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IRAQ (26)

15 April 1998

Dear Mr. Walker,

I have the pleasure to present, in the attached paper, UNHCR's position on a range of issues related to the outflow of Iraqis. The paper is the result of a consultative process among Divisions and Bureaux in UNHCR. The Office has considered the situation in Iraq, the neighbouring countries, and the countries of first arrival and transit in Europe.

A number of proposals are made which address the various aspects of the protection situation in these countries, in the hope that constructive efforts can be made to bring about realistic improvements.

UNHCR has addressed in particular the questions of internal flight alternatives and the return of rejected cases.

On the first question, UNHCR has now concluded, on the basis of a recently completed evaluation of the situation, that, as a result of a gradual stabilisation of the situation in northern Iraq, an internal flight alternative may be applied in certain cases. The situation is volatile and may change at any time; UNHCR continues to monitor developments carefully. The Office considers that there is no internal flight alternative for refugees from Government-controlled Iraq.

On the second question, UNHCR urges extreme caution in returning rejected asylum-seekers to Government-controlled Iraq. The Office would not object to the return to their places of origin in northern Iraq of asylum-seekers originating therefrom, who have been found through fair and efficient procedures not to be in need of international protection. This view is also based on the conclusions recently reached by the Office that the situation has sufficiently stabilised over the last several months to allow for such returns.

I hope you find this useful.

Yours sincerely,

Kerola Paul
Kerola Paul
Deputy Director
Bureau for Europe

Mr. Timothy Walker
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THE MOVEMENTS OF IRAQI ASYLUM-SEEKERS - POSSIBLE RESPONSES FROM THE PERSPECTIVE OF UNHCR

1. Executive Summary

This paper sets out UNHCR's concerns and recommendations with regard to current outflows of Iraqi asylum-seekers, refugees and migrants. It outlines the views of the Office on the reasons for the outflow and the character of those seeking asylum. It also considers to what extent Iraqis may find effective protection and durable solutions in intermediate countries, and the prospects for reducing spontaneous movements which are not protection-related from those countries towards Western Europe. It makes some specific suggestions to improve the situation in several of the concerned countries. The main conclusions are:

- The movement of Iraqis out of Iraq is a mixed motive movement. A significant proportion are refugees. A primarily 'control' response is therefore not justified.
- A limited internal flight alternative may be considered possible for some asylum-seekers from northern Iraq. There is no internal flight alternative for refugees from Government-controlled Iraq.
- The Office urges extreme caution in returning rejected asylum-seekers to Government-controlled Iraq. UNHCR would not object to the return to their places of origin in northern Iraq of asylum-seekers originating therefrom, who have been found through fair and efficient procedures not to be in need of international protection.
- Reception and protection possibilities in the region (Turkey, Jordan, Lebanon, Syria and Iran) are hardly available. With only one exception (and this is strictly limited in scope), these countries cannot be considered either asylum countries or safe third countries to which Iraqi asylum-seekers could be returned from other countries.
- Most East European countries cannot be considered countries of asylum nor can Iraqi asylum-seekers safely be returned to them after transiting.
- Significant protection problems remain in Central European countries, but with strengthened capacity-building assistance, some have the potential to become acceptable asylum countries and safe third countries in the near future.
- UNHCR advocates a response which focuses on strengthening protection possibilities in neighbouring countries and in 'transit' countries of Europe, on improving reception conditions in countries of first arrival and transit, on improving and making more efficient procedures for resettlement and family reunion, particularly from Middle Eastern countries, on implementing measures to promote better responsibility-sharing in considering asylum applications, and on moving towards a harmonisation of assistance measures and integration prospects across European countries.

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2. Dimensions of the Problem

There has been a rise in the numbers of Iraqi asylum-seekers in Western Europe in recent years. While in UNHCR's view this cannot be considered a mass influx, the increase has been particularly noticeable in a few States.

Between 1990-97, some 120,000 Iraqi nationals applied for asylum in Europe. A significant proportion (nearly 39,000 - 32%) arrived in Germany and in the Netherlands (24,500 - 20%). In 1997 some 36,000 Iraqi nationals applied for asylum in Europe (both West and Central) out of a total of 260,000 asylum applications. This represents 13% of the total number of applications.

Looking at the profile of Iraqi asylum-seekers arriving in EU countries but also at those in Turkey, it becomes apparent that the movement out of Iraq is a mixed motive movement. Some Iraqis move for reasons of economic hardship (UN sanctions) while others leave Iraq in search of international protection (from persecution, human rights violations). Iraqi asylum-seekers who can establish that they fled Iraq, or are unwilling to return there, owing to a well-founded fear of persecution for a 1951 Convention reason, should be recognised as refugees under that instrument. A sample survey carried out by UNHCR of the reasons given by asylum-seekers for leaving the country during the last ten months indicates that the claims are compatible with available country of origin information.

