

OPINION

The Protection and Security of Refugees and Asylum Seekers in  
Iraq  
The Case of the Refugees in Camps Ashraf and Liberty

by

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## 1. Introduction

1. I have been asked to advise on international legal and institutional aspects of the protection of refugees and asylum seekers in Iraq, with specific reference to those resident in 'Camp Liberty'. The residents were relocated to this location from Camp Ashraf (also referred to as Camp New Iraq), ostensibly to facilitate individual, case-by-case decision-making by the Office of the United Nations High Commissioner for Refugees (UNHCR), notwithstanding clear *prima facie* evidence of entitlement to international protection.
2. Camp Liberty has been designated as a 'temporary transit location'; to all intents and purposes, it is a refugee camp, the residents of which are in urgent need of a solution (resettlement) in a third country, or immediate transfer to a safe environment, owing to their precarious security situation in Camp Liberty.

## 2. The principal actors

### 2.1 The Government of Iraq: International legal responsibilities

3. In addition to the obligations by which it is bound under treaty and general international law, the Government of Iraq has formally and additionally agreed with the United Nations that the process of finding a peaceful and durable solution for the refugees in Iraq is to be pursued, 'in compliance with its commitments under the rules of international human rights law...'; and that it shall,
  - '[ensure] the safety and security of Camp Liberty';
  - 'permit the United Nations to carry out monitoring of the human rights and humanitarian situation in the temporary transit locations and shall establish procedures for the reporting of complaints';
  - 'permit and facilitate UNHCR to conduct interviews with the residents of the Camp to identify their status in accordance with its mandate and its operational rules'; and
  - 'Commit to *non-refoulement* of the individuals of Camp New Iraq to Iran'.

Memorandum of Understanding between the Government of the Republic of Iraq and the United Nations, 25 December 2011, Preamble; First Section, paragraph A; Third Section, paragraph B; Fourth Section, paragraph A; Fifth Section, paragraph B(3).

## 2.2 International organisations and their mandates

4. As its website rightly proclaims, UNHCR is *the UN Refugee Agency*. It is a subsidiary organ of the UN General Assembly, established with effect from 1951; the UN High Commissioner for Refugees is elected by and reports to the UN General Assembly. It is the responsibility of the High Commissioner for Refugees to provide international protection to refugees and, together with governments, to seek permanent solutions to the problem of refugees.
5. The United Nations Assistance Mission for Iraq (UNAMI) is a subsidiary organ of the UN Security Council, established by SC resolution 1500 (2003).<sup>1</sup> Its primary functions are advice and support to the Government of Iraq across a variety of fields; its principal officer is the Special Representative of the Secretary-General for Iraq.
6. Nothing in the mandate of UNAMI or the Special Representative of the Secretary-General specifically provides for competence *to protect refugees or to monitor the human rights of refugees and asylum seekers in Iraq*. Neither the relevant Security Council resolutions nor the various letters addressed to the Security Council by the Government of Iraq in recent years mention any such activity.
7. UNAMI's role is subsidiary and, insofar as it may engage in activities which benefit refugees, it does so at the request of the Government of Iraq. Thus, Security Council Resolution 1170 (2007) reaffirms the importance of the United Nations, 'in particular the United Nations Assistance Mission for Iraq, in supporting the efforts of the Iraqi people and Government to... *assist* vulnerable groups, including refugees...' (Emphasis added). In operative paragraph 2, reflecting the content of the Iraqi Foreign Minister's letter of 6 August 2007 (UN doc. S/2007/481, 9 August 2007), the Security Council decides that, 'as circumstances permit, the Special Representative of the Secretary-General and the United Nations Assistance Mission for Iraq, *at the*

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<sup>1</sup> The UNAMI website states that it is a 'political mission established by the 2003 UN Security Council Resolution 1500 at the request of the Government of Iraq': <http://unami.unmissions.org/>. This is incorrect, of course; the Iraqi 'Governing Council' had just been established in July 2003, but the Coalition Provisional Authority remained the effective governing authority until its dissolution on 28 June 2004.

*request of the Government of Iraq, shall... (b) Promote, support and facilitate, in coordination with the Government of Iraq: (i) The coordination and delivery of humanitarian assistance and the safe, orderly, and voluntary return, as appropriate, of refugees and displaced persons...'* (Emphasis added).<sup>2</sup>

8. The most recent Security Council resolution 2061 (2012) employs much the same language, mostly by reference to what has gone before,<sup>3</sup> save that express reference is now made to, 'the important role of the Office of the United Nations High Commissioner for Refugees, *based on its mandate*, in providing continued advice and support to the Government of Iraq, in coordination with UNAMI...' (Emphasis added).
9. The reference to UNHCR's mandate is significant precisely because UNHCR, not UNAMI, is the 'UN Refugee Agency', accountable to the United Nations General Assembly; and even more importantly, because, unlike UNAMI's subsidiary role, UNHCR's protection function is *not* dependent on 'the request of the Government of Iraq', but draws directly on its mandate from the General Assembly and the recognition of its authority and standing in international law in the practice of States.
10. As a matter of principle, therefore, and in line with international law and long-standing institutional arrangements, UNHCR retains primary responsibility for *international protection and solutions* in the case of refugees in Iraq. It is UNHCR which, in accordance with international law and practice, ought to intervene with the Government of Iraq and other stakeholders to ensure the physical protection and freedom from attack of Camp Liberty and its residents; and it is UNHCR whose officials, experienced in practice and in the applicable law, ought to monitor the human rights and humanitarian situation of those in need of international protection and an appropriate solution.

