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Perspective***2 STEMMING THE FLOW OF ENVIRONMENTAL DISPLACEMENT: CREATING A CONVENTION TO PROTECT PERSONS AND PRESERVE THE ENVIRONMENT**

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I. INTRODUCTION

In recent years, many commentators have identified a new refugee requiring the protection of international law: the environmentally displaced person [\[FN1\]](#)--one who leaves his or her home and seeks refuge elsewhere for reasons relating to the environment. While the number of *3 people who have been displaced for environmental reasons is on the rise, it is a mistake to believe that the existing refugee structure and current refugee norms are adequate to protect these individuals. In this paper, I address the root causes of environmental degradation and catastrophe that are causing this increased migration of environmentally displaced persons. I also provide justification for my position that a new convention should be drafted providing protections for environmentally displaced persons and creating affirmative obligations for states to work toward preventing environmental displacement in the future.

Part II defines "**environmental refugees**" and describes how they have come to exist and where they come from. Several examples from recent years illustrate that environmental factors are often only one piece of a more complex puzzle. In Part III, I consider a representative commentator who argues that **environmental refugees** can be amply protected under existing refugee mechanisms--a position which fails to consider the definition of "refugee" in the international context. Even if these refugees could meet the academic criteria laid out in the definition of the Refugee Convention of 1951, individual states have implemented the provisions of the Convention in different ways--often, as in the case of the United States, in such a way that would make it practically impossible for an environmentally displaced person to be admitted to the state as a refugee. Accordingly, we must create a new mechanism for protecting environmentally displaced persons, addressing both the displacement and the environmental factors precipitating the displacement. Merely allowing environmentally displaced individuals to move does not solve the problem. Not only is their homeland continually decimated, but also the massive influx of **environmental refugees** to other areas creates a vicious cycle of environmental problems in these new areas.

Part IV outlines my suggested alternative to the proposal that environmentally displaced persons should be considered under the existing refugee structure. The solution for this problem must address not only the root of the problem (environmental issues), but also the results (**environmental refugees**). Utilization of the Refugee Convention, while addressing the results, does not touch the root of the problem. I, therefore, propose that the international community address the problem of environmentally displaced persons in a manner similar to that of victims of torture. As with the Convention Against Torture, I suggest that states offer temporary protection to those fleeing from environmental problems, and also assume obligations and duties in order to solve these problems within their own jurisdictions, thus preventing the creation of **environmental refugees** from the start. Sufficient evidence of support for a new convention governing environmentally displaced persons already exists *4 in international treaty law and customary international law, and can provide the necessary sense of obligation for a new treaty to succeed.

II. ENVIRONMENTALLY DISPLACED PERSONS: WHO ARE THEY AND WHY DO THEY EXIST?

The Yanomami people of the Brazilian rain forest; the Ukrainians around Chernobyl; the Indians affected by the Bhopal disaster; Nicaraguans whose homes were destroyed by Hurricane Mitch; Ethiopians, Rwandans, and Somalis suffering from drought and lack of sustainable agriculture; Central Asians harmed by years of poor Soviet agricultural practices; Nigerians suffering from increased pollution and the loss of their land due to government policies towards oil companies--all of these groups of individuals have one thing in common: they have been displaced, forced to move from their homes and traditional habitats due wholly or in part to environmental reasons.

A. Causes of Environmental Displacement

Environmental displacement of people is not a phenomenon unique to the present day. Certainly as far back as the dinosaurs, living creatures have been forced to migrate from one area to another for environmental reasons. Prior to the Industrial Revolution, however, these migrations primarily occurred because of natural environmental disasters, such as floods or hurricanes, or due to the natural rotation of hunters, gathers, and farmers, searching for new resources and different land. In the twentieth century, however, a new type of environmentally-related migration began to occur: migration due to pollution and other environmental degradation caused by human interferences with the world, and an increase in natural disasters due to environmental degradation.

Traditionally, there are many reasons why people leave their homes and migrate elsewhere. Economics, nationality, religion, war, ethnic hatred, and political turmoil, among many other reasons, have caused hundreds of thousands of people to move from their homes in search of safety, food, a better lifestyle, or religious tolerance. In recent decades, however, environmental reasons have also caused displacement. Specifically, land erosion, desertification, deforestation, global warming, earthquakes, floods, hurricanes and other storms, fires, and industrial disasters producing unhealthy, and sometimes deadly, results must be added to this list. For many people, it is difficult to point to a single culprit among these causes. In Africa, for example, widespread ethnic conflict *5 occurred in conjunction with drought, exacerbating the lack of available food, water, and medical attention, causing people to flee to safer areas.

Another factor to consider in an examination of environmentally-displaced persons is how far they migrate in relation to the environmental event that has occurred. The distances people move when displaced vary considerably from group to group, depending on the type of environmental disaster or degradation, as well as what other problems they may be facing at the same time. This may also depend on the sudden or gradual nature of the environmental change. Sometimes, the environmental change that forces people to move is sudden and unexpected, such as Chernobyl or Hurricane Mitch. In other situations, the environmental change is gradual in nature, such as deforestation in Brazil, the rising sea-level in low-lying areas of China, or the depletion of the soil in Central Asia. In some cases, such as for those who lost their homes due to the floods caused by Hurricane Mitch, the persons affected simply moved to new homes in the same region and set about re-building what they lost. Others, however, such as Nigerians forced from their land by their government and oil companies, have in great numbers sought to resettle in entirely new areas, often in other regions or countries.

B. Case Studies: Environmentally Displaced Persons

No matter what the cause or how far the affected group moves, the number of people forced to leave their homes at least in part due to environmental reasons has increased significantly over the past several decades. According to Michelle Leighton, Director of the Human Rights and Environment program at the National Heritage Institute in Berkeley, California, the number of **environmental refugees** has reached a total of 25 million, making it the single largest refugee group in the world. [FN2] Moreover, "[i]t is estimated that 150 million **environmental refugees** will exist in the year 2050." [FN3]

Nearly all continents have seen a rise in **environmental refugees**. In Europe, particularly Eastern Europe and the provinces of the former Soviet Union, there has been significant environmental displacement due to Soviet-era practices pertaining to agriculture and nuclear testing. For example, in the former Soviet Republics in Central Asia approximately *6 270,000 persons were displaced due to soil degradation and desertification in the

first half of the 1990s. [FN4] This environmental damage occurred as a result of decades of agricultural exploitation, industrial pollution, and overgrazing. [FN5] During the Soviet control of the region, poorly designed and badly-managed irrigation schemes were introduced, leading to large-scale water scarcity and degradation of land due to salinization. [FN6] Moreover, large amounts of chemicals were used on the crops to control weeds, resulting in the poisoning of the region's land and water. [FN7] The resulting economic and social consequences of many years of environmentally unfriendly behavior caused a sharp decrease in agricultural production, an increase in food prices, the disappearance of some industries (such as fishing in the Aral Sea), and declining health standards among the local populations. [FN8] All of these problems have been dramatically exacerbated by the demise of the Soviet structure, the resulting economic struggles of the new nations, and the lack of any real government infrastructure.