In the countries neighbouring Iraq, there is no evidence of an increase of Iraqi refugees comparable to that recorded in Europe. At the beginning of 1997, according to Government sources, Iran hosted some 600,000 Iraqi refugees (85% of the total number of Iraqi refugees worldwide); a number that has hardly changed over the past few years. Other countries in the region with sizeable Iraqi refugee populations are Yemen (approximately 30,000) and Syria (approximately 27,000). It should be noted that the majority of this refugee caseload left Iraq several years ago under very different circumstances from the present. During 1995 - 1997, the number of individual cases who applied for asylum to UNHCR offices located in the region (Jordan, Kuwait, Lebanon and Turkey) has remained stable at around 10,000 applications per year.

The influx of Iraqis into Turkey has also remained comparatively stable in the course of the last few years. UNHCR received 282,000 Iraqi asylum-seekers in 1995, 2597 in 1996, 2939 in 1997 and 466 in the first few months of 1998.¹⁰

3. The Causes of the Movement

The current regime in Iraq recently described by the Special Rapporteur on Iraq for the Commission on Human Rights as 'dictatorial' and 'totalitarian', will continue to provoke the departure of refugees. A wide-spread abuse of human rights is reported in a range of recent studies by human rights organizations. Freedom of thought, expression, religion, association and assembly, for example, are completely suppressed, and compliance with these restrictions is enforced through the threat and application of such measures as arbitrary arrest and detention, torture, disappearances, extra-judicial executions and indiscriminate killings. These violations of fundamental rights have their basis in political, religious and ethnic discrimination and / or are provoked by confrontation, perceived or

PUK released 75 and 67 POWs respectively, viewed by observers as a good sign of potential cooperation. The two parties have been cooperating on the implementation of UN Resolution 986, including a joint detachment at the UN in New York. It has now become apparent that these developments have contributed to an improved political and security atmosphere in northern Iraq, which has recently eased UNHCR's worries about internal flight alternatives and the return of rejected asylum-seekers.

4. Internal Flight Alternative

It is generally accepted that the notion of "internal flight alternative" may be used as grounds for denying recognition of refugee status if, considering all the circumstances of the case, it would be reasonable to expect that the refugee claimant should have sought refuge in another part of his/her country.

There is no internal flight alternative in Government-controlled territory for refugees from this part of Iraq.

Nevertheless, for those persons emanating from Government-controlled territory who have fled through northern Iraq, the circumstances surrounding the case might indicate that the claimant could reasonably have sought protection in the Kurdish-controlled area, rather than in another country, i.e., the concept of an internal flight alternative may be applied. The basic factors to be considered are whether the claimant has family, community and/or political links in the north that would normally provide the possibility for a smoother integration within the boundaries of his own country, rather than abroad. If a person had resided for a considerable length of time in the north without any protection problems, (s)he would be deemed to have been integrated in the local community. As a result, Turkomans, Kurds and Christians will frequently be considered to have an internal flight alternative in northern Iraq.

However, persons with a high political or military profile, even with relatives or community links in northern Iraq, should not be considered to have an internal flight alternative because of the risks they may be exposed to of persecution or ill-treatment by the factions or Iraqi Government agents operating in the area.

In northern Iraq, KDP and PUK members or sympathisers might be considered to have access to protection in the area controlled by their party, but could be at risk while residing in the area controlled by the other party. For example, active PUK military personnel, security forces (*Ajayish*) and others who have held high positions or decision-making posts within the PUK administration or police could be targeted if identified by the KDP. Conversely, similar categories of KDP people could find themselves in the same situation when residing or crossing the PUK controlled area.

On the other hand, persons originating from the part of northern Iraq under the control of the Iraqi Government, who have sought asylum abroad and are found to have a valid fear of persecution vis-à-vis the central government in Baghdad, but have nothing to fear from the Kurdish authorities in the north, can be considered to have an internal flight alternative in northern Iraq and, therefore, will not

normally be in need of international protection. This approach is generally applicable to Kurds, Christians and Turkomans.

Lastly, opponents of the Iraqi Government, including members of the Iraqi National Congress (INC), who have a valid fear of persecution vis-à-vis the Government as well as the Kurdish authorities in the north, cannot be considered to have an internal flight alternative in the north.

In conclusion, now that the gradual improvements over past months in the situation in northern Iraq have acquired a sufficiently stable character, UNHCR considers that there are possibilities for meeting protection needs within the territory, i.e. that there is a limited internal flight alternative. This consideration should also be conditioned upon whether the claimant has family, community and/or political links there. However, the situation is volatile and may change at any time, and UNHCR will continue to monitor it carefully. Any serious deterioration will be an important factor in the assessment of cases and may lead UNHCR to reconsider its position on the possibility of an internal flight alternative. UNHCR hopes that the Office's views would be taken into account by Governments.

5. 'Safe third country'

UNHCR takes the view that the removal of an asylum-seeker to a third country cannot legitimately take place unless it has been duly established that the third country:

- (a) will admit the asylum-seeker to its territory,
- (b) will observe the principle of non-refoulement and, generally, will treat the asylum-seeker in accordance with accepted international standards; and,
- (c) will consider his claim in fair and efficient status determination procedures and, if appropriate, will offer him protection.

General readmission agreements relating to aliens at large do not provide sufficient guarantees to permit the removal of asylum-seekers, insofar as they do not include the obligation of the country of destination to consider the asylum claim that the person made in the removing country.

