

## **IRAQ’S DISPLACED: WHERE TO TURN?**

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## INTRODUCTION

Refugees and internally displaced persons ["IDPs"] are hardly a new phenomenon for Iraq. Under Saddam Hussein's long and brutal rule forced displacement was a deliberate state policy.<sup>1</sup> The government used expulsions as a tool to subdue recalcitrant populations and punish political opponents. The two main victims of this displacement were the Kurds, Iraq's largest minority group which staged repeated rebellions, and the Shi'a majority, many of whom opposed the regime, including hundreds of thousands of Marsh Arabs.<sup>2</sup> The government also used expulsions to take over fertile and oil-rich land. From the Kirkuk region, Saddam Hussein uprooted more than 100,000 Kurds and also members of the smaller Turkmen and Assyrian (Christian) minorities in an effort to 'Arabize' the area. In all, when the United States invaded in 2003 close to one million people were internally displaced in Iraq.<sup>3</sup> Another one to two million Iraqis lived abroad fearing persecution should they return. In fact, Iraq was one of the largest refugee-producing countries in the world prior to the U.S. entry on the scene.<sup>4</sup>

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1. ROBERTA COHEN & JOHN FAWCETT, BROOKINGS INST., *THE INTERNALLY DISPLACED PEOPLE OF IRAQ* (2002), available at [http://www.brookings.edu/papers/2002/1120iraq\\_cohen.aspx](http://www.brookings.edu/papers/2002/1120iraq_cohen.aspx) (estimating that as a result of the displacement policy more than one million people remain forcibly displaced in Iraq today).

2. *Id.*

3. *See id.* (breaking down the total number of displaced to include 600,000 to 800,000 in northern Iraq and 300,000 in southern and central Iraq); *see also* JOHN FAWCETT & VICTOR TANNER, BROOKINGS INST., *THE INTERNALLY DISPLACED PEOPLE OF IRAQ 1* (2002), available at <http://www.brookings.edu/fp/projects/IDP/articles/iraqreport.pdf> (recognizing that little attention was paid to the displaced despite substantial international humanitarian efforts).

4. *See* U.S. COMMITTEE FOR REFUGEES, *WORLD REFUGEE SURVEY 2000* 185 (Immigration and Refugee Services of America 2000) (ranking Iraq third on a list of countries that have produced the greatest numbers of refugees and asylum seekers, with 568,000 people formally qualifying for refugee or asylum status and an estimated one to two million Iraqis living abroad with a well-founded fear of persecution in Iraq); *see also* U.S. COMMITTEE FOR REFUGEES, *WORLD REFUGEE SURVEY 2002* 170 (Immigration and Refugee Services of America 2002) (ranking Iraq ninth on a list of countries that have produced the greatest numbers of refugees and asylum seekers, with 300,000 people formally qualifying for refugee or asylum status and an estimated one to two million Iraqis living abroad with a well-founded fear of persecution in Iraq).

The U.S. invasion and the toppling of Saddam Hussein, far from resolving the problem, however, made it worse. It catapulted the country into a near civil war between Shi'a, who had largely been excluded by Saddam Hussein's regime, and Sunnis who until then had dominated the government.<sup>5</sup> The combination of intense and bloody sectarian violence, coalition military action, fighting among Shi'a militias and between the government and the Mahdi army, and generalized violence and criminality caused massive uprooting. In 2007, some 60,000 Iraqis were reported to be fleeing their homes each month.<sup>6</sup> New displacement diminished sharply in 2008 as overall security improved in Iraq.<sup>7</sup> But together with those who had been displaced earlier, some fifteen to twenty percent of the Iraqi population—or 4.7 million people out of a total population of 27 million—remained displaced. Of this total, 2.7 million (ten percent of Iraq's population) are inside the country while some 2 million more are abroad, mostly in neighboring countries.<sup>8</sup>

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5. See, e.g., Michael Howard, *Iraq Slips Toward Civil War After Attack on Shi'a Shrine*, THE GUARDIAN, Feb. 23, 2006, available at <http://www.guardian.co.uk/world/2006/feb/23/iraq.iraqtimeline1/print> (recognizing the near civil war that resulted from retaliatory attacks by Sunni and Shi'a Muslims on holy sites following the changing power dynamics caused by the U.S. invasion).

6. Andrew Harper, *Where to Now? Decreasing Options for Displaced Iraqis*, MIGRATION INFORMATION SOURCE, Sept. 2007, <http://www.migrationinformation.org/Feature/display.cfm?id=644> (noting Iraqi Red Crescent Organization estimates that the monthly displacement figure is actually closer to 100,000).

7. See IDP WORKING GROUP, INTERNALLY DISPLACED PERSONS IN IRAQ: UPDATE, Mar. 24 2008, [www.reliefweb.int/rw/RWFiles2008.nsf/FilesByRWDocUnidFilename/SHIG-7D6DBL-full\\_report.pdf/\\$File/full\\_report.pdf](http://www.reliefweb.int/rw/RWFiles2008.nsf/FilesByRWDocUnidFilename/SHIG-7D6DBL-full_report.pdf/$File/full_report.pdf) (recognizing that the rate of displacement has been significantly lower in 2008 but secondary displacement, particularly in Baghdad, has increased).

8. See *IOM Emergency Needs Assessments*, IOM BI-WEEKLY REPORT (International Organization For Migration, Geneva, Switzerland), Mar. 15, 2008, at 1, available at [http://www.reliefweb.int/rw/RWFiles2008.nsf/FilesByRWDocUnidFilename/LSGZ-7J4BDV-full\\_report.pdf/\\$File/full\\_report.pdf](http://www.reliefweb.int/rw/RWFiles2008.nsf/FilesByRWDocUnidFilename/LSGZ-7J4BDV-full_report.pdf/$File/full_report.pdf) (estimating the number of displaced within Iraq since February 2006 as 1,596,448 and the number earlier displaced within Iraq as 1,212,108, a total of 2.8 million internally displaced); see also *Statistics on Displaced Iraqis Around the World*, U. N. High Commissioner for Refugees, Sept. 2007, available at <http://www.unhcr.org/cgi-bin/texis/vtx/home/openssl.pdf?tbl=SUBSITES&id=470387fc2> (last visited Sept. 16, 2008) (estimating 500,000-700,000 refugees in Jordan, and 1.4 million in Syria); Kenneth H. Bacon & Kristele Younes, Op-Ed, *Outside and Inside Iraq's Border, a Forgotten Exodus*, WASH. POST, Jan. 20, 2008 (setting forth the number of refugees in the Gulf States, including 130,000 in Egypt, 50,000 in Lebanon, and 57,000 in Iran); *Iraqi Refugees: Can the U.S. Do More to Help?: Written*

Today's displaced Iraqis are not viewed as sympathetically around the world as those persecuted and uprooted by Saddam Hussein.<sup>9</sup> One reason is that they are seen as a problem largely of the United States' making and one that the United States should therefore "fix." America's failure to establish security in the country after its invasion or to prepare effectively for the country's reconstruction is considered a major reason for the chaos and violence that caused the mass displacement. As a result, many donor governments have been reluctant to fully share the burden of Iraq's displaced, believing the United States should foot most of the bill together with the government of Iraq, which over the past year has been able to accumulate considerable oil wealth. Nor have they been overly forthcoming in resettling Iraqi refugees or in offering funds to the governments of Jordan and Syria, which house most of the refugees.<sup>10</sup>

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*Statement Before the H. Comm. on Foreign Affairs, Subcomm. on International Organizations, Human Rights, and Oversight and the Subcomm. on Middle East and South Asia*, 110th Cong. (2008) (written statement of L. Craig Johnstone, Deputy High Commissioner, United Nations High Commissioner for Refugees), available at <http://foreignaffairs.house.gov/110/joh022608.htm> (stating that the level of displacement has stabilized and the overall rate of displacement has decreased). *But see* FAFO, IRAQIS IN JORDAN 2007: THEIR NUMBERS AND CHARACTERISTICS 3, <http://www.fafo.no/ais/middeast/jordan/IJ.pdf> (concluding, despite contrary reports, that only 450,000-500,000 Iraqis have fled to Jordan, perhaps indicating that the governments concerned have provided inflated figures to the international community).

9. *See No-Fly Zones: The Legal Position*, BBC NEWS, Feb. 19, 2001, [http://news.bbc.co.uk/2/hi/middle\\_east/1175950.stm](http://news.bbc.co.uk/2/hi/middle_east/1175950.stm) (last visited Sept. 26, 2008) (pointing out that the United States and its allies, for example, set up a no fly zone at the end of the Gulf War in 1991 to protect displaced Kurds from Saddam Hussein's wrath); *see also* GlobalSecurity.org, *Operation Pacific Haven Wraps up Humanitarian Efforts*, [http://www.globalsecurity.org/military/ops/pacific\\_haven.htm](http://www.globalsecurity.org/military/ops/pacific_haven.htm) (last visited Sept. 16, 2008) (describing a military operation in 1996-97 during which the U.S. rescued approximately 6,500 Kurds from northern Iraq).

10. *But see* KELLY O'DONNELL & KATHLEEN NEWLAND, MIGRATION POLICY INST., *THE IRAQI REFUGEE CRISIS: THE NEED FOR ACTION* 22 (2008), available at [http://www.migrationpolicy.org/pubs/MPI-The\\_Iraqi\\_Refugee\\_Crisis\\_The\\_Need\\_for\\_Action\\_011808.pdf](http://www.migrationpolicy.org/pubs/MPI-The_Iraqi_Refugee_Crisis_The_Need_for_Action_011808.pdf) (demonstrating that Sweden has been an exception, and anticipates taking in more than 25,000 refugees in 2006-2007, significantly more than its EU counterparts). *See also id.* (noting that from 2006-June 2007, Greece, the Netherlands, Germany and the UK took in more refugees than the United States, with numbers reaching 4,900; 3,327; 2,882; and 1,970 respectively as compared to 910 for the United States).

The Iraqi government's attitude toward its displaced population has contributed to this international unwillingness to extend needed support. Even though Iraq's budget surplus from oil revenues is projected to be \$79 billion by the end of 2008, the Shi'a-dominated government of Nuri Kamal al-Maliki has delivered only minimal amounts of funding to neighboring states for the refugees.<sup>11</sup> Some believe it is because many of the refugees are Sunni and Christian or because the refugees humiliated the government by departing. Still others argue that support for the refugees will discourage their returning home. Nor has the government been forthcoming with support for its internally displaced population, again dampening other countries' willingness to contribute.

The U.S. government's fear of terrorism after September 11 has also cast a shadow of suspicion over Iraq's displaced. Alarm bells are constantly raised that some Iraqi refugees could be associated with terror cells, and others could become potential terrorists if they remain displaced for long periods without assistance.<sup>12</sup> Although the U. N. High Commissioner for Refugees ("UNHCR") has identified up to 100,000 vulnerable Iraqis for resettlement, the Department of Homeland Security ("DHS") has subjected them to such intense screening that resettlement has been excruciatingly slow and the number admitted small—some 12,000 who fled since 2003, with

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11. See Walter Pincus, *Iraq's Slow Refugee Funding has Ripple Effect; U.N. Says It May Scale Back Its Effort; Some Nations Have Withheld Payments*, WASH. POST, May 17, 2008, at A12 (underscoring that many donor countries have withheld funding for refugees as a result of the Iraqi government's meager efforts, providing only fifteen million dollars to Syria, two million dollars to Lebanon, and eight million dollars to Jordan); James Glanz & Campbell Robertson, *As Iraq Surplus Rises, Little Goes Into Rebuilding*, N.Y. TIMES, Aug. 6, 2008, at A1 (describing the expected windfall to the Iraqi government resulting from increased oil prices).

