The Factors Behind US Policy on Iraqi Refugees

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THE FACTORS BEHIND US POLICY ON IRAQI REFUGEES

by

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The Iraq War began on March 30, 2003, prompted by the US-led invasion of Iraq. This major, long-lasting conflict resulted in a drastic increase in the number of internally displaced Iraqis as well as Iraqi refugees. The resulting stream of Iraqi refugees is known as the Iraqi refugee crisis. This thesis first conducts a literature review the field of refugee studies, including a review of major theoretical works. From this review emerge theories and frameworks governing the root causes of refugee crises and the resulting consequences. Within the context of the Iraq War, this thesis then analyzes the policy response of the United States to the Iraqi refugee crisis. This analysis is comprised of various models of factors and variables that influence national and international refugee policy. The conclusion suggests that national security considerations, bureaucratic tension due to a principal-agent relationship between Congress and the president, as well as wider foreign policy and Iraqi-US relations, were the major factors that influenced the US policy response. Eventually, additional moral and ethical considerations provoked a change in policy, making the United States more receptive to Iraqi refugee admissions. In doing so, this thesis presents the US policy response against the backdrop of the United Nations Convention and Protocol Relating to the Status of Refugees, the body governing the international refugee regime. It suggests that compliance with its mandate has become increasingly difficult, as the landscape of refugee flows has evolved over the twentieth century.
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INTRODUCTION: OVERVIEW OF THE INTERNATIONAL REFUGEE REGIME

The prepared statement by Representative Gary Ackerman, Chairman of the Subcommittee on the Middle East and South Asia, during a 2008 hearing before the House Committee on Foreign Affairs went as follows:

…Almost a year ago, the Middle East and South Asia subcommittee held a hearing on the Iraqi refugee crisis and we learned several disturbing things. We learned that the Administration was doing next to nothing to assist those Iraqis who put their lives in jeopardy in order to assist the United States in our efforts in Iraq. Not only wasn’t the Administration helping them, they didn’t even know how many Iraqis actually worked for us, so they naturally had no idea how many people needed our help. We learned that the Administration was woefully unprepared to process refugees referred to us by the United Nations High Commissioner for Refugees. We learned that it took up to 5 months to process a refugee referral. We learned that the United States had the capacity to process merely a few hundred refugees a month but wasn’t working anywhere near even that limited capacity. We learned that we were telling Iraqis seeking our assistance and protection to flee to a safe place—like Syria—because we weren’t processing at risk populations in Iraq. And we learned that the need for refugee assistance was so great that Congress ultimately had to take the lead in providing an additional $150 million to address it.¹

In his statement, Representative Ackerman expressed his dissatisfaction with the response of the United States to the Iraqi refugee crisis as of 2007. His dissatisfaction stemmed from a belief in the fundamental principles governing the international refugee regime. By invoking the United Nations High Commissioner for Refugees (UNHCR), Ackerman invoked the obligations and responsibilities of the United States regarding refugee protection. What follows is a history of UNHCR and a discussion of how

refugees came to be a legally protected class. Although the refugee regime was established over fifty years ago, recent events such as the Iraqi refugee crisis demonstrate its relevance and permanence in today’s world. By comparing the US response to the Iraqi refugee crisis with historical and academic refugee crisis models, patterns surrounding state action and compliance with the international refugee regime emerge.

At present, UNHCR acts as the de facto authority on refugee statistics and data. As per Resolution 319 (IV) of December 3, 1949, the United Nations (UN) General Assembly decided to establish a High Commissioner for Refugees Office. On December 14, 1950, the UN General Assembly adopted the Statute of the Office of the United Nations High Commissioner for Refugees. The general provisions of the Statute state that the High Commissioner, acting under the authority of the General Assembly, must provide international protection to refugees. The High Commissioner must also assist governments and acceptable private organizations with the goal of voluntary repatriation, refugee assimilation, and the end goal of the permanent solution for the problem of refugees. Provision II of the Statute of the Office of the United Nations High Commissioner for Refugees stipulates that the work of the High Commissioner will be entirely non-political in character and instead be humanitarian and social.

The current UN High Commissioner for Refugees is António Guterres. On June 15, 2005, Guterres became the tenth person elected to this position by the UN General Assembly.

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2 UN High Commissioner for Refugees, *Convention and Protocol Relating to the Status of Refugees*, (Geneva, Switzerland: 1954): 2. In paragraph 4 of the Statute, the Economic and Social Council also established an Advisory Committee on Refugees. This was later reconstituted as the United Nations Refugee Fund (UNREF) Executive Committee. The Executive Committee of the High Commissioner’s Programme later replaced UNREF in 1958.

Assembly. After serving his five-year term, Guterres was elected to a second five-year term in April 2010.\textsuperscript{4} As High Commissioner, Guterres heads UNHCR and leads UNHCR’s actions to implement humanitarian programs worldwide.

The establishment of UNHCR coincided with the ratification of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. The Convention, as well as the later Protocol of 1967, provides the basis of international refugee protection today. The Convention is grounded in Article 14 of the Universal Declaration of Human Rights of 1948, which recognizes the right of persons to seek asylum abroad from persecution in their home countries. The Convention and Protocol also echo the Universal Declaration of Human Rights in affirming the right to leave one’s country and the right to seek asylum. The physical act of border crossing is central to the international refugee regime. The ability of refugees to access international protection is dependent upon their ability to cross international borders and leave their country of origin. The Convention and Protocol seek to protect refugee rights surrounding the highly divisive and controversial subject area of border crossing.\textsuperscript{5}

The 1951 Convention was formulated after World War II and designed specifically to protect European refugees fleeing the conflict.\textsuperscript{6} Its original wording was limited to providing protection to individuals fleeing events that had occurred before

\textsuperscript{6} UNHCR, Convention and Protocol Relating to the Status of Refugees, 7. “The development of the post-1951 refugee protection regime was directly influenced by the experiences of the 1930s, in which the nascent asylum regime collapsed and borders were closed to huge numbers of refugees fleeing fascism in both Spain and Germany.”
January 1, 1951. The 1967 Protocol, the only amendment to the 1951 Convention, removed these limitations and expanded the scope of the Convention as refugee displacement became a global problem. The 1967 Protocol thus removed the geographic and temporal limits of the 1951 Convention regarding modern refugee protection.

The Convention and Protocol set in motion the movement of the international community to assemble a set of guidelines and laws in order to ensure the protection and humane treatment of refugees. The Convention and Protocol are the only international legal instruments that answer the questions *Who is considered a refugee?* and, *What is the definition of a refugee?* The Convention and Protocol also describe the kind of legal protection, social assistance and human rights to which refugees are entitled. These documents simultaneously define a refugee’s obligations to a host country and specify certain narrow categories of people, such as war criminals, who cannot qualify for refugee status.⁷

Embedded in the Convention and Protocol are fundamental principles of the international refugee regime. These are the principles of non-discrimination, non-penalization and non-*refoulement*. The principle of non-discrimination states that Convention provisions must be “applied without discrimination as to race, religion or country of origin.” Advancements in international human rights law have also reinforced the principle that the Convention be applied without discrimination as to sex, age, disability, sexuality, or other prohibited grounds of discrimination.⁸

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The principle of non-penalization states that refugees should not be penalized for their illegal entry or stay in a host country during any time in the process of seeking asylum. This principle would prohibit charging refugees with immigration or criminal offenses for their illegal entry, as well as detaining them arbitrarily or solely on the basis of their status as asylum-seekers. This provision is an acknowledgment that seeking asylum may require refugees to break traditional immigration rules.9

The principle of non-refoulement is considered “so fundamental that no reservations or derogations may be made to it.”10 It provides that a state may not expel or return (refouler) a refugee against his or her will to a country where he or she faces serious threats to his or her life or freedom.11 This principle is a way to safeguard refugees from arbitrary expulsion.12 As recently as 2001, signatory states issued a Declaration reaffirming their commitment to the 1951 Convention and the 1967 Protocol, and they formally recognized that the core principle of non-refoulement is specifically embedded in customary international law.13 The Convention additionally establishes basic minimum standards for the treatment of refugees. These rights include access to state courts, to primary education, to work, and to the provision of refugee and travel documentation. Under the Convention, refugees are granted travel documents in the form of a passport.14

Although based in a specific historical context and born out of the refugee crisis

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9 Ibid.
10 Ibid., 2.
11 Refouler may be translated from French to English as “to force back” or “to turn away.”
12 Guterres, 6.
14 Ibid., 3.
following World War II, the Convention and Protocol have become even more important for global governance as the number of refugees continues to increase. UNHCR maintains its mandate, and signatory states are required to uphold the Convention’s principles and standards. Huge growth in refugee numbers has kept UNHCR’s mandate relevant and essential. According to UNHCR, refugee growth over the course of the 20th century stems specifically from the increase in the number of source countries (countries of origin) from which refugees flee. By its data, in 1970, refugees existed from 16 total source countries. By 1980, the number of sources countries had increased to 32. In 1990, that number reached 43 source countries.\footnote{J. Craig Jenkins and Susanne Schmeidl. “Flight From Violence: The Origins and Implications of The World Refugee Crisis.” \textit{Sociological Focus} 28, no. 1 (February 1, 1995): 71.}

The increase in the number of refugees has meant that beneficial repatriation of a small number of refugees has become increasingly difficult. Prior to the mid-1970s, the majority of refugees eventually returned home, despite the fact that many cases were prolonged and some unresolved.\footnote{Harto Hakovirta. “The Global Refugee Problem: A Model and Its Application.” \textit{International Political Science Review / Revue Internationale De Science Politique} 14, no. 1 (January 1, 1993): 35.} UNHCR estimates that between 1971 and 1975, annual repatriations represented 25% of the total refugee population of about 2.4 million people. Between 1976 and 1980, just 3.5% of 4.9 million refugees were successfully repatriated. During the 1980, repatriations made up only 2.5% refugee scenarios annually. The trend of increasingly overwhelming refugee flows coupled with frequently prolonged security threats in the country of origin has resulted in alternatives to repatriation as viable solutions to refugee crises.\footnote{Jenkins and Schmeidl, 70.} 

As highlighted by these increasing numbers, refugee issues and policy are as...
important, if not more important, for academics today. The international refugee regime has not altered its core principles since the enactment of the Convention and Protocol, but these principles have remained open to interpretation. Even as the Convention and Protocol remain unchanged, important characteristics of modern refugee flows have changed. Instead of large refugee flows from a uniform country of origin, today refugee flows tend to be smaller, more sporadic and have origins in a variety of separate countries.

What follows next is a scholarly literature review of the field of refugee studies up to the present. The review will include basic scholarship on the definitional challenges of the field and issues regarding its scope. This review will also lay out various arguments about the causation contributing to the emergence of refugee flows. Finally, it will cover analytical models created to evaluate the policy responses of potential host countries. As a whole, these models are extrapolated largely from past refugee crises and applied in the abstract.
CHAPTER 1: ASSESSING THE FIELD OF REFUGEE STUDIES

Current refugee and refugee policy literature is grounded in the United Nations Convention relating to the Status of Refugees and the UNHCR mandate. As Richard Black notes in his comprehensive review, the field of “refugee studies” has expanded and grown significantly in the second half of the twentieth century. This academic expansion has directly coincided with the global emergence of the phenomenon of forced migration and an increase in the total number of refugees. Within the past fifty years, academic attention to refugee studies has increased and at the same time become more institutionalized. This growth in the field of refugee studies has paralleled a growth in the numbers of refugees and forced migrants over the same period.1

The process of institutionalization of the field of refugee studies began with the introduction of the Convention in 1951 and the later Protocol in 1967. On an international scale, this process has included the establishment of specialized research centers, international research organizations and the foundation of academic journals, all dedicated specifically to refugee studies. The field of refugee studies is intrinsically connected to the emergence of specific refugee policy regimes; as such, its expansion and institutionalization has largely paralleled specific policy development.2 A growth in scholarly output and a concurrent increase in centers for refugee studies have been

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2 Ibid., 57-8.
connected to policymakers. Often times, refugee research is policy-oriented research, completed in an institutional context. The production and dissemination of empirical evidence through policy organizations has been instrumental in expanding the field of refugee studies. The increase in output of academic literature has been based largely on the newly documented examples of specific displacement and humanitarian crises. The real increase in the number of global refugees has been one of the major contributing factors to the recent explosion in the field of refugee studies. The relationship between research and policy has developed a dialogue between policy practitioners who follow a problem-centered approach.³

Perhaps for this reason, academics in the discipline of refugee studies have consciously sought to remain a part of mainstream academia. Many in the refugee studies field perform research outside of an institutional context that requires specialization in refugee or migration studies. In fact, most current scholarly literature on refugees exists not only in specialist journals devoted only to refugee studies but also in broad, interdisciplinary policy studies journals. Many specifically refugee-oriented institutions do exist. The Journal of Refugee Studies, founded in 1988, is one example of a major interdisciplinary journal that focuses specifically on refugee studies. This journal and others, such as the International Migration Review, provide an important “focus for scholarly output” within the field of refugee studies. For such a newly emerging field, practitioners believe it is important to cultivate a broad academic discourse and maintain

³ Ibid., 65-7.
the scholarly presence of refugee studies across disciplines.\(^4\) To prevent the field of refugee studies from becoming too obscure or highly specialized, practitioners should apply their research to the fields of sociology, political science, history, as well as ethics and even religion.

The field of refugee studies must be more clearly defined if it is to progress as a distinct field of study. Language and terminology used within a field of study plays an important role in defining the scope that the field encompasses. Defining refugee studies is problematic because of various terminological difficulties and ambiguities. The question of what constitutes a “refugee” has both academic and practical implications. The United Nations Convention relating to the Status of Refugees, adopted in 1951, provides the fundamental definition of who is a refugee. The Convention defines a refugee as:

\[\ldots\text{a person who is outside his or her country of nationality or habitual residence; has a well-founded fear of being persecuted because of his or her race, religion, nationality, membership of a particular social group or political opinion; and is unable or unwilling to avail him—or herself—of the protection of that country, or to return there, for fear of persecution.}\]

By nature, a definition must be specific. However, defining a refugee only by the 1951 Convention definition has the potential to lead to a definition rooted in too particular a context. In general, acceptance of the legal, policy-based definition of refugee prevails in the global refugee discussion. Although the question of what constitutes a refugee exists, there has been relatively little academic literature based on conceptualizing or theorizing

what constitutes a refugee or what constitutes the field of refugee studies.\(^6\)

However, some literature argues for the extension and expansion of the definition of “refugee” to include other types of forced migrants. Scholars argue that definitions and classification of different peoples establish legal differences for essentially similar human conditions. The popular conception and application of the term “refugee” is generally more expansive than the legal definition. Many individuals labeled as refugees by the public have difficulty proving the necessary “well-founded fear” and terms required by the legal definition. The popular view tends to include almost all individuals who have crossed a border because of dangers in their home country, independent of the nature of the danger. Although civil war and domestic disturbance do not serve as a complete basis for designation as a refugee, the public repeatedly calls those who have fled civil war “refugees.” Proving broader than the legal definition, the social understanding of the definition of what defines a refugee includes those who flee their country of origin out of fear, irrespective of the Convention’s five grounds.\(^7\)

Due to the specific requirements of the legal “refugee” designation, there exist other specific terms and more generalized categories to define different types of forced migrants. For example, scholars have focused increased attention on the term “internally displaced persons” (IDPs) to describe marginalized, alienated and persecuted populations. This effort to broaden the definition of what constitutes a refugee consequently extends

\(^6\) Black, 63-5.
the boundaries of refugee studies to encompass a broader field of forced migration.8

**Analytical Lenses**

Within the field of refugee studies, much of the research seeks to assess the impact of the field’s scholarship on actual policy. While it is difficult to establish a causal link between research and changes in policy, there do exist concrete analytical frameworks by which refugee policy can be examined.9 Sarah Deardorff Miller introduces and defines two contemporary lenses through which global refugee policy can be analyzed. Like Black, Miller emphasizes that one’s understanding of global refugee policy is highly contingent upon ontological assumptions and the way in which disciplinary lenses are applied.10

Miller defines the first approach as a combination of political science and international relations. By this lens, academics focus on how states, transnational networks, and national and international organizations and institutions interact with and put into practice global refugee policy. By this analytical framework, the state is the main object of study. This approach takes an empirical look at how policy is created and how and where it functions. This approach emphasizes that the world is increasingly globalized and interdependent. As such, the political science and international relations lens highlights the fact that global refugee policy is not just a domestic or national issue.

