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Realizing protection space for Iraqi refugees: UNHCR in Syria, Jordan and Lebanon

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“I hope this conference will galvanize international support to provide [Iraqi refugees] with more protection and assistance and I hope it will mobilize resources in establishing much needed protection space.”

Ban Ki-Moon, Secretary-General of the United Nations, International Conference on Addressing the Humanitarian Needs of Refugees and Internally Displaced Persons inside Iraq and Neighbouring Countries, Geneva, 17 – 18 April 2007.

Introduction

Protecting refugees is the core mandate of UNHCR but is primarily the responsibility of states. When states are unable to provide refugees with protection, UNHCR steps in to assist them. Over time, international refugee protection, a function primarily focused on the provision of legal assistance to refugees, has evolved to encompass a range of additional activities. Before UNHCR can provide refugees with protection, an environment conducive to the facilitation this protection is required. In certain contexts, such an environment has come to be called ‘protection space’. Carving out protection space is not without its obstacles; for in addition to meeting the protection needs of refugees, UNHCR must simultaneously meet the concerns of states.

In states that have neither acceded to the main instruments defining the international refugee regime nor formalized any legal provisions regulating the status of refugees UNHCR faces a challenge in creating protection space. This challenge is compounded in states which struggle to support their own populations and are confronted by mass-influxes of refugees. Overwhelmed, even states with traditionally generous admissions policies and practices can respond by violating the principle of *non-refoulement*, by denying admission, through implementing highly restrictive entry requirements and by engaging in detention practices that violate international standards.¹

To a certain extent, it is within such a context that UNHCR has worked over the past five years to secure protection space for Iraqi refugees. The largest displacement crisis in the Middle East since 1948, of approximately two million Iraqi refugees in the region, the UNHCR estimates that at present Syria hosts 1.2 to 1.4 million Iraqis, Jordan 500,000 to 600,000 and Lebanon 20,000 to 30,000.² These countries have no specific legislation concerning refugees. As such, their policies towards Iraqi refugees have in large part been formulated on an *ad hoc* basis. Moreover, the presence of so many Iraqis on their territories has had destabilizing effects, further compromising Iraqi refugee protection.

* Many thanks are due to Vicky Tennant, Radhouane Nouicer, Andrew Harper, Yuka Hasegawa, Semih Bulbul, Indira Beganovic, José Riera and Jeff Crisp for their invaluable assistance with this paper.

¹ See: UNHCR, *State of World’s Refugees: Human Displacement in the New Millennium* (Oxford: Oxford University Press), 2006, 3.

² Approximately another two million are internally displaced. It should be noted that hundreds of thousands of Iraqis left Iraq prior to 2003, either as a result of persecution or discrimination or in search of better economic, health or educational opportunities. Andrew Harper, ‘Iraq’s Refugees: Ignored and Unwanted’ (2008) 90 *International Review of the Red Cross*: 169 – 190 at 170.

In this paper I look at how UNHCR has gone about creating, maintaining and expanding protection space for Iraqi refugees in the context of the Jordan, Syria and Lebanon.

The paper is divided into two parts. I first touch on UNHCR's mandate and the 1951 Convention Relating to the Status of Refugees, which together provided, for the first time, a formal structure for the protection of refugees under international law. Then, turning to the development of protection as a concept over time, I highlight the utility of using a rights-based approach to defining the term as well as its action-oriented and dynamic nature, as understood by the egg framework for protection as an activity. Next, in an effort to better conceptualize the space within which protection activities can be carried out – protection space – I look to the notion of humanitarian space.

In the second part of the paper I turn my attention to the Iraqi displacement to Syria, Jordan and Lebanon. I begin by outlining the protection environment as regards refugees in the region and indicate the protection needs faced by Iraqi refugees, or rather rights which remain to be realized by Iraqi refugees in these countries. Though at times I am critical of Syria, Jordan and Lebanon's treatment of Iraqi refugees, I emphasize that these countries deserve credit for agreeing to receive so many Iraqis and for allowing them to remain in their territories at significant cost to their own societies. Finally, I remark on UNHCR's efforts to create, maintain and expand protection space for these refugees.

International refugee protection

UNHCR is mandated to provide international protection to refugees and is, thus, “institutionally at the centre of the international protection regime.”³ UNHCR's statute has allowed further evolution of its functions and activities and the General Assembly and to some extent, the Economic and Social Council (ECOSOC) can and have further developed this mandate.⁴ Other sources underpinning UNHCR's constitution are its organizational practice and corresponding acquiescence by states as well as implied powers.

Given its fragmented constitutional basis, UNHCR does not have a straightforward and easily retrievable statement of its responsibilities.⁵ However, this fragmented constitutional basis is also dynamic. It creates the conditions whereby UNHCR can adapt to meet new protection challenges, whether by permitting its work on behalf of additional populations or by amending its activities to best meet the work at hand.

UNHCR's competence *ratione personae* - persons in relation to whom the term “populations of concern” could be used - extends to the following categories of people: refugees and asylum seekers, returnees, stateless persons, the internally displaced, persons threatened with displacement or otherwise at risk. The latter two categories do not fall under UNHCR's general mandate. An additional selective and

³ Volker Türk, ‘Freedom from Fear: Refugees, the Broader Displacement Context and the Underlying International Protection Regime,’ in Vincent Chetail (ed.), *Globalization, Migration and Human Rights: International Law under Review*, Volume II, (Brussels: Collection of the Geneva Academy of International Humanitarian Law and Human Rights, 2007), 475 – 522 at 479 – 80.

⁴ Türk, 480.

⁵ Türk, 480.

limited mandate allows UNHCR to provide protection and seek solutions for these categories of people under certain conditions.⁶ In this paper I will look only to the protection of asylum seekers and refugees.

UNHCR's material scope of competence - the functions and activities which UNHCR is required or is authorized to carry out for the categories of people mentioned above - are laid out both in the Statute and in subsequent General Assembly and ECOSOC resolutions.⁷ UNHCR is primarily mandated to provide international protection, including humanitarian assistance.

Over time, the activities and functions of UNHCR have expanded considerably. Initially, UNHCR simply stepped in to offer refugees a legal bridge between the time they lost the protection of their country of origin until they were legally normalized elsewhere or were able to return to their country of origin.⁸

Formally recognizing such people as refugees was itself a form of protection – giving them a clear legal status in international law. The early work of UNHCR, which was limited to efforts in Eastern Europe, was primarily legal and technical – identifying people as refugees, issuing travel documents, assisting in obtaining recognition of their various legal statuses (marriage, property, etc.), and advocating ever more precise guidelines for handling recognized refugees.⁹

In the intervening decades, the westward flow of Eastern Europeans was eclipsed by sudden, large-scale South-South or South-North trans-boundary migrations.¹⁰ As David Kennedy notes, “today, refugees are less often middle-class people who need legal assimilation in a second European culture than destitute people with a wide variety of special needs.¹¹ Often these people are in immediate need of humanitarian assistance – food, shelter, and medical care – assistance which UNHCR, among other actors, provides.

In addition to providing protection, both through legal assistance and humanitarian assistance, UNHCR fulfils a supervisory role in relation to the instruments of international refugee law. This role is a vital part of UNHCR's protection mandate, which is linked directly to ensuring a principled application of the international refugee protection regime.¹²

As Volker Türk notes, “the rationale behind this role is that strengthened supervision by an international organization is indispensable for a functioning, predictable and credible framework of international cooperation to ensure the proper functioning of such a system.”¹³ Türk states that a direct emanation of UNHCR's supervisory responsibility is, *inter alia*, that UNHCR be given prompt and unhindered access to asylum seekers and refugees, wherever they are¹⁴ and be allowed to supervise their

⁶ Türk, 481.

⁷ Türk, 489.

⁸ David Kennedy, *The Dark Sides of Virtue: Humanitarianism in Crisis* (Princeton NJ: Princeton University Press, 2004), 203.

⁹ Kennedy, 203.

¹⁰ Kennedy, 203.

¹¹ Kennedy, 203.

¹² Türk, 490.

¹³ Türk, 490. Türk, 490.

¹⁴ See: Executive Committee Conclusions No.22 (III), 33 (h), 72 (b) 73 (b) (iii), 77 (q), 79 (p).

well-being.¹⁵ Importantly, Turk also notes that the wording of UNHCR's statute regarding its supervisory responsibility is flexible and does not restrict UNHCR's supervisory function to one or other specific international refugee convention. It is therefore competent to supervise all conventions relevant to refugee protection and has done so in practice. Moreover, most international refugee conventions explicitly establish a link to UNHCR's supervisory function as regards the application of their provisions.¹⁶

The 1951 Convention and other relevant instruments

The 1951 Convention is significant in two respects.¹⁷ First, although it was initially limited to refugees from Europe (its territorial scope was later expanded by its 1967 Protocol) it provides a general definition of a refugee as someone outside his or her own country and unable to return as a result of a well-founded fear of persecution on grounds of race, religion, nationality, political opinion or membership of a social group. Second, it recognizes that people who fall within the refugee definition should benefit from certain rights.¹⁸

The rights enumerated in the 1951 Convention form the foundation of the international refugee protection regime. The list of rights attributed to refugees under the Convention and its 1967 Protocol include *inter alia* – the right not to be returned to a place where they risk persecution for a Convention reason (*non-refoulement*), access to food and shelter, access to healthcare, the right to work, the right to housing, the right to education and freedom of religion and expression.

These rights have been supplemented and enhanced by other refugee law instruments¹⁹ as well as human rights²⁰ and humanitarian law instruments²¹. Though

¹⁵ See: Executive Committee Conclusion No. 22 (III), 44 (4) (d). Article 35 of the 1951 Convention and Article II of the 1967 Protocol oblige states to cooperate with UNHCR, for instance, by providing verifiable information on issues and people of concern to UNHCR and granting access to said people. Another means by which UNHCR implements its supervisory role is through its Guidelines on International Protection. Turk notes that these guidelines in a way follow the model of the General Comments issued by the human rights treaty monitoring bodies. They are intended to update and complement the understandings in UNHCR's Handbook on Procedures and Criteria for Determining Refugee Status.

¹⁶ Türk, 490.

¹⁷ UNHCR, *State of the World's Refugees* (Oxford: Oxford University Press, 2000), 1.

¹⁸ UNHCR, *State of the World's Refugees* (Oxford: Oxford University Press, 2000), 1.

¹⁹ Additional international instruments dedicated to refugee protection include the regional instruments of Africa and Latin America. The Organization of African Unity (OAU) Convention (1969) complements the 1951 Convention. In addition to presenting a broader refugee definition it regulates the question of asylum and contains important provisions on voluntary repatriation. The Cartagena Declaration (1984) laid down the legal foundations for the treatment of refugees in Latin America and like the OAU Convention offers a broader refugee definition. The Cartagena Declaration also includes provisions highlighting the importance of integrating refugees and undertaking efforts to eradicate the refugee problem. Unlike the OAU Convention it is not binding, but it has been incorporated into the domestic legislation of some states in Latin America.

