

THE PRESENT STATUS OF THE SOUTHEAST ASIAN REFUGEES UNDER THE 1980 REFUGEE ACT: A CALL FOR REFORM

I. INTRODUCTION

It has been almost fifteen years since the United States began dealing with the large numbers of refugees leaving war ravaged Vietnam, Cambodia and Laos due to the rise of the Khmer Rouge led by Pol Pot.¹ Many of the refugees sought "first asylum"² in Thailand because of its close proximity to Vietnam and because many of them only desired a place for temporary refuge until adverse powers were driven out.³ The United States had an open and compassionate policy of admitting refugees.⁴ Today, refugees leave these countries to escape reeducation programs implemented by the Soviet Union,⁵ to avoid guerilla attacks, and to find safer lands on which to live.⁶

1. Under the Khmer Rouge regime, Cambodia became known by its Khmer name, Kampuchea, and the full national name as recognized by the United Nations became Democratic Kampuchea. U.S. Committee for Refugees, *Cambodians in Thailand: People on the Edge* 1 (Dec. 1985). As of fall 1984, the United Nations decided to retain the standard western form of Cambodia, which will be used in this Note. *Id.* at 1. In April 1975, the Khmer Rouge, Cambodia's Communist movement led by Pol Pot, stormed Phnom Penh and mistreated its inhabitants. *Id.* at 4. In December 1978, Vietnam invaded Cambodia and drove the Khmer Rouge from power. Vietnam had initially supported the Khmer Rouge, but once Pol Pot was in power, Vietnam realized it could not control its leader and thus invaded. *Id.* at 4-5.

2. "First asylum" is a term referring to the country which admits and gives refugees temporary permission to remain until another country has processed their claims and granted them permanent asylum. Fears of being left with a residual refugee population who will drain economic and social resources may encourage countries to limit access to first asylum in their nations. See Suhrke, *Indo-Chinese Refugees: The Law and Politics of First Asylum*, 467 THE ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE, 102-03 (May 1983) [hereinafter *Indo-Chinese Refugees*]. It should be recognized that equitable sharing of the refugee burden is needed. *Id.* at 112-13.

3. See generally G. KELLY, FROM VIETNAM TO AMERICA, 2-3 (1977)(chronicling the flight of Southeast Asian refugees in 1975). The refugees sought only temporary refuge until the Pol Pot regime was overcome, not a new home. *Id.* at 2-3.

4. In 1975 the U.S. admitted more than 135,000 East Asian refugees. Department of State Bureau for Refugee Programs, *Refugee Arrivals in United States Fiscal Year 1975-1987* (July). As of 1987, that number had fallen to a mere 23,407. *Id.*

5. With the onset of *glasnost*, the Soviet policy of "openness" under Mikhail Gorbachev, Southeast Asians are more optimistic about their future. See N. Y. Times, Nov. 24, 1987, at A1, col.2. Political, bureaucratic and economic relaxation are enabling these countries to emerge from their isolation, but such a metamorphosis will take time. See *id.* at A12, col. 1.

6. See Comment, *Can the Boat People Assert a Right to Remain in Asylum*, 4 U. PUGET SOUND L. REV. 176, 176-79 (1980)(discussing the lack of security experienced by Southeast Asian refugees facing forcible return to conditions they fled, the dangerous boat cross-

Now, at a time when there is evidence of extreme overcrowding in refugee camps,⁷ Thailand has implemented a policy of pushbacks of refugees seeking entry and forced repatriation.⁸ Additionally, U.S. policy has become entangled in a nationwide concern over the entrance of illegal immigrants. As a result of public pressure, a stricter admissions policy has developed.⁹

Such mass refugee migrations have challenged general principles and customs of international law which were designed for manageable numbers of refugees, not the large influx presently occurring.¹⁰ As a result, it is necessary that several basic tenets of international agreements and conventions be reexamined.¹¹ Furthermore, refugee policies need to address the limitations of the nations involved.

The Refugee Act of 1980¹² is the cornerstone of U.S. immigration law regarding comprehensive resettlement and assistance. It professes to eliminate ideological and geographic restrictions from immigration policies and to focus on humanitarian concerns.¹³ Policy formation and long term implementation however are two dis-

ings, and ethnically motivated violence). See also N. Y. Times, Nov. 25, 1987, at A9, col. 1. This article discusses the American antipersonnel bombs that fell on the Laotian people and their villages at the rate of 1,000 per person during the 1960's-70's. Many never exploded. *Id.* More than 4,700 people have subsequently been killed by the accidental detonation of these bombs. *Id.*

7. Many Vietnamese boat arrivals have been housed in Phanat Nikhom. Though the camp was built to hold no more than 7,000 people, camp population is now at 11,000. See CERQUONE, *Refugees From Laos: In Harm's Way*, AMERICAN COUNCIL FOR NATIONALITIES SERVICE 1, 3 (1986) [hereinafter *Refugees From Laos*]

8. See N. Y. Times, Apr. 6, 1988, A1, col. 1, at A15. United Nations refugee officials reported that at least 170 Vietnamese boat people have died off the coast of Thailand since the end of January 1988 after their boats were pushed off or intentionally rammed by Thai police, navy or fishing vessels. *Id.* at A1, col. 1. The Chief of police in Trat Province, where most of the newly arriving Vietnamese are detained, confirmed that 220 persons were pushed off in January 1988 and 233 in February. *Id.* at A1, col. 2; A15, col. 1.

