Human Rights Watch welcomes the opportunity to address the International Organization for Migration (IOM) and its Member States at its 2007 Council meeting (94th Session). As we have noted in the past, we continue to be committed to working with the Council and IOM to ensure that migrants’ rights are protected and promoted in all IOM operations. We remain cognizant of the need to raise awareness about the human rights and protection-needs dimensions of global migration and welcome the opportunity of the 2007 Council to continue our dialogue with IOM and its Member States regarding IOM’s mandate and policies, as well as its specific practices.

The Human Rights Watch-IOM Dialogue

Since gaining observer status in 2002, Human Rights Watch has engaged in an ongoing dialogue with IOM regarding the human rights dimension of migration and the extent to which IOM’s activities enhance or compromise the human rights of migrants. The common framework within which both our organizations are seeking to safeguard the welfare and rights of these populations remains that of international human rights law, without which there can be no accountability for assessing good practice or its absence. We share with IOM the view that migration management is not a purely technical matter of services rendered, since it involves the lives and rights of human beings, often at their most vulnerable. This recognition means that IOM, in fact, has a protection role even if it lacks a formal protection or human rights mandate. We appreciate IOM’s repeated statements of its commitment to respect fundamental human rights.

At times, the Human Rights Watch-IOM discussion has been spirited and the criticisms sharp. While we may continue to have disagreements about matters of IOM policy, we are committed to a fair and open process of information-gathering with respect to IOM operations and will endeavor to arrive at an objective and accurate understanding of events and practices. If we are to have disagreements, we want to the extent that is possible to ensure they will not be disputes about facts but rather about policies. In this regard, we want to acknowledge a regrettable incident that did not meet our usual high standards of reporting and to reiterate an apology we have issued to IOM regarding our report, Ukraine: On the Margins—Rights Violations against

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Migrants and Asylum Seekers at the New Eastern Border of the European Union. Key elements of that report with regard to IOM operations in Ukraine were found to be inaccurate. Upon discovery of the inaccuracies, we removed the report from our website, and inserted a correction. We then amended the report to correct errors, removed the section on IOM, and reissued it in January 2007, as a report on the situation for migrants and asylum seekers in the Ukraine, as of November 2005. We also removed our December 2005 statement to the 90th session of the IOM Council in its entirety, not because we found other inaccuracies, but because it was part of the record of that meeting and we thought it would be misleading to revise part of it ex post facto. We are strongly committed to ensuring our reporting is based on reliable, accurate information.

A Rights-based Approach to Managing Migration

We daresay that both Human Rights Watch and IOM have grown in experience over the years and have learned to better understand each other and to find common ground for areas of mutual concern. From IOM’s side, this growth, we think, is reflected in the statement in the Programme and Budget for 2008:

While some interpret ‘managing migration’ as concerned with control and contrary to a rights-based approach, IOM considers that migration, when managed effectively, can indeed better ensure the protection of migrants. Managing migration includes addressing smuggling and trafficking. It means properly trained law-enforcement officials and, in turn, greater awareness of and adherence to human rights standards.

There is much to commend in this statement. Human Rights Watch has issued ten major reports on the exploitation and abuse of migrant workers since our last intervention at the 90th IOM Council meeting. In these reports, which cover a diverse selection of countries that includes Guinea, Kuwait, Lebanon, Libya, Morocco, Saudi Arabia, Singapore, South Africa, Spain, and the United Arab Emirates, and in many press releases and letters, we have urged these and other

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governments to ratify both the Convention on the Protection of All Migrant Workers and Members of Their Families (Migrant Workers Convention) and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Organized Crime (United Nations Trafficking Protocol). Ratification and enforcement of these two conventions, among other conventions, would commit states to better regulate the treatment of migrant workers and their families and to prevent the trafficking and exploitation of migrants, especially women and children, and we take the opportunity of this statement before the IOM Council to urge its member states again to ratify the relevant conventions and incorporate fundamental protections into their domestic laws.

