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Refugees in the 21st Century

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The 1951 Convention on the status of refugees, upon which the U.S. Refugee law is heavily modeled, focuses on "persecution". Today's refugees typically leave their country due to reasons other than persecution. Particularly, countries in the developing world are increasingly facing dangers to their environment due to industrialization. If government actions cause life-threatening situations those who are the most terribly affected victims are entitled to the status of refugees.

Keywords: *refugees, persecution, convention, immigration.*

INTRODUCTION

More than half a century after in the wake of World War II, current U.S. refugee policy remains an expression of postwar global requirements and the response. However, the evolving global environment has created the need for a program to help refugees which is better responding to the needs of our current times and the era of increasing international investment in developing nations and an ongoing international trade in waste as well as increasing industrialization. One of the main factors that lead to international migration is environmental degradation. Under the current legal framework "refugee" does not include

those who are seeking refuge from hazardous environmental hazards due to natural or human-caused environmental disasters. In 1951, there was a Convention on the status of refugees that is the basis upon which the U.S. Law on refugees is modeled and is focused heavily on "persecution" or conviction that persecution is the goal of the government of the person's country of origin as the main motive for protecting refugees.¹ The definition was formulated in response to Cold War expectations and needs. Today, however, refugees tend to move out of their countries for reasons that are not related to fear of persecution. Particularly, those that are developing face increasing dangers to their environment as a result of industrialization and the use of exploitative methods, typically based on the request and approval from their governments. If actions of the government cause life-threatening circumstances, those who are the most severely affected sufferers have the right to be treated as refugees of refugees.

This Note for uses on two types of environmentally-induced migrations:

- Which result from immediate natural disasters that are caused by humans, like technological or industrial disasters; and
- Those that result from human-caused actions over an extended period of time, like the excessive use or mismanagement of resources.

Part 1 of this article examines the recent changes in international as well as U.S. refugee law. Part II explains the current situation in the context of U.S. refugee law - specifically, The 1980 Refugee Act as well as international refugee law as well as the controversy over the meaning and interpretation of the definitions for "refugee" within these statutes. Part I will focus on recent examples of the two kinds of environmental disasters that are caused by humans, which are described in the preceding paragraphs. Part IV will examine the arguments for the recognition of those affected by environmental disasters as refugees in light of precedents in the past as well in the interpretive rules for the international as well as U.S. refugee law. Part V proposes amendments in both the Immigration and Nationality Act (INA) and international refugee laws which grant refugees the right to claim that their lives are in danger as a result of

¹ Kathleen Newland, *U.S. Refugee Policy: Dilemmas and Directions* (Carnegie Endowment for Intl Peace 1995) 9

natural disasters that are caused by humans. The final part of Part VI ends by discussing the wider implications of these modifications to the refugee policy.

REFUGEE LAW AND PERFORMANCE

The first to establish the definition of "universal" for a refugee was adopted through the Geneva Convention relating to the refugees of Refugees. The increasing number of refugee issues following World War II prompted delegates to the Convention to replace "ad special agreements specifically formulated for specific refugee circumstances" by "an instrument that provides an all-encompassing definition of what's to be considered the definition of a refugee." States that ratified the Convention agreed to that refugee definition, however, they're not obliged to accept refugees. But, they are required to provide these refugees with certain rights. For instance, the Convention restricts the state from "returning refugees to areas where they are at risk of dangers to their lives or liberty due to race, religion or nationality, political opinions, or belonging to a particular social group"² and removing refugees without a proof that they are secure, as well as penalizing refugees admitted "without a legitimate justification in the eyes of the State" in situations where they originate from a country "where their life or freedom is in danger." There is no evidence that suggests there was evidence to suggest that the United States did not sign the Convention however, it did when it was time for the signing of it in 1967. United Nations Protocol Relating to the Status of Refugees, in formulating terms for refugees.³ In order to be in accordance with the Protocol, Congress passed the Refugee Act of 1980⁴ (Refugee Act) which defined the term of a refugee under the Protocol in conformity to Section 101 (a)(42) (42) within INA. The Refugee Act eliminated the requirement in INA Section 203(a)(7)(A) to avoid persecution within the context of a Communist or communist-governed Middle Eastern country. The law introduced the United States into substantial conformity with the United Nations definition of refugee and "removed the limitations on the geographical and

² 'Handbook on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees' (UN High Commissioner for Refugees, April 2019)

<<https://www.refworld.org/docid/5cb474b27.html>> accessed 25 February 2022

³ 'Protocol Relating to the Status of Refugees' (UN High Commissioner for Refugees)

<<https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-relating-status-refugees>> accessed 25 February 2022

⁴ Refugee Act, 1980

ideological nature of refugees' admission to guarantee a fair and effective asylum policy' that isn't dependent on political or other circumstantial views." In the course of amending the U.S. refugee law, however, Congress eliminated INA section 203(a)(7)(B) which permitted victims of catastrophic natural disasters to enter the country. This provision allowed temporary admission to the United States for temporary admission into the United States for "persons uprooted by a natural catastrophe that is catastrophic in the sense that the president defines and are unable to return to their home."⁵