²⁰ Protection Cluster Working Group, 'Handbook for the Protection of Internally Displaced Persons', 2007, 5. These human rights law instruments include the International Covenant for Civil and Political Rights (1966). The International Covenant on Civil and Political Rights extends its broad-ranging protection to 'everyone' or to 'all persons'. Each contracting state undertakes in Article 2(1) to ensure the rights in the Covenant: To all individuals within its territory and subject to its jurisdiction...without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national

not specifically geared towards the protection of refugees, many international human rights and humanitarian law instruments are directly applicable to refugees. Additional rights contained in these instruments include: the right to life; protection from torture and ill-treatment; the right to a nationality; the right to freedom of movement; and the right to leave any country including one's own, and to return to one's country.

These rights are affirmed, along with other civil, political, economic, social and cultural rights for all persons, citizens and non-citizens alike, in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. In addition, under customary law states are required to treat non-citizens in the same way in which they treat their own nationals.²²

Often said to be the cornerstone of refugee protection, the principle of *non-refoulement* – the right not to be forcibly returned or expelled to a situation which would threaten one's life or freedom – embodied in article 33 of the 1951 Convention, finds further expression in article 3 of the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. *Non-refoulement* has even risen to the level of customary law, thus binding all states not to engage in this practice.

The presence of provisions relevant to refugees in all of these instruments allows for greater protection of refugees, particularly in the cases of states not party to the 1951 Convention and its 1967 Protocol.

Historical antecedents and recent definitions

While the origins of the term 'protection' are obscure, the international refugee protection regime has historical antecedents, which can be found in different sources of international law. Originally rooted in the idea of surrogacy, a concept found in consular or diplomatic protection, international refugee protection was understood as filling a 'protection vacuum' for a special class of vulnerable people in response to whom a specific regime of rights needed to be created.²³

or social origin, property, birth or other status. James Hathaway notes, "While nationality is not included in this illustrative list, it has been determined to be embraced by the residual category of other status." Hathaway goes on to mention that the Human Rights Committee has explicitly confirmed that: The general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens. Aliens must receive the benefit of the general requirement of non-discrimination in respect of the rights guaranteed by the Covenant. More recently the Committee has held that rights may not be limited to citizens of a state, but: must also be available to all individuals regardless of nationality and stateless, such as asylum seekers and refugees. See: James Hathaway, *The Rights of Refugees Under International Law* (Cambridge: Cambridge University Press, 2005), 119-25.

²¹ In humanitarian law, the 1949 Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War; article 44 of this Convention deals with refugees and displaced persons, while Article 73 of the 1977 Additional Protocol stipulates that refugees and stateless persons shall be protected persons under parts I and III of the Fourth Geneva Convention.

²² See: *Barcelona Traction and Light Co*, International Court of Justice Reports (1970): 32 <<<http://www.icj-cij.org/docket/index.php?p1=3&p2=3&code=bt2&case=50&k=1a>>>.

²³ *Türk*, 493.

Guy Goodwin-Gill and Jane McAdam indicate that the notion of ‘surrogacy’ describes, succinctly, what happens when an international organization or a state steps in to provide the protection which a refugee’s own state cannot or will not provide.²⁴ They cite one of the leading ‘social group’ cases, *Attorney General v. Ward* (1993), in which the Federal Court of Canada identified as a ‘fundamental principle’, that international protection is to serve as surrogate protection when national protection cannot be secured. On appeal, the Supreme Court of Canada also noted:

Except in situations of complete breakdown of the state apparatus, it should be assumed that the state is capable of protecting a claimant. This presumption, while it increases the burden on the claimant...reinforces the underlying rationale of international protection as a surrogate, coming into play where no alternative remains to the claimant.²⁵

This excerpt indicates that the notion of international protection is:

Driven by the state of origin and its capacity, actual or supposed, to provide protection: and then, in a corollary move, to the state of refuge and the extent of its obligations to provide protection instead.²⁶

Goodwin-Gill and McAdam warn, however, that the notion of ‘surrogacy’ can be misleading, as it can shift the focus away from the individual at risk.²⁷

It is also worth noting that though connected to the notion of surrogacy, diplomatic protection may not be entirely helpful in understanding international refugee protection.²⁸ As David Kennedy notes:

Unlike refugee protection, diplomatic protection occurs when a state feels that its sovereign rights have been violated by the treatment accorded to one of its nationals by another state. It then represents that national on the international plane. At issue are the reciprocal rights of sovereign states – that the injury has been done to a national, or that a national gets ‘protected’ is, strictly speaking, a secondary matter in international law.²⁹

Typically when a person is outside his or her country he or she relies on diplomatic or consular protection. This is not the case in international refugee protection. In international refugee protection, a state does not step in to “protect” its nationals in another country. Instead, the state hosting refugees provides refugees with protection and should that state prove unwilling or unable to do so, an international organization – UNHCR – acts as a surrogate and fulfils this protection role.

Putting aside the idea of diplomatic protection, but recognizing that international refugee protection is based on the notion of surrogacy, we can next look to the

²⁴ Guy Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (Oxford: Oxford University Press, 2007), 10.

²⁵ Goodwin-Gill and McAdam 10. See: *Attorney General v. Ward* [1993] 2 SCR 689.

²⁶ Goodwin-Gill and McAdam, 10.

²⁷ Goodwin-Gill and McAdam, 10.

²⁸ Kennedy, 203.

²⁹ Kennedy, 203.

substance of this protection, which are based on the rights laid out in the 1951 Convention. In his essay, 'Freedom from Fear: Refugees, the Broader Forced Displacement Context and the Underlying International Protection Regime', Volker Türk excerpts various authors' definitions for the term to indicate how it has been understood over time:

[...] de sauvegarder les droits et les intérêts des réfugiés, d'améliorer leur statut juridique de manière à les mettre autant que possible sur un pied d'égalité avec les ressortissants du pays où ils demeurent et, chose plus importante encore, les aider à cesser d'être réfugiés.³⁰

The function of international protection can best be described as the task of safeguarding the rights and legitimate interests of refugees and of seeking to overcome any disabilities arising from their position as refugees.³¹

The word protection denotes measures of some kind or other taken by a subject of international law in order to promote the integrity, rights, or interests of an individual. Protection may take many shapes.³²

[...] basée sur des instruments juridiques, mais une fonction complexe, administrative, diplomatique et qui comprend, si elle est conçue dans toute son ampleur des activités de recherche et de diffusion.³³

[...] first and foremost, action to secure human rights, with the objective of re-establishment within a community.³⁴

While the above definitions incorporate ideas of security and integrity, it is remarkable to note that least four of the definitions understand international protection as an activity, involving the promotion, the securing and safeguarding of rights. Indeed in the 1994 UNHCR Note on International Protection³⁵ as well as in the 2000 Note on International Protection,³⁶ UNHCR indicates that it comprehends its international protection function to have evolved to encompass all activities through which the rights of refugees and asylum seekers are ensured. These activities include securing admission and asylum, respect for basic human rights and an appropriate standard of treatment (which often includes the provision of assistance), as well as

³⁰ Türk, n. 40. F. Schnyder, 'Les aspects juridiques actuels des problèmes des réfugiés', 1965 *Recueil des Cours de l'Académie de droit international*, 346.

³¹ Türk, n. 41. P. Weiss, 'The Office of the United Nations High Commissioner for Refugees and Human Rights', 1968 *Human Rights Journal*, 249.

³² Türk n. 42. A. Grahl-Masden, *The Status of Refugees in International Law*, Volume 1 (Leyden, AW Sijthoff, 1966), 381.

³³ Türk, n. 43. G. Jaeger, 'Les Nations Unies et les Réfugiés,' 1989 *Revue belge de droit international*, 58.

³⁴ Türk n. 44. Guy Goodwin-Gill, 'Refugees in the World: the European Community's Response', 1989 *Netherlands Institute of Human Rights*, 1.

³⁵ See: UNHCR, 'Note on International Protection', UN doc. A/AC.96/830, 7 September 1994.

³⁶ See: UNHCR, 'Note on International Protection', UN doc. A/AC.96/930, 7 July 2000.

achieving a durable solution through restoration of national protection either in the country of origin, the host country or another country.³⁷

A rights-based approach

International refugee protection has a particular basis and meaning, but is informed and shaped by broader understandings of protection. During a series of workshops sponsored by the International Committee of the Red Cross (ICRC), which included UNHCR and involved some fifty other humanitarian and human rights organizations, a general framework for understanding protection as a rights-based enterprise was developed.³⁸ The Inter-Agency Standing Committee (IASC),³⁹ of which UNHCR is a member, adopted the following definition for protection:

All activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and spirit of the relevant bodies of law, namely human rights law, international humanitarian law and refugee law.⁴⁰

Relying on notions of physical security as well as personal dignity and integrity, this definition of protection is based on the civil, cultural, economic, political and social rights of individuals and groups, and states' obligations under international human rights law to respect, protect and fulfill these rights.⁴¹ Such a rights-based approach recognizes individuals as rights-holders with legal entitlements to protection and assistance.

Unlike needs, rights generate responsibilities to ensure the protection and well-being of individuals. The state and other authorities are duty-bearers with responsibilities to respect and protect individuals' rights. These rights and responsibilities are firmly rooted in international human rights law and humanitarian law, and where relevant, refugee law.

Taking the above definition for protection one step further, the Protection Cluster Working Group⁴² of the IASC understands rights-based protection to be three

³⁷ Türk, 494.

³⁸ Hugo Slim and Andrew Bonwick, 'Protection: An ALNAP guide for humanitarian agencies' (ALNAP, August 2005), 33. Accessible at:

<< <http://www.odi.org.uk/alnap/publications/protection/index.htm>>> (accessed 3 September 2008).

³⁹ For information about the Inter-Agency Standing Committee (IASC) see:

<< <http://www.humanitarianinfo.org/iasc/content/default.asp>>> (accessed 3 September 2008).

⁴⁰ 'Handbook for the Protection of Internally Displaced Persons', 5.

⁴¹ 'IASC Gender Handbook', (2006), 9. Accessible at:

<< <http://ochaonline.un.org/HumanitarianIssues/GenderEquality/KeyDocuments/IASCGenderHandbook/tabid/1384/Default.aspx>>> (accessed 3 September 2008).

⁴² According to its webpage, the global Protection Cluster Working Group (PCWG) is the main forum at the global level for the overall coordination of protection efforts by human rights, humanitarian and development agencies and organizations working in complex emergencies, natural disasters and other similar situations. Established in 2005 as part of the humanitarian reform process, it aims to ensure a more predictable, accountable and effective response to protection in humanitarian action. UNHCR is a member of this group. See: << <http://www.humanitarianreform.org/Default.aspx?tabid=541>>> (accessed 3 September 2008).

dimensional: protection as an objective, protection as a legal responsibility and protection as an activity.⁴³

As an objective, protection is envisioned to ensure the full and equal respect for the rights of all individuals, without discrimination, as provided for in national and international law. In this capacity, protection covers the full range of rights including civil and political rights, such as the right to freedom of movement and to political participation, and economic social and cultural rights, including the rights to education and health.⁴⁴ As an objective, refugee protection could be seen to encompass all relevant provisions for refugees under international law, which are discussed in the paragraphs below.