12. See DANIEL L. BYMAN & KENNETH M. POLLACK, BROOKINGS INST., ANALYSIS PAPER NO 11: THINGS FALL APART: CONTAINING THE SPILLOVER FROM AN IRAQI CIVIL WAR 5 (2007), available at [http://www.brookings.edu/~media/Files/rc/papers/2007/01iraq\\_byman.pdf](http://www.brookings.edu/~media/Files/rc/papers/2007/01iraq_byman.pdf) (recognizing that refugee camps are often breeding grounds for militia groups, regardless of whether they are under international control); see also Interview with Amelia Templeton, Refugee Policy Analyst, Human Rights First, by e-mail (Mar. 3, 2008) (explaining that the Department of Homeland Security has expressed the fear that "terrorists will seek to infiltrate" the resettlement program if procedures are weakened and large numbers are put in the pipeline).

most admitted in 2008.<sup>13</sup> The extensive delay even prompted the U.S. Ambassador to Iraq to complain to Washington about the failure to expedite resettlement for the Iraqis who are at risk because they worked for the U.S. government.<sup>14</sup> By contrast, the victims of Saddam Hussein have fared much better in gaining admission to the United States; in the past, roughly 37,000 Iraqi refugees fleeing that regime resettled in the United States.<sup>15</sup>

Neighboring states, which to their credit have taken in up to two million Iraqis, also share fears that the refugees could bring their home grown ethnic and religious struggles to their countries of asylum. In November 2005, three Iraqi nationals recruited by al-Qaeda entered Jordan and blew themselves up at Amman hotels killing sixty people.<sup>16</sup> Although this violent incident did not involve the “refugees” *per se*, Jordan subsequently began barring entry of Iraqi men from the ages of eighteen to thirty-five, and there have been repeated warnings that large numbers of Iraqi refugees could represent a security threat to the region.<sup>17</sup> Some argue that displaced

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13. Walter Pincus, *U.S. to Admit 17,000 Iraqi Exiles*, WASH. POST, Sept. 14, 2008, at A12.

14. See Spencer S. Hsu & Robin Wright, *Crocker Blasts Refugee Process*, WASH. POST, Sept. 17, 2007, at A1 (noting that “thousands of desperate Iraqis who have worked alongside Americans now find themselves the targets of insurgents and sectarian militias”). In FY 2007, the United States issued special immigrant visas for translators and interpreters to 429 Iraqi principal applicants plus their family members, and in FY 2008 issued visas to 318 principal applicants plus their family members as of April. Fact Sheet, U.S. Dep’t of State, Office of the Spokesman, U.S. Humanitarian Assistance for Refugees and Internally Displaced Iraqis (Apr. 15, 2008), <http://www.state.gov/t/pa/prs/ps/2008/apr/103623.htm> [hereinafter *Dep’t of State Fact Sheet*] (announcing further that new legislation would increase the number of visas available to Iraqis in immediate danger to 5,000 but that processing procedures for such visas remained unfinished).

15. Lawrence E. Bartlett, U.S. Dep’t of State, Bureau of Population, Refugees, and Migration, Statement at Georgetown University Panel Discussion on Iraq: The Human Cost of War (Mar. 21, 2007) [hereinafter Bartlett Statement] (claiming an upcoming expansion of the U.S. resettlement program to make up for the disparity between the Iraqis admitted from the mid-1970s through 2003, roughly 37,000, and from 2003-2007, 692).

16. Nir Rosen, *Iraq’s Jordanian Jihadis*, N.Y. TIMES, Feb. 19, 2006 (magazine), at 54 (noting that non-Jordanians were used in the attack to avoid infiltration by Jordanian intelligence authorities).

17. Thanassis Cambanis, *Exodus from Iraq Unsettles Mideast*, THE BOSTON GLOBE, Dec. 3, 2006, at A1 (describing the results of Jordan’s change of policy, in particular the roundup and subsequent deportation of Iraqi men).

men and women, desperate for funds, could easily fall prey to militant groups. In fact, the Iraqi refugee situation is often compared to the worst refugee case studies (e.g., Afghanistan) in which refugees paid and armed by third parties undertook *jihad* against their countries.<sup>18</sup>

The Palestinian refugee problem has further affected Iraqi refugees are viewed and at times has undermined a willingness to help the them. For sixty years, Arab countries have borne the brunt of the Palestinian refugee crisis and are therefore mindful of the consequences of accepting large numbers of refugees for long periods. One Middle East specialist, when speaking of Jordan, commented that “[a]dding another large refugee population could seriously undermine the viability of a key U.S. ally in the Middle East.”<sup>19</sup> Although both Jordan and Syria have been widely commended for admitting large numbers of Iraqis, Jordan began to restrict entry at the end of 2006 and Syria began to restrict entry in the fall of 2007.<sup>20</sup> It is feared that the two governments could in time deport the refugees back to Iraq or make life so untenable for them that they will have no choice but to return. By now, eight to twelve percent of the populations of Jordan and Syria are Iraqis.<sup>21</sup>

Particularly unacceptable to both governments is the entry of Iraqi Palestinians. Jordan, already seventy percent Palestinian because of the Palestinian influxes of 1948 and 1967, has refused entry to Iraqi Palestinians, while Syria since 2006 has sought to bar their entry as

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18. BYMAN & POLLACK, *supra* note 12, at 55-58 (describing the birth of the Taliban and al-Qaeda from Afghan refugees living in Pakistan).

19. Interview with David A. Korn, retired, State Department, in Wash., D.C. (Jan. 24, 2008).

20. See Cambanis, *supra* note 17 (detailing Jordan's policies cutting back the number of Iraqi refugees permitted to enter the state); see also PATRICIA WEISS FAGEN, IRAQI REFUGEES: SEEKING STABILITY IN SYRIA AND JORDAN 21 (2007), available at <http://isim.georgetown.edu/Publications/atPubs/Iraqi%20Refugees.pdf> (noting that while Syria has not closed its border with Iraq, it will implement new regulations governing entry and limiting the number of visas granted to certain groups of individuals).

21. See Bacon & Younes, *supra* note 8 (indicating that the influx of Iraqi refugees into Jordan is the second refugee crisis Jordan has faced and the resultant fears of the Jordanian kingdom of a “protracted refugee crisis”); *Syria: Warning of Looming Crisis as Iraqi Refugee Influx Continues*, IRIN, <http://www.irinnews.org/report.aspx?ReportId=72967> (warning of the potential social and economic crisis that may result from Syria's burgeoning Iraqi refugee population).

well.<sup>22</sup> After considerable negotiations, Syria did allow into a camp in its northeast those stranded on the Iraqi-Jordanian border, but other Palestinians were denied entry and remain in Al Tanf, a camp in a no-man's land between Syria and Iraq, as well as in a camp on the Iraqi side of the border.<sup>23</sup> Syria has now begun to deport hundreds of Iraqi Palestinians to Al Tanf.<sup>24</sup>

The perilous situation faced by more than four million displaced Iraqis is sometimes presented as a *temporary* problem, especially when filtered through the positive political prism of the Bush Administration. The return of tens of thousands of refugees since mid-2007 has been cited as evidence of an improved security environment, made possible by 'the surge' (the addition of 30,000 U.S. troops to the 130,000 already there).<sup>25</sup> But when analyzing the returns more closely, UNHCR found that most of the refugees returned because their resources or visas ran out in Syria and Jordan.<sup>26</sup> Moreover, many of those who returned could not reclaim

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22. See Eric Londoño, *Iceland Takes Palestinians Leaving Iraq*, WASH. POST, Sept. 9, 2008, at A15 (noting that the Syrian and Jordanian governments have turned Palestinian refugees away "out of concern that thousands would follow").

23. ASHRAF AL-KHALIDI, SOPHIA HOFFMAN & VICTOR TANNER, BROOKINGS INST., *IRAQI REFUGEES IN THE SYRIAN ARAB REPUBLIC: A FIELD-BASED SNAPSHOT 14-15 (2007)*, available at <http://www3.brookings.edu/fp/projects/idp/200706iraq.pdf> (noting that Palestinian refugees were allowed into Syria as part of a convoy organized by the United Nations High Commissioner for Refugees and the UN Relief and Works Agency).

24. Interview with anonymous UNHCR Official, by e-mail (Feb. 29, 2008).

25. See *Syria: Not Safe Enough for Iraqi Refugees to Return – UNHCR Chief*, IRIN, Feb. 14, 2008, <http://www.irinnews.org/report.aspx?ReportID=76738> [hereinafter *Syria: Not Safe*] (providing conflicting accounts of security in Iraq coming from the Iraqi government and the UN High Commissioner for Refugees); United Nations High Commissioner for Refugees, *Iraq Government Busses Refugees Home from Syria*, UNHCR, Feb. 14, 2008, <http://www.unhcr.org/cgi-bin/texis/vtx/iraq?page=news&id=474d996c4> (quoting Iraqi officials crediting the American troop surge with improved security in Baghdad).

26. See *Iraq-Jordan: Few Iraqis Returning Home*, IRIN, Dec. 9, 2007, <http://www.irinnews.org/report.aspx?ReportID=75771> (contrasting the opinions of Iraqi government officials that the return of refugees from Syria is the result of improved security with that of aid agencies who claim that the return is the result of increasingly inhospitable conditions in Syria, including stricter immigration rules and financial considerations); *Iraq-Syria: Starving to Survive: Iraqi Refugees Resort to Desperate Measures*, IRIN, Jan. 2, 2008, <http://www.irinnews.org/Report.aspx?ReportId=76062> (discussing the unsavory practices in which Iraqi refugees have felt compelled to engage, including prolonged fasting and prostitution, because they cannot otherwise afford to survive).



their homes for security reasons or found them damaged beyond repair. Nor could they find jobs or basic services. Some returned to Syria, while most others became displaced inside the country.<sup>27</sup> Iraqi government authorities have acknowledged that they do not have sufficient capacity for handling returning refugees.<sup>28</sup> One Middle East expert claimed that “[i]t would not be surprising if, 20 years from now, millions of Iraqis still lived outside their home country.”<sup>29</sup>

Taking into account the unique situation in which Iraq's refugees and IDPs find themselves, this article examines the problems facing the displaced, the different solutions being proposed and possible ways forward.

## I. THE REFUGEE CRISIS

The flight across borders of some two million Iraqis, especially in 2006-07, has been described as “the world's fastest growing displacement crisis”<sup>30</sup> and the largest in the Middle East since the Palestinian exodus. It is estimated that there are about 1 million Iraqi refugees in Syria, 500,000 to 700,000 in Jordan and more than 400,000 in other neighboring countries.<sup>31</sup> By the end of 2006, the

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27. Interview with anonymous UNHCR Official, by e-mail (Jan. 28, 2008).

28. See Abed Al-Samad Rahman Sultan, *An Unenviable Task*, FORCED MIGRATION REV., June 2007, at 16 (expressing an urgent need for technical and financial assistance to enable the Iraqi Ministry of Displacement and Migration to adequately discharge its duties); see also *Iraq: Parliament Committee Demands Fixed Budget to Aid the Displaced*, IRIN, Feb. 10, 2008, <http://www.irinnews.org/report.aspx?ReportId=76662> [hereinafter *Parliament Committee Demands Fixed Budget*] (underscoring the urgent need for a complete policy and budget to assist displaced Iraqis); *Iraq: More Government Money for IDP's, Refugees*, IRIN, Feb. 14, 2008, <http://www.irinnews.org/report.aspx?ReportId=76734> [hereinafter *More Government Money*] (discussing the Iraqi Parliament's proposal that between three and five percent of national oil revenues be devoted to the problem of displaced families).

29. Daniel Byman, *The Next Phase of the Iraq War*, SLATE, Nov. 15, 2007, <http://www.slate.com/id/2178065/>.

30. See generally KRISTELE YOUNES, REFUGEES INT'L, THE WORLD'S FASTEST GROWING DISPLACEMENT CRISIS (Mar. 2007), <http://www.refugeesinternational.org/content/issue/detail/9915> (outlining the problems faced by displaced persons inside Iraq and providing recommendations to improve the situation).

31. See *Bacon & Younes*, *supra* note 8 (recognizing that refugees have flocked to the major cities in the region, making it harder for them to be distinguished).

high numbers caused Jordan to close its doors while Syria in the fall of 2007 imposed visa restrictions to reduce the refugee flow.<sup>32</sup>

In neither Syria nor Jordan do refugees have a clear legal status. Neither government is party to the 1951 Convention Relating to the Status of Refugees (“Refugee Convention”),<sup>33</sup> nor does either recognize the rights to which refugees are entitled or the obligations signatory states have toward those in their territory. While both initially welcomed the refugees, their non-recognition of the Refugee Convention is now putting many of these same people in jeopardy, especially in Syria. The Refugee Convention, for example, provides that refugees have the right to work, including self-employment, and with treatment as favorable equal to the most favorable accorded to foreign nationals, but in Syria, where the refugees are considered tourists or guests, they are not officially allowed to work.<sup>34</sup> Although some specialized professionals, such as teachers and doctors, have been issued work permits, many work illegally or are unemployed as a result of Syrian policies.<sup>35</sup> Unable to support themselves and their families, and with depleted financial reserves, hundreds are now leaving each day.<sup>36</sup> The Refugee Convention further provides that

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32. *See id.* (reporting that the ability of Iraq's neighbors to handle such large numbers is close to breaking point, that Jordan estimates the cost of the Iraqi refugees within its territory to be one billion dollars a year; and that although Syria boasts the largest number of Iraqi refugees, visa restrictions imposed in October 2007 made it more difficult for Iraqis to enter Syria); *see also* Cambanis, *supra* note 17 (recognizing Jordan's wariness of sectarian strife spreading from Iraq as one of the reasons for the restrictions).