6. The situation in neighbouring countries: reception and protection possibilities

Turkey

Turkey cannot be considered as a safe third country for non-European asylum seekers, including Iraqis, and the return on safe third country grounds of asylum-seekers who left the country, is not advisable for the moment.

Turkey is party to the 1951 Geneva Convention, with a geographical reservation of its obligations to refugees originating from European countries. Nevertheless, Turkey has allowed substantial numbers

of non-European refugees to remain temporarily on its territory, pending resettlement in another country. UNHCR has maintained its own refugee status determination (RSD) procedure under the mandate due to the shortcomings of the governmental procedure, established by the 1994 Asylum Regulation, which do not guarantee an RSD procedure in accordance with international standards and relevant EXCOM conclusions. Since this regulation came into force, there have been parallel procedures by the Government and by UNHCR. Turkish authorities grant a kind of temporary asylum to non-Europeans including Iraqis, following their own registration and interview procedure. UNHCR conducts RSD for all such asylum-seekers who approach the Office. In addition to finding resettlement solutions for Iraqi refugees, UNHCR's opinion is often sought by the authorities and the Office intervenes whenever it is aware that asylum-seekers and refugees face protection problems.

Currently, non-European asylum-seekers and refugees are facing a number of protection problems in Turkey. Among the most serious are those caused by the limitations of access to the Turkish asylum procedure, contained in the 1994 Asylum Regulation. Particularly problematic is the rule according to which asylum applications must be submitted within five days of arrival of the person to the territory and the requirement for asylum applicants to produce identity documents within fifteen days. Mainly as a result of the strict application of these rules by the Turkish authorities, a number of asylum-seekers, as well as refugees recognized by UNHCR, have been returned to their home countries. The trend of *refoulement* is decreasing (the cases known to UNHCR comprise 76 recognized mandate refugees in 1995; 51 in 1996; 20 in 1997, and 18 asylum-seekers in 1996 to 61 in 1997). This decrease is the more significant because increased UNHCR presence in the border areas of Van, Hakkari, Silopi and Agri, allows for better monitoring of the situation. Nonetheless, *refoulement* remains a major concern for UNHCR.

The Middle East (Jordan, Lebanon, Syria, Iran)

Refugees do not, as a general rule, enjoy effective protection in the Middle East. At best, they are tolerated by the Governments of the region, on condition that UNHCR provided them with assistance, pending identification of durable solutions, (i.e. voluntary repatriation or resettlement to a third country). They do not in general enjoy basic rights, such as freedom of movement and right to work, to education, and health care, nor are they protected from arbitrary arrest and detention. Most seriously, they are sometimes exposed to *refoulement*.

It is true to say that some improvements, related in particular to the principle of non-*refoulement*, have been noticed in recent years, partly as a result of UNHCR's efforts.

However, none of these countries, except Iran, are parties to the international refugee instruments. There are no official status determination procedures; it is UNHCR which conducts eligibility determination, even in Iran, which has acceded to the 1951 Convention and its 1967 Protocol. Refugees are not granted any legal status by the various countries in the region and therefore do not enjoy basic economic and social rights. Many asylum-seekers residing in the region therefore prefer to remain anonymous as either legal or illegal migrants rather than be known as refugees, unless or until they are confronted with protection problems or are not able to sustain themselves. It is generally under such circumstances that asylum-seekers present themselves to the

Office, or proceed beyond the region. UNHCR offices in the region lack resources to quickly assess asylum claims and identify durable solutions, such as resettlement.

These countries cannot be considered safe third countries. It cannot be excluded that returns, carefully negotiated on an individual basis, might be possible in the future, but as a general rule, in UNHCR's experience, these countries do not readmit asylum-seekers or even refugees who have departed, in particular when undocumented upon return and when returns are undertaken unilaterally, i.e. without requesting for the Governments' prior consent.

Complicating factors making difficult substantial improvement of the protection situation of refugees in the Middle East are the following:

- (i) the lack of solution to the long-lasting Palestinian problem, with which the refugee 'burden' in the region is most associated. Palestinian refugees have been hosted in their thousands by many countries in the region, particularly Jordan, Lebanon and Syria. They argue that the international community has shown little interest in addressing the causes of the problem, nor demonstrated a will to share the burden, for example by provision of adequate assistance to refugees;
- (ii) other unresolved tensions in the region, which continue to produce refugee movements;
- (iii) the generally bad overall human rights situation in the region, affecting citizens as well as non-citizens.

Jordan

Jordan is not a country of asylum for refugees, nor is it a safe third country.

There are between 100 - 120,000 Iraqi nationals in Jordan, the majority of whom are illegal migrants. In 1997, 450 refugees recognised by UNHCR under its mandate were resettled.

The most serious protection problem is the possible *refoulement* of Iraqi asylum-seekers who have crossed into Jordan clandestinely. A number of asylum-seekers enter Jordan through smuggling networks which are also involved in smuggling of weapons, drugs, commodities and livestock. Jordanian authorities have thus adopted very restrictive measures towards such asylum-seekers. The UNHCR office in Amman preferred when 30 asylum-seekers were refouled in April 1997, upon which the authorities undertook to inform the office of asylum-seekers apprehended while attempting to cross into Jordan clandestinely. While several such asylum-seekers continue to approach the office, UNHCR suspects that there may be other instances where asylum-seekers have been refouled.

