

WHAT YOU ARE DEPENDS ON WHERE YOU'RE
STANDING: HOW EXPANDING REFUGEE
PROTECTIONS TO THE INTERNALLY DISPLACED
THROUGH THE REFUGEE ACT OF 1980
VIOLATES INTERNATIONAL LAW

Matthew T. Clyde Pace

ISSN 0041-9915 (print) 1942-8405 (online) • DOI 10.5195/lawreview.2012.193
<http://lawreview.law.pitt.edu>



This work is licensed under a Creative Commons Attribution-Noncommercial-No Derivative Works 3.0 United States License.



This site is published by the University Library System of the University of Pittsburgh as part of its D-Scribe Digital Publishing Program and is cosponsored by the University of Pittsburgh Press.

WHAT YOU ARE DEPENDS ON WHERE YOU'RE STANDING: HOW EXPANDING REFUGEE PROTECTIONS TO THE INTERNALLY DISPLACED THROUGH THE REFUGEE ACT OF 1980 VIOLATES INTERNATIONAL LAW

Matthew T. Clyde Pace*

I. INTRODUCTION

Brédjing is a Chadian town near the Chad-Sudan border; it is also the name of a near-by refugee camp operated by the International Federation of the Red Cross.¹ The denizens of the camp are the men and women, young and old, who were forced from their Sudanese homes in the Darfur region.² For years, paramilitary forces backed by the Sudanese national government in Khartoum pillaged and ransacked the refugees' former towns and villages.³ The best hope for these civilians to escape the persecution of their own government was to flee into neighboring Chad.

Life, as in any refugee camp, is dangerous; the refugees are the targets of bandits and rebels, and they suffer illness and instability.⁴ However, life within the

* Matthew T. Clyde Pace, J.D., M.P.I.A., University of Pittsburgh: School of Law and Graduate School of Public & International Affairs. I would like to thank the outstanding faculty at the University of Pittsburgh School of Law and GSPIA for all of the guidance and aid they provided. I also must thank my wife, Carrie, for her unwavering support and her seldom wavering patience.

¹ *Chad: Annual Report*, INTERNATIONAL FEDERATION OF RED CROSS AND RED CRESCENT SOCIETIES 3 (Apr. 30, 2010), <http://www.ifrc.org/docs/appeals/annual09/MAATD00109ar.pdf> [hereinafter IFRC REPORT].

² *Id.*

³ Int'l Comm'n of Inquiry on Darfur, *Report of the International Commission of Inquiry to the United Nations Secretary General*, U.N. Doc. S/2005/60 (Jan. 25, 2005).

⁴ *IRC Provides Essential Healthcare for Darfuri Refugees in Eastern Chad*, RELIEFWEB (Nov. 7, 2008), <http://www.reliefweb.int/rw/rwb.nsf/db900SID/MCOT-7L6DLP?OpenDocument>.

boundaries of the camp at Brédjing is in many ways better than the violence and insecurity they left behind. In the camp, the international community provides a stable source of nutrition and potable water. Shelter, basic infrastructure, and services such as medical care and education are also available.⁵ Perhaps most importantly the refugees are beyond the reach of the government that has perpetuated the persecution. Additionally, these individuals either have already sought, or are permitted to seek, legal refugee status with the United Nations High Commissioner for Refugees.⁶

The total number of refugees from Darfur in 2009 lay somewhere near 268,000.⁷ In contrast, estimates from the following year on the number of Darfuri internally displaced people (IDPs) ranged from 1.9 to 2.7 million.⁸ IDPs often suffer persecution, violence, and instability similar to that of refugees, but have not left their home country. Unfortunately, not only do many IDPs lack the assistance and physical security of coordinated international relief available in camps like Brédjing, they also are excluded from the legal benefits intrinsic in refugee status.⁹ The reason for this exclusion lies within the particular language of the legal definition of refugee. Current international and domestic law differentiates these similarly at-risk populations by their geographic location.¹⁰ Specifically, a person must be outside of his or her home country to qualify as a refugee.¹¹ This requirement, the “alienage” or “territoriality” element, is enshrined in the 1951 Convention Relating to the Status of Refugees (the Refugee Convention).¹²

The United States has sought to circumvent the alienage requirement of refugeehood through domestic legislation. The Refugee Act of 1980, currently a

⁵ IFRC REPORT, *supra* note 1, at 3.

⁶ See, e.g., United Nations High Commissioner for Refugees [UNHCR], Handbook on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, ¶¶ 15-16, U.N. Doc. HCR/IP/4/Eng/Rev.1 (Jan. 1992).

⁷ Sudan—Complex Emergency: Situation Report #10, U.S. AGENCY FOR INT’L DEV. (Aug. 20, 2010), http://www.usaid.gov/our_work/humanitarian_assistance/disaster_assistance/countries/sudan/template/fs_sr/fy2010/sudan_ce_fs10_8-20-2010.pdf.

⁸ *Id.*

⁹ See *infra* Part II(A)2(a).

¹⁰ Convention Relating to the Status of Refugees, art. 1(A)(2), Apr. 22, 1954, 189 U.N.T.S. 150 [hereinafter Refugee Convention].

¹¹ *Id.*

¹² *Id.*

part of the Immigration and Nationality Act (INA) § 101(a)(42)(B),¹³ provides the President the authority to choose when and where this territorial element of the international refugee definition applies.

This article will explore the most pressing question regarding the Refugee Convention's alienage requirement, namely whether it is merely a baseline from which parties may expand protections to include internally displaced groups which otherwise fit the refugee requirements. Or, alternatively, is the alienage requirement an essential element of the Convention, a non-derogable limit on who may be considered a refugee? If the latter is correct, then what restrictions does the alienage stipulation place on the capacity of the United States to expand refugee protections to internal refugees as provided for under INA § 101(a)(42)(B) (hereinafter "alienage exception law" or "(42)(B)")?

This paper argues that the alienage exception law as it is executed by the President often, but not in every instance, violates international law. The United States, as a signatory to the Refugee Convention,¹⁴ is beholden to the terms of that document, including the Convention's definition of refugee. Where the language of (42)(B) seemingly permits the President to grant refugee status to individuals who still reside in their home country, this paper asserts that alienage is mandated by the Refugee Convention and the principle of non-intervention. Therefore, the U.S., in order to comply with its own obligations and to comport with international law and the rights of fellow sovereign states, must fundamentally change the means of providing assistance to internally displaced populations.