Contrary to popular belief, human trafficking should not be understood necessarily or exclusively as an underground phenomenon run by criminal syndicates. Instead, trafficking often results from inadequate or faulty government policies that place certain groups of migrants and workers at greater risk of abuse and with little hope for redress. Anti-trafficking efforts must target and reform these policies. For example, poor regulation and monitoring of recruitment agents leads many migrants to become heavily indebted or deceived about working conditions. Sponsorship visas in the Middle East and Asia tie workers to their employers making it difficult for them to change employment in cases of abuse. And certain categories of work in which migrants are concentrated, such as domestic work and agriculture, are excluded from key labor protections. We urge IOM to work with its Member States to promote legal, orderly, and rights-respecting labor migration that seeks foremost to protect vulnerable migrants from coercion, deceit, threats, and abuse.

We believe that more regulation of migration, if appropriately done, can indeed serve to improve respect and protection of rights, but we also recognize that many, if not most, irregular migration flows involve people with mixed motivations, including people who are escaping conditions from which they may be deserving of international protection. And in all cases, human rights law is clear that a migrant’s lack of a legal immigration status does not forfeit his or her fundamental rights as a human being.

We have interacted with IOM offices in several countries. We applaud some of the IOM programs we have seen, for example a rehabilitation program for trafficking victims in Jakarta, Indonesia and the work IOM has been doing to document conditions of internally displaced persons in Iraq and to advocate on their behalf. We have been disappointed to learn that donors have only provided 25 percent of IOM’s appeal for its work on behalf of the internally displaced in Iraq, and call on Member States to be more responsive.

We also have further recommendations on the positive role that IOM ought to play as it embarks on various migration management projects and enters into partnerships with individual governments. To illustrate, we present here the list of recommendations to IOM in our report on Libya, Stemming the Flow: Abuses against Migrants, Asylum Seekers, and Refugees. Many of these recommendations would be applicable to IOM’s dealings with other governmental partners that lack legal frameworks and infrastructures for migrants and refugees and that have records of arbitrary treatment of non-nationals:

- Make improvement of material and legal conditions for migrants and, where appropriate, facilitation of third-country resettlement the sole objectives of any future IOM projects in...
Libya. Do not promote or facilitate interception or return. Vigorously encourage Libya, as a member of IOM’s Governing Council, to respect the human rights of migrants and to implement laws and procedures that effectively do so. Act with greater transparency in negotiations with Libya on all matters relating to migration and border control.

- Apply strict human rights conditionality to any joint projects with the Libyan government in the migration field. Do not cooperate on strengthening Libyan border or internal immigration controls unless human rights, and refugee and migrant rights in particular, are dramatically improved.

- Avoid using language such as “transit migrants” or “stranded migrants” when speaking of the entire population of those held, for example, in Libyan detention centers. In the absence of an effective asylum regime in Libya (at present Libya has no asylum law, let alone effective enforcement of the law), such labels are misleading and lend credence to those who argue erroneously that Libya has no refugees on its territory.

- Avoid setting targets for the “voluntary repatriation” of migrants as a measure of success in IOM projects, as this creates undue pressure to achieve returns without the necessary safeguards. Increasing Libyan capacity to effect returns of foreign nationals is not a safe objective so long as so many returns are coerced, and so long as there is not a functioning asylum system in the country.

- Rather than expanding immigration detention or camp infrastructure in Libya, focus on providing detainees with greater access to basic necessities such as nutritious food, clean water, bedding, sanitation and medical care within existing facilities. In accordance with IOM’s Memorandum of Understanding with UNHCR, refer to UNHCR Tripoli any person expressing a desire for asylum or a fear of return, and insist upon UNHCR’s access to “transit migrants.” Refrain from any further work in Libya if the Libyan authorities do not accept this condition.

- With the consent of the alleged victim, refer any cases that IOM staff finds of suspected torture or police abuse to the Human Rights Program at the Qadhafi Foundation for Development and to the Libyan authorities responsible for investigating and prosecuting such crimes.