In the case of changes in U.S. refugee law, however, Congress eliminated INA section 203(a)(7)(B) which was a clause that was intended to assist victims of disasters caused by natural catastrophes. ¹⁶ The clause allowed temporary admission into the United States for "persons uprooted because of catastrophes caused by natural disasters, according to the definition of the president and who is incapable of returning regularly home." The president has never made any event "catastrophic natural disaster" in the sense of this section. There is evidence that legislators as well as the Executive could have devised an agenda to render the provision unenforceable. In INA Section 203(a)(7)(B) is clearly targeted toward the victims of natural and non-man-made environmental disasters. When it was time to amend this version in 1965 of INA, Congress stated that the main reason for including foreigners who had to flee their homes because of natural disasters that were catastrophic as refugees were "to assist in situations where foreigners are forced out of their home due to the effect of natural catastrophes that are major, such as volcano eruptions, earthquakes, tsunamis or any other natural disasters comparable to those." There is no proof to back up the assertion that any president has ever declared an event as a catastrophe. However, a minority position contained within the Senate Report on the 1965 amendments suggests that the decision could have been approved by lawmakers from all political parties "the United States should render physical, financial and technical assistance to areas affected by natural disasters; but it should not permit the movement of individuals to the United States." The interpretation of this law would have served as the foundation for the removal in section 23(a)(7)(B). The initial version of the

⁵ Janet L. Parker, 'Victims of Natural Disasters in U.S. Refugee Law and Policy' (1982) 3 (1) Michigan Journal of International Law, 137

refugee law in 1980 included persons who had suffered natural disasters as refugees within the definition. However, the provision was later deleted. The reason behind the removal is most likely due to the main concern when the reformulation of U.S. refugee policy was giving refugee status to those who are political refugees and in accordance with an official United Nations definition of a refugee. In addition, there were lawmakers who believed that people who were affected by natural disasters should be assisted in the restoration of the homes they had lost, and not forced to move to the U.S. States. Many believed that encouraging the relocation could cause the development of a "brain drain" in the wake of a disaster. Others believed that emergencies are usually temporary and do not require relocation. However, in any event, Congress was acquiescing to the inability of the presidents as well as Attorney Generals to implement section 203(a)(7)(B) to effectuate that repeal of the legal section.

Environmental catastrophes aren't separate from the political and social situations that lead to the flow of people across borders. In the instance of Haiti, Haitian "boat inhabitants" in the 1990s were not just political refugees. Their displacement was due to the drastic reduction in agricultural productivity because of severe soil erosion that was caused by the enormous destruction of the forest and vegetation. The degradation of the environment and the subsequent conflict to extract limited resources played a major influence on the Zapatista rebels which erupted within the Chiapas State of Mexico. The Chiapas State of Mexico caused an exodus of as high as 35000 people. The link between the two is evident in the conflict that is reversed and political instability that is the root cause of the ongoing hunger crisis in Sudan.⁶ Inadequately planned and implemented strategies for agricultural development in the Soviet administrations have resulted in enormous-scale waste of resources, as well as the salinization of soil as well as contamination of the food chain, which makes it difficult for certain groups to return to their regular home.⁷ The causes of migration are environmental. However, they merit greater global attention, despite the political and social circumstances to which they may be linked. While their numbers are increasing quickly, people who are forced to relocate because

⁶ Saleheen Mohamed, 'WFP launches multi-million dollar appeal for Sudan' (*All Africa*, 18 February 2000)

<<https://allafrica.com/stories/200002180079.html>> accessed 26 February 2022

⁷ 'The State of the World's Refugees: In Search of Solidarity' (*UN High Commissioner for Refugees*, 2012)

<<https://www.unhcr.org/4fc5ceca9.pdf>> accessed 26 February 2022

of environmental disasters are not included in the definition of refugee and only qualify as refugees under international law only with a fluctuating method.

CURRENT INTERNATIONAL AND U.S. REFUGEE LAW

People who are forced from their homes for environmental factors are not covered by international law or U.S. law. Two provisions in the INA, however, provide alternatives for individuals who have been forced out to seek refuge in the United States. The United States. The United States. In the first instance, INA section 207(a) states that the number of refugees who are admitted in the United States in any fiscal year is "such as the President decides prior to the beginning of the calendar year.

The fiscal year, after proper consultation, is justified because of the necessity for humanitarian assistance or is in the national interest. "This provision allows the President the possibility to suggest that those who seek refuge from natural disasters - provided they meet the requirements for refugees in the Refugee Act - be admitted to the United States if such decision is based upon legitimate justifications. The law, however, does not oblige the President to make a decision regarding this matter. INA section 244A permits the Attorney General the authority to grant temporary protection status (TPS) to individuals who live in the United States and cannot return to their home countries as a result of "extraordinary or temporary conditions" that are unique to their country. This provision applies to anyone who is a resident of a particular state that is located living in the United States before a cut-off date for the nation set by the Attorney General.⁸ The Attorney General may issue TPS to anyone who is located within the United States if the Attorney General determines there was "there were a natural disaster, earthquake or flood, drought, epidemic or drought, or another environmental disaster in the state that caused significant, but temporary changes to the conditions in the region affected." The protection granted to temporary periods is granted to just 12 countries since INA section 244A. The law was enacted in the year 1990. The law is only applicable to those who somehow have been admitted to this country through the United States and who

⁸ Susan Martin et al., 'Temporary Protection: Towards a New Regional and Domestic Framework' (1998) 12 (4) Georgetown Immigration Law Journal, 543, 548

are citizens of one of the 12 countries listed. If they do meet the criteria, TPS is effective only for the period that is specified in the statement of the Attorney General. The law also allows for the deportation of those who have arrived later than the cut-off date, however they'll be in similar circumstances within their country of origin in the same manner as those who receive protection. Each of the sections 207(a) or 244A is broad and permissible, but they do not provide any assurance that anyone who is fleeing environmental disasters in their country of origin can be admitted into the United States.

