international law.⁵¹

While some refugees were stopped on the Turkish side of the border at places like Pirinceken or Kayadibi, Turkish forces kept many others inside Iraq. Even those who had been allowed to enter Turkey were trapped in the border area where they were exposed to cold, lack of food and sanitation, and poor medical care. In early 1991, death rates were as high as 400 persons per day.⁵²

In April 1991, the United States established “Operation Provide Comfort” to provide food, shelter and clothing to Kurds in northern Iraq.⁵³ At the outset of the operation, humanitarian conditions in the northern “safe areas” were extremely difficult. A civil engineer working with the humanitarian relief agency Médecines sans Frontières said, “these mountains are the worst possible place for a camp. There is no water and it is not flat. Sanitation is impossible because the tents are packed too close together.”⁵⁴ By late spring 1991, however, humanitarian conditions improved in the “safe area.” Given the categorical withdrawal of international protection for refugees by Iraq’s neighbors, the “safe area” may have been the next best option.

While Operation Provide Comfort addressed many issues regarding food, shelter and water, it left protection issues unanswered. The government of Iraq was hostile to the establishment of the “safe area,” and argued it was an infringement upon its sovereignty.⁵⁵ Given this hostility, it was not surprising that approximately 200 armed Iraqi police under the command of the central government moved into the northern “safe area” in April 1991.⁵⁶ In July 1991, the Allied forces withdrew and between 350 and 500 U.N. observers were deployed to monitor Iraqi compliance with Resolution 688 in the northern zone.⁵⁷ In October 1991 the government withdrew from the northern provinces. In 1992, the Turkish government, claiming that Kurdistan Workers’ Party (PKK) guerrillas were hiding out in northern Iraq, sent in its army to attack them. Sporadic fighting between the two main Kurdish parties: the Kurdistan Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK) occurred in 1993 and 1994. Again, on March 20, 1995, responding to what it considered threats to its territory, Turkey sent some

⁵⁰ At this same time, Iran permitted hundreds of thousands of Iraqi refugees to cross the border to safety.

⁵¹ The customary international law norm of *nonrefoulement* protects refugees from being returned to a place where their lives or freedom are under threat. International customary law is defined as the general and consistent practice of states followed by them out of a sense of legal obligation. That *nonrefoulement* is a norm of international customary law is well established. See e.g. “Problems of Extradition Affecting Refugees,” ExCom Conclusion No. 17, 1980; ExCom General Conclusion on International Protection, 1982; Encyclopedia of Public International Law, Vol. 8, p. 456. UNHCR’s ExCom stated that *nonrefoulement* was acquiring the character of a peremptory norm of international law, that is, a legal standard from which states are not permitted to derogate and which can only be modified by a subsequent norm of general international law having the same character. See ExCom General Conclusion on International Protection No. 25, 1982.

⁵² See Centers for Disease Control, “International Notes Public Health Consequences of Acute Displacement of Iraqi Citizens,” Morbidity and Mortality Weekly Report, July 5, 1991 (noting that out of an approximate population of 400,000, crude mortality rates in April ranged from 4.0 to 10.4 per 10,000 per day).

⁵³ U.N. Security Council Resolution 688, adopted on April 5, 1991, authorized the establishment of the northern Iraq “safe area” and gave general authorization for the humanitarian intervention to begin to help the stranded would-be refugees. On April 18, 1991, U.N. and Iraqi authorities signed a Memorandum of Understanding, authorizing U.N. humanitarian operations along Iraq’s northern borders. Iraq committed to “facilitate the safe passage of emergency relief commodities throughout the country.” The parties subsequently agreed in May 1991 that 500 unarmed U.N. guards would be deployed to act as “moral witnesses” to inspire confidence among the refugees located in the “safe area.” An air-exclusion zone was also imposed north of the 36th parallel. See United Nations Security Council Resolution 688, April 5, 1991, paras 3-6; “Survival is Harsh, Recovery Slow in Hard Hit Areas,” *U.N. Chronicle*, September 1991.

⁵⁴ “GIs, Kurds Find Kinks in ‘Operation Comfort,’” *Washington Post*, April 18, 1991.

⁵⁵ See e.g. Oscar Schachter, “United Nations Law in the Gulf Conflict,” *American Journal of International Law*, July 1991, p. 468-470.

⁵⁶ See “Kurds Deserve a Safe Haven,” *Chicago Tribune*, April 14, 1991.

⁵⁷ See “Allies End Three-Month Presence in Kurdistan on Optimistic Note,” *Agence France-Presse*, July 16, 1991.

35,000 troops into the “safe areas.”⁵⁸ Repeated Turkish incursions and the internal fighting in the region threatened security and reduced relief work and village reconstruction.

By 1996, no significant international military presence remained in the northern areas, but the flight-exclusion zone remained in place. However, Iraqi government forces entered the city of Arbil on August 31, 1996 at the request of the Kurdistan Democratic Party, which asked for help in ousting forces of the Patriotic Union of Kurdistan from the city at the height of the inter-Kurdish conflict. Hundreds of people were arrested and scores were summarily executed⁵⁹ when the Iraqi government forces surrounded the city of Arbil.⁶⁰ Two relief workers were beaten and killed in the attacks, and Iraqi agents searched the offices of humanitarian organizations, looking for personnel files, confiscating computers, and interrogating and threatening staff.⁶¹ The situation became so perilous for certain Kurds, largely employees of U.S. aid agencies and their families, that the U.S. government agreed to evacuate 6,500 people.⁶²

Despite these failings, observers variously cited Operation Provide Comfort as the “most effective,”⁶³ or “the least bad of several bad”⁶⁴ alternatives considered by the international community to protect displaced Iraqis since Turkey had not met its obligations under international law.

C. Human Rights Obligations

If, in the event of war Turkey or any other government creates a “safe area,” that government will have the burden of ensuring that all necessary assistance is provided and that such camps are secure. Past international experience has shown that “safe areas” often do not remain safe. “Safe areas” often pose significant dangers: if adequate safeguards are not in place, the promise of safety can be an illusion and “safe areas” can come under deliberate attack. There may also be pressures on humanitarian agencies to cooperate with military forces in ways that compromise their humanitarian principles, or agency personnel and access may be severely hampered by military operations. Finally, the presence of military personnel can make the location a military target as opposed to a “safe area.”

One example which, while extreme, shows all of these problems was the “safe area” in the Srebrenica enclave of Bosnia-Herzegovina. The failure of U.N. peacekeepers to protect Srebrenica led to the single biggest atrocity of the 1992-1995 war in Bosnia-Herzegovina: the premeditated mass execution of more than 7,000 men and boys.⁶⁵ In addition, abuses attending the occupation of the “safe area” included rape and the terrorization of women, children and the elderly.⁶⁶ The example of Srebrenica highlights the dangers of creating a “safe area” without making adequate provision for the safety of displaced persons.

Those who seek protection internally should never be prevented or dissuaded from seeking international refugee protection. States, in turn, cannot justify keeping their borders closed to refugees on the ground that they have set

⁵⁸ See “US Protection of Kurds Succeeds - But How Does It End?” *Washington Post*, April 4, 1995. See also UNHCR, *The State of the World's Refugees*, 2000, p. 216.

⁵⁹ See Bill Frelick, “Down the Rabbit Hole: the Strange Logic of Internal Flight Alternative,” *U.S. Committee for Refugees, World Refugee Survey*, 1999.

⁶⁰ See UNHCR, *The State of the World's Refugees*, 2000, p. 217.