Another problem area in the region is the former Soviet republic of Kazakhstan. Between 1949 and 1989 almost 500 nuclear bombs were exploded in the region, approximately 150 of them above ground. [FN9] As information has become more available since the demise of the Soviet Union, we now know that 160,000 people chose to leave the area due to the fear of radiation in these areas. Most moved either to other parts of Kazakhstan, or Russia, Ukraine, or other former Soviet Republics. [FN10]

In the Americas, environmental displacement has occurred most heavily in the regions of South and Central America, due to both natural environmental disasters affecting unprepared and unprotected areas, and the business practices of international companies in the regions. One of the most widely publicized cases from the Americas is that of the Yanomami people of Brazil. This intensely reclusive indigenous group has fought for decades to protect its traditional tribal lands from deforestation carried out by the Brazilian government and international corporations. *7 [FN11] This deforestation has taken away the Yanomami's traditional lands, where they practiced ancient agricultural traditions and survived by respecting nature. The removal of much of the Yanomami's forest region has thrown the indigenous tribe into the modern world, where their traditional practices have had no place, resulting in not only a loss of culture, but increasing homelessness and poverty among the people. [FN12] A similar situation is affecting the Huaorani people of Ecuador. [FN13]

In Asia, one of the potentially most dangerous environmental disasters is currently unfolding as China continues with its huge Three Gorges Dam project. Thousands of people have already been displaced, and millions more will be forced from their homes and businesses upon completion of the Three Gorges Dam, the largest project of its kind in the world. [FN14] Once operational, the dam will flood thousands of acres of farmland, leaving people who have farmed the land for hundreds of years with nothing. These people have relocated to hastily built shanty towns set up by the Chinese government, with no further means of support or survival. [FN15]

Africa probably suffers more from environmentally-displaced persons than any other continent in the world. Years of drought and non sustainable agricultural practice, coupled with a large, poor population and occasional natural environmental disasters have left Africa with a disproportionate number of the world's environmentally displaced persons. For example, in Nigeria, international oil companies such as Shell and Chevron, with the consent and often assistance of the Nigerian government, destroyed and polluted hundreds of traditional communities throughout the Nigerian region of Ogoni land. [FN16] The Ogonis, traditionally small farmers who live in close contact with the land, have had their land polluted by oil spills and sludge, their houses burned, and their friends and family members murdered as the oil companies and government forces have raped the region for oil. [FN17]

*8 In Ethiopia, Somalia, Rwanda, and other countries, years of drought and lack of sustainable agricultural practices have left millions dead and millions more displaced, searching for a more hospitable environment where they can have food and water. [FN18]

These are just a few of the more publicized cases of environmental destruction or catastrophe that have led to the displacement of hundreds, if not thousands, of persons from their homes in the past decade. There are nu-

merous others that could be mentioned, including the recent situation in Goma, Congo, where thousands were forced to flee their homes as a nearby volcano erupted, sending lava pouring into the village. [FN19] And the inhabitants of the Pacific island

of Tuvalu, a tiny island country in the Pacific Ocean midway between Hawaii and Australia, have conceded defeat in their battle with the rising sea. They will abandon their homeland. New Zealand has agreed to accept all 11,000 citizens of Tuvalu, with migration expected to start in 2002. Some claim the rise in sea level is due to global warming. [FN20]

III. CAN ENVIRONMENTALLY DISPLACED PERSONS BE PROTECTED UNDER EXISTING REFUGEE LAW?

It is apparent from these numerous examples of environmentally displaced persons that increased environmental migration has become a significant problem. Moreover, unless action is taken to stem the tide, this problem is likely to get worse in the future. What then is the solution? Several scholars throughout the 1990s proposed that those persons displaced, wholly or in part, due to environmental factors should be allowed to seek protection under the existing international refugee structure that protects those forced from their homes and across borders. Jessica Cooper, in the NYU Environmental Law Journal, states:

Expanding the established refugee definition to encompass **environmental refugees** may require no more than an easy extension of human rights policy. Since the 1951 refugee definition is heavily imbued with human rights notions, and **environmental refugees** are no *9 less entitled to their basic rights and needs than their traditional counterparts, using human rights concepts to expand the refugee definition has natural appeal. [FN21]

Although this solution may have natural appeal, the protections offered to refugees under the 1951 Refugee Convention are very specific, and current international human rights and environmental documents do not offer any similar protections to environmentally displaced persons. As I will explain in the next section, interpreting the current definition of "refugee" to cover environmentally displaced persons is not possible based on the wording of the definition as it currently stands in international law. Revising the definition to specifically include a phrase protecting environmentally displaced persons is not the answer either, as this will not address the key issues surrounding environmentally displaced persons--the root causes of the environmental changes that caused the displacement in the first place. Only by developing a new convention that provides both assistance and protection to environmentally displaced persons and creates affirmative obligations for states to prevent the environmental disasters that force displacement in the first place, can we truly solve this growing problem.

A. Definition of Refugee Under Current International Law

The term "refugee" was originally defined in international law with the drafting of the 1951 Convention Relating to the Status of Refugees (Refugee Convention). [FN22] The contracting parties to this Convention, of which there are 140, [FN23] stated in article 1 of the Convention, that a refugee is a person who:

[a]s a result of events occurring before 1 January 1951 [FN24] and owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such a fear, unwilling to avail himself of the protection of that *10 country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. [FN25]

This definition of "refugee" therefore provides two separate criteria that must be met in order for an individual to be considered a refugee. First, he or she must have a well-founded fear of persecution; and second, the well-founded fear of persecution must be based on one of the five enumerated grounds. Since its codification in the Refugee Convention, this definition has served as the basis for the domestic refugee law of the majority of treaty parties, including the United States, Canada, and the states of Western Europe. [FN26] An examination of the United States' [FN27] understanding of these terms will give a general idea of how the definition is used in an actual refugee situation.

1. Well-founded Fear

The first required factor in defining a refugee, well-founded fear, is proved by establishing that a situation exists in which a reasonable person in the same circumstances would fear persecution. [\[FN28\]](#) This well-founded fear can either be based on past persecution or be a fear of future persecution if the individual is returned to the State from which he or she fled. [\[FN29\]](#)

2. Persecution

Persecution has been defined as "a threat to the life or freedom of, or the infliction of suffering or harm upon, those who differ in a way regarded as offensive." [\[FN30\]](#) Persecution has also been characterized by confinement and torture, including substantial economic deprivation constituting a threat to an individual's life or freedom [\[FN31\]](#) or the infliction, under government sanction, of suffering or harm upon persons who differ in a *11 way regarded as offensive. [\[FN32\]](#) It is generally agreed that the definition of persecution does not include discrimination, except in extraordinary cases. [\[FN33\]](#)

3. "For Reasons Of"

The definition of "refugee" requires that a well-founded fear of persecution must be for one of five specified reasons: race, religion, nationality, membership in a particular social group, or political opinion. This requires a causal connection between the actions feared and the defining characteristic of the individual seeking refugee status. [\[FN34\]](#) In the United States, for example, this has been taken to mean that an individual arriving in the United States as a refugee and seeking to claim asylum must demonstrate that his or her well-founded fear of persecution exists on account of some specific action by the government or those the government cannot control because of his or her particular race, religion, nationality, political opinion, or membership in a particular social group. The refugee claimant must have been targeted individually, and must demonstrate that he or she was not simply the victim of a much larger government crackdown or discriminatory policy. [\[FN35\]](#)