Congress has not provided any useful guidelines to courts on how they interpret provisions contained in the Refugee Act other than stating that the primary reason for adopting the law was to ensure compliance with international refugee laws, which is why it does not offer interpretive guidance. The legislative history of the Refugee Act, however, can provide some insight into its original intentions. Its 1979 Senate report states that the Refugee Act "reflects one of the most important themes of American history: welcoming homeless refugees to our country." The report provides five major objectives of the bill that include: making substantive and procedural adjustments that better cater to the needs of refugees. The purpose of the bill was "to establish a continuous and consistent process to permit the entry into the country of refugees that are particularly important to this country, and also to offer the United States, and to create a complete and comprehensive system of universal assistance to refugees who have been accepted into the United States. "The mention of "homeless" individuals and refugees "of particular importance to people in the United States" indicates that legislators sought to broaden the range of human rights in U.S. refugee law and to place these stated human rights principles subject to the basis of U.S. interests. It's therefore not surprising to find that this phrase has generated a lot of discussions among immigration scholars as well as human rights activists around the globe and has also caused disagreement with U.S. courts - over the definition of "refugee."⁹

It is the United Nations High Commissioner for Refugees' Handbook on Procedures and Criteria for determining the Refugee Statute (UNHCR Handbook), released in 1979, provides

⁹ Peter H. Schuck, *Refugee Burden-Sharing: A Modest Proposal* (1997) 22 *Yale Journal of International Law*, 243, 251

aid to the government when it comes to making decisions about the rights of a refugee within their home countries and providing interpretive guidelines for U.S. courts. In accordance with the UNHCR Handbook, the procedure to determine the status of refugees as per the 1951 Convention comprises three elements: "inclusion," "cessation," and "exclusion" clauses. "Inclusion" and "inclusion" clauses form the primary clauses that constitute the basis on which the status of a refugee will be decided. "Casement" along with "exclusion" are the two other "cessation" and "exclusion" clauses. They are negative because they establish the conditions under the circumstances that a person stops being a "refugee" and the conditions that determine if the person is not able to be included in the scope of the 1951 Convention regardless of whether they meet the criteria laid within the accepted clauses. The UNHCR Handbook also clarifies that refugees should be distinguished from economic migrants, which are those who were "moved solely because of economic reasons" to "voluntarily" abandon their country of origin to "take the chance to live in another country." It also states that it is vital to understand that the difference between two types of a migrant due to economic and refugee reasons may not be evident due to the conditions of economic and political circumstances that exist in their country of birth being interconnected. The UNHCR Handbook and later in 1951 in 1951, the Convention was created to provide refugee protection to people who are) required to move out of their homes and are unable to return) because of actual or justified fear of persecution due to religion, race, or any other factor citizenship, political, or belonging to a particular social group, and three) who require or are qualified to be protected by international law. The definition excludes individuals who are affected by natural disasters or natural disasters from the definition of a refugee. In reality, an important research study completed in response to requests by UNHCR specifically stated that refugee status as defined contained in the Convention does not bar people who are those affected by natural disasters from obtaining refugee status. Based on this the factors that cause relocation "derive from the relationship between the state and the nation." This is why these interpretive manuals appear to support the U.S. lawmakers' hesitancy to grant refugee status to those who have been displaced because of natural environmental causes. The 1967 Protocol changed refugees' definitions but it retained the core requirements of displacement, persecutory for one of five causes as well as

the requirement to be protected by international law. Certain scholars have suggested these criteria are expansive and restricting when applied to actual situations. On the other hand, the ambiguous terms used for the term refugee can create many uncertainties when it comes to specific situations. On the other hand, however, the definitions are specific enough to encompass the numerous circumstances and motives that can create refugee flows.

The beginnings of the law on refugees as revealed in the history of legislation as well as interpretive guides reveal that the drafters accepted that natural catastrophes were the main factor in human migrations and they consciously declined to grant refugees the status of those who suffered from natural disasters. It is unclear what the law is capable of assessing the effects on the environment of man-made catastrophes which have been deemed to pose an environmental threat or, at the very minimum but not to the extent that we have seen in recent years. The legal foundations that define the definition of refugee need to be reviewed or, at the very least, amended to bring refugee laws to the present demands of the present. Many environmental catastrophes that took place during the 20th-century highlight the need to modify the international and U.S. refugee laws to assist victims of such catastrophes.

HUMAN-MADE ENVIRONMENTAL DISASTERS

Prior to examining the possibility of granting refugee status to those who are forced to leave their homes by man-made environmental forces, it is necessary to define what constitutes an environmental catastrophe worthy of the status. The environmental disasters that humans cause can be generally classified into two categories:

- Environmental catastrophes that are immediate;
- Environmental catastrophes that are immediate;
- More long-term destruction of the environmental condition.

Recent developments show that in certain situations, these two types of catastrophes deserve refugee protection in line with the goals for international law as well as U.S. refugee law.

IMMEDIATE MAN-MADE ENVIRONMENTAL DISASTERS: CHERNOBYL, BHOPAL, AND KUWAIT

In the early morning hours of the month of April, an explosion took place at a nuclear facility at Chernobyl, Ukraine destroyed a reactor, leading to a permanent emission of radioactive fuel as well as radioactive waste into the environment. The spread was across the entire region that includes Ukraine, Byelorussia, the Russian Federation, and most of Europe. It was the most devastating technological disaster ever recorded. Soviet authorities were at an impasse, refusing to admit to the tragedy publicly and not taking any action in the initial moments after the explosion. It was only 38 hours after the blast, and after a surge of international pressure as well as global media coverage and international media coverage, did officials from the Soviet Government Issue a small press release stating that a nuclear event was in progress. The explosions destroyed the economic and social life of Ukraine and its neighbors. However, the consequences of the catastrophes surpassed national boundaries and were portrayed as a global catastrophe, and a source of alarm across the globe. Soviet leaders had a natural desire to conceal the most information regarding the Chernobyl incident from the world at large since the consequences of this incident could be a threat to the future of their nation. In the early 1980s, nuclear power had emerged as the major expansion area for the power industry in the Soviet Union. This meant that the development of the economy of the country was dependent on the performance of the nuclear power plants. The long 63 years of the communist strict doctrine could have planted the seeds for the catastrophe. The Soviet leadership emphasized the importance of efficiency at all costs. They used secrecy on every level to safeguard the truthfulness of all aspects associated with Soviet Party policies. They also firmly suppressed any information, even if it was reliable and pertinent to the project on which the Party was working. At the end of the day, Soviet industries left critical problems unexplored.