⁶¹ See Bill Frelick, “US Must Rescue Kurds Who Trusted U.S. Employers,” November 8, 1996 (available at http://www.refugees.org/news/op_ed/110896.htm).

⁶² See Arthur Helton, *The Price of Indifference*, 2002, p. 174.

⁶³ See e.g. Bill Frelick, “Down the Rabbit Hole: the Strange Logic of Internal Flight Alternative,” *U.S. Committee for Refugees, World Refugee Survey*, 1999.

⁶⁴ See Arthur Helton, *The Price of Indifference*, 2002, p. 173.

⁶⁵ See Human Rights Watch/Helsinki, *Bosnia-Herzegovina: The fall of Srebrenica and the failure of U.N. Peacekeeping*, Vol. 7, No. 13, October 1995. On August 2, 2001, the International Criminal Tribunal for the former Yugoslavia delivered its first ever genocide conviction for crimes committed in the wake of the 1995 capture of Srebrenica by the Bosnian Serb Army. See also International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Radislav Krstic*, Judgement, August 2, 2001.

⁶⁶ See Human Rights Watch/Helsinki, *Bosnia-Herzegovina: The fall of Srebrenica and the failure of U.N. Peacekeeping*, Vol. 7, No. 13, October 1995, p. 26-7.

up internal “safe areas.” Turkey⁶⁷ and Iran (see discussion in Section IV B below) have indicated that they may not allow refugees into their territories. Especially as members of the UNHCR’s ExCom,⁶⁸ Turkey and Iran have obligations under international refugee law to keep their borders open and to “always admit [asylum seekers] at least on a temporary basis and provide them with protection. . .without any discrimination,” while other governments are obliged to “take all necessary measures” to assist such host countries.⁶⁹ If any government forces refugees who have entered its territory, or who are standing at its borders, to return to conditions that are not safe, it will violate their obligations under international refugee law.⁷⁰

It is critical that host countries open their borders to refugees and that the international community provide the support necessary to ensure that such countries have the resources to cope with any refugee influx. If the international community directly or indirectly supports the closure of borders and the establishment of in-country camps as an alternative to open borders, it will set a damaging precedent and send a dangerous message to countries elsewhere in the world facing large-scale refugee arrivals. Such practices could permanently erode the institution of asylum that is so fundamentally important to protect millions of people who flee persecution and human rights violations worldwide.

IV. IRAQI REFUGEES: A CHRONIC SITUATION

A. Current Concerns

Iraq shares land borders with six countries: Turkey, Iran, Jordan, Syria, Saudi Arabia, and Kuwait. As of late 2001, between one and two million Iraqis living outside Iraq were thought to have a well-founded fear of persecution if they returned.⁷¹ Of these, only about 300,000 had any formal recognition as refugees or asylum seekers, largely due to the failure of the governments hosting them to put in place refugee status determination procedures. Instead of providing for their needs, many of these host governments imposed hostile policies aimed at restricting refugee rights so as to deter additional Iraqis from entering their territories.

In the event of war, new refugee flows in the immediate vicinity of Iraq, a region which has hosted a large refugee population for many years,⁷² may overwhelm local authorities and agencies. The scale of flight is likely to be affected by the intensity of the conflict as well as by whether or not biological or chemical weapons are used. It is likely that a large number of refugees would seek to flee into Iran, a country that has traditionally been the most tolerant of their presence. Others might attempt the harrowing journey across the mountains into Turkey as happened during the Gulf War.⁷³ Others, especially Sunni Muslim Arabs, might try to reach Syria, particularly if there are extended attacks on the Baghdad area and the predominantly Sunni Arab central provinces. Still others might try to reach Jordan, which has indicated that it will only admit refugees who are in transit to a third country,

⁶⁷ See text accompanying footnotes 48-49, above.

⁶⁸ For a description of ExCom, see note 2, above.

⁶⁹ See “Protection of Asylum-Seekers in Situations of Large Scale Influx,” ExCom Conclusion No. 22, 1981, para. IIA(1) and IV(1). See also “Temporary Refuge,” ExCom Conclusion No. 19, 1980, para. (b)(i).

⁷⁰ See note 51, above for a discussion of the norm of *nonrefoulement*. Although Turkey is party to the Refugee Convention (where this norm is codified), since it maintains a geographical limitation on its obligations under the Convention to the effect that it only recognizes refugees fleeing Europe, Turkey’s *nonrefoulement* obligations are based on customary international law.

⁷¹ See U.S. Committee for Refugees, World Refugee Survey, 2002

⁷² In addition to Iraqi refugees already living in these countries, they each host refugees from other nationalities as well. For example, Iran hosted 1.4 million refugees from Afghanistan in 2001, Jordan hosted 1.6 million Palestinian refugees, Kuwait hosted 800,000 Palestinian refugees, Saudi Arabia hosted 240,000 Palestinian refugees, and Syria hosted 400,000 Palestinian refugees. See UNHCR Statistical Yearbook 2001, October 2002, p. 92-95. See also UNRWA in Figures, June 30, 2002, available at www.un.org/unrwa/pr/pdf/uif-june02.pdf.

⁷³ In contrast to the difficult conditions encountered by refugees on mountain roads in 1991, humanitarian agencies report that the roads in the region are in very good condition, which would better facilitate the flight of refugees and access for humanitarian services. However, the capacity for road clearance in the winter is unknown. See “Food Issues of Iraq,” Center for Humanitarian Cooperation, available at <http://cooperationcenter.org/library5.as>.

which is likely to be a small number.⁷⁴ As noted above, U.N. agencies predicted in December 2003 that war could cause 900,000 Iraqis to become refugees.⁷⁵

Human Rights Watch is concerned that the countries bordering Iraq are likely to maintain or further tighten policies that are hostile towards refugees. Instead of being allowed to enter villages or cities, refugees may be housed in camps near the border, where freedom of movement may be severely limited, where the civilian nature of the camps cannot be guaranteed, nor protection from cross-border attacks, and where humanitarian conditions are likely to be extremely difficult. Finally, Iraqi refugees living in urban areas may continue to experience the kinds of arbitrary arrests and detention, and restrictions on their ability to work and to access education that they have experienced for years.

B. Background

Iran

Unlike most of the other countries neighboring Iraq, such as Jordan, Syria, Saudi Arabia and Kuwait, Iran is party to the Refugee Convention.⁷⁶ A government-run census in 2001 revealed that Iran hosted more refugees than any other government in the world: 2.56 million,⁷⁷ of whom 2,355,000 were Afghans and 203,000 were Iraqis.⁷⁸ This number likely excludes hundreds of thousands of Iraqis who were deported by Iraq to Iran during the 1980s, and refugees living in Iranian towns and cities without registering with UNHCR. In addition, thousands of Iranians remain internally displaced after the 1980-88 war with Iraq. The government of Iran has grown increasingly disenchanted over the years about hosting such a large refugee population in the face of minimal international interest, financial support, or burden sharing.

Over the past six months, Iran has sent mixed messages about whether it is willing to host a potential new influx of Iraqi refugees. On August 7, 2002, Iran announced that it would not provide protection to an influx of Iraqi refugees in its territory, and would set up camps for Iraqis inside Iraq.⁷⁹ Two months later, deputy interior minister Ahmad Hosseini was unequivocal: "In the event of an American attack against Iraq, we will not authorize any Iraqi refugee to enter Iranian territory."⁸⁰ He also gave more details of the government's plans: "We have plans for sixteen camps on the Iraqi side of no man's land with room for 700,000 people."⁸¹ Iran further indicated that it had sufficient food for only 50,000 refugees, which is one-third of the conservative estimate of 150,000 refugees that UNHCR asked Iran to prepare for.