4. Membership in a Particular Social Group

Finally, it is necessary for a discussion of environmentally displaced persons that one other component of the refugee definition be defined: "membership in a particular social group." According to the United Nations High Commissioner for Refugee's Handbook on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees (1979), "membership in a particular social group" refers to those individuals who can be defined as "persons with similar backgrounds, habits or social status." [\[FN36\]](#) Examples of those persons who have been classified as members of a social group in the context of U.S. law, based on the Refugee Handbook *12 definition include: Iranian women who advocate women's rights; [\[FN37\]](#) women subjected to, but opposed to, female genital mutilation; [\[FN38\]](#) homosexuals; [\[FN39\]](#) or particular clans within a society. [\[FN40\]](#) Persons who have been deemed not to be members of a particular social group include individuals who have refused to join the military; [\[FN41\]](#) battered and raped women; [\[FN42\]](#) and Chinese families having more than one child. [\[FN43\]](#) What distinguishes the latter groups is that there is no immutable, common characteristic among them. In other words, there is no characteristic that they all have that is central to their person, that they cannot change, and that serves as the reason they suffer persecution.

This definition of "membership in a particular social group" is crucial because it is under this particular component of the Refugee Convention that many scholars propose environmentally displaced persons should fall. [\[FN44\]](#) However, as outlined in the next section, environmentally-displaced persons do not fit within the category of "membership in a particular social group" because they do not have the immutable characteristic required to provide refugee status under the existing definition.

B. The Definition of Refugee Does Not Cover Environmentally Displaced Persons

Given the definitions outlined above, stemming from an international document that has been in existence for fifty years, it is difficult to conceive how the term "refugee" can be expanded to fit those who have left their homes due to environmental reasons. A person might be forced to leave home for many reasons, only some environmental, which would qualify the person as a refugee. There must be a strong causal link between the particular acts that caused the person to flee his or her home and the person's fear of returning. However, in the majority of the situations where environmental problems are involved, it is impossible to demonstrate a link between a specific action causing the migration and a specific characteristic of the persons migrating (race, religion, nationality, political opinion, or membership in a particular social group). In *13 other words, environmentally displaced persons cannot be protected under existing refugee law because they generally do not have a well-founded fear of persecution on account of race, religion, nationality, political opinion, or membership in a particular social group.

To underscore this point, the United Nations High Commissioner for Refugees (UNHCR) has stated that those individuals displaced from their homes for environmental reasons are not considered refugees. [FN45] As the international body charged with monitoring, classifying, assisting, and protecting refugees, the UNHCR has determined that, although many persons displaced for environmental reasons cross international borders, they do not meet the traditional criteria for refugee classification, and are therefore not subject to automatic protections under the Refugee Convention and any corresponding domestic laws. [FN46] The UNHCR makes this distinction by stating that:

[R]efugees are distinguished by the fact that they lack the protection of their state and therefore look to the international community to provide them with security. Environmentally displaced people, on the other hand, can usually count upon the protection of their state, even if it is limited in its capacity to provide them with emergency relief or longer-term reconstruction assistance. [FN47]

In other words, environmental displacement of people is not generally a concerted government action targeted at a specific group of people with common, immutable characteristics. Environmental problems--whether they have occurred over a long period of time such as soil erosion, or whether they are sudden, such as an earthquake or a toxic explosion--are most often haphazard and do not target individuals or groups based on a particular characteristic.

*14 Therefore, environmentally displaced persons do not meet the required criteria established in the definition of refugee in the Refugee Convention. It is understandable that persons in regions affected by environmental disaster may be fearful. It cannot be said, however, that they have a well-founded fear of persecution (the second required criterion) because persecution requires the affected persons be persecuted for one of the specific reasons listed in the definition: race, religion, nationality, membership in a particular social group, or political opinion. None of these bases for persecution, however, applies to environmentally displaced persons.

Some commentators have argued that a government that does nothing to prevent environmental events from occurring is somehow persecuting the affected people on account of their membership in a particular social group. [FN48] This connection, however, cannot be made under the existing law. First, even if the government did not regulate a nuclear plant or did not prevent soil erosion from occurring, these are not actions that rise to the level of persecution. As discussed above, acts of persecution are specific acts targeted at specific individuals for specific reasons. For these types of environmental policies or inactions by a government to rise to the level of persecution, the government would have to state, for example, that it is not going to ensure the safe operation of a state-owned nuclear power plant because it hopes the plant explodes and kills the people living within a two-mile radius. This is the kind of causal connection necessary for a person to be considered a refugee under the existing refugee laws. Moreover, environmentally displaced persons do not form a particular social group. Unless there are other factors at work, as in the case of the Yanomami people of Brazil, or the Ogoni people of Nigeria, organizing people in a social group by virtue of the fact that they have been affected by the same environmental problem does not comport with the international legal definition of "membership in a particular social group."

Another argument for including environmentally displaced persons under the existing refugee definition is that they can form a social group for protection under the Refugee Convention because they are a group of politically powerless individuals (politically powerless to prevent the environmental degradation). [FN49] However, political powerlessness is not an immutable characteristic that will make a person or group of persons members of a particular social group. [FN50] Moreover, this argument would *15 not help the many groups of persons who have been environmentally displaced or are threatened with environmental displacement and who are not politically powerless. [FN51]

A third argument made by proponents of including environmentally displaced persons under the existing definition of refugee is based on international human rights law. Article 14(1) of the Universal Declaration of Human Rights (1948) [FN52] states that "everyone has the right to seek and enjoy in other countries asylum from persecution." [FN53] While this is indeed a key component of refugee law, and is recognized by a majority of states, this right does not reflect the reality of environmentally displaced persons. Environmentally displaced persons do not, in the majority of cases, suffer persecution by environmental means, as outlined above, and therefore cannot claim refugee status based on this article from the Universal Declaration of Human Rights.

Even those who wish to make this argument must concede that under the existing definition, those who are forced to leave their homes as a result of general upheaval, poor economic conditions, or other widespread problems affecting the entire population are not eligible for protection as refugees under international law. [FN54] Those fleeing their homes for environmental reasons very often fall into this category, as environmental destruction often takes the form of a widespread disaster, affecting people indiscriminately, without regard to race, religion, nationality, political opinion or membership in a particular social group. On its own, therefore, it cannot be an adequate basis for protection under the existing refugee definition.

In her article proposing that **environmental refugees** should be considered under the 1951 Refugee Convention, Jessica Cooper states that given the increase in deforestation, the disappearance of topsoil, the salinization of water resources, and land shortages and overuse, the number of "**environmental refugees**" has increased. [FN55] However, she overlooks the fact that while these issues need to be addressed, they are not deliberate acts by a government (or group of individuals a government is unable to control) aimed at persecuting an individual or group based on one of the five grounds enumerated in the definition of 1951. These *16 types of environmental problems, catastrophic as they may be, are the result of years of environmentally-unfriendly policies on the part of all states and all individuals. Moreover, while a particular government may be accused of not adopting a particular policy to stop environmental degradation, or continuing with an agricultural or other project responsible for depleting natural resources, these acts, generally, are not of the type usually defined as persecution.

