Policy Brief

SUMMARY

The war in Iraq could prove to be a testing ground for more than just new military hardware and doctrines. Important precedents for refugee protection may well be forged in the heat of this conflict. In the security vacuum that has taken hold after the war, ethnic and retaliatory violence may create new refugee flows. Set against the background of one of the most restrictive climates in the history of the international refugee regime, civilians fleeing continuing turbulence in Iraq are likely to find many of their paths to safety blocked as states struggle to balance security considerations with their obligations under international refugee law. Such restrictions undermine the institution of asylum and threaten the safety and well being of individual refugees.

Drawing examples from the war on Iraq, this paper sets forth the argument that state security and refugee protection are not mutually exclusive objectives. Rather, through a rigorous and fair application of refugee law, and through working together to share effectively the responsibility of protecting refugees, states can ensure their own security while preserving and strengthening the institution of asylum.

Reconciling Refugee Protection and Security Concerns in Wartime
The Case of Iraq

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A pivotal chapter in history is unfolding in Iraq, and not simply because of the global scale and bitter conflict of the latest Gulf War. Critical precedents for refugee protection may emerge from the conflict and its aftermath. Crucially important is the fact that the war was launched amid an increasingly restrictive atmosphere for refugee protection, made even worse by the post-9/11 security concerns of many states. In this climate, displaced Iraqis may find many of their paths to safety limited by states struggling with the question: How can national security and refugee protection best co-exist?

Even before the latest war, many states had already responded that refugee protection and security concerns were a zero-sum game, and had begun trying to systematically "contain" refugee flows in their region—or even country—of origin. This policy, however, threatens both the safety of refugees and the viability of the international asylum system. States can, in fact, reconcile refugee protection with security concerns—*if* policymakers both in and outside the region of conflict commit themselves to conscientious application of existing tools of international refugee law, such as exclusion and separation, and work to effectively share the related burdens and responsibilities.

Iraq provides an opportunity to examine how policymakers can effectively balance the interests of states with the needs of refugees. This policy brief, after mapping out the context of the latest war, will examine how post-9/11 security concerns have added to an increasingly restrictive international climate for refugee protection. The tools available to policymakers to address these security concerns—namely, exclusion, separation, and burden sharing—will then be presented in detail, with concluding recommendations on reconciling the security interests of states and the rights of refugees.

PAST REFUGEE CRISES IN IRAQ

Iraq is struggling with the aftermath of its third major war in two decades, and the consequences for the country's civilian population are likely to exacerbate an already precarious humanitarian situation. Nearly two million people fled the repression of Saddam Hussein's forces after failed insurrections in the wake of Iraq's defeat in the 1991 Gulf War, and they attempted to find safety in neighboring countries. Of these, some 1.2 million found protection in Iran in emergency camps.

Less fortunate, however, were the approximately half-million Kurds who massed on the Turkish border. Concerned at the refugees' potential to destabilize the Kurdish population in Turkey, the authorities closed the country's borders and denied the great majority of the refugees access to safety. Many thousands died in the freezing mountains as the world watched on television. Their plight was catapulted to the forefront of public awareness, and international opinion ultimately pushed the US-led coalition into action.

However, rather than pressing Turkey to open its borders, the coalition instead opted to provide a "safe haven" within Iraq. There, Kurds were protected by international military forces and United Nations guards, with the assistance of UN and non-governmental organizations. Though not a new phenomenon, the "containment-oriented" response of the international community to Turkey's concerns signified the triumph of security considerations over the institution of asylum, in a pattern that has continued to this day.

Twelve years later, humanitarians are faced with many of the same concerns. Potable water, food, shelter, and health care are the most pressing needs for huge numbers of civilians. However, Iraqis today are far less resilient than in 1991, having exhausted many of their traditional coping mechanisms and being weakened by 12 years of sanctions. An estimated 60 percent of Iraqis are dependent for daily food needs on the UN's "Oil for Food Program," which was suspended immedi-

ately before the beginning of the US-led war on March 19, 2003.