Although there is an understanding between the Jordanian Government and UNHCR, allowing asylum-seekers registered with the UNHCR office in Amman to remain in Jordan pending consideration of their case by UNHCR and their resettlement in a third country, a major protection problem facing the Branch Office continues to be the regularization of the stay of asylum-seekers pending refugee status determination procedures. Jordan is experiencing problems with large-scale illegal immigration and is reacting forcefully against illegal migrants. Since asylum-seekers are without legal status, they are subject to the same treatment.

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A third formidable protection problem is the physical safety of Iraqi refugees. The Government has on various occasions reassured UNHCR that it does not tolerate acts threatening the life and physical safety of refugees, but, perhaps due to other domestic priorities, the ability of the Government to guarantee this seems limited.

The asylum institution in Jordan is extremely fragile. Jordan's desire for international legitimacy and its respect for international and human rights law are tempered by domestic political and security considerations. An incident on 10 February 1998 serves as an example. It was reported that some 400 Iraqis who had attempted to enter Jordan clandestinely were immediately returned to Iraq. Further reports stated those among this group who were deserters from the army were executed upon return, while draft evaders had their ears cut off, and women and children were imprisoned.

While UNHCR continues to promote Jordan's accession to the 1951 Convention and 1967 Protocol, it is unlikely that the situation will change substantially as long as Jordan continues to host more than 1.2 million Palestinian refugees, and while the Jordanian Government's stated security concerns remain.

Lebanon

Lebanon tolerates the temporary stay of refugees recognised by UNHCR but they do not grant any formal asylum for a short or a longer-term stay. Lebanon is not a safe third country.

In Lebanon there are now 2,664 Iraqi mandate refugees and 400 cases comprising 663 persons of Iraqi origin are awaiting eligibility interviews. In 1997, UNHCR resettled 32 comprising 95 persons and plans to resettle at least 65 cases out of 200 persons in 1998. The objective in 1999 is to resettle 400 refugees, because of the lack of durable solutions. Resettlement from Lebanon has proved slower and more difficult than from other Middle Eastern countries.

The period of stay for refugees is limited to six months, pending resettlement or voluntary repatriation, with the possibility of extension of up to 3 years. UNHCR may even be able to negotiate further extension where required by the situation in the refugee's country of origin. The documents given to asylum-seekers and refugees by UNHCR do not give these persons any legal status and there have been cases of arrests. Threats to the physical security of Iraqi refugees by agents of the Iraqi regime as well as members of Hezbollah have also been reported.

In 1997 some Iraqi refugees were arrested by Syrian Intelligence Services operating in Lebanon and transferred to Syria, where they were interrogated, ill-treated and deported back to Lebanon after one to three months in detention. This deportation to Lebanon instead of northern Iraq was decided on the basis of the mandate refugee status enjoyed by Iraqi refugees in Lebanon and with a view to avoiding protest by UNHCR to the Lebanese authorities (against these arbitrary arrests and extra-judicial measures carried out by foreign forces in Lebanon.) Fortunately these instances are very limited. In this case, UNHCR was able to resettle the Iraqi refugees.

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Asylum-seekers and refugees who leave Lebanon and then return, receive no effective protection from the Lebanese authorities. Even some groups of refugees 'recognised' by UNHCR, have not been readmitted by Lebanon. A recent example was a group of Iraqi refugees who left Lebanon through local smuggling networks to Cyprus and Turkey. The Lebanese authorities held that the refugees had been illegal in Lebanon and since they had wanted to move to another asylum country, the latter should be responsible for dealing with them, in collaboration with UNHCR, and on the principle of 'burden-sharing' vis-à-vis refugees from the Middle East.

Complicating factors for Lebanon are the need to address the problems of its own nationals (one third of whom are displaced) and the need to find durable solutions for over 350,000 Palestinian refugees. Lack of local integration possibilities and of prospects for voluntary repatriation, as well as the very precarious economic and social situation in a country still recovering from 15 years of civil war, mean that an increased number of acceptances for resettlement would be highly desirable.

Syria

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Syria is generally a safe country of first asylum for Iraqis admitted legally to the country. Syria does not readmit individuals who leave the country illegally.

There are 22,500 Iraqis in Syria. Approximately 500 are resettled annually.

Each week the Government admits approximately 50 Iraqi asylum-seekers sponsored by various political parties. They are screened by the security services, and once screened in, are generally safe. Their status changes dramatically if they are convicted of criminal offences or any violation of Syrian law, including an attempt to leave the country illegally. Such individuals will not be readmitted to the country, or will be detained or deported back to northern Iraq or to Lebanon.

The Syrian Government is not friendly to the present Iraqi regime but tends to sympathise strongly with the Iraqi people. For this reason it agreed to open its borders to Iraqis during the recent UNSCOM crisis and to cooperate with UNHCR to set up entry points and transit centres, to avoid a humanitarian crisis. There has been an agreement of sorts to improve economic relations between Iraq and Syria since the end of 1997, but this has not affected the safety of refugees living in Syria.