In a welcome move away from this position, the government announced on November 9, 2002 that it would allow refugees to enter Iran's border areas if they are in danger, but would not allow them to settle in cities.⁸² As of January 2003, Iran's message remained ambiguous,⁸³ but it still appeared that up to nineteen refugee camps would be set up inside Iran, within a few kilometers of the Iraqi border and mostly in central and southern Iran across the border from major Iraqi population centers. At the time of writing, preparatory work on the campsites was incomplete and it was unclear whether the sites would be located too close to the border to offer refugees sufficient protection. Iran is in consultation with international agencies and NGOs on the development of the sites.

Contrary to the government's current preference for housing new refugees in camps, the vast majority of Iraqis in Iran live in urban areas: mostly in Shiraz, in the south, and in Qom, in central Iran. The preference for camps often makes refugees in cities (both new arrivals and those who have lived there for many years) extremely vulnerable to police abuse and discriminatory treatment. In fact, some policies curtailing refugees' rights are already in place in Iran. In June 2001, restrictions on refugees' access to employment were tightened even further, so that all refugees except those with old work permits were classed as illegal workers and thereby subject to

⁷⁴ See "Aid Groups Get Ready for War, Nearby Nations Expect Flood of Refugees," *Atlanta Journal and Constitution*, December 23, 2002 (stating that the government of Jordan "announced it will admit only those going through Jordan to a third country, not people who have nowhere else to go."). See also Mark McDonald, International News, Knight Ridder Washington Bureau, December 19, 2002 (quoting Mohammad Adwan, Jordan's Minister of State for Political Affairs and Information stating that "his government 'won't allow huge floods of refugees. We simply can't absorb them.'").

⁷⁵ See United Nations, "Likely Humanitarian Scenarios," December 10, 2002 para. 11, available at <http://www.casi.org.uk/info/undocs/war021210.pdf>.

expulsion under a law known as Article 48. A new policy of fining and imprisoning the employers of undocumented workers was also introduced. Many refugees were instantly fired from their jobs, and thereby also lost their homes and all entitlement to medical care. They had absolutely no access to state social security or any other safety net. Although it was decreed that even undocumented children would be permitted to attend school, many local authorities continued to deny refugee children entrance to public schools and forcibly closed down those organized by refugees themselves.⁸⁴ In short, many Iraqi refugees were systemically denied the means to subsist in Iran by Iranian law.

In 2001 the government of Iran undertook a costly and logistically complex registration exercise with the assistance of UNHCR, during which millions of refugees obtained a “registration slip” recognizing their status as refugees in Iran. At the time of writing, it was doubtful whether potential new arrivals to Iran would have access to similar documentation.

Turkey

Turkey has insisted it will keep its borders closed to new flows of Iraqi refugees. Turkey, a country with its own chronic economic problems, has (like Iran) repeatedly had to shoulder a heavy financial burden to meet refugee crises arising from its neighbors. For four years after 1988, following the Iraqi government’s chemical weapons attacks on Halabja and Badinan in northern Iraq, Turkey provided shelter for 60,000 Iraqi refugees. Turkish civil society responded with concern and urgency to the influx in 1991 sending material assistance to the crisis region.

As of the end of 2001, Turkey was host to only 565 recognized refugees from Iraq,⁸⁵ although 7,700 people, many of them Iraqis, are considered “persons of concern” to UNHCR.⁸⁶ These numbers are likely not representative of the number of Iraqis in Turkey with a well-founded fear of persecution, since many feared rejection of their claims and therefore did not present themselves to the authorities. Turkey does not offer asylum seekers a reliable system of determination and protection. Under Turkey’s geographical reservation to the Refugee Convention, non-European asylum seekers must register with the police who carry out an assessment to determine whether they are asylum seekers rather than migrants. Individuals must register their claims within ten days of arriving in Turkey, and the process does not include the minimum safeguards required by international law for fair and accurate refugee determination. Those who pass the assessment are referred to UNHCR which carries out a further determination process to establish whether or not the person is a refugee. Those who pass this test wait in Turkey for eventual resettlement to a third country.

⁷⁶ Iran ratified the Refugee Convention on July 28, 1976. *See also* footnote 70, above, explaining that Turkey is also party to the Refugee Convention, but with a geographical limitation.

⁷⁷ *See* UNHCR, *Global Report 2001*, p. 284.

⁷⁸ *See* U.S. Committee for Refugees, *World Refugee Survey 2002*, p. 167. In January 2003, the government of Iran announced that 470,000 Afghans returned home in the previous ten months, leaving almost 2.1 million refugees in total in Iran. *See* “470,000 Afghans have returned home from Iran,” *Agence France-Presse*, January 26, 2003.

⁷⁹ *See* “Iran readies for influx of refugees ahead of U.S. strike on Baghdad,” *The Independent*, August 7, 2002.

⁸⁰ “Camps for 700,000 refugees, on Iraqi side of the border,” *Agence France-Presse*, October 15, 2002.

⁸¹ *Ibid.*

⁸² *See* “Iran Says It’ll Accept Iraq Refugees,” *Associated Press*, November 9, 2002.

⁸³ *See* “Iran Ready to Shelter More Iraqis,” *BBC Worldwide Monitoring*, January 1, 2003 (quoting Iranian government spokesman Abdollah Ramezanzadeh, “in case a number of Iraqi nationals require Iran’s humanitarian assistance, we would take actions to host them under U.N. supervision beyond the border.”); “Iran Prepares for 200,000 Refugees from Iraq in Ten Camps,” *Agence France-Presse*, January 26, 2003 (noting that the “Islamic Republic [of Iran] was holding talks with Iraqi officials to help *them set up refugee camps within Iraq.*”) (emphasis added); “Iran Ready to Accept up to 200,000 Iraqi Refugees in Case of War,” *Itar-Tass*, January 26, 2003 (stating that “Iranian Deputy Interior Minister Ahmad Hosseini said that his country’s closed door policy does not change, but Iran will assign 10 camps *in its border provinces* to Iraqi refugees on humanitarian grounds if their lives are really in danger”) (emphasis added).

⁸⁴ These school closures violated Articles 28 and 29 of the *Convention on the Rights of the Child*, G.A. Res. 44/25, 44 U.N. GAOR, Supp. No. 49, U.N. Doc. A/44/49, 1989, entered into force September 2, 1990.

⁸⁵ U.S. Committee for Refugees, *World Refugee Survey*, 2002.

⁸⁶ *See* *Statistical Yearbook 2001*, UNHCR, October 2002, p. 83.

Turkish police and military are particularly rigorous in apprehending, detaining, and deporting asylum seekers and other migrants at the borders. In fact, Turkish authorities reported apprehending and detaining more than 13,000 people attempting to enter Turkey from Iraq in the first ten months of 2002.⁸⁷ Asylum seekers have difficulty crossing into Turkey at unofficial crossing points since the border is marked by barbed wire, watchtowers, and potentially lethal minefields.⁸⁸ In addition, Turkish police conduct periodic raids in immigrant neighborhoods in cities and towns, arresting and eventually deporting the asylum seekers and refugees together with other foreigners. Through these and other measures, Turkey forcibly returned seventy-eight Iraqis in 2001 to northern Iraq, as reported by the U.S. Committee for Refugees. Many of these individuals were believed to possess a well-founded fear of persecution in Iraq since they had already registered with UNHCR.⁸⁹ Therefore, their returns likely violated Turkey's obligation of *nonrefoulement*.