A lot of people were forced to be refugees following the Chernobyl incident. Contrary to those who fled other circumstances many affected by Chernobyl were unable to return home as the region remains contaminated with radionuclides. Ten years after the catastrophe the 30-

kilometer area known as Chernobyl was virtually inaccessible to people. Most of the people who died in Chernobyl went to different regions of the Soviet Union. However, the survivors were scattered throughout the world and if the same tragedy were likely to occur in the two Soviet states, it's likely that the survivors would journey beyond the boundaries of their respective countries in search of safety. The 1984 release of toxic gas from Bhopal, India - considered the most devastating industrial accident of all time is another example of an unavoidable man-made environmental disaster that led humans to move. Union Carbide India Limited (Carbide) is an Indian company that is owned by a large portion of A New York Corporation, which makes pesticides at its Bhopal plant on the demand made by the Government of India.¹⁰ The disposal system of waste that was used within Carbide located in Bhopal was suspected before the leak. The problem wasn't it was the fact that Carbide released waste to open pits and solar evaporation ponds. It also discharged harmful effluents over a prolonged length of time in sewer drains.¹¹ On December 2, 1984, a huge amount of highly poisonous gas was discharged from the plant which quickly spread to regions of the high population around the plant and into areas filled with city dwellers. More than 2,500 people were killed in the first hour and over 100,000 people fled their homes. Many of them were suffering from severe or permanent injuries.¹² Just a few days after the incident, American attorneys of the United States filed the first lawsuit on behalf of a vast variety of Indians. Further 144 lawsuits were filed in federal courts within the United States, all of which were transferred to the Southern District of New York. The case was ultimately dismissed due to *forum non conveniens*. This put in place the litigation in the United States. However, the situation in India continues until today and the majority of victims haven't been compensated.

Furthermore, the environmental impacts continue to be a major issue for the people of Bhopal and surrounding areas. The government's efforts to clean the area are not taking long. A large

¹⁰ 'In re Union Carbide Corp. Gas Plant Disaster at Bhopal' (*Lexis Nexis*) <<https://www.lexisnexis.com/community/casebrief/p/casebrief-in-re-union-carbide-corp-gas-plant-disaster-at-bhopal>> accessed 26 February 2022

¹¹ Meena Menon, 'Carbide's Toxic Legacy, Poisoned Water, Wastes' (*Suns Online*, 14 September 1999) <<https://www.sunsonline.org/trade/process/followup/1999/09140399.htm>> accessed 26 February 2022

¹² Tim Covell, 'The Bhopal Disaster Litigation: It's Not Over Yet' (1991) 16 (2) *North Carolina Journal of International Law*, 279

amount of toxic chemical and tar-type residues, likely to be contaminated by mercury from sealed pots that were not utilized and disposed of in waste areas still in the premises of the Union Carbide plant, which is now controlled by the government. A report in 1996 from the public health department in Bhopal states that groundwater found in Bhopal is highly contaminated with bacteria and chemicals. The solar evaporation lakes are still contaminated by toxic substances that kill and poison animals that eat from the ponds. Ten thousand people live in the vicinity of the plant that is no longer in operation and 83 are at risk of suffering the devastating effects of the tragedy 10 years after the event. If drinking water becomes unusable in the very near future, the residents are likely to be forced to move or die because of the incompetence of their government.

The case of Kuwaiti oil wells is the third instance of a human-caused immediate environmental disaster. After the Persian Gulf War, retreating Iraqi soldiers deliberately ignited wells during Saddam Hussein's final show of anger. They also warned Western states for their acts of a lack of Middle Eastern oil. For the next eight months, over 7100 wells burned without control until a multinational coalition of firefighters could eliminate them. Along with causing huge economic damages, these fires also destroyed the environment around them. The rates of mortality in the region due to lung cancer, as well as other respiratory diseases are expected to rise quickly over the next 10 years because of the greater exposure to the harmful air due to smoke clouds. Alongside the air pollution, freshwater sources are severely threatened, including many desalination plants that transform sodium chloride into the water for drinking. As the region is growing in population and industrialization is expanding the demand for water that is safe is going to become more urgent.