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8 Black, 63-4.
but instead a global and international issue that crosses state boundaries.\textsuperscript{11}

This approach provides a contrast to the anthropological and sociological lens. By this second approach, the nature of refugee policy itself is questioned. This approach seeks to analyze how policy is used, especially with regards to power, authority and control of government vis-à-vis the individual. Through this lens, specific themes of power and authority, as well as discourse and rhetoric, are used to analyze the concept and usage of the terms “policy” and “global policy.” By this approach, it is important to conceptualize what exactly constitutes “global refugee policy.” Policy is considered an instrument of governance that is created with a specific function. Forced migration literature written from this analytical perspective examines how language, discourse and power relations affect refugee policy.\textsuperscript{12}

By taking an anthropological perspective on policy, this lens focuses on the relationship between the individual, the society and the government. This approach espouses a critical approach to policy, regarding refugee policies as the tools of state officials used to categorize, limit, label and control refugees. When policy is considered as a function of top-down regulation, it can be analyzed to pinpoint reasons why it does not always perform its intended function. At the core, refugee policy issues are so difficult because they are an attempt to solve the problems of individuals on societal, governmental and international levels. Due to the difficulty this presents, the current trend is to use prima facie group determination of refugee status on the basis of the circumstances the country of origin, instead of determining refugee status by individual

\textsuperscript{11} Ibid., 2.
\textsuperscript{12} Ibid., 2-4.
Considering these two analytical frameworks, Black would assert that the political science and international relations approach is more prevalent in refugee literature. The conceptualizing and theorizing that is important by the anthropological and sociological perspective may be lacking. Miller also suggests that gaps in refugee policy literature still exist. For instance, she claims that academics must question whether the existence of global governance in a global world is necessarily a given. This poses the question of whether increased globalization and interdependence must lead to a uniform international or supranational refugee policy.\(^\text{14}\)

With regards to terminology, Miller poses the question of whether “policy” or “norms” is the more appropriate and advantageous term to use when discussing solutions and standards of the international refugee regime. On a similar note, Miller suggests that the core of global refugee policy has yet to be defined. In order for the concepts to be globally viable, both the field of refugee studies and the idea of a global refugee policy must be better defined. Both ontologically and normatively, for a global refugee policy to exist it must become clear whether migration management, refugee rights, refugee protection, or another key component will form its core. Miller suggests that a better understanding of what global refugee policy should entail by scholars and policymakers will allow states and organizations to respond by devising better policies. Refugees themselves will benefit from a more well-defined and well-understood notion of global protection.


\(^{14}\) Miller, 6.
refugee policy, as the development of the field of refugee studies has important implications on human lives.\textsuperscript{15}

\textit{Refugee Flow Creation}

The ongoing and substantial increase in refugee populations begs the question of how these refugee flows are created. Refugee flows, also called “refugee streams,” arise in “refugee situations.” A refugee stream is composed of a certain number of refugees who flee to one or more similar asylum countries over the course of a certain period of time. The presence of refugee flows causes a “refugee situation,” which occurs as a result of refugee streams that manifest in the form of various degrees of human, societal, governmental and international difficulties. As a rule, refugee flows are most often caused by conflict situations. Conflict situations can be defined as “situations in which violence and/or persecution is used for the attainment of political goals, or where there is an immediate threat of violence or persecution due to societal turmoil or lack of law and order.”\textsuperscript{16}

Scholars also assert that refugee flows are produced by the nature of the international political system. According to Charles Keely, refugee flows are created by the geopolitical nature of international politics. The nation-state is thus the source of refugee flows.\textsuperscript{17} Hakovirta concurs that conflict situations may arise between states, between opposed political forces within a state, or between a government and its

\begin{itemize}
\item\textsuperscript{15} Ibid., 6-7.
\item\textsuperscript{16} Hakovirta, 38-9.
\item\textsuperscript{17} Charles B. Keely. “How Nation-States Create and Respond to Refugee Flows.” International Migration Review 30, no. 4 (December 1, 1996): 1046.
\end{itemize}
unorganized opposition. So, the root causes of violence and repression that give rise to refugee outflows are, in the majority of cases, governmental instability, poverty, societal and regional divisions, as well as power considerations.\textsuperscript{18} Scholars have identified various factors within the international system that cause refugee flows.

By Keely’s model, a nation-state will create forced migration flows for three reasons. First, the nation-state contains more than one nation. Second, the population within the nation-state disagrees about the structure of the state or the economy. Third, the state implodes due to lack of resources.\textsuperscript{19} Hakovirta notes that in each situation, there exists a positive correlation between refugeeism and repression. So, repression in either of these situations is a prediction of possible refugee flows.\textsuperscript{20}

When the ethnic and the territorial nation are not aligned, tension within the nation-state occurs. The ethnic nation can be defined as a community based on descent; the ethnic nation is essentially a nation in search of a state. The territorial nation is instead a fusion of regional groups that have been brought together under an overarching identity by a central governmental power. Typically, physical territory is an integral part of nationality. However, the occurrence of incongruity between the territorial and the ethnic nation is a central cause of refugee flows. In most cases, the nation requires a state in order to provide and preserve internal order, as well as to preserve and defend the nation externally. In the contemporary geopolitical system, “statelessness is normatively deviant.” Stateless peoples such as refugees, who fall outside of the protection of the state,

\textsuperscript{18} Hakovirta, 42.  
\textsuperscript{19} Keely, 1046.  
\textsuperscript{20} Hakovirta, 40.
are thus deviant and threaten geopolitics based on the nation-state. Ideally, each state should contain one nation so that a government supports a unified collective interest. The existence of multinational states demonstrates the difference between the normative ideal and the reality of the modern system. Keely calls this distinction the nation-state norm versus the multinational reality.\textsuperscript{21}

The multinational state represents the first possible source of refugee flows. Due to the frequent difference between ethnic and territorial nations, the nation-state must attempt to reconcile the nation-state norm with political reality. The nation-state will do this by a) attempting to develop a supranational identity distinct from any constituent nation, b) creating a national identity based on one dominant group to which other groups are forced to conform, c) forging confederation agreements to institutionalize national differences, or d) developing a program of ethnic cleansing to achieve ethnic homogeneity and a single national identity. In this fourth scenario, refugee flows emerge as a result of state-sponsored population transfers, expulsion, or genocide as a way to reconcile a multitude of identities.\textsuperscript{22}

In extreme cases, the state may pursue an ethnic purification policy that culminates in genocide. At times, strong separatist or autonomist movements challenge the political and economic domination by hegemonic ethnocracies.\textsuperscript{23} In fact, many of the most urgent and longest-lasting refugee crises have originated from ethnic and religious

\textsuperscript{21} Keely, 1047-52.
\textsuperscript{22} Ibid., 1053.
cleavages, as well as regional inequalities and differences within a nation.\textsuperscript{24} Although the last manner of nation-state formation is most outwardly violent, all four methods contain the inherent possibility of conflict. Each case requires the destruction or suppression of the national identities of at least some citizens. During the process of nation-building or during times of transition, a nation-state that attempts to manage or actively change its multinational dynamic is likely to become the source of refugee flows.\textsuperscript{25}

The second possible source of refugee flows comes from a diversity of ideologies. Ideological disagreement or revolution shows the unfixed nature of state institutions. When the political or socioeconomic structures of the state undergo changes due to internal ideological unrest, the creation of refugee flows is a possible and probable result. Social transformation and revolution, from either the left or the right, usually accompanies violence and displacement.\textsuperscript{26}

The third possible source of refugee flows is the implosion of the state. By definition, “state implosion” occurs when there is no sitting government in control, no operating justice system, a failing infrastructure without the resources to repair it, and the lack of banking and monetary systems. When a state implodes, migration almost always occurs. These migrants become categorized as refugees if they come to fear persecution or death by rival groups seeking to establish political power. Hakovirta notes that as violence and repression are correlated with the production of refugee flows, so too does

\textsuperscript{24} Hakovirta, 45.
\textsuperscript{25} Keely, 1054.
\textsuperscript{26} Ibid., 1054-5.
the ceasing of a refugee flow coincide with the ending of a repressive conflict.\textsuperscript{27} Although distinct, these three conflict scenarios can occur simultaneously and exacerbate the production of refugee flows.\textsuperscript{28}

The aforementioned analytical lenses and identifiable factors affecting refugee creation and subsequent policy responses are all contained under the umbrella of recent refugee studies scholarship. By providing two multi-faceted analytical frameworks, scholars like Miller permit concrete analysis of refugee crises at different levels of governance. It is important to recognize for the forthcoming argument that the factors outlined by Keely and others were present in Iraq and contributed to the creation of a prolonged refugee crisis. Although this paper will focus specifically on the policy response of the United States to this crisis, it is important to take note of tendencies displayed internationally in addition to national tendencies. Essentially, such a global problem warrants a look at the global response. Over time, changes in refugee patterns have paralleled changes in policy responses. These changes, as well as the variety of interpretations of the Convention and Protocol, call into question the existence of a truly uniform international refugee regime.

\textit{Change in Refugee Patterns Over Time}

The main source of refugee flows has evolved over time. After World War I, the original international refugee regime that emerged with the League of Nations sought to arrange internationally coordinated protection and assistance to displaced people. At this

\textsuperscript{27} Hakovirta, 42.
\textsuperscript{28} Keely., 1055-6.
time, population transfers were related to the end of European empires. Major flows were caused as people fled from states that could no longer protect their citizens. Directly after World War II, international attention shifted its focus to refugees from Nazi Germany and other minorities. Relief efforts focused on the repatriation of these refugees within Europe, and later on overseas resettlement after the descent of the Iron Curtain. In the 1950s, the focus of humanitarian efforts for refugees shifted to the Third World, as it became the source of the majority of refugees. Conflict situations brought about by civil wars and ideological revolutions that emerged during post-colonial state building created high-volume refugee flows. As superpowers began to withdraw support from Third World countries at the end of the Cold War, these states became further weakened to the point of implosion, creating additional refugees.\(^{29}\)

During the latter half of the 1970s, both the number of refugees as well as the level of international response increased dramatically. Between 1979 and 1980, the number of refugees worldwide doubled; the financial resources received by UNHCR from signatory nations quadrupled. Although the increase in funding was positive, this disproportional growth demonstrated that the cost per refugee had begun to far outpace the increase in refugee numbers; more money was needed to assist fewer refugees. At this time, the growth in costs was largely due to resettlement programs for Indochinese refugees. By the end of the 1980s, the rapid-development phase proved to be transitory. From the 1980s on, spending levels by UNHCR remained the same or below the level reached in 1980, even as the number of refugees globally continued to increase. This

\(^{29}\) Ibid., 1056-7.
means that the amount spent per refugee has been constantly decreasing. Hakovirta defines this difference between international response and the causes of refugee crises as a “crisis gap.” In this way, one major problem that has contributed to the continuity of the global refugee crisis is the inability of UNHCR and individual nations to coordinate a sufficient international response to individual refugee crises.

According to Keely, the international cause of refugee flows has always been based on the nation-state system. This is precisely because large, uncontrolled movements of peoples beyond their state borders threaten international stability. Thus, the political basis for the international refugee regime is protection of the state and the international system of states. By this model, refugees represent a “system-induced threat” to international equilibrium. In order to restore order to the system, the “preferred durable solution” is the process of repatriation as an “attempt to regain normalcy.” Like the process of refugee flow formation, refugee policies have also evolved over time. During the Cold War, refugee policy focused mainly on resettling the “victims” of communism; in fact, resettlement and asylum policy in the West favored applicants from communist countries. This represented a distortion of the refugee regime, because anticommunist policy encouraged refugee admissions as a way to disparage totalitarian countries. In the 1990s, UNHCR’s focus was also on repatriation. Keely identifies a dual standard in the treatment of anticommunist refugees and Third World refugees, who are more likely to

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30 Hakovirta, 48. In constant prices, only between 1989 and 1990 did the sums spent by UNHCR exceed the level reached in 1980.
31 Ibid., 49.
32 Keely, 1057-8.
Due to the stateless status of refugees, a fundamental mandate of UNHCR is to provide state-like protection to refugees. This protection mandate includes the security of person and property, the exercise of the right to worship, marry and perform normal life activities, and the general preventative action against large-scale human rights violations. Human rights violations are often major causes of refugee flows. For this reason, UNHCR seeks to identify “early warning” signs of potential refugee flows.\textsuperscript{34} The UNHCR mandate is fundamentally given by states. Therefore, states define its scope and operation by interpreting the mandates through authoritative and positive actions. States want to maintain the UNHCR mandate because refugees pose a destabilizing threat to the state system itself. This fact is especially important in the context of this paper. Refugee policy and response to migration flows must be analyzed on a state-by-state basis because states are the political bodies that interpret and act out UNHCR mandates.\textsuperscript{35}

J. Craig Jenkins and Susanne Schmeidl label the refugee situation today as a “global refugee crisis.” First, the problem is global because the refugee flows have become so large that they can only be addressed and remedied at a world level. This means that international institutions and non-governmental organizations are fundamental in humanitarian assistance and humanitarian intervention for conflict resolution. Even as the problem must be solved at a global level, the roots of the refugee crisis lie in the structure of the international system. Conflict over refugee policy is essentially rooted in

\textsuperscript{33} Ibid., 1059.
\textsuperscript{34} Ibid., 1062.
\textsuperscript{35} Ibid., 1059-62.
international inequality between nations of the world economy. On one hand, refugees often emerge from nations where internal or domestic problems are caused by inequality, repressive governments and ethnic hostilities. The larger issues of global inequality and interstate interaction are also part of the refugee problem. Political violence derived from inequality is generally the basis for the global refugee crisis. This includes instances of civil war, severe state repression and international war.36

Factors Affecting Refugee Policy

As the refugee crisis has become more globalized, scholars have been able to use data from past refugee crises to identify the factors affecting refugee policy once a crisis emerges. Generally, scholars tend to agree on the principal variables at play that affect refugee policy. However, scholars vary in their division of the general variables into more specific factors. The four broadest variables that encompass more specific factors include a cost-benefit analysis on an international level, diplomatic relations with the sending country, analysis of the absorptive capacity of the prospective host country as determined by economic conditions, and national security considerations of the host country. Depending on the cause of the refugee crisis and the state of the political climate, certain factors become more important in predicting and explaining the policy responses of individual nations.

The first response to refugee crises occurs on both an international and national level. Scholars suggest that the internationalization of a specific refugee crisis (as well as

36 Jenkins and Schmeidl, 63.
the global refugee crisis as a whole, historically) depends on the following factors: the seriousness of the refugee crisis itself, the nature of the underlying conflicts causing the refugee crisis, and the efforts undertaken by the state and other actors to manage and solve the issue. Even as these factors affect the process of internationalization of the response to a refugee crisis, the subsequent internationalization of a response influences these original factors in return.37

Once refugee flows emerge, governments face choices about how to respond to this population influx. First, a “refugee influx” is defined as “that which occurs when, within a relatively short period (a few years), large numbers (thousands) of people flee their places of residence for the asylum country.” Essentially, an influx is a group of people who flee their country en masse. A host government has three clear choices when it comes to accepting refugees. It can a) do nothing; b) respond negatively; or c) respond positively. A host government can evaluate refugee policy choices along a spectrum based on United Nations protocols and recommendations: from perfect compliance to noncompliance.38

Beneath the umbrella of generally accepted policy variables, Karen Jacobsen identifies four major factors that influence the policy response of individual host governments and influence the formation of a state’s refugee policy in the face of a refugee influx. Jacobsen presents the following specific factors: costs and benefits of accepting international assistance, relations with the sending country, political

37 Hakovirta, 52.
calculations about the local community’s absorption capacity, and national security considerations. The nature of these factors means that less developed countries often practice different responses with regards to asylum than those of industrialized Western countries. This is precisely because diverse economic, political and military considerations shape their responses.39

The first factor that influences a host country’s response is the cost-benefit analysis of accepting international assistance. The cost and benefit analysis is largely tied to bureaucratic choices. Bureaucratic choices deeply affect refugee policy. For instance, prior legal and bureaucratic decisions affect subsequent refugee policy decisions; thus policy outputs become subsequent policy inputs.40 Often times, the decision to allocate refugee responsibility to a civilian state agency means that agency has a vested interest in refugees and will set a more positive policy. If refugee policy is not allocated to a separate agency, refugees can be seen as a burden or even a threat to national security.41

Part of this cost-benefit analysis, executed at the national level, is an analysis of the various players that shape bureaucratic decisions and actions. Gary J. Miller outlines the traditional principal-agent theory (PAT), a modeling technique that addresses the information asymmetry and resulting system of incentives in political relationships relevant to this case. PAT assumes that the agent has an informational advantage over the principal, although the principal has formal authority in the relationship. In PAT, the principal’s authority to impose incentives on the agent is most important. Even at an

39 Ibid., 656.
40 Ibid., 660.
41 Ibid., 661.
informational disadvantage, the principal can maintain leverage against the agent. The principal seeks to manipulate the agent’s incentives in order to minimize “shirking,” which is defined as the total loss imposed on the principal by an inability to align the agent’s self-interest with that of the principal.42