This article will lay out the argument in several steps. In Part II, it provides a brief clarification of terms followed by a short history of the Refugee Convention's drafting after World War II up to its incorporation in domestic law through the Refugee Act of 1980. Part III presents the bulk of the argument. First, this section discusses the nature of non-intervention and its constraints on refugeehood. Specifically, it argues that non-intervention has long mandated a blanket prohibition against the application of refugee status to IDPs. Second, the section examines whether the Refugee Convention permits any deviations from the non-intervention principle as it applies to refugee status, including whether it contains a

¹³ 8 U.S.C. § 1101(a)(42)(B) (2006).

¹⁴ As a technical matter, it bears mention that the United States never signed the original Refugee Convention. However, the U.S. is a signatory to the 1967 Protocol, which incorporates the structure of the 1951 Convention. Therefore, the U.S. is bound to the terms of the Refugee Convention as amended by the Protocol. *See States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol*, UNHCR (Apr. 1, 2011), <http://www.unhcr.org/protect/PROTECTION/3b73b0d63.pdf>.

legal basis for the application of (42)(B). In this context, the language of the Convention will be analyzed and interpreted along with an examination of the legislative history, intent of the drafters, and the meaning of the Convention as it was understood by those countries who signed onto it. Part III concludes that the Refugee Convention does not establish an exception to non-intervention.

Part IV proposes several options to remedy this problem. Specifically, the U.S. can alter its application of the alienage exception law to comport with international law, or it can seek a new international agreement which allows for intervention on behalf of internal refugees. In addition, this section briefly explores the utility of the emerging field of human security as a potential avenue for addressing IDP issues within the framework of international law.

II. DEFINING AND DISCRIMINATING REFUGEES FROM OTHER PERSECUTED GROUPS

A. *Refugees, IDPs & Internal Refugees*

In common parlance the term “refugee” has been used to describe any person who was forced to flee home in fear. For instance, the *Wall Street Journal* described the victims of the 2010 Haiti earthquake as refugees even though these individuals in no way fit the international legal definition.¹⁵ In relevant part, the Refugee Convention defines a refugee as any individual who “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 fear, is unwilling to avail himself of the protection of that country.”¹⁶ This definition establishes four requirements for refugee status: a well-founded fear of persecution; persecution based on one of the enumerated motives; alienage (the person is outside of his or her home country); and an unwillingness to return home due to such fear. Therefore, civilians who flee into a neighboring country on account of natural disaster, famine, economic destitution, or similar reasons are not properly understood as refugees in the legal sense. Similarly, individuals who are persecuted for precisely one of the enumerated motives but by force or choice remain within their home country also are not defined as refugees.

¹⁵ Christopher Rhoads, *Refugees Flee to Remote Village, Find Same Problems*, WALL ST. J. (Jan. 21 2010), <http://online.wsj.com/article/SB10001424052748704320104575015583574736678.html>.

¹⁶ Refugee Convention, *supra* note 10.

The term “internally displaced persons” lacks an agreed-upon legal definition. However, it has been widely adopted to describe all civilians who were forced to flee their homes out of fear for their safety or well-being but who have not left their home country.¹⁷ It is important to note that this definition could include many displaced people who do not face persecution. Therefore, it is incorrect to think of all IDPs simply as refugees who have not fled their home country. For purposes of this paper, the narrower term “internal refugees” signifies precisely that population who would be refugees but for a failure to meet the alienage requirement. In other words, all internal refugees are IDPs, but not all IDPs are internal refugees.

There is no lack of interest or concern for IDPs in the international community; indeed, many African states have signed on to what is, in effect, an IDP Convention to address their plight.¹⁸ Yet, while there is a growing awareness and effort on behalf of these victimized populations, they do not receive nearly the same legal, physical, or social provisions as are provided to refugees.

Despite the similarity of conditions for IDPs and refugees, the difference in treatment they are guaranteed under international and domestic U.S. law is vast. Under the Convention, refugees are afforded rights including “wage-earning employment.”¹⁹ They are also guaranteed access to social security²⁰ and public aid, such that they receive “the same treatment with respect to public relief and assistance as is accorded to [the host state’s] nationals.”²¹ Yet, perhaps the greatest benefit provided to refugees is the promise of *non-refoulement*. This right is laid out in Article 33(1) of the 1951 Convention, mandating that “[n]o Contracting State shall expel or return (*refouler*) a refugee in any manner whatsoever to the frontiers of territories where his [or her] life or freedom would be threatened on account of his [or her] race, religion, nationality, membership of a particular social group or

¹⁷ See REPRESENTATIVE OF THE SECRETARY-GENERAL, *Guiding Principles on Internal Displacement*, Comm. on Human Rights, 54th Sess., U.N. DOC. E/CN.4/1998/53/Add.2 (Feb. 11, 1998) (by Francis M. Deng) (defining IDPs as “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border”).

¹⁸ See, e.g., *The African Union IDPs Convention: A Unique Opportunity to Strengthen the Protection of the Internally Displaced in Africa*, FÉDÉRATION INTERNATIONALE DES LIGUES DES DROITS DE L’HOMME (Jan. 20, 2010), <http://www.fidh.org/The-African-Union-IDPs-Convention>.

¹⁹ Refugee Convention, *supra* note 10, at art. 17.

²⁰ *Id.* at art. 24.

²¹ *Id.* at art. 23.

political opinion.”²² This doctrine has been described by the UNHCR as “the cornerstone of international refugee protection.”²³

In addition to these international guarantees, refugees in the United States are provided notable immigration benefits. Refugees are eligible to adjust their status to that of a permanent resident and obtain a green card after one year.²⁴ Their immediate family members may also enter the U.S. with derivative refugee status.²⁵ Moreover, volunteer organizations within the U.S. which assist the refugee’s transition to their new home “arrange for food, housing, clothing, employment, counseling, medical care, and other necessary services.”²⁶ It is clear then that there are tangible and critical benefits incumbent in legal refugee status.