One of the likely outcomes of this precarious situation is displacement. Though the early weeks of war saw few arrivals of refugees into the countries neighboring Iraq, humanitarian agencies continued to suggest that up to 600,000 individuals could seek protection as refugees. Any significant refugee flows generated from Iraq as a result of the war will almost certainly be primarily civilian in

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"Protection is likely to prove as important and elusive in 2003 as it was in 1991"

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character. However, a variety of persons with less clear-cut status may be intermingled with the civilian refugee population. Former government employees, officials of Saddam Hussein's Baath Party, and members of the Iraqi military may try to use the refugee route to flee. Some of these individuals may be personally implicated in war crimes and crimes against humanity. Moreover, any refugee population would likely mirror the ethnic and communal fault lines of the Iraqi population. Score-settling is likely after the war, and could reach into countries of asylum.

In short, security issues are likely to feature legitimately in the calculations of states receiving displaced Iraqis. In this context, protection is likely to prove both as important and as elusive in 2003 as it was in 1991. Already, in a move reminiscent of 1991, front-line states such as Turkey, Kuwait, and Saudi Arabia have cited security as a reason for effectively keeping their borders closed—or erecting temporary camps just inside the border in which potential refugees will be held. Furthermore, states outside the region in Europe and North America, along with Australia, increasingly fear that terror-

ists may seek to use the asylum system to remain in their territories, and on this basis have hardened their policies toward asylum seekers and refugees. But what are these concerns when examined in detail, and what concrete measures have states taken to address them?

SECURITY TO THE FORE

The influence of security concerns on perceptions of Iraqi refugees and asylum seekers, as well as on the policies directed toward them, is global in its scope. But however much they are guided by real security concerns, all of Iraq's neighbors—and indeed, the states beyond—are also bound by customary international law to admit (at least on a temporary basis) Iraqi refugees. The principle of "non-refoulement" ("non-return") is considered to be binding on all states under the 1951 UN Convention relating to the Status of Refugees (the Refugee Convention) and prevents them from returning an individual to a country or region where his or her life or freedom would be threatened or where he or she is at risk of persecution, torture, cruel, inhumane, or degrading treatment.

This dilemma of obligations versus security concerns is playing itself out in two key arenas: border closures, and asylum and resettlement beyond the immediate region.

Closed Borders
Many countries neighboring Iraq cited security considerations as a central factor determining their responses to Iraqi refugees. Kuwait and Saudi Arabia in part justified their border closures in the name of security. Jordan already hosts some 300,000 Iraqi exiles and feared that a mass influx of Iraqi refugees could trigger instability, particularly given its pro-US stance in the war. The Jordanian government also expressed concern that a new Iraqi influx could cause unrest in its large Palestinian refugee population. It did, however, permit third-country nationals to transit through its territory and reluctantly allowed at least one temporary refugee camp just within the border.

Nowhere was security a greater influence on the policy adopted toward Iraqi refugees than in Turkey. Iraq's northern neighbor is exceedingly reluctant to allow Iraqi refugees into its territory, citing—as in 1991—the potential of massive inflows of Iraqi Kurds to again destabilize the country and provoke attacks by the Kurdistan Workers' Party (PKK). Turkey opted for a policy that would block refugee flows in the first place, or at a minimum contain any refugees who did manage to arrive in its territory to camps just inside the borders. Officially, Turkey decided to only allow "emergency cases" inside the country and would instead seek to provide protection through five "collection centers" along the border inside Turkey. The Turkish government also stated that it was prepared to establish a dozen camps inside northern Iraq.

Asylum and Resettlement Beyond the Immediate Region
A variety of hurdles continue to await any Iraqi attempting to find protection outside the immediate region. These include visa restrictions, interception at sea, return to countries of transit or to the so-called "Internal Flight Alternative" (IFA) in Northern Iraq, and other policies instituted by EU states, Australia, the US and others to prevent refugees from seeking asylum in their territories (or in many cases, from even entering their territories in the first place).