As a legal responsibility, protection is the duty of the state and its agents.⁴⁵ As stated above, UNHCR is mandated to provide international protection to people within its competence. However, the primary responsibility for safeguarding the rights of refugees lies with states, not least because of the fundamental responsibility of states to guarantee the human rights of everyone (including non-citizens) subject to their jurisdiction and within their territory.⁴⁶

Upon flight, a refugee becomes subject to the jurisdiction of the authorities in the country of reception. As mentioned earlier, under international law, individuals are not to be returned to a territory where their lives or freedom may be threatened – the principle of *non-refoulement*. This prohibition includes non-rejection at the border or shore. In international law, regardless of whether people seeking asylum are recognized by the host government as refugees or are classified as unauthorized aliens, a state is obligated to provide legal protection and to respect their fundamental individual rights.⁴⁷

The standard of treatment to which all non-citizens are legally entitled is the same as that which applies to a state's treatment of its own nationals and should not fall below that level.⁴⁸ Additionally, at a minimum, procedures should conform with standards set down by various UNHCR Executive Committee Conclusions. For example, Conclusion No. 93 (2002) requires, *inter alia*, that asylum seekers have access to assistance for basic support needs, such as food, clothing, accommodation, medical care and respect for privacy. Reception arrangements are sensitive to age and gender, in particular the educational, psychological, recreational, and other special needs of

⁴³ 'Handbook for the Protection of Internally Displaced Persons', 5.

⁴⁴ 'Handbook for the Protection of Internally Displaced Persons', 5.

⁴⁵ In situations of armed conflict, that responsibility extends to all parties to the conflict under international and humanitarian law, including armed opposition groups. Human rights, humanitarian and development actors play an important role as well, in particular when states and other authorities are unwilling to fulfill their protection obligations. 'Handbook for the Protection of Internally Displaced Persons', 5.

⁴⁶ Türk, 495.

⁴⁷ Such fundamental rights are declared in the International Covenant on Civil and Political Rights (ICCPR)⁴⁷ and the International Covenant on Economic Social and Cultural Rights (IESCR).

⁴⁸ See *Barcelona Traction and Light Co*, International Court of Justice Reports (1970): 32 (State bound to protect foreign nationals admitted onto its territory). Available at: <<<http://www.icj-cij.org/docket/index.php?p1=3&p2=3&code=bt2&case=50&k=1a>>>.

children, and the specific needs of victims of sexual abuse and exploitation, trauma and torture.⁴⁹ Above all, treatment must not be inhuman or degrading.⁵⁰

When states fail to meet these obligations under international law, humanitarian and human rights organizations engage in protection as an *activity*. A model developed by the ICRC divides into three groups the various activities undertaken by humanitarian and human rights organizations (Figure 1, below). These three groups – or types of activity – constitute a protection as-an-activity framework which may be imagined in the form of an egg.

This model is intended to convey the non-hierarchical and interdependent nature of the activities, as well as the possibility of carrying them out simultaneously.⁵¹ Such a model puts an end to the protection-assistance dichotomy, instead regarding the two as specific facets of the same action which cannot be disassociated. Significantly, these protection activities are often not simply ends in themselves, but rather increase the likelihood that more protection activities will be able to be undertaken in the future.

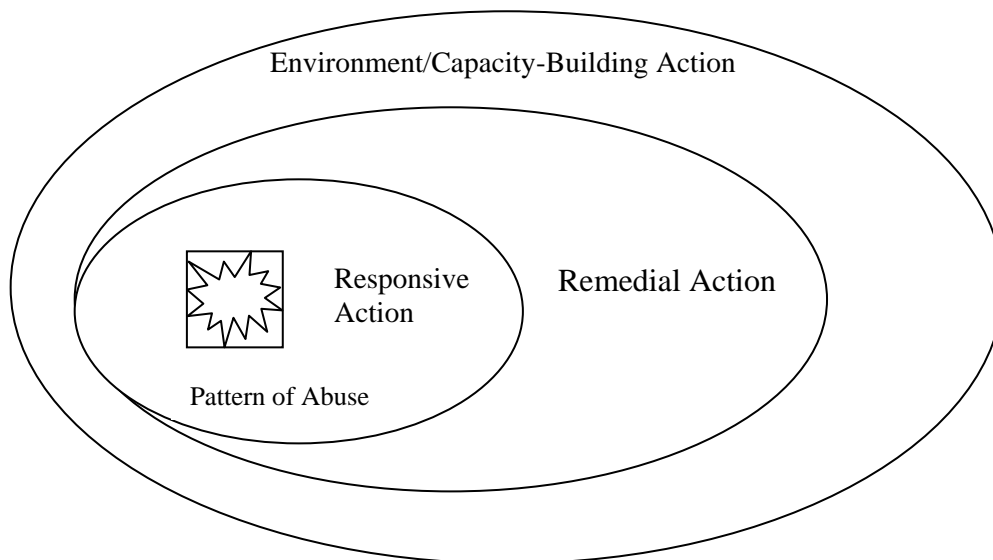


Figure 1: The Egg Model

Within the egg model, the most immediate form of action is responsive action. Responsive action is any activity undertaken with an emerging or established pattern of abuse of fundamental rights and aimed at preventing its recurrence, putting a stop to it, and/or alleviating its immediate effects.⁵² Responsive activities in which the UNHCR might be involved include pressuring authorities through public disclosure into taking the measures needed to stop the abuse and prevent its recurrence;

⁴⁹ UNHCR, 'Executive Committee Conclusion', No. 33 (1984). Accessible at: <<<http://www.unhcr.org>>>.

⁵⁰ Goodwin-Gill and McAdam, 413.

⁵¹ Sylvie Gioosi Caverzasio, ed., 'Strengthening Protection in War: A Search for Professional Standards', (Geneva: International Committee of the Red Cross, 2001), 21.

convincing the authorities concerned, through dialogue, to take the same measures; providing direct services to the victims of the abuse; and providing technical support for local facilities, both public and private.⁵³

Moving further outwards, the second sphere of action is remedial action. It is aimed at restoring people's dignity and ensuring adequate living conditions subsequent to a pattern of violation through rehabilitation, restitution and repair.⁵⁴

Finally, the third sphere of action, environment-building or capacity-building, is concerned with moving society as a whole towards protection norms which will prevent or limit current and future violations and abuses.⁵⁵ It is the most long-term and structural sphere of action and requires environment-building action that consolidates political, cultural and institutional norms conducive to protection. Indeed, UNHCR defines capacity-building as "the reinforcement of human, institutional or community performance, skills, knowledge and attitudes on a sustainable basis. It is both an approach and a set of activities, intimately linked to nationally-driven reform processes."⁵⁶

Before UNHCR can engage in any protection activities, be they responsive, remedial or capacity-building, an environment which enables such activities to be carried out – sometimes referred to as protection space – is required.

Defining protection space

At UNHCR the term 'protection space' is not defined and its use appears limited to the context of resettlement and in the case of working in countries hesitant to be seen as countries of asylum. When used strategically, resettlement is understood enlarge protection space.⁵⁷ In countries sensitive to being seen as countries of asylum, protection space is used as a euphemism for 'asylum space'⁵⁸ – yet another fuzzy term. To my mind, the notion of 'space' links protection space to the concept of 'humanitarian space' and in looking to humanitarian space we may begin to tease out a definition for, or at the very least a better understanding of, protection space.

The term 'espace humanitaire' (humanitarian space) was coined by former Médecins Sans Frontières (MSF) president Rony Brauman, who described it in the mid-1990s as 'a space of freedom in which we are free to evaluate needs, free to monitor the distribution and use of relief goods, and free to have a dialogue with the people'. The UN Office for the Coordination of Humanitarian Affairs (OCHA)'s Glossary of Humanitarian Terms has no specific entry for humanitarian space, but it does mention the term as a synonym for 'humanitarian operating environment': a key element for

⁵² 'Strengthening Protection in War', 21.

⁵³ 'Strengthening Protection in War', 22-3.

⁵⁴ 'Strengthening Protection in War', 22-3.

⁵⁵ 'Protection: An ALNAP guide for humanitarian agencies', 42.

⁵⁶ UNHCR, 'A Practical Guide to Capacity-Building as a Feature of UNHCR's Humanitarian Programs' (1999), 3.

⁵⁷ "In addition to providing a solution to some of the most vulnerable cases resettlement may have a strategic impact in creating protection space for those Iraqis who remain in the region," UNHCR, 'Resettlement of Iraqi Refugees' (12 March 2007), 2.

⁵⁸ UNHCR Director of Middle East and North Africa Bureau, email correspondence with author, 6 August 2008.

humanitarian agencies and other organizations when they deploy, consists of establishing and maintaining an environment conducive to humanitarian operations.⁵⁹

Though the humanitarian community has not reached a more precise definition for the concept, it would seem that there are two central aspects to humanitarian space: a physical space and an action space, or one within in which operations can be carried out.⁶⁰ Physical space is geographical space. Looking to proxemics – a theory of space – we see that one aspect physical space is that of ‘fixed-feature space’, which comprises things that are immobile, such as walls and territorial boundaries. For our purposes we can think of physical space as an element of protection space insofar as protection space is limited by geographical or territorial borders.

The second element of protection space is action space. ‘Action space’ is defined by the Oxford Dictionary of Geography as “the area in which in an individual moves and makes decisions about his or her life.”⁶¹ I would push this notion one step further to indicate that it is a space within which an individual has the possibility of moving and making decisions. This notion of possibility is instrumental to understanding how action space functions as an element of protection space. It indicates that space is not simply a fixed, pre-delineated domain; it is time-sensitive, fluid and changeable. A potentially useful model for conceptualizing action space can be found in theories of astronomy. One such theory understands the solar system to be wrapped in a bubble that is constantly pulsating, expanding and retracting.⁶²

For the present purposes, it is important to incorporate the idea of surrogacy into action space. As discussed earlier, individuals in need of protection cannot always secure their own protection. Often an international organization or other entity will need to step in to help these individuals meet their protection needs. Consequently, the notion of the *possibility* of moving and making decisions (in this case providing protection) is extended to the international organization or entity acting on behalf of the individual or population in need.

Considering the above, I would define protection space as an environment which enables the delivery of protection activities and within which the prospect of providing protection is optimized. It is important to remember that that protection space is fluid and expands and retracts, thus requiring a variety of efforts to ensure its continued existence and expansion.

⁵⁹ UN Office for the Coordination of Humanitarian Affairs (OCHA)’s Glossary of Humanitarian Terms (2003). Accessible at: <<[http://www.reliefweb.int/rw/lib.nsf/db900sid/KKEE-6DMRTJ/\\$file/glossary.pdf?openelement](http://www.reliefweb.int/rw/lib.nsf/db900sid/KKEE-6DMRTJ/$file/glossary.pdf?openelement)>>. Last accessed 3 September 2008.