From a purely humanitarian or moral position, if two innocent civilians are hunted by the same murderous regime, it seems absurd that the sole distinction of perhaps fifty yards of physical space should determine legal protection or legal vulnerability, life or death. With the contrast between the tremendous support offered to refugees and the relatively non-existent legal protection for internal refugees or IDPs, it is no wonder that some authors have sought to diminish the role of alienage in the Refugee Convention and international law.²⁷

B. *1951 Refugee Convention and its 1967 Protocol*

The Refugee Convention was the product of negotiations following World War II.²⁸ Prior to that war, the international community addressed refugee flows in an ad hoc fashion; specific and identifiable ethnic groups such as Armenians would be the subject of refugee agreements and organizations.²⁹ After the war, the United Nations sought to alleviate the plight of the uncounted masses of displaced people

²² *Id.* at art. 33.

²³ U.N. High Commissioner for Refugees, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, ¶ 5, (Jan. 26, 2007), <http://www.unhcr.org/refworld/docid/45f17a1a4.html>.

²⁴ *Post Arrival Assistance and Benefits*, REFUGEE COUNCIL USA, <http://www.rcusa.org/index.php?page=post-arrival-assistance-and-benefits> (last visited June 29, 2012).

²⁵ *Id.*

²⁶ *Id.*

²⁷ See, e.g., Luke T. Lee, *Internally Displaced Persons and Refugees: Toward a Legal Synthesis?*, 9 J. REFUGEE STUD. 27, 38–39 (1996).

²⁸ See Kristen Walker, *Defending the 1951 Convention Definition of Refugee*, 17 GEO. IMMIGR. L.J. 583, 587–97 (2003) (providing a thorough recounting of the history of the 1951 Refugee Convention).

²⁹ *Id.* at 587.

through a new mechanism which would define refugee status based on the individual's situation.³⁰ After its drafting in the late 1940s and 1950, the proposed Convention on the Status of Refugees was reviewed by the U.N. Economic and Social Council and later the General Assembly.³¹ This document would become the 1951 Refugee Convention.³²

The Protocol to the Refugee Convention was established in 1967.³³ The original Refugee Convention definition placed temporal restrictions on refugeehood such that it applied only to "events occurring before 1 January 1951."³⁴ The Protocol eliminated this stipulation.³⁵ Thus, joining the Protocol has the same legal effect as signing the Convention itself. To date, 141 countries are signatories to both the Convention and the Protocol. A few countries, including the United States, are only signatories to the Protocol.³⁶

C. *The Refugee Act of 1980*³⁷

In the U.S., the domestic implementation of the Refugee Convention came about in the Refugee Act of 1980.³⁸ This legislation established the U.S. definition of a refugee.³⁹ Although the full Convention definition is included, the Refugee Act definition also includes more expansive language. Specifically, under (42)(B), the President has the authority to extend refugee status to individuals who still reside in their home country.⁴⁰ The Act provides that the refugee definition may be expanded to include:

³⁰ *Id.* at 589–90.

³¹ *Id.* at 591.

³² *Id.* at 592.

³³ Protocol Relating to the Status of Refugees, Jan. 31, 1967, art. 1(2), 606 U.N.T.S. 267 [hereinafter Protocol].

³⁴ Refugee Convention, *supra* note 10.

³⁵ Protocol, *supra* note 33.

³⁶ U.N. HIGH COMMISSIONER ON REFUGEES, GLOBAL REPORT 2007: MAP-PARTIES TO THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES AND/OR ITS 1967 PROTOCOL, at 145 (2008) available at <http://www.unhcr.org/4848f6072.pdf#zoom=66>.

³⁷ See Susan Raufer, *In-Country Processing of Refugees*, 9 GEO. IMMIGR. L.J. 233, 241–45 (1995) (providing a thorough examination of the history of the Refugee Act of 1980).

³⁸ 8 U.S.C. § 1101(a)(42)(B) (2006).

³⁹ *Id.*

⁴⁰ *Id.*

In such special circumstances as the President after appropriate consultation . . . may specify, any person *who is within the country of such person's nationality* [and] who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.⁴¹

This power is exercised yearly in a Presidential Determination (PD). The White House issues a PD which specifies the number of refugees to be admitted to the United States that year and which countries' citizens will be admitted. Often, when identifying potential refugees, the PD disregards the alienage requirement, allowing IDPs to seek asylum in the U.S. as well. For example, the 2010 PD permitted the admission of 80,000 "refugees of special humanitarian concern to the United States."⁴² It also stated that the citizens of Cuba, Iraq, the former Soviet States, and people "in exceptional circumstances" in any country "be considered refugees for the purpose of admission to the United States within their countries of nationality or habitual residence."⁴³ Until as recently as 2009, citizens of Vietnam were also included in the (42)(B) category.⁴⁴

The language of the statute was the product of negotiations between Senate and House bills that eventually become the Refugee Act.⁴⁵ The Senate version, influenced largely by the late Senator Edward Kennedy, sought a far more expansive definition of "refugee" than was required by the Convention.⁴⁶ In addition to the standard Convention definition, the Senate bill also sought to cover "persons displaced in their own country by military or civil disturbances, or

⁴¹ *Id.* (emphasis added). 8 U.S.C. § 1157(e) (2006) (defines "appropriate consultation" as, "discussions in person by designated Cabinet-level representatives of the President with members of the Committees on the Judiciary of the Senate and of the House of Representatives to review the refugee situation or emergency refugee situation, to project the extent of possible participation of the United States therein, to discuss reasons for believing that the proposed admission of refugees is justified by humanitarian concerns or grave humanitarian concerns or is otherwise in the national interest, and to provide such members with the following information: [nature of the refugee situation; number of refugees; plans for resettlement; social, economic and demographic impact on the US; extent of other countries involvement; impact on foreign policy; any other appropriate information]").

⁴² Presidential Determination No. 2011-02, 75 Fed. Reg. 75,851-52 (Oct. 8, 2010).

⁴³ *Id.*

⁴⁴ Presidential Determination No. 2008-29, 73 Fed. Reg. 58,865-66 (Sept. 30, 2008).

⁴⁵ Edward M. Kennedy, *Refugee Act of 1980*, 15 INT'L MIGRATION REV. 141, 143-45 (1981).

⁴⁶ *Id.* at 149.

uprooted by arbitrary detention.”⁴⁷ In effect, this definition would have entirely eliminated the alienage element found in the Convention.⁴⁸ While this provision was not included in the final bill, it is evidence of the intent of some drafters when they crafted the Refugee Act. Specifically, influential members within the United States Congress sought to craft a legal basis for providing refugee status to IDPs even though the Convention seemingly mandated alienage.