The United Nations High Commissioner for Refugees (UNHCR) has recently asked governments not to return rejected Iraqi asylum seekers to *any* region of Iraq for at least three months, advising that all Iraqis currently outside their homeland should be given some form of temporary international protection. This is a change in policy from UNHCR's previous recommendation that no rejected Iraqi asylum seeker should be returned to *government-controlled* areas, which had the effect of supporting the existence of the IFA in Northern Iraq.

It is notable that Iraqis were the largest single group of asylum seekers in industrialized countries in 2002, with more than 51,000 applications. According to UNHCR, asylum applications lodged

by Iraqis in 26 industrialized countries rose by 37 percent in January 2003 in the build-up to war. However, in the post-9/11 period, security concerns have led to more and more restrictions on the ability of any refugee, and particularly refugees from Middle Eastern and/or predominately Muslim countries, to find protection. In the same month that the US and its allies went to war to "liberate" the Iraqi people, Washington also introduced a new policy of detention for all asylum seekers from Iraq as well as 33 other countries considered by the US to be "havens" for the Al Qaeda network.

In other words, the US government has taken the position that Iraqis are victims of a brutal regime but does not allow those fleeing that regime the full benefits of the international protection system. As Gideon Aranoff of the Hebrew Immigrant Aid Society has said, "…we are going to war with Iraq because of the persecution of Iraqi citizens, and yet asylum seekers from Iraq, just such people who are fleeing persecution, will be jailed if they come here." The detention of such persons is mandatory and will be for the full duration of the asylum process.

An EU Directive on Temporary Protection went into effect on December 31, 2002 but has yet to be used. The directive, which grants prima facie (group) temporary protected status (TPS) for up to two years for specific groups of persons fleeing a particular conflict, may be activated by member states in situations of actual or imminent mass influx into the EU. It would clearly have had great potential to provide for the protection needs of Iraqi refugees had a mass influx occurred through Turkey or by sea into the European Union.

There has been little or no public discussion within the EU, however, of the possibility of implementing the directive. Paramount among the reasons for this situation is the EU concern about how to address the security implications of a mass influx of Iraqi refugees. TPS is, as mentioned above, a group designation, meaning that persons falling within the directive are not subject to individual status determination as are asylum seekers. Thus, it is thought that it

may prove more difficult to exclude from protection persons who may be considered security risks.

Security has also been advanced as one justification for the UK government's proposed "new vision" for dealing with mounting numbers of asylum seekers. One idea proposed by the UK is the establishment of an international network of "Refugee Protection Areas" (RPAs)—basically a variation of the "safe haven" concept combined with an evolution of "safe third country" policies increasingly used by traditional receiving countries.

Early discussion considered areas in the immediate region of the Iraqi conflict (Turkey, Iran, or Northern Iraq) as a possible testing ground for such a system. In addition to an "open door" policy for those who seek protection within the area rather than travel outside the region, it has been suggested that asylum seekers who apply for protection in states *outside* the region could be sent back to the RPAs rather than granted access to the asylum system in the country in which they are applying. Though details are far from clear, the UK scheme has in part been marketed as a way of ensuring that potential terrorists are contained in the region rather than allowing them to arrive on UK (or EU) territory. The idea has generated a great deal of controversy but has received a certain amount of cautious support from various EU governments keen on keeping the "problem" off of their territories.

Security concerns have also permeated the international refugee resettlement system, the backbone of which is the US program. Third-country resettlement has effectively been put on hold as a result of fear that terrorists may "hide" among resettlement candidates. The reality, however, is that refugees accepted for resettlement undergo more screening, identity, background, health, criminal, and other security checks than nearly any other "migrants" in the world. Nonetheless, the US resettlement program was completely suspended following 9/11. This total suspension lasted nearly three months, and the program has been in crisis ever since. The total number of refugees resettled has been drastically lower in general since September 2001, and

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particularly for refugees from the Near East and South Asian regions. According to the US Committee for Refugees, whereas 10,079 and 12,086 refugees from those regions were resettled in the US in FY 2000 and FY 2001, respectively, only 3,554 were resettled in FY 2002 and only 1,231 during the first half of FY 2003. Interestingly, Iraqis were the "most-approved" asylum seekers in the US—with an 81.8 percent acceptance rate—for 10 consecutive years, through FY 2001.