LONG TERM EXPLOITATION OF NATURAL RESOURCES: CENTRAL AND SOUTHEAST ASIA

Ex-Soviet Central Asia states are a good example of long-term environmental degradation causing displacement and migration.¹³ Many of the problems of soil erosion and desertification in Central Asia are due to decades of agricultural exploitation, industrial

¹³ The State of the World's Refugees: In Search of Solidarity (n 7)

pollution, and overgrazing during and after the Soviet era. In the 1990s, the Soviets "mono-cultural" agricultural system employed massive amounts of chemicals to combat weeds and to replenish soil nutrients, which lead to the pollution of the soil as well as water. The Aral Sea, which runs between Kazakhstan and Uzbekistan, is the most destructive region in Central Asia. The Soviets used the majority of the water from the sea to water the cotton crops in the area. The lake's surface was reduced to half by 1980. The dried-up seabed, which contained large amounts of industrial and agricultural chemicals, is now moving long distances. This contributes to further salinization, desertification, and land salinization. Another example of man-made environmental disasters in Central Asia is Semipalatinsk, located in Kazakhstan. Between 1949 and 1989, the U.S.S.R. destroyed over 500 nuclear bombs in the region. Of these, 150 were above ground. Around 160,000 people have fled the region since the public became more aware of the dangers of radiation. A significant number of these people moved to other parts of Kazakhstan, while others went to Russia, Ukraine, and other former Soviet countries. The area's most wealthy and educated residents are often emigrating to avoid being left behind by less mobile and less well-off people who lack the social networks to find new homes. Another instance of continuing environmental destruction is the pillaging of forest areas in Southeast Asia, most notably in Cambodia. According to foreign-aid officials and Cambodian opposition to Hun Sen's government, Hun Sen Cambodia has a serious environmental problem that could just be as destructive as the recent end of the threat of the Khmer Rouge. Khmer Rouge caused mass destruction and death throughout the time it was in power.¹⁴ A series of agreements signed in the latter part of the 1980s between Hun Sen's communist regimes, the Thai military, and private businessmen have led to a downward spiral of corruption, conversion, and the petty stealing of the forests of Cambodia for wealth.¹⁵ The destruction of forests in the process has resulted in devastating flooding in recent times, as well as siltation and fish deaths, as well as other negative consequences of massive deforestation. The most significant risk to the Cambodian Tonle Sap (Great Lake) which is

¹⁴ Michael Richardson, 'Ecology: Cambodia's Next Man-Made Disaster' (*The New York Times*, 15 January 1999) <<https://www.nytimes.com/1999/01/15/news/ecologycambodias-next-manmade-disaster.html>> accessed 26 February 2022

¹⁵ Kirk Talbott & Melissa Brown, *Forest Plunder in Southeast Asia: An Environmental Security Nexus in Burma and Cambodia*' (1998) 4 *Environ Change Secur Proj Rep.*, 53-60

described as being among the most valuable freshwater fishing areas worldwide, is slowly drained due to the destruction of forests and could disappear within the coming years. There are other reports that suggest that uncontrolled logging at the current levels could cause the destruction of the remaining forests of Cambodia in the coming years.¹⁶ The environmental degradation has left the land at risk of erosion and flooding which fills the channels with water. The destruction also threatens the livelihoods of communities, which are often the most marginalized, who depend on the forests and lakes for shelter, food, and water sources. The Cambodian government recently established a prohibition on the export of unprocessed timber and ordered the armed services to clamp down on illicit loggers, but implementation is haphazard, and the devastation continues. Furthermore, some officials from the government and the military might be in collusion to circumvent the ban. 105 It is obvious that the exploitation of the forests in Cambodia is a key factor in its power. political and military officials in Cambodia and not just for the government in power as well as for the guerilla groups which have taken on them. Although the destruction of the forests of Cambodia has been fueled by and been fueled by years of violent conflict in the political arena and civil conflict, the environmental destruction alone is likely to render vast regions of the country inhospitable.

ANALYSIS

The victims of natural disasters caused by humans deserve refugee status due to a variety of reasons. First, a reading of the UNHCR Handbook which is widely considered to be the most accurate version of the Convention and the Protocol suggests that such victims might be eligible, or at the very least be eligible for the status of refugees. According to the Convention and the Protocol Refugees are differentiated from other migrants due to the fact that they are not protected by their home country and. have to rely on the international community to provide security. Refugees are an individual who is a part of their country due to persecution based on one of the five reasons or fear of persecution or fear of such persecution, and "is in a

¹⁶ Daniel Pruzin, 'Loggers Use Loophole to Decimate Cambodia's Disappearing Forests' (*The Christian Science Monitor*, 2 May 1997) <<https://www.csmonitor.com/1997/0502/050297.intl.intl.3.html>> accessed 26 February 2022

position of being unable or, due to the fear, unwilling to accept the protections of the country." A 108-page document from the UNHCR Handbook states that the word "unwilling," refers to "refugees who are unwilling to accept the protections of the Government of their country," as well as being "qualified by the expression "due to their fears." "If it is clear that the security of the country of citizenship is in place in the event that there's no justification based on solid fears to deny the protection," the person does not require protection from international law and is not an asylum seeker. Thus, the fear of being targeted is a fundamental condition for a refugee's inability to be granted protection by the government when the refugee is not "unwilling" to take protection.

A lack of any qualification definition for "unable" indicates that the anxiety of "unable" is not the main reason for refugees' rejection of protection by the government if the refugee is not eligible to receive the protection offered by the government. According to the UNHCR Handbook the phrase "unable" to avail of the protections provided by the government "implies circumstances that are beyond the reach of the person who is affected." For example, it could be due to the occurrence of war or "other significant disturbances that block the country of the country of origin from providing protection or renders the protection unusable." The nation of origin may have denied protection to the applicant. Refugees' "inability" to receive protection can be due to two possible causes: (1) where the government was not able to effectively protect them and (2) where the authorities were incapable of providing protection. This scenario is a good example of instances of being targeted by the state. But, the second scenario implies that refugees might discover that they are "unable" to avail the protections offered by the government, despite the fact that it is in the best interest of its government to offer the protection. A lack of state persecution doesn't necessarily mean the absence of persecutors can also be a result of non-government individuals like militant groups, guerillas, or mobs. In these situations, you could be forced to flee by persecution and find yourself "unable" to take advantage of the protection of the government if circumstances hinder the government from providing protection. The terms in the Convention and the Protocol implies that refugeehood could result even in absence of persecution, i.e. the result of circumstances that make an organization unable to offer effective protection. Even if the authors of the Convention and