⁶⁰ Ulrike von Pilar, ‘Humanitarian Space Under Siege: Some Remarks from an Aid Agency’s Perspective,’ Background Paper prepared for the “Europe and Humanitarian Aid – What Future? Learning from Crisis’ Conference held 22 and 23 April 1999, Bad Neuenahr, Germany, 4.

⁶¹ Dictionary of Geography (Oxford: Oxford University Press, 2004). Accessible at: <<<http://www.encyclopedia.com/doc/1O15-actionspace.html>>> (accessed 3 September 2008).

⁶² NASA, ‘What does the Edge of the Solar System Look Like?’ Ask Voyager (2003). Accessible at: <<http://www.nasa.gov/vision/universe/solarsystem/voyager_heliosphere.html>> (accessed: 3 September 2008).

Creating, maintaining and expanding protection space

UNHCR presence in the states in which it is trying to secure protection for refugees is often the first step towards the creation of protection space. UNHCR presence is complemented by state ratification of the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol as well as national legislation concerning refugees. In the absence of such legislation, the Memoranda of Understanding (MOUs) negotiated between UNHCR and governments outline the main rights and duties of the host state, and set the conditions for cooperation between the two parties. This protection space thus created is maintained by regular communication between UNHCR and government officials to ensure clarity regarding UNHCR's activities.

While the above factors may engender the creation of a protection space, a variety of other issues lead to its retraction. Many states, often those with the most limited resources, have continued to admit and host large refugee populations on their territories.⁶³ However, the quality of asylum in many such countries has deteriorated, including in several regions with a tradition of generous asylum policies.⁶⁴

The reasons underlying this change include the economic and social difficulties of hosting large refugee populations, national security situations, as well as concerns about the use of asylum procedures by illegal migrants, and trafficking and smuggling of persons.⁶⁵ Faced with the pressures of hosting so many refugees, states often feel they have no choice but to respond by violating the principle of *non-refoulement*, by denying admission, by implementing highly restrictive entry requirements and by engaging in detention practices that violate international standards. They can also fail to adequately register and document asylum seekers and have inadequate refugee status determination procedures.

It is often in such contexts that UNHCR works to lift the burden placed on the host state and to build its capacity to receive and protect refugees. The efforts it undertakes are protection activities, which work to maintain and expand existing protection space. Returning to the egg model for protection as an activity, and keeping in mind that protection activities are often interrelated and mutually supportive, remedial or responsive protection activities in which UNHCR engages would certainly include assessing the protection needs of the population in question and identifying any potential risk factors.

Upon assessing such risks, which naturally vary depending on the context, UNHCR then undertakes a search for durable solutions along with a variety of operational measures, either directly or in partnership with other organizations and the refugees themselves. In the absence of such partnerships UNHCR works to establish them. Environment or capacity-building activities in which UNHCR engages include promoting national legislation and asylum procedures; providing advice and developing jurisprudence; promoting existing international refugee law and standards; and creating public awareness of refugee-related issues.

⁶³ UNHCR, 'Note on International Protection', 2000, 2.

⁶⁴ UNHCR, 'Note on International Protection', 2000, 2.

⁶⁵ UNHCR, 'Note on International Protection', 2000, 2.

Realizing protection space for Iraqi refugees

Securing protection space for Iraqi refugees in Jordan, Syria and Lebanon has been a challenging and complex enterprise for UNHCR. The protection environment for Iraqi refugees in these countries is uncertain because it is the product of a web of political and socioeconomic concerns on the part of these states. Though Jordan and especially Syria's admissions policies have traditionally been generous – particularly for Arab nationals – people in refugee-like situations are generally subject to the restrictive legislation applicable to foreigners, diminishing the likelihood that their basic rights are upheld.

Falling somewhere between the benefits that accompany state expressions of Arab solidarity and legislative realities, the status of Iraqi refugees in Jordan and Syria is further complicated by the reaction of these states to the strain of the Iraqi presence on their infrastructures, in addition to security considerations. In Lebanon the situation is slightly different. Less generous than its Syrian and Jordanian counterparts regarding admission, it too restricts those in refugee-like situations to its circumscribed legislation applicable to foreigners, often resulting in their detention. As regards Iraqi refugees in particular, Lebanon remains wary of their presence due to its already fragile sectarian balance.

The combination of the lacuna characterizing legislation dealing with refugees in Jordan, Syria and Lebanon, state incapacity to meet Iraqi refugee needs and state fears about the perceived security threat posed by Iraqis, has led each of these states to adopt a series of *ad hoc* and sometimes restrictive policies concerning Iraqi refugees.

In the sections below I describe in greater detail the protection environment within which UNHCR works to establish, maintain and expand protection space for Iraqi refugees in Jordan, Syria and Lebanon. I begin by accounting for the numbers and characteristics of Iraqis, highlighting states' perceptions of the strain hosting Iraqi refugees has placed on their infrastructures and security conditions.

I then look to the legal and political environment as regards refugees in these states and indicate that chiefly on account of the politically-sensitive Palestinian issue, these states lack adequate legislation concerning refugees. As Jordan, Syria and Lebanon find themselves unable to meet their responsibility to protect Iraqi refugees under international law, UNHCR steps in to assist them. In the final section, I address UNHCR's protection activities on behalf of Iraqi refugees.

Iraqi refugee numbers and state perceptions

Though the US-led invasion took place in March 2003, it was in 2006 that Iraqis began to flee Iraq *en masse*.⁶⁶ The bombing of the Al-Askari mosque, a holy Shi'a shrine in the town of Samarra, north of Baghdad in February 2006 ignited a spate of

⁶⁶ For a detailed timeline of Iraqi arrivals into Syria since 2003, which is reflective of Iraqi displacement in general, See: Ashraf al-Khalidi, Sophia Hoffmann and Victor Tanner, 'Iraqi Refugees in the Syrian Arab Republic – A Field-Based Snapshot' (Brookings Institution and University of Bern Project on Internal Displacement, June 2007), 9. Accessible at: <<<http://www3.brookings.edu/fp/projects/idp/200706iraq.pdf>>> (accessed 3 September 2008).

sectarian violence, which continues to impel Iraqis to seek refuge in neighbouring countries. It is estimated that at present there are at least 2 million Iraqi refugees in the Middle East. The generally accepted figures include more than 1 million Iraqis in Syria, 450,000-500,000 in Jordan, 200,000 in the Gulf States, 50,000 in Lebanon, 40,000-60,000 in Egypt, 60,000 in the Islamic Republic of Iran and another 10,000 in Turkey.⁶⁷ For the most part, Iraqi refugees come from an urban background and in exile have fled to the region's largest cities, particularly Damascus, Amman, Cairo and Beirut.⁶⁸

While the source of their estimation is unclear, the governments of Syria and Jordan understand that hosting Iraqi refugees has cost them up US\$1 billion per year. These governments indicate that hosting Iraqi refugees has placed tremendous strains on their national infrastructures.⁶⁹ According to Syria's Prime Minister, the influx of 1.5 million Iraqis is equivalent to an added burden of 300,000 Syrian families who consume US\$1 billion per year in diesel, electricity, water, sanitation and household gas.⁷⁰ Prices for oil, electricity, water and kerosene have risen by 20%, low standard rents have tripled since 2005 and subsidies have been scaled back.

In Jordan, which already lacks an adequate amount of water for its own population, authorities estimate that Iraqis are putting a severe strain on the Jordanian water sector. Furthermore, the demand for fuel has increased by approximately 9%. Since Jordan imports 97% of its oil, this increased demand results in rising prices for an already overstretched supply. Both Jordan and Syria point to an urgent need to expand their respective health, transport, sanitation and security services.⁷¹

In addition to burdens on their infrastructures, Syria, Jordan and Lebanon cite security concerns. These concerns often overlap with perceived strains on their political-demographic composition. As of the end of August 2008, UNHCR had registered 219,010 Iraqis in Syria, 54,064 in Jordan, and 10,674 in Lebanon.⁷² Some 50 to 60 percent of those registered are Sunni. Shiites represent less than 30 percent of the total registered in Jordan and Syria, while in Lebanon, Sunnis make up 44 percent of the registered Iraqi population. In Jordan, a Sunni majority country, though Shiites represent only 27 percent of Iraqi refugees. Iran's regional influence has created heightened anxiety about the emergence of a so-called Shiite crescent supposedly

⁶⁷ Harper, 170. Harper indicates that these figures are derived from government estimates and cross-checked with independent surveys where possible. He notes that given the urban character of the Iraqi refugee population it is extremely difficult to obtain precise figures. See Harper, n. 2. It should also be noted that hundreds of thousands of Iraqis left Iraq prior to 2003, either as a result of persecution or discrimination or in search of better economic, health or educational opportunities. See also 'Iraqi Refugees in the Syrian Arab Republic', 9.

⁶⁸ Harper, 171.

⁶⁹ Harper, 177. Harper also indicates that Mukhaimer Abu Jamous, secretary-general of Jordan's interior ministry, said in April 2007 that 750,000 Iraqi refugees were costing his government \$1 billion a year, stretching to the limit the resources of a country of just 5.6 million. On 12 February Agence France-Presse (AFP) reported: "Hosting our Iraqi brothers depletes the Infrastructure and has cost the government more than 1.6 billion dinars (2.2. billion dollars) during the past three years", Planning Minister Suheir al-Ali told visiting UN High Commissioner for Refugees Antonio Guterres. See Harper, n. 17. However, as the recent International Crisis Group report makes clear, "the actual balance sheet is much more nuanced." International Crisis Group, 'Failed Responsibility: Iraqi Refugees in Syria, Jordan and Lebanon' (10 July 2008), 12-13, 19,

⁷⁰ Harper, 178.

⁷¹ Harper, 178.

⁷² UNHCR, 'Iraq Situation Update', August 2008.

threatening the Sunni Arab world.⁷³ The government reacts nervously to expressions of Shiite identity and allegedly sought to prevent Iraqis from visiting Shiite shrines.⁷⁴ In Lebanon, the physical and political absorption capacity is arguably less than in Syria or Jordan given its population size and pre-existing tension surrounding its delicate sectarian balance.⁷⁵ Authorities throughout the region also claim there is a marked rise in criminality, including prostitution.⁷⁶

*The legal and political environment*⁷⁷

Historically, many Middle Eastern countries have maintained a relatively open door policy regarding non-nationals, particularly if coming from a fellow Arab nation. In line with pan-Arabism and likely connected to the notion of ‘aman’ in Islam, the Syrian regime has, for example, traditionally allowed any Arab visitor to enter Syria without a visa.⁷⁸ It should be kept in mind, however, that governments do not perceive the admission of Arab nationals to amount *ipso facto* to the granting of asylum, but instead as a mere gesture of hospitality. Once in these countries, individuals in refugee-like situations, are understood to be “guests” and as with other foreigners are granted permission to stay for a limited period of time, generally for six months, after which time a fine is applied and in some cases deportation envisaged.⁷⁹

The apprehension felt by Jordan, Syria and Lebanon towards refugees in general may in part be a result of resource constraints, but is mostly a product of the as yet unresolved Palestinian issue. This issue has fundamentally coloured the asylum policies and practices of these countries and their attitudes towards refugees and UNHCR. For the past sixty years, Syria, Jordan and Lebanon have hosted sizeable populations of Palestinian refugees.⁸⁰

Even though each of these states is party to international human rights instruments with provisions relevant to refugees, the continued presence of Palestinian refugees on their territories has made them wary of becoming party to refugee-related legal instruments. None of these states has acceded to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. They fear that future refugee populations, like the Iraqis, if accorded the rights set down in the 1951 Convention may too end up remaining on their soil indefinitely.⁸¹ The priority of Syria, Jordan and Lebanon is the

⁷³ ‘Failed Responsibility,’ 11.