Iran

Iran is no longer a country of asylum for newly arriving Iraqi asylum-seekers and is not a safe third country.

Iran is a party to the 1951 Convention and its 1967 Protocol. It also hosts the largest refugee community in the world. According to government statistics at present there are over two million refugees in Iran, and over half a million of these are Iraqis. Around half of the Iraqi caseload consists of Iraqi Kurds while the other half of Shi'a Arabs from the southern Iraqi marshlands. Only 28,000 of the Iraqi Kurds are accommodated in camps, the remaining caseload of possibly up to 200,000 reside in towns all over Iran but mainly in the three western Iranian provinces. Until 1992, the Islamic Republic of Iran accorded the right to stay in Iran to practically all Iraqis fleeing from Iraq. Since then

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hardly any Iraqis have received refugee status or the right to reside in Iran. All new arrivals without Iranian visas are considered as "illegal aliens" in Iran by the authorities. UNHCR has had considerable difficulty concerning a group of around 65,000 Iraqi Kurds who fled Kurdish later-factional fighting in northern Iraq in September 1994, who were initially admitted to the territory but who shortly thereafter had to return to northern Iraq under pressure from the Iranian authorities.

Traditional generosity towards refugees has been eroded by the presence, since 1979, of millions of Afghan refugees. This is one of the reasons why Iranian policy has changed. Another is that the nature of the refugees now fleeing Iraq is not the same as those who fled for reasons related to the Iran-Iraq war of 1980-88, with whom Iran was more sympathetic.

Iran is not often used as a transit country to the west for Iraqi Kurds. However, occasionally Iraqis do decide to leave Iran for Western Europe. In such cases, it is Iran's policy not to re-admit Iraqis who the country illegally. The return to Iran on the grounds that the Iraqi had obtained the right to reside in Iran before his departure should not, therefore, be considered sufficient ground to justify safe return of the asylum-seeker.

2. The situation in European countries: protection and asylum

Central and Eastern Europe: transit or asylum?

Most Eastern European countries cannot be considered countries of asylum nor can Iraqi asylum-seekers safely be returned to them after transiting. As regards Central Europe, significant protection problems remain. Institution and capacity-building, including financial and technical assistance, will improve the situation to make Central European countries acceptable asylum countries and allow for the return of asylum-seekers on safe third country grounds. Some countries have already reached this stage, or are considered to have the potential to reach it in the near future. When considering which countries fall into these categories, Governments may wish to refer to UNHCR's 'safe third country' papers.

One of the main routes for Iraqi asylum-seekers and migrants headed for Western Europe pass through Central and Eastern Europe. While some Central and Eastern European countries are gradually becoming targets for asylum-seekers and migrants, others continue to be mainly transit countries. The reasons why asylum-seekers move on vary from lack of safety to the hope of finding more favourable economic conditions elsewhere, or a combination of both, and also to the presence of members of their community of family in the countries of final destination.

Although some Eastern European countries have acceded to the 1951 Geneva Convention, many have not. Even those States which have acceded to it have not adopted the legislation and administrative norms required to implement it, or have adopted them but are not yet applying them in practice. As a result, asylum-seekers and refugees do not enjoy effective protection in those States.

All Central European countries are now parties to the 1951 Geneva Convention, and are gradually establishing the institutions and the capacity to receive asylum-seekers and integrate refugees. Many have adopted implementing legislation, decrees and by-laws.

Several *locovores* still exist, however, in the asylum systems of a number of Central European countries, such that many cannot as yet be considered as safe third countries. These *locovores* include time limits for applying for asylum, denial of and lack of access to asylum-procedures, a too broad application of the notion of manifestly unfounded claims, insufficient legal remedies, in particular in accelerated procedures, excessive detention of asylum-seekers and limitations on the duration of asylum. Moreover, financial resources are scarce in most of these transition economies and the asylum problems may not be a priority. Capacity-building activities and financial and technical support will gradually improve the situation.

The EU have tabled the notion of using 'parallel' Dublin agreements with Central and Eastern European countries. UNHCR can support the adoption of multilateral agreements aimed at allocating responsibility for the examination of asylum requests, as in the Dublin Convention, in so far as they may contribute to the prevention of "orbit cases", and provide guarantees that an asylum request will be examined in substance.

These agreements are, however, based on the assumption that the Contracting Parties apply similar or comparable standards of treatment to asylum-seekers and refugees, both in terms of procedural requirements and in terms of substantive criteria. The return of an asylum-seeker to a country whose procedures and determination criteria are not consistent with internationally accepted standards, could well amount to a breach by the returning State of its international obligations and could not be supported by UNHCR.

Accordingly, the adoption and implementation of Dublin-type agreements between EU Members States and Central European countries should, in UNHCR's view, be made dependent upon the prior establishment in the latter of appropriate structures and the adoption of policies and measures to ensure that asylum requests shall be examined through fair procedures and in accordance with the relevant international criteria.