Protocol did not intend for refugee status to be used without persecution, the UNHCR Handbook's acknowledgment of "grave circumstances" rendering a government's security "ineffective" implies that the definition of a refugee should be revised to take environmental dangers into account. With regard to the humanitarian purposes of the refugee policy, It is not logical to grant refugee status to people who are under the guise of governments trying to protect them. However, it is not worth giving refugee status to those who are the cause of their governments' inability to protect them from similarly serious circumstances, like those that resulted from the Chernobyl blast and the many years of testing bombs across central Asia. In addition, regardless of how it is read in the UNHCR Handbook is considered, it is clear that "whether not able or unwilling to take advantage of the protections of the Government the refugee is one who does not benefit from such protection." This language highlights the significance of the absence of protection by the state within refugees' definitions, no matter the reason.

While it is true that reinterpreting or changing the definition of refugee that includes any persons who have been displaced from their homes and who do not have the protection of their state would create an influx of refugees that is beyond what the international community is able to handle. The interpretation of this must, therefore, have been restricted by certain rules, for instance, the existence of certain minimum levels of environmental destruction within the nation of its origin as well as the presence of certain circumstances that make applicants ineligible to take advantage of the protection of their government within a specified period. Another rationale for granting refugee status to people affected by natural disasters is that major changes in global conditions have led to a rise in mass migrations. It is clear that the authors of international and U.S. refugee legislation foresaw the extent to which refugee standards would alter in the near future. According to the UNHCR Handbook, the 1951 cut-off date for the Convention was chosen because "there was a desire among several States not to be bound by obligations that were not foreseeable." Therefore, in addition to the dateline in 1951 and the 1951 cut-off date, the Convention also provided contracting states with the "possibility of restricting what they are required to do under the Convention to people who were refugees because of the events that took place in Europe. The Convention also allowed for the

possibility of limiting obligations to refugees arising from events in Europe. The 1967 Protocol did not, however, eliminate the geographical and temporal restrictions regarding the definition of the refugee because of the belief that "new refugee issues have emerged after when the Convention was adopted and the refugees in question may not be covered by the provisions that were stipulated in the Convention." A decade and a half later, when the Convention was adopted, however, the drafters of the Protocol recognized the necessity to change the definition of refugee, however, only slightly because of the changes in conditions.

The refugee definition in the international community remains unchanged ever since it was adopted in 1967. The Protocol came into force in 1967. After 30 years, however, environmental conditions have dramatically changed. The rapid growth of industrialization and economic development in a number of developing countries has resulted in the loss of the safety of their citizens' environment. For instance, "in the hopes of increasing economic growth, the governments of emerging nations allow industries to use dangerous technologies under-supervised, unregulated and consequently more risky conditions." The tragedy that occurred in Bhopal offers a concrete illustration of this: It "occurred due to the fact that governments of India allowed the possibility of industrial growth to surpass the significance of ensuring environmental risk management." There is a good chance that another incident similar to that in Chernobyl is likely to take place soon because the majority of Soviet nuclear power stations are located in highly populous regions as well as the previous Soviet states' dependence on nuclear power is now greater than ever. The scale of these technological and industrial advancements, as well as their potential dangers, cannot have been anticipated at the time that such massive technological and industrial activities weren't in place. The legislative process that shaped U.S. refugee law also indicates the recognition of the necessity of establishing an unrestricted refugee program. According to the 1979 Senate report, The Refugee Act could not expressly define its complete definitions - particularly, the criteria to decide the categories of refugees that should be "of particular interest to those living in America." The United States - for it was "an issue that only the future can be able to resolve." The legislation was "designed to be a guideline for the years to be." What the requirements for refugees are considered to be particularly important to American citizens is an important public issue that will be ...

examined and reviewed regularly by Congress and the President and American citizenry." The statement shows Congress is focused on establishing an immigration system that can be able to meet the ever-changing needs of refugees, as well as the needs of those living in the United States.

An important role was played in the drafting of the 1951 Refugee Convention.¹⁷In its final form, in its final version, the Convention included those who had were forced to flee, or who could be forced to leave due to the circumstances they have already occurred in the past, including the Nazi persecutions from 1933 to 1945 and "increasingly brutal communist regimes across Eastern Europe." This is why the context of the Convention in itself suggests that its main purpose was to meet the demands of refugees in the current. This is apparent in the apparent acceptance by international and U.S. refugee law of the necessity of being fluid in the meaning of refugees and illustrates an amendment to the refugee definition to include people who are currently affected by environmental disasters as refugees are in keeping with the original intent and the goal of both international and domestic refugee law. Another argument in favor of granting the status of refugees to persons who have been displaced by environmental factors requires a change to the definition of refugee to lessen the confusion of international and U.S. refugee law. As opposed to the admission of migrants and refugees, the acceptance of refugees usually conveys a powerful international message to the nation that the refugees originate from. The acceptance of refugees could convey a negative message when the Country accepts them because of an issue which the state of origin is unable, or cannot, and will not, address, for example, religious or political discrimination. Foreign policy concerns also are usually inextricably connected to domestic priorities, for instance, the need to ease tensions with other countries that they are seeking to gain the United States seeks economic or political cooperation. Although the text and the legislative history in the Refugee Act indicate a humanitarian emphasis, actual usage indicates that U.S. refugee admissions have been influenced much more by national and foreign policy considerations. For example, Central American aliens have generally had very minimal U.S. sympathy, and the Immigration and Naturalization Service (INS) in response to the State Department, maintains