⁷⁴ ‘Failed Responsibility,’ 11.

⁷⁵ ‘Failed Responsibility,’ 27.

⁷⁶ Harper, 178.

⁷⁷ As will be abundantly clear, given the dearth of material on the subject, for this section I rely very heavily on Zaiotti. Ruben Zaiotti, ‘Dealing with non-Palestinian Refugees in the Middle East: Policies and Practices in an Uncertain Environment’, (2006) 18(2) *International Journal of Refugee Law*, 333-353.

⁷⁸ Syria has the most permissive legislation allowing all Arab nationals entry without a visa (Minister of Interior Decree 1350/N of 15 July 1980. Similarly, in Egypt until 1995, Sudanese citizens were granted, in principle, a status very close to Egyptian nationals; they could enter and reside in Egypt without an entry visa or residence permit and were given access to social services health and education facilities and employment. Zaiotti, n. 20.

⁷⁹ Zaiotti, 338.

⁸⁰ As of 2000, Syria was hosting 423,000 Palestinian refugees, Jordan, 1,800,000 and Lebanon 382,600.

⁸¹ The Palestinian issue is so sensitive and Syria so keen not to be seen to be a “dumping ground” for Palestinian refugees that Syria has not allowed groups of Palestinians fleeing Iraq to enter its territory or has confined them to a camp. The number of Palestinians residing in Al-Tanf camp located in the

resolution of the Palestinian issue, by which Palestinians would be able to realize their 'right of return'⁸².

In addition, in the Middle East, a regional regime similar to those in Africa or Latin America does not exist.⁸³ A document that may have represented a starting point for such a regime; the Declaration on the Protection of Refugees and Displaced Persons in the Arab World, was drafted in 1992. In 1994 the Arab Convention on Regulating the Status of Refugees in the Arab Countries was adopted, but has not been ratified.⁸⁴

With regard to domestic legislation concerning refugees, neither Syria nor Jordan or Lebanon has specific provisions referring to the main international instruments. Although most of these countries' national legal systems mention asylum as a matter of principle,⁸⁵ procedures for its application are not clearly specified. Moreover, the term "refugee" is nowhere defined. Ruben Zaiotti notes:

Syria confers supposed refugee status to special categories of refugees, generally those who are believed to enhance Syrian national interests, but the rules of conferral are not formally written. Jordan has also granted asylum but such acts are exceptional and at the complete discretion of the monarch. Lebanon has a provision regarding the granting of refugee status, but it has been applied only once since the end of the civil war in 1991.⁸⁶

'no-man's land' between the Iraq and Syrian borders now number 847 people. In Al-Waleed camp on the border near the Syrian border and 200 meters inside Iraq reside 1,367 people. The number of Palestinian refugees in El-Hol camp, which is located inside Syria is 334 people. UNHCR, 'Iraq Situation Update, August 2008'.

⁸² UNHCR Director of Middle East and North Africa Bureau, e-mail correspondence with author, 13 September 2008. Additionally, the term 'right of return' refers to an international legal principle which indicates that members of a national or ethnic group have a right to immigration and naturalization into the country that they, the destination country, or both, consider to be that group's homeland. This principle can be located in the following sources: UN General Assembly Resolution 194 of 11 December 1948; Article 12(4) of the 1966 Covenant on Civil and Political Rights; and international precedent.

⁸³ I am speaking specifically of the Cartagena Declaration on Refugees (1984) and the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa (1969).

⁸⁴ Khadija ElMadmad, 'An Arab Convention on Forced Migration: Desirability and Possibility', (1991) 3 *International Journal of Refugee Law*, 461-81; and Khadija ElMadmad, 'An Arab Declaration on the Protection of Refugees and Displaced Persons in the Arab World: Report of the Cairo Seminar, 19 November 1992', (1993) 6 *Journal of Refugee Studies*, 173-5.

⁸⁵ Article 21 (i) of the Jordanian constitution states 'Political refugees shall not be extradited on account of their political beliefs or for their defense of liberty'. See:

<< http://www.kinghussein.gov.jo/constitution_jo.html>> (accessed 4 September 2008). A similar provision exists in article 34 of the Syrian constitution: "Political refugees cannot be extradited on account of their political principles or their defense of freedom." See: << <http://www.damascus-online.com/history/documents/constitution.htm>>> (accessed 4 September 2008). In Lebanon, the 1962 Law on the Entry, Stay and Exit of Foreigners allows foreigners to request political asylum, but does not allow appeals. This law provides that the person granted with political asylum will be considered as legally in the country. In reality, these provisions were only intended for high-profile political cases and have rarely been used. In 2007, the 1962 law was applied to asylum seekers and refugees without any legal status conferred to them by the Government of Lebanon. Punishment of such individuals included imprisonment varying from one month to three years, fines and deportation. UNHCR, '2007 Annual Protection Report: Lebanon'.

⁸⁶ Zaiotti, 337.

These countries have rarely granted asylum to those recognized as refugees and the procedures and criteria for doing so have remained unclear and discretionary in nature.⁸⁷

As Jordan, Syria and Lebanon either lack the capacity or are simply uninterested in refugee status determination, legally determining who classifies as a refugee in these countries has fallen upon UNHCR. UNHCR's presence in Jordan and Syria is a consequence of the first Gulf War (1990-1) and its residual refugee crisis, one with which these states had neither the capacity nor the infrastructure to cope. Though UNHCR had been present in Lebanon prior to this time, at the end of 1990, it resumed its full activities. Zaiotti indicates that at this point, UNHCR and local government agencies had relatively little institutional knowledge of each other. He writes:

On the one hand, Middle Eastern governments considered UNHCR to be a useful tool in dealing with the emergency. They perceived its presence as relatively short and confined to humanitarian relief. On the other, UNHCR judged the permission by these governments to play a major role during the crisis as a sign of their willingness to be more active in the refugee regime.⁸⁸

While UNHCR's relationships with these states developed in the intervening years, governments remained cautious about the issue of asylum. Zaiotti states:

As rationale for their stance, they pointed at the close connection between the plight of refugees and the politically sensitive and still unresolved Palestinian question. They raised other concerns as well, stressing both domestic and regional constraints, such as the limited resources available and the economic burden newcomers would be to the host country, the need to maintain good relations with neighbouring countries and the fear of becoming a 'dumping ground' for rejected refugees from other countries in the area.⁸⁹

Over time, the interest expressed by Middle Eastern governments in the refugee issue began to wane. They focused on other priorities sought to avoid any political problems refugees might bring along with them. Consequently, they saw little sense in taking over refugee status determination, even if it might bring them improved standing in the international community. Although government agencies have accepted UNHCR's authority and decisions regarding refugee recognition, both refugees and asylum seekers have fallen under these countries' restrictive legislation applicable to foreigners.⁹⁰ As UNHCR has not made much progress in transferring responsibilities to local government agencies, it has maintained its role as both status determination and protection agency.

⁸⁷ Zaiotti, 337.

⁸⁸ Zaiotti, 343.

⁸⁹ Zaiotti, 344.

⁹⁰ As Zaiotti notes: "Foreigners, whether refugees or not, are liable to be sent back to their country of origin if they try to enter the country without authorization (if a visa is required). Similarly, recognized refugees may be sent back to their home country in the case of a serious violation of the law of the land, or for surpassing the permitted length of stay." Zaiotti, 338.

Iraqi protection needs and rights

While Lebanon has never been particularly welcoming when it came allowing Iraqis to seek refuge on its soil, Jordan and Syria were initially exceptionally generous in this regard. However, as time passed and their infrastructures became increasingly strained, Jordan and Syria put in place a series of visa and residency restrictions for Iraqis.⁹¹

In October 2007, Syria imposed a requirement permitting only certain categories of Iraqis to obtain visas.⁹² As Andrew Harper notes, this restriction marked the first time that Syria had imposed a visa requirement on a fellow Arab state – an action which underscored its increasingly desperate position.⁹³ In November 2005, following the multiple suicide bombings in Amman, Jordan introduced tighter entry requirements, in particular for single males.⁹⁴ In May 2008, Jordan extended visa requirements to the entire Iraqi community. These requirements necessitate applying for visas in Iraq before travelling⁹⁵ or through Jordanian diplomatic missions abroad.⁹⁶

As is the case with Syria and Jordan, Lebanon requires Iraqis to have visas to enter the country⁹⁷, but does not issue them at the border with Syria, thus forcing many Iraqis to enter Lebanon illegally.⁹⁸ Lebanon has not been especially hospitable to populations in need of asylum and typically treats such people as well as those who have overstayed their visas as illegal immigrants, who are subject to imprisonment, fines

⁹¹ Harper indicates at March 2008 the Iraqi influx into Syria was estimated at 2,000 people per day. Harper, 179.

⁹² Under this visa scheme the categories of Iraqis allowed to enter Syria include: academics and their immediate families; Iraqi students enrolled in Syrian universities and institutions of higher education; children attending schools; truck and passenger drivers operating on the Baghdad – Damascus route; Iraqis who need medical treatment in Syrian hospitals, provided they have the relevant official documentation; members of cultural and sporting delegations visiting or passing through Syria; and traders and businesspeople with commercial interests. Syrian officials told Amnesty International in March 2008 that border authorities exercise a large degree of discretion in granting visas and that those who do not fall into one of the stipulated categories but are in desperate need of protection are allowed in. Amnesty International did not, however, meet any individuals who had been permitted entry on this basis. Amnesty International, 'Rhetoric and Reality: the Iraqi Refugee Crisis' (June 2008), 9 – 10.

⁹³ Harper, 179.

⁹⁴ 'Failed Responsibility', 11.

⁹⁵ Applications for visas can be made at any one of the thirteen offices of the international courier TNT, in Iraq. TNT charges applicants a fee of 15,000 Iraqi dinars (US\$12.5) each. 'Rhetoric and Reality', 17.

⁹⁶ In the period 1 - 11 May 2008, there were 927 applications representing a total of 2,811 people. The Jordanian Ministry indicated it had approved the majority of these applications. A TNT official stated that around 60 percent of applications sent by its main Baghdad office had been approved. After processing, they are forwarded to the Ministry of the Interior in Amman. 'Rhetoric and Reality', 17-18. While these new rules may make getting a visa more difficult, it is in a sense better than the previous arrangement in that the conditions for entry are more clearly outlined.