Without claiming to know what motivations the President has for including certain countries on the PD, the obvious correlation between the U.S. and (42)(B) states is that they have all been, at one point, tied intricately to U.S. foreign policy. The governments of the former Soviet states,⁴⁹ and communist forces in Vietnam⁵⁰ and Cuba,⁵¹ have been perceived as antagonists to the United States’ foreign policy goals. As such, the identification and welcoming of refugees from those countries was a clear philosophical and doctrinal victory for the non-Communist bloc and the U.S. in particular.⁵² Strangely, this second characteristic does not apply to Iraq; when Iraq was added to the PD list in 2009 the Iraqi government was ostensibly a U.S. ally, one which it had a great deal of interest in promoting as stable and legitimate.⁵³ Here it is plausible that the Iraqi government supports this U.S. immigration policy as a means to either protect its citizens from hostile groups within Iraq or to reduce the size of a massive IDP population, estimated in 2009 to be over 1.5 million.⁵⁴ Of course, this is only speculation. In any event, regardless of

⁴⁷ *Id.*

⁴⁸ See S. 3202/H.R. 15093, 91st Cong., 1st Sess., § 6(a)(7)(B) (1969) (defining a refugee as “any alien who has fled or shall flee from and is unwilling to return to any country”).

⁴⁹ Since as early as 1946, U.S. officials have regarded the Soviet Union as a hostile international actor. See, e.g., George Kennan, Long Telegram (Feb. 22, 1946), available at <http://www.gwu.edu/~nsarchiv/coldwar/documents/episode-1/kennan.htm> (telegram from George Kennan, the American charge d’affaires in Moscow, to James Byrnes, Secretary of State).

⁵⁰ See, e.g., H.R.J. Res. 1145, 88th Cong., 2d Sess. (1964) (providing President Lyndon Johnson authority to engage Communist forces in Vietnam by taking “all necessary measures to repeal any armed attack against the forces of the United States and to prevent any further aggression”).

⁵¹ See, e.g., 22 U.S.C. § 6002 (2006) (“It should be the policy of the United States . . . to seek a peaceful transition to democracy and a resumption of economic growth in Cuba through the careful application of sanctions directed at the Castro government and support for the Cuban people . . .”).

⁵² See Raufer, *supra* note 37, at 234–35.

⁵³ See Presidential Determination No. 2009-32, 74 Fed. Reg. 52,385, 52,386 (Sept. 30, 2009).

⁵⁴ U.N. HIGH COMMISSIONER ON REFUGEES, GLOBAL REPORT 2009: IRAQ SITUATION, at 171 (2009), available at <http://www.unhcr.org/4c09f25e9.pdf>.

the motivations behind it, numerous presidents over decades have shown a willingness to utilize the powers provided by (42)(B).

While the intent behind Refugee Act definition may be humanitarian in nature, Congress has arguably changed the fundamental nature of what it means to be a refugee. They have taken a strict and clear element of the 1951 Convention and cast it aside.

III. 101(A)(42)(B) AND THE CONSTRAINTS OF INTERNATIONAL LAW

This article does not contest the domestic validity of (42)(B) as passed by Congress. It is valid in the sense that it was properly established as law within the United States. The question at hand is whether the language of the statute runs afoul of international law and the Refugee Convention on its own terms or in its application, and if so, under what circumstances.

While many aspects of the refugee definition have been debated, the territorial requirement has largely been ignored. Perhaps this is because it appears to be, relative to the other elements, clear and objective. The Council of Europe's Human Rights Education Associates explains bluntly "applicants for refugee status must be *outside* the country of their nationality. They must have crossed an international border. If they have not, they do not qualify for protection under the 1951 Refugee Convention."⁵⁵ Scholars have also touched only briefly on this topic; James Hathaway has stated:

[M]any if not most of the persons forced to flee their homes in search of safety remain within the boundaries of their state. Their plight may be every bit as serious as that of individuals who cross borders, yet the Convention definition of refugee status excludes internal refugees from the scope of global protection.⁵⁶

Few things in law, particularly international law, are so seemingly cut and dried: a person either is or is not outside of their home country. However, digging deeper one finds that the purpose, role, and reach of this language leave many questions unanswered.

⁵⁵ *Tutorials: The Rights of Refugees and Displaced Persons*, HUM. RTS. EDUC. ASSOCIATES, <https://hrea.org/learn/tutorials/refugees/page11.html> (last visited July 1, 2012).

⁵⁶ JAMES C. HATHAWAY, *THE LAW OF REFUGEE STATUS* 29 (1991).

A. *The Scope of International Law and the Right to Non-Intervention*

Before delving into a discussion about the language of the Refugee Convention's definition, it is necessary to explain the environment in which it exists. In broad terms, every nation has the right to state sovereignty and the right to conduct internal affairs without intervention from external actors.⁵⁷ Specifically, the international law principle of non-intervention as an element of state sovereignty has a tremendous bearing on the role and limits of the Refugee Convention and refugee status generally.⁵⁸ The argument has been presented that "the historical importance of the border-crossing element is imposed by what remain the cardinal principles of international law, namely, state sovereignty [and] non-intervention."⁵⁹ At the most basic level, this proposition asserts that refugee status and the benefits incumbent in that status cannot be extended to IDP populations because to do so would be a violation of non-intervention.

A skeptic to the argument above would rightly require a more precise explanation of what constitutes "intervention." A survey of the literature makes plain that a proper definition of non-intervention remains elusive. In its most popular modern incarnation, the UN Charter recognizes the "sovereign equality of all its Members"⁶⁰ stating that it is inappropriate to "intervene in matters which are essentially within the domestic jurisdiction of any state."⁶¹ The General Assembly has reaffirmed this rather unhelpful definition of non-intervention, calling it a "duty not to intervene in matters within the domestic jurisdiction of any State."⁶²

⁵⁷ U.N. Charter art. 2, ¶¶ 1, 7.

⁵⁸ Guy S. Goodwin-Gill, *International Protection and Assistance for Refugees and the Displaced*, UNHCR, 7 (Apr. 24, 2006), <http://www.unhcr.org/47e8d2a82.pdf> ("In the case of refugees, the fact of having crossed a frontier brings their situation clearly onto the international plane, triggering a raft of rules, practices, expectations, institutional mechanisms, and legal tools. On the other hand and as a matter of international law, primary responsibility for the protection of and assistance to internally displaced persons rests with the territorial State, in virtue of its sovereignty and the principle of non-intervention.")