Main countries of entry into EU territory

Greece

Greece does not consider itself a country of asylum under current policies and conditions.

The majority of the Iraqi asylum-seekers in Greece arrive from Turkey, by land or by sea. In 1997, some 3,800 asylum applications were filed by Iraqi (mainly Kurdish) asylum-seekers in Greece. The average processing time of their applications is currently between 6 and 8 months, with a recognition rate of 4 %. As reception facilities are not sufficient to accommodate all new arrivals, most Iraqi asylum-seekers stay in four temporary sites. These sites, where conditions leave much to be desired, will soon have to be vacated, with no alternatives having been offered. Various bodies, including the asylum-seekers themselves, local authorities, NGO and volunteer groups are involved in the running

of these sites and the provision of assistance there. Some reports of *refoulement* have been received by UNHCR.

A number of the Iraqi asylum-seekers leave Greece again, mainly for other Western European countries. As their main reasons for leaving they invoke inadequate reception facilities for asylum-seekers, lengthy asylum procedures, the low refugee recognition rate and granting of humanitarian stay, insufficient socio-economic benefits for asylum-seekers and recognised refugees, and the absence of a procedure for family reunification with recognised refugees.

Italy

Italy is a country of asylum for Iraqi asylum-seekers.

At the end of 1997, the majority of the Iraqis arriving in Italy did not apply for asylum there. They were issued with expulsion orders, according to which they had to leave Italy within 15 days. Following the increase in arrivals of Iraqis, as from July 1997, mainly on the southern coast of Italy, expulsion orders were discontinued. After an information campaign by the Italian Refugee Council on the consequences of the asylum-seekers leaving Italy and on asylum legislation in Italy, the majority of asylum-seekers now apply for asylum in Italy. Their claims are assessed by the Central Eligibility Commission, which currently recognises 65% of the claims. So far those Iraqis whose claims for refugee status have been rejected have been granted sojourn permits on humanitarian grounds.

The main reasons why Iraqi asylum-seekers (particularly the Kurds) proceed to other European countries are for family reunion and community support (there is no significant Iraqi Kurdish community in Italy), and the prospect of better integration possibilities and job opportunities. The Italian authorities aim to improve integration assistance for recognised refugees and reception conditions for asylum-seekers, and to carry out further information campaigns.

2. Suggested Causes of Action

Strengthening protection

Promotion of refugee norms and principles in the intermediate countries of the Middle East would, in the very long term, create conditions under which Iraqi asylum-seekers would find effective protection there. Some specific promotion activities in those countries are outlined below. This must be considered a longer-term strategy, with no immediate probable results. Certain activities, however, might improve the temporary / emergency reception of Iraqi asylum-seekers in those countries.

Strong political and diplomatic support by the international community for UNHCR's concerns and promotion efforts regarding the protection situation in Turkey and in the Middle East is essential for success. UNHCR will continue its work to improve the situation in the Middle East through promotion of accession to the 1951 Geneva Convention, its 1967 Protocol and the 1994 Arab Convention on Refugees (signed by only one country (Egypt) out of the 22 Arab States). In Turkey, support is needed for UNHCR's efforts to enhance the knowledge of international refugee law and

principles of the competent Turkish authorities, and to gradually increase the confidence of Turkish authorities to accept and provide protection for non-European refugees.

In the countries of Central and Eastern Europe protection mechanisms need to be strengthened and capacity-building activities in this regard may bring more tangible and rapid benefits for Iraqi asylum-seekers. Assistance from the EU is provided in some measure, some specific suggestions and targeted activities are outlined below.

Asylum

Various measures could be envisaged to promote better responsibility-sharing in considering asylum applications among European countries, the first being to reach agreement on an assessment of the situation in Iraq and on common benchmarks for determining eligibility for refugee status and asylum of Iraqi asylum-seekers. Of course, as the nature of the caseload may vary from country to country, even a uniform application of these benchmarks will not necessarily result in similar eligibility rates, nor in themselves ensure a more even distribution of asylum-seekers among States.

Improving reception conditions

Improving the reception conditions in countries of first arrival and countries of transit would help to reduce spontaneous movements to countries with well developed reception and integration facilities. Poor reception conditions constitute an important element in the asylum-seeker's decision to move on to other countries in search of better possibilities for themselves and their families. Of course there are also other reasons for such a decision, the chief ones being a desire to join family in other countries or to join larger communities of the same ethnic group that may help to provide both material and moral support.

Capacity-building activities are needed, particularly in southern and central Europe, to establish appropriate structures and procedures to deal with asylum applications, as well as to improve the physical reception conditions and provide access to basic welfare and social benefits.

Improving integration prospects and assistance

While the issue of harmonisation of assistance measures across the EU has not yet been sufficiently addressed, agreeing on approximate criteria for providing assistance to asylum-seekers and for the integration of refugees would help to reduce spontaneous movements from some West and Central European countries to others.

Resettlement

Since the legal regimes of first countries of asylum in the Middle East do not provide Iraqi refugees with guarantees against *refoulement*, nor are there domestic legal measures permitting local integration, UNHCR has been resettling recognised mandate Iraqi refugees from the region, and will continue to do so throughout 1998. Resettlement has become an indispensable protection tool in the region, providing refugees with the necessary protection against *refoulement* and arbitrary arrest.