33. *See* States Party to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol, <http://www.unhcr.org/protect/PROTECTION/3b73b0d63.pdf> (last visited Nov. 12, 2008) (setting forth the 144 nations party to the Convention).

34. *See* U.N. Convention Relating to the Status of Refugees, July 28, 1951, arts. 17, 189 U.N.T.S. 150 [hereinafter Refugee Convention] (stipulating that signatory states must protect refugees' rights to seek wage-earning employment within a state territory on a level equal to the most favorable treatment accorded nationals of a foreign country).

35. *See* O'DONNELL & NEWLAND, *supra* note 10, at 13 (noting that the passports of Iraqi refugees are stamped upon entry into Syria, barring them from working).

36. Interview with anonymous UNHCR official, by e-mail (Feb. 29, 2008); *see also* Syria: Not Safe, *supra* note 25 (noting that, though the figure is disputed, the Iraqi Red Crescent has reported that nearly 45,000 Iraqis returned to Iraq in the four month period from September 2007 to December 2007).

refugee children shall enjoy elementary education just as nationals do.<sup>37</sup> Although Iraqis have free access to schools in Syria, in 2007, statistics show that enrollment in Syrian schools is a mere “35,000 out of an estimated 250,000 school-aged Iraqi children,” and many Iraqi families could not afford the required uniforms and school supplies.<sup>38</sup> Access to adequate health care is also limited even though Iraqis are provided with emergency medical and primary health care. Thirty-six percent of refugees registered with UNHCR in Syria had special medical needs.<sup>39</sup>

In Jordan, the refugees are in a precarious situation. Following the 2005 suicide bombings in Amman by Iraqi nationals, the government began to restrict entry and by 2007 had largely closed its doors, also rounding up and deporting some Iraqis. Treated as guests or sometimes as illegal immigrants, most Iraqis have been denied the right to work: “in May 2007, only [twenty-two] percent of Iraqi adults were employed.”<sup>40</sup> Only one-fifth of school-age refugee children were in public schools although all Iraqi children were theoretically given access to public education.<sup>41</sup> Refugees were able to access emergency treatment in public hospitals, but to receive continued treatment, they had to be residents.<sup>42</sup>

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37. See Refugee Convention, *supra* note 33, art. 37 (“The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.”).

38. See O'DONNELL & NEWLAND, *supra* note 10, at 13 (recognizing that many Iraqi refugee families are forced to choose between “sending their children to school or to work”); Interview with anonymous UNHCR official, *supra* note 36; AL-KHALIDI, HOFFMAN & TANNER, *supra* note 23, at 33-34 (recognizing that schools may turn children away if they fail to produce the required documentation).

39. Ron Redmond, UNHCR Spokesperson, Statement at Press Briefing on Iraq: Pressure on Safe Havens Inside and Outside Fuels Fears of Increased Internal Displacement (Oct. 23, 2007), available at <http://www.unhcr.org/cgi-bin/texis/vtx/iraq?page=briefing&id=471dc5653> (categorizing the special needs as including medical, children and women at risk, the elderly, and the disabled).

40. See O'DONNELL & NEWLAND, *supra* note 10, at 15 (noting the resentment among Jordanians caused by the influx of Iraqi refugees, which decreased wages throughout Jordan).

41. See Presbyterian Church in Canada, *Iraq: Assistance Needed for Internally Displaced People and Refugees*, PWS&D NEWSWIRE, Jan. 23, 2008, <http://www.presbyterian.ca/node/2557> (suggesting that this statistic is an improvement on past numbers of Iraqi children attending school in Jordan).

42. See AMNESTY INT'L, MILLION IN FLIGHT: IRAQI REFUGEE CRISIS 23 (Sept.

While Iraqi refugees have provided some benefits to their host countries (purchase of goods and services, additions to the job market), rising inflation and deteriorating economic conditions in Jordan and Syria have provided fertile ground for economic resentments to surface against them, overriding initial feelings of “Arab solidarity.” Schools and health services have become more crowded and apartments more scarce. Jordanians in particular have begun to blame Iraqis for a deteriorating quality of life due to higher prices, increasingly unavailable and expensive housing, inflation, and increased traffic and crime.<sup>43</sup> In Syria, many blame the refugees for the rise in unemployment, the higher cost of food, fuel and water, strains on electricity, and in particular, rent increases. As a result of the Iraqi influx, Syria’s government has had to spend more for public services and subsidies of goods such as bread, fuel, municipal water and electricity.<sup>44</sup>

It is unlikely therefore that Jordan or Syria will accommodate a long-term presence of Iraqis. Neither country has developed a plan to integrate Iraqi refugees. This makes return to Iraq the only serious option, even though most do not want to return<sup>45</sup> and the likelihood

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2007), <http://www.amnesty.org/en/library/asset/MDE14/041/2007/en/dom-MDE140412007en.pdf> (recognizing that private hospitals generally do not have residency requirements, but are often too expensive for Iraqi refugees).

43. See FAGEN, *supra* note 20, at 12 (underscoring that although the Jordanian government has worked to manage the strain on public services created by Iraqi refugees through public subsidies and additional personnel, it has been unable to keep up with the increased demand); see also Robert F. Worth, *Rising Inflation Prompts Unease in Middle East*, N.Y. TIMES, Feb. 25, 2008, at A1 (illustrating the inability of the Jordanian government to maintain public subsidy programs and the impact of the removal of a subsidy on fuel on the cost of food).

44. See IRAQI REFUGEES IN THE SYRIAN ARAB REPUBLIC, *supra* note 23, at 41 (reporting that, according to the Syrian Ministry of Foreign Affairs, the influx of Iraqi refugees caused “[t]he demand for bread [to rise] 35 percent, costing the state \$34 million,” and the increased demand for water cost Syria roughly \$7 million); see also ELIZABETH FERRIS & MATTHEW HALL, BROOKINGS INST., UPDATE ON HUMANITARIAN ISSUES AND POLITICS IN IRAQ 8 (July 6, 2006), available at <http://www3.brookings.edu/fp/projects/idp/20070706.pdf> (underscoring the increased costs to the Syrian government of public schooling and state subsidized goods resulting from the Iraqi refugee population); Andrew Harper, *Iraq: Growing Needs Amid Continuing Displacement*, FORCED MIGRATION REV., Dec. 2007, at 53 (noting that increased demand has overcome the ability of the Syrian government to meet the demand for electricity).

45. See *Iraq: UNHCR Concerned About Funding for Refugees, IDPs*, IRIN, Apr. 30, 2008, <http://www.irinnews.org/report.aspx?ReportID=77990> [hereinafter

of their finding resettlement in the industrialized countries is small.<sup>46</sup> For the time being, the security situation in Iraq is still sufficiently uncertain that the UNHCR has not revised the requests it made to the governments of Jordan and Syria to refrain from forcibly deporting refugees back to Iraq.<sup>47</sup> Among the groups unlikely to return are religious minorities subject to persecution, in particular Christians (representing some fifteen to twenty percent of the registered refugees).<sup>48</sup> Yet for Jordan and Syria to host many refugees for extended stays, they will need considerable international help. But even with more help, the governments in the region might not agree to accept long-term strains on their infrastructure and societies.

#### A. TERRORISTS OR VICTIMS?

Fears are often expressed that without adequate assistance the refugees in Syria and Jordan could become a source of terrorism and violence in the region. Iraqi specialist Daniel Byman, for example, has warned that the Iraqi refugee crisis could destabilize an already volatile Middle East.<sup>49</sup> Humanitarian advocates regularly bolster their arguments for providing aid to the refugees by pointing out the

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*UNHCR Concerned*] (highlighting a UNHCR survey that found that only four percent of the Syrian refugees surveyed plan to return to Iraq).

46. See O'DONNELL & NEWLAND, *supra* note 10, at 22-23 (recognizing that Iraqis seeking asylum in industrialized nations are constrained by the cost of traveling and the restrictive policies in industrialized nations, including visa and passport restrictions requiring refugees to acquire a passport in Baghdad).

47. See *Syria: Not Safe*, *supra* note 25 (highlighting comments made by UN High Commissioner for Refugees Antonio Guterres that Iraq remained too unstable to support returning refugees and Syria's subsequent pledge not to forcibly deport Iraqi refugees); see also *Jordan's King Meets Guterres, Pledges Continued Hosting of Iraqis*, DEUTSCHE PRESSE-AGENTUR (Hamburg, Germany), Feb. 12, 2008 [hereinafter *King Meets Guterres*] (emphasizing King Abdullah II of Jordan's commitment to supporting Iraqi refugees until the security situation in Iraq stabilized).

48. See Lourdes Garcia-Navarro, *All Things Considered: Archbishop's Slaying Rocks Iraq's Christian Minority* (NPR radio broadcast, Mar. 13, 2008), available at <http://www.npr.org/templates/story/story.php?storyId=88200212&ft=1&f=1001> (noting that despite not being involved in the conflict in Iraq, the Christian minority were targets of the violence and were portrayed as allies of American forces).

49. See *Byman*, *supra* note 29 (recognizing the impact of the Palestinian refugee crisis on the wars between Israel and its neighbors and cautioning that a similar outcome may result from a failure to address the Iraqi refugee crisis).

security consequences of not providing aid. As Elizabeth Ferris of the Brookings Institution warns, “[i]f the refugees do not receive sufficient support from the host governments and the international community, there is a very real danger that political actors will seek to fill the gap.”<sup>50</sup> Similarly, a UNHCR official pointed out that the state security agencies in Jordan and Syria “are aware that Iraqis are changing the character of their societies and fear that their presence may ignite sectarian and ethnic conflict.”<sup>51</sup> Given the explosive environment in the Middle East, such concerns bear heeding. The presence of more than half a million Iraqis in Jordan, a country of only six million people, could well have consequences for its domestic politics and security. Although most of the refugees are Sunni, roughly one quarter are Shi’a and some have been moving into militant neighborhoods.<sup>52</sup> In the case of Syria, “numerous sources confirm that both Sunni and Shi’a radical armed groups have people” in that country, with the Sunni Ba’athist resistance having the strongest presence.<sup>53</sup> An increasing number of “politically active, Islamist-oriented Iraqis” could pose a threat to the government’s secular rule.<sup>54</sup>

At the same time, it bears emphasizing that most refugees in Syria and Jordan have been the *victims* of violence and threats, not the

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50. ELIZABETH FERRIS, BROOKINGS INST., SECURITY, DISPLACEMENT AND IRAQ: A DEADLY COMBINATION 17 (Aug. 27, 2007), available at [http://www.brookings.edu/~media/Files/rc/papers/2007/0827humanrights\\_ferris/20070827.pdf](http://www.brookings.edu/~media/Files/rc/papers/2007/0827humanrights_ferris/20070827.pdf).

51. Harper, *supra* note 44, at 53.

52. *See id.* at 52-53 (noting that Shi’ites constitute less than twenty-five percent of Iraqi refugees in Syria and Jordan, while more than fifty percent are Sunnis); *see also* FERRIS, *supra* note 50, at 13 (highlighting reports of local NGOs that Iraqi refugees are increasingly moving into the Zarqa neighborhood of Amman, which is known to Jordanian media as “a cradle of Islamic militancy” and is the hometown of Abu Musab al-Zarqawi, the leader of al Qaeda in Iraq).

53. *See* AL-KHALIDI, HOFFMAN & TANNER, *supra* note 23, at 15 (noting that the presence of the Ba’athist resistance is widely acknowledged, from the U.S. government to the Arab media).