The standards for achieving protection under the Refugee Convention, and the individual domestic laws implementing that Convention, are very high. They must be high in order to ensure that protection is available only for those who truly need it. Still, something must be done for those fleeing for reasons not enumerated in the Convention or migrating strictly on the basis of environmental reasons. Often, refugee status is available to these people on the basis of one or more of the other factors causing them to flee; i.e. race, religion, nationality, membership in a particular social group, or political opinion. That is not to say that those hundreds of thousands of people who are forced to leave their homes due wholly or in part to environmental reasons are somehow unworthy. We are all responsible for the environment and the environmental degradation on this planet, and therefore it is our responsibility as a global community to assist those who suffer the most as a result.

C. Including Environmentally Displaced Persons in the Existing Refugee Structure Would Not Address the Problem

1. The Root Causes of Environmental Displacement Need to be Addressed

As explained above, including environmentally displaced persons under the existing refugee structure is not a viable option because, for the most part, environmentally displaced persons do not meet the requirements of

the definition. There is, however, another reason that it is shortsighted simply to advocate for the inclusion of this group of people under the existing legal structure. If advocates succeed in classifying environmentally displaced persons as refugees under the existing refugee definition, then no steps will be taken to make a connection between the environmental crisis that caused the migration and the migration itself. In other words, the root causes of the migration, whatever environmental reason that may be, will not be addressed, and therefore will most likely be perpetuated. Addressing only the effects without addressing the causes will not lead to a permanent solution and will allow a continual perpetuation of the causes with increasing damage as they become more *17 widespread. As stated by Michelle Leighton of the National Heritage Institute, in order to stem the rising tide of environmental displacement, it is necessary to "address the root causes and deal with people in their home territories." [\[FN56\]](#)

2. Environmental Displacement Increases Environmental Degradation in the Host Country

Proponents of including environmentally displaced persons in the traditional definition of refugees argue that inclusion is the best choice because protecting them under international law ensures that the burden is distributed more evenly among nations. [\[FN57\]](#) This position, however, ignores several key issues.

First, environmentally displaced persons do not generally fit under the traditional definition, unless they meet the criteria on some ground other than environmental. Second, by including environmentally displaced persons under the existing definition, there is an assumption that the burden of protecting these displaced persons will be balanced among the receiving states--a position that is dangerously misguided. Clearly there are some states that receive more refugees than others. In many cases, these states tend to be larger, more developed, and better able to handle the influx of people such as some European countries, Canada, and the United States. However, when dealing with people expelled from their homes by a large-scale, sudden environmental disaster, or from lack of food or water, or other environmentally-related reasons, these people tend not to travel to the typical receiving states. History has shown that those who suffer from disasters in which they are forced to flee their homes are more likely to relocate within their own countries, or to simply cross the nearest border and settle there waiting for the chance to return home. [\[FN58\]](#)

Unfortunately, these environmental disasters and the corresponding migration tend to occur in those areas of the world least capable of handling the situation. To assume that receiving countries will be able to handle the influx is therefore grossly misguided.

The migration of vast numbers of people places a great strain on the environment. [\[FN59\]](#) Among the most significant problems associated with *18 refugee-affected areas are deforestation, soil erosion, and depletion and pollution of water resources. Other long-term problems can include changes in the social and economic welfare of local communities following the arrival or the prolonged residency of refugees, and an alteration in the rate and extent of local services available. [\[FN60\]](#) The fact that a large portion of this migration occurs in areas that have already suffered significant environmental destruction, and are not able to handle the influx of large numbers of people, only exacerbates the problem.

Persons forced to migrate can be enormously destructive to their new location. [\[FN61\]](#) Arriving in a new place, these people are often hungry, exhausted, humiliated, scared, and grief-stricken. Their first concern is to look after themselves and to create some semblance of a normal existence that reminds them of what they had to leave behind. [\[FN62\]](#) This primarily means building shelter and obtaining food. [\[FN63\]](#) In order to procure shelter and food, however, these persons cut trees to use for shelter, warmth, and cooking fuel. [\[FN64\]](#) They create waste and begin combing the new landscape for plant and animal life that can serve as food and clothing. [\[FN65\]](#) With thousands of people in situations such as these worldwide, the environmental results can be disastrous, and may include deforestation, soil erosion, and depletion and pollution of natural resources. [\[FN66\]](#)

The United Nations High Commissioner for Refugees enacted a program aimed at finding long-term solutions to the problems created and experienced by refugees concerning the environment. [\[FN67\]](#) One primary focus of this program is limiting the impact refugees have on the countries generous enough to host them during

their time of greatest need. [FN68] The UNHCR has begun addressing three principal issues, all of which must be considered if the impact of refugee-induced environmental degradation is to be minimized. These include providing for environmental rehabilitation of the host area after the refugees have returned home, examining the environmental effects of integration for those refugees who do not return home, and monitoring the environmental aspects of reintegration for persons returning to their home countries. [FN69]

***19 IV. IF ENVIRONMENTALLY DISPLACED PERSONS CANNOT BE COVERED UNDER THE
TRADITIONAL PROTECTION MECHANISMS FOR REFUGEES, HOW DO WE PROTECT THE GROW-
ING
NUMBER OF PEOPLE FORCED FROM THEIR HOMES DUE, AT LEAST IN PART, TO
ENVIRONMENTAL REASONS?**

Although I have outlined why advocating that environmentally displaced persons be protected under the Refugee Convention is not the best solution, my goal and the goal of those who do advocate such a position are still one and the same: offering protection to those increasingly large numbers of persons forced to leave their homes for environmental reasons. Since it is not possible to consider environmentally displaced persons as refugees under the definition given in the Refugee Convention, the questions then become: What sort of protection can and should the international community offer these individuals? What steps need to be taken to solve this growing problem? And how, in the meantime, do we ensure that those who suffer from environmental harms are able to find a safe place to continue their lives?

I propose that a new document be drawn up by the international community to address these issues. Following the framework of the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (1985), [FN70] a treaty could be drafted offering both temporary protections for those displaced due to environmental problems, and requiring the state parties to work towards ensuring that similar types of environmental problems do not recur. I believe there is sufficient evidence of support within existing international treaty law and customary international law to provide the necessary sense of state obligation for a new treaty to succeed.

A. The Convention Against Torture: A Model Agreement

1. Protection for the Individual

The Convention Against Torture is an ideal document to use as a model given its balance between affirmative obligations for signatory *20 states and the rights that it grants to individuals. For example, article 3 of the Convention Against Torture prohibits a State party from returning any individual to a State where it is likely he or she will suffer torture. [FN71] This provision was a landmark event in international human rights, offering protections far beyond those offered in previous human rights documents. Under article 3 of the Convention Against Torture, a person can not be returned if he or she fears torture, regardless of whether he or she had committed a crime or entered a country illegally. [FN72] More importantly, there is no requirement that protection be based on race, religion, nationality, membership in particular social group, or political opinion. A person only has to prove, to a substantial degree, that he or she fears torture; there is no affirmative requirement that he or she have a well-founded fear of torture on account of one of the five grounds necessary for refugees. [FN73]