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In 1997, Iraqi refugees constituted one of the UNHCR largest resettlement caseloads from the Middle East. Under UNHCR's auspices, more than 7,000 mandate refugees from Iraq were resettled out of Saudi Arabia, Turkey, Jordan, Syria, Pakistan and other countries in the region.

The resettlement of such numbers of persons demands allocation of appropriate manpower and resources. In all the Middle Eastern countries under review in this paper, in which UNHCR carries out status determination, the resources of the UNHCR offices are so stretched that in some countries asylum-seekers may have to wait for up to one year for their initial eligibility interviews with UNHCR. UNHCR will be evaluating the efficiency of its own processes to ensure that optimal arrangements are made to reduce the waiting period for eligibility interviews and the resettlement processing of mandate refugees. It is evident, however, that lack of resources has created fundamental problems for UNHCR in carrying out timely eligibility determination interviews for asylum-seekers who decide to seek the protection of the Office.

Strengthening human resources for the purpose of expediting the adjudication of asylum-seekers' claims would reduce the waiting period for refugee status determination and improve the quality of submissions by UNHCR for resettlement of recognised refugees in third countries. This in turn would contribute to reducing spontaneous movements by asylum-seekers and recognised refugees.

- European countries may wish to assist UNHCR in carrying out its mandated responsibility by allocating resources to the Office for these purposes.

Many people currently leave Iraq in order to join family members abroad. A particularly difficult problem is the transit through third countries of persons accepted for family reunion.

- Also with a view to reducing spontaneous movements, European countries may consider instituting legal measures to ease family reunion procedures for persons who already benefit from asylum on their territory, (with refugee or similar status), or who have other types of residence permit.

the meantime, host countries in the region need to institute protective measures, giving asylum-seekers and recognised refugees legal, physical and psychological security. This will mitigate the main causes of spontaneous departure from these first countries of asylum, encouraging them to wait out the period before their status determination interviews, or while their applications for resettlement are processed. Resettlement countries similarly need to streamline and expedite acceptance of UNHCR's submissions.

Repatriation and return

As regards the position on return of screened out asylum-seekers to their country of origin, UNHCR's policy is that asylum-seekers who are properly rejected through fair and efficient procedures which employ the criteria appropriately can, in principle, be returned. In practice this may become difficult where the country of origin raises obstacles. More important are concerns which would accompany any returns which are carried out in such a manner as to provoke a particular negative focus on the affected individuals by the national authorities. In the case of Iraqis to Iraq, the

record of the Government on human rights protection, coupled with the unpredictability of its reactions, is a strong argument for extreme caution generally in the return of rejected cases. This kind of unpredictability was illustrated recently following the *refoulement* by Jordan on 10 February 1998 of 400 Iraqis, many of whom were reportedly then killed or imprisoned. The possibility cannot be overlooked that the return itself could put Iraqis in danger of treatment contrary to Article 3 of the European Human Rights Convention.

UNHCR now considers that the gradual improvements over past months in the situation in northern Iraq have acquired a sufficiently stable character to mitigate the Office's strong concerns over the return of rejected cases. The Office has continued to express until recently its objections to this, in the interests of caution, and while it was still in the process of undertaking a thorough assessment of the situation.

UNHCR would not object to the return to their places of origin in northern Iraq of asylum-seekers originating therefrom, who have been found through fair and efficient procedures not to be in need of international protection.

UNHCR would also not object to the return to northern Iraq of asylum-seekers originating from the Iraqi Government controlled areas, who have been found through acceptable and reliable procedures not to be in need of international protection, and who have family, community / or political links in the North that would normally provide the possibility for a smooth integration.

The Office will continue to monitor and evaluate the situation and may reconsider this position, should developments so dictate.

Immigration control

Immigration control and measures aimed at combating illegal migration must be applied with care, so as not to prevent people in need of protection gaining access to safety.

As the above analysis shows, many Iraqis leave their country in order to avoid persecution or other threats to their lives or liberty. This conclusion must serve to frame responses to the outflow. Any response by European countries to the Iraqi outflow must focus on eliminating the causes of those threats and on providing protection to those fleeing them. The latter is particularly important because of the limited possibilities for the Iraqis to find protection in neighbouring countries.

The use of readmission agreements to return Iraqi asylum-seekers to intermediate countries is highly problematic in that effective protection is not provided for Iraqis in many of those countries. It should also be noted that, in implementing a strict policy of immigration control, with the goal of returning asylum-seekers to the intermediate countries near Iraq, the very fragile protection balance which UNHCR endeavours to uphold in these countries will be endangered.