54. *See* FERRIS, *supra* note 50, at 15 (recognizing the historical security concern of the Syrian government with the growth of political Islam, including the use of military force to expel the Muslim Brotherhood from the state in 1982); *see also* Nir Rosen, *The Flight From Iraq*, N.Y. TIMES, May 13, 2007 (magazine), at 40 (recognizing that Syria has balanced its relationship with sectarian groups, but this balance may soon become untenable and may threaten the stability of the state).

perpetrators.<sup>55</sup> Further, it is not clear that those who had radical ties in Iraq will remain part of those organizations once out of the country. What might have been essential for survival in Iraq need not be continued in Jordan or Syria, so the argument that the refugees are potential security risks to their host countries must be carefully weighed against other factors:

- The refugees are not in camps, but dispersed in urban areas, mixed in with the general population where it would be far more difficult to militarize and manipulate their members.<sup>56</sup>
- In a country like Syria, the police apparatus is so controlling that it is unlikely that terrorist plots could be easily hatched. In Jordan, King Abdullah II has publicly warned that “we will never allow Jordan to become a staging ground for initiating problems within Iraq.”<sup>57</sup>
- The profile of the refugees is markedly different from that of refugee populations where violence and jihad became a serious issue. The mujahadeen from Afghanistan and the Hutu *genocidaires* from Rwanda, often cited as precedents, were imbued with the desire to overthrow or undermine the governments left behind (e.g., the Soviet dominated regime in Kabul and the Tutsi dominated government in Kigali).<sup>58</sup> The Iraqi refugees, by contrast, are mostly middle class and urban professionals who fled sectarian and generalized violence.<sup>59</sup>

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55. See AL-KHALIDI, HOFFMAN & TANNER, *supra* note 23, at 15-16 (recognizing that although there are Iraqi radical groups operating among Iraqi refugees in Syria, the majority of Iraqi refugees, both in Syria and in the other refugee-accepting states, are victims of the conflict).

56. See FERRIS, *supra* note 50, at 20 (noting that funding education and avoiding the creation of refugee camps ensures “alternative activities for young people who might otherwise turn to crime or militias”).

57. Interview by Asharq Al Aswat with King Abdullah II of Jordan, in Jordan (Jan. 23, 2007), available at <http://www.jordanembassyus.org/hmka01232007.htm>.

58. See Byman & Pollack, *supra* note 12, at 5-6 (discussing the origins of the mujahadeen from Afghanistan and the Hutu *genocidaires* from Rwanda and how these movements came to fruition from refugee crises); see generally STEPHEN JOHN STEDMAN & FRED TANNER, BROOKINGS INST., REFUGEE MANIPULATION: WAR, POLITICS, AND THE ABUSE OF HUMAN SUFFERING 57-134 (2003) (detailing how the motivations of the refugees and the support of the international community and the host state contributed to the militarization of refugees and continued violence in their home state).

59. See AL-KHALIDI, HOFFMAN & TANNER, *supra* note 23, at 45 (noting that

While many do not identify with the “new Iraq,” which since their departure has become more conservative, less secular, and dominated by Shi’a with ties to Iran, they do not fit the profile of people seeking to overthrow their government. In fact the profile of the refugees points more to a serious brain drain for Iraq than an insurgent threat. Since 2003, “[forty] percent of the country’s professional class has left the country,” including a disproportionate number of people with managerial and administrative backgrounds and fifty percent of its 34,000 medical doctors, while the number of teachers in Baghdad has fallen by eighty percent.<sup>60</sup> “Whereas less than [one percent] of Iraqis had a postgraduate education, nearly [ten percent] of refugees in Syria had advanced degrees, including [four and a half percent] with doctorates.”<sup>61</sup> To be sure, since 2006, less affluent and educated Iraqis have also fled to Syria and Jordan, but according to one study, the influx has not produced the kind of “generalized poverty, misery or despair among the Iraqi refugees” that could lead to jihad and violence.<sup>62</sup> According to a U.N. official who served in the area, refugees needing to

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146 of 192 Iraqi refugees interviewed were from the middle class).

60. See Elizabeth Ferris, Address: Iraq’s Displacement Crisis and International Response (Dec. 6, 2007), available at [http://www.brookings.edu/speeches/2007/1206\\_iraq\\_ferris.aspx?p=1](http://www.brookings.edu/speeches/2007/1206_iraq_ferris.aspx?p=1) (noting that the professional class “are most likely to have the means, will, and capabilities to remain outside their country”); see also Elizabeth Ferris, Address: Humanitarian Issues and Politics in Iraq (Feb. 14, 2007), available at <http://www3.brookings.edu/fp/projects/idp/20070706.pdf> (underscoring that the loss of such professionals will result in problems with reconstruction); News Release, World Health Organization, Violence Threatens Health in Iraq (Apr. 17, 2007), available at <http://www.who.int/mediacentre/news/releases/2007/pr15/en/index.html> (noting that the “government estimates that almost 70% of critically injured patients with violence-related wounds die while in emergency and intensive care units due to a shortage of competent staff and a lack of drugs and equipment”).

61. Michael Schwartz, *Iraq’s Tidal Wave of Misery: The First History of the Planet’s Worst Refugee Crisis*, TOMDISPATCH.COM (2008), <http://www.tomdispatch.com/post/174892>.

62. See AL-KHALIDI, HOFFMAN & TANNER, *supra* note 23, at 44-45 (noting that only 10% of the Iraqis interviewed were poor, but that percentage could rapidly change without international recognition of the problem of Iraqi refugees).



support themselves and their families have become “far more vulnerable to prostitution than to terrorism.”<sup>63</sup>

## B. THE U.S. ROLE

Many have looked to the United States to play the principal role in resolving the Iraq refugee problem. However, at a public forum at Georgetown University in March 2007, a representative of the State Department refused to acknowledge any special responsibility in this case.<sup>64</sup> In testimony before Congress in January 2007, Ellen Sauerbrey, then the Assistant Secretary of State for Population, Refugees and Migration, stated that the Iraqi refugees had become a “very top priority” for the United States, but expressed little urgency about expediting refugee resettlement.<sup>65</sup> As former U.S. Ambassador to the U.N. John Bolton explained it, sectarian violence, not American actions, created the refugee problem so it was therefore not the United States’ responsibility: “Our obligation . . . was to give them new institutions and provide security. We have fulfilled that obligation. I don’t think we have an obligation to compensate for the hardships of war.”<sup>66</sup>

Pressure from members of Congress, humanitarian and human rights NGOs, and the public has produced pledges by the Bush Administration to speed up resettlement. In fiscal year (“FY”) 2006 (October 1, 2005 to September 30, 2006), only 202 Iraqis were admitted, and in FY 2007 (October 1, 2006 to September 30, 2007), 1,608, and most of these were backlogged cases of Iraqis who had fled the Saddam Hussein regime. It was not until May 2007 that

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63. Interview with anonymous UN official, in Washington, D.C. (Jan. 19, 2008); see Katherine Zoepf, *Iraqi Refugees, in Desperation, Turn to the Sex Trade in Syria*, N.Y. TIMES, May 29, 2007, at A1 (describing women who engage in prostitution to support their families).

64. See Bartlett, *supra* note 15 (in the question period he said that the U.S. did not distinguish between the Iraqi refugees and other refugee caseloads).

65. See Rachel L. Swarns, *Senators Denounce Bush Policy Limiting Refuge for Iraqis*, N.Y. TIMES, Jan. 17, 2007, at A8 (blaming the time-consuming process of determining who is a refugee as a reason for the slow process of refugee resettlement); see also Kelley Beaucar Vlahos, *Iraq Translators Face Closed Door U.S. Immigration Policy*, FOX NEWS, Feb. 7, 2007, <http://www.foxnews.com/story/0,2933,250595,00.html> (noting that the U.S. Embassy in Baghdad is unable to handle the number of applications for resettlement it receives).

66. Rosen, *supra* note 54, at 74, 78.

refugees who fled post-war Iraq began to enter the United States. In FY 2008 (October 1, 2007 to September 30, 2008) the United States admitted 12,000 Iraqis, largely in response to the adoption by Congress of the "Refugee Crisis in Iraq Act," which seeks to expedite the entry into the U.S. of Iraqi refugees.<sup>67</sup> But to advocacy groups, the total falls "far short of needs."<sup>68</sup>

The resources made available have also been limited. In FY 2006, the U.S. contributed \$43 million for Iraqi refugees and IDPs, increasing this to \$171 million in FY 2007, while the needs in Jordan and Syria were estimated at more than \$2.6 billion.<sup>69</sup> After members of Congress and NGOs urged the U.S. to fund at least fifty percent of UNHCR's January 2008 appeal for \$261 million, the United States increased its share to \$95.4 million and added to its contributions to other international organizations, making for an overall total of \$208 million by April 2008.<sup>70</sup> But this starkly contrasted with the \$70 billion the U.S. appropriated for the military effort in Iraq in FY2008

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67. See O'DONNELL & NEWLAND, *supra* note 10, at 2, 19-20 (recognizing that the Act was an amendment to the Department of Defense Authorization Act passed by Congress in December 2007).

68. See Press Release, Refugees Int'l, U.S. Goals for Iraqi Refugees are Inadequate, Sept. 12, 2008 available at <http://www.refugeesinternational.org/press-room/press-release/release-us-goals-iraqi-refugees-are-inadequate>.

69. See Dep't of State Fact Sheet, *supra* note 14 (calculating the total funding that the United States spent on humanitarian assistance for refugees and IDPs in Iraq, as well as how much aid is allocated for international organizations and non-governmental organizations); Bacon & Younes, *supra* note 8 (reporting that the U.N. estimated that the U.S. spent about \$105 million in 2007 to accommodate Iraqi refugees while Jordan estimated that the cost of harboring Iraqi refugees is nearly \$1 billion a year); see also *US Contributes More Than \$125 Million to International Organizations to Aid Displaced Iraqis*, STATES NEWS SERVICE, Feb. 14, 2008 (reporting that the United States contributed \$46 million in humanitarian aid for IDPs and refugees in Iraq in January of 2008 and an additional \$125 million in February 2008).

70. See *US Contributes More Than \$125 Million*, *supra* note 69 (providing an itemized list of international organizations that will receive the additional humanitarian aid from the U.S. for IDPs and refugees, including the UNHCR, the United Nations Children's Fund, and the World Health Organization); Letter from Representative Alcee L. Hastings & Representative John D. Dingell to President George W. Bush (Jan. 22, 2008), available at <http://www.csce.gov> (follow "Newsroom" hyperlink; then follow "Press Releases" hyperlink; then browse Recent Press Releases for "January 2008"; then follow "Reps. Hastings and Dingell Urge Increased Funding for Iraqi Refugees" hyperlink) (communicating the Congressmen's view that the United States should fund at least half of the UNHCR's proposal for \$261 million in refugee assistance).

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and led members of Congress to call for more than \$1 billion for Iraq's refugees and IDPs in FY2009.<sup>71</sup>

As matters stand in the closing months of 2008, the United States can best help promote a solution to Iraq's displacement crisis by taking the following steps:

- Insist that the government of Iraq devote the resources and develop the plans for the safe and sustainable returns of the bulk of the refugees, and provide the training and guidance for it to do so. Although the government of Iraq has set aside funds to give free transportation and start-up money to returning families (a promise not always kept), and has been trying to promote the return of medical doctors, there appears to be no long-term planning or capacity to support those returning to Iraq. In fact, the UN reports relatively small numbers trying to return.<sup>72</sup> Some face threats and violence upon return, encounter problems in gaining access to basic services, and have to struggle to revive their livelihoods or find new sources of income.<sup>73</sup>
- Press the government of Iraq to adequately compensate neighboring states for sheltering Iraqi refugees beyond the \$25 million given in 2008.
- Mobilize U.S. and international resources to adequately help the refugees and ensure that Jordan, Syria, and other

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71. See Hastings & Dingell, *supra* note 70 (declaring that underfunding the humanitarian crisis in Iraq is both a moral failure of the United States and a security threat).

72. See UNITED NATIONS HIGH COMMISSION FOR REFUGEES, UNHCR GLOBAL REPORT 2007 306 (2008), available at <http://www.unhcr.org/home/PUBL/484908962.pdf> (stating that the absence of security and essential services in Iraq prevented UNHCR from promoting "repatriation" in 2007, although repatriation is helping a limited number of Iraqis).