**Assisted Voluntary Returns: Iraqis in Detention in Lebanon**

Under the current circumstances in Iraq, Lebanon cannot deport Iraqis because to do so would openly violate Lebanon’s *nonrefoulement* obligations. Instead, however, Lebanon keeps Iraqi refugees in indefinite detention under the authority of General Security for the purpose of arranging deportations that cannot legally be carried out. As such this amounts to arbitrary detention and hence violates Lebanon’s obligations under the International Covenant on Civil and Political Rights.4

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4 For a detailed analysis of Lebanon’s obligations under international and Lebanese law regarding the detention of refugees and asylum seekers, see Frontiers (Ruwad) Association (Beirut), “Legality vs. Legitimacy: Detention of
In theory, Lebanon does not return any Iraqi refugees to Iraq against their will. However, the practices of the Lebanese authorities coerce Iraqi refugees to “choose” to return to Iraq. By first arresting and detaining Iraqis who enter the country illegally for the purpose of seeking asylum, and then giving those in detention a “choice” between returning to Iraq or indefinite detention, Lebanon in practice commits refoulement.

Article 1(1)(d) of the IOM constitution provides that the purposes of the organization include “services as requested by States, or in co-operation with other interested international organizations, for voluntary return migration, including voluntary repatriation.” The requirement of voluntariness means that any person whose return IOM facilitates must be able to choose freely and not be pressured or coerced to return, and bars the IOM from facilitating deportations.

The website of IOM-Iraq’s Regional Operations Centre states:

A voluntary decision to return entails a two-pronged element:

1. The freedom of choice in the absence of any physical, psychological or material pressure.

2. An informed decision based on available, updated objective and accurate information on which this voluntary return decision is based upon.

A voluntary return request is always the trigger for IOM assistance and is based on the premise that the migrant is not under any pressure or coercion to return and is duly informed on the conditions of return.

Refugees and Asylum Seekers in Lebanon,” May 2006. www.frontiersassociation.org/pubs/ArbitraryDetentionFINALMAY2006.pdf (accessed August 3, 2007). See also the criteria established by the U.N. Working Group on Arbitrary Detention to determine when deprivation of liberty is arbitrary, Office of the United Nations High Commissioner for Human Rights, “Fact Sheet No. 26, The Working Group on Arbitrary Detention,” www.ohchr.org/english/about/publications/docs/fs26.htm (accessed August 3, 2007). The European Court of Human Rights has likewise held that while detention pending deportation is lawful, proceedings to deport must be in progress and to be prosecuted with due diligence. In Quinn v. France (judgment of March 22, 1995, Series A no. 311) the Court found France to have subjected the applicant to arbitrary detention because the detention lacked proportionality and the state had not conducted the relevant proceedings with due diligence. See also Chahal v United Kingdom, judgment of November 15, 1996, Reports of Judgments and Decisions 1996-V.


6 See also IOM, “IOM Return Policy and Programmes: A Contribution to Combating Irregular Migration,” MCIINP/236, November 5, 1997, para. 6, footnote 3, which states: “IOM considers that voluntariness exists when the migrant’s free will is expressed at least through the absence of refusal to return, e.g. by not resisting to board transportation or not otherwise manifesting disagreement. From the moment it is clear that physical force will have to be used to effect movement, national law enforcement authorities would handle such situations.”

Until temporarily suspending these activities in September 2007, IOM was involved in returns of detained Iraqis from Lebanon that did not conform to the standards on voluntary return as articulated in these IOM documents. Far from having the freedom to choose in the absence of any form of pressure, Iraqi detainees have been coerced by the prospect of indefinite detention to accept that they have no other option but to return to Iraq.