In the run-up to war, the US State Department suspended admission of all Iraqis already approved for resettlement. There was little official explanation of the change, only a statement that the INS had introduced an additional "enhanced review" of Iraqis accepted for resettlement. The newly enhanced review, divulged in late February 2003, was *in addition* to the greatly increased security reviews that were implemented for the US refugee resettlement program as a whole after 9/11. Outcry from refugee advocacy groups pressured the government to resume admission of Iraqis for resettlement some two weeks later. However, "security advisory opinions" (SAOs) are now required of Iraqis as well as citizens of many other mostly Middle Eastern and/or predominately Muslim countries before the US immigration services will even begin to process their applications for resettlement in the US. These new policies raise several concerns about the de facto ability of Iraqi refugees cleared and accepted for resettlement to pass through the mountain of paperwork required to ever be resettled in their new country. A resettlement process that takes years and years to complete cannot be thought to provide an effective form of protection for the vulnerable.

The impact of such a slowdown is magnified when one considers that resettlement is often the only way refugees in the Middle East region can find a durable solution. Several countries, including Jordan and Lebanon, stipulate that refugees recognized by UNHCR are only allowed to remain in their territory for a limited amount of time—usually six months—pending resettlement to a third coun-try. Resettlement is thus key to maintaining the asylum system in the region, and a lack of third-country resettlement options can have a longer-term impact on the ability of refugees to receive durable protection.

VERSATILE TOOLS

While the security concerns outlined above do have a legitimate basis, it is important to remember that refugees and asylum seekers are themselves victims—often of the same violence from which receiving states seek to protect themselves with enhanced security regimes. Rather than insulating and isolating themselves, or responding with a blanket closing of borders, therefore, it is in the interests of receiving states both in and outside the region of conflict to make use of tools that already exist within the refugee protection regime. States should cooperate to institute clear, transparent, and rights-respecting procedures to screen for those who may have committed serious crimes, and to separate out those who may pose a risk to the host population, the refugee population, and/or be at risk themselves from these same sources. And though host states have the primary responsibility for protecting refugees on their territory and ensuring public order and security, the task of making sure that the institution of asylum is not abused is shared among all those concerned: UNHCR as the agency with the explicit mandate to protect refugees, the host state, donor states, humanitarian agencies, and refugees themselves, who are bound to abide by the laws of the host country.

Exclusion
International refugee law explicitly excludes from protection those who have violated the human rights of others or committed other serious crimes. Nazi genocide and war crimes were fresh in the minds of the governments that drafted the new framework of human rights and refugee law in the immediate post-World War II years, including the Refugee Convention. Believing that "undeserving" cases should be prevented from claiming refugee status, the framers wrote the so-called exclusion

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clauses contained in Article 1F of the Refugee Convention. These clauses place anyone who has committed such crimes outside the protection of the international refugee regime.

Given the grave consequences of exclusion, which include removal of protection against involuntary return to a country of persecution, it is vital that the clauses be restrictively interpreted and resorted to only where there is clear and compelling evidence of individual responsibility for a serious crime specified under the exclusion clauses. It is critical that the process by which an individual exclusion decision is made be fair, transparent, and grounded in law. Thus, mere membership in a political organization, even one widely considered to be tyrannical such as Iraq's Baath Party, is unlikely to be sufficient grounds to exclude someone from protection.

In theory, the exclusion provisions are clear-cut. However, even where the asylum eligibility system is well resourced and developed, application of the exclusion clauses is complex because it is, in effect, a criminal investigation. But even this is nothing compared to the challenge of screening during situations of mass influx and the challenges of proof and procedure that screening in such situations pose.