⁹⁷ Human Rights Watch, 'Rot Here or Die There: Bleak Choices for Iraqi Refugees in Lebanon' (November 2007), 20. Iraqis are granted tourist visas to enter Lebanon at the Beirut airport as long as they have the following: US\$2,000 in cash or an accredited check from a recognized bank; a hotel reservation or residential address and telephone number; a return non-refundable ticket. Iraqi citizens can also receive tourist visas after proving they are traders or are doctors or engineers, provided they have hotel reservations and places, cash in the bank and non-refundable return tickets. Tourist delegations can receive visas without meeting these requirements. General Security, "Visas – Entry of the Citizens of non-Gulf Arab Countries who are coming for the purposes of Tourism," <http://www.general-security.gov.lb/English/Entrance+Visas/Arab+countries/> (accessed 2 September 2008).

⁹⁸ 'Rot Here or Die There', 21.

and deportation.⁹⁹ Until an agreement (described below) was reached in February 2008 to regularize the status of non-nationals in the country, many Iraqi refugees in Lebanon lived in fear of imprisonment and forced return to Iraq.¹⁰⁰

Once admitted into Jordan and Syria, Iraqis are legally allowed to remain until their visas expire. At the beginning of 2007, Syrian authorities reduced the length of the initial visa from three months to one month. The one-month visa is renewable for a further two months at a Syrian Immigration Department office. Once a visa has been extended for two months and is about to expire, Iraqis are required to leave the country and obtain a new visa if they wish to re-enter.

In practice, this has meant that many Iraqis have had to travel to the border checkpoint to exit Syria and then immediately re-enter to obtain a new one-month visa (renewable for a further two months).¹⁰¹ Under Jordanian law, Iraqis must pay up to US\$761 for every year they overstay their visa. The Jordanian authorities announced in February 2008 that they would exempt Iraqis from accumulated fines if they decided to return home or travel to a third country, but that those who wanted to stay had until 17 August to pay 50 percent of their dues and rectify their status, or risk never being accepted for residency.¹⁰² In April 2008, a one-month extension was announced to this arrangement.¹⁰³

Related to the issue of admission is that of residence. In Jordan, many Iraqi refugees, including those registered with UNHCR; do not meet the criteria for obtaining a residence permit. To do so they must either invest in Jordanian business enterprises, be employed in fields deemed to be of national interest or prove they are able to support themselves. This means they are required to deposit what amounts to nearly US\$150,000 in a Jordanian bank and must maintain a sufficient balance (about half) to earn interest.¹⁰⁴

In Lebanon, in February 2008, the government introduced a regularization program to allow foreign nationals, including Iraqis, a three-month grace period in which to present themselves to the General Security Office with a sponsor in order to obtain a residency permit and/or a work permit, which is valid for one year. This scheme requires a fee of 950,000 Lebanese pounds (approximately US\$630) to clear the irregular status and an additional payment for the residency and/or a work permit. The sponsor must deposit US\$1000 as a guarantee.¹⁰⁵ While for most Iraqis in Lebanon the

⁹⁹ 'Rot Here or Die There', 2.

¹⁰⁰ While in March 2007 there were fewer than 100 Iraqi refugees in detention in Lebanon, by December 2007 this number had increased to over 600 as a direct result of the deteriorating security situation in the country. Half of these refugees were detained beyond the duration of their initial sentence. Detention conditions in Lebanon are poor; prisons are overcrowded, health is substandard and prison violence targeting Iraqis was often reported. There was, seemingly, no provision for judicial review of administrative detention, which had the effect of leaving detainees without any legal remedy. According to Andrew Harper, UNHCR protection challenges in Lebanon were the greatest in the entire region. In comparison, Syria and Jordan detained fewer than 50 Iraqis in 2007. Harper, 182.

¹⁰¹ 'Rhetoric and Reality,' n. 19.

¹⁰² UNHCR, 'Iraq Situation Update', March 2008.

¹⁰³ BBC, Jordan extends deadline for exempting Iraqis from residency fines, 17 April 2008.

¹⁰⁴ Patricia Weiss Fagen, 'Iraqi Refugees: Seeking Stability in Syria and Jordan', (Institute for the Study of International Migration: Georgetown University, 2007), 8. Accessible at: <http://isim.georgetown.edu/Publications/PatPubs/Iraqi%20Refugees.pdf> (accessed 4 September 2008).

¹⁰⁵ 'Iraqi Refugees: Seeking Stability in Syria and Jordan', 8.

cost and likelihood of finding a sponsor makes this arrangement a near impossibility, it is a positive step away from detention and *refoulement*. In Syria, while some Iraqi refugees have managed to obtain a temporary residence permit, the majority do not have residence permits.¹⁰⁶

Work permits and access to services

As Iraqis fall under the legislation applicable to foreigners and are considered guests in Jordan, Syria and Lebanon, the availability and enjoyment of the right to work has remained limited, often leading to their impoverishment. In addition, even though Iraqi children in Jordan, Syria and Lebanon have access to education, in practice this right is sometimes restricted on account of cost. With regards to access to health services in Syria, Iraqis can receive medical care, though at increasing cost, in Jordan medical care comes at a discounted rate whilst in Lebanon, medical care is costly.

As is the case with most foreigners, Iraqi refugees in Syria are not permitted to work. According to a November 2007 IPSOS survey, some 37 percent of those living in Syria said their main source of income was their savings,¹⁰⁷ while over 75 percent received financial support from relatives in Iraq. Though some Iraqi refugees in Syria work illegally, most do not and are threatened by the prospect of dwindling savings and imminent impoverishment.

In most cases, Iraqis in Jordan are not allowed to work and as in Syria, according to the 2007 FAFO survey, the majority of Iraqis live on savings or money transfers from Iraq.¹⁰⁸ They are thus at risk of depleting their savings and are vulnerable to deteriorating security conditions in Iraq, which would likely affect the flow of transfers.¹⁰⁹ In the cases of those who do work illegally, they are to be vulnerable to low pay, exploitation and arbitrary dismissals.¹¹⁰ Regarding Lebanon, the 2008

¹⁰⁶ In Syria, foreigners (including Iraqis, which are recognized by UNHCR as *prima facie* refugees, but are not officially recognized as refugees by the state) must meet certain requirements in order to obtain a residence permit: written permission from the Ministry of Social Affairs and Labor; HIV test; residency certificate from the district's mayor; lease agreement or certification of ownership of property; valid passport or identity card. Syrian immigration legislation makes no allowance for special consideration to be given to those persons recognized by UNHCR as asylum seekers or refugees, but refugee certificates did aid some refugees in obtaining residency permits. Email correspondence with Senior Legal Officer, Middle East and North Africa, UNHCR.

¹⁰⁷ 'Second IPSOS Survey on Iraqi Refugees: Preliminary Results' (Damascus, November 2007). Accessible at: <<<http://10.9.35.107/cgi-bin/texis.exe/tscript/website/home/opendoc.pdf?tbl=SUBSITES&id=476267512>>> (accessed 4 September 2008).

¹⁰⁸ 42 percent of those surveyed in the 2007 FAFO survey receive such transfers from Iraq. FAFO, 'Iraqis in Jordan 2007, Their Numbers and Characteristics' (2007), 12. Accessible at: <<<http://www.fafon.org/ais/mideast/jordan/IJ.pdf>>> (accessed 4 September 2008).

¹⁰⁹ 'Iraqis in Jordan 2007', 3-4. The cost of shelter is another reason behind the depletion of Iraqi refugees' savings. As noted in 'Failed Responsibility', "Refugees who first rented accommodation in more expensive downtown areas of Amman, Damascus, and southern Beirut were forced, as a result of skyrocketing costs fuelled in part by their own demand for housing, to move to more peripheral areas. Significant numbers have ended up in Palestinian refugee camps or slums, including those in and around Damascus, in northeast Amman, and Beirut." 'Failed Responsibility', 5.

¹¹⁰ The cost of shelter is one reason behind the depletion of Iraqi refugees' savings. As noted by the recent report issued by the International Crisis Group, "Refugees who first rented accommodation in more expensive downtown areas of Amman, Damascus, and southern Beirut were forced, as a result of skyrocketing costs fuelled in part by their own demand for housing, to move to more peripheral areas.

regularization scheme mentioned in the section above allows Iraqis to get work permits, but at significant cost.

Iraqi refugees in all three countries have difficulty receiving treatment for the medical conditions from which they suffer. According to the recent International Crisis Group report, 57 percent of Iraqi refugees in Syria and 11 percent in Jordan suffer from chronic medical problems.¹¹¹ These problems include tuberculosis, diabetes, cancer, and cardiovascular disease. While medical care in Syria is virtually free for citizens and non-citizens, its limited capacity does not match their level of need.

While access to services has improved since 2007, the high number of people in need of specialist care for indicates many are not receiving the treatment they need.¹¹² In Jordan, Iraqi refugees have basic access to emergency health care. However, further medical treatment is not free and less than 10 percent of Iraqis in Jordan have medical insurance.¹¹³ Additionally, in theory, Iraqis can access private health clinics, but most cannot afford to do so. Similarly, Iraqi refugees do not have easy access to health care services in Lebanon, mainly because of the cost of treatment.

In some cases, minor medical problems are becoming serious because of the lack of treatment.¹¹⁴ This is most certainly the case concerning the psychological problems Iraqis face on account of the trauma many have suffered. According to a February 2008 study by the IOM, the growing need of psychosocial and psychological support for the refugee population is real in Jordan.

As with displaced Iraqis elsewhere, those in Lebanon are reported to be suffering high levels of emotional and psychological distress. A contributing factor to these psychological problems is that many Iraqis are victims of sexual and gender-based violence. Syria hosts a growing number of Iraqi survivors of sexual and gender-based violence. In 2007, UNHCR Syria identified about 400 cases of Iraqi female refugees who had survived sexual or gender-based violence, including rape, in Iraq. At least 200 survivors were also identified between January and May 2008.¹¹⁵ In addition, a significant number of Iraqi female refugees are subject to marital violence.¹¹⁶

With regards to education, Jordan, Syria and Lebanon have permitted Iraqi children to attend school. However, in Syria, only a relatively small proportion of Iraqi refugee children actually go to school; as of May 2008, 43,749 out of an estimated 200,000 school-aged Iraqi children were in primary and secondary schools.¹¹⁷ The Jordanian government has recently confirmed that all Iraqis will be allowed access to every type and level of public education,¹¹⁸ but Jordan's education sector already struggles to

Significant numbers have ended up in Palestinian refugee camps or slums, including those in and around Damascus, in northeast Amman, and Beirut." 'Failed Responsibility', 5.

¹¹¹ 'Failed Responsibility', 5.

¹¹² 'Rhetoric and Reality', 14.

¹¹³ 'Failed Responsibility', n. 5.