⁵⁹ CATHERINE PHUONG, *THE INTERNATIONAL PROTECTION OF INTERNALLY DISPLACED PERSONS* 24 (James Crawford et al. eds., 2004).

⁶⁰ UN Charter art. 2, ¶ 1.

⁶¹ *Id.* at art. 2, ¶ 7.

⁶² Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, G.A. Res. 2625 (XXV), U.N. GAOR, 25th Sess. Supp. No. 18, U.N. DOC. A/8018, at 122 (Oct. 24, 1970).

If the UN has been unable to provide a clear written definition of non-intervention, it does at least provide some guidance in its application. The UN has applied the principle of non-intervention broadly, evidenced by the international community's recognition of very few exceptions. Specifically, the only widely-accepted actions excluded from the non-intervention principle are: actions taken with the consent of the offended state; self-defense on the part of the intervening state; or Security Council sanctioned actions.⁶³ Yet for all this, what is and is not intervention is still far from clear.

R.J. Vincent, in his seminal work on this matter, *Nonintervention and International Order*, sought to break down "intervention" into its component parts.⁶⁴ This was done in the hopes that by examining the elements individually, a sort of checklist could be constructed to help identify intervening conduct by a foreign state.⁶⁵ Vincent cataloged six elements which comprised intervention. His rubric considers: the "actor that embarks upon intervention, the target that suffers [intervention], the activity of intervention itself, the types of intervention, the purposes of the activity, and the context in which it takes place."⁶⁶ Within this framework, analyzing the expansion of refugee protection to internal populations may help to clarify whether it can be understood as "intervention" in violation of international law.⁶⁷

Under Vincent's framework, the first step is to identify the actor who is potentially violating national sovereignty.⁶⁸ This element is important in many cases because there is a dispute as to whether rebel groups, corporations, NGOs, or even private citizens can violate international law and the principle of non-intervention. For purposes of the current analysis however, this element is rather simple.⁶⁹ The exercise of (42)(B) is clearly undertaken by the U.S. every year with the issuance of the Presidential Determination document. There is no dispute that

⁶³ Peter Stockburger, *U.S. Immigration Detention: Policy and Procedure from a Human Rights Perspective*, 5 INTERCULTURAL HUM. RTS. L. REV. 365, 368 (2010).

⁶⁴ R.J. VINCENT, *NONINTERVENTION AND INTERNATIONAL ORDER* 3 (1974).

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.* at 4.

⁶⁹ *Id.*

states are capable of violating international law and non-intervention.⁷⁰ Therefore, this first element is met.

The second element in the rubric examines the target or beneficiary of the potential intervention; it attempts to define “matters . . . within the domestic jurisdiction” of States as the UN uses the term.⁷¹ Recall that in the case of (42)(B), the target is the victim of persecution who still resides within his or her home country.⁷² Vincent proposes that foreign actions affecting “matters concerning *individuals* within the jurisdiction of a state” run afoul of the principle of non-intervention.⁷³ Vincent is not alone in this assessment; along with Dr. Guy Goodwin-Gill,⁷⁴ James Hathaway has argued that “any attempt to respond to the needs of internal refugees would constitute an infringement of the national sovereignty of the state within which the refugee resided.”⁷⁵ The basis of this contention is that IDPs are geographically and legally within the confines of their home state. Thus, their status and condition remain solely within the domestic jurisdiction of that state.⁷⁶

The third and fourth elements are somewhat similar to each other in that they attempt to identify what types of action can be classified as intervention.⁷⁷ According to Vincent, the activity of intervention encompasses actions as invasive as military invasion to those as “apparently insignificant as an ill-chosen remark made by a statesman about the affairs of a foreign state.”⁷⁸ For instance, intervention may occur if one country lends moral support to anti-government groups within another state.⁷⁹ As (42)(B) expands refugee protections to internal populations, it intrinsically presents a judgment of the foreign state’s actions toward its own citizens. This judgment is made in the most literal sense: a U.S.

⁷⁰ See, e.g., DAVID J. BEDERMAN, INTERNATIONAL LAW FRAMEWORKS 1 (2001).

⁷¹ U.N. Charter art. 2, ¶ 7.

⁷² See *supra* Part II(C).

⁷³ VINCENT, *supra* note 64, at 6 (quoting QUINCY WRIGHT, INTERNATIONAL LAW AND THE UNITED NATIONS 63 (1960)) (emphasis added).

⁷⁴ See Goodwin-Gill, *supra* note 58.

⁷⁵ HATHAWAY, *supra* note 56, at 31.

⁷⁶ See PHUONG, *supra* note 59, at 23–24.

⁷⁷ VINCENT, *supra* note 64, at 10–13.

⁷⁸ *Id.* at 3.

⁷⁹ *Id.* at 10.

official must cast judgment on the actions of the refugee's persecutor, the foreign government.⁸⁰ Further, even in the absence of an actual refugee determination, the mere inclusion onto the PD inherently casts aspersions on that state. This act singles a country out as one whose domestic affairs are worthy of special treatment and provides material and moral support to groups within that state.

The fifth element of the paradigm focuses on the intervening state's intentions—"the end toward which [the intervention] is directed, that which it is designed to achieve."⁸¹ Yet, Vincent hesitates to provide a strict definition of intent for two familiar reasons. First, there are almost always multiple reasons for the actions of a state. It is difficult to say with any degree of certainty why a group of policy makers has ultimately chosen a particular course of action.⁸² Second, even if a government proposes a singular motive, it is difficult to ensure the veracity of such a statement.⁸³ Still, with due consideration to the difficulties just presented; where intent can be identified it is extremely relevant to whether state action constitutes intervention. In the case of the alienage exception law, the political motives behind its application appear rather conspicuous.

The main historical focus of (42)(B) relief has been on antagonists to U.S. foreign policy, namely the Soviet Union, Cuba, and Vietnam.⁸⁴ Despite atrocities and persecution occurring in places such as Saudi Arabia⁸⁵ or former President Hosni Mubarak's Egypt⁸⁶ these friendly countries have never made it onto a

⁸⁰ See, e.g., *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 427–28 (1987) (stating "eligibility for asylum depends entirely on the Attorney General's determination that an alien is a "refugee," as that term is defined in § 101(a)(42) . . .").

⁸¹ VINCENT, *supra* note 64, at 10.

⁸² *Id.* at 12.