¹⁷ Daniel J. Steinbock, 'Interpreting the Refugee Definition' (1998) 45(3) UCLA Law Review, 733, 766

an assumption that Salvadoran refugees are mostly economically displaced and, therefore, are not in need of assistance. In the meantime, ever since the glasnost crisis and the subsequent changes to the former Soviet Union and in the past, it has been the circumstance in the past that the U.S. has generously accepted ex-Soviet refugees. In 1990 in the year 1990, 1990, the United States accepted 40,000 Soviets who weren't from the country where they were born and were not forced to go home due to civil war or war, and who often, in most instances, did not fit into the terms for a U.N. definition of a refugee as defined by the Refugee Act. This admission process was based on refugees to America being admitted to the United States "in response to the political environment in the country "under the new refugee profile research, studies, assumptions, as well as assumptions." So, despite Congress eliminating the politics out of its Refugee law in the perspective of foreign policy, however, domestic politics continue to have a significant impact on the admission process of refugees.

The trend of politicking refugee admissions is a result of the vague words of the Refugee Act. In addition to the requirement for "appropriate discussions" with Congress as well as the requirement to consult with Congress, it is also required to consult with Congress. The Refugee Act establishes a few limitations in terms of guidelines for the Attorney General as well as the Executive must adhere to in using their "discretion" when deciding on refugee admissions. There are no guidelines that clearly require U.S. authorities to make refugee admissions that are in accordance with the main objective of the refugee program, which is to offer protection to those who cannot obtain protection from their respective governments. Without any specific authority from the law or even the rules of the executive and administrative agencies usually adhere to, they do not confirm the decisions made and, if they do, they offer the possibility of taking legal action against officials that are part of their U.S. government - an alternative that isn't available for many immigrants seeking refugee status. If the refugee law does not specifically allow refugee status for people affected by natural catastrophes and environmental disasters thousands of victims every year are denied asylum status despite the fact that many others might be less qualified to be granted recognition as international refugees due to reasons which are completely not compatible with the intent of the law on refugee status. Then, those affected by natural disasters caused by humans ought to

be able to take refuge within different states due to humanitarian concerns. The people who leave their homes and sometimes their country due to catastrophes like Chernobyl or Bhopal are the victims of environmental injustice since there is no political authority to safeguard their environment. Some scholars have argued that the victims fall into the 1951 definition of refugees because they belong to a "social group" without the power of the state to safeguard their environment. The argument is controversial in that it violates the 1951 definition by distorting the definition of "social group" and by claiming that because of this trait, the victims can be "persecuted" through their government. The victims of environmental disasters are typically disempowered politically. However, that doesn't mean that they are the definition of a "social community," for such disempowerment is not ascribed to any particular attribute other than the all-encompassing quality of being a citizen under an undemocratic system of government. Also, it doesn't prove their status as "persecuted" due to their belonging to a particular social group since there isn't any specific reason that they are regarded as different and oppressed. It is clear that the "refugee" definition is therefore not able to include the victims in its definitions, despite the fact that they are voluntarily relocated and are not then able to seek the protection of their governments as refugees from religious or political persecution.

Many international agreements have established an essential right to live and prohibited the deliberate deprivation or destruction of life. In the Universal Declaration for Human Rights that "everyone has the right to life liberty, freedom and the protection that comes with it."¹⁸ According to the International Human Rights Committee has declared that "a state's inability to take the appropriate measures to prevent the disappearance and death of a person is in violation of the rights to live in accordance with article 6 of International Covenant on Civil and Political Rights."¹⁹ The obligation of states to protect the rights of the living be applicable to "circumstances in which the actions of the state cause harm to the health of the environment." Environmental risks can constitute an infringement of rights of people of other nations which includes the right to health, life, cultural, privacy, and property rights as

¹⁸ Universal Declaration of Human Rights, 1948, art. 3

¹⁹ Michelle Leighton Schwartz, *International Legal Protection for Victims of Environmental Abuse* (1993) 18 *Yale Journal of International Law*, 355, 362

defined in international treaties such as that of the Universal Declaration, the International Covenant on Civil and Political Rights, and perhaps in international law that is used. The human rights organizations or tribunals have made a decision regarding the scope or nature of rights extent of rights. It is certain that the United States has, at most in terms of language, it has committed to defending these rights in international contexts. To acknowledge that the past been the basis to determine the meaning of the concept of refugee in 1979 in a Senate Report about the Refugee Act declared the United States has admitted refugees in a variety of ways in domestic and foreign strategy, "to respond to human rights concerns as defined in the Universal Declaration for Human Rights." Furthermore, it is the fact that the U.S. Supreme Court has clarified, even in its rulings that the main concept in United States refugee legislation is "the making a safe place for the homeless across the globe,"²⁰ not simply keeping a certain predisposition in place for those who previously had to endure discrimination. The people who flee environmental catastrophes that are not the result of their own actions are certainly homeless, which implies that their survival is in danger in a manner like the hardships faced by people who are victims of discrimination based on religion, politics, or any other discrimination. If the fundamental human rights are the foundation of U.S. refugee laws, as the past legislative evolution suggests they do, then they are the United States' duty to accept members of the global community to accept refugees who are fleeing the consequences of human-made environmental disasters that have left them homeless.