In the United States, the president has the role of the agent, and Congress plays the role of the principal. Case study research has shown that despite low levels of congressional monitoring of the president, Congress still exercises a level of control over the executive. This suggests that bureaucrats are adequately motivated by incentives to act in the best interest of Congress, even in the absence of strict monitoring procedures. Miller asserts that congressional oversight of the bureaucracy has placed increasing emphasis on the negotiation of administrative procedures, instead of the imposition of outcome-based incentives on the agent.43 Citing an earlier paper by BR Weingast, Miller explains the precise nature of the incentives provided to bureaucrats and the executive by congressional committees: bureaucratic competition for (ultimately) limited budgetary appropriations, congressional influence over the appointment of top bureaucratic officials, and the threat of ex post sanctions in the form of congressional hearings and investigations.44

The second factor can be defined as a combination of international relations and global politics considerations that affect diplomatic relationships between the sending country and the host country. On a practical level, the international refugee regime

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provides financial assistance to support refugee resettlement, and UNHCR sets standards that states must follow. Normatively, the threat of bad publicity on an international stage can lead to more generous refugee policies. In some cases, the host government still may have leverage over international institutions within its borders. Relations with the sending country, whether friendly or hostile, also play a large role in determining a state’s response to refugee flows. Asylum policies are accorded to applicants by their countries of origin, demonstrating that relations between host country and sending country affects policy.\textsuperscript{45}

The third factor affecting policy is political calculations about the local community’s absorption capacity, as determined by economic conditions. Policy is thus concerned with the admission and treatment of refugees, durable solutions of repatriation, and local integration or resettlement in a host country. The local absorption capacity can be defined as the extent to which a community is willing and able to absorb an influx of refugees. On one hand, absorption capacity is based on the structural ability of a community to absorb large numbers of refugees, taking into account economic capacity and international assistance.\textsuperscript{46} Economic conditions are a major determinant for a receiving country’s migration policy. Economic capacity takes into account land availability, the carrying capacity of land, employment rates, and the strength of local infrastructure. On the other hand, absorption capacity can be measured by the willingness of a community to accept the refugees. This capacity is based on local beliefs and attitudes about refugees and a general perception of the community’s ability to

\textsuperscript{45} Jacobsen, 662-4.
\textsuperscript{46} Ibid, 658.
absorb refugees. This can also be called social receptiveness, which determines the cultural meaning of “refugees” in a community. Often times, the way in which a receiving community perceives refugees and thus how it responds to them is based on historical, cultural and religious factors. Cultural factors such as ethnic affinity and the belief that refugees are “deserving” of asylum foster more sympathy for refugees. This is especially important in democratic countries where governments are constrained by accountability to the public. A strong linkage between a state and civil society means that civil society influences policymaking.48

The final element that Jacobsen identifies that comes into play is national security consideration. National security can encompass both environmental and socioeconomic security. In different instances, refugees themselves may be real or perceived threats to the host country. The presence of an actual or perceived security threat affects policy negatively: police and immigration officials become less likely to admit asylum seekers and more likely to expel existing refugees.49 Wayne A. Cornelius and Marc Rosenblum also concur that diplomatic or security considerations can shape immigration policy generally, and in turn, refugee policy.50

Marc Rosenblum and Idean Salehyan, in a second article, assert that the four major factors that affect refugee policy act as a combination of both normative and national interest considerations. By their theoretical framework, normative and strategic goals are not mutually exclusive; in fact, normative and strategic goals can complement

48 Ibid., 669-71.
49 Ibid., 672-3.
or conflict in an interaction that determines state policy. For analytical purposes, however, Rosenblum and Salehyan point out that normative and instrumental goals can be analytically separated.\textsuperscript{51} From their previous studies, Rosenblum and Salehyan have concluded that refugee and asylum policy is predominantly humanitarian based. By this analytical framework, states thus make refugee and asylum decisions based on norms and interests.\textsuperscript{52} This argument may serve to predict which factor plays the most predominant role in shaping a refugee policy response.

Despite the definition of the general variables and specific factors that affect policy responses to a refugee crisis, there is no way to perfectly predict how a nation will respond. Over the past twenty years, coupled with an increase in global refugee flows, states have closed their borders to refugee influxes many times. Usually, states close their borders in order to preserve security and to relieve pressure on national capacity and capability to receive the refugees. Despite these economic or practical factors, border closures have become increasingly political. The ability to control state borders is a fundamental expression of state sovereignty that is equated with political power and identity. By determining who may enter a state’s territory, a state can determine its social and economic make-up. In this way, when a state offers asylum to asylum-seekers and grants refugee status to certain individuals, this obligation may directly conflict with or contradict state sovereignty, especially if the refugee influx may threaten the security of

\textsuperscript{51} See Miller’s definition of analytical lenses, pp. 9-12.
Thus, the theory and practice of border policy stand in opposition. Despite the willingness of states to allow asylum-seekers to remain within their borders, significant obstacles stand in the way. These obstacles are largely based in realism: the power and importance of national sovereignty. This can be included in what Rosenblum and Salehyan call the “norms-versus-interests debate.” In this case, the debate centers on whether humanitarian norms or strategic considerations can and do effect asylum and refugee policy. Humanitarianism, in this case, can be defined as the “principle that there is a duty incumbent upon each and every individual to assist those in great distress or suffering when the costs of doing so are low.” On one hand, realists and traditional liberals contend that states are rational actors that seek to maximize tangible benefits. On the other hand, constructivists argue that the emergence of international norms and the internalization of these norms take precedent over instrumental calculations.

UNHCR operates by its own set of normative and strategic calculations. Traditionally, the norm of non-intervention has taken precedence over the option for intervention as a strategy to mitigate refugee flows. Although intervention can risk significant conflict escalation and international instability, an interventionist approach by UNHCR risks the rejection by countries of origin (largely in the Third World) as well push-back from main donor states. For these reasons, current UNHCR policy focuses on

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identifying the root causes of refugee crises, as outlined here.\textsuperscript{56} The general scholarship on refugee flows is comprehensive in defining the factors influencing the creation of refugee flows and the decisions by host states to accept refugees. These points will be important in the chapters to follow as the response of the United States to the Iraqi refugee crisis is analyzed.

\textit{Proposal}

After looking critically at the existing literature, one can conclude that the Iraqi refugee crisis can be analyzed using the factors describing refugee formation as well as the policy response of host countries. Keely’s assertion that refugee crises are brought about by the geopolitical nature of the international political system holds, as does Hakovirta’s notion that the nation-state serves as the source of forced migration. More specifically, Keely’s suggestion that a multiethnic, multi-religious state can provoke and exacerbate a refugee crisis holds for Iraq; Iraq is a multi-ethnic state. Divisions between Sunni and Shia Iraqis, coupled with distinct geographical divisions between North and South Iraq, produced the tension between the nation-state norm and the multinational reality.\textsuperscript{57} Between February 2006 and November 2007, the registered IDPs in Iraq were self-identified as 63% Shia and 32% Sunni. According to the Iraqi Ministry for Migration and Displacement, almost half of Iraq’s non-Muslim minorities had fled abroad by

\textsuperscript{56} Hakovirta, 49-50.
\textsuperscript{57} Keely, 1047-52.
2008.\(^{58}\) Ethnic, religious and regional differences in Iraqi contributed to the dissonance and disorganization during the Iraq War.

Although a distinct difference in ideologies did not heavily contribute to the creation of Iraqi refugee flows, the implosion of the Iraqi state served as a major exaggerating factor after the invasion of the United States in 2003. The characteristics of state implosion, including civil strife, a lack of sitting government, no operating justice system, and a failing infrastructure, were all present and contributing factors to the refugee crisis. State implosion in this case caused forced internal migration and external migration. As both Hakovirta and Keely note, the Iraqi state was not the only state to contribute to the Iraqi refugee crisis. These two scholars agree that conflict situations may arise within a state but also between states. In this case, the initial act that preceded the refugee crisis was the invasion of Iraq by the United States in 2003. According to UNHCR, prior to invasion of Iraq there existed 1,021,963 IDPs living in Iraq. Between 2003 and 2005, following the invasion by the United States, the number of IDPs in Iraq rose by 190,146 persons. The number of IDPs rose significantly in February 2006 after the bombings in Samarra, which provoked unprecedented retaliatory sectarian violence.\(^{59}\) The lack of stable infrastructure, in combination with the Iraqi insurgency brought on by the Iraq War, contributed to the refugee crisis. Keely’s framework for the creation of a refugee crisis thus successfully and concretely explains the emergence of a refugee crisis in Iraq.


\(^{59}\) Ibid., 4-6.
The analytical models presented above can also be applied to the resulting refugee policy response. Jacobsen’s model of factors affecting a nation’s policy response is applicable in this case to the response of the United States to the Iraqi refugee crisis. Jacobsen’s first factor, costs and benefits of accepting international assistance, played a role in the US response by affecting bureaucratic and congressional actions. Specifically, the principal-agent theory and model can be used to analyze the US policy response. In this case, the division of responsibility and decision-making ability between the legislative and executive branches of the US government meant that initial responses to the refugee crisis were inconsistent and based on variable motivations. However, the power of the principal eventually played a role in policy change via a system of incentives and sanctions established by congressional hearings.

The second factor, diplomatic relations with the sending country, played a larger role in the US response. Regardless of US intentions, the invasion of Iraq in 2003 and the establishment of the Coalition Provisional Authority clearly exacerbated the hostile relationship between the United States and the government of Saddam Hussein. Even after the transfer of power to the Interim Iraqi Government and the reestablishment of diplomatic relations in 2004, the continuous presence of US troops kept official relations strained.60

In comparison, Jacobsen’s third factor played little to no role in the US policy response to Iraqi refugees. Political calculations about the local community’s absorption

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capacity is not highly relevant in the case of the United States, given the extensive resources of the US Refugee Admissions Program.61

Jacobsen’s fourth factor, national security considerations, played a relevant role in the initial policy response of the United States. Directly after the terrorist attacks of September 11, 2001, the United States halted the active processing of Iraqi refugee cases and banned all refugees from entering the United States while security procedures were reviewed. The consequent procedural changes resulted in an enhanced security review process and heightened security measures.62 Put into place to prevent terrorists from entering the country, this enhanced security review made it incredibly difficult for Iraqi refugees referred to the United States by UNHCR to pass through the screening process.63 In this case, steps taken to enhance national security directly resulted in a lower number of Iraqi refugee admissions.64

By using these two frameworks to discuss the factors influencing the production of the Iraqi refugee crisis as well as the policy response of the United States to the crisis, this paper will identify the unique factors that contributed to US policy. After considering the policy response of the United States and its political reaction to the Iraqi refugee crisis, one can determine whether the policy response follows a specific pattern of action


64 US Citizenship and Immigration Services, "Iraqi Refugee Processing Fact Sheet." Last modified April 25, 2012. Accessed March 28, 2013. For example, as late as FY 2007, refugee referrals to USRAP numbered 12,098. The actual number of refugees admitted to the United States was 1,608.
or operates on a more ad hoc basis. The initial response of the US government with regards to Iraqi refugees aligns most directly to the national self-interest approach to a refugee program. Over time, pressure from Congress, international organizations, as well as an increasing feeling of responsibility shifted the strategy to a partially humanitarian approach. The system of incentives created by the principal-agent model describing Congress and the executive can account for the eventual imposition of congressional hearings and committees, which served to assert certain ex post sanctions and to break down part of the informational asymmetry. This represented a reassertion of the formal authority of the principal over the agent in the form of a more complete refugee policy and increased appropriations.

In this paper, the creation and extent of the Iraqi refugee crisis is analyzed, including its origins in the Iraqi War and the US invasion of Iraq in 2003. The creation of the Iraqi refugee crisis will be analyzed using the factors outlined above that contribute to the production of refugee flows. Once the emergence of the Iraqi refugee crisis has been established, this paper will examine the historical development of the refugee policies of the United States. Using these existing policies as a background, this paper will then analyze the individual policy response of the United States to determine how its refugee policy was affected by the emergence of the Iraqi refugee crisis. By using aforementioned factors affecting a nation’s policy response to refugee flows, this paper will examine the motivating factors behind each specific response. Finally, the last section of the paper will examine the role of ethics and obligation as possible factors contributing to a policy response. These factors will be analyzed in conjunction with an analysis of the efficacy of
the Convention and Protocol Relating to the Status of Refugees, and the extent to which the United States conforms to international norms in their policy responses.
CHAPTER 2: THE IRAQ WAR AND ITS REFUGEES

The Iraq War

The Iraq War began in 2003, initiated by an invasion by the United States and the United Kingdom. The roots of the war, as well as the causes and motivation behind the invasion, rested largely on Iraq’s alleged possession of weapons of mass destruction (WMD) and the resulting threat posed by such a heavily armed Iraq. The history of the United States-Iraq conflict dates back to the Gulf War. At the war’s conclusion, the UN prohibited Iraq from producing and possessing WMD, and it required Iraq to submit to additional inspections to confirm its compliance. This prohibition was formally stated in UN Resolution 687, passed on April 3, 1991, which conditionally ended the Gulf War. It stipulated that Iraq destroy its chemical and biological weapons, as well as its long-range ballistic missiles. Iraq agreed not to develop nuclear weapons and to submit to on-site inspections and reports.

At the beginning of 2002, President George W. Bush identified Iraq, along with Iran and North Korea, as an “axis of evil” in his State of the Union Address. In May of that year, the UN Security Council (UNSC) decided to reevaluate and change its 11-year-old sanctions against Iraq, then under the control of Saddam Hussein. The UN introduced “smart sanctions” that were targeted at military equipment and required Iraq to cooperate with UN inspectors, in order to ensure that it did not possess WMD. After negotiations between the UN and Iraq began to deteriorate in July 2002, Iraq sought to invite Hans
Blix, the UN chief weapons inspector, to Baghdad, as a step towards compliance and a completed arms inspection. In September 2002, Iraq accepted the unconditional return and presence of UN inspectors.1

On October 16, an official referendum gave Saddam Hussein an additional seven-year term as Iraq’s president, after he received 100 per cent of the vote. At this point, both the United States and the United Kingdom had publicly declared their belief that Iraq posed a global security threat. President Bush appealed to the UN General Assembly, stating that Iraq posed a “grave and gathering danger” that had to be confronted immediately. On the other hand, the United Kingdom also published what became known as the “45 minute claim,” stating that Saddam Hussein did in fact possess WMD that could be activated within 45 minutes of his order.2 Released on the morning of the Tuesday, 24 September 2002 House of Commons debate, this report embodied claims and judgments of Britain’s intelligence services as to the nature of Iraq’s military capacity.3

On November 8, the UNSC passed Resolution 1441. Resolution 1441, jointly drafted by the United States and the United Kingdom, required Iraq to reinstate the process of UN weapons inspections after a four-year absence, in order to comply with its previous obligation to disarm. Resolution 1441 provided Iraq a final opportunity to fully comply with its original resolutions, including Resolution 687. It stated that Iraq, by the

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2 Ibid.
possession of WMD, was in material breach of that resolution. Resolution 1441 was accepted by Saddam Hussein on November 13, and weapons inspector Blix, now backed by UN Resolution 1441, returned to Baghdad shortly afterwards to look for WMD. As part of an additional requirement of Resolution 1441, Iraq produced a 12,000-page weapons declaration detailing its arsenal. The document was meant to be a full and current account of all chemical, biological, nuclear and missile weaponry at the time. At first, Blix stated that this Iraqi arms declaration contained little new information regarding its WMD capability.\(^4\)

However, on December 19, the United States accused Baghdad of a continued “material breach” of Resolution 1441. In response, Blix reported to the UNSC that although there remained “many unanswered questions” about Iraq’s weapons programs, the inspectors had not found any “smoking guns” that warranted military action. Ironically, on January 16, 2003, UN weapons inspectors found twelve never-before-seen warheads designed to carry chemical weapons. The inspectors believed that the warheads were not reported in Iraq’s 12,000-page submission to the UNSC. In response, the United States issued a statement describing the warheads as a “smoldering, not smoking gun,” evidence worthy of a military response.\(^5\)

After concluding the inspection, UN inspectors presented a report to the UNSC regarding Iraqi cooperation with Resolution 1441, as well as their search for WMD. The United States and the United Kingdom proceeded to seize the report, stating that it proved Iraqi noncompliance instead of Iraqi cooperation. In his 2003 State of the Union

\(^4\) Gilligan and Collins.
\(^5\) Ibid.
Address, President Bush announced his plan to attack Iraq, even without an official UN mandate. The Chilcot Inquiry later revealed that in April 2002, Prime Minister Tony Blair had promised President Bush to support the United States in its attack of Iraq in order to overthrow Saddam Hussein, with or without a UN mandate. Additional documents released later demonstrated that Prime Minister Blair disagreed with the cautionary statement made by the Attorney General, Lord Goldsmith. According to documents leaked after the meeting, Prime Minister Blair had confirmed to President Bush on January 31, 2003, that he supported US military action.  