An exodus from Iraq, particularly as hostilities come to a close, would bring many of these problems to the fore. The first major hurdle would entail reconciling the need to screen—an inherently individual process—with the need to ensure that the maximum numbers of people are able to reach safety as rapidly as possible, which will often require that recognition be extended on a prima facie (group) basis. Reconciling these tensions and clarifying the legal basis for screening are important for ensuring that states such as Jordan would continue to feel confident in sustaining open borders. Critical to preserving the institution of asylum is that individuals fleeing conflict and persecution are able to cross an international border to safety. Any screening process should in no way obstruct or delay this process.

Important legal and policy questions remain to be answered about the criteria used to select those who must undergo individual eligibility screening from among an influx that has been recognized on a group basis. Should screening occur in each and every instance of mass influx, or can any general criteria be established for involvement in this activity? How effectively can these factors be identified during the contingency planning phase for any potential protection crisis? Developing a transparent, rational, and limited framework to govern the decision as to "when" to screen is vital for the long-term health of the principles of refugee protection.

One of the more difficult issues likely to be faced by officials conducting such screening is precisely *what* constitutes a serious international crime that would fall under the scope of the exclusion clauses. UNHCR's guidelines suggest that "serious reasons" to consider the applicant excludable will exist where the applicant has confessed, or where there exists the "credible and unrebutted testimonies of other persons or other trustworthy or verifiable information." Moreover, the guidelines emphasize that "ordinary rules of fairness and natural justice require that an applicant be given the opportunity to refute any accusations." In the heated and conflicted atmosphere that often generates refugee flows, however, suspicion and hearsay are likely to be rampant. Reaching the appropriate threshold of proof and ensuring that the due process rights of refugees are respected is likely to prove a considerable challenge. Though responsibility for implementing the exclusion clauses rests in the first instance with the host state, much of the expertise in this area resides within UNHCR as the agency mandated to oversee the Refugee Convention. In the past, UNHCR has floated the idea of states developing expert exclusion units to undertake this task; the agency has also deployed its own expert teams both to screen populations and to advise states on such processes. Either alternative may prove useful in the Iraqi context where, in the aftermath of direct hostilities, considerable concern has been expressed by members of the coalition about possible abuse of the asylum system by high-ranking members of the former Iraqi regime.

These concerns have been particularly acute with respect to Syria. The current approach, involving the complete closure of borders, ignores the fact that civilians with genuine protection claims will also be denied access to protection.

Once a decision to exclude has been taken, the authorities have a two-fold duty. The first is to ensure that the excluded individual can be held accountable for his or her actions though prosecution before a national or international criminal court. The scope of the exclusion clauses includes crimes that, under international law, are deemed so serious that any state may investigate, prosecute, and punish their perpetrators on the basis of the principle of universal jurisdiction. This is particularly the case for war crimes and crimes against humanity, including genocide. Few states, however, have actually taken up these obligations. The International Criminal Court would be a logical recourse in the present instance, however both Iraq and the US have yet to recognize its jurisdiction. Ad hoc international tribunals, such as those established for Rwanda and the former Yugoslavia, are one option that has been pursued in the past. Current indications are that the US-led coalition will opt for military tribunals for crimes committed during the war, and national trials (in the hands of Iraqis) for pre-war crimes. Both have been criticized by human rights organizations, which are concerned that a fair trial may be impossible before such forums. However, coalition plans to bring international criminals to justice are as yet unclear and ill-defined.

Second, states must ensure that an individual excluded from refugee protection continues to be protected by international human rights law both in the host country and if he or she faces deportation to a country where there is a substantial risk of human rights violations. For instance, the prohibition on exposing a person to torture—through expulsion, deportation, or any other forced removal measure—is absolute. It includes even those who have persecuted others or committed serious crimes. In such a situation, the host state must ensure that such individuals continue to be pro-tected by human rights law, particularly the UN Convention Against Torture.