⁸³ *Id.*

⁸⁴ See *supra* notes 49–51 and accompanying text.

⁸⁵ See BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEPT. OF STATE, 2008 HUMAN RIGHTS REPORT: SAUDI ARABIA (Feb. 25, 2009), available at <http://www.state.gov/g/drl/rls/hrrpt/2008/nea/119126.htm> ("During the year the following significant human rights problems were reported: no right to change the government peacefully; beatings; judicially sanctioned corporal punishment; impunity, particularly on the part of the religious police; denial of public trials and lack of due process in the judicial system; political prisoners; incommunicado detention; restrictions on civil liberties such as freedoms of speech (including the Internet), assembly, association, movement, and severe restrictions on religious freedom; corruption; and lack of government transparency. Violence against women and discrimination on the basis of gender, religion, sect, and ethnicity were common.").

⁸⁶ See BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEPT. OF STATE, 2009 HUMAN RIGHTS REPORT: EGYPT (Mar. 11, 2010), available at <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136067.htm> ("The [Egyptian] government's respect for human rights remained poor, and serious

presidential determination. One possible reason is that political considerations, at the very least, influence decisions to include or exclude certain countries on the PD. If this is the case, the application of the alienage exclusion law may be properly understood as an attempt to intervene purposefully in the domestic affairs of a foreign state for political reasons. While this is not to say that the U.S. has not had concomitant humanitarian motives as well, it certainly does not appear as though humanitarianism has been the sole, or even the determinative, factor.

The final element of Vincent's model is the context in which the intervention takes place. However, Vincent finds that while context is always present in international affairs, it is "not [a factor] germane to the task of defining intervention."⁸⁷ On Vincent's advice, this article will not delve into this element of his framework.

Employing Vincent's analysis, there exists a logical argument that the application of refugee protection to internal groups is a violation of non-intervention. Accepting this point, if only for the sake of argument, a critical matter remains which may render the non-intervention issue moot. Specifically, it must be considered whether the Refugee Convention allows for states to expand the refugee definition to citizens within their home country. Put another way, have the signatories to the Refugee Convention signed away their right to non-intervention on this point? The following section concludes that the signatory states have not ceded this right.

B. The Scope of the Convention: Interpretation & Intent

The language of the 1951 Convention states that a refugee "is outside the country of his nationality."⁸⁸ However, it does not go on to clarify whether this is a limit beyond which states may not expand protections to IDPs without violating state sovereignty and non-intervention. In an effort to clarify this point, this section begins with an examination of the Convention language itself. It identifies an instructive, though not definitive, answer to whether states have surrendered their right to non-intervention as it regards internal refugees. Subsequently, this section explores the legislative history of the Convention's drafting. Here it becomes clear

abuses continued in many areas. . . . Security forces used unwarranted lethal force and tortured and abused prisoners and detainees, in most cases with impunity. Prison and detention center conditions were poor. Security forces arbitrarily arrested and detained individuals, in some cases for political purposes, and kept them in prolonged pretrial detention.").

⁸⁷ VINCENT, *supra* note 64, at 13.

⁸⁸ Refugee Convention, *supra* note 10.

that the Convention signatories did not intend to include internal refugees within the definition of a refugee.

There is universal agreement that sovereign countries generally have free reign to enter agreements binding them to the negotiated terms.⁸⁹ A state could, for example, agree to have a certain segment of its international economic disputes resolved by arbitrators.⁹⁰ Similarly, a nation could enter a treaty such as NATO with the promise that it would come to the defense of an ally if attacked.⁹¹ These are clear cases of states surrendering a portion of their sovereignty. In this same fashion, states that ratified the Refugee Convention bound themselves to uphold its terms to treat refugees in certain specified ways.⁹² However, this point only takes us so far; the obvious next question is what have the signatories given up? The answer to this question is difficult, but it is the heart of the matter.

To be sure, there is no problem with states expanding upon the list of groups that can be considered refugees, so long as the beneficiaries are *outside* of their home country. While the Convention definition mandates that persecution based on race, religion, nationality, political opinion, or social group are grounds for refugeehood, many nations have added to this list. For example, two of the most notable expansions have been put forth by the Organization of African Unity (OAU) in 1969⁹³ and numerous Central American countries in the Cartagena Declaration in 1984.⁹⁴ The OAU Convention reaffirms the original definition put forth in the 1951 Convention,⁹⁵ but goes on to state that “the term refugee shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order [and] *is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin.*”⁹⁶ Following the African Convention, Latin American

⁸⁹ Vienna Convention on the Law of Treaties, art. 6, Jan. 27, 1980, 1155 U.N.T.S. 331.

⁹⁰ See, e.g., Marrakesh Agreement Establishing the World Trade Organization, art. III, ¶ 3, Apr. 15, 1994, 1867 U.N.T.S. 154.

⁹¹ See, e.g., North Atlantic Treaty, art. 3, Apr. 4, 1949, 63 Stat. 2241, 34 U.N.T.S. 243.

⁹² See generally Refugee Convention, *supra* note 10.

⁹³ Organization of African Unity, Convention Governing the Specific Aspects of Refugee Problems in Africa, Sept. 10, 1969, 1001 U.N.T.S. 45 [hereinafter OAU Convention].

⁹⁴ Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, Nov. 22, 1984, O.A.S. Doc. OEA/Ser.L/V/II.66/doc.10, rev. 1, at 190–93 [hereinafter Cartagena Declaration].

⁹⁵ See generally OAU Convention, *supra* note 93, at art. 1, ¶ 1.

⁹⁶ *Id.* at art. 1, ¶ 2 (emphasis added).

signatories to the Cartagena Declaration expanded their refugee definition to include “persons *who have fled their country* because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violations of human rights or other circumstances which have seriously disturbed public order.”⁹⁷ Clearly, many nations have wisely chosen to broaden the scope of refugee protections to groups not initially covered by the 1951 definition. It deserves mentioning, however, that neither of these progressive definitions of refugeehood went so far as to eliminate the alienage requirement.

Does (42)(B) follow along in the footsteps of the OAU Convention and the Cartagena Declaration? Intuitively, one might say that yes, the U.S. law is similar to these other documents because it merely expands upon the circle of people who are allowed to seek refugee status. In this respect, the alienage exception law certainly is in line with these past examples. However, in dismissing the territoriality element, (42)(B) is indisputably different from its predecessors in one critical way. The expansion of protected groups who are already outside of their home country has, by virtue of geographic location, rendered the non-intervention question moot.⁹⁸ Therefore, it is problematic to end the inquiry here, as the precedent of other expansions of the refugee definition is not analogous.