On February 24, the United States, the United Kingdom and Spain submitted a proposed resolution to the UNSC, stating Iraq had failed to comply with the final opportunity for cooperation that was provided by Resolution 1441. In response, the foreign ministers of France, Russia and Germany released a joint declaration stating that they would not allow a new resolution that authorized military action to pass in the UNSC. In March, as tension rose, France and Russia announced that they would veto a drafted UN resolution requiring Iraq to disarm in seven days. French President Jacques Chirac declared that France would vote against any resolution that contained an ultimatum leading to war until the weapons inspectors in Iraq confirmed this prospect as a last resort. 

In direct opposition to the French, President Bush, Prime Minister Blair and the Spanish Premier, Jose Maria Aznar, met to discuss their proposed resolution. They set March 17, 2003, as a deadline for the UNSC to support the jointly proposed resolution

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6 Ibid.  
7 Ibid.
between the United States and the United Kingdom, which called for the immediate disarmament of Iraq. On that day, the British ambassador to the UN announced the withdrawal of the proposed resolution co-sponsored by the United States and Spain, as well as the termination of diplomatic processes on the topic of Iraq. In Iraq, UN arms inspectors evacuated; at the same time, President Bush gave Saddam Hussein 48 hours to leave Iraq or face war with the United States. On the British side, Lord Goldsmith, the Attorney General, stated that war with Iraq would be legal on the grounds of existing UN resolutions. On March 20, 2003, the invasion of Iraq by the United States and the United Kingdom began. Less than a month later, Baghdad fell to US forces.8

After declaring a victory for the United States on May 2, President Bush appointed Paul Bremer as top civilian administrator in Iraq, creating a US-led administration to replace Saddam Hussein’s fallen regime. Bremer then proceeded to abolish Iraqi institutions that had served to perpetuate Saddam Hussein’s powerful hold. The UNSC subsequently declared its support for the new administration in Iraq, and it lifted its economic sanctions. In July 2003, the interim governing council was formed, comprised of twenty-five Iraqis appointed by the United States and the United Kingdom. On December 13, 2003, Saddam Hussein was captured. After his capture, talk began about forming the Iraqi Interim Government; however, the Coalition Provisional Authority opposed holding democratic elections at this time.9

Beginning in the spring of 2004, the Iraqi resistance, made up of insurgents who opposed the foreign occupation, began to intensify. At this point, the Iraqi insurgents

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8 Ibid.
9 Ibid.
began to shift their attacks towards members of the new Iraqi Security Forces, instead of focusing solely on the coalition forces. Iraqi civilians and police became the new targets of the insurgency forces. Multiple offenses led by the coalition forces became some of the bloodiest battles in the war. In January of 2005, the Iraqi people elected the Iraqi Transitional Government. After an initial lull in the fighting, suicide bombers let loose a violent campaign across Iraq in the wake of the elections that killed hundreds of Iraqi civilians.

The Iraqi Refugee Crisis

The Iraq War of 2003 was the catalyst for a refugee crisis of massive proportions. By Harto Hakovirta’s definition, the Iraq War can be considered a “conflict situation.” Defined as a situation in which violence is used for political goals and where there exists the risk of violence or persecution due to social turmoil and a breakdown of law and order, a conflict situation produces the possibility of refugee flows. The violence that occurred in Iraq as part of the developing conflict situation emerged as a result of the US invasion. The nation-state and the international state system itself can be seen as a source of the conflict and the consequent refugee flows. In this case, the conflict situation arose between states and between factions within the state of Iraq. In turn, from this conflict situation emerged a “refugee stream,” essentially Iraqis fleeing the violence and persecution in their home country. From this model, the existence of a refugee stream caused a refugee situation, or crisis, in which the refugee flows became manifest on a
By 2008, it is estimated that the refugee stream exiting Iraqi was comprised of more than two million Iraqi refugees, or ten per cent of the Iraqi population. These Iraqis fled Iraq and took refuge in Syria, Jordan, Lebanon and other states that border Iraq. By some estimates, there were a total of approximately 4.5 million internally and externally displaced persons (IDPs) by 2008. Due to the difficulty with obtaining accurate and up to date data, the numbers of displaced and refugee-status Iraqis have changed constantly and vary by source. For example, Kelly O’Donnell and Kathleen Newland note that, while the Migration Policy Institute reported close to 4.5 million displaced Iraqis (2.2 million refugees and 2.3 IDPs) in a January 2008 publication, the Iraqi Red Crescent Society estimates of refugees and IDPs exceeded those numbers. Furthermore, UNHCR estimated in 2008 that close to 4.7 million Iraqis had been displaced from their homes, including roughly 2.7 million IDPs and 2 million refugees who had fled Iraq for neighboring Jordan and Syria.

According to UNHCR estimates, prior to the invasion of Iraq by the United States and the United Kingdom in 2003, Iraq was home to 1,021,963 IDPs. Between 2003 and 2005, the number of IDPs in Iraq rose by 190,146 persons. Specifically, the number of IDPs began rising significantly in November 2006, after Saddam Hussein was sentenced

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to death. As a result, it is estimated that around 1.5 million Iraqis were displaced between 2006 and 2007. Between February 2006 and November 2007, the registered IDPs in Iraq were self-identified as 63% Shia and 32% Sunni. According to the Iraqi Ministry for Migration and Displacement, almost half of Iraq’s non-Muslim minorities had fled abroad by 2008. By December 2007, just 4,575 Iraqis had left for third countries through formal resettlement programs, as opposed to informal migration streams. Between 2003 and 2006, a total of just 3,100 Iraqis were resettled to industrialized countries.

Over the course of 2008, less than one per cent of the Iraqi population was additionally displaced. On one hand, this data presents evidence of limited improvement, including a decrease in violence, lower levels of displacement, and a handful of returned Iraqis in some regions. However, the Iraqi refugee crisis remained serious and sustained; UNHCR estimated that the number of Iraqi IDPs who lacked food and shelter in 2008 exceeded 1 million people. In order to temper this ongoing humanitarian crisis, experts began suggesting that a stronger response from the international community, including funds for humanitarian relief, was necessary in the future. It would also be pertinent to examine the resettlement policies of third countries, especially those that neighbor Iraq. International assistance is needed to develop a strategy to manage the IDPs within Iraq as well as increase funding and aid to host countries and refugees outside of Iraq.

Although Iraq had been a significant refugee-producing country for several

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13 O’Donnell and Newland, 4-6.
14 Margesson, Sharp and Bruno, 1.
15 O’Donnell and Newland, 8-9.
16 Margesson, Sharp and Bruno, 1-2.
decades, the Iraqi displacement crisis grew on an unprecedented scale in recent years, and in particular since the upsurge in sectarian violence following the February 2006 Samarra bombings. According to the International Organization for Migration, the bombing of the Al-Askari Mosque in Samara in February 2006 triggered sectarian violence that significantly increased the number of displaced Iraqis. Although military operations, crime, and general insecurity remained factors, sectarian violence became the primary driver for population displacement. The steadily deteriorating security situation since the 2003 invasion made Iraq unacceptably dangerous for millions of its citizens. As UNHCR stated in its September 2007 eligibility guidelines on Iraqi refugees, “the present situation in Central and Southern Iraq is characterised by pervasive extreme violence, serious violations of human rights and a general lack of law and order.” By Charles Keely’s refugee model, the implosion of the Iraqi state at that time presents a plausible source of the subsequent refugee streams. Keely emphasizes that while implosion most often times causes migration, migrants become categorized as refugees if they come to fear persecution or death by rival groups seeking to establish political power.

Of the approximately 4.5 million displaced Iraqis, nearly 2 million have fled to neighboring countries of first asylum. These include Syria, Jordan, Lebanon, Egypt, and Turkey. Syria is host to the largest population of Iraqis outside Iraq, with approximately

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19 Sperl, 2.
1.2 to 1.5 million resident Iraqis, including over 128,000 registered refugees. According to the Institute for Applied International Studies, approximately 450,000-500,000 Iraqi refugees are residents of Jordan. Lebanon is host to approximately 50,000 Iraqi refugees, according to UNHCR.

The Iraqi refugee crisis is distinct and presents unique problems for a variety of reasons. First of all, the most significant problem with the past and current Iraqi refugee situation is that the top four countries of first asylum, including Syria, Jordan and Lebanon, are not signatories to the 1951 United Nations Convention relating to the Status of Refugees and its 1967 Protocol. This means that these countries have not legally accepted the UNHCR definition of the term “refugee,” as outlined by the convention. These countries have also refused to formally recognize the protection mandates recognized under international law. For this reason, these countries have not granted Iraqis legal refugee status and therefore treat them as temporary guests.

The refusal to grant legal refugee status stems largely from the fear that refugees will settle permanently in the country of first asylum. This means that the Iraqis are treated more as “temporary visitors” than those that require long-term support. So, Iraqi refugees fear deportation and thus do not take advantage of resources that should be available to official refugees. Despite this fact, UNHCR has expanded to operate in all of the major host countries. Registration with UNHCR still does not provide any legal status,

21 O’Donnell and Newland, 11.
22 Ibid., 14.
23 Margesson, Sharp and Bruno, 7. This article states that 40,000 currently reside in Lebanon.
24 Ibid., 8.
25 O’Donnell and Newland, 12.
however, and it therefore can only informally guarantee protection against deportation.  

On September 10, 2007, Syria issued visa restrictions limiting the entry of Iraqi refugees. Syria also refused to grant visas to US Department of Homeland Security officials seeking to screen Iraqis personally for admission to the United States Refugee Resettlement Program. Following pressure from the United States, Syria lifted the ban on November 11, 2007, but continued to deny Iraqis legal refugee status. Jordan, a second country that is not a signatory to the Convention, has not granted asylum to Iraqi refugees, nor has it given Iraqis legal refugee status. By law, Iraqis remain subject to deportation under these circumstances. Despite the fact that these nations are not parties to the UN Convention and Protocol, international law experts have claimed that all countries remain bound by international law to follow principles of non-refoulement—the principle of not returning refugees to their home country against their will. 

Such a large number of Iraqi refugees have started seeking closer countries of first asylum because of the costs associated with relocation. The majority of Iraqis are constrained from seeking refuge outside of the surrounding region due to the obstructive cost of the journey, and due to restrictive administrative practices in receiving countries. In these neighboring countries, many refugees fall into urban settlement patterns, which represents a departure from other past refugee crises. Typically, refugee camps serve to consolidate refugees in a central location, making it easier to distribute aid to refugees. However, in refugee camps like those in Syria and Jordan, Iraqis are placed in a more

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27 Ibid., 26. Some of these nations have granted a small number of tourist visas to Iraqis; this does not provide Iraqis with legal refugee status and thus prevents them from receiving state-funded support.  
28 Ibid., 12-6.
urban setting and are also dispersed. Humanitarian efforts have been made more
difficult by the lack of accurate and reliable estimates on the number and needs of Iraqis
living as refugees in neighboring countries. It is difficult to target and record Iraqis
because they are living interspersed with the natural population, especially in urban areas.
This makes aid distribution more difficult and less effective.

Many of Iraq’s neighboring countries have refused to grant Iraqis legal refugee
status because they fear an overwhelming drain on national resources, due to the
overwhelming number of refugees who have fled over Iraq’s borders. A primary concern
is the declining absorptive capacity of neighboring countries, and whether or not they can
provide the resources necessary for such a large refugee population. Regardless of the
desire of these nations to host Iraqi refugees, refugee flows are generally disruptive and
can inhibit stability in already unstable regions.

A third major problem facing Iraqi refugees is the weak capacity of the Iraqi
government to assist its IDPs and refugees that have fled. In 2007, the Iraqi government
pledged $25 million to assist Iraqi refugees in neighboring states. The payment of this
pledge was delayed until mid 2008. For this reason, some of Iraq’s neighboring countries
that have been hosting Iraqi refugees have expressed discontent over the perceived lack
of support from the Iraqi government for its own citizens, at home and abroad. Some see
this lack of adequate funding as an indication of the Maliki government’s unwillingness

29 O’Donnell and Newland, 2.
30 Government Accountability Office, i.
31 Margesson, Sharp and Bruno, i.
to seriously assist its own people.\textsuperscript{32}

Some experts believe that sectarian divisions have influenced the behavior of the majority Shiite Iraqi government. According to UNHCR estimates, approximately 67% of registered Iraqi refugees in Syria are Sunni Muslims. Some scholars suggest that religious differences have prevented greater support from the Iraqi government. In the United States, Congress has voiced concerns about the level of resources the Iraqi government has pledged to assist Iraqi refugees and IDPs. On the other hand, some experts suggest that the Iraqi Ministry of Displacement and Migration (MoDM) has simply lacked the capacity to respond adequately to the refugee crisis. In response to the lack of developmental capacity of the Iraqi government, UNHCR and other international organizations have emphasized that international aid must be increased. UNHCR has emphasized the need for program development within host countries as well as for NGOs that are providing humanitarian assistance.\textsuperscript{33}

\textit{International Response to the Crisis}

Over the course of the conflict in Iraq, UNHCR has regularly released guidelines for states to follow with regards to refugee determination. Per the UN mandate for UNHCR, the body must try to ensure that states uphold their own obligations under the 1951 Refugee Convention. Despite the power of UNHCR’s recommendations, some states have been unwilling to fully accept these recommendations. Worldwide, there are few states that have granted Iraqis full refugee status, with the majority failing to provide

\textsuperscript{32} Ibid., 16.
\textsuperscript{33} Ibid., 17.
even complementary protection.34

According to UNHCR, whose mandate requires it to propose final solutions to the refugee crisis, there exist three possible solutions as an end point of the crisis. The first and most preferred solution is voluntary refugee repatriation. In most cases, the majority of refugees prefer to return home as soon as circumstances in their home country permit, often times when the conflict situation has abated and a level of order has been restored. UNHCR does promote, support, and facilitate voluntary repatriation as the best solution for displaced people, as long as the process of reintegration is safe and viable. The second solution proposed by UNHCR is the resettlement of refugees in the country of asylum. UNHCR facilitates the process of integrating refugees into various host countries and helping refugees to transition to a new life. This solution is preferable in cases where refugees are unwilling or unable to return to their country of origin in the face of possible persecution. Although this is a viable solution, UNHCR data sets show that only a small number of countries permit and encourage refugee resettlement.35

The third possible solution is an extension of the second: permanent resettlement of refugees in third countries. According to UNHCR, only a small number of nations take part in UNHCR resettlement programs, which includes accepting annual quotas of refugees.36 This is because it is difficult to align the migration destination choices of refugees with the host states’ costs of hosting refugees. Since the Convention was adopted in 1951, the resettlement regime has become less attractive to wealthy states. If

34 Sperl, 4-5.
36 Ibid., 10.
some heterogeneity exists between the costs of hosting refugees, often times the “first best” will not be implemented. The “first best” is defined as a matching up of the migration destination choices of refugees with the cost-minimizing allocation of refugees to host states.\textsuperscript{37}

While it provides a permanent solution to the refugee crisis, refugee resettlement has its benefits and its drawbacks. It is necessary to keep in mind that the global refugee populations do not make up a static pool of individuals that can be easily counted and organized. Resettlement not only affects the host country, but it also creates consequences in future migration patterns, future refugee flows, and the attitudes and actions of existing refugee camp populations. A major resettlement program can produce unintended consequences in the sending country, and it can affect the politics in the country of origin as well as the country of asylum. Large-scale resettlement programs can have the unintended effect of discouraging other, sometimes superior, durable solutions. For this reason, UNHCR ranks voluntary repatriation and local integration in the current country of asylum higher than major refugee resettlement programs.\textsuperscript{38}

Since the start of the Iraq War in 2003, UNHCR’s position has continually been that Iraqi asylum-seekers should be either recognized as refugees or provided with another form of international protection, with special consideration given to those from Central and Southern Iraq. Before the escalation of sectarian violence that occurred in September 2004 and September 2005, UNHCR issued Return Advisories that


emphasized the need for individual status determination to be carried out for each Iraqi asylum seeker that may be returned home. These Return Advisories also called for a minimum level of protection for all Iraqi asylum-seekers outside of Iraq, until the security situation improved and refugee return became feasible and beneficial. Since the Samarra bombings in February 2006, subsequent UNHCR guidelines further emphasized the need for greater numbers of Iraqis to be granted refugee status. The September 2007 recommendations reaffirmed UNHCR’s December 2006 position, stating that all Iraqi asylum-seekers from Central and Southern Iraq “should be considered as refugees based on the 1951 Convention criteria.” Additionally, for those not granted automatic refugee status, UNHCR continues to strongly recommend that “international protection should be afforded” through a complementary form of protection.\(^{39}\)

Since the invasion of Iraq in 2003, UNHCR has continually maintained its opposition to any program of forced returns of failed Iraqi asylum-seekers, due mainly to persistent security concerns. UNHCR has also discouraged states from implementing voluntary return programs to Southern and Central Iraq, which might inadvertently or implicitly encourage Iraqis to return home before they should. Many of the UNHCR guidelines are based on the premise that Iraqis generally lack an Internal Flight Alternative, which is defined as the possibility for Iraqis to find protection elsewhere in their country of origin. Widespread violence, as well as the difficulties and costs associated with extensive travel, has prevented Iraqis from seeking refuge within Iraq.\(^{40}\)

Regarding Central and Southern Iraq, the final UNHCR guidelines have

\(^{39}\) Sperl, 4.