Until September 2007, IOM arranged for return flights for detained Iraqis, and assumed the transportation costs, to one of the four international airports in Iraq (Baghdad, Basra, Erbil, Sulaimaniya). Depending on the arrival airport, IOM either arranged for onward transportation to the returnees’ final destination, or paid for public transportation.8 Between May and September 2007, IOM provided Iraqi returnees with a reintegration package worth $2,000, including a $500 cash component, with the remainder disbursed as in-kind assistance.9 Between January 1 and May 17, 2007, IOM returned 67 Iraqis from Lebanon to Iraq, including 62 Iraqis who had been in detention for illegal entry, and one family of five people.10

On September 24, 2007, IOM sent a letter to the Iraqi embassy in Beirut informing it that IOM had decided to temporarily suspend its “voluntary return assistance” for detained Iraqis in Lebanon. It based this decision, it said, on discussions with the UN High Commissioner for Refugees (UNHCR) and in recognition that “general conditions in Iraq have greatly deteriorated.” Despite the temporary suspension, IOM said that it “will resume work in the near future after the UNHCR, according to their agreement with the Lebanese government, assesses the care for the expected returnees outside of arresting agencies.”11

Human Rights Watch welcomes IOM’s temporary suspension of its facilitation of returns of detained Iraqis in Lebanon and urges the Council and IOM to ensure that IOM participation is not resumed until conditions in Iraq allow for safe and dignified return and IOM’s standards for voluntariness can be assured.

Human Rights Watch will be releasing a major new report next week in Beirut on Iraqi refugees in Lebanon. We have brought advance copies of the report for delegates to this meeting. The report documents the failure of the Lebanese government to recognize Iraqis with legitimate asylum claims as refugees or to provide protection to them. It shows how restrictive immigration laws that do not take into account the protection needs of Iraqi nationals render many Iraqis in Lebanon illegal. The report, entitled Rot Here or Die There: Bleak Choices for Refugees in Lebanon, describes how the Lebanese authorities generally refuse to release from prison Iraqis who have served their prison sentences for being in the country illegally. The majority can secure their release only by agreeing to return to Iraq. Iraqi refugees are thus presented with a

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8 Email from IOM-Lebanon to Human Rights Watch, June 7, 2007.
10 Email from IOM-Lebanon to Human Rights Watch, May 17, 2007, and June 7, 2007. IOM was not able to say whether any of the 62 detained returnees left family members behind in Lebanon. Although they left individually, IOM said, “This does not mean all are unmarried.” IOM said that the Iraqi embassy and UNHCR “usually also alert us to situations in which they are aware of spouses or other family members in Lebanon,” and that IOM seeks to clarify the possible consequences for families in its counseling “and to discourage the provision of assistance, as appropriate.” Email from IOM-Lebanon to Human Rights Watch, July 18, 2007.
repugnant choice: either continue to suffer indefinite detention or agree to go back to the violence from which they fled.

Iraqi embassy officials in Lebanon are acutely aware of the fact that Iraqi detainees only agree to go back to Iraq because they do not have a real alternative. The Iraqi consul in Lebanon told Human Rights Watch, "You put them [Iraqi detainees] in a corner: either you stay in prison, or you go back to Iraq. They have no choice. If you gave them another option, and if they then wanted to go back, that would be voluntary." 12

IOM informed Human Rights Watch: “All individuals assisted by IOM in their voluntary return are subject to voluntariness assessment and return counseling.” 13

Human Rights Watch suggested to IOM that the circumstances of the Iraqi return program from Lebanon rendered the distinction between voluntary repatriation and forced return meaningless. IOM responded:

Stating that such circumstances — individuals being placed in detention for undetermined periods of time as a sole result of their being irregular migrants — render "the distinction between voluntary and forced returns meaningless" defeats the purpose of the many steps we, in coordination with all relevant stakeholders, have taken over the past years, to precisely establish and maintain that distinction, as well as the belief that individuals, properly counseled and informed of their status and alternative options, should be able to decide for themselves, in fine, whether or not they wish to seek return assistance to their home country. 14

Clearly, counseling detainees and providing information about the situation in Iraq is vital, but cannot alter the fact that to many indefinite detention is so unacceptable and may cause such trauma that almost any alternative presents itself as the better option, no matter how dangerous or harmful that alternative is.