As described above, Turkey has been particularly vociferous about its fears that large numbers of Iraqi refugees will attempt to enter its territory in the event of war in Iraq. On November 23, 2002 the government of Turkey revealed a plan to send troops into northern Iraq in order to set up twelve camps for displaced persons inside Iraqi territory. Only if these camps became full would the Turkish authorities consider allowing some Iraqis to cross the border to five camps set up inside Turkey. When announcing this plan, Turkey explained that its main goal would be "to send foreigners settled in the camps either back to their region of origin or to third countries."⁹⁰ This official position of hostility towards the presence of Iraqi refugees in Turkey and clear desire to make any refugee's stay constrained and temporary, raises serious concerns about the potential for *refoulement* and other human rights abuses perpetrated against Iraqi refugees at the hands of Turkish authorities, particularly at the border with Iraq. Although Turkey's willingness to consider opening five camps on Turkish soil is a positive sign, it must be backed up with a clear expression of Turkish readiness to open the border should Iraqis need to enter Turkey in order to escape a humanitarian emergency or military attack.

Jordan, Kuwait, Saudi Arabia and Syria

Jordan hosts between 250,000 and 300,000 Iraqis,⁹¹ although the number could be much higher since Iraqis in Jordan doubt the benefits of registering with UNHCR and therefore often fail to do so. Approximately 5,000 refugees are registered with UNHCR, awaiting resettlement to another safe country.⁹² In accordance with an agreement signed between UNHCR and Jordan in April 1998, refugees are granted temporary asylum for a maximum period of six months, after which they become illegal aliens, subject to daily fines and at risk of return to Iraq.⁹³ The *de facto* presence of refugees waiting for resettlement is tolerated by the authorities pending their departure, although they have no permission to work and they are subject to "regular[. . .]round ups"⁹⁴ and instances of *refoulement*. Kuwait hosted 15,000 Iraqi refugees in 2001.⁹⁵ Some 5,200 Iraqi refugees are housed in the Rafha camp in Saudi Arabia.⁹⁶ Syria, meanwhile, has over 1,700 recognized refugees registered with UNHCR, awaiting resettlement.⁹⁷ Refugees in Syria are allowed to remain for a period of nine months,⁹⁸ but have no permission to remain thereafter. The U.S. Committee for Refugees estimates that there are 40,000 Iraqis in Syria who remain undocumented and are not formally recognized or protected as refugees.⁹⁹

⁸⁷ See "Turkey planning mission to head off Iraq refugees," *Chicago Tribune*, November 24, 2002

⁸⁸ See "Twelve Years Later, Turkey Braces for Another Wave of Iraqi Refugees," Copley News Service, December 16, 2002.

⁸⁹ U.S. Committee for Refugees, World Refugee Survey, 2002, p. 251

⁹⁰ Dexter Filkins, "Turks, Fearing Flow of Refugees, Plan Move Into Iraq," *New York Times*, November 23, 2002 (citing regional governor of southeastern Iraq).

⁹¹ Correspondence from UNHCR Branch Office Jordan, December 3, 2002 (on file with Human Rights Watch).

⁹² *Ibid.*

⁹³ See Géraldine Chatelard, "Iraqi Forced Migrants in Jordan: Conditions, Religious Networks, and the Smuggling Process" September 2002 (on file with Human Rights Watch).

⁹⁴ *Ibid.*

⁹⁵ See U.S. Committee for Refugees, World Refugee Survey 2002. UNHCR only counted 300 Iraqis in Kuwait in 2001. See UNHCR Statistical Yearbook 2001, October 2002, p. 92.

⁹⁶ See UNHCR, Statistical Yearbook 2001, October 2002, p. 92.

⁹⁷ See UNHCR, Statistical Yearbook 2001, October 2002, p. 92.

⁹⁸ Correspondence from UNHCR, December 3, 2002 (on file with Human Rights Watch).

⁹⁹ See U.S. Committee for Refugees, World Refugee Survey, 2002.

The governments of Jordan, Kuwait, Syria, and Saudi Arabia are not parties to the Refugee Convention nor do they have domestic laws that specifically protect refugees.¹⁰⁰ All four governments have policies ranging from benign neglect to open hostility towards refugees present in their territories. Kuwait in particular is known to be hostile to Iraqi refugees because they are often suspected of past collaboration with the Saddam Hussein government during the Gulf War.¹⁰¹ At the same time, however, Kuwait signed and its National Assembly ratified an agreement with UNHCR in 1996 recognizing that organization's mandate to protect refugees.

Access to protection by means of UNHCR status determination and resettlement can be highly problematic in Jordan, Kuwait, Saudi Arabia, and Syria. Although Saudi Arabia provides health care, air conditioning, and primary and secondary schooling in the Rafha camp, it remains a prison-like camp located in a highly militarized zone.¹⁰² The Iraqis live in isolation, with only occasional access to the nearby town, according to UNHCR.¹⁰³ Dozens of Iraqi refugees held at this camp in Saudi Arabia since the Gulf War went on a hunger strike in July 2001 to draw attention to their plight.¹⁰⁴ A program to resettle the refugees in third countries was broken off in 1997, due to what is perceived as lack of interest from the international community, and subsequent initiatives have also failed.¹⁰⁵ As of October 2002 the Saudi government has agreed to allow 2,000 Iraqis to settle permanently in Saudi Arabia, on condition that the remaining 3,200 are given permanent status in other countries.¹⁰⁶

In Jordan and Syria, where accessing UNHCR offices is difficult, many refugees who would have valid claims under the Refugee Convention do not register with the agency. Corruption makes some of these undocumented refugees vulnerable to harassment and extortion by the Jordanian and Syrian police if they wish to avoid arrest, detention and possible *refoulement*. Although the Syrian government denies forcibly repatriating refugees, there were reports that an undetermined number of Iraqis were expelled to northern Iraq in 1999 and that several hundred were summarily returned in December 2001.¹⁰⁷ Police harassment and *refoulement* of Iraqi refugees also occurs in Jordan. Such actions intimidate other refugees from coming forward to register.

C. Human Rights Obligations

International cooperation to assist countries bordering Iraq

The international community is obliged to assist Iraq's neighbors to meet the humanitarian needs of large refugee influxes. The Preamble to the Refugee Convention underlines the "unduly heavy burdens" that sheltering refugees may place on certain countries, and states "that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international cooperation." Numerous ExCom Conclusions also reiterate the need for international responsibility sharing to assist host countries in coping with large refugee influxes.¹⁰⁸

The international community has a responsibility to assist countries neighboring Iraq to cope with mass influxes of refugees and to provide longer-term solutions to their plight. Not only should donor countries provide all countries hosting refugees with financial and logistical assistance, but all industrialized governments should also be prepared to accept Iraqi asylum seekers who arrive in their territories and provide protection to Iraqi refugees under emergency resettlement schemes. Clear undertakings for substantial support should be made at an early

¹⁰⁰ Jordan does have a few provisions in its Constitution that recognize the existence of "political refugees."

¹⁰¹ U.S. Committee for Refugees, *World Refugee Survey 2002*, p. 178.

¹⁰² See U.S. Committee for Refugees, *World Refugee Survey 2002*, p. 182.

¹⁰³ UNHCR Briefing Notes, October 15, 2002.

¹⁰⁴ See "Iraqi refugees go on hunger strike in Saudi camp," *Agence France-Presse*, July 2, 2001.

¹⁰⁵ *Ibid.*

¹⁰⁶ See "Lubbers Impressed by Saudi Efforts to Rehabilitate Iraqi Refugees," *Saudi Press Agency*, October 17, 2002.