To balance this extra protection, however, a person who obtains protection under the Convention Against Torture is not absolutely guaranteed the right to remain in the country in which he or she seeks protection. The protection offered is temporary protection, lasting only as long as the threat of torture exists. [FN74] For example, in the United States, [FN75] a person who demonstrates a fear of torture in his or her home country, but who does not otherwise meet the well-founded fear and other requirements for refugee status or asylum, is granted "withholding of removal". This means that he or she may remain in the United States but will not have any permanent rights here, and can, upon reexamination by the Immigration and Naturalization Service, be returned to his or her home country if it is determined that the threat of torture has ended. [FN76]

***21 2. Obligations of the State**

The Convention Against Torture also requires certain affirmative acts from state parties to the Convention. For example, article 2 requires state parties to take "legislative, administrative, judicial, or other measures to prevent acts of torture within its territory." [FN77] Article 4 requires the state parties to make all acts of torture offenses under the states' domestic criminal law. [FN78] Article 12 requires a "prompt and impartial investigation" of any possible acts of torture, [FN79] and article 14 requires states to ensure that victims of torture have adequate means of redress. [FN80] Additionally, the Convention Against Torture requires states to undertake educational and training initiatives to ensure that torturous acts are not being committed by individuals within its territory. [FN81]

These provisions, coupled with the extensive reporting requirements and investigative authority granted to the Convention body, [FN82] provide a unique framework that protects individuals from torture and requires state parties to ensure that the provisions of the Convention are adequately supported by the states' domestic legal structure. Moreover, these provisions provide assurance that the states are working to educate and inform those individuals likely to commit acts of torture under the Convention that those types of acts are in violation of both domestic and international law.

This has proven to be an effective combination of provisions, as the Convention Against Torture is one of the most widely ratified and widely implemented treaties in international human rights law. [FN83] Even the United States, the perpetual holdout in multilateral international human rights treaties, has ratified and implemented the provisions of the Convention. [FN84] Buttressing the Convention Against Torture's authority is the belief by a great majority of members of the international community that torture is against the law of nations. [FN85]

*22 I believe that the explicit purpose of the Convention Against Torture, coupled with its clear provisions enumerating specific obligations states must satisfy and protections they must provide, as well as the support the prohibition enjoys from customary international law and the law of nations make the Convention very effective. Given this extensive support, the clear guidelines in the Convention Against Torture provide states with the necessary impetus to effectively implement the Convention's provisions. This is in contrast to other human rights documents that are filled with broad and vague statements highlighting general obligations, which are often contentious and unclear and that result in widespread nonimplementation by state parties. [FN86] I believe the positive features of the Convention Against Torture can be emulated in a new document protecting environmentally displaced persons.

A. Application of the Convention Against Torture Structure to a New Document:

The Convention on the Protection of Environmentally Displaced Persons

1. Interim Protections

By following the structure of the Convention Against Torture, a new Convention on the Protection of Environmentally Displaced Persons could be drafted addressing the specific issue of environmentally displaced persons. The success of such a treaty depends on the recognition in international law that environmentally displaced persons need protection, as well as recognition that the root causes of the environmental degradation must be addressed. Similar to the Convention Against Torture, a new document would focus not only on protecting those individuals who are forced to leave their homes due to environmental displacement, but also would require specific obligations from state parties to prevent the root causes from occurring.

The Convention would first define environmentally displaced persons and the types of environmental destruction that constitute a basis for classification under this Convention. These provisions might read as follows:

*23 For purposes of this Convention, an environmentally displaced person is an individual forced to leave his or her home due to environmental reasons.

Environmental reasons may include water shortages due to pollution, food shortages due to desertification or pollution, a sudden environmental disaster such as a hurricane, flood, fire, tornado, etc., or inhabitation of an area due to pollution, toxicity, or a sudden disaster such as a nuclear explosion.

Similar to the Convention Against Torture, the Convention would also specifically require state parties to take legislative, administrative, judicial, or any other necessary action to protect these people who arrive in their territory because of any of the listed environmental problems. The language of this provision would read as follows:

No State Party shall expel, return or extradite an environmentally displaced person to any State where there are substantial grounds for believing that he or she would be in danger due to one of the environmental problems listed in this Convention.

Like the Convention Against Torture, this language does not provide any right of permanent residency in the receiving States. States would be obliged under the Convention to offer interim protection to those who arrive at their borders, but once the basis for the protection has ended, the State may reexamine the case and return the person to his or her home if it is deemed safe. This solution avoids one of the problems posed by the proponents for including environmentally displaced persons under existing refugee protections: States are more likely to assist victims of environmental degradation and disaster if it is seen as a temporary protection, rather than a permanent resettlement.

This solution also addresses some of the concerns over the environmental destruction that occurs when there is massive, permanent migration from one area to another. Providing temporary shelter and protection for those who need it provides an easier method for assimilation than a mass influx of people, all of whom tend to remain together indefinitely in the new location. Although any migration of people from one place to another will indeed place a burden on the new location, this burden can be limited with proper precautions.

2. State Obligations

This proposed Convention on the Protection of Environmentally Displaced Persons would address the root cause of the migration. This crucial element is ignored by those proposing merely to include environmentally displaced persons in the existing refugee structure. As in the *24 Convention Against Torture, the Convention on the Protection of Environmentally Displaced Persons should incorporate extensive provisions outlining State responsibility to find, correct, and prevent occurrences of the environmental degradation and destruction that force people to migrate.

For example, the new Convention could include provisions requiring all state parties to ensure that acts of environmental sabotage (as in the case of the oil companies in Nigeria) are made illegal under domestic law. Each State party could be required to provide education and information to rural farmers regarding sustainable agriculture and conservation of water. States would be required to closely regulate those who sell pesticides and other toxic materials to ensure that the products are being used correctly and safely. States could also be required to set up strict regulations and guidelines for hazardous industries such as nuclear plants, which can create widespread environmental harms if operated improperly. Education, oversight, and inspection would be required for such industries. Moreover, individuals living within a certain radius of these types of operations should be educated about the dangers and the proper response should a problem arise. The list could go on, but the general idea would be to require and encourage states to strengthen their existing mechanism, or create a mechanism, to inform and educate their populations to prevent environmental disasters and degradation before they start. Finally, the new Convention would establish an oversight body, reporting mechanisms, dispute resolution procedures, and sanction provisions to encourage active compliance by all state parties.

C. Creating the New Convention: Can it Be Done?

1. Existing Support in International Law

Critics of this position on environmentally displaced persons will probably cite the lack of international legal support as a reason not to accept a new international agreement governing this issue. However, I believe the concept of protecting environmentally displaced persons can be found in existing treaty law and customary international law. Similarly, there is already enough general support in existing international relations, and among individual member states, so that an agreement may be more feasible than some might think.

While protecting the environment and assisting environmentally displaced persons have not risen to the level of aversion to torture under *25 international law (a jus cogens norm), [FN87] over the past decades the international community has come together to draft conventions, treaties, and other documents for the purpose of protecting the environment, reducing environmental damage, and protecting the rights of persons living within the environment. [FN88] Human rights and the environment are intertwined concepts, and the necessity of protecting both, including environmentally displaced persons, has risen to the level of customary international law. The international community, through its increasing number of protective documents, state action, and the increasing detail and manner in which these concepts are being addressed, has shown its intent to be bound by environmental and human rights protections as principles of customary international law.