73. See Press Release, International Organization for Migration, Tent Camp Assessment Reveals Grim Reality in Iraq (Aug. 15, 2008), available at <http://www.iom.int/jahia/Jahia/pbnAF/cache/offonce?entryId=18137> [hereinafter IOM Press Release] (describing deplorable health conditions and cultural factors that discourage Iraqis from choosing to live in tent camps); UNHCR Concerned, *supra* note 45 (providing UNHCR survey results that found that although many refugees may have contact with people still living in Iraq, they are unlikely to return permanently because of the general violence or because their homes, work and/or families were destroyed).

neighboring states receive the assistance needed for assuming the lion's share of the burden.

- Press Saudi Arabia, Kuwait, and the other Gulf States to admit refugees and to provide financial aid to Jordan and Syria.
- Work with Syria and Jordan to develop plans for the integration of those who can not, or choose not to, return home, with special attention paid to educational and employment opportunities.
- Take in greater numbers of refugees to the United States, including more Iraqis who worked for the United States, and urge other states to increase the refugee numbers they admit.

One reason the Bush Administration has failed to do more to help Iraq's refugees is that doing so would require an implicit admission that its policies have not produced peace and stability in Iraq but rather a refugee crisis. A change in administration will therefore doubtless be needed before a more constructive policy can be adopted. As a Presidential Candidate, Barack Obama expressed support for a large increase in humanitarian aid for the refugees to total \$2 billion but has not yet provided many policy details.<sup>74</sup> Some experts have proposed a massive resettlement program modeled after the one that brought hundreds of thousands of Vietnamese to the United States.<sup>75</sup> But this followed a defeat that no U.S. administration may be ready to acknowledge in Iraq. Although UNHCR has identified up to 100,000 Iraqis in pressing need of resettlement (they can neither remain safely in their host countries nor return safely to Iraq), leading Republican members of Congress have taken the position that "the last thing we want to do is to have people who are friendly to democracy . . . moving here in large numbers at a time when they're needed to build a new, thriving Iraq

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74. See Barack Obama, War in Iraq, <http://www.barackobama.com/issues/iraq/> (last visited Sept. 16, 2008) (expressing Obama's support for preventing a humanitarian crisis by contributing to neighboring countries, assisting the resettlement of IDPs, and prosecuting war crimes).

75. But see FAGEN, *supra* note 20, at 23-24 (noting that states in Southeast Asia were largely unwilling to host the refugees and pressed for resettlement, which contributed to the U.S. commitment to this option); see, e.g., Byman, *supra* note 29 (comparing the Iraqi refugee crisis to the refugee crisis following the 1948 Israeli war of independence).

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. . . . Now is the time that we should be calling on the refugees from Iraq to go home.”<sup>76</sup>

For Iraqis at risk because they worked for the United States, attention has focused on Operation Pacific Haven, carried out by the Clinton Administration in 1996-97 to remove 6,600 Kurds from northern Iraq whose lives were in danger for having worked with the United States.<sup>77</sup> The U.S. government successfully accelerated their screening and resettlement so that they could arrive (via Guam) in 90 to 120 days.<sup>78</sup> When the operation ended, the Department of Defense predicted that it would “undoubtedly be a role model for future humanitarian efforts.”<sup>79</sup> To date, the Bush Administration has given no consideration to this option, but a future administration would do well to revisit the program.

## II. THE IDP PROBLEM

The 2.7 million people internally displaced in Iraq serve as a constant reminder that the country, in many respects, is a dysfunctional state. The Iraqi government proved unable to prevent the forced displacement of people in Baghdad, its own capital, as well as in other urban centers. In fact, radical Sunni and Shi'a militias who drove the 2006-07 sectarian violence were tied to political parties, police and army units. The Ministry of the Interior is

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76. Walter Pincus, *House Panel Debates Iraq Refugee Quandary*, WASH. POST, Mar. 17, 2008, at A15 (quoting Rep. Dana Rohrabacher, ranking minority member of the Subcommittee on International Organizations, Human Rights and Oversight of the House Foreign Affairs Committee).

77. See News Release, U.S. Dep't of Defense, Office of the Assistant Secretary of Defense (Public Affairs), *Operation Pacific Haven Wraps Up Humanitarian Efforts* (Apr. 15, 1997), <http://www.defenselink.mil/releases/release.aspx?releaseid=1218> (announcing the successful conclusion of a 218-day operation in which Kurdish evacuees were brought to Guam and provided with medical care and clothing to prepare them for assimilation into the United States).

78. See *id.* (comparing the expedited asylum procedure used for Kurdish evacuees to the typical asylum process, which can take from six months to two years per individual).

79. See *id.* (quoting Joint Task Force Operation Pacific Haven commander Major General John Dallager); see also George Packer, *The Guam Option*, THE NEW YORKER, Nov. 9, 2007, available at <http://www.newyorker.com/online/blogs/georgepacker/2007/11/the-guam-option.html> (challenging the Bush Administration to copy the Kurdish relocation program despite the negative publicity that might arise).

still widely reported to be infiltrated by Shi'a militias, which assaulted and expelled people from their homes, sometimes in police uniforms.<sup>80</sup> In such a political environment, it is not surprising that the government has failed to exhibit the will, resources or skills to deal with the needs of the displaced. In the Ministry of Displacement and Migration, it is not unusual to find staff that sees the displaced only from the perspective of their own ethnic or religious group.<sup>81</sup>

More than 1.5 million of Iraq's IDPs were uprooted following the February 2006 bombing of the al-Aksari Shi'a shrine in Samarra.<sup>82</sup> Although the sectarian violence had started earlier, once Shi'a restraint ended, the violence accelerated and sectarian-induced displacement sharply overtook the displacement caused by military operations, generalized violence, and the expulsions from the Saddam Hussein period.<sup>83</sup> Shi'a and Sunni militias systematically and purposefully began to intimidate, harass, kill and expel people of the opposite ethnicity from their neighborhoods in order to gain control over those areas and expand their power base. The result has been an Iraq increasingly fragmented along religious and ethnic lines, with segregated areas in Baghdad and other urban centers.

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80. See ASHRAF AL-KHALIDI & VICTOR TANNER, BROOKINGS INST., SECTARIAN VIOLENCE: RADICAL GROUPS DRIVE INTERNAL DISPLACEMENT IN IRAQ 13 (2006), available at [http://www.brookings.edu/fp/projects/idp/20061018\\_DisplacementinIraq\\_Khalidi-Tanner.pdf](http://www.brookings.edu/fp/projects/idp/20061018_DisplacementinIraq_Khalidi-Tanner.pdf) (discussing instances of Shi'a militias operating in police uniforms and the police force's inability to stop an attack on the Abu Hanifa mosque); Solomon Moore, *Ominous Signs Remain in City Run by Iraqis*, N.Y. TIMES, Feb. 23, 2008, at A1 (reporting that ethnic militia control police and incite ethnic violence even in homogeneous Iraqi cities, like Basra).

81. Interview with anonymous Ministry of Displacement and Migration staff, in Wash. D.C. (July 13, 2005).

82. See Patrick Cockburn, *Iraq is Disintegrating as Ethnic Cleansing Takes Hold*, THE INDEPENDENT, May 20, 2006, <http://www.independent.co.uk/news/world/middle-east/iraq-is-disintegrating-as-ethnic-cleansing-takes-hold-478937.html> (identifying the bombing of al-Aksari Shi'a shrine in Samarra as a major factor that edged Iraq closer to civil war and set off a wave of displacement as people fled from the violence).

83. See AL-KHALIDI & TANNER, *supra* note 80, at 7-8 (describing ruthless strategies employed by both Shi'a and Sunni radical groups, such as targeting youth, creating violence in mixed neighborhoods, and attacking the other's mosques); INT'L ORG. FOR MIGRATION, IRAQ DISPLACEMENT 2007 YEAR IN REVIEW 1 (2007) [hereinafter IRAQ DISPLACEMENT 2007 YEAR IN REVIEW], [http://www.iom.int/jahia/webdav/shared/shared/mainsite/media/docs/reports/2007\\_year\\_in\\_review.pdf](http://www.iom.int/jahia/webdav/shared/shared/mainsite/media/docs/reports/2007_year_in_review.pdf) (highlighting the spike in displacement that occurred following the February 2006 Samarra bombing and subsequent violence).

Sunnis and Shi'a pushed from their homes have mostly gone to areas where their group is in the majority while Christians have fled to parts of Ninewah province and Kurds to the northern Kurdish areas.<sup>84</sup>

At least forty percent of those who fled do not expect to return<sup>85</sup> since their displacement reflects deep-seated political divisions within the country. Indeed, the brutality used in uprooting them was intended to ensure that they would not return to their home areas.<sup>86</sup> Many, in fact, sold their homes or abandoned their property when they fled, indicating that they do not plan to return.<sup>87</sup> Given "the departure of entire families and, in some cases, communities," internal displacement "is likely to be long-term."<sup>88</sup> The more prolonged it becomes, the less likely substantial returns will occur.

Sizeable numbers of minority groups—Kurds, Christians, Sabeans, Turkmen, and Roma—as well as foreign nationals—Palestinians and Sudanese—were also uprooted by the sectarian violence. These expulsions came in addition to Saddam Hussein's earlier uprooting of more than 100,000 Kurds (and also Turkmen and

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84. See AL-KHALIDI & TANNER, *supra* note 80, at 21-26 (explaining the displacement of religious and ethnic groups from regions where they are not a majority, as well as where they went); see Interview with anonymous UNHCR official, *supra* note 24 (noting that in 2008, UNHCR found increasing numbers of Christians who fled to Ninewah fleeing again, this time abroad in search of safety); see AL-KHALIDI & TANNER, *supra* note 80, at 21-26 (recognizing that of the estimated 1.5 million IDPs uprooted since the Samarra bombing, many (560,000) are in the center of the country in Baghdad governorate, twenty-seven percent in the south, and fifteen percent in the northern governorates). Of the estimated million displaced before 2006, fifty-three percent are in the north and thirty-three percent in the south. *Id.*

85. See IRAQ DISPLACEMENT 2007 YEAR IN REVIEW, *supra* note 83, at 4, 7 (reporting that twenty-two percent of IDPs plan to remain in their current location, while seventeen percent plan to resettle in a third location, and two percent are undecided if they are going to return, or settle elsewhere); *Internal Displacement Update for Iraq*, UNHCR, Apr. 1, 2008, <http://www.unhcr.org/cgi-bin/texis/vtx/iraq?page=briefing&id=47f20efd6> (finding that as of April 2008, some 6,000 IDP families returned (two percent of those uprooted since 2006), mostly to areas where their communities were in the majority).

86. See AL-KHALIDI & TANNER, *supra* note 80, at 12-15 (demonstrating that the ethnic cleansing is neither spontaneous nor popular but carefully calculated to achieve political ends).

87. See FERRIS & HALL, *supra* note 44, at 2-3.

88. Harper, *supra* note 44, at 51.

Assyrians) from Kirkuk and its surrounding areas in order to 'Arabize' this highly fertile region, which contains from ten to twenty percent of Iraq's oil reserves. To reverse this ethnic cleansing, Kurds after the 2003 war began to return and try to reclaim their homes and land, but many found these to be occupied by others and became internally displaced again. Soon thereafter, Kurdish authorities began to reestablish control over the region, and some 100,000 Arabs fled or were pushed out by the Pesh Merga. Meanwhile, Kirkuk's Turkmen look to Turkey to protect their interests there. Because of the intensity of competing claims, Kirkuk has become a tinderbox of potential conflict and displacement.<sup>89</sup>

Most of Iraq's internally displaced persons, whether in the north, center or south, face extreme hardship, many with urgent needs for shelter, food, medicine, clean water, employment and basic security.<sup>90</sup> The decrease in sectarian violence since the summer of 2007 has reduced displacement but has not significantly improved conditions for the displaced.<sup>91</sup> In fact, in August 2008, the International Organization of Migration ("IOM") reported a "worsening" in the situation, estimating that more than seventy

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89. See AL-KHALIDI & TANNER, *supra* note 80, at 23-25 (accounting for the displacement of Kurdish, Christian, and third-country nationals, particularly Palestinians and Sudanese, by Sunni and Shi'a radicals); HUMAN RIGHTS WATCH VOL. 16, NO. 4(E), CLAIMS IN CONFLICT: REVERSING ETHNIC CLEANSING IN NORTHERN IRAQ 2-4 (2004) (providing context to the conflict between the Kurds and Arabs over Kirkuk and Mosul, which has been ongoing since the 1930s and has been largely ignored by the United States in Iraq); Michael O'Hanlan & Omer Taspinar, Op-Ed., *Time for Kurdish Realism*, WASH. POST, Feb. 9, 2008, at A15 (arguing that Kurds should promote regional stability in Iraq because sharing Kirkuk will better serve Kurdish, Iraqi, and American interests in the long-term); ELIZABETH FERRIS & KIMBERLY STOLZ, BROOKINGS INST., THE FUTURE OF KIRKUK: THE REFERENDUM AND ITS POTENTIAL IMPACT ON DISPLACEMENT 1 (2008), available at [http://www.brookings.edu/~media/Files/rc/papers/2008/0303\\_iraq\\_ferris/0303\\_iraq\\_ferris.pdf](http://www.brookings.edu/~media/Files/rc/papers/2008/0303_iraq_ferris/0303_iraq_ferris.pdf) (recognizing the contentious nature of Kirkuk's status and the potential for producing displacement).