Separation
When security concerns fall short of exclusion, or arise about the conduct of a person in the country of asylum, the use of other tools may be contemplated. Separation is one option in the context of refugee flows generated by the war in Iraq. Certain people may need to be separated from the general population of refugees because they pose a security risk to other refugees or to the host country, or because they themselves may be at risk if kept among the general refugee population, particularly if they or their family members are perceived as having links to the former regime.

Separation (which, unlike exclusion, is not grounded in the Refugee Convention) can play an important role in preserving the civilian and humanitarian character of refugee camps. Nevertheless, it also runs the risk of stigmatizing people who are removed from the refugee population. In a volatile regional environment, it may identify them and put them at greater risk of being targeted by the country of origin. Moreover, although those separated may be kept in conditions identical to the rest of the general refugee population, it is also true that these conditions may differ and that separation may be accompanied by a significant restriction of rights. It may lead to prolonged and thus illegal detention, complicate repatriation efforts in the future, reinforce the former regime's command and control structures, and lead to the division of families.

It is therefore clear that, like exclusion, a principled approach to separation is required and its use should be strictly circumscribed. In particular, clear procedural safeguards need to be present during the separation process, and the rights of those who have been separated must be safeguarded. On the policy front, there are questions regarding when and under what conditions in a mass influx separation should be considered. Who should do the separating, and which agency is responsible for looking after the welfare and rights of the separated population?

How might separation be used in countries receiving Iraqi refugees? As a starting point, it is clear that active combatants should not be mixed in with refugees. Combatants must be identified, disarmed, separated, and interned at a place far from the field of battle. Interned combatants must be given, at a minimum, the treatment afforded to prisoners of war and fall under the mandate and protection of the International Committee of the Red Cross (ICRC).

"A principled approach to separation is required"

But the situation is rarely clear-cut. In the aftermath of war, states will likely face a "mixed" flow, including combatants who may try to hide this status as well as civilians seeking protection from continuing uncertainty and violence in Iraq. Identifying such persons is the primary responsibility of host governments, and separation at this stage is an important first step in ensuring that refugee camps retain a civilian character. However, it is also primarily at this stage that genuine refugees are most at risk of being involuntarily returned.

On a practical level, therefore, reconciling the need to identify active combatants with the need of refugees to be admitted to safety clearly requires close cooperation between the ICRC, UNHCR, and the host government's security forces. This is intimately related to the operational capacity of UNHCR to deploy a protection presence to international borders early in a conflict. Where separation becomes necessary, the state must carefully balance any restrictions placed on the rights of the individual against the ultimate objectives sought through separation, such as preserving the civilian nature of camps.

Separation, like exclusion, can play an important role both in protecting genuine refugees and in restoring the credibility and peaceful, humanitarian nature of asylum. Nevertheless, given their potential repercussions, separation and exclusion should lie on the more extreme end of a continuum of measures that may be taken to deal with insecurity in and around camps. Other measures, which should be taken as a matter of routine, include disarming arrivals at the border, situating refugee camps at a safe distance from international borders and the zone of conflict, and keeping camps at a manageable size.

Burden-sharing

Many countries are quick to point out the real security concerns and financial burdens they are obliged to bear as a result of a mass influx of refugees. Although included in the Refugee Convention, the lack of concrete and predictable systems to equitably share the burdens of countries such as Turkey, Jordan, and Iran is a major gap in the current international legal and policy framework protecting refugees.

While international agencies have arrangements for sharing the tasks of refugee protection, governments—often in partnership with organizations such as UNHCR—must also play a critical role in ensuring the co-existence of refugee protection and security. A historical example of international burden-sharing around the security concerns of countries of first asylum occurred during the exodus of Vietnamese "boat people" to Southeast Asian countries beginning in 1979. The security concerns of the receiving states made them increasingly reluctant to accept and host these hundreds of thousands of refugees. Rather than allow the refugees to be involuntarily returned to Vietnam, several industrialized countries (including the United States, Australia, and France) worked with UNHCR to create the "Comprehensive Plan of Action" through which over two million Vietnamese were permanently resettled in third countries outside the region.