These numerous human rights and environmental documents put forth as multilateral declarations, resolutions, and treaties lend credence to the notion that the international community may be willing to draft and approve a document such as the one I have proposed. The number of multilateral agreements protecting individuals has increased dramatically over the past thirty years. [FN89] The notion of total sovereignty over a *26 state's citizens has been restricted by the notion that there are certain rights of individuals and obligations of states that are of concern to the international community as a whole. These include the right to life, [FN90] the elimination of discrimination against women, [FN91] special protections for children, [FN92] the prevention of genocide, [FN93] and numerous other political, cultural, economic, civil, and social rights [FN94]--all of which are potentially affected by environmental degradation and displacement.

In many of these multilateral treaties, provisions have been included that suggest an open-mindedness of the international community towards protection of environmentally displaced persons. Some of these provisions were even cited by Ms. Cooper in her article touting inclusion of environmentally displaced persons in the protections of the 1951 Refugee Convention. For example, Ms. Cooper points to article 25 of the Universal Declaration, which provides the right to "a standard of living adequate for the health and well-being ... including food, clothing, housing, and medical care and necessary social services...." [FN95] The problem with Ms. Cooper's argument is that she states that provisions such as this in and of themselves give rise to an obligation of states to protect environmentally displaced persons, I do not believe this is the case. Such provisions, however, can be used to test international support for this notion, and lead to the formulation of a separate, cohesive document based on the belief that protecting the environment to prevent persons from being displaced from their homes has become a principle of customary international law.

Additionally, both human rights covenants cite the right of individuals to enjoy and use their natural wealth and resources. [FN96] Ms. Cooper's contention is that these provisions provide evidence that environmentally displaced persons should be protected under the existing refugee structure. [FN97] In reality, these provisions demonstrate only a willingness on the part of participating states to recognize the importance of *27 the environment to the rights of people, which, I believe, indicates a willingness to cooperate to protect these rights. These clauses in the international covenants do not provide a right to seek protection elsewhere; they provide a right to enjoy one's environment and resources within one's home State. Based on provisions such as these, it is evident that the international community has moved in the direction of accepting and requiring states to take appropriate action to protect the environment for its citizens, causing these notions to become part of the fabric of customary international law.

One important distinction to note in this case is that the customary international support for a new Convention on the Protection of Environmentally Displaced Persons is based more on international human rights law than on international environmental law. International human rights law is a much more cohesive, developed, and accepted body of international law, containing fewer of the difficulties encountered in international environmental law such as reaching consensus on pollution reduction levels or waste management. In international environmental law, this "lack of international consensus on environmental norms" is one of the principal reasons that international environmental law on its own (absent any human rights violations) has had a difficult time finding acceptance in the international community. [FN98] In the case of environmentally displaced persons, however, international human rights must be taken into account. These rights must include the right to life, the

health and welfare of children, and the prevention of genocide as human rights that are considered *jus cogens* rights and part of the law of nations. [\[FN99\]](#) Further, sheltering and aiding environmentally displaced persons, as well as addressing the root causes of environmental problems causing displacement, is humanitarian in nature, and international humanitarian law is rapidly expanding to include international community involvement in protecting human rights such as those enumerated above.

2. Encouraging the International Community

Certainly, the creation of a new international agreement for the protection of environmentally displaced persons is not something that will happen overnight. International agreements can take years, sometimes even decades, to be signed by members of the international community. However, once proposed, I believe that this type of document would be **28* feasible for the community of states. The basis for this agreement already exists, and offering temporary protection and addressing the root of the problem is likely to gain more support than requiring states to take in environmentally displaced persons continuously and requiring that they be allowed to stay.

A key component of encouraging the international community to address this issue is to provide incentives for them to do so. One way in which the protections and obligations of the Convention Against Torture differ from the protections and obligations of the proposed Convention on the Protection of Environmentally Displaced Persons is that complying with the provisions of the Convention Against Torture does not cost the State Party a great amount of money. Implementing domestic regulations prohibiting torture, punishing those within a State's territory who commit acts of torture, and protecting an individual who seeks such protection from a State will not cost a great deal. However, implementing environmental safeguards and protections, and temporarily housing hundreds or thousands of individuals forced from their homes for environmental reasons, can cost states a great deal. Therefore, it is important that incentives be offered to those state parties that cannot afford to comply with the proposed Convention on their own.

Costs of implementation and compliance have always been a hindrance to international environmental treaties. The costs of cleaning up pollution or installing new technology to prevent pollution can be enormous, and many states simply cannot afford them. However, there are mechanisms currently in place that could conceivably lower the costs associated with a Convention on the Protection of Environmentally Displaced Persons.

For example, the UNHCR already has a program in place working to provide assistance to states who take in environmentally displaced persons. [\[FN100\]](#) As explained earlier, international consensus on the expansion of the UNHCR's mandate [\[FN101\]](#) could provide for additional assistance to needy states that comply with the proposed Convention's provisions. This assistance does not necessarily need to take the form of monetary **29* help. The UNHCR, for example, is working to confine the impact of environmentally displaced persons in receiving states, and is assisting host countries with rehabilitation and clean-up operations. [\[FN102\]](#) Moreover, in recent years other UN agencies, Nongovernmental Organizations (NGOs), and even state governments have begun providing humanitarian assistance for environmentally displaced persons. [\[FN103\]](#)

Other possible solutions include requiring the government of the state in which the environmental event that causes the displacement occurs to pay the state that temporarily shelters the displaced persons a fee for their protection. As in many of the international environmental documents that have been drafted by the international community in recent years to prevent the environmental degradation that causes the displacement in the first place, technology and resources can be shared between states to lessen the likelihood of environmental catastrophe. Finally, in cases where the government of a state is purposefully taking action that will cause environmental displacement, or failing to act to prevent environmental displacement, international sanctions or referral to the International Court of Justice can be included as incentives to comply with the proposed Convention.

V. CONCLUSION

Of course, bringing the international community together to draft and approve a new Convention designed to protect environmentally displaced persons, while requiring states to work towards preventing the types of environmental problems that cause the displacement is no small undertaking. I believe, however, that it is the only

viable option to ensure the protection of those persons forced to leave their homes, families, friends, and livelihoods for environmental reasons. Requiring states to offer protection to those who are displaced, while also requiring them to work within their own borders to ensure environmental protection for all their citizens, is the only way to work towards preventing this type of destructive mass movement of people in the future.

The current international legal regime does not offer any concrete protection for these persons. Including these displaced people under the existing refugee scheme is not an option because they are not refugees in the traditional sense and because this would not address the root of the problem. Only through a new set of provisions, outlined in a separate *30 document and based on the recognized international legal protections and obligations outlined in existing international human rights law and international environmental law, can the international community truly hope to address this rapidly growing problem and stem the tide of environmentally displaced persons.

[FN1]. Adjunct Professor, Golden Gate University School of Law; Graduate Student, Ph.D. Program, Department of Political Science, University of California, Davis; L.L.M. in International Legal Studies, Golden Gate University, 2000; J.D., Boston University, 1996; M.A. in International Relations, Boston University, 1996. The author wishes to thank Armin Rosencranz and Michelle Leighton for their expert instruction and assistance, and Carl Falstrom for his editorial expertise and support.