Given the ambiguity of the Convention definition, the first place to look for clarification is elsewhere in the Convention. Relevant to this inquiry, Article 38 unequivocally establishes the International Court of Justice (ICJ) as the final arbiter of disputes about the “[Refugee] Convention relating to its interpretation or application.”⁹⁹ Therefore, an ICJ opinion on the territoriality question would indeed be a helpful, if not entirely determinative, resolution to the ambiguity. Unfortunately, since no state has brought this matter to the attention of the ICJ, there has been no opportunity to do so.¹⁰⁰

However, in a case pre-dating the Refugee Convention by less than one year, the ICJ issued a remarkably clear and pertinent statement. The case dealt with the granting of asylum to an individual who had not yet fled his home country and

⁹⁷ Cartagena Declaration, *supra* note 94, at Part III, ¶ 3 (emphasis added).

⁹⁸ See, e.g., Goodwin-Gill, *supra* note 58 and accompanying text.

⁹⁹ Refugee Convention, *supra* note 10, at art. 38.

¹⁰⁰ See Walter Kälin, *Supervising the 1951 Convention Relating to the Status of Refugees: Article 35 and Beyond*, in REFUGEE PROTECTION IN INTERNATIONAL LAW: UNHCR’S GLOBAL CONSULTATIONS ON INTERNATIONAL PROTECTION 613, 655 (Erika Feller et al. eds., 2003).

whether this action was a violation of sovereignty. Ruling in 1950 in *Asylum Case (Colombia v. Peru)* the court said:

In the case of diplomatic asylum, the refugee is within the territory of the State where the offence was committed. A decision to grant diplomatic asylum involves a derogation from the sovereignty of that State. It withdraws the offender from the jurisdiction of the territorial State and *constitutes an intervention in matters which are exclusively within the competence of that State*.¹⁰¹

The 1950 ruling falls in line with arguments already provided within this article that the granting of refugee status to internal refugees constitutes intervention. As enlightening as this statement may be on the position of the ICJ, it must be acknowledged that because it was not made in regard to the Refugee Convention, it has no bearing on the final treaty interpretation. Thus, the ICJ's statement is certainly persuasive but not determinative.

In the absence of an explicit ICJ ruling or opinion, Article 42, the derogation clause of the Refugee Convention, may provide some additional guidance. This article restricts the terms of the Convention upon which a signatory state may make a reservation.¹⁰² A reservation allows the signatory to opt out of or alter a provision of a treaty or convention while otherwise remaining party to the document.¹⁰³ In this case, Article 42 expressly forbids any reservation to Article 1, which includes the refugee definition.¹⁰⁴ This can be interpreted as supporting the position that the territoriality element of the definition may not be cast aside. In light of the seemingly plain language mandating alienage, and the non-derogable nature of that stipulation, there is support to show that the territoriality clause is a critical element to the refugee definition.

The position that the terms of the refugee definition are merely a baseline from which it may be expanded is perhaps most forcefully rebuked by examining the relevant legislative history. During the Convention's drafting process the territoriality element was discussed on several occasions. The comments made at those times evidence the conscious and deliberate exclusion of internal refugees

¹⁰¹ *Asylum Case (Colom. v. Peru)*, 1950 I.C.J. 266, 274–75 (Nov. 20) (emphasis added).

¹⁰² See BLACK'S LAW DICTIONARY 509 (9th ed. 2009) (defining "derogation clause").

¹⁰³ *Id.*

¹⁰⁴ Refugee Convention, *supra* note 10, at art. 42.

from the Convention. At one point in the process, the Greek delegate specifically inquired about the impact that the Refugee Convention would have on the internally displaced population within his country.¹⁰⁵ Mrs. Roosevelt, in her capacity as delegate of the United States, responded with the following:

All credit was due to the governments which bore the heavy burdens of those moves of people unilaterally, *but those problems should not be confused with the problem before the General Assembly, namely, the provision of protection for those outside their own countries*, who lacked the protection of a Government and who required asylum and status in order that they might rebuild lives of self-dependence and dignity.¹⁰⁶

It was not just the United States that took this position however. In subsequent discussions, the French delegate, Mr. Rochefort, stated that:

Whatever [definitional] formula might ultimately be chosen, *it would not and could not in any event apply to internal refugees* who were citizens of a particular country and enjoyed the protection of the government of that country. There was no general definition covering such refugees, since *any such definition would involve an infringement of national sovereignty*.¹⁰⁷

If that were not explicit enough, in explaining the drafting process a year later, Mr. Rochefort stated bluntly that “[i]t was certain that the United Nations did not intend to apply the provisions of the Convention to national [domestic] refugees.”¹⁰⁸ These statements could not be clearer.

We can say with a great deal of certainty that at least some of the most influential states that crafted the Refugee Convention in 1951 did so with the express understanding that the territoriality element was an outer limit to the reaches of the refugee definition. To these drafters, a refugee must be outside of their home country. It was not a bare minimum; it was the furthest that the

¹⁰⁵ See UNGAOR, 4th Sess., Third Committee, Summary Records, 110 (1949).

¹⁰⁶ *Id.* (emphasis added).

¹⁰⁷ HATHAWAY, *supra* note 56, at 31 n.14 (quoting Statement of Mr. Rochefort of France, UN DOC. E/AC.7/SR.172, at 4 (Aug. 12, 1950)) (emphasis added).

¹⁰⁸ Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, 24th mtg., July 17, 1951, *Summary Record of the Twenty-fourth Meeting*, at 4, U.N. DOC. A/CONF.2/SR.24 (Nov. 27, 1951).

sovereign states were willing to go. To the extent that there were delegates who sought to push further on this point and eliminate the alienage element, there remained “anxiety that any attempt to respond to the needs of internal refugees would constitute an infringement of the national sovereignty of the state within which the refugee resided.”¹⁰⁹ Under this argument, state sovereignty and international law constrain international actors and foreign states from applying refugee status to individuals who remain within their home country.

In response to the overarching question then of whether states party to the Refugee Convention intended to sign away their right to non-intervention regarding internal refugees, the short answer is that they did not. The language of the Convention itself, the interpretations by academics and the ICJ, and the statements of the drafters of the Refugee Convention all provide firm basis for this position.