Large-scale floods, hurricanes, and earthquakes are certain to need an international reaction. However, these natural disasters differ from the types of disasters caused by the environment that occurred in Chernobyl and are still being seen throughout Southeast Asia, for they aren't directly triggered by the national government. The expansion of the term "refugee" may not be the best answer to these kinds of situations because following these events the international response should include assistance to those affected as well as reconstruction of damaged infrastructure whenever it's feasible. Simply opening the doors to an increasing number of victims doesn't aid in the long run to aid the regions that have been devastated. Natural environmental disasters caused by humans could be considered human rights violations if

²⁰ *Rosenberg v Yee Chien Woo* [1971] 402 U.S. 49, 55

they result from government actions. If the language that is used in the refugee laws of both countries doesn't recognize those affected by these natural disasters in the sense of refugees, contemporary situations call for a change in the language to ensure that the refugee law is in line with the international human rights conventions.

A POLICY PROPOSAL

The status of refugees in the INA for those forced to relocate due to natural human-caused disasters could be the first step in granting these victims recognition internationally. U.S. refugee law, however, has to adhere to strict quality, regardless of any "discretion" which is the result of the decisions of the Attorney General and President such as, for instance, according to an international standard that is applicable to all U.N. member states. The paper proposes changing international as well as U.S. refugee law to include as a "refugee" any person

- That is a resident of a country where their citizenship is declared inaccessible because of an environmental catastrophe which is caused or condoned by the government, "unlivable" being defined in accordance with the criteria for the right of life as outlined within the Universal Declaration and other international norms and agreements that are in force for many states; and
- Those who are not capable of obtaining protection from the government of the state because of the government's inability or inability to effectively secure its citizens,
- Where the United Nations General Assembly, following appropriate consultation, and appropriate consultation, concludes that the current situation in the country from which they came cannot be transformed into a "livable" country within a certain amount of time, the amount of time must be determined by a concert with the General Assembly at the time of changing the definition.

"Appropriate consultation" should comprise the recommendations from each of The United Nations High Commissioner for Refugees (UNHCR) as along with UNHCR in conjunction with UNHCR and the United Nations Environment Programme (UNEP) and all of which will assess the current state of refugees and environmental concerns across the globe and suggest

specific actions for members of the General Assembly. The main components of the revised definition for refugees should be also formulated by the General Assembly through this process of consultation with the most authoritative U.N. organs. It could be that by submitting for the United States to standards set by international organizations, the law could be in violation of the powers that are granted to the Legislative and Executive branches under Articles 1147 as well as 1148 of the Constitution. The issue can be resolved by implementing the standard by the United States as an international agreement, subject to the requirement that the United States refuses to be bound by any clause which might result in it acting in a manner against the Constitutional rules of the U.S. Constitution. There could be a possibility that the United States could proclaim in the majority of instances that a decision taken under this standard is illegal because it is in violation of U.S. legislative or executive authority. In the case of every international treaty, issues of foreign policy provide the rationale for adhering to the regulations of the treaty. It is possible that the United States would exercise its right to refuse to adhere to the terms of the treaty in the last instance since this could have a major influence on the United States' relations with the international community. It is therefore obvious for the United States would not be legally bound by any treaty that is in violation of the Constitution but, fundamental concerns about foreign policy might prevent it from abusing the norms that it was set out in the treaty, but only in the most extreme circumstances which have enough significance to be worthy of international focus. In this international standard refugees' status will be established in a more objective manner as opposed to the existing regulations, which allows every nation the power to define and enforce the vague requirements of the refugee definition within international law based on the specific needs of its diplomatic or national requirements.

CONCLUSION

We're no longer in the midst of a Cold War. Discrimination against various social groups is still prevalent in many areas of the globe, and those who are caught in these circumstances surely need international help. However, the idea of granting the status of refugee only for those who demonstrate that their lives are at risk because of the social group they belong to or

the view of the world they believe in is to claim that only belonging to particular groups and the freedom to express opinions or beliefs are human rights that should be the subject of protection worldwide. This is a violation of the fundamental rights that all humans must live in an environment that is free of dangers due to human carelessness. If a state aids in or facilitates the development of these environmental disasters, the rights of the human are at risk, and those affected are entitled to flee to another country as refugees. Without the term "refugee" in international legal law countries do not have to adhere to rules of non-refoulement environmental migrants are always moved to places where their lives are in danger. A policy that recognizes "environmental refugees" will direct international efforts to address the main causes behind the displacement. It will obligate those countries with the power to influence the actions that impact the environment to engage in not just economic and political decisions but also ones that benefit the environment globally as well. The current law in the United States gives the President and Attorney General the power to permit or deny the victims of environmental catastrophes that are motivated by "humanitarian concerns" in addition to an interest related to "national security." These terms, however lofty they may seem, are actually an invitation to smart decisions in the political realm and leverage when U.S. interests are at risk. It is impossible to monitor the process of admission, other than the consultations that are believed by officials as "appropriate" at present. Although the executive has wide authority to decide on immigration for the national interests, this doesn't justify the adoption of the Protocol that is not an obligation-signatory.

It is clear that the burdens of refugees are one that must be shared by the entire international community, and not only from just the United States alone. However, because international agreements are only successful if they are abided by within the context of the laws and treaties in place at home and treaties, they cannot be enforced within the United States. In the end, it is the United States that would do well to set an example in recognizing that people who are refugees have the right to aid from the global community. This would encourage the United Nations to revise the mid-century definition of refugees, and set the new global standard of refugee security which will meet the immediate requirements that are currently in the spotlight. The definition of refugees is built on an international convention that safeguards

people who are displaced from their homes because of the injustices that are imposed or tolerated by their governments. If this is indeed the main concept, then those who have been forced out of their homes due to human-caused environmental catastrophes are entitled to be considered refugees.