¹⁰⁷ See U.S. Committee for Refugees, *World Refugee Survey 2002*.

¹⁰⁸ Between 1979 and 2000, the ExCom passed fourteen Conclusions citing the need for international responsibility-sharing to assist host countries to cope with mass influxes of refugees. The Conclusions also stipulate the fundamental obligation of first countries of asylum to keep their borders open to refugees and to provide them with full refugee protection on at least a temporary basis, while being assisted in meeting that obligation with financial assistance from other governments.

stage in order that countries bordering Iraq are given confidence to plan positive action to meet contingencies rather than developing a cautionary policy of avoiding responsibility by keeping their borders closed.

Sending refugees back to an unsafe place (refoulement)

The right of refugees not to be returned to a country where their lives or freedom are threatened (the principle of *nonrefoulement*) is the cornerstone of international refugee protection. The principle of *nonrefoulement* is enshrined in Article 33 of the Refugee Convention as well as being a fundamental principle of international customary law. Article 33 (1) of the Refugee Convention states that:

No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

If countries neighboring Iraq should in fact push Iraqi refugees back at the border, thereby returning them to a country where their lives are seriously at risk, these governments would violate their obligations of *nonrefoulement*. Iran and Turkey are parties to the Refugee Convention and its 1967 protocol. However, as noted above, Turkey has maintained a geographical limitation to its Convention obligations, pursuant to which it recognizes as refugees only individuals fleeing "events occurring in Europe before 1 January 1951." Although Jordan, Kuwait, Saudi Arabia, and Syria are not signatories to the Convention, the obligation of *nonrefoulement* is now a generally accepted principle of customary international law,¹⁰⁹ and so is binding on these states, as well as Turkey despite its geographical limitation.

Border checkpoints

Because Turkey has announced its opposition to Iraqi refugees crossing its border, Human Rights Watch is concerned that border authorities there or elsewhere may use force unlawfully against refugees. Border checkpoints during armed conflicts are potential areas of generalized insecurity and violence, but force may not ever be used to deny entry to persons seeking asylum or protection from *refoulement*.

Under the UN Code of Conduct for Law Enforcement Officials (the "Code of Conduct")¹¹⁰ and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (the "Basic Principles"),¹¹¹ law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty. Border officials should, as far as possible, use non-violent means before resorting to the use of force.¹¹² Any use of force must be proportional to the threat posed, and law enforcement officials must minimize injury and threat to human life, and they must ensure that medical care reaches any injured persons as soon as possible.¹¹³

Separation of armed elements in situations of mass influx

Some of the governments neighboring Iraq have cited security rationales for their desire to build refugee camps at, or very near the border. However, it is not evident why locating camps in places within easy reach of armed groups or cross-border raids reduces security concerns. Governments can often better ensure the civilian character of refugee camps by locating them a safe distance from the border of the country of origin in order to prevent military incursions and the use of the camps as a base for military activities. Adequate policing of refugee camps and settlements must be provided to prevent infiltration and abusive attacks by armed elements. The Refugee Convention, UNHCR policies and guidelines, and ExCom¹¹⁴ Conclusions have emphasized the importance of maintaining humanitarian and civilian nature of asylum and refugee camps.

¹⁰⁹ See footnote 51, above.

¹¹⁰ Code of Conduct for Law Enforcement Officials, G.A. Res. 34/169, December 17, 1979, article 3.

¹¹¹ Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

¹¹² See Basic Principles, Article 4.

¹¹³ See Basic Principles, Article 5.

¹¹⁴ For a description of ExCom, see footnote 2, above.

In situations, such as a potential Iraq refugee crisis, where armed individuals and those who have not genuinely and permanently renounced their military activities may be mixed with civilian refugee populations, refugees should be screened on arrival in the country of asylum to identify and disarm armed elements and to separate them from the rest of the refugees.¹¹⁵ Screening should take place according to clearly defined criteria and with international monitoring to guarantee that international protection is provided to those in need.¹¹⁶ UNHCR stipulates that once separated and disarmed, fighters should be interned at a safe location away from the border, or otherwise prevented from continuing their armed activities or endangering the refugee population. The basic needs of those confined should be met and they should be protected from forcible return to their own country under international refugee law.

It should be noted that the separation of armed elements is a practical measure to ensure the civilian and humanitarian nature of refugee camps and is not the same as exclusion from international protection under the Refugee Convention. If there are serious reasons for considering that an individual seeking asylum committed serious human rights abuses,¹¹⁷ that individual may be excluded from refugee protection in a fair individualized legal proceeding with full due process protections and high evidentiary standards (a full discussion of these standards is beyond the scope of this paper). A government or an international tribunal could also prosecute such individuals in accordance with standards of international criminal law. In addition, international refugee law allows for the screening of individuals who may pose a threat to national security. Even if an individual has been excluded from refugee status, he or she still should not be sent to a place where there are substantial grounds for believing he or she will be in danger of being subjected to torture (see Convention against Torture, Art. 3).¹¹⁸ Persons should not be excluded from refugee protection solely on the grounds of their race, nationality, ethnic origin, political, or religious beliefs.

Urban refugees

Since many of the refugees hosted by Iraq's neighbors are already living in cities, and since new arrivals may also attempt to do so, particular attention must be paid to the human rights of these refugees. During the emergency phase of a large refugee influx, governments may require newly arriving refugees to reside in camps located a safe distance from the border, where humanitarian relief may be more easily distributed and where security can be better guaranteed. To the extent feasible soon thereafter, newly arriving refugees should be able to live in cities or towns, close to relatives or communities of support. They should also be afforded access to assistance and to the offices of UNHCR.

Even during the emergency phase, policies that require refugees to reside in camps may be interpreted by local law enforcement officials as a justification for arbitrary arrests and detentions of refugees already living in urban areas. In addition, law enforcement personnel or employers may prey on refugees by extorting bribes or forced labor. These abuses may remain unaddressed and hidden when refugees' very presence in urban areas is considered "illegitimate" in a particular country.

Such abuses cannot be justified by a perception of "illegitimacy." First, the human rights of refugees do not vary based on where within a particular country they choose to live. Second, refugees have freedom of movement rights under international law, which allow them to reside in urban areas, and which can only be limited as

¹¹⁵ See "Civilian and Humanitarian Character of Asylum," ExCom Conclusion No. 94, 2002.

¹¹⁶ See "Safeguarding Asylum," ExCom Conclusion No. 82, 1997.

¹¹⁷ There are three grounds upon which an individual may be excluded from refugee status: "The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that: (a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; (b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee; (c) He has been guilty of acts contrary to the purposes and principles of the United Nations." See 1951 Convention Relating to the Status of Refugees, Chapter I, Article 1F.

¹¹⁸ Under the European Convention on Human Rights, no one should be sent to a place where he or she will be subjected to torture, or inhuman or degrading treatment or punishment (article 3).

necessary to address security concerns.¹¹⁹ Limits on freedom of movement must be enacted in domestic law, so that any security concerns faced by host governments are identified and any limits placed on freedom of movement are carefully tailored to address those concerns. UNHCR's ExCom has encouraged states "to intensify their efforts to protect the rights of refugees. . .to avoid unnecessary and severe curtailment of their freedom of movement."¹²⁰

Women and children refugees

Women and children will be especially affected by a humanitarian crisis resulting from armed conflict in Iraq. Host and donor countries, and U.N. and humanitarian agencies must pay particular attention to the protection needs of refugee women and children. These include protection against physical, sexual, and domestic violence and abuse; full and unimpeded access to appropriate assistance, including access to food, shelter, water, health care, including reproductive health care, and education for children; and full participation in decision-making and the planning and implementation of protection and assistance programs.