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<sup>2</sup> It is not clear, either from the text or the context, whether this is intended to apply to *Iraqi* refugees, or also to non-Iraqi refugees on the territory of the State of Iraq. The Report of the Secretary-General which led to the establishment of UNAMI suggests the former: 'Report of the Secretary-General pursuant to paragraph 24 of Security Council resolution 1483 (2003)': UN doc. S/2003/715, 17 July 2003, §§70-73.

<sup>3</sup> Security Council resolution 2061 (2012), operative paragraph 2, referring to the Iraqi Foreign Minister's letter of 28 June 2012: UN doc. S/2012/520, annex.

### 3. UNHCR and security

11. A considerable body of UNHCR experience with security matters draws from problems arising when camps and settlements are located close to the frontier with the refugees' country of origin, or close to or within a conflict zone. As UNHCR itself has noted,
 

'... camps and settlements have been attacked for no obvious reason except to spread fear and terror... Attacks... represent a serious crisis, even a breakdown of protection. The re-establishment of a peaceful and secure environment for persons of concern has to be UNHCR's primary objective.'  
UNHCR, *Manual on Security of Persons of Concern*, Geneva: UNHCR, 2011, 57.
12. These words well describe the critical situation facing the residents of Camp Liberty. It is common knowledge that elements within the Government of Iraq are sympathetic to the political and persecutory aims of the Government of Iran, which remains totally opposed to the refugees in Camp Liberty and elsewhere. Refugees have been killed and injured as a result of attacks which could not have taken place without those connections. This has never been denied, nor has any contrary explanation ever been upheld on the evidence. The result is that the refugees in Camps Ashraf and Liberty are in a unique situation, where the host country has proved to be as hostile to them as the country of origin, and where the principal location, Camp Liberty, has proved to be very vulnerable.
13. In the present circumstances, the issue of refugee security ought to be central to UNHCR's protection activities in Iraq. Given the unfocused nature of UNAMI's role – and, indeed, its interest primarily in unrelated activities such as development and inter-State relations<sup>4</sup> – UNHCR's responsibility is now critical to the avoidance of future harm. Much more is required, for example, than the occasional press release, such as that issued on 1 March 2013, 'UNHCR calls for safety and security of Iraq's Camp Liberty population'.
14. UNHCR needs to make it clear to the Government of Iraq – and simultaneously to the Security Council and its own Executive Committee – that Camp Liberty and its

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<sup>4</sup> See, for example, the interview with the Special Representative of the Secretary-General reported in *Iraqi German Business Dialogue*, No. 3, September 2012, entitled 'Germany businesses are well advised to keep Iraq in mind', and in which the SRSG highlights German industry's need for investment security. The present SRSG, Martin Kobler, was German Ambassador to Iraq from 2006-2007, and is married to H. E. Britta Wagner, the present German Ambassador.

inhabitants are to be protected against attack as a matter of international law and obligation.

15. UNHCR needs also actively to monitor the camp and its environs, including, as its *Manual on Security of Persons of Concern* recognizes, by advocating 'for humanitarian access to ensure protection by presence... of UNHCR and other actors...' Ibid., 59.
16. Given the precedent of the 9 February 2013 attack which left so many killed and wounded and that of 29 April, where the missiles landed just outside the Camp, UNHCR clearly needs to be in a position to verify the facts of any future incident, to document it fully, and to report to the Security Council (which still has Iraq on its agenda), and to the General Assembly (to which the High Commissioner is responsible).
17. The likelihood of a further serious incident means that UNHCR ought now actively to evaluate the case for relocating the people of Camp Liberty to a more secure environment, whether by returning them to the relatively safer circumstances of Camp New Iraq (Camp Ashraf), or through prompt relocation to a third country.
18. Given the involvement and complicity of certain Iraqi elements in threatening the security of Camp Liberty, it is already essential that UNHCR not only insist on vigorous investigation and immediate prosecution of those responsible for the attacks, but that it also advise and engage competent international stakeholders, including the Security Council and UN Member States, in forcefully reiterating that the protection of the refugees in Camp Liberty, Camp Ashraf and elsewhere in Iraq is a matter of international legal concern, and that the Government of Iraq is expected to ensure security, fully, effectively and in good faith.
19. It cannot be ignored that the protracted refugee status determination process engaged in by UNHCR and the equally prolonged search for humanitarian solutions are both negatively affected by the lack of security. The impact of the attacks and other intrusive incidents on the residents of Camp Liberty has been profound and should not be underestimated. Regrettably, it has also been compounded by the slowness of UNHCR's processing, by the lack of information regarding decision-making, and by contradictory information disseminated by UNAMI and the Special Representative of the Secretary-General.
20. It is unfortunate, if understandable, that some of the residents have begun to lose faith in the United Nations, a development which has not been helped by periodic talk of 'withdrawing international protection'. Of course, it would be a clear dereliction of its obligations to the international community for UNHCR to pursue any such course of action, tantamount to complicity in any further assaults and loss of life. Equally, it is clear that a *mediated* solution is called for, in which

confrontational language is avoided and focus is maintained on reaching humanitarian solutions.

21. The deteriorating security situation and the threat of further attacks on Camp Liberty are strong arguments for a pro-active approach to protection. Taking account also of the slow pace of interviews, it is surely time now for UNHCR to take up the point made in August 2011, to acknowledge formally the refugee status of the residents at large, and to signal that in consequence they are entitled to international protection.

A handwritten signature in black ink, appearing to read 'Guy S. Goodwin-Gill', with a stylized flourish at the end.

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