Chapter 5
Evaluation and Recommendations

In the preceding pages, we discussed different aspects of international law as applied to protect Iraqi refugees who fled their country for reasons of persecution, general violence, violation of human rights and breaches of international humanitarian law by their government during the past several years. We analyzed different aspects of three branches of relevant international law, namely international refugee law, international humanitarian law and international human rights law, and their protection mechanisms in favour of refugees in general and for Iraqis in particular.

It was established that there exist serious lacunae in the international mechanism of refugee protection and that, in the absence of a modern contractual basis for an enhanced level of protection, the international community has tried innovative ways and means to bridge the gaps, although not always very successfully.

In chapter one, we elaborated on the purpose of this study and introduced the underlying questions to which our research needed to seek answers. We also introduced the main arguments and findings.

In chapter two we started with a historical review of why Iraq has maintained its potential as a major refugee producer in the world. In this context, interactions between the three main ethnic and religious groups of Iraq's inhabitants; Shiites, Sunnis and Kurds, was discussed, and the role which was played by uprisings, conflicts and wars in the contemporary history of Iraq was touched
upon. Different refugee crises of Iraq were reviewed and the role and legal standing of the neighbors of Iraq as well as relevant international organizations vis-à-vis Iraqi refugees were discussed. In the same chapter we studied the nature of the continuing humanitarian challenges that prompts the application of international law for the protection of Iraqi victims of movements of people.

Chapter three was dedicated to the architecture of refugee law and international mechanisms of protection, set up by the United Nations and international humanitarian agencies. We elaborated on the international relief system, including the role of non-governmental humanitarian actors and assessed various humanitarian activities in favor of Iraqi refugees, which have turned Iraq into a melting pot of international humanitarian operations. It was argued that refugees were left more to the mercy of their neighboring countries than to the integrity of international law and the UN relief system that has, per se, evolved enormously over time. International refugee instruments were also reviewed and the legal basis for humanitarian intervention in Iraq was discussed. The much varied legal adherence, and behavior of regional hosts to the Iraqi refugees was illustrated.

The extent of applicability of international law in favour of refugees in general and Iraqi refugees in particular was the focus of chapter four. We discussed the shortcomings of international law as regards the definition of refugees, the evasiveness of countries in accepting treaty obligations, lack of protection for the internally displaced persons, the unresolved issue of mass influx, and international burden-sharing in dealing with the sheer numbers of refugees, especially in cases of mass exodus.

We established that the conventional definition of refugees as reflected in the existing hard-law instruments is not up-to-date and relevant. It is therefore no longer applicable to the needs of our time. The evolution of the refugee phenomenon throughout the past fifty years is sufficient to account for the gap between the provisions of the Convention and its Protocol and realities on the ground. The focus of the Convention on individuals as refugees makes it unsuitable to protect refugees in the massive shape and form the world has come to know today.

It was however clear that the Convention should be given credit for establishing an important principle of today’s customary international law, namely non-refoulement. But it is this same principle which has also turned out to be the main obstacle to a modern contractual definition of refugees, as states show greater resistance to any broadening of its initial scope.