[FN1]. One initial problem that confronts a discussion of those persons who must leave their homes for environmental reasons is what to call them. The term 'environmental refugee' has come to the forefront of this debate, covering those persons who leave their homes, whether by force or by choice, due to environmental reasons. Given the wide array of direct and indirect environmental causes for migration, and the strict definition outlined in international documents regarding refugees, the title of **environmental refugees** does not, upon close examination, serve as an appropriate fit for such persons. I therefore have chosen the term 'environmentally displaced persons' instead. "Environmental refugee," however, is a term used by many of the scholars whose opinions I cite in this paper.

[FN2]. Interview with Michelle Leighton, Director of Human Rights and Environment Program, National Heritage Institute, in Berkeley, Cal. (Oct. 25, 2000).

[FN3]. Penn State University, College of Earth & Mineral Sciences, **Environmental Refugees**, at <http://www.ems.psu.edu/info/explore/EnviRefu.html> (last modified June 21, 2001).

[FN4]. United Nations High Commissioner for Refugees, The State of the World's Refugees, at http://www.unhcr.ch/refworld/pub/state/97/box1_2.htm [hereinafter UNHCR].

[FN5]. Id.

[FN6]. Id. Salinization is an increase in the salt content of the land so as to prevent agricultural growth.

[FN7]. Id.

[FN8]. Id.

[FN9]. Id.

[FN10]. UNHCR, *supra* note 4.

[FN11]. See DAVID HUNTER ET AL., INTERNATIONAL ENVIRONMENTAL LAW AND POLICY 1342-43 (David L. Shapiro et al. eds., 1998).

[FN12]. Id.

[FN13]. Id. at 1347.

[FN14]. International Rivers Network & Human Rights in China, Major Problems Found in Three Gorges Dam Resettlement Program: An International Rivers Network and Human Rights in China Joint Report, at http://gb.hrichina.org/old_site/reports/3gorges.html (Mar. 12, 1998).

[FN15]. Amnesty International, China: The Three Gorges Dam, at <http://www.amnestyusa.org/justearth/countries/china2.html> (last visited Feb. 17, 2002).

[FN16]. Amnesty International, Nigeria, at <http://www.amnestyusa.org/justearth/countries/nigeria.html> (last visited Feb. 17, 2002).

[FN17]. Id.

[FN18]. See HUNTER, *supra* note 11, at 17.

[FN19]. Mark Lacey, Tens of Thousands Flee a Devastating Volcano in Congo, N.Y. TIMES, Jan. 19, 2002, at A3.

[FN20]. All Things Considered (National Public Radio radio broadcast, Nov. 15, 2001) available at <http://search.npr.org/cf/cmn/cmnpd01fm.cfm?PrgDate=11%2F15%2F2001&PrgID=2>.

[FN21]. Jessica B. Cooper, Note, [Environmental Refugees: Meeting the Requirements of the Refugee Definition](#), 6 N.Y.U. ENVTL. L.J. 480, 488 (1998).

[FN22]. Convention Relating to the Status of Refugees, July 28, 1951, art.1, 19 U.S.T. 6577, 189 U.N.T.S. 150 (entered into force Apr. 22, 1954).

[FN23]. United Nations Treaty Collection, at <http://www.unhcr.ch/html/menu3/b/treaty2ref.htm> (as of Feb. 5, 2002).

[FN24]. This date provision was amended with the Protocol Relating to the Status of Refugees, Dec. 16, 1966, art. I, 19 U.S.T. 6223, 606 U.N.T.S. 267 (entered into force Oct. 4, 1967). Article 1 of the Protocol omitted the words "As a result of events occurring before 1 January 1951" and "as a result of such events" from the refugee definition.

[FN25]. Convention Relating to the Status of Refugees, *supra* note 22.

[FN26]. FRANK NEWMAN & DAVID WEISSBRODT, INTERNATIONAL HUMAN RIGHTS: LAW, POLICY AND PROCESS 640 (1996).

[FN27]. The United States has used the Convention's definitions as the basis for its refugee laws. See Immigration and Nationality Act § 101(a)(42), 8 U.S.C. § 1101(a)(42) (2001).

[FN28]. See *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421 (1987).

[FN29]. Convention Relating to the Status of Refugees, *supra* note 22.

[FN30]. *Matter of Acosta*, 19 I. & N. Dec. 211 (BIA 1985).

[FN31]. *Borca v. I.N.S.*, 77 F.3d 210 (7th Cir. 1996), at 215-17.

[FN32]. *Abdel-Masieh v. U.S. I.N.S.*, 73 F.3d 579, 583 (5th Cir. 1996), IRA KURZBAN, IMMIGRATION LAW SOURCEBOOK 255 (6th ed. 1998).

[FN33]. KURZBAN, *supra* note 31, at 256.

[FN34]. *Fisher v. I.N.S.*, 79 F.3d 955, 962 (9th Cir. 1996).

[FN35]. Refugee Convention, *supra* note 22; See also [I.N.S. v. Elias- Zacarias, 502 U.S. 478 \(1992\)](#); [Vera-Valera v. I.N.S., 123 F.3d 1302 \(9th Cir. 1997\)](#); [Fisher, 79 F.3d at 962](#).

[FN36]. UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, HANDBOOK ON PROCEDURES AND CRITERIA FOR DETERMINING REFUGEE STATUS UNDER THE 1951 CONVENTION AND THE 1967 PROTOCOL RELATING TO THE STATUS OF REFUGEES ¶ 77 (1979).

[FN37]. [Safaie v. I.N.S., 25 F.3d 636, 640 \(8th Cir. 1994\)](#).

[FN38]. [Matter of Kasinga, 21 I. & N. Dec. 357 \(BIA 1996\)](#).

[FN39]. [Matter of Toboso-Alfonso, 20 I. & N. Dec. 819 \(AG 1994\)](#).

[FN40]. [Matter of H-, 21 I. & N. Dec. 337 \(BIA 1996\)](#) [citing to Department of Justice Basic Law Manual at p. 48].

[FN41]. [Arriaga-Berrientos v. U.S. I.N.S., 925 F.2d 1177, 1180 \(9th Cir. 1991\)](#).

[FN42]. [Gomez v. I.N.S., 947 F.2d 660, 663-64 \(2nd Cir. 1991\)](#).

[FN43]. [Yang v. Carroll, 852 F. Supp. 460, 469-71 \(E.D. Va. 1994\)](#).

[FN44]. See generally Cooper, *supra* note 21.

[FN45]. UNHCR, *supra* note 4.

[FN46]. *Id.* The UNHCR does clarify, however, that there is an exception to this rule, which may be found in situations where acts of environmental destruction, such as the poisoning of wells, the burning of crops, or the draining of marshlands are methods purposefully used to persecute, intimidate or displace a particular population. This, however, is not an affirmative statement that individuals suffering such a fate are considered refugees under international law, and that therefore they should be automatically welcomed as such into another State. For one thing, intimidation, unless severe, is not a basis for refugee status. The intimidation must rise to the level of persecution on one of the five grounds in order for an individual to be classified as a refugee, and, as mentioned above, confirming the causal connection between persecution and one of the five factors when environmental harm is at issue is extremely difficult to do, unless one of the other five factors exists in the same circumstance (i.e., race, religion, nationality, political opinion, or membership in a particular social group).

[FN47]. *Id.*

[FN48]. *Id.*, at 503-04.