IV. IMPLICATIONS: LIMITS OF STATE SOVEREIGNTY

This section seeks to provide some guidance on what role the alienage exception law might have in light of the constraints of international law. There are several possible answers to this question.

A. *Agreement of Foreign States*

Since the main obstacle to the purposed of (42)(B) is the principle of state sovereignty, the most obvious and acceptable way around this is to obtain the permission of a target state to apply protections to internal refugees. While the use of the alienage exception law as a political tool to disparage another state may be resisted by that state, it is not always the case that animosity between governments necessarily prohibits cooperation on some issues. For example, following an influx of refugees from Cuba into the United States in 1965, Fidel Castro permitted these refugees to briefly return to the island so they could retrieve their relatives and take them back to the U.S.¹¹⁰ In this case, the in-country processing of refugees would not violate the sovereignty of Cuba because the government willingly put that issue aside. Similar programs have occurred at various times in Vietnam regarding the children of Vietnamese mothers and American soldiers born during the Vietnam War.¹¹¹

¹⁰⁹ HATHAWAY, *supra* note 56, at 31.

¹¹⁰ Rauffer, *supra* note 37, at 246.

¹¹¹ *Id.* at 247.

A similar willingness to permit the in-country processing of refugees may be found in so-called “friendly” governments. Iraq is currently listed in the 2011 Presidential Determination despite repeated attempts of the U.S. to characterize the government as successful and legitimate.¹¹² For whatever reason, whether it be a humanitarian concern for its own people or an interest in resolving its own displacement issues, Iraq’s acquiescence to the executive decision would remove any perceived violation of their sovereignty.

In these scenarios, (42)(B) does not violate international law, and no conflict between the 1980 Refugee Act and international law exists. In this regard, the ideal approach to address the internal refugee situation, and IDP issues more generally, is through the establishment of a new international convention. Something akin to Refugee Convention should be drafted, debated, and ultimately ratified so that the victims of persecution may obtain heightened protections from suffering at the hands of their own government.

B. Human Security and Re-envisioning State Sovereignty

A second argument, one far more controversial, is that the exercise of the alienage exception law may be proper when a government is not upholding its responsibilities as a sovereign state. This argument is built upon the extraordinary progress of the international human rights and human security movements. These schools of thought propose a conceptualization of state sovereignty that does not provide a nation *carte blanche* to abuse and persecute its citizens.¹¹³ Rather, sovereignty is understood as a conditional privilege that can be forfeited by a state as a result of its actions.¹¹⁴ The benefits of state sovereignty, including the right of non-intervention, are existentially bound to the willingness of the government to respect the basic rights of its citizens, chief among them the right to be free from persecution.¹¹⁵

Under this paradigm, (42)(B) could properly be applied to any state engaged in systematic violation of the basic freedoms of its people. For example, the conditions in Darfur throughout much of the last decade, the wide-scale arrest and

¹¹² Presidential Determination No. 2009-32, *supra* note 53.

¹¹³ SHAHRBANOU TADJBAKSH & ANURADHA M. CHENOY, HUMAN SECURITY: CONCEPTS AND IMPLICATIONS 190 (2007).

¹¹⁴ *Id.*

¹¹⁵ *Id.*

detention of political dissidents in North Korea,¹¹⁶ or the mass violence brought to bear against civilians in Syria by their own government¹¹⁷ may be grounds for dismissing those governments' claims to non-intervention. There is no sovereign right to persecute people. Under this human security framework, the provision of refugee status to these groups would not constitute a violation of the non-intervention principle.

There are problems with this approach however. International human rights law and human security have not obtained wide acceptance within international law. The rights and duties approach to state sovereignty was not contemplated by the ICJ when it said that the provision of asylum to an internal refugee constituted a "derogation from the sovereignty of that State."¹¹⁸ Moreover, this school of thought is still young and lacks broad consensus in many key areas. For instance, it remains unclear what forms of abuse or how many instances of persecution are necessary before a government should lose its claim to non-intervention. While these issues certainly plague this human security approach to refugee law today, the steady advancement and wider acceptance of these principles will only serve to strengthen this argument in the coming years.

V. CONCLUSION

At first glance, it may seem non-contentious that the United States has the authority to decide to whom it will offer assistance and immigration status as a refugee. In one way, this appears to be a purely domestic matter that is well within the right of any sovereign state to decide. However, as this article seeks to demonstrate, such an action has long been understood as a violation of the principle of non-intervention in international law. This is the position expressed by the International Court of Justice, international institutions such as the Council of Europe, the drafters of the Refugee Convention, and respected academics in the field. The United States sought to bypass international law through the Refugee Act of 1980. With this law, the U.S. unilaterally chooses foreign countries which will no longer be provided the right to non-intervention as to the relationship between that government and its citizens.

¹¹⁶ See, e.g., BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEPT. OF STATE, 2009 HUMAN RIGHTS REPORT: DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA (Mar. 11, 2010), available at <http://www.state.gov/g/drl/rls/hrrpt/2009/eap/135995.htm>.

¹¹⁷ See, e.g., Press Statement, Sec. of State Hillary R. Clinton, Sharp Escalation of Regime Violence in Syria (Jan. 30, 2012), available at <http://www.state.gov/secretary/rm/2012/01/182720.htm>.

¹¹⁸ Rauffer, *supra* note 37, at 246 (quoting Asylum Case (Colom. v. Peru), 1950 I.C.J. 266, 274–75 (Nov. 20)).

The principle of non-intervention is incorporated in the Refugee Convention's definition of 'refugee' by the territoriality requirement. Despite the fact that many countries have expanded the conditions upon which refugee status may be conferred, these countries have retained the alienage requirement. This is critically important because once the individual has left his or her home country, the non-intervention principle no longer applies to refugee status conferred on that person. This is the fundamental problem the alienage exception law runs into; it expands refugee protections beyond the limits set by international law and the Refugee Convention in particular. As a result, the way in which (42)(B) is exercised should be conformed to comply with the dictates of international law. Only where the internal refugees' government has acquiesced to their inclusion in the Presidential Determination may refugee status be granted properly. Refugeehood, and the benefits incumbent with that status, goes a long way toward protecting and enabling victims of abhorrent persecution, but it can only go so far. Under international law today, for better or worse, internally displaced persons must cross the border to be refugees.