\(^{40}\) Ibid., 3.
emphasized that those Iraqis granted refugee status prior to the 2003 invasion should not have their refugee status revoked, despite the fall of the Iraqi Ba’ath government. Prior to 2003, refugee status was granted on the basis of the threat of persecution by Saddam Hussein’s regime. UNHCR maintains that the prevailing instability in Iraq is grounds for maintaining refugee status.41

In contrast to UNHCR’s position regarding Central and Southern Iraq, UNHCR’s position regarding Northern Iraq has been slightly more lenient. By comparison, the security situation in the three Kurdish-controlled Northern Governates has remained markedly more stable than in the rest of the country. As such, UNHCR has stated that voluntary returns to this region may be possible. In saying so, UNHCR has strongly qualified this position by restating that nations must remain sensitive to the unstable security situation throughout Iraq. Its guidelines emphasize that states wishing to voluntarily or forcibly return Iraqis to Northern Iraq must take the position of the Kurdistan Regional Government (KRG) into account. In the past, the KRG authorities have stated that they “strongly oppose any forcible returns to Northern Iraq.”42

The topic of voluntary returns of refugees to their home country remains controversial. In late 2007, the number of returned refugees to Iraq increased. At the time, these successful returns were credited to an improved security situation in Iraq. On the other hand, these returns can also be interpreted as a political move by the Iraqi government in response to pressure to demonstrate progress in the rebuilding process. These returns can also be seen as a way to acknowledge and demonstrate a reduction in

41 Ibid., 5.
42 Ibid.
violence by the United States and as a way to prove the positive and critical impact of the previous troop surge that occurred in 2006.\textsuperscript{43}

This positive outlook contrasts with statements made by UNHCR at the time warning about the dangers of preemptive voluntary returns programs. UNHCR stated that it did not consider conditions in Iraq at that time to be conducive to voluntary returns. This statement was primarily due to concerns about security and protection for returnees in Iraq as well as the lack of absorptive capacity and infrastructure to implement a beneficial returns program. According to reports, up to 70\% of Iraqi refugees who did return to Baghdad were unable to resettle in their own homes, either because someone else was living there or because the ethnic composition of the neighborhood posed social dangers. The main fear was that MoDM lacked the resources and competency to effectively process potentially large-scale returns.\textsuperscript{44}

In addition to voluntary returns, some nations have created policies of forced returns of refugees to their home country. In countries neighboring Iraq, such as Lebanon, refugees that are arrested because they lack legal refugee status are given the option of “voluntary deportation” to Iraq or to remain in jail. European countries, such as the United Kingdom, have sent Iraqis back to the Kurdish-controlled North, which has been considered sufficiently stable and safe for returns.\textsuperscript{45} In contrast, by 2007, Sweden had received the highest number of Iraqi refugees. According to UNHCR’s \textit{Statistics on Displaced Iraqis Around the World} from September 2007, Sweden granted protection

\textsuperscript{43} Margesson, Sharp and Bruno, 16.
\textsuperscript{44} \textit{Ibid}.
status to more Iraqis in 2006 than the rest of EU combined.\textsuperscript{46}

In addition to UNHCR, several other major international NGOs with expertise on refugee issues have issued their own declarations regarding the Iraqi refugee crisis. These NGOs, including Amnesty International, the European Council on Refugees and Exiles (ECRE) and Human Rights Watch, have declared recommendations on Iraqi asylum-seekers consistent with those guidelines issued by UNHCR. In addition, the International Committee of the Red Cross has stated that the security situation in Iraq since 2004 has qualified as an “internal armed conflict.” At a conference in 2007, organized by UNHCR to draw international attention to the Iraqi refugee crisis, both UN High Commissioner for Refugees Antonio Guterres and the UN Secretary General called on states to grant protection to Iraqi asylum-seekers.\textsuperscript{47}

The international response to the Iraqi refugee crisis has been widespread. On August 14, 2003, the UN Security Council passed Resolution 1500, which established the UN Assistance Mission for Iraq (UNAMI). UNAMI coordinates the United Nations Country Team, which is composed of sixteen UN agencies and programs involved in Iraq, and it works with international and local staff. At present, Martin Kobler serves as the UN Secretary General’s special envoy to Iraq and head of UNAMI, replacing Steffan de Mistura in August 2011. On August 7, 2008, the UN Security Council Resolution 1830 extended UNAMI’s mandate for an additional year. In coordination with the Iraqi MoDM, UNHCR is the focal point for the United Nations’ Cluster Approach on refugees and IDPs. The International Organization for Migration (IOM) serves as deputy coordinator.

\textsuperscript{46} O’Donnell and Newland, 22.
\textsuperscript{47} Sperl, 5.
The UN Operation in Iraq is divided into clusters such as agriculture and food security, education, and human development. It maintains a separate cluster for Refugees, Internally Displaced Persons and Durable Solutions.48

On July 27, 2006, the UN launched an International Compact for Iraq, in conjunction with the government of Iraq. The International Compact came in response to continuing and vocal efforts by the United States encouraging an increase in donor contributions and international funding for aid. This initiative came about as a way to coordinate donor contributions and the donor structure for aid to Iraq. Under the International Compact initiative, donors pledge funds in return for promises of reform from the Iraqi government. Specifically, donors hope to exchange funds for a five-year program developed by the government of Iraq, outlining specific steps to take towards long-term economic and political development and reform. At a donor meeting held on May 3, 2007, the Compact and its terms were outlined and finalized. Over sixty countries attended the meeting, held in Egypt. One year later, the First Anniversary Ministerial Review of the International Compact with Iraq was held in Stockholm, Sweden, on May 29, 2008. Although the Compact focuses largely on economic and political development, the first annual progress review briefly referenced the problem of IDPs within Iraq and the need to discuss assistance for Iraqi refugees with neighboring countries.49

However, while UNHCR and others in the humanitarian community view Iraq as currently inhospitable to a returns program, the problem highlights the difficult balance countries need to strike in being open to asylum seekers, fulfilling their obligations, and

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48 Margesson, Sharp and Bruno, 8.
49 Ibid., 9.
helping those who want to resettle in third countries. Countries must also take into consideration the particular status of those applying, the resources within the country’s communities, and the need for burden sharing between states on overall resettlement programs.50 As major donor countries and important players on the world political stage, members of the European Union did not develop a fully comprehensive refugee policy that could provide the basis for a joint EU approach to the provision of refugee assistance in regions of origin, as well as the establishment of more uniform resettlement programs. It should also have included the adoption of measures to ensure that asylum-seekers were able to access the territory of a country of asylum in order to seek international protection. The lack of such an organized and uniform policy has been painfully evident in the EU’s poor response to the Iraqi refugee crisis.51 It is probably fair to say that so far, the most evident sign of a common EU refugee policy is a negative one: it consists of preventing asylum-seekers from reaching EU territory in the first place. This much can be gauged from the difficulties and obstacles Iraqi refugees have faced in trying to make the journey to Europe and the high costs involved.

The international response to the Iraqi refugee crisis can be analyzed according to the level of internationalization of the refugee crisis. Hakovirta’s assessment of international and national response suggests that the internationalization of a specific refugee crisis depends on the seriousness of the refugee crisis itself, the nature of the underlying conflicts causing the refugee crisis, and the efforts undertaken by the state and

50 Ibid., 16.
51 Sperl, 1.
other actors to manage and solve the crisis. As this process gets underway, individual governments must decide how to respond to the refugee flows. A host government has three clear choices when it comes to accepting refugees: do nothing, respond negatively, or respond positively. In the case of Iraq, the countries located the closest to Iraq geographically have been burdened with the majority of the Iraqi refugees. The inability of Iraq to solve or even alleviate the refugee crisis has produced resentment in the neighboring countries shouldered with the burden of receiving Iraqi refugees. The perceived lack of effort by the Iraqi government to fix the problem could account for some of the hesitance in countries like Jordan and Syria to extend full refugee status to Iraqis.

For those nations like the United States that are located far away from the locus of the crisis, geopolitics has played a smaller role in the immediate decision to admit or reject Iraqi refugees. The international response has been not so much geopolitical in nature as it has been humanitarian in nature. Since countries like the United States are located outside of close geographic proximity to the center of the refugee crisis, the responsibility has been spread overseas and thus removed tangibly and intangibly.

52 Hakovirta, 52.
CHAPTER 3: THE RESPONSE OF THE UNITED STATES TO THE IRAQI REFUGEE CRISIS

History of US Refugee Policy

The emergence of a coordinated refugee policy in the United States occurred following World War II. In parallel to the global trend towards the creation of an international refugee regime, the United States, too, began consolidating its first major refugee policy as a result of the heretofore-unseen number of refugees created by WWII. The Displaced Persons Act (DPA) of 1948 thus came as a direct response to the first major international refugee crisis. The core of the DPA demonstrated its foundation in contemporary events: the act required proof that refugees had entered allied zones in Germany, Austria, or Italy before December 22, 1945, in order for individuals to be classified as refugees and be eligible for resettlement in the United States. One unintended consequence of this requirement was that it hindered the admittance of Jews fleeing nations other than Germany. This act represented the first legislation to mark the beginning of a restrictive period in refugee policy. During the decades to follow, the fear that immigrants and refugees would take American jobs affected immigration policy and made immigration and asylum policy more restricted.¹

The DPA remained in effect until 1950. As post-WWII politics began to settle and alliances began to form, the United States came to view refugee policy as a potentially beneficial political tool on the international stage. Specifically, the United States sought

to use refugee and asylum policy as a way to combat communism. During the Cold War, the United States sought to discredit communism by admitting refugees from nations governed by communist regimes. By accepting asylum-seekers from communist nations, the United States sought to demonstrate that these nations were unable to adequately provide for their citizens. In doing so, the United States sought to attack communist regimes, as well as weaken them by draining human capacity. In addition, by accepting numerous refugees from abroad, the United States sought to improve its own national image. In this way, refugee policy that focused on specific admissions became a type of “propaganda tool.” For this reason, the DPA was amended in 1950 to incorporate this strategy and to provide refugees fleeing communist regimes the most protection. The 1950 amendment specifically extended protection to refugees from communist China. In addition, in 1951 the original cut off date for refugees to have entered an allied zone was expanded to January 1, 1945, for resettlement eligibility, which would allow for higher level of refugee admissions.²

At this time, the aforementioned UN Convention Relating to the Status of Refugees was also introduced. The United States did not originally ratify the Convention and Protocol.³ The next form of American legislation, the Immigration and Nationality Act of 1952, consolidated US immigration and asylum policy; however, it failed to make provisions for any type of humanitarian admissions. In 1956, after the refugee crisis in

² Ibid., 396.
which 150,000 Hungarians fled a Soviet invasion, Congress responded with the Refugee-Escape Act of 1957. This act created a permanent category for refugee admissions within the category of immigrant admissions, but it still failed to incorporate UNCHR’s definition of “refugee” (as defined by the UN Convention Relating to the Status of Refugees). Instead, the act defined a refugee as a person fleeing a “Communist or Communist-dominated country or . . . any country within the Middle East.” At this time, preference towards refugees from communist nations remained imbedded in US policy.

In 1965, Congress amended the 1952 Immigration and Nationality Act with the incorporation of a Conditional Entry Program, maintaining the uniquely American definition of “refugee.” Under this program, a preference category was established for a maximum of 17,400 refugees who feared persecution and were fleeing either a “Communist- dominated” country or a country “within the general area of the Middle East.” The conditional aspect of this program meant that those admitted by this preference category were able to apply for adjustment of their temporary status to permanent residence after two years.

One important aspect of current US refugee policy, which played a role in eventual legislation reform, is the parole power of the president. This executive power permits the president to admit asylum-seekers into the United States on an individual basis. Although the president may admit individuals at will, the parole power does not grant the parolee protection against future removal from the country. This power grants

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4 Ibid., 683.
5 Ibid.
6 Waibsnaider, 398.
the president unreviewable executive discretion; in this way, the president has final
determination of regions from which specific refugees are admitted. Although the parole
power was intended primarily as a temporary measure, by 1965 it became a numerically
significant part of the US immigration system. Historically, the use of the parole power
has illustrated the opportunity for foreign policy bias to have an effect on the refugee
admission process.7

Meital Waibsnaider notes that it is important to understand how the president’s
parole power was one factor that contributed to the eventual passage of the politically
neutral Refugee Act of 1980. In 1980, the first comprehensive refugee legislation in the
United States was enacted under President Jimmy Carter. The 1980 Refugee Act created
domestic statutory law governing refugees in the United States by replicating the 1951
UNHCR Convention and 1967 Protocol.8 Under the new act, the official definition of
what constituted a “refugee” was revised, and the United States officially discarded its
blatantly anti-communist definition that gave preference to those hailing from communist
countries.9 The new definition was intentionally aligned with the UN Convention and
Protocol, thus bringing US refugee policy under international standards and norms. By
the new definition, ad hoc refugee and asylum procedures were discarded, and every
asylum-seeker was defined as a refugee.10 The goal of the act was to remove any foreign
policy bias regarding refugee admission and put forth politically neutral language. At the

7 Waibsnaider, 399.
8 Ibid., 397-9. The one exception is that the 1980 Refugee Act did not specifically require refugees to be
outside or inside their country of nationality or habitual residence.
3 (May 1, 1980): 700–725.
10 Idean Salehyan and Marc R. Rosenblum. “International Relations, Domestic Politics, and Asylum
time, human rights groups praised the change in legislation as necessary and meaningful.\textsuperscript{11}

The Refugee Act of 1980 created the new Office of Refugee Resettlement, which was responsible for funding and administering federal programs for domestic resettlement and assistance to refugees. It also created the framework by which the US government implements its refugee and asylum policy today. Actual refugee selection involves the US President, Congress, the Department of Homeland Security (DHS), as well as the Bureau of Population, Refugees, and Migration (PRM). PRM is the office that accepts and screens refugee applications. The Refugee Corps of the DHS, which is comprised of officers from the US Citizenship and Immigration Services, makes the individual determination of refugee status. This office then applies specific “processing priorities” to determine which refugees from each region will be admitted.\textsuperscript{12}

As an extension of the president’s parole power, the processing priorities are established yearly as part of the annual proposed refugee admissions and are heavily influenced by the executive branch. The act authorizes the president to make an annual determination of how many refugees may be admitted in the upcoming fiscal year, with no upper or lower limits on the numbers, but it also includes a requirement that the president consult with Congress before making any numerical determinations. The presidential determination applies to the regions from which refugees may be admitted.\textsuperscript{13}

In the 1980s, the efficacy of the Refugee Act was tested as thousands of refugees

\textsuperscript{11} Waibsnader, 398. But, “In fact, one of the primary goals of the Act was to eliminate foreign policy bias altogether in the admission of overseas refugees” (393).

\textsuperscript{12} \textit{Ibid.}, 399-400.

\textsuperscript{13} \textit{Ibid.}
arrived from Latin America, Cuba and Haiti. The response by the Reagan Administration cast doubt on whether or not the anti-communist bias was still in existence. Asylum admission rates for Nicaraguans and Cubans, who were fleeing leftist governments, proved higher than those for refugees from Guatemala, El Salvador and Haiti.\(^{14}\) Although the act attempted to create a politically neutral policy, foreign policy considerations remained an underlying influencing factor.

After the fall of the Berlin Wall in 1989 and the proverbial end of the Cold War, international refugee policy, as well as US refugee policy, shifted its focus away from receiving the majority of refugees from communist countries. The end of the Cold War power struggle meant that admitting refugees from communism was no longer an advantageous way to shame the opponents of the United States. As the number of potential refugees from communist countries decreased, the United States also enacted more restrictive asylum policies that tended to decrease total refugee admissions.\(^{15}\) In the 1996 Illegal Immigration Reform and Immigrant Responsibility Act, the United States tightened its procedures for determining official refugee status. The act shortened the time limit for new asylum applications, imposed broader asylum detention provisions, and provided for an expedited removal process for rejected applicants.\(^{16}\) These factors

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\(^{14}\) Rosenblum and Salehyan “Norms,” 684.

\(^{15}\) Waibsnaider, 401. Despite an overall decrease in admissions, admission levels have increased for those refugees fleeing religious persecution. The Lautenberg Amendment of 1989 amended the act in order to define and codify “cultural preferences” given to certain religious groups. At this time, Soviet Jews and Pentecostals, Ukrainian Catholics and members of the Ukrainian Orthodox Church, as well as some Vietnamese, were granted the presumption of refugee status. A “presumption of persecution” means that Department of Homeland Security officers must presume individuals in these categories to be refugees unless there exists persuasive evidence to the contrary.

lead to an overall decrease in refugee admissions.