Country- and Region- Specific Measures

TURKEY:

• While Turkey cannot be considered a safe third country for non-European asylum-seekers, UNHCR welcomes the idea of establishing reception centres to better manage the flow of migrants and refugees to and through Turkey. This would constitute a practical step forward that could substantially help the Turkish Government. UNHCR has some specific interests and concerns, however, that would have to be accommodated before UNHCR could become actively involved in support of this effort:

- The screening of those admitted into the reception centres should be undertaken in accordance with internationally accepted criteria for refugee status and through procedures meeting due process requirements. There should be joint UNHCR / Turkish Government teams working at the centres to assure that refugees are properly recognised and not rejected.
- Problems with the current regime for asylum-seekers in Turkey (5 day rule, presentation of travel documents within 15 days) would have to be remedied.
- Reception centres should not be detention centres. Constraints on freedom of movement should be minimised. There must be guarantees in place to ensure proper and fair treatment of asylum-seekers and their ongoing protection, which must include non-refoulement guarantees. During the processing of the applications, asylum-seekers should be accorded a temporary or provisional legal status allowing them to remain on Turkish territory.
- A *sine qua non* for improvement of the protection situation in Turkey would be that resettlement countries continue to be committed to resettle non-Europeans, including persons, who although not qualifying as refugees under the 1951 Geneva Convention, are in need of international protection. Recognised refugees should be allowed to reside outside the centres.
- Proposals to improve training for border guards and other officials is welcomed and UNHCR is ready to assist through its training programmes.

MIDDLE EAST (JORDAN, LEBANON, SYRIA, IRAN):

- UNHCR promotes accession to international refugee instruments and seeks to increase the understanding and confidence of the authorities in developing mechanisms to receive, give legal status to, and protect refugees. Political and diplomatic support is a necessary complement to these efforts.
- UNHCR promotes mechanisms to deal with new arrivals and to distinguish those in need of protection, providing relevant documentation to them, and promoting also their rights including the right to work. UNHCR would welcome resources to carry out this work.
- An increase in material assistance levels for asylum-seekers and refugees, upon reception and as they await status determination by UNHCR, would greatly improve the well-being of the persons

concerned and, at the same time, would help to reduce spontaneous movements from the intermediate countries of the Middle East to Europe. Effecting such improvements requires resources.

- Resettlement remains a principal protection tool for Iraqis in these countries and the processes and procedures need improvement (see above, 'Resettlement'). In the case of Lebanon, greater opportunities for resettlement are sought.

CENTRAL AND EASTERN EUROPE:

UNHCR is actively promoting the improvement of protection mechanisms in Central and Eastern Europe, including through institution and capacity-building. The Office has traditionally been, and continues to be supported in its efforts in this regard by Western European Governments. The European institutions, including in particular the European Commission and the Council of Europe, are increasingly beginning involved in this area.

- Additional support for promotion of refugee and asylum law and its improved implementation would be highly beneficial. Needs range from increased political and diplomatic support for UNHCR's efforts to ensure respect by Central and Eastern European countries for international refugee norms, to material support for institution and capacity-building activities. In this latter area, support by Western European countries has hitherto focused on training of officials involved in processing of asylum cases.
- The needs for financial assistance to create an infrastructure for reception of asylum-seekers are increasingly acute. This would include the establishment of reception centres, increased assistance for integration of refugees, and facilitation of the return of rejected cases.
- UNHCR finds the application of readmission agreements problematic. Arrangements similar to the Dublin Convention could be applied, providing the States participating in such arrangements have developed asylum systems with the necessary legal safeguards.
- A number of Central European countries, and in particular the candidate States for membership of the EU, have benefited from assistance in the asylum area, but support for Eastern European countries has been much more scarce. The TACIS Programme of the European Commission could be better utilised to this effect.

GREECE:

- UNHCR will assist the Greek authorities in improving the currently inadequate reception facilities for asylum-seekers.
- The Office promotes improvements in the eligibility determination procedure to make them more fair, efficient and effective.
- Financial support is needed to improve levels of assistance and to provide for integration for recognised refugees.

20/04 '98 MON 13:00 FAX 32 2 2389384 32 2 2389384
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- UNHCR recommends enhancing possibilities of family reunion with recognised refugees and persons enjoying other forms of asylum.

- The role of information campaigns in discouraging unwarranted onward movements is being examined

ITALY:

- Support for the Italian authorities to improve reception conditions for asylum-seekers should be a priority
- Levels of assistance and prospects for integration for recognised refugees need improvement.
- As for Greece, the role of information campaigns is being further examined; useful campaigns might focus on asylum and integration possibilities in Italy.

9. Conclusion

The measures suggested above are an attempt by UNHCR to find possibilities for mitigating the effects of spontaneous and uneven movements of Iraqi asylum-seekers across Europe. These measures can be carried out by the Governments concerned, and UNHCR, but they need the political and financial support of the EU member states. At the same time, long-term and long-lasting success depends also on efforts to address the root causes of the movement from Iraq.

UNHCR does not consider that the outflow of Iraqi asylum-seekers represents a mass influx of alarming proportions nor, given its nature, should it be subject to a primarily 'control' response.

On the contrary, UNHCR's overriding concern is that Iraqi asylum-seekers must have access to international protection. A significant proportion of the persons leaving Iraq are refugees. While flight alternatives may be considered, in UNHCR's view protection in neighbouring countries is fraught with problems for all the reasons and in the circumstances described above. Whatever measures are taken, they must be based squarely on these premises.

16

69