It seems unlikely that Iraqi detainees would choose to go back to Iraq if they were indeed given an alternative other than indefinite detention. Certainly, Iraqi refugees who are not in detention, and who therefore do have an alternative, unequivocally reject the idea that they might want to go back to Iraq at this time. However difficult life is for Iraqi refugees in Lebanon, they nevertheless choose to stay. Asked whether he hoped to be able to go home in the foreseeable future, one refugee answered succinctly, “No. You die over there.” 15 Asked the same question, an Iraqi woman said, “No. I am very afraid, afraid of violence. I am looking for security and safety, this is my goal. I want to live without nightmares and without fear.” 16 Another woman said, “No one does not like their own country, but if the situation remains like this, why would I want to go back?” 17 Refugees are also warned against returning home by their relatives who have

13 Email from IOM-Lebanon to Human Rights Watch, June 7, 2007.
14 Email from IOM-Iraq in Amman to Human Rights Watch, July 18, 2007.
15 Human Rights Watch interview with Iraqi couple (No. 57), Greater Beirut (Dahich), April 25, 2007.
16 Human Rights Watch interview with Iraqi woman (No. 59), Beirut, April 26, 2007.
17 Human Rights Watch interview with Iraqi woman (No. 58), Beirut, April 26, 2007.
stayed behind in Iraq. As one refugee said, “Every time we call our family in Iraq they tell us, ‘Don’t even think about coming back to Iraq.’”

The option of release through employment sponsorship and legalized status is also remote. An Iraqi detainees told Human Rights Watch of his failed efforts to have his employer sponsor his application to regularize his status. He said:

No one tells me how long it is going to be in prison. I see people who have been here for eight months. If I can’t regularize my status, I will go back to Iraq. If I go back to Iraq, I will be killed. I don’t want to go back, but it is better for me to go back than to spend one more day being locked up with criminals. I don’t want to stay in prison. I have never been to prison in my life. This is the first time that I am in a room with criminals. I suffer so much in prison, I prefer to die.\textsuperscript{19}

IOM has emphasized that “the rights of individual migrants and refugees should be respected.”\textsuperscript{20}

Of course, the most basic right of refugees is the right not to be returned to a place where their lives or freedom would be threatened, that is, the right not to be subjected to \textit{refoulement}. Lebanon, by detaining Iraqis who enter the country illegally for the purpose of seeking asylum, and then giving them a “choice” between returning to Iraq or indefinite detention coerces them to “choose” to return to Iraq, a form of \textit{refoulement}. IOM should not resume its participation in the return of Iraqi refugees thus coerced. Doing so would facilitate what are in practice deportations and exposes IOM to the risk of being complicit in committing \textit{refoulement}.

While noting that IOM has temporarily suspended its involvement in returns of detained Iraqis from Lebanon, it informed the Iraqi embassy in Beirut that it would “resume work in the near future.”\textsuperscript{21} The IOM Council has a responsibility as the authoritative decision-making body of IOM to ensure that IOM does not resume its engagement in Iraqi returns from Lebanon if doing so would violate its constitutional prohibition against facilitating coerced returns.

Human Rights Watch urges the Council and its Member States not to fund IOM return operations from Lebanon to Iraq that would involve detained Iraqis for at least as long as UNHCR’s guidance that no Iraqi should be forcibly returned to southern or central Iraq remains in effect.

\textsuperscript{18} Human Rights Watch interview with Iraqi man (No. 56), Greater Beirut (Dahieh), April 25, 2007.
\textsuperscript{19} Human Rights Watch interview with Iraqi man (No. 42), Roumieh Prison, Greater Beirut, April 23, 2007.
\textsuperscript{21} Letter from Rafiq Tashman, head of mission for IOM in Iraq, to the Iraqi Embassy in Beirut, September 24, 2007, translated from the Arabic by Human Rights Watch and on file with Human Rights Watch.