Generally, US refugee policy has changed over time. So, however, have the type and number of refugee flows around the world. Subsequently, national refugee policies have had to change over the course of the twenty-first century. Whereas the first half of the century was marked by large, steady refugee flows from a limited number of locations, later refugee flows are and will be categorized by smaller-scale flows and resettlement initiatives. Refugees from Vietnam and the former Soviet Union, the two major sending countries for the earliest era of refugees, were geared towards long-term resettlement. In addition, current refugees are often processed in a dangerous or unstable environment and come from a wide array of nations and distinct situations. This poses a challenge not only to the refugees in question but also to the immigration and refugee officials from the receiving country. This means that officers from the Department of State and the Department of Homeland Security are thus faced with logistical challenges and constant changes to the refugee program. Now, countries are faced with the necessity of improving refugee admissions by creating a flexible system that can quickly approve new settlement initiatives.17

Possible Approaches to Refugee Policy

The Refugee Act of 1980 required that refugee admissions be neutral and that foreign policy play no role in refugee admission and treatment. However, in practice, refugee policy is based on a variety of outside and partial factors. Models for approaches

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17 Martin, i-4.
to refugee programs include those that strictly pertain to national self-interest, humanitarian concerns, or, more specifically, human rights concerns. The national self-interest approach takes foreign policy goals into consideration when developing a refugee policy, thus negating the concept of neutral refugee policy. Often times, a receiving country may use a refugee program to benefit the nation politically, at both the domestic and international levels. Foreign policy bias in refugee selection consists of accepting refugees from certain countries in order to shame and embarrass the ruling governments. A perfect example of this strategy was the anti-communist bias embedded in the US refugee policy during the Cold War. On the other hand, the nation may bar or limit refugees from certain countries whose governments it supports, effectively refusing to acknowledge the existence of refugees. One example of this approach was the reluctance of the United States to acknowledge and accept refugees from Guatemala or El Salvador, two countries whose civil wars involved US participation. This model can be considered a partial perspective, in which cultural and national community shapes national identity and creates admissions categories.

The national self-interest model also applies to the practice of categorizing some refugees who are fleeing home countries that are American allies as economic migrants, instead of granting them refugee status. In the case of both Hungary and Vietnam, refugee admissions were increased for countries in which the United States had interfered militarily. By encouraging uprisings but failing to provide adequate military support, a

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18 Waibsnaider, 414.
new category of refugee caused by specific foreign actions has emerged. Although this may raise the ceiling for refugee admissions, this type of policy still carries a foreign policy bias because the government involved still determines whether or not its actions have created the category defined as “refugees.” The national-interest response has been characterized as conducive to refugee resettlement with regards to burden sharing. Burden sharing is defined as the attempt by receiving countries to distribute the burdens placed on host countries through financial support and refugee admissions. These policies are often based on the foreign policy and national self-interest goals of each country.20

A second refugee model is the humanitarian approach model, which aims to relieve the suffering of the largest numbers of refugees. This model bases state responses on the level of refugee need or the extremity of the refugee predicament, instead of “value-laden distinctions” that include the preference of certain refugees over others. This model contends that it is hard, if not impossible, to distinguish or prioritize the various dangers facing different refugee populations, including disease, hunger, or sustained armed conflict.21 The norm of humanitarianism grew out of the assumption that extreme situations, like refugee crises, give rise to special responsibilities. In these crisis situations, the low cost creates positive duties of responsibility.22

Matthew Gibney elaborates on the liberal-utilitarian political theory of refugee policy. According to this impartial and neutral perspective, universal moral claims restrict the legitimate grounds upon which states can deny entrance to refugees. By standards of

20 Waibsnaider, 415-6.
21 Ibid., 416-8.
22 Gibney, 178.
impartiality, current entrance restrictions on immigrants and refugees violate the human
liberty to reside where one pleases by making distinct admissions categories. The liberal
perspective supports the free movement of people, which parallels the support of free
international movement of goods and services. By utility, Gibney describes how liberal
democracies feel the obligation to increase their immigrant and refugee admissions until
there exists an equilibrium between the marginal utilities gained through extra
immigration and the costs to residents, by both residents and potential entrants. This
produces a type of moral brinkmanship, in which a state is obligated to accept refugees
up to the brink of productive utility.23

The third model of refugee policy is the human rights approach. By this model,
policy efforts select refugees individually, based on the degree of human rights violations
each individual has suffered. In addition, there is a heavy focus on deterrence; this model
seeks to deter the home country government from continuing these violations of human
rights by focusing on individual human rights. One issue with this model is the difficulty
with making individualized determinations about which refugees have suffered, or are in
danger of suffering, the “worst” kinds of human rights violations. This process, while
relying heavily on value-laden distinctions, is also more challenging and time-consuming.
At times, the human rights model of refugee policy can be used as a cover for hidden
political or national interest purposes, because the guise of human rights brings with it a
moral superiority of action.24

Generally, the interaction of all three distinct models produces a nation’s refugee

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23 Gibney, 171-4.
24 Waibsnaider, 419.
policy. In order to understand how US refugee policy is produced, one must understand the bureaucratic organization of the structures governing refugee policy.

**The US Refugee Program**

At present, the Immigration and Nationality Act (INA) define laws governing the admission and resettlement of refugees to the United States. According to the INA, a “refugee” is defined as “a person who is outside his or her country and who is unable or unwilling to return because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.” The Department of State’s Bureau of Population, Refugees, and Migration (PRM) has primary responsibility for interpreting these laws by formulating US foreign policy on population issues, protection and assistance to refugees and conflict victims, and international migration. PRM is responsible for administering all US refugee assistance and admission programs, including programs and policies in response to humanitarian emergencies worldwide. In this capacity, PRM seeks to resolve protracted refugee situations.25

To do so, PRM works closely with regional bureaus, US embassies, and US missions to provide guidance to its implementing partners, including international organizations and NGOs, and engage with other donor countries and countries hosting Iraqi refugees. PRM primarily implements its US humanitarian assistance goals for Iraqi

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refugees by funding and monitoring international organization and nongovernmental organization projects. PRM is also responsible for managing the US Refugee Admissions Program (USRAP).\(^{26}\)

The Department of State (DOS) is in charge of processing refugees overseas. Under the INA, all refugees are processed and admitted to the United States from abroad. Processing and admission is priority based, and the system defines three priorities for admission to the United States. Priority One (P-1) covers the most serious protection cases in which no durable solution exists. Refugees of all nationalities, including Iraqis, are eligible for P-1 processing. UNHCR, a US embassy, or a specially designated NGO may refer these refugees to the US refugee program.\(^{27}\)

The Priority Two (P-2) category encompasses groups of “special humanitarian concern” to the United States. This category includes specific groups within certain nationalities, clans, or ethnic groups that have been specially identified. The Priority Three (P-3) category includes family reunification cases involving spouses, unmarried children under the age of twenty-one, and parents of individuals who were previously admitted to the United States as refugees or granted asylum.\(^{28}\)

Under the US refugee program, those who apply for refugee status are checked and verified through the Department of State’s Consular Lookout and Support System (CLASS). Within this system, certain applicants require further investigation. For these applicants, the Department of State must obtain a Security Advisory Opinion (SAO) from

\(^{26}\) Ibid.


\(^{28}\) Ibid., 13-14.
the Federal Bureau of Investigation. The SAO process is comprised of additional database searches to check for information on the applicant. In addition to this process, Iraqi refugees are subject to enhanced security screening procedures established by the Department of Homeland Security (DHS).²⁹

Applicants who pass the preliminary qualifications for refugee status are presented to the Department of Homeland Security’s US Citizenship and Immigration Services (USCIS) for an in-person interview. USCIS, within the DHS, is responsible for interviewing refugees and adjudicating their applications for resettlement in the United States. Consequently, USCIS makes the final decision about whether an applicant is eligible for refugee status and generally admissible to the United States.³⁰

The number of refugees to be admitted to the United States each year is proposed by the president. Before the beginning of each fiscal year, the president submits a report to Congress called the consultation document. This report contains the administration’s proposed refugee ceiling and regional allocations for the year. Congress then reviews the report. Upon congressional agreement and consultation, the president then issues a Presidential Determination setting the refugee numbers for that year.³¹

Policy Response to Iraqi Refugees

Starting in 2006, the United States began putting in place new immigration mechanisms in addition to its existing structures, in order to handle the increase in the

²⁹ Government Accountability Office, 10.
³⁰ Ibid.
³¹ Margesson, Sharp and Bruno, 14.
number of Iraqi refugees. Many of these programs were established in order to facilitate the admission of Iraqis who had worked for or had been closely associated with the US government or US military. The National Defense Authorization Act for FY 2006 authorized DHS to grant legal permanent resident status to certain Iraqi and Afghani nationals classified as “special immigrants.” This status may be granted to those Iraqis who have worked directly with the US Armed Forces, under Chief of Mission authority, as well as their spouses and children. For FY 2007 and FY 2008, this program was capped at 500 aliens (excluding spouses and children). For subsequent years, this number was reduced to 50 aliens (excluding spouses and children).32

In February 2007, Ellen Sauerbrey, Assistant Secretary of State for Population, Refugees, and Migration, announced that the United States would process 7,000 Iraqi refugees by the end of September, and approximately half would arrive in the United States by that time. By September 30, only 1600 had entered the United States.

In February 2007, the State Department established the Iraq Refugee and Internally Displaced Persons Task Force, a committee designed to coordinate the work of the United States with various international organizations. The task force included officials from the Department of State, USAID, and the Department of Homeland Security, who sought to work together to coordinate refugee and IDP assistance and refugee resettlement. From 2006 to 2007, the United States increased funding for Iraqi refugees from $43 million to $200 million. This may have come as a result of various

32 Ibid.
appeals from international organization and nongovernmental organizations.33

The Refugee Crisis in Iraq Act was enacted in June 2007. This bipartisan bill was introduced by Senator Edward Kennedy (D-MA) and Senator Gordon Smith (R-OR). The act passed in December 2007 and was eventually renamed as the Kennedy Amendment to the Department of Defense Authorization Bill. Its aim was to improve the response of the United States to the Iraqi refugee crisis and the plight of the Iraqi refugees. Again, a main focus was ensuring that Iraqis that had worked with the US government, military and contractors, as well as with the US media or other groups, were protected and given access to escape Iraq. In September 2007, the Secretary of State appointed Ambassador James B. Foley as the Senior Coordinator for Iraqi Refugee Issues. In addition, the Secretary of Homeland Security appointed Lori Scialabba as a Senior Advisor for Iraqi Refugee Affairs.34

On January 28, 2008, the Department of Defense Authorization Act was signed into law for FY 2008. The National Defense Authorization Act for FY 2008 outlined the place of Iraqi refugees within this classification system. It outlined the commitment by the United States to take more decisive action to address the needs of Iraqi refugees generally, as well as focusing on providing routes of escape for endangered Iraqis who had been affiliated with the United States. This act defined new groups of Iraqis that may be processed under Priority Two. These new P-2 groups include Iraqis who are or were employed by the US government in Iraq, Iraqis who are or were employed in Iraq by either a media or nongovernmental organization headquartered in the United States (or an

33 O’Donnell and Newland, 20-1.
34 Ibid., 21-2.
entity closely associated with the US mission in Iraq that has received US government funding), and Iraqis who are members of a persecuted religious or minority group and have close family members in the United States. The act also established Iraqi eligibility for P-3 processing. In addition, the act required the Secretary of State, in consultation with the Secretary of Homeland Security, to establish an in-country refugee-processing program for Iraqis.\textsuperscript{35}

These distinctions came under a broadening of the scope of the Department of Homeland Security’s authority to grant special immigrant status to certain Iraqi nationals. The National Defense Authorization Act for FY 2008 granted the Secretary of State the authority to grant special immigrant status in conjunction with the Secretary of Homeland Security. The law stated that Iraqi nationals were eligible for special immigrant status if they are or were employed by or on behalf of the U.S. government in Iraq on or after March 20, 2003, for not less than one year. Additional requirements to receive special immigrant status are documents proving valuable service to the US government, and that the applicant had experienced “an ongoing serious threat as a consequence of the alien’s employment by the United States government.”\textsuperscript{36}

The ceiling for this special immigrant program was capped at 5,000 principal aliens (excluding spouses and children) for each fiscal year 2008 through 2012. The National Defense Authorization Act requires the Secretary of State, in consultation with the Secretary of Homeland Security, to establish or use existing refugee processing mechanisms in Iraq and elsewhere in the region for processing Iraqis under the new

\textsuperscript{35} Ibid., 22.
\textsuperscript{36} Margesson, Sharp and Bruno, 15.
special immigrant program. Furthermore, the law makes Iraqi special immigrants eligible for the same resettlement assistance, entitlement programs, and other benefits as refugees for up to eight months.  

Given the ever-changing refugee ceilings and congressional and executive decisions, admissions of Iraqi refugees into the United States have fluctuated over the past ten years. In FY 2005, the total number of Iraqis admitted to the United States was 198. In FY 2006, that number remained low at 202 admitted refugees. In FY 2007, the number increased to 1,608, and in FY 2008 the number totaled 13,823. It is important to note that in 2007, UNHCR referred a total of 14,698 Iraqis to the United States for resettlement. In FY 2007, the US Refugee Resettlement Program had allocated a ceiling of 7,000 refugees, which is half of that original number. Despite these recommendations and fairly generous ceilings, only 1,608 Iraqis were admitted in 2007.  

In FY 2008, the total worldwide refugee ceiling in the United States was 80,000 admissions. This number included 70,000 admissions allocated across various regions as well as an unallocated reserve of 10,000 additional admissions, to be used if the need for additional refugee slots develops. The FY 2008 allocation for the Near East and South Asia region, which includes the country of Iraq, was 28,000. According to the FY 2008 consultation document, this allocation was primarily meant to include vulnerable Iraqis, Bhutanese, and Iranian religious and ethnic minorities. By comparison, the United States admitted just 13,832 Iraqis during 2008. According to US Citizenship and Immigration Services, as of March 31, 2012, the US has admitted a total of 64,174 Iraqi refugees  

37 Ibid.  
38 O’Donnell and Newland, 17-8.
through its USRAP program (which has run from FY 2007 to FY 2012.)

Refugee admissions are intimately connected to the program of resettlement that the United States has chosen. Iraqis who are admitted to the United States are set on a path to temporary to eventually permanent resettlement. Currently, the process of Iraqi resettlement to the United States begins in the local UNHCR office. Iraqi refugees must first register with UNHCR in order to be eligible for resettlement referral. After this registration process, UNHCR refers the most vulnerable cases first to the United States. Priority resettlement is granted to victims of torture or severe trauma, single mothers, unaccompanied children, and those with severe medical problems. In addition, Iraqis with ties to the US military, the UN, or other international organizations in Iraq are also given priority. After referral by UNHCR, the next step is an interview with immigration officials from the Department of Homeland Security. The United States also provides direct refugee processing for Iraqi former employees.

The registration process itself can be an ordeal. As of fall 2007, the closest US processing office accessible to Iraqi refugees was in Amman, Jordan. That means there existed no facility in Iraq for former employees to access. At the same time, refugees outside of Iraq that are seeking aid in a US processing office must work with UNHCR in

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40 House Committee on Foreign Affairs. *Iraqi Volunteers, Iraqi Refugees: What Is America’s Obligation? Hearing before the Subcommittee on the Middle East and South Asia.* 110th Cong., 1st sess., March 26, 2007: 26. Ellen Sauerbrey, Assistant Secretary of State for Population, Refugees and Migration, Department of State, asserted that permanent resettlement was not a viable or preferred option for the majority of Iraqi refugees: “The most important thing for the people who are outside of Iraq for the great majority of them is a peaceful, stable Iraq to which they can return home in peace and dignity. When you have millions of displaced persons, there is no way that resettlement is going to address anything more than a very small percentage, and it is focused and should be focused on identifying and bringing to this country those who are most vulnerable, who have the least chance of going back.”
41 Margesson, Sharp and Bruno, 13-4.
order to obtain necessary documents that protect them from future deportation back to Iraq. This process of resettlement is part of the policy arm of the US response to the Iraqi refugee crisis.

**Iraqi Refugee Policy**

The US response to the Iraqi refugee crisis has two arms: the humanitarian side and the policy side. First and foremost, the Iraqi War provoked a humanitarian crisis of global proportions. In total, the US State Department calculates that the US government has provided over $1 billion in humanitarian assistance since 2003 to displaced Iraqis and other groups made vulnerable during the war. The majority of this funding, including requests from the Bush Administration and congressional action, has been raised through emergency supplemental appropriations.