90. See Sultan, *supra* note 28, at 17 (urging Iraqi refugees not to return to Iraq because internal aid distribution is so limited).

91. See IRAQ DISPLACEMENT 2007 YEAR IN REVIEW, *supra* note 83, at 4 (noting that returning IDPs often are subject to violence and maltreatment). THE INTERNALLY DISPLACED PEOPLE IN IRAQ, IRAQI RED CRESCENT ORGANIZATION UPDATE 28 3 (2007), available at [http://www.iraqredcrescent.org/IDP\\_28\\_update\\_EN.pdf](http://www.iraqredcrescent.org/IDP_28_update_EN.pdf) (detailing the challenges faced by IDPs in acquiring healthcare, education, and affordable shelter).



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percent of IDPs do not have regular access to food rations from the Public Distribution System; fourteen percent have no access to health care; thirty-three percent cannot obtain the medications they need; and thirty-one percent have found their property occupied by others.<sup>92</sup> While the vast majority of IDPs stay with families and friends that support them or rent homes, their situation has become precarious as rents increase, jobs grow scarce, and their hosts begin to run out of resources. At least twenty percent of the displaced can now be found in abandoned buildings, military bases, schools, parks, cemeteries, and soccer fields. One to two percent reside in tented camps, which lack basic services and tend to be in remote areas.<sup>93</sup> Although most of Iraq's eighteen governorates have set up camp areas for IDPs, by the beginning of 2008 they began to restrict the number coming into their areas. According to a UNHCR official, the displaced have been "left largely to fend for themselves."<sup>94</sup>

#### A. NATIONAL AND INTERNATIONAL RESPONSE

Thus far, the national government has not demonstrated that it has the skills, resources, or political will to take care of its displaced population or provide the security, access to basic services, and livelihoods needed for the return of large numbers to their homes. Government agencies have often been described as incompetent, negligent, corrupt, or sectarian in approach.<sup>95</sup> The Iraqi Minister of

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92. See IRAQ DISPLACEMENT 2007 YEAR IN REVIEW, *supra* note 83, at 6; see also IOM Press Release, *supra* note 73 (depicting the difficult life in tent camps due to a lack of basic services, unemployment, and overcrowding).

93. See Harper, *supra* note 44, at 51-52 (stating that the poor conditions in tent camps lead to violence, psychological stress, and, for children, malnutrition, and that though the percentage in actual tent camps is low, an additional twenty percent reside in collective settlements).

94. See *id.* at 53.

95. See *Iraq: NGOs Urge Action on Displacement Crisis*, IRIN, Aug. 13, 2008, <http://www.irinnews.org/report.aspx?ReportId=79798> (recognizing the failure of the Iraqi government to address the needs of IDPs and refugees and calling for the strengthening of Iraqi institutions); *Iraq: Government Negligent in Tackling Human Displacement*, IRIN, May 13, 2008, <http://www.irinnews.org/Report.aspx?ReportId=78172> [hereinafter *Iraq Government Negligent*] (reporting that the Iraqi government's inability to solve the IDP crisis fuels militia membership and can lead to terrorist activity); *Iraq: IDPs Demand Government Return Them Home*, IRIN, June 15, 2008, <http://www.irinnews.org/PrintReport.aspx?ReportId=78749> (quoting the head of Iraq's parliament's Displacement and Migration Committee,

Displacement and Migration explained that “[o]ur ministry, unlike others established when the state of Iraq was founded, is without any administrative legacy or institutional knowledge in the field of migration and displacement.”<sup>96</sup> He therefore has called for a local, regional and international response. In January 2008, the head of parliament’s displacement committee Abdul-Khaliq Zankana announced that the government would allocate additional funds for IDPs, but acknowledged that “a plan for using this money has not been drawn up yet.”<sup>97</sup>

Local authorities, neighborhoods and mosques have sometimes proven more effective in aid distribution although they can also be partisan and do not usually provide housing and jobs. Assisting these efforts at the community level have been local non-governmental organizations [“NGO”], like the Iraqi Red Crescent, which have provided assistance to large numbers of IDPs, but most have limited capacity, may suffer from mismanagement and have not been able to reach many of those in need because of lack of security.

Filling the void left by the government have been radical sectarian Sunni and Shi’a groups (the largest being the movement affiliated with Moqtada al-Sadr). Indeed, a Feinstein International Center study found that, “[i]ncreasingly, Iraqis are looking to militias and ad hoc neighborhood organizations as their option of first resort when seeking protection and assistance.”<sup>98</sup> Similarly, members of

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stating that the IDP crisis could go unsolved for another decade if the Iraqi government does not soon address it); KRISTELE YOUNES & NIR ROSEN, REFUGEES INTERNATIONAL, UPROOTED AND UNSTABLE: MEETING URGENT HUMANITARIAN NEEDS IN IRAQ 3, 6 (2008), <http://www.refugeesinternational.org/content/publication/detail/10570/> (blaming the Iraqi government’s inadequate response to the IDP crisis in part on the role that sectarian bias has in the distribution of aid).

96. Sultan, *supra* note 28, at 16-17.

97. See *Parliament Allocates More Money for IDPs*, IRIN, Jan. 24, 2008, <http://www.irinnews.org/report.aspx?ReportId=76404> (comparing the diversity and gravity of tasks for which the Iraqi Ministry of Displacement and Migration is responsible to the scant resources made available to it); *More Government Money*, *supra* note 28 (reporting that in February 2008 the government earmarked \$40 million for IDPs and refugees).

98. GREG HANSEN, FEINSTEIN INT’L CENTER, COMING TO TERMS WITH THE HUMANITARIAN IMPERATIVE IN IRAQ 8 (2007), available at [http://www.internal-displacement.org/8025708F004CE90B/\(httpDocuments\)/A070E41CF0D611D1C1257292005AB87F/\\$file/pdf\\_HA2015\\_Iraq\\_Briefing\\_Paper.pdf](http://www.internal-displacement.org/8025708F004CE90B/(httpDocuments)/A070E41CF0D611D1C1257292005AB87F/$file/pdf_HA2015_Iraq_Briefing_Paper.pdf); see YOUNES & ROSEN, *supra* note 95, at i, 2-4 (reporting that IDPs are joining militias to secure

Parliament have warned that continued inattention to the displaced could make them “easy prey to militias and armed gangs inside Iraq and possible recruits to intelligence services outside Iraq.”<sup>99</sup>

In July 2008, the government introduced a National Policy to Address Displacement<sup>100</sup> at a two-day conference that brought together central and local government officials, U.N. agencies and national and international NGOs. It commits the government to assist and protect IDPs, as well as refugees who return, without discrimination and promises to mobilize the resources required and strengthen government offices to improve the national response.<sup>101</sup> In particular, it promises to improve the access of the displaced to basic services, to help them find employment, to protect them from evictions and violence, to assist them reclaim their property, and to encourage reconciliation between the different ethnic and religious groups upon return.<sup>102</sup> Much of the policy, however, is in the form of recommendations that will need to be carried out. While it marks an important first step toward addressing displacement, the capacity and will of the government to implement its provisions will need to be demonstrated.

The international community has also been slow to recognize the humanitarian and security crisis inside Iraq. For years, the U.S. and Iraqi governments assumed that the domestic situation would stabilize and that the IDPs would return home. As a result, billions of dollars in international aid focused on recovery and development programs that couldn't be implemented because of the violence.

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food, clothing and security).

99. *Iraq Government Negligent*, *supra* note 95.

100. See Press Release, Ministry of Displacement & Migration and United Nations High Commissioner for Refugees, Improving the Rights of the Displaced (July 8, 2008), available at <http://www.uniraq.org/documents/Press%20release%20E%20UNHCR%208%20July%202008.pdf> [hereinafter Ministry Press Release] (announcing the formation of the *National Policy to Address Displacement*, intended to serve as a tool to facilitate the return of Iraqi IDPs and refugees).

101. *Id.* (asserting that the *National Policy to Address Displacement* is striving to create a safe return for 240,000 displaced Iraqi families).

102. See *id.* (quoting Daniel Endres, a representative of UNHCR in Iraq, as stating, “[b]y adopting this National Policy the Government of Iraq makes it clear that it wants to strengthen the protection of and assistance to displaced persons, and it indicates its willingness to work towards durable solutions for the displaced”).

More recently, a reassessment of donor priorities and U.N. programs has begun to take place.

Greater international humanitarian presence is one of the priorities. Unlike in most other crises, international humanitarian organizations and international NGOs do not operate directly on the ground in Iraq except in parts of the north. Since the 2003 bombing of the U.N. headquarters, most humanitarian organizations moved their international staff out of Baghdad to Amman where they have operated by "remote management."<sup>103</sup> In August 2007, the U.N. Security Council voted to expand the United Nations' mandate and presence in the country.<sup>104</sup> The U.N. Assistance Mission for Iraq is expected to work with the government in support of the delivery of humanitarian aid and to promote the safe and voluntary return of IDPs and refugees.

The extent, however, to which the U.N. will be able to increase its humanitarian presence throughout Iraq is not yet known. The decrease in violence since the summer of 2007 has not ended security threats against humanitarian staff, especially U.N. staff, who are often perceived as being allied with coalition forces. For the International Organization for Migration, "Iraq continues to be one of the most dangerous places in the world for humanitarian agencies to work."<sup>105</sup> Between March 2003 and late 2006, some eighty-one local and international humanitarian and human rights workers were

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103. *But see* Cecile Pouilly, *Difficult Delivery: The 'remote management' of aid in Iraq*, Vol. 146, Issue 2, REFUGEES, Apr. 2007, at 14 (quoting a UN refugee agency Iraqi employee as stating, "[r]emote management is not an option. It's a one-way street . . . [w]e don't have other options to choose from."); YOUNES & ROSEN, *supra* note 95, at 8 (providing examples of UN agencies that have local staff throughout Iraq, such as UNICEF and the International Organization for Migration).

104. *See* S.C. Res. 1770, ¶¶ 1-2, U.N. Doc. S/RES/1770 (Aug. 10, 2007) (declaring an extended mandate of twelve months in addition to other efforts intended to assist in reconciliation and reintegration efforts that foster an orderly return of Iraqi IDPs and refugees).

105. IRAQ DISPLACEMENT 2007 YEAR IN REVIEW, *supra* note 83, at 6; *see* Press Release, Office for the Coordination of Humanitarian Affairs, UN Officials Call for Improved Security and Access to Reach Iraqis in Need (Apr. 4, 2008), available at <http://www.reliefweb.int/rw/rwb.nsf/db900sid/LSGZ-7DDH6Y?OpenDocument> (stressing the importance of increasing security to facilitate humanitarian aid to Iraqis who lack essential goods and services).

killed there.<sup>106</sup> When U.N. Under-Secretary-General for Humanitarian Affairs John Holmes visited the area in April 2008, he did not go into Iraq for security reasons. At the same time, international agencies have begun to expand their staff on the ground.<sup>107</sup> It is hoped they will find that direct cooperation with local leaders, local communities, and local NGOs will prove an important way of increasing assistance and protection for IDPs and reinforcing local capacity.

## B. PROPOSED SOLUTIONS

Several solutions have been proposed to help Iraq deal with the IDP problem. These include creating camps or safe havens, carrying out population transfers, introducing property and compensation mechanisms, establishing a viable political system, and implementing the National Policy to Address Displacement.