All measures pertaining to refugee women and children should be fully in accordance with the 1979 Convention on the Elimination of All Forms of Discrimination against Women ([CEDAW](#)) and the 1989 Convention on the Rights of the Child ([CRC](#)). Governments and U.N. agencies should also comply with the 1991 UNHCR Guidelines on the Protection of Refugee Women ([Guidelines Refugee Women](#)), the 1995 UNHCR guidelines on prevention and response to sexual violence against refugees ([Guidelines Sexual Violence](#))¹²¹ and the 1994 UNHCR guidelines on protection and care of refugee children ([Guidelines Refugee Children](#)). Numerous ExCom Conclusions also provide guidance to states on the protection of refugee women and children.¹²²

V. REFUGEES OUTSIDE THE IMMEDIATE REGION OF IRAQ

A. Current Concerns

At the end of 2001, the largest populations of Iraqi refugees outside the Gulf region were hosted by Sweden (25,900), the Netherlands (26,100), and the United States (19,100).¹²³ Denmark (12,600), the United Kingdom (12,000), Norway (8,200), Australia (10,000) and Canada (6,000) also hosted significant numbers of Iraqi refugees.¹²⁴

In the event of an armed conflict in Iraq, governments outside the immediate region must ensure that refugees are able to reach protection. This will require high-level diplomatic efforts to open borders in the region of origin and in countries of transit, and to ensure that all groups, such as Kurdish and Shi'a refugees, are able to find effective protection. Industrialized states must keep their borders open to refugees, and immediately lift immigration measures, including visa restrictions, carrier sanctions, detention and interception policies, that effectively deny access to those seeking safe haven. Australia and European Union member states have in recent years increasingly invoked "third country" rules to require that asylum seekers find refuge in the first country they entered upon fleeing their country of origin; those who travel on are swiftly sent back to that country.

In November 2002, the E.U. Council of Ministers mandated the European Commission to negotiate readmission agreements with several states, including Turkey, which E.U. member states may hope to use as a third country to which they can return Iraqi asylum seekers. As previously described, however, based on its past record in treating asylum seekers, particularly those from Iraq, Turkey cannot be counted on to provide protection from *refoulement*. In the event of war in Iraq, no third country rules should be applied to Iraqi asylum seekers who will inevitably have to transit other countries to reach Australia, North America and Europe. As detailed below, a

¹¹⁹ See text accompanying footnote 42, above.

¹²⁰ See ExCom General Conclusion on International Protection No. 65 (1991) at (c).

¹²¹ As of January 2003 the UNHCR Guidelines on the Prevention and Response to Sexual and Gender Based Violence had been revised and field testing was complete. The agency was undergoing subsequent revisions in order to incorporate the results from the field testing.

¹²² See [ExCom Conclusion-Refugee Women](#); [ExCom Conclusion - Refugee Children & Adolescents](#)

¹²³ See UNHCR, Statistical Yearbook 2001, October 2002, p. 92.

¹²⁴ See UNHCR, Statistical Yearbook 2001, October 2002, p. 92.

number of European governments and Australia have announced plans to continue to repatriate failed Iraqi asylum applicants.

B. Background

Under present **Australian** policy, refugees, including those from Iraq, can only arrive in Australia by air, not boat. This effectively means that only those holding valid travel documents are able to seek asylum there. Any new arrivals by sea would either be detained on the “excised” Australian territory of Christmas Island where they would have their claims determined without reference to Australian law, or they would be detained in one of the Australian-funded “offshore” sites in the Pacific (Nauru or Papua New Guinea). In the past, refugees arriving by boat have been pushed back by Australia to Indonesia. As of January 2001, there were several hundred Iraqis in Indonesia who had been turned back by Australia. Indonesia is not a signatory to the Refugee Convention and there are no domestic laws providing for the legal entry or residence of refugees.¹²⁵

Many Iraqis already admitted to Australia have been awarded only temporary protection visas, a status which requires each recognized refugee to periodically re-prove her need for continued international protection. The first temporary protection visas are now due for renewal, and if war starts in Iraq it is likely that decisions on whether to extend them will be frozen until stability is restored. If the renewal hearings occur after the end of a conflict in Iraq, the burden of proof will be unfairly placed on the individual refugee to show why he or she should not be returned immediately, making many refugees fearful of forced returns.

The Australian government has already put considerable pressure on rejected Iraqi asylum seekers (including those pursuing final appeals) to return home, despite the harrowing consequences likely to await anyone returned to Iraq. Most of these rejected asylum seekers are in detention, either in Australia or in the remote Pacific centers where they have little ability to communicate with the outside world and no access to lawyers. Some have been in detention under harsh conditions for years and the government is now offering some individuals assistance with “voluntary return” to other countries in the Middle East of which they are not nationals, such as Syria or Yemen.

A number of European states have shown a willingness during the past year to return rejected asylum seekers to Iraq. **Germany, Denmark, Luxembourg and Switzerland**, have indicated that there is an “internal flight/protection/relocation alternative” for certain Iraqis in the Kurdish-controlled zone of northern Iraq. This perspective is reflected in the E.U.’s Action Plan on Iraq,¹²⁶ which states that “Northern Iraq can be seen as an internal flight/internal relocation alternative for those who fear persecution at the hands of the regime in Baghdad, except in the case of specified at-risk groups and after a case-by-case assessment.” E.U. member states have rejected a number of Iraqi claims on this basis and returned asylum seekers to this area.

In August 2002, Danish Integration Minister Bertel Haarder announced that **Denmark** planned to send home Iraqis whose asylum requests have been rejected, despite the threat of a U.S. attack on Iraq, stating that “the potential risks of war do not in themselves justify asylum.”¹²⁷ According to an August report from the Danish immigration office, some Iraqi refugees can return to the country without facing any risks.¹²⁸ Denmark announced in May that it would not deport twenty-six Iraqis on hunger strike in the Copenhagen cathedral, who were protesting the slow treatment or rejection of their asylum claims. Integration Minister Bertel Haarder stated that Denmark would “try to send back as many refugees as possible but will not force them to leave.”¹²⁹ It was

¹²⁵ Indonesian Immigration Act No.9/1992, Sections 8 and 24 define who is permitted and refused lawful entry to Indonesia and clearly make no provision for a protection visa or any other form of international asylum.

¹²⁶ See E.U. Action Plan on Iraq, Doc. 11425/99. The 46-point Action Plan was adopted by the E.U. General Affairs Council on January 26, 1998, in response to Germany’s long-standing demand for an E.U. initiative to stem the movement of Kurdish refugees into the Union via the south. In particular, it was a reaction to the arrival in Italy, on December 28, 1997 and January 1, 1998 of two large boat-loads of refugees and migrants, mostly Kurds from Turkey and northern Iraq. The Plan was widely criticized by human rights groups for concentrating on the tightening of border surveillance and policing while failing to address the root causes of the movement.

¹²⁷ See “Denmark to send Iraqi asylum seekers home despite threat of war,” Agence France-Presse, August 29, 2002

¹²⁸ Ibid.

¹²⁹ See “Iraqi refugees end hunger strike in Denmark,” Agence France-Presse, May 30, 2002

reported that this year alone, 228 Iraqi refugees refused to return to their homeland after their asylum claims were denied, according to Danish police.¹³⁰

On November 8, 2001 **Greece** signed a readmission agreement with Turkey, which allows the Greek government to intercept (often at sea) individuals who departed from Turkey, and return them to Turkish territory. One such interception and return occurred on November 21, 2001, when forty-two migrants were intercepted as they were heading for the Greek island of Kos from the nearby Turkish port of Bodrun. Partly because of the readmission agreement, Greece purchased ten patrol boats for the purpose of intercepting people trying to reach its territory.