[FN49]. Cooper, *supra* note 21, at 524.

[FN50]. KURZBAN, *supra* note 32, at 264-65.

[FN51]. One example is the case of persons living in the Florida Keys, one of the first places that will likely be flooded if the oceans continue to rise due to global warming. One would be hard pressed to say that the people of Florida are politically powerless.

[FN52]. Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. GAOR, 3rd Sess., at 71, U.N. Doc. A/810 (1948).

[FN53]. Cooper, *supra* note 21, at 491.

[FN54]. *Id.* at 483.

[FN55]. *Id.* at 485.

[FN56]. Interview with Michelle Leighton, *supra* note 2.

[FN57]. Cooper, *supra* note 21, at 488.

[FN58]. See UNHCR, *supra* note 4; see also Amnesty International, *supra* note 15, note 16.

[FN59]. United Nations High Commissioner for Refugees (UNHCR), "Environment: Refugees and the Environment," at <http://www.unhcr.ch/environ/refande.htm>.

[FN60]. *Id.*

[FN61]. *Id.*

[FN62]. *Id.*

[FN63]. *Id.*

[FN64]. *Id.*

[FN65]. *Id.*

[FN66]. *Id.*

[FN67]. *Id.*

[FN68]. *Id.*

[FN69]. *Id.*

[FN70]. Convention Against Torture, and other Cruel, Inhuman, and Degrading Punishment, opened for signature Feb. 4, 1985, S. TREATY DOC. NO. 100-20 (1988), 1465 U.N.T.S. 85 [hereinafter Convention Against Torture].

[FN71]. Convention Against Torture, *supra* note 70 at article 3,

No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. (2) For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Id.

[FN72]. *Id.*

[FN73]. *Id.*

[FN74]. *Id.*

[FN75]. [64 Fed. Reg. 8478-96 \(Feb. 19, 1999\)](#). (The U.S. signed the Convention Against Torture in 1988, and it entered into force in 1994, with implementing regulations finally being promulgated in early 1999).

[FN76]. For the provisions governing withholding of removal for those individuals who fear torture, see [8 C.F.R. § 208.16\(c\)](#); see also U.S. Dept. of Justice, Immigration and Naturalization Service, Supplemental Instructions to Form I-589 Application for Asylum and Withholding of Removal, OMB No. 1115- 0086 (Mar. 22, 1999).

[FN77]. Convention Against Torture, *supra* note 70, art. 2.

[FN78]. *Id.* art. 4(1).

[FN79]. *Id.* art. 12.

[FN80]. *Id.* art. 14(1).

[FN81]. *Id.* arts. 10-12.

[FN82]. *Id.* arts. 17-24.

[FN83]. United Nations, <http://untreaty.un.org/ENGLISH/bble/englishinternetbible/partI/chapterIV/treaty12.asp>. The Convention Against Torture entered into force on June 26, 1987 and currently has 127 state parties.

[FN84]. *Id.*

[FN85]. NEWMAN & WEISSBRODT, *supra* note 26, at 18-19.

[FN86]. Examples may include the Universal Declaration on Human Rights, *supra* note 52; The International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976; and The International Covenant on Political and Civil Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976.

[FN87]. A *jus cogens* norm is a peremptory norm of international law from which no derogation is permitted. See generally WEISSBRODT & NEWMAN, *supra* note 26, at 18.

[FN88]. These include, but are not limited to: Rio Declaration on Environment and Development, UN Conference on Environment and Development (UNCED) at Rio de Janeiro, June 13, 1992, UN Doc. A/CONF.151/26 (vol. I) (1992); Declaration of the United Nations Conference on the Human Environment, Stockholm, June 16, 1972, UN Doc. A/CONF.48/14/Rev. 1 (1972); African Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, [21 I.L.M. 58 \(1982\)](#), entered into force, Oct. 21, 1986; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), OAS Doc. OES/Ser.L.V/II.82 Doc.6 Rev.1, at 67 (1992); Convention on the Elimination of All Forms of Discrimination Against Women, adopted Dec. 18, 1979, entered into force Sept. 3, 1981, G.A. Res. 34/180, 34 UN GAOR Supp. (No. 46) at 193, UN Doc. A/34/46 (1980); Convention on the Elimination of All Forms of Racial Discrimination, opened for signature Mar. 7, 1966, entered into force Jan. 4, 1969, 660 U.N.T.S. 195; Convention on the Rights of the Child, opened for signature Nov. 20, 1989, entered into force, Sept. 2, 1990, GA Res. 44/25; Convention on the Prevention and Punishment of the Crime of Genocide, adopted Dec. 9, 1948, entered into force Jan. 12, 1951, 78 U.N.T.S. 277; Vienna Convention for the Protection of the Ozone Layer, adopted Mar. 22, 1985, entered into force Sept. 22, 1988, UNEP Doc. IG.53/5, [26 I.L.M. 1529 \(1987\)](#); United Nations Framework Convention on Climate Change, adopted May 29, 1992, entered into force, Mar. 21, 1994, [31 I.L.M. 849 \(1992\)](#); Convention on Biological Diversity, adopted June 5, 1992, entered into force December 29, 1993, [31 I.L.M. 818 \(1992\)](#); United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification Particularly in Africa, adopted Oct. 14, 1994, entered into force Dec. 26, 1996, [33 I.L.M. 1328 \(1994\)](#); Kyoto Protocol to the United Nations Framework Convention on Climate Change, adopted Dec. 10, 1997, [37 I.L.M. 22 \(1998\)](#).

[FN89]. See *id.*

[FN90]. See Universal Declaration of Human Rights, *supra* note 52.

[FN91]. See Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 88.

[FN92]. See Convention on the Rights of the Child, *supra* note 88.

[FN93]. See Convention on the Prevention and Punishment of the Crime of Genocide, *supra* note 88.

[FN94]. See International Covenant on Economic, Social and Cultural Rights, *supra* note 89; International Covenant on Political and Civil Rights, *supra* note 88.

[FN95]. Universal Declaration of Human Rights, *supra* note 52, art. 25.

[FN96]. International Covenant on Civil and Political Rights, *supra* note 88, art. 47; International Covenant on Economic, Social and Cultural Rights, *supra* note 88, art. 25.

[FN97]. Cooper, *supra* note 21, at 488.

[FN98]. Armin Rosencranz & Richard Campbell, [Foreign Environmental and Human Rights Suits Against U.S. Corporations in U.S. Courts](#), 18 STAN. ENVTL. L.J. 145, 155 (1999).

[FN99]. *Id.* at 151.

[FN100]. UNHCR, *supra* note 4.

[FN101]. Presently, UNHCR's mandate is to protect the rights and dignity of refugees within the context of the 1951 Refugee Convention. However, the UNHCR in recent years has begun to expand this mandate to take steps to safeguard the environment around refugee operations and to encourage management of natural resources with a view to long-term sustainability. A further expansion to assist countries with the costs of supporting these refugees, and preventing environmental disasters that cause the displacement in the first place is a conceivable goal in the near future. See generally, UNHCR, *supra* note 4.

[FN102]. *Id.*

[FN103]. Michelle Leighton Schwartz, [International Legal Protection for Victims of Environmental Abuse](#), 18 YALE J. INT'L L. 355, 381 (1993).

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