The US State Department’s Bureau for Population, Refugees, and Migration (PRM) has provided refugee assistance mostly through its international partners, which include UNHCR and the International Committee of the Red Cross (ICRC). The Office of Foreign Disaster Assistance (OFDA) at the US Agency for International Development (USAID) has provided humanitarian assistance aimed at IDPs within Iraq. This assistance consists of the provision of emergency relief supplies, water systems, and support for infrastructure rehabilitation in local communities. It also includes support for emergency and mobile medical teams as well as small-scale livelihood projects.

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42 Government Accountability Office, 33.
43 Margesson, Sharp and Bruno, 11.
44 Ibid.
In addition to its work with its implementing partners in Iraq, congressional appropriations and budget changes have been a hallmark of the US humanitarian response. In FY 2007, Congress set aside $171 million for humanitarian assistance through PRM and OFDA. This amount included $37 million in response to UNHCR’s appeal and $39 million to the UNHCR/UNICEF Joint Education Appeal.45

In FY 2008, the Bush Administration’s supplemental request asked for $230 million for Migration and Refugee Assistance (MRA) for anticipated and unanticipated refugee and migration emergencies. Of the $230 requested, $195 million was requested specifically for humanitarian assistance to Iraqi refugees. In the Consolidated Appropriations Act (P.L.110-161), $200 million was appropriated for MRA. The remaining $30 million (of the original $230 million request) became part of the Bush Administration’s second FY 2008 supplemental request. The Administration’s second FY 2008 supplemental request did not include funding for the International Disaster Assistance (IDA) account (In the Consolidated Appropriations Act [PL 110-161], $110 million was appropriated for the emergency humanitarian assistance, with $80 million for Iraq). For FY 2009, the Administration requested $191 million for supplemental MRA funding, which included $141 million for Iraqi refugees. The Administration requested $45 million in its FY 2009 supplemental request.46

In response to these requests, congressional action has included bills granting supplemental funding for Iraqi refugees. For the FY 2008 supplemental request, the June 30-enacted version of HR 2642 provided $315 million for MRA (which was $285 million

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46 Ibid.
above the request) to meet global refugee needs worldwide. This included humanitarian assistance for Iraqi refugees in Jordan, Syria, Lebanon, Turkey, Egypt, and the region, as well as for IDPs in Iraq. Congress mandated that these funds could also be used to support the admissions costs of Iraqi refugees and other requirements of the Iraqi refugee program. The final June 30 version of the bill provided $350 million for MRA in the FY 2009 supplemental, nearly 50% more than requested, in order to respond to urgent humanitarian and refugee admissions requirements such as assistance for refugees from Iraq.47

For FY 2008, the June 30-enacted version of HR 2642 included $220 million for IDA for urgent humanitarian crises worldwide, including countries affected by the ongoing food crisis, but it did not specify an amount for Iraq. The FY 2009 regular budget request did not include funding for Iraqi refugees or IDPs. For FY 2009, the bill included $200 million for IDA for ongoing humanitarian needs worldwide, and it specified that some of these funds could be allocated to assist IDPs in Iraq and be used in response to the international food crisis.48

When analyzing the extent of US humanitarian aid to Iraq, it is necessary to take into account the competing priorities of giving aid while maintaining the national budget. After the start of the Iraq War in 2003, rising costs of war have contributed to budget deficits. In order to combat these deficits, discretionary spending, or government spending through an appropriations bill, is typically slowed or reduced. As disaster contingency accounts are depleted when disasters require immediate relief, these

47 Ibid., 12-3.
48 Ibid.
accounts must be replenished in order to respond to future humanitarian crises, including the Iraqi refugee crisis. Another issue is donor fatigue and the lack of aid pledges, as multiple humanitarian crises emerge in other disaster areas.\(^{49}\)

Regarding the current humanitarian crisis in Iraq, some critics have questioned if the United States has requested sufficient funds to handle a worsening crisis. The vast majority of humanitarian aid provided by the United States has been by way of supplemental appropriations. On one hand, budgetary restrictions may tie the hands of US politicians. On the other, some experts argue that the United States now has a greater responsibility as a role model for committing funds to address the needs of Iraqi refugees and IDPs. They argue that if the United States increases its funding and resettlement numbers, other neighboring countries and the entire international community may be encouraged to do the same. Finding the correct balance of aid and burden sharing with the international community is the eventual goal.\(^{50}\)

Some international organizations, including Human Rights First, claim that the initial US response to the Iraqi refugee crisis has thus far been insufficient. Due to the role of the United States in the Iraq War, critics claim that the United States owes a special moral obligation or moral debt to Iraqis who worked for the United States and to those who were innocently involved.\(^{51}\) In a sense, the United States has not fully acknowledged its role in the Iraqi refugee crisis because that acknowledgment would be both politically and militarily embarrassing. Accepting high numbers of Iraqi refugees

\(^{49}\) Ibid., 19.
\(^{50}\) Ibid.
would essentially force the United States to admit its role in creating these refugees. On a broader scale, an admission of this sort could signal weakness or defeat in the attempt to garner and retain support for the US war on terror. In this way, the issue of Iraqi refugees amounts to a battle of ideologies, similar to the mindset for refugee admissions during the Cold War. Current US refugee policy “contradicts the politically neutral spirit and language of the Act, the Convention, and the Protocol.”52

Human Rights Watch has further blamed the US military operation in Iraq for the current refugee crisis. In an October 2005 report, the group stated as follows:

[T]he United States had a legal obligation under international humanitarian law to take all measures in its power to restore and ensure, as far as possible, public order and safety [in Iraq]-an obligation the United States [has] failed to meet. U.S. and coalition forces largely stood by as individual Iraqis and organized groups looted government offices, hospitals, and, most dangerously for the country's security, abandoned police and army depots filled with arms and ammunition.53

Many scholars believe that when the United States takes military action, it should not simultaneously close its borders to refugees that obtain this status as a result of its military action. In this case, the United States may have a moral obligation to put in place a policy that includes Iraq and Afghanistan refugees that have emerged as a result of US wars waged in these countries.54

In specific cases, the United States has developed a refugee policy and admitted refugees out of explicit or implicit moral obligation. The first example of this is the case of Hungarian refugees in 1956. After an invasion into Hungary by the Soviet Union, a Hungarian revolution broke out, resulting in tens of thousands of Hungarian refugees. In

52 Waibsnaider, 423.
53 Ibid., 409.
54 Ibid., 394.
total, the United States admitted approximately 40,000 Hungarian refugees after the crisis. This occurred despite the fact that Hungary remained a communist country. The admittance of these Hungarian refugees was largely attributed to a moral obligation derived from US military involvement in the area. The United States supported the Hungarian uprising as a boon to its foreign policy interest because any national opposition would have weakened the Soviet Union, a US enemy and the occupying power at the time. The failure of the US-backed revolution and the later withheld military aid promised to the Hungarians resulted in a feeling of moral responsibility to admit the refugees.55

The second example of US refugee policy resulting from military involvement abroad is the period after the 1975 Vietnam War. After the refugee outflow caused by the Vietnam War and relating fighting, the United States provided UNHCR with 52% of its budget between 1975 and 1979. The United States also received 322,000 Indochinese refugees for resettlement out of the global total of approximately 583,000, including refugees from Vietnam, Laos and Cambodia.56

In these two cases, the failure of US military action against communist regimes resulted in the destruction of a foreign nation and the endangerment of many people. Here, the United States acknowledged both a moral responsibility and an obligation to help those it had failed to successfully support abroad. In a sense, Waibsnaiser sees these direct changes in refugee policy as examples of the United States attempting to rescue its

55 Ibid., 402.
It is necessary to consider the fact that changing US refugee policy and tailoring it to specifically aid allies does not maintain a politically neutral policy. Legislation that appears politically neutral may still be used to promote a foreign policy or preserve specific national self-interest. Thus, policy models may be both humanitarian and in the national interest.

Scholars have identified various additional issues with the US response to the Iraqi refugee crisis. Human rights groups, including Human Rights First, have found that one major problem is the prevalence of delays in refugee processing. Slow processing creates further backlogs in the resettlement process, and it also undermines how effectively the priority resettlement programs for US-affiliated Iraqis can be implemented. At the end of 2010, the processing time for US-affiliated Iraqis ranged from twelve to twenty-one months. Despite the existence of a priority access program that enables direct application for resettlement for those affiliated with the United States, delays occur in this program as well. Delays occur most often due to the extensive background checks conducted by the United States. As refugees wait to be cleared, they remain in dangerous situations for extended periods of time.

The US response to the Iraqi refugee crisis can thus be seen from two angles: the humanitarian angle and the policy angle. As a major world power, the United States has had the financial resources to provide major humanitarian support to UNHCR and its other international partners. By allocating funds through congressional budgetary supplements, the United States has successfully provided funding to international

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57 Waibsnaider, 403.
58 Human Rights First, 3.
organizations, which then put this money to work in Iraq and neighboring countries. On the other hand, the US policy response has been less than decisive. An initial desire to not acknowledge the severity of the crisis, coupled with slow-moving bureaucratic decision-making, suggests that a further analysis of the factors affecting the final policy is necessary.
CHAPTER 4: FACTORS INFLUENCING THE US POLICY RESPONSE

Influencing Factors Defined

Behind each policy decision exists a multitude of factors and variables that contribute to the final outcome. By looking at specific events and the resulting policy decisions over time, patterns concerning repeating influential factors come to the forefront. By comparing the reactions of the United States and other nations to previous refugee crises, scholars have assembled models that define specific motivating factors behind policy responses. In order to analyze the US response to the Iraqi refugee crisis, specific and relevant influential factors must be identified. Scholars have identified the following factors that most directly affect a nation’s response to a refugee crisis: costs and benefits of accepting international assistance, relations with the sending country, political calculations about the local community’s absorption capacity, and national security considerations.¹

The first influential factor, a cost-benefit analysis of accepting international assistance and complying with an international response, can be heavily influenced by bureaucratic choices and diplomatic considerations. Foreign policy goals, as well as domestic demands, influence asylum and immigration policy. In addition to humanitarian concerns and taking into account the needs of the applicants, military, economic and diplomatic relations all shape asylum policy in the United States.

general, migration policy can be viewed as a foreign policy tool on one hand and a means of achieving humanitarian goals on the other.

Marc Rosenblum and Idean Salehyan postulate that popular opinion and congressional action shape decisions by the executive branch to enforce asylum policies. Domestic politics and political opinion can determine the balance between prevailing international humanitarian norms and the traditional interests of the state. Public opinion also has an independent effect on asylum approval rates. In addition, domestic attention on immigration issues constrains a more liberal asylum policy. Rosenblum and Salehyan have also found that media and congressional attention play an important role in influencing how the executive branch makes enforcement decisions. Popular attention to asylum increases the importance of humanitarian concerns relative to instrumental factors. The effect of congressional attention depends on whether asylum is seen as an enforcement or humanitarian issue. The importance of these factors has also changed over time.²

This model falls under the analytical perspective of domestic liberalism. From the perspective of domestic liberalism, Andrew Moravscik writes that the multiplicity of domestic coalitions and institutions all have specific preferences and interests, and that the state is an institution representative of these societal preferences. So, variations in domestic state structure and bureaucracy can explain the variations in state behavior, and thus determine international cooperation or conflict. From the standpoint of ideational liberalism, domestic social identities and values are the basic determinants of state

preferences. This goes hand in hand with the idea that asylum policy is influenced by both humanitarian and non-humanitarian factors.

One important aspect of the cost-benefit variable is that prior bureaucratic decisions affect subsequent bureaucratic and policy decisions. As previously stated, in the case of refugee policy, policy outputs become policy inputs, and vice versa. In the United States, policy regarding Iraqi refugees has been necessarily linked to broader US policy on Iraq. In a report to Congress on the proposed refugee admissions for FY 2007, officials stated, “It is hoped that significant numbers of Iraqi refugees located throughout the Middle East and Europe will soon be able to return home, although the security situation will remain an important consideration in repatriation.” When establishing resettlement policies, the United States must take into account any policy implications for refugee resettlement in the past, present and future. Attitudes towards resettlement policies change depending on whether the situation of Iraqi refugees is viewed as a temporary or permanent situation.

Principal-Agent Relationship

In the United States, this sort of cost-benefit analysis and the allocation of refugee responsibility to specific agencies had a substantial affect on the policy outcome in response to the Iraqi refugee crisis. Specifically, the separation of the legislative and executive branches of government in the United States contributed to a varied and

inconsistent policy response. Rosenblum and Salehyan categorize the relationship between Congress (the legislative branch) and the executive branch with regards to asylum enforcement as a “principal-agent relationship.” As mentioned, by traditional principal-agent theory (PAT), Congress acts as the “principal” by determining refugee and asylum policy, and the president and executive branch act as “agents” that must enforce the policies. By this model, the agent can choose to act in line with its own preferences over that of the principal due to an informational asymmetry. For this reason, the principal imposes a system of incentives to motivate the agent to act in accordance with its wishes.⁵

Gary Miller goes further to describe the principal-agent relationship by asserting that although Congress may be ignorant of bureaucratic behavior, congressional committees still create a system of incentives for the executive by providing both sanctions and rewards. Specifically, he describes how the threat of “ex post sanctions” creates “ex ante incentives” to the executive branch to act in accordance with Congress. In effect, congressional committees and hearings create an implicit contract based on the observable effects of specific bureaucratic behavior. From this theory, one can conclude that the more effective the system of incentives created by the principal, the fewer “sanctions” in the form of congressional hearings would occur.⁶

One reason asylum and refugee policy falls under the principal-agent model is that oftentimes Congress and the president disagree on migration policy due to

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⁵ Salehyan and Rosenblum, “International Relations,” 106.
preferences established by distinct institutional constituencies. By nature, members of Congress are more susceptible to specific interest-group lobbies; the president is less susceptible to short-term pressure from interest groups because of his broader constituencies. By comparison, the president’s decisions regarding asylum and refugee policy, within the executive branch, more strongly relate to diplomatic and national security implications. In addition, the executive branch can often effectively exercise its preferences because the execution of migration policy falls to the Department of Homeland Security.7 By the PAT model, Congress measures bureaucratic cooperation by gauging constituent responses to bureaucratic behavior. Since congressional decisions are based largely on constituent response and the desire for reelection, Congress is typically able to spend time on more divisive issues while simultaneously spending less time monitoring and overseeing issues about which constituents are silent and satisfied.8

One central, canonical assumption of traditional PAT is that there exists one, unified principal acting on coherent assumptions. In the United States, the separation of powers, as well as the highly competitive partisan politics, mean that bureaucratic agencies are not entirely unified. As mentioned, congressional principals are subject to the whims of their respective interest groups and are constantly competing for majority status and appropriation funding. The existence of multiple, opposing congressional committees translates to an enhanced ability of the bureaucratic agents to use their information asymmetry to their advantage. So, actual congressional dominance is

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7 Salehyan and Rosenblum, “International Relations,” 106.  
8 G. Miller, 210.
tempered by the existence of multiple principals. In this case, partisan divisions and the separation of refugee policy between multiple agencies prevented the principal from exercising ultimate control until the conclusion of major congressional hearings, beginning in 2007.

Historically, the principal-agent relationship has been evident in the United States, especially in the case of humanitarian migration policy. Presidents have repeatedly exercised executive power to accept applicants from rival countries while rejecting applicants from countries with pro-US governments. As the president seeks greater autonomy to pursue his own foreign policy and diplomacy goals, Congress continuously uses its legislative power to reign in presidential power. Naturally, left-right partisan differences between the executive and legislative branches also affect the principal-agent relationship and migration policy outcomes.

Foreign Policy Considerations

The second factor applies directly to the relationship between the host country and the sending country, in this case between the United States and Iraq. Although granting refugee and asylum status is, on one hand, a humanitarian act, it also contains inherent implications for foreign policy. Granting refugee status publicly acknowledges a crisis of human rights in the sending country, and receiving refugees and asylum seekers can be seen as an act of harboring dissidents. This is why nations are more likely to accept refugees from hostile regimes, and why they are more hesitant to accept applicants from

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9 Ibid., 211.
friendly regimes. This becomes evident when analyzing the former US program of systematically denying asylum-seekers from Guatemala, El Salvador and Haiti. In each of these countries, the United States had provided military and police assistance to the governing regime. Accepting refugees from these countries would acknowledge and suggest complicity with human rights violations occurring there, and it would also suggest a level of responsibility for the humanitarian refugee crisis.

Lisa Ramaci-Vincent, the Executive Director of the Steven Vincent Foundation and a witness at a Senate hearing before the Committee on the Judiciary, stated that she got the impression that some members of the US government did not want to acknowledge that Iraq is not a working democracy, and only a titular one. Allowing more Iraqi refugees into the United States, which would subsequently acknowledge the extent of the refugee crisis, would have been an admission of failure of the United States to support a functional Iraqi democracy that can protect its citizens. Acknowledging Iraq as a democracy is to assume that the government would never permit its citizens to become refugees.