In 2001, **Norway's** strict policy toward asylum seekers from northern Iraq was further tightened and as of April 2001, one-year residence permits granted to Iraqi asylum seekers were not being renewed and applicants were being rejected if they had no individual protection grounds. Under Norway's one-year permit system, Iraqi refugees also had no right to reunify with their family members. Of the 1056 Iraqis who applied for asylum in Norway in 2001, only 2.5% were recognized as Convention refugees;¹³¹ however many others were granted humanitarian protection.

In April 2002, the Swedish Migration Minister Jan O. Karlsson said that **Sweden** would recommence deportations of asylum seekers from Iraq. Several thousand Iraqi asylum seekers who have been refused residence in Sweden are waiting to be deported to Iraq. Until now this has not been possible for practical reasons, such as the no-fly zone over Iraq. According to Karlsson, as of April 2002, the situation in northern Iraq had stabilized, making it possible to people to that region.¹³² At the same time, Sweden granted Kurds from the Kurdish-controlled zone in northern Iraq permanent permission to remain in the country.

In 2001, the **United Kingdom** determined that the Kurdish-controlled zone of northern Iraq was increasingly stable and was said to be exploring options of return, a result of which was a drop in its recognition rate for Iraqi refugees. In July 2002, the British government announced that it planned to deport Iraqi Kurdish refugees who failed in their asylum bids. While the UK Home Office reportedly accepted that some northern Iraqi refugees genuinely needed protection, a spokesperson stated that other asylum seekers from Iraq did not meet the criteria of the Refugee Convention.¹³³

Just over 3,000 new Iraqi refugees arrived in the **United States** in 2001. Of these, only 815 were individuals who arrived at U.S. airports or borders.¹³⁴ The remainder arrived through the resettlement program, presumably from countries in the immediate region surrounding Iraq (see above). A United States decision to go to war with Iraq should include an increased recognition of its obligation to resettle refugees from the region. However, the United States has only allocated 70,000 places for resettled refugees from throughout the world in 2003. Refugees from South Asia and the Middle East have been especially affected by an increase in background checks on resettled refugees that has slowed down resettlement processing and left many refugees in dangerous situations. On January 10, 2003, the U.S. State Department introduced – and withdrew without comment less than twenty-four hours later – a policy that would have denied admission to Iraqis already identified as refugees in need of resettlement.¹³⁵

C. Human Rights Obligations

¹³⁰ Ibid.

¹³¹ Memo from Information Office, European Council on Refugees and Exiles (ECRE), November, 2002

¹³² See "Sweden will recommence deporting Iraqi asylum seekers," BBC Monitoring Europe, April 10, 2002

¹³³ See Associated Press, "UK: Government plans to deport Iraqi Kurdish refugees who fail in asylum bid," July 17, 2002

¹³⁴ See UNHCR Population Statistics, "Indicative Refugee Population and Major Changes by Major Origin and Country of Asylum," June 6, 2002.

¹³⁵ See e.g. "U.S. Reopens Door to Iraqi Refugees," *Los Angeles Times*, January 11, 2003; U.S. Committee for Refugees, "USCR Acutely Concerned Regarding U.S. Government Decision to Bar Admission of Iraqi Refugees," January 10, 2003; Brandon Sprague, "U.S. Won't Let Iraqi Refugees In, Group Say / No Explanation Given for Apparent Change of Policy," *San Francisco Chronicle*, January 11, 2003 (citing a State Department memo providing for the freeze on admissions and citing a UNHCR confirmation of the U.S. government action).

Access to asylum-determination procedures

The Universal Declaration of Human Rights, which is widely recognized as customary international law, provides in Article 14 that “everyone has the right to seek and enjoy in other countries asylum from persecution.” This principle of international human rights is at risk when governments impose visa requirements, security checks, and other barriers to entry that effectively prevent persons from applying for asylum. The right to seek asylum is also violated, often together with the principle of *nonrefoulement*, when individuals cannot access fair and impartial asylum determination procedures.

Temporary protection schemes should not be used to indefinitely or unreasonably postpone consideration of applicants’ claims to full refugee status and recognition of the rights to which they are entitled. Where temporary protection regimes are in place, governments should allow individuals fearing persecution on Refugee Convention or other relevant grounds access to individualized determinations for full refugee status within a set period of time.

A number of countries have made accessing fair procedures much more difficult for refugees: visa restrictions and “safe third country” rules continue to obstruct their flight; expedited procedures are applied in many European airports and Australia has excised certain territories from its migration zone; the U.S., Australia, and some European states continue to employ administrative detention as a deterrent; and officials in many countries have made sweeping generalizations about the relationship between terrorists and illegal migrants.

Finally, industrialized countries have *nonrefoulement* obligations stemming from the Refugee Convention, the Convention against Torture, and for European states, the European Convention on Human Rights. Any decisions to return Iraqis to their home country or neighboring countries must not violate this fundamental obligation.

Preventing prolonged, arbitrary and unlawful detention

UNHCR guidelines state that asylum seekers should only be detained in exceptional circumstances and that refugee children should never be detained. The right to liberty and security of person is guaranteed under the International Covenant on Civil and Political Rights (ICCPR). Article 9 of the ICCPR provides that everyone “has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.” To ensure freedom from arbitrary detention, Article 9 further requires that detention must be examined for its lawfulness by an impartial adjudicator. The U.N. Human Rights Committee has expressly stated that the guarantees of Article 9 apply to aliens.

UNHCR guidelines on the detention of asylum seekers also stipulate that minimal procedural safeguards must be guaranteed. These include the right to an automatic independent judicial review of all decisions to detain followed by periodic reviews of the necessity to continue to detain, and the right of all asylum seekers to be informed of their right to legal counsel and to be provided free legal assistance where possible. Policies of Australia, the United States, and other governments in Europe to detain asylum-seekers with severely limited access to review by an impartial adjudicator violates the prohibition against arbitrary detention.

Temporary Protection

If war were to occur in Iraq, the European Union Council of Ministers would likely activate its “Directive on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.”¹³⁶ This Directive can be triggered by an imminent as well as an actual mass influx, and should be applied “in particular if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation.” Human Rights Watch emphasizes that the postponement of access to individual determinations should occur only if and when European asylum systems are genuinely overwhelmed, not as a way of avoiding granting Convention Status to deserving claims.

The Directive may be triggered by either spontaneous arrivals in the European Union or by an evacuation

¹³⁶ E.C. Council Directive (2001/55/EC).

program implemented elsewhere (such as the region surrounding Iraq should there be a war), and it provides that member states will share the responsibility for hosting the displaced persons “in a spirit of Community solidarity.” The costs would be shared via the European Refugee Fund, and persons would probably be distributed (with or without their consent) throughout the E.U. on the basis of respective statements of reception capacity.

In addition, European states will need to revisit current policies based on the existence of an “internal flight alternative”/ “internal protection alternative” in Northern Iraq if the situation becomes unstable. It would be wholly inappropriate in the context of an international armed conflict, particularly should Iraq use population displacement or attacks on its own citizens as tactics in a war, for European asylum states to consider the supposed opportunities of refugees to flee to other areas inside Iraq, including “safe areas,” when assessing the credibility and validity of asylum claims. Finally, moves to suspend asylum determinations in Europe, while halting dangerous returns to the region, nevertheless will cause asylum seekers to live without certain fundamental rights and legal protections for the duration of the conflict.