¹¹⁴ In addition, the substandard housing in which many Iraqis live, with leaking roofs and inadequate heating, contributes to poor health. International Rescue Committee, 'Five Years Later: a Hidden Crisis' (March 2008), 3. Accessible at: <<http://www.theirc.org/resources/2008/iraq_report.pdf>> (accessed 4 September 2008).

¹¹⁵ UNHCR, 'Syria Update', May 2008.

¹¹⁶ 'Rhetoric and Reality', 15.

¹¹⁷ 'Rhetoric and Reality', 15.

¹¹⁸ UNHCR, 'Iraq Situation Update', March 2008.

accommodate the 24,000 Iraqi refugee children it currently schools. In Lebanon, as of February 2008, 40 percent of Iraqi children between the ages of six and seventeen could not attend school because their families could not afford uniforms or supplies or needed to have children working to boost the family income.¹¹⁹ Cost is also a factor in Syria, where, although education is free, many parents cannot afford the cost of transport and supplies (uniforms and writing materials) and often need their children to work to earn desperately needed cash.¹²⁰

Likewise, in Jordan, children work to earn money for their families.¹²¹ In addition to cost, documentation has proven obstacle to education in all three countries. In Jordan Iraqi children are required to bring official school documents from Iraq and prove they have been absent from school for over three years.¹²² Similar requirements exist in Lebanon and Syria.

UNHCR's efforts to realize protection space

From UNHCR's perspective, regardless of the formal legal status conferred, the most critical elements for the protection of Iraqis arriving in neighbouring countries and seeking refuge are; access to safety and *non-refoulement*, non-penalization for illegal entry, free and unhindered access to public services, the availability of humanitarian assistance for people with special needs, permission to stay under acceptable conditions and the search for durable solutions, including through resettlement until such a time as conditions permit the voluntary repatriation to Iraq in safety and dignity.¹²³

Returning to the rights-based definition of protection provided earlier, as Syria, Jordan and Lebanon are often unable to meet their legal obligations concerning the above mentioned Iraqi refugee protection needs (or rights to be realized), UNHCR steps in to assist these states and engages in protection as an *activity*. To do so it relies on the protection space, which it essentially created in these countries through signing Memoranda of Understanding, in the case of Syria, informal understandings with relevant authorities. These MOUs and other agreements formalize the conditions under which UNHCR is to operate in Jordan and Lebanon. The MOUs allow UNHCR to conduct interviews to assess protection needs and to issue documentation.

Within this protection space, UNHCR often in collaboration with Iraqi refugees and along with its partners; local and international NGOs and/or government ministries and organizations in Jordan, Syria and Lebanon, engages in a series of responsive, remedial and capacity-building protection activities. Though I refer to other activities, for the purposes of this paper I have chosen to focus on six main responsive/remedial

¹¹⁹ International Organization for Migration, 'Assessment of Psychosocial Needs of Iraqis Displaced in Jordan and Lebanon' (February 2008), 11. Accessible at:

<<http://www.iom.int/jahia/webdav/shared/shared/mainsite/published_docs/brochures_and_info_sheet/s/report_psy_assessment.pdf>> (accessed 4 September 2008).

¹²⁰ 'Failed Responsibility', 5; and IPSOS Survey, 5.

¹²¹ 'Assessment of Psychosocial Needs of Iraqis Displaced in Jordan and Lebanon', 10.

¹²² 'Rhetoric and Reality', 20.

¹²³ UNHCR, 'Humanitarian Needs of Persons Displaced within Iraq and Across the Country's Borders: An International Response', Paper prepared for the International Conference addressing the humanitarian needs of refugees and internally displaced persons inside Iraq and in Neighboring Countries Palais des Nations Geneva, 17- 18 April 2007.

activities in which UNHCR is involved on behalf of Iraqi refugees in Jordan, Syria and Lebanon. These activities include; needs-assessment, resettlement, financial assistance, medical support, educational support, and legal assistance. All of these activities are interdependent, interrelated and work to ease the burden on the host countries. In so doing they reduce the probability of *refoulement* and penalization for illegal entry while increasing the likelihood that these countries will continue to allow Iraqis access to their schools and medical services. UNHCR is also engaged in capacity-building activities on behalf of Iraqis, but for reasons discussed below, only to a limited extent.

UNHCR's remedial/responsive protection activities

Identifying refugee needs is the first responsive activity in which UNHCR engages. It does so through a combined rights and community-based approach. Assessing the protection needs of the population in question and identifying any potential risk factors are among the key responsive/remedial protection activities to be undertaken. While its methods of assessing refugee needs overlap and can be somewhat complex, to assess refugee needs UNHCR typically relies on analyzing existing information¹²⁴, conducting participatory assessments¹²⁵ with refugees, interviewing government and other officials and completing pre-registration and registration interviews.

In general, needs are best thought to be assessed through a combination of these efforts. Upon determining Iraqi refugee needs, UNHCR analyzes these needs, paying particular attention to protection risks. It then, to a certain extent in cooperation with Iraqi refugees, designs a strategy to intervene to meet these needs. These protection strategies are intended to ensure that women, men, boys and girls of concern to UNHCR enjoy equal access to and enjoyment of rights.

The chief means through which UNHCR identifies the protection needs of Iraqi refugees is through its pre-registration and registration interviews of each applicant. During the pre-registration interviews, a series of needs-related questions are asked. Those applicants understood to be especially vulnerable are immediately referred to the unit in UNHCR best-suited to assist them. All others receive appointment slips for registration interviews.

In Syria, simply applying for a UNHCR registration appointment entails access to subsidized health care and eligibility for food and other assistance.¹²⁶ It has become increasingly apparent that most Iraqis approaching UNHCR for a registration appointment slip do so with the sole objective of receiving health care. They proceed

¹²⁴ Existing information may include: the socioeconomic, political and legal context; the population profile; standards and indicators reports; country reports; annual protection reports and other agency partner reports.

¹²⁵ Conducting participatory assessments works towards building partnerships with people of concern to UNHCR. These assessments are a critical part of ascertaining the needs of people of concern to UNHCR and as such, serve as a valuable protection tool. In 2006, UNHCR, WFP and UNICEF carried out a joint assessment of Iraqi refugee needs in Syria. In 2007, two participatory surveys of the Iraqi refugees in Syria were undertaken by IPSOS, a private survey company in close consultation with UNHCR. The surveys were based on a convenience sample of Iraqi refugees who presented themselves at the main registration center. The results of these surveys were used to gauge community attitudes in an attempt to predict future trends and challenges.

¹²⁶ UNHCR, 'Iraq Situation Update', August 2008.

to remain in Syria for a few weeks or months, until their treatment is finished and then return to Iraq. In an effort to counter this trend, UNHCR has engaged the assistance of one of its implementing partners, an international health organization, to set up a team in the registration centre to carry out a pre-screening of medical cases.

Detailed registration interviews have allowed UNHCR to fully document individuals, to identify their protection needs and potential durable solutions. While registration does not confer formal status recognized by these governments, it does entitle vulnerable refugees to international protection and humanitarian assistance, with the possibility of a small number being accepted for resettlement.¹²⁷

Though the MOUs between UNHCR and Jordan and Lebanon are unrealistic when it comes to the time frames for resettling refugees, UNHCR has engaged in constructive dialogue with the Jordanian and Lebanese authorities to prevent the deportation and detention of Iraqi refugees and to ensure that their basic protection needs are met. As a result, in Lebanon, Syria and Jordan, although a formal policy was not issued, authorities demonstrated a certain level of flexibility not to arrest UNHCR-document holders.

The very nature of the urban refugee caseload has meant that in general, Iraqis with protection needs must come forward themselves in order to receive assistance. However, requesting assistance is problematic as it is seen by many as dishonourable and demeaning to their family name.¹²⁸ Moreover, unaware or uncertain of their rights, they may fear being sent back to Iraq.

In an effort to reach additional vulnerable Iraqis, in Jordan and Syria UNHCR has established community centres, mobile registration and assistance teams, and offices outside the capital cities. These centres, teams, and offices aim to provide Iraqis not living in Damascus and Amman with more information about UNHCR, as well as access to UNHCR-funded food distribution initiatives and other assistance measures conducted in collaboration with UNHCR's partners.¹²⁹

UNHCR is also engaged in community-based outreach efforts to ascertain Iraqi needs in Jordan, Syria and Lebanon. In Syria, UNHCR has employed 52 female Iraqi refugee outreach workers to go out into their communities in and around Damascus to identify vulnerable Iraqis. These workers have thus far found more than 1,000 vulnerable Iraqis and remarkably have managed to assist 80% of these refugees on their own. This effort has resulted in both the empowerment of the female outreach workers and a reduced burden on UNHCR. This program is expected to be enlarged in the coming year.

Another means through which UNHCR has used a community-based approach to identify Iraqi needs is through participatory assessments, which work towards

¹²⁷ As local integration into a host country is not an option and at present UNHCR advises against voluntary repatriation to Iraq, for the most vulnerable refugees, for the moment resettlement is the only viable durable solution.

¹²⁸ Harper, 182.

¹²⁹ In Syria UNHCR is registering Iraqis (and providing assistance) in Aleppo, Hassake, Abu Kamal and Deir Ezzor. UNHCR estimates that there are some 55,000 Iraqis residing outside Damascus. In Jordan outreach teams travel to areas outside Amman to identify families who in many instances are afraid to approach UNHCR, 'Iraq Situation Update', April – May 2008.

building partnerships with people of concern to UNHCR. In 2006, UNHCR, WFP and UNICEF carried out a joint assessment of Iraqi refugee needs in Syria. In 2007, two participatory surveys of the Iraqi refugees in Syria were undertaken by IPSOS, a private survey company in close consultation with UNHCR.¹³⁰ In Jordan, UNHCR has a Multi-Functional Team dedicated to conducting participatory assessments and identifying protection gaps. In Lebanon UNHCR, in collaboration with its implementing partners has undertaken a series of participatory assessments, which included meetings with Iraqis.

For Iraqi refugees for whom resettlement has been identified as an appropriate durable solution, UNHCR works to resettle them to a third country. UNHCR selects the most vulnerable refugees for resettlement using a list of eleven specific vulnerabilities laid out in its policy on the resettlement of Iraqi refugees.¹³¹ In 2007 and 2008, resettlement emerged as a powerful protection tool for refugees in Jordan, Syria and Lebanon. As stated in UNHCR's 'Refugee Resettlement: Performance Outcomes 2007 and Global Projections 2009':

UNHCR's Iraq resettlement policy is one element of a wider protection strategy for Iraqi refugees and is intended to provide immediate solutions to persons with specific vulnerabilities, while at the same time leveraging greater protection and tolerance for the non-resettled refugees by demonstrating genuine international burden-sharing.¹³²

UNHCR emphasized the importance of resettlement as a tool of burden or responsibility-sharing in the international conference UNHCR held addressing the humanitarian needs of Iraqi refugees and internally displaced persons (IDPs) in April 2007. This conference brought worldwide attention to the Iraqi refugee and IDP crisis. It allowed the countries hosting Iraqis to be given credit for their hospitality and UNHCR to be seen as acting as an advocate on these countries' behalf.