### 1. *Camps or Safe Havens*

A solution put forward during the height of the sectarian violence was the creation of large scale IDP camps or safe havens to enhance access to the displaced, take the strain off host families and contain refugee flows.<sup>108</sup> Camps, it was argued, could provide public services

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106. See HANSEN, *supra* note 98, at 7 (recognizing that such deaths occurred despite a range of security strategies employed to protect aid workers).

107. See Tim Cocks, *Foreign Aid Workers Start to Return Home*, REUTERS, July 31, 2008 (reporting that the World Health Organization “quietly redeployed expatriate workers to Iraq” in July 2008); *Guterres Visits Iraq; Announces Strengthened UNHCR Presence*, UNHCR, July 5, 2008, <http://www.unhcr.org/cgi-bin/texis/vtx/iraq?page=news&id=47b99cd54> (citing Guterres’s February 2008 promise to boost UNHCR’s “Baghdad-based staff from two to five internationals”); *Iraq: Q&A – A day in the Life of Our Man in Baghdad*, UNHCR, July 4, 2008, <http://www.unhcr.org/cgi-bin/texis/vtx/iraq?page=news&id=486e36fc4> (detailing the routine of UNHCR’s Iraq representative in Baghdad); Press Release, United Nations Security Council, United Nations “Doing its Best” in Iraq in Midst of Painful National Transition, Under-Secretary-General for Political Affairs Tells Security Council (Apr. 28, 2008), *available at* <http://www.un.org/News/Press/docs/2008/sc9311.doc.htm> (noting that overall UN staff—non-humanitarian and humanitarian—has increased in Baghdad’s Green Zone and Erbil to nearly 200 people).

108. See BYMAN & POLLACK, *supra* note 12, at 44-45 (presenting the establishment of safe havens or “catch basins” along the Iraqi border as a way to “prevent the flow of dangerous people” across the border).

to the displaced and a modicum of security. But many compelling reasons dictated against setting up camps and would do so in the future. Camps or safe havens in today's Iraq could easily be taken over by one ethnic group or another and become targets of sectarian attack. Moreover, unless the camps became detention centers surrounded by troops or police, it would be difficult to protect the people inside. There is also the question of whose troops or police would do the protecting. The reliability of the army and the police in Iraq remains questionable, as there have been clear connections between these officers and the militias undertaking the sectarian cleansing. Camps could also become an easy source of recruitment for militias while their restrictions on human rights and freedom of movement would undermine IDP protection. Iraqis, moreover, strongly prefer to stay with extended families and friends, and only a small percentage inhabit camps. For these reasons, the Representative of the U.N. Secretary-General on the Human Rights of IDPs, Walter Kälin, called for camps to be used in Iraq as "a last resort."<sup>109</sup> He recommended alternative measures such as providing resources to families to allow them to construct additional rooms in their homes for the displaced or supporting communities to enable them to build housing for the displaced and expand public services for them.<sup>110</sup>

Special safe areas for Iraqi Christians have also been proposed. However, the recent attacks that have taken place against them have been within the area where Christians predominantly live (Ninveh province) and to where they fled to escape attacks in other parts of the country. It has further been suggested that a Christian semi-autonomous province become part of the Kurdish region where Christians would presumably be better protected, but this could risk their becoming caught up in a conflict over territory between the Kurds and the Arab central government. Clearly needed is

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109. See Walter Kälin, *A Tragedy of Increasing Proportions: Internal Displacement in Iraq*, FORCED MIGRATION REV., June 2007, at 15 (noting the shortcomings of refugee camps, including expense, risk of increased sectarian violence, and inadequacy in upholding cultural traditions).

110. See *id.* (advocating allowing IDPs to live within existing communities in order to avoid the dangers associated with IDP camps).

responsible governmental protection of Christians and other minorities.<sup>111</sup>

## 2. Population Transfers.

Another solution put forward at the height of the violence was organized population transfers so that Sunni, Shi'a and Kurds, with the help of the international community, could relocate, albeit voluntarily, to areas of the country where their ethnic group was in the majority. The population transfers were intended to accompany "a soft partition" of the country into Kurdish, Shi'a and Sunni areas.<sup>112</sup> Not surprisingly, this solution proved distasteful to many because it put the international community in the position of facilitating ethnic cleansing and of promoting mass displacement.

Historically, population transfers were viewed in a positive light as a means of lessening loss of life in communal conflicts, creating more cohesive societies, and promoting more stable border demarcations. Such exchanges were carried out after the first and second world wars and also on the Indian subcontinent in the late 1940s. But as human rights expert Felice Gaer has noted, "[t]hese mass population exchanges came with tremendous costs."<sup>113</sup> Millions

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111. Erica Goode & Suadad Al-Salhy, *A Spate of Violence in Mosul Forces Iraqi Christians to Flee Their Former Homes*, N.Y. TIMES, Oct. 11, 2008, at A10.

112. Compare EDWARD P. JOSEPH & MICHAEL E. O'HANLON, BROOKINGS INST., THE CASE FOR SOFT PARTITION IN IRAQ 3 (2007), available at [http://www.brookings.edu/~media/Files/rc/papers/2007/06iraq\\_joseph/06iraq\\_joseph.pdf](http://www.brookings.edu/~media/Files/rc/papers/2007/06iraq_joseph/06iraq_joseph.pdf) (suggesting that "the mass movement of populations is far preferable to insisting that people at risk stay put or return to their homes to prop up an illusion of political co-existence"), with Chaim Kaufmann, *Separating Iraqis, Saving Iraq*, 85 FOREIGN AFF. 4, July/Aug. 2006, at 156-60 (arguing that any partition would only be "de facto, because many Shiite leaders still hope that a unified country can emerge, and no regime in the Middle East would tolerate" Kurdish independence).

113. See Internal Memorandum by Felice Gaer of the Jacob Blaustein Institute for the Advancement of Human Rights, Resolving Conflicts and Upholding Human Rights Principles: Population Exchanges (Feb. 15, 2007) (on file with author); see also Rama Lakshmi, *India's Survivors of Partition Begin to Break Long Silence*, WASH. POST, Mar. 12, 2008, at A1 (noting that "[a]ccording to conservative estimates, about half a million Hindus and Muslims were slaughtered and 14 million displaced, and about 70,000 women were abducted and raped, leaving both countries with deep psychological and political scars"). Kenneth Hill et al. compiled an excellent study of the impact of partition. See generally Kenneth Hill et al., *The Demographic Impact of Partition in the Punjab in 1947*, 62 POPULATION STUDIES 2 (2008) (concluding that "Partition-related population

of people were uprooted and persons became “dispossessed, and sent penniless and homeless on what, for many, were death marches.”<sup>114</sup> Although billed as voluntary, they were not in fact because “[t]here was no individual buy-in, or consent, to the exchanges, and little in the way of compensation or restitution of property.”<sup>115</sup>

In the case of Iraq, population exchanges could easily turn into coerced actions, with transfers possibly leading to unemployment, homelessness, poverty, and vulnerability to violence. Nor would they be easy to accomplish in Iraq since thirty-five percent of marriages, at least in the past, were mixed and people of different ethnic and religious backgrounds were used to living and working together. Advocates of the idea have argued that population transfers, however painful, might be the only way to protect people from sectarian violence; moreover, if people asked to be relocated for protection, they should be helped.<sup>116</sup> Others have countered that population transfers overlook the right of IDPs to return to their homes once the threat to their safety has ended. In fact, there is a growing international consensus that displaced people should have the option not only of resettlement but of return to reclaim their property and even their homes. Population transfers would remove this choice.<sup>117</sup>

In deciding the future status of Kirkuk, however, population transfers could become a part of the solution.<sup>118</sup> The liabilities of the

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losses in the Punjab, either from deaths or unrecorded migration, were in the range of 2.3-3.2 million”).

114. See DAVID FROMKIN, *KOSOVO CROSSING*, 189-90 (Free Press 1999) (chronicling the population deportations in Eastern and Central Europe after World War II).

115. Gaer, *supra* note 113.

116. Samantha Power, Op-Ed, *Beating Genocide in Iraq*, L.A. TIMES, Mar. 5, 2007, at A15 (“If Iraqis tell us that they would feel safer in religiously homogenous neighborhoods . . . we should support and protect them in their voluntary, peaceful evacuation.”).

117. Cf. RHODRI C. WILLIAMS, BROOKINGS INST., *APPLYING THE LESSONS OF BOSNIA IN IRAQ: WHATEVER THE SOLUTION, PROPERTY RIGHTS SHOULD BE SECURED* (2008), available at [http://www.brookings.edu/papers/2008/0108\\_iraq\\_williams.aspx](http://www.brookings.edu/papers/2008/0108_iraq_williams.aspx) (relating one of Bosnia’s most important legacies, the general rule that “all those wrongfully displaced during the war had the right to return and reclaim their former homes and property,” to Iraq).

118. See Stephen Farrell, *U.N. Readies ‘Grand Deal’ to Resolve Iraq’s Dispute over Kirkuk*, N.Y. TIMES, Aug. 21, 2008, at A10 (noting that UN officials left open



approach should therefore be carefully studied so that steps will be taken to mitigate the negative effects.

### 3. *Property and Compensation Mechanisms.*

To encourage the return of IDPs and refugees to their homes as well as enhance their ability to resettle elsewhere, it is crucial that effective property restitution or compensation mechanisms be established for those forced from their homes since 2003.

For Iraqis who lost their land and property as a result of the policies of Saddam Hussein, mechanisms were created in cooperation with the Coalition Provisional Authority.<sup>119</sup> These procedures need to be extended to those more recently displaced and improvements made in how they work. The processing of claims for the victims of Saddam Hussein has taken far too long. By the end of 2007, the Commission for the Resolution of Real Property Disputes was able to decide only one-fourth of the claims submitted (some 37,000 out of 135,000).<sup>120</sup> There was also a low rate of enforcement. Other problems arose as well—people with informal or collective land claims (such as the Marsh Arabs) found little or no help in retrieving property; there was little legal clarity over whether *damages* to property were covered; and the requirement of formal documentation to prove ownership excluded too many claims, pointing to the need for more flexible interpretations and applications of the law.<sup>121</sup>

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the possibility that population transfers may be recommended for Kirkuk, although noting that such a move would be contentious in the region).

119. See Peter Van der Auweraert, Presentation at U.S. Dep't of State Symposium on Post Conflict Restitution in Arlington, Virginia (Sept. 6-7, 2007), available at [http://www.internal-displacement.org/8025708F004CE90B/\(http Documents\)/48FF3C144E17CBBCC12573DB00500C96/\\$file/Property+Restitutio n+in+Iraq+-+Peter+Van+der+Auweraert.pdf](http://www.internal-displacement.org/8025708F004CE90B/(http Documents)/48FF3C144E17CBBCC12573DB00500C96/$file/Property+Restitutio n+in+Iraq+-+Peter+Van+der+Auweraert.pdf) (examining the background and establishment of the CRRPD to address the property violations that occurred under Saddam's regime).

120. *Id.*

121. See *id.* (noting the necessity for reconsideration of thousands of decisions after changes to the CRRPD law and that "a significant number of successful claimants face difficulties in having their CRRPD restitution decisions enforced"); see also Norbert Wuehler, Presentation at Conference on Internally Displaced Persons – An Ongoing Dialogue, The Amar International Charitable Foundation, London (Mar. 1-2, 2006).

Property specialist Rhodri Williams, who worked on claims in Bosnia for the U.N., recommends that the Iraqi authorities make an announcement that the appropriation and destruction of property since 2003 will be reversed through the use of legal remedies. Iraq, he says, should stand behind the provisions in its Civil Code, which specify that “true title does not pass with property acquired unlawfully; that transfers of property made under duress are invalid; and that those wrongfully dispossessed are entitled to the return of their property as well as compensation . . . .”<sup>122</sup> Williams warns that the absence of a meaningful legal process of restitution in which hundreds of thousands are dispossessed could threaten long-term national and regional stability.<sup>123</sup>

In Bosnia, he notes, by 2004, families were able to reclaim approximately 200,000 abandoned homes, and as many as half of those displaced have returned to their former homes.<sup>124</sup> At the same time, the Balkans experience shows that many refugees and IDPs do not return to their home areas unless their ethnic group is in the majority.<sup>125</sup> Similarly, in Iraq, many of the refugees and IDPs may not return home, but being able to resolve their property claims may at least enable them to earn the means for reintegration elsewhere in the country. International organizations should be tapped to help set up such mechanisms in Iraq, in particular the “independent and impartial commission” called for in the government’s new National Policy on Displacement.<sup>126</sup> The international community’s long experience with property claims and the lack of capacity and frequent politicizing of state institutions in Iraq make this essential.