In this case, the initial reluctance to acknowledge and admit Iraqi refugees to the United States stemmed from what Rosenblum calls the “foreign policy bias.” In connection with the principal-agent relationship between the legislative and the executive branches, the president uniquely exhibits a “foreign policy bias.” This means that strategic and instrumental concerns relating to foreign policy have a greater effect on

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11 Ibid., 105.
12 Ibid., 106.
14 Margesson, Sharp and Bruno, 15.
asylum enforcement than do humanitarian concerns. The interstate relations between the host country and the sending country, as well as the effect of domestic political pressures, thus influence asylum admissions.\textsuperscript{15}

\textit{Absorptive Capacity}

The third factor, which is described as a political assessment of the absorptive capacity of the local community, is not as relevant in this case. The first part of absorptive capacity, which is based on structural and economic capacity, is essentially a non-factor in this case, given the wealth of resources maintained by the United States and its proven ability to provide monetary humanitarian assistance. The second part of absorptive capacity, which can be defined as social receptiveness, also did not play a large role in the policy decisions regarding Iraqi refugees. Most often, the concept of social receptiveness is established by cultural or religious affinity, which is not present between the majority of US citizens and Iraqis. The belief that refugees deserve their refugee status can also play a role in determining policy outcomes, especially in democratic societies where government is particularly accountable to the public. However, as stated with regards to media coverage surrounding the Iraqi refugee crisis, hesitation by the US government to acknowledge Iraqi refugees as well as the comparable lack of media coverage did not provoke any initial outcry from the general public.

\textsuperscript{15} \textit{Ibid.}
**National Security Considerations**

The fourth factor, national security considerations by the host country, played an important role in the policy response of the United States. After the terrorist attacks of September 11, 2001, the United States made major security changes, which also affected its refugee policy. According to a State Department report, on September 28, 2001, the State Department banned all refugees from entering the United States while security procedures were being reviewed and revised. The additional halting of the active processing of Iraqi refugee cases since 9/11 reflects both heightened security measures as well as heightened fear of Muslim immigrants and refugees.\(^\text{16}\) The new screening process for resettled refugees developed by the Department of Homeland Security has become more intense. This has lead to the delay or blocking of many cases. In this case, those refugees who have possible ties to terrorist organizations can be rejected for resettlement in the United States.\(^\text{17}\)

The United States did experience a steep fall-off in total refugee admissions during 2002 and 2003. During these two years, the total number of refugee admissions dropped to below 29,000 per year.\(^\text{18}\) In 2002, refugee admissions to the United States numbered 27,110. In 2003, the number stood at 28,400. Additional security features put into place after 9/11 combined to form one factor that played a role in the declining rate of refugee admissions. In 2004, the total number of refugees admitted increased to 52,800.


However, admissions of refugees from Iraq and Afghanistan decreased dramatically. From 2003-2004, refugee admissions from the Near East and South Asia decreased from 4,260 to 2,854. In comparison, between 2003 and 2004, refugee admissions from Africa rose from 10,717 to 29,125, and Latin American admissions rose from 452 to 3,556. During the 2006 fiscal year, the United States admitted just 202 Iraqi refugees. Between 2003 and 2005, less than 600 Iraqis were admitted.19

Ellen Sauerbrey, Assistant Secretary of State for Population, Refugees and Migration, Department of State, addressed the questions posed by senators regarding heightened security surrounding US refugee admissions. She stated that a main factor limiting the admission of Iraqis into the United States was the enhanced security review process. As mentioned, this enhanced screening process was put into place after 9/11 as a security measure to prevent terrorists from gaining entry to the United States. One of the effects of this enhanced security review is that since its inception, it has been incredibly difficult for Iraqi refugees referred to the United States by UNHCR to pass through the screening process. Sauerbrey acknowledged that the low rate of Iraqi refugee acceptance led UNHCR to reduce its referrals to the United States.20 In this way, Sauerbrey framed the reduced number of Iraqi refugee admissions as a result of national security policy.

The Fifth Factor: Moral Obligation and Ethical Responsibility

In addition to these four major factors, this analysis would be incomplete without the consideration of additional normative factors. Marc Rosenblum and Idean Salehyan

19 Waibsnaider, 411-2.
20 The Plight of Iraqi Refugees, 14.
assert that the four major factors affecting refugee policy act as a combination of both normative and national interest considerations. So, normative and strategic goals are not always mutually exclusive, and they most often do interact by complementing or conflicting to determine state policy. By the authors’ analytical framework, they determined that refugee and asylum policy is predominantly humanitarian based. This means that final refugee and asylum decisions are based on norms and interests, not solely national interest concerns.21 This argument serves to explain why talk of moral responsibility and ethical obligation played a role in determining the approach to Iraqi refugee policy in the United States. More specifically, rhetoric that harkened back to the Vietnam War served as a harsh comparison of the role the United States played in each refugee crisis.

An analysis of the relationship between the United States and Iraq becomes especially pertinent when comparing the Iraqi refugee crisis to previous crises. Many scholars have compared and drawn connections between the Iraqi refugee crisis and the refugee crisis that resulted from the Vietnam War. Both the refugee outflows from the Vietnam War and the Iraq War are similar in some ways, because the United States played a role in instigating the fighting that led to the dangerous situations in each home country. As a general comparison, the number of Iraqi refugees that emerged since the US intervention in 2003 has been far greater than the number of refugees after the Vietnam War. By some standards, however, the response from the United States has been weaker.

For instance, since the start of the Iraq War, the total number of Iraqi refugees has reached approximately two million. After the Vietnam War, the United States received 322,000 Indochinese refugees for resettlement out of the global total of approximately 583,000. In contrast, between 2003 and 2007, the United States admitted only 2,000 Iraqi refugees through its resettlement program. Despite its role in the Iraq War, the United States has not allocated additional funding for extra Iraqi refugees. In 2007, the United States spent under $200 million on displaced Iraqi refugees. In comparison to the 33% of total funding provided by the United States to UNHCR in 2007, after the refugee outflow caused by the Vietnam War, the United States provided UNHCR with 52% of its budget between 1975 and 1979.22

Various differences between these two major events have contributed to the difference in refugee response. One major difference between the two events is that the Iraqi refugee crisis began as the war was still going on. In 1975, when the largest refugee flows began following the Vietnam War, the United States had already pulled its troops out of Vietnam. In 2007, as many as 150,000 US troops remained in Iraq. Due to the fact that attacks between Iraqi and US troops were ongoing from 2003 to 2007, during which time large numbers of refugees began leaving Iraq, security screenings of refugees were more intense. The additional security procedures put into place after 9/11 were combined with security measures aimed at anti-terrorism. Generally, the plight of Iraqi refugees has been less publicized than that of the refugees produced by the Vietnam War. In the United States, Iraqi refugees have been given little to no media attention and can be

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22 Sanders and Smith, 24.
considered “relatively invisible.” Another important aspect of the fact that the Iraq War was ongoing is that the presence of US troops in Iraq only serves to emphasize that the US military had played a role in the fighting there. It also made it more apparent that the US-led invasion had failed to maintain a level of national security for the Iraqi people.23

In January 2007, Congress called a Senate hearing before the Committee on the Judiciary regarding the plight of the Iraqi refugees in the “current refugee crisis.” In his introduction, Senator Patrick Leahy (also chairman of the Committee on the Judiciary) explained that support for bipartisan reform to address the Iraqi refugee crisis had lead to a congressional hearing. Leahy specifically mentioned the Vietnam War in his introduction, stating that the United States must not make the same mistake twice in failing to properly help its allies seeking refuge. His two most important points were that the United States must protect Iraqi refugees because of its moral obligation, and second that the United States must extend support to Iraqis that are friends and allies. Senator Leahy specifically mentioned his desire to help those Iraqis who had aided American efforts in Iraq, as well as Iraqi scholars—two groups that he believed were at great risk. Leahy asserted that fundamental human rights and national security were not mutually exclusive concepts. He called for a return to the United States as a “safe haven for refugees,” as well as the need to change refugee and asylum policies in order to avoid further injustices.24

In this hearing, Senator Edward M. Kennedy, too, acknowledged that the United States bears much of the responsibility for the plight of Iraqi refugees. Senator Kennedy

23 Ibid., 23.
also agreed that the United States has a special obligation to help those Iraqis who have aided the United States. Senator Kennedy stated that the United States must also work with the countries that neighbor Iraq, in order to prevent major destabilization in the region.25

Senator John Cornyn also recognized the American tradition of providing refuge to asylum seekers. He emphasized that the US resettlement program both advances American democratic values while at the same time protects our national interest. Senator Cornyn asserted that a comprehensive policy towards Iraqi refugees would lessen the security threat posed to the United States, protect US forces in Iraq, and prevent the further escalation of the refugee crisis.26

A subsequent Hearing before the Subcommittee on the Middle East and South Asia in March of 2007 echoed the feelings of politicians about the inadequacy of the US response to Iraqi refugees. Representative David Scott asserted that “Whatever the intentions were in going into Iraq we know what the consequences are. This is a broken country. The American Government has a major, major stake of responsibility in this being a broken country.”27 Representative Gary L. Ackerman stated, too, that “America has a clear moral obligation to the millions of Iraqis who have become refugees because of our invasion, however well intentioned, but even more so and especially to the thousands of Iraqis who because of their allegiance to us have no future in their own

25 Ibid., 4.
26 Ibid., 5.
As a result of the 2007 hearing, specific policy changes were enacted. At the committee’s encouragement, the State Department approved an additional $18 million for UNHCR. In addition, the administration recognized that an additional $60 million for Iraqi refugees was required in FY 2007 supplemental appropriations. When the supplemental bill passed in the House, it raised the number to $90 million for Iraqi refugees.\(^29\)

In 2008, a joint hearing before the Committee on Foreign Affairs was conducted, in response and as follow-up to the hearing before the Middle East and South Asia Subcommittee in 2007. Gary Ackerman, chairman of the Subcommittee on International Organizations, Human Rights, and Oversight, Committee on Foreign Affairs, briefed the committees on their previous findings. He described the committees’ frustration upon learning that the administration had not taken more drastic steps in order to assist Iraqis that had worked for the United States. This 2007 hearing also brought to light the fact that the United States remained unprepared to process the number of refugees referred to it by UNHCR. At that time, the United States had the capacity to process just a few hundred refugees each month. Due to the administration’s unpreparedness, processing a refugee referral could take up to five months. Another problem deemed egregious by the committees was the fact that the United States had refused to process refugees and refugee referrals within Iraq; for this reason, Iraqis were forced to flee to neighboring

\(^{28}\) Ibid., 2. 
\(^{29}\) Ibid.
countries to be processed in a safer environment.  

Bill Delahunt, Chairman on the Subcommittee on International Organizations, Human Rights, and Oversight, also stated:

I would submit that this sad reality imposes a moral responsibility on both the administration and the Congress, for we cannot deny that the invasion of Iraq was the proximate cause of this human tragedy. So, our response should be timely, decisive, and fully resourced, not simply because it is right and reflects our values, but it will prevent, in my opinion, further erosion of how we are viewed in the Middle East. And that is important.  

In this way, Delahunt references the moral and ethical obligation of the United States to take care of refugees that its military actions effectively helped to create. This obligation, reminiscent of the policy response to the Vietnam War, was the impetus for hearings to persuade Congress to take stronger action.

Over the year between March 2007 and March 2008, Congress increased the number of special immigrant visas available to Iraqis who worked for the United States to 500 and later 5,000. Within that category, Congress also expanded the types of employment that would be eligible for the special immigrant visas. In addition, Congress required that the Secretary of State establish a mechanism for refugee processing within Iraq. During this same time period, the Administration issued all 500 special immigrant visas available under the first law.

In this case, the historical example of the Vietnam War served as a harsh reminder of the role played by the United States in the creation of the Iraqi refugee crisis. So,

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31 Ibid., 7.
32 Ibid., 2.
normative factors, in addition to the non-normative factors like as military, economic and diplomatic relations with the host country, have influenced refugee policy and asylum approval rates. Rhetoric of moral and ethical obligation towards Iraqi refugees was asserted at both the personal and the national level. That is, members of Congress asserted, on behalf of the administration, that action had to be taken to correct certain foreign policy wrongs. This line of reasoning suggests that the international refugee regime, as established by the 1951 Convention, is derived from a naturally occurring moral obligation to assist global refugees.
CONCLUSION: CURRENT AND FUTURE REFUGEE POLICY

After considering the policy response of the United States and its political reaction to the Iraqi refugee crisis, this paper has determined the policy response followed a specific pattern of influential factors. The initial response of the US government to the Iraqi refugee crisis pertained most directly to the national self-interest approach to refugee policy. Over time, pressure from Congress, international organizations, as well as an increasing feeling of responsibility shifted the strategy to a partially humanitarian approach. This can be considered the introduction of the fifth influential factor, which takes morality and ethics into consideration. This normative factor suggests a level of intrinsic compliance with the mandate set out by the 1951 Convention and its 1967 Protocol.

In a slightly convergent interpretation, Ryan Bubb, Michael Kremer, and David I. Levine suggest that the initial adoption of the 1951 Convention regime was based largely on the model of refugee protection as a “global public good.” By this model, the assumption is that political and ethnic persecution produces disutility for citizens of all states, but the hosting of refugees is costly only to the host state that receives them. Thus, public and private benefits from hosting refugees diverge, which results in free riding by those states that do not serve as hosts. However, the regime of the 1951 Convention also produced a contract under which states agreed to host refugees in excess of the privately (or domestically) optimal number. The regime of the 1951 Convention, which essentially
obliged states to host all refugees who enter the country, thus resulted in a higher level of
the global public good of refugee protection. High levels of this global public good may
explain the widespread adoption of the 1951 convention.¹

As such, complete compliance with the 1951 Convention and Protocol by any
state is difficult because it amounts to what can be called an “incomplete contract.” By
this contract, states can agree to the broad responsibilities of establishing legal procedures
to process refugees’ applications and grant legal refugee status. States can contract on the
promise to host applicants that are granted refugee status. However, the Convention does
not require that states contract on the details of individual determination procedures and
application processes. States are thus able to determine their own standards and
determination procedures. As states make the path to legal refugee status more difficult,
this gives other states the increased incentives to alter their procedures as well, in the face
of larger flows of asylum applicants. As such, this back-and-forth response results in
what Bubb, Kremer, and Levine call “multiple equilibria.” An almost competitive cycle
occurs as states seek to maximize their strategic complementarity. So, even as states are
fully complying with the mandate of the Convention, which constitutes one equilibrium,
all state are also seeking to subtly decrease their obligations for performance—a second
global equilibrium.²

In order to offset this imperfect state of affairs, policy responses to refugee crises
must evolve in parallel to changes in the characteristics and nature of global refugee

¹ Ryan Bubb, Michael Kremer, and David I. Levine. “The Economics of International Refugee Law.” The
² Ibid., 379-80.
flows. As previously stated, the large, steady refugee flows of the first half of the twentieth century have given way to smaller-scale flows from a wider variety of countries and crisis situations. As such, refugee admissions policy has changed and will continue to evolve along with the political landscape, in relation to the types of refugee flows present. Distinct policy issues will evolve, as individual refugee flows require many smaller-scale resettlement programs that present their own unique challenges and solutions. These new challenges include the organization of refugee processing and logistics, as well as the coordination and agreement among the relevant US government bodies, international organizations, and individuals that will benefit from resettlement. Within this new policy landscape, refugee policy must become more flexible and easier to individualize. An improved capacity to quickly and efficiently approve new resettlement initiatives will be the number one factor in improving admissions programs. To fulfill humanitarian obligations most effectively, the United States must align the outlook and operations of its refugee resettlement programs with the current state of global refuges.3

David A. Martin suggests that in the quest for a more efficient and effective refugee admissions program, the eventual goal will most likely be to define closed and finite groups that will clearly delineate and define US refugee policy. In order to minimize fraud and to emphasize the refugee status of the finite group, conceptual “line-drawing” must be completed before resettlement plans become public. Due to the wealth of factors at play with regard to refugee resettlement programs, Martin asserts that choices to resettle specific groups or categories must be done judiciously and on a case-

by-case basis. As stated, modern nations are extremely unlikely to enact a virtually open-ended refugee resettlement program that includes the commitment to resettle all those whom the public considers refugees. For this reason, refugee admissions cannot be based solely on any single factor. Instead, resettlement decisions must take careful account of the inherent dynamics of refugee situations, which vary greatly by geographic location and refugee population. In the absence of a general and open refugee admissions program, each refugee flow or crisis must be analyzed and evaluated individually for specific positive and negative consequences.

Martin also suggests that such a candid and rigorous look at the challenges posed to the United States in determining its resettlement program is not “antithetical” to the fundamental humanitarian aims of refugee resettlement. Instead, this type of analysis and examination of each case is necessary in order for the program to respond to refugees more effectively. In this way, refugee policy may come to represent a marriage between orderly, uniform policy processes and humanitarian considerations. The 1951 Convention indeed stated that “the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation.”

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4 Ibid., 15.
5 Ibid., 5.