At the same time, countries of asylum were helped to host and process refugees in order to offset some of their concerns regarding security and resources. This aid—as well as the promise that their role as

"host" would be only temporary—helped persuade countries in the region to leave their borders open and allow Vietnamese to seek protection without fear of being involuntarily returned.

More recently, when Macedonia closed its borders to refugees fleeing the war in Kosovo in 1999, thousands of Kosovar Albanians found themselves stranded in a precarious protection situation. Similar to Turkey's fear of Kurdish refugees in the Gulf Wars, the government of Macedonia expressed concerns that an influx of Kosovar Albanians would complicate its difficult relationship with the country's significant ethnic Albanian population and perhaps draw it into the conflict in Kosovo.

At that time, states outside the region responded with the Humanitarian Evacuation Plan (HEP). The HEP evacuated over 90,000 Kosovar Albanians from the Macedonian border to a variety of third countries—many of them, such as the UK and the US, located far from the region. For the most part, the receiving countries agreed to grant the Kosovars only temporary protection, and in fact most refugees did return to Kosovo relatively quickly.

The HEP provided at least immediate protection to those in need during the height of a crisis and relieved the security concerns of the country of first asylum (Macedonia). As such, the plan could provide the international community with a blue-print for burden-sharing for emergency protection needs. However, the situation in Kosovo was in some ways unique, particularly given how quickly the refugees were able return to their homes. How successfully the HEP could be replicated in a different region (such as the Middle East) or during a more prolonged conflict remains unclear.

Though special schemes have proven useful, burden-sharing must also be understood on a much more basic level. Reaffirming and demonstrating commitment to the principle of asylum, through providing protection to those in need and keeping the doors to resettlement open, are two long-established means by which states can share the burden of refugee protection.

CONCLUSION

Refugees are often the first victims of insecurity, so it would be wrong to present the tension between protection and security as a zero-sum game. Moreover, it must be acknowledged that refugee flows, particularly when they involve the movement of hundreds of thousands of people, can indeed have implications for the security of host states, the broader region, and the international community as a whole.

The following recommendations aim to balance the legitimate security concerns of states with the needs of refugees and asylum seekers:

■ States neighboring conflict zones must keep their borders open to ensure that vulnerable populations have the ability to flee.

■ Screening refugee populations that may include combatants, former combatants, or those who may have committed serious international crimes is an inherently complex task. Though such a process is the primary responsibility of the host state, agencies with international mandates to protect such populations (such as UNHCR in the case of refugees and ICRC in the context of combatants) should be allowed to monitor and advise on the process.

■ Screening should in no way obstruct or delay access to international protection.

■ Where there are serious reasons for considering that someone may be guilty of international crimes such as war crimes and crimes against humanity, they should be excluded from refugee protection and prosecuted under a fair, transparent, and rights-respecting procedure before an appropriate national or international tribunal.

■ Combatants should not be allowed to mix with the refugee population. They should be identified, disarmed, and interned at a place far from the field of battle. Interned combatants must be given, at a minimum, the treatment afforded to prisoners of war.

■ In certain limited and exceptional circumstances it may be appropriate to "separate" certain elements from the refugee population either for their own security, for the security of others in the camp, or as a measure to safeguard the security of host countries. The use of separation should be strictly circumscribed and grounded in basic principles of human rights law including the principle of proportionality. Care must be taken to ensure that the rights of those separated are not prejudiced or restricted as a result.

■ Refugee camps should be kept to a manageable size, preferably under the 20,000-person limit advocated by UNHCR, and should be far from borders and combat zones.

■ States outside the region must recognize the burden borne by countries receiving a mass influx of refugees, and should seek to share this burden both financially as well through concrete measures to address security concerns.

The medium through which to reconcile the twin objectives of refugee protection and security is respect for and principled adherence to the law. Refugee protection does not have to fall victim to the security concerns of states as a result of the war on terror and the war with Iraq. Rather, the two can co-exist.

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