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122. Williams, *supra* note 117; *see, e.g.*, CODE CIVIL [C. CIV.] art. 135 (1951) (Iraq) (invalidating the disposal of property without the validation of the rightful owner); *id.* art. 114 (providing that contracts made under duress are void); *id.* art. 192 (requiring that usurped property be returned to its owner).

123. *See* Williams, *supra* note 117 (explaining that the “legacy of grievance and impoverishment” resulting from a lack of legal restitution remedies may pose a great “threat to long-term national and regional stability”).

124. *Id.* (underscoring that the reclaiming of property allowed refugees and IDPs to “get on with their post-war lives” by giving them economic autonomy).

125. *See* Deniz Sert, Property Rights in IDP Return and Resettlement (Feb. 2008) (unpublished Ph.D. dissertation, City University of New York Graduate Center) (on file with author).

126. *See* Ministry Press Release, *supra* note 100 (announcing the participation of the United Nations and the international community in the new Iraqi National Policy to Address Displacement).

#### 4. A Viable Political System.

The way Iraq evolves politically will heavily affect how displacement is addressed. The Bush Administration has by and large supported a unitary state as the best way of preventing Iraq from falling into chaos. The Shi'a led al-Maliki government, it believes, will ultimately transform itself into one of national unity.<sup>127</sup> Others, however, argue that the only way to preserve a unified Iraq is by the development of a "loose federalism." Vice-President-elect Joseph R. Biden, Jr., when chair of the Senate Foreign Relations Committee, called for a decentralized, federal state as the best political solution for Iraq.<sup>128</sup> Author Peter Galbraith has gone further, arguing in favor of partition and pointing out that a loose confederation has already become "the reality on the ground."<sup>129</sup> The existence of an autonomous Kurdish north, a Shi'a region in the south, a Sunni enclave in the center and west, with a weak national government in Baghdad constitutes a form of partition, which Galbraith considers "a better outcome than a Sunni-Shiite civil war."<sup>130</sup> Such a war would lead to a Shi'a victory given the preponderance of Shi'a in the country and the strong potential influence of Iran. What is needed instead, Galbraith argues, is a blueprint for working out the borders of the three ethnic areas, an arrangement for the sharing of oil revenues, and a formula to share or divide Baghdad. Opponents of partition, however, consider the reality on the ground more complex.

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127. Compare Peter W. Galbraith, *The Surge*, N.Y. REV. OF BOOKS, Mar. 15, 2007, at 4 [hereinafter Galbraith, *The Surge*] (recognizing that "Bush's strategy assumes that Iraq's Shiite-led government can become a force for national unity"), with Charles Krauthammer, *The Partitioning of Iraq*, WASH. POST, Sept. 7, 2007, at A21 (arguing a weak partitioned Iraq is not the best outcome and that it is "highly doubtful" that "[a] democratic, unified Iraq might someday emerge" through "ground-up reconciliation in the provinces").

128. See Joseph R. Biden, Jr. & Leslie H. Gelb, Op-Ed., *Federalism, Not Partition*, WASH. POST, Oct. 3, 2007, at A23 ("[Our plan] would hold Iraq together by bringing to life the federal system enshrined in its constitution. A federal Iraq is a united Iraq but one in which power devolves to regional governments, with a limited central government").

129. See Peter W. Galbraith, Op-Ed, *Make Walls, Not War*, N.Y. TIMES, Oct. 23, 2007, at A29 (contending that the plan advocated by Biden/Brownback "is irrevocably becoming the reality on the ground" in Iraq).

130. See *id.* ("Let's face it: partition is a better outcome than a Sunni-Shiite civil war."). See generally Galbraith, *The Surge*, *supra* note 127 (outlining the dangers attendant in an un-partitioned Iraq).

They point out that local militia leaders and sheiks have begun to control areas with shifting boundaries in which “Shi’a are often at odds with other Shi’a and Sunni at odds with other Sunni.”<sup>131</sup> Any move to partition the country into three parts, these experts contend, will not only have little bearing on what now exists but will meet with substantial resistance.

As of this writing, the Shi’a dominated government has been consolidating its strength over the center and south of the country. But whatever political system emerges, it should be in the interest of both the central and local authorities to initiate and carry forward programs to address the needs of internally displaced populations. Reintegrating IDPs is not only a humanitarian imperative but a strategic one. Large masses of people without the basic necessities of life are a threat to national as well as local security.

#### *5. Implementation of the National Policy to Address Displacement.*

Launched in July 2008, the policy sets forth the rights of the displaced and the government’s obligations toward these populations. It promises to ensure that IDPs are registered, can readily access basic services, obtain documentation, secure compensation for lost or damaged property, find employment and housing, receive pensions, and obtain assistance and legal aid when subject to human rights abuse.<sup>132</sup> To promote its implementation, it will need to be reinforced by:

- A comprehensive database to provide information about the needs of the displaced in all governorates, updated by regular countrywide assessments.
- The setting up of consultation mechanisms to achieve a close working relationship with IDPs, local communities and NGOs in applying the policy.

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131. See Thom Shanker, Op-Ed., *Divided They Stand, But On Graves*, N.Y. TIMES, Aug. 19, 2007, WK1 (quoting a deputy director at the International Crisis group warning “that Iraq ‘was not falling apart into two or three parts; the country risks total collapse’”).

132. See Ministry Press Release, *supra* note 100 (outlining the “need for coordination and cooperation between the different Ministries and the international community”).

- The active involvement and coordination of all relevant central and local government offices (e.g., displacement and migration, housing, health, education, finance, human rights and the judicial system) in implementing the policy and carrying out its recommendations.
- The assignment to government offices of staff in sufficient numbers and with adequate training to carry out the policy and apply the principle of non-discrimination in so doing.
- The training of police and military to protect displaced persons and humanitarian staff and hold accountable those involved in sectarian violence, forced displacement, the destruction of houses, the expropriation of land, and attacks on aid workers and their supplies.
- The allocation of adequate resources, in particular a fixed percentage of oil revenues, to address the needs of the displaced.<sup>133</sup> The Iraqi Parliament has urged the government to allocate \$1.5 billion for this purpose, and a parliamentary committee has recommended \$4 billion.<sup>134</sup> A substantial part of the funds should be given directly to displaced families, and resources should also be assigned to governorates, local communities and families hosting the displaced. Local NGOs should also be apportioned funds to build up their capacity in helping IDPs.
- The setting up, in collaboration with the U.N., of property restitution and compensation mechanisms for those uprooted since 2003, with special attention paid to Kirkuk where property claims are becoming explosive and where mechanisms instituted now could prevent violence and more displacement

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133. See *Parliament Committee Demands Fixed Budget*, *supra* note 28 (quoting the Iraqi Parliament's Displacement and Migration Committee's proposal that "3 to 5 percent of national oil revenues should be allocated" for assistance to refugees and IDPs).

134. See *Parliament Urges Government to Reallocate Development Money to Those in Need*, IRIN, Apr. 13, 2008, <http://www.irinnews.org/report.aspx?ReportId=77740> (quoting the head of the Iraqi Parliament's anti-corruption committee, advocating that the money "belongs to the Iraqi people and it must go to the Iraqi people"); and *Iraq: Parliament demands financial help for IDPs, refugees*, IRIN, Sept. 25, 2008, <http://www.irinnews.org/Report.aspx?ReportId=80581>.

later on. In addition, there should be more rigorous application of existing compensation laws applicable to claims prior to 2003.

- Evaluations of conditions for return throughout the country, and the setting up of special programs to help IDPs and refugees return or resettle once conditions are deemed safe and sustainable. Dialogue and reconciliation programs should be introduced in return areas, such as the joint rebuilding of houses and infrastructure by different ethnic and religious groups, and the strengthening of the judicial system to deal with issues of justice, reconciliation and human rights.

## CONCLUSION

Absent a political accommodation among Shi'a, Sunnis and Kurds, the return and reintegration of most of Iraq's displaced will be difficult to achieve. Although some steps have been taken on the political front,<sup>135</sup> progress has been limited on the major issues—the sharing of oil revenues; the development of an effective national police able to deal with sectarian and tribal violence (there appears to be progress with respect to the army); the disbanding of local militias; the implementation of a more decentralized form of government; and a decision on the future status of Kirkuk. Without movement on these issues, large scale violence could potentially resume in different parts of the country with substantial deaths and the increased displacement of people.

One clear test of whether Iraq will emerge as a functioning state is how it addresses the needs of the more than four million persons displaced inside the country and throughout the region. Government

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135. *See, e.g.*, Jason Gluck, *From Gridlock to Compromise: How Three Laws Could Begin to Transform Iraqi Politics*, United States Institute for Peace Briefing, May 2008, [http://www.usip.org/pubs/usipeace\\_briefings/2008/0319\\_iraqi\\_politics.html](http://www.usip.org/pubs/usipeace_briefings/2008/0319_iraqi_politics.html) (recognizing the importance of the amnesty law that would benefit Sunnis and a law aimed at better structuring the relationship between the central and provincial governments, including a compromise that grants seventeen percent of national revenues to the Kurdish regional government); ERIC OWLES, *PODCAST: THE PROVINCIAL ELECTION LAW* (N.Y. Times 2008), <http://baghdadbureau.blogs.nytimes.com/2008/09/26/podcast-the-provincial-election-law/?hp> (recognizing the impact of the provincial election law on increasing the representation of Sunnis in government).

action too often has been marred by sectarian preferences, a lack of urgency, and incompetence. The International Medical Corps has called for a “civilian surge” to develop the technical capacity and efficiency of the Iraqi government to deal with the humanitarian emergency.<sup>136</sup> The urgency felt by the displaced and their supporters was expressed by the chair of an Iraqi coalition of NGOs who called upon the government “to shoulder the majority of the responsibility” for Iraq’s IDPs and refugees.<sup>137</sup> The government’s new National Policy to Address Displacement, a welcome development, constitutes an important framework for addressing the needs of the displaced but it will require a great deal of national and international effort to implement its provisions, reinforced by greater portions of Iraq’s growing oil revenues. To date, the government has set aside only meager amounts of its \$70 billion budget for 2008 for refugees and IDPs.<sup>138</sup> Unless it is willing to tackle the humanitarian crisis inside the country and the refugee crisis and brain drain that it has caused, Iraq will not be able to work out effective responses to the larger issues of its internal stability and political future.

The United States must fully acknowledge the special obligation it has toward Iraq’s displaced, since its actions have spawned the overall crisis in Iraq. Assuming this responsibility will mean working with the government of Iraq to support its development of programs for the safe and sustainable returns of most refugees and IDPs. It will also mean sharp increases in its own financial support for refugees and IDPs as well as a willingness to bring into the United States larger numbers of Iraqis and to mobilize a more generous international response. America will also have to pay greater attention to how security will be provided for civilians once the United States draws down its troop levels. It remains unclear how

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136. *See Concerned Over Crisis – International Medical Corps Calls for Long-Term Assistance to Iraqis*, INT’L MEDICAL CORPS, Apr. 14, 2008, <http://www.imcworldwide.org/content/article/detail/1734/> (bemoaning a gap in the delivery of services that humanitarian aid workers could fill).

137. *See More Government Money*, *supra* note 28.

138. *Compare Iraq: Government Incentives for IDPs, Refugees to Return*, IRIN, June 3, 2008, <http://www.irinnews.org/Report.aspx?ReportId=78532> (reporting that “the Iraqi government has allotted . . . \$195 million to encourage [IDPs] and refugees to return to their homes), *with Vote Brings Iraqi Budget to Record \$70 Billion*, CNN.COM, July 8, 2008, <http://www.cnn.com/2008/WORLD/meast/07/08/iraq.main/index.html> (noting that Iraq’s total 2008 budget is now \$70 billion).

effectively Iraqi national police and army will be able to provide security for IDPs and returning refugees and contain radical militias should they resume propagating sectarian violence. This makes the option of an international or regional police force worth considering.

U.N. envoy Sergio Vieira de Mello, while dying in the rubble of the Canal Hotel bombing in 2003, urged that the United Nations not leave Iraq. It is time for the world community to heed his appeal and play a more engaged role in the reconstruction and development of Iraq, the return and reintegration of its displaced populations and its movement toward a more politically sound future.