Rights of rejected Iraqi asylum seekers

All rejected asylum seekers possess human rights, including the right to be treated with dignity during detention and deportations, the right to be free from arbitrary detention, and the right to be afforded basic socio-economic rights such as education and urgent medical care. States must continue to respect such basic standards, regardless of the scale of any new refugee crisis in Iraq.

As previously mentioned, a number of European states currently maintain that Iraqi asylum seekers have a flight alternative in Iraq and have rejected asylum claims on that basis. In the context of a new crisis or conflict, it is very likely that such an assessment and possible returns based on such an assessment will need to be frozen. Rejected asylum seekers may need to lodge new asylum claims based on changed circumstances and must be permitted to do so, at least as soon as new arrivals are permitted to lodge their claims.

During the course of any crisis or conflict, it will be essential that those falling outside the scope of the 1951 Refugee Convention but still in need of protection, for example on the basis of Article 3 of the Convention against Torture or Article 3 of the European Convention on Human Rights, are granted some form of subsidiary or complementary status, with broadly equivalent rights to those of Convention refugees. Deserters from the Iraqi army, in particular, may require protection beyond the usual terms of the Refugee Convention.

Following the end of an armed conflict, it is usually both a matter of humanitarian principle and pragmatism that asylum states should wait until conditions allow for voluntary return in true safety and dignity before enforcing or actively promoting mass returns. The current pressure on Afghans to return from many asylum states indicates a tendency toward unnecessary impatience, which results only in fresh cycles of internal displacement and may put returnees’ lives at risk. Inversely, the willingness of Iraq to accept voluntary returns of persons in conditions of safety and dignity, to arrange for property returns, and to make arrangements for property dispute resolution, without discrimination, will be, as always, important indicators of the government's respect for human rights.

CONCLUSIONS AND RECOMMENDATIONS

Human Rights Watch believes there is an urgent need for the international community to prepare for a humanitarian crisis in the event of war in Iraq. Such preparations should include, addressing the severe hardships Iraqi civilians, including the displaced and refugees likely will face, the need for Iraq’s neighbors to open their borders in the event of a humanitarian emergency, assistance to countries likely to receive a massive refugee influx, and the need for increased acceptance by industrialized states of refugees from the region. Human Rights Watch is particularly concerned that governments not use security concerns to keep their borders closed or introduce legislation that indiscriminately restricts the rights of those fleeing armed conflict or human rights violations.

Recommendations:

To the Iraqi government, authorities in northern Iraq, and any parties to an armed conflict

- Respect the human rights of all Iraqi civilians including the displaced, in accordance with the Guiding Principles on Internal Displacement and the ICCPR, among other standards.
- Allow U.N., intergovernmental and non-governmental humanitarian agencies full, safe and unimpeded humanitarian access to all civilians inside Iraq, including the internally displaced.
- Respect the neutral and impartial character of the work of humanitarian agencies, and grant such agencies the ability to work independent of military or political authorities.
- Respect the right to freedom of movement of all persons within the territory of Iraq.
- Allow all persons, including asylum seekers, the freedom to leave Iraq.

To neighboring countries

- Open borders to refugees from Iraq, particularly in the event of a large-scale refugee influx.
- Do not deport Iraqi refugees or push them back at the border.
- Ensure refugees have access to official border crossings to discourage travel through mined and other dangerous areas.
- Provide training to border and police personnel on providing security and the proper use of force in refugee settings.
- Do not use the existence of cross-border camps, “safe areas,” or humanitarian zones within Iraq as a justification for withdrawing refugee protection or deterring refugees from crossing international borders to seek protection.
- Accord those recognized as refugees or prima facie refugees (refugees fleeing a country where conditions are objectively dangerous) their full range of rights under international refugee and human rights law, particularly with relation to freedom of movement and the right to work.
- Do not impose discriminatory policies upon refugees living in urban areas.
- Develop in collaboration with donor governments and United Nations agencies, a coordinated strategy to effectively identify and separate armed elements from civilian refugees.
- Establish any refugee camps in secure accessible areas at a safe distance from international borders in accordance with international refugee protection standards. Camps should be set up in areas free of landmines or unexploded ordnance, with adequate infrastructure and water supply and humanitarian agencies should have full, free and unimpeded access to the camps. Refugees should not be held in camps under detention-like conditions. The security of refugees and humanitarian workers should be ensured.
- Cooperate fully with the United Nations High Commissioner for Refugees (UNHCR) in providing protection to refugees.

To governments outside the region

- Allow Iraqi and other asylum seekers access to fair and efficient asylum determination procedures. Immigration controls, including visa restrictions, anti-terrorist and anti-smuggling measures, should not infringe on the rights of all asylum seekers to access fair and efficient asylum determination procedures, and should in no way undermine governments’ international obligations prohibiting arbitrary and indefinite detention or the return of refugees and asylum seekers to territories where their lives or freedom may be threatened.
- Prepare emergency and additional resettlement possibilities for Iraqi refugees.
- Ensure that Iraqi refugees are given full access to resettlement referrals, and that they are accepted for resettlement.
- Ensure that immigration control measures include procedural safeguards in conformity with international standards for migrants, refugees, and asylum seekers who are arrested, detained, or in the process of deportation. At a minimum, those safeguards must include the rights to judicial review; an explanation of rights and the reasons for their detention in their own language or a language that they understand; immediate and regular access to family, legal counsel, and a medical officer; communication with representatives of international humanitarian agencies; an effective legal remedy to challenge the lawfulness of detention and obtain release if the detention is arbitrary or

unlawful; access to a judicial authority to complain about possible mistreatment; and the right to seek and obtain compensation for arbitrary detention or other abuse.

- Ensure that temporary protection is used only when reception systems are overwhelmed. Prevent resort to temporary protection as a means of indefinitely denying refugees access to a permanent status and their rights under the Refugee Convention.
- Prevent the return of rejected asylum seekers to any part of Iraq until it is clear that their safety and freedom can be guaranteed throughout the territory.
- Suspend safe third country rules for Iraqi asylum seekers for the duration of any crisis and do not in any event return Iraqi asylum seekers to countries neighboring Iraq.
- Take measures to provide leadership in counteracting and preventing attacks against nationals, immigrants, asylum seekers, and refugees on the basis of their ethnic origin, nationality, religious and political beliefs and backgrounds. Increased protection should be provided to these groups, and government leaders should, in their public statements and actions, take the lead in countering xenophobic and racist acts.

To donor governments and intergovernmental humanitarian agencies

- Put in place plans to address the humanitarian consequences of a potential war in Iraq, paying particular attention to cooperation among agencies to ensure that in the event of an armed conflict, humanitarian relief and protection is promptly and efficiently provided to the entire population.
- In the event of war, provide increased financial assistance to address the humanitarian problems likely to strike the civilian population inside Iraq, including the internally displaced, as well as to assist Iraqi refugees and countries called upon to host them.
- Urgently explore options for ensuring that assistance reaches those most in need, especially the very poor, young, aged, and the internally displaced, without endangering them. Efforts must be taken to ensure that U.N. and humanitarian agencies have full, safe, and unimpeded humanitarian access to civilians inside Iraq.
- Provide international assistance to neighboring countries and countries in the region, including to their current urban refugee populations, to cope with the potential outflow of refugees from Iraq.

To donor governments

- Develop in collaboration with host governments in the region and United Nations agencies a coordinated strategy to effectively identify and separate armed elements from civilian refugees. Separation should take place inside host countries at the border and involve an international monitoring presence.