Largely as a result of the conference, countries which typically resettle refugees began to increase the number of places made available for resettlement, while countries without a history of resettlement activities developed resettlement programs or strengthened existing programs, enabling the resettlement of Iraqi refugees on their territories.

For non-resettled Iraqi refugees, UNHCR has engaged in assistance measures both directly and through partnerships. Like resettlement, these protection measures go beyond achieving immediate protection needs to relieve strain on the host countries, expanding the protection space for Iraqi refugees.¹³³ Upon determining their protection

¹³⁰ The surveys were based on a convenience sample of Iraqi refugees who presented themselves at the main registration center. The results of these surveys were used to gauge community attitudes in an attempt to predict future trends and challenges.

¹³¹ UNHCR, 'Iraq Resettlement Policy'. In accordance with Executive Committee recommendations, women-at-risk are prioritized.

¹³² UNHCR, 'Refugee Resettlement: Performance Outcomes 2007 and Global Projections 2009' (2008), 272. In 2008 UNHCR anticipates the submission of 18,630 Iraqi refugees in Syria, Jordan and Lebanon for resettlement to third countries, a number that in 2009 UNHCR expects to jump to 83,323 Iraqis.

¹³³ If the following paragraphs seem weighted towards activities in Syria it is because the number of Iraqis in Syria is greater than in Jordan and Lebanon and thus the assistance provided by UNHCR and its partners is greater.

needs UNHCR has responded accordingly by engaging in the following assistance measures; the distribution of food and non-food items, cash assistance and educational and medical support.

With regards to food and non-food item assistance; on 22 July, UNHCR, the World Food Program (WFP) and the Syrian Arab Red Crescent (SARC) completed the fifth round of food distribution to 142,029 Iraqi Refugees in Syria.¹³⁴ Harper notes that if sufficient resources are provided, this figure will climb by the end of December 2008 to 362,800.¹³⁵ In addition to food rations, UNHCR provided non-food items to refugees receiving assistance for the first time. In Jordan, the Jordanian Alliance Against Hunger has distributed food and hygiene packs and in Lebanon, UNHCR has distributed food and non-food items to 3,800 Iraqi refugees.¹³⁶

As financial assistance proved to be an exceptionally pressing need, in Syria UNHCR set up a financial assistance program. A total of 10,533 families (30,533 individuals) received ATM cards to withdraw up to US\$100 per week with an additional US\$10 for each dependent.¹³⁷ The Office's target for 2008 is to have provided ATM cards to 13,200 families (37,700 individuals). In Jordan, a total of 3,757 cases/families received financial assistance during the month of May through CARE International, Mercy Corps and the Jordanian Alliance Against Hunger (JAAH).

In addition, UNHCR Jordan has signed a contract for cash distribution using ATM cards through Cairo Amman Bank. In Lebanon, 208 cases received one-time cash assistance from the office, while 299 cases receive such assistance on a monthly basis.¹³⁸ In addition to allowing Iraqis to meet their basic needs, financial assistance also has the goal of supporting the enrolment of Iraqi children in host country schools, by preventing the need for child labour.

As mentioned earlier, many Iraqis are in need of medical care. UNHCR is supporting more than ten primary health centres and Red Crescent clinics in Syria and Jordan.¹³⁹ This support is achieved in collaboration with the Syrian Arab Red Crescent and Ministry of Health in Syria and the Jordanian Arab Red Crescent, the Jordanian Ministry of Health and the Jordan Ministry of Planning and International Cooperation in Jordan.

In Jordan, UNHCR support facilitated medical consultations for 18,444 cases during the first seven months of 2008. In Syria over 312,000 medical referrals and consultations were made whilst in Lebanon, UNHCR facilitated medical consultations for 2,028 cases. In Syria UNHCR has also signed agreements with the Syrian Arab Red Crescent to support and manage new and existing clinics, expand medical services outside Damascus and support community outreach.¹⁴⁰

¹³⁴ UNHCR, 'Iraq Situation Update', August 2008.

¹³⁵ Harper, 180.

¹³⁶ UNHCR, 'Iraq Situation Update', August 2008.

¹³⁷ As Harper notes: "Unfortunately, the cost of a modest apartment in Damascus is US\$200 to US\$300 per month, so even this assistance is not sufficient to keep the most vulnerable out of poverty." Harper, 181.

¹³⁸ UNHCR, 'Iraq Situation Update', August 2008.

¹³⁹ Harper, 181.

¹⁴⁰ UNHCR offices in both Jordan and Syria are also very involved in SGBV and community services related activities. These activities include financial support to local institutions working with victims

In Lebanon, Syria and Jordan, UNHCR has made very significant efforts towards ensuring that Iraqi children are able to attend school. For instance, in Syria, in 2007 the UNHCR Education Program responded to the education needs of Iraqi children chiefly through its support of Ministry of Education and Syrian Arab Red Crescent activities. An agreement of over US\$20,000,000 was signed between the Ministry of Education and UNHCR Syria to absorb more Iraqi children into the already overburdened Syrian school facilities.¹⁴¹ UNHCR provided 20,000 school uniforms to Iraqi children for the 2007-8 school year and expects to outfit 30,000 children before the start of the following school year.¹⁴² UNHCR has also established 2 pilot Education Information Units at UNHCR-SARC Community Centres and has employed 15 Iraqi educational outreach volunteers.

These efforts which are intended to help Iraqi refugees obtain accurate information about formal and informal educational opportunities in their communities.¹⁴³ In Jordan, in addition to supporting kindergartens, vocational and drop-out programs, UNHCR is working with UNICEF on informational material about registration at public schools to be distributed to the Iraqi community. This effort is part of its campaign to increase enrolment in the 2008/9 academic year. UNHCR's educational efforts try to facilitate coexistence between Iraqis and local populations.

Lastly, UNHCR expanded its legal assistance to combat the arrest and detention of refugees based on illegal entry. This protection tool was particularly emphasized in Lebanon. In Lebanon UNHCR-assisted pro-bono lawyers represented refugee cases, the majority of which concerned illegal entry. UNHCR also bolstered detention monitoring in collaboration with NGOs and maintained a constructive dialogue with the General Security Office in Lebanon despite its reluctance to alleviate the detention problem.

By the end of the year, the General Security Office began expressing its readiness to put an end to the prolonged detention of asylum seekers and refugees as a result of pressure from UNHCR, NGOs and advocacy groups. In Syria, in a number of complex visa cases, a lawyer appointed by UNHCR has been successful in securing visa extensions by providing legal justification.¹⁴⁴

UNHCR's capacity-building activities

Given the very real and immediate needs of Iraqis in the context of the Iraq crisis, UNHCR has not placed as much emphasis on capacity-building measures as it has on remedial/responsive activities. As mentioned earlier, *capacity-building* action is the outermost layer of protective action as conceived of in the egg-framework; it is concerned with moving society as a whole towards protection norms which will

SGBV as well as direct financial and material assistance to the victims themselves. See: UNHCR, 'Iraq Situation Update', August 2008.

¹⁴¹ UNHCR has assisted in school construction and rehabilitation as well as the provision of support to informal and non-formal educational efforts. Its efforts work towards supporting primary, secondary and even tertiary education.

¹⁴² UNHCR, 'Iraq Situation Update', August 2008.

¹⁴³ Interview with UNHCR Iraq Support Unit Desk Officer, 15 September 2008.

¹⁴⁴ UNHCR, 'Syria Update', May 2008.

prevent or limit current and future violations and abuses.¹⁴⁵ Capacity-building activities in which UNHCR has engaged in the context of the Iraqi refugee crisis include nominal promotion of the adoption of the 1951 Convention and 1967 Protocol and their implementation at the national level, as well as the promotion of national refugee legislation and creating a public awareness of refugee-related issues.

Assisting Lebanon, Jordan and Syria in becoming parties to the 1951 Convention and the 1967 Protocol is an objective for UNHCR, but given the sizeable populations of Palestinian refugees these states host in addition to their current Iraqi “guests” it is unlikely that this objective will be met in the near future. As such its capacity-building efforts in this regard, are for the moment, limited.

Regarding domestic legislation, in Lebanon, the revision of the 1962 law continues to be the only viable option towards improving the legal conditions for the stay of UNHCR persons of concern in the country.¹⁴⁶ However, given the political situation in Lebanon it is unlikely that achievements are to be made in the near future. In October 2006, the Syrian government formed a committee to draft a national asylum law and members of this committee visited UNHCR headquarters to discuss the issue. However, at present it is not actively being discussed.

With regards to other capacity-building activities; UNHCR held a training program for journalists in Amman in June 2008 and sponsored a weeklong festival in Damascus in March 2008, which highlighted Iraqi culture.

Conclusion

The success of UNHCR’s efforts to create, maintain and expand the protection space afforded Iraqi refugees in Jordan, Syria, and Lebanon is, at its most basic level, measured by the extent to which these states have refrained from *refoulement*. While it is true that Jordan, Syria and Lebanon are, in general, not sending Iraqi refugees back to Iraq, a significant number of refugees have decided to return to Iraq.

As yet, there is no indication that those who have chosen to return have done so based on a positive reassessment of security conditions. Among returnees, unbearable conditions in exile appear to weigh as much if not more, than improved conditions in Iraq.¹⁴⁷ What does this say about the quality and effectiveness of UNHCR’s protection efforts in host countries?

In looking to UNHCR’s protection efforts, it is important to consider the degree to which UNHCR is undertaking a concerted effort to systematically determine the efficacy of their impact. Determining the success of a UNHCR protection activity does not stop at UNHCR’s delivery of a particular item or service. Generating a comprehensive picture of Iraqi refugees’ protection situation entails going a few steps further to determine the actual effect of a UNHCR provided item or service in the lives of Iraqi refugees. It also requires on-going assessments of UNHCR’s protection

¹⁴⁵ ‘Protection: An ALNAP guide for humanitarian agencies’, 42.

¹⁴⁶ UNHCR, ‘2007 Annual Protection Report: Lebanon’.

¹⁴⁷ UNHCR, ‘Internally Displaced Persons in Iraq’, Update 24 March 2008. Geneva: 2008. Accessible at: <http://www.unhcr.org/cgi-bin/texis/vtx/home/openssl.pdf?tbl=SUBSITES&id=47f243552> ; also, ‘Failed Responsibility,’ n. 8.

activities using both quantitative and qualitative indicators. Moreover, the input of those intended to benefit from these protection activities is a critical component of this process. To varying degrees UNHCR engages in such assessment measures in Syria, Jordan and Lebanon. Systematized and frequent assessments of UNHCR's protection activities incorporating qualitative indicators and followed by adjustments in these activities would no doubt prove invaluable towards enhancing the protection space afforded to Iraqi refugees in these countries.

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Radhouane Nouicer, Director of the Middle East and North Africa Bureau, UNHCR, 23 July 2008.

Yuka Hasegawa, Senior Desk Officer, Iraq Support Unit, UNHCR, 1 September 2008.

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