9. See *infra* notes 61-66 and accompanying text.

10. See Chamberlain, *The Mass Migration of Refugees and International Law*, 7 FLETCHER FORUM 93, 94 (1983)(discussing the new demands of Third World refugees upon the world community and international organizations). Chamberlain proffers that 97 to 98 percent of all refugees today are in developing countries and that the mass migration is not the result of temporary dislocations calling for only *ad hoc* measures.

11. See *infra* notes 17-22 and accompanying text.

12. Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 103 (1980) [hereinafter *Refugee Act*].

13. S. REP. No. 96-256, 96th Cong., 2d Sess. 1, *reprinted in* 1980 U.S. CODE CONG. & ADMIN. NEWS 141, 142. The bill was created to give statutory meaning to our national commitment to human rights and humanitarian concern. *Id.* at 1, *reprinted in* 1980 U.S. CODE CONG. & ADMIN. NEWS 141. The bill does not explicitly define which refugees are deemed to be of special concern to the United States, but leaves this to be determined in the future. *Id.* at 6, *reprinted in* 1980 U.S. CODE CONG. & ADMIN. NEWS 141, 146-47.

tinct matters.

The issue addressed here is whether the Southeast Asian refugee has been fairly dealt with under the Refugee Act of 1980. Part II examines the purposes behind the Refugee Act of 1980. It will show how congressional intent has been displaced by a concern for meeting political and social pressures. Part III and Part IV set forth discussion and recommendations urging the renovation of U.S. refugee policies in order to alleviate the bias prevalent in the existing system. In addition, this Note recognizes the need to balance international humanitarian principles and national limitations in order to develop a means for equitably sharing the increasing refugee burden. This discussion will conclude that the Southeast Asian refugee has become entangled in U.S. domestic and foreign policy goals, contrary to the objectives proffered by the Refugee Act of 1980.

II. BACKGROUND

There are at least two different ideological threads inherent in U.S. immigration policies. One is that the United States owes certain obligations to aliens by virtue of their humanity; the other denies these responsibilities when it is not in the interest of the United States.¹⁴ Similar conflicts between national sovereignty and international obligations are evident throughout the world community.¹⁵

The Refugee Act of 1980 was established in order to show U.S. national commitment to human rights and humanitarian concerns not reflected in the Immigration Naturalization Act of 1952.¹⁶ The Refugee Act changed the legal status of refugees under U. S. immigration law to coincide with internationally recognized guidelines.¹⁷

14. Schuck, *The Transformation of Immigration Law*, 84 COLUM. L. REV. 1, 7 (1984) (discussing the new social reality in which immigration law must work and the ideological shift concerning the federal government's legal obligation toward individuals).

15. Problems arise because nations must harmonize the individual's freedom of movement with sovereign power, thus requiring the nation state to regulate and control people. See Chamberlain, *supra* note 10, at 94.

16. See S. REP. NO. 96-256, 96th Cong., 2d Sess. 1, reprinted in 1980 U.S. CODE CONG. & ADMIN. NEWS 141. The Refugee Act recognized that "there is an urgent need for the United States to begin to take the steps necessary to establish a long range refugee policy; a policy which will treat all refugees fairly and assist all refugees equally, such a national refugee policy is now clearly lacking . . ." *Id.* at 2, reprinted in 1980 U.S. CODE CONG. & ADMIN. NEWS 141, 142.

17. See generally Convention Relating to the Status of Refugees, opened for signature, July 28, 1951, 189 U.N.T.S. 150 [hereinafter United Nations Convention] The United States became a party to the Convention on October 4, 1968. See 114 CONG. REC. 29, 607 (1968). In

The Act adopts a broader definition of refugee than does the 1951 United Nations Convention Relating to the Status of Refugees¹⁸ and the 1967 United Nations Protocol¹⁹ because the Act allows persons still in their country of origin to be declared refugees by the President of the United States after consultation with Congress.²⁰

In comparison, Canada,²¹ Switzerland,²² and many other countries favor the definition of refugee based on international guidelines. The 1951 Convention and 1967 Protocol recognized refugees as a class known in general international law and, as a matter of law, entitled to protection and assistance when normal citizen-state relationships collapse.²³ Under customary international law these individuals are generally considered to have a right to *non-refoulement*.²⁴ In conjunction with this right, individuals also have a right to temporary refuge until a reliable determination can be made as to whether each applicant possesses a legitimate claim of persecution. However, the discretion used in rendering such a de-

addition, the United States signed the 1967 Protocol Relating to the Status of Refugees, opened for signature Jan. 31, 1967, 19 U.S.T. 6223, T.I.A.S. No. 6577, 606 U.N.T.S. 267 (1967) [hereinafter United Nations Protocol].

18. The 1951 Convention declared that a contracting state can not expel or return a refugee to territories where his life or freedoms would be endangered. See United Nations Convention; *supra* note 17, at 176. The Convention referred to refugees prior to January 1, 1951, thus dealing primarily with refugees of World War II. *Id.* at 153.

19. The 1967 United Nations Protocol expressly incorporates the terms of the Convention in 1951, but requires that a refugee must have fled one's country prior to 1951. See United Nations Protocol, *supra* note 17, at 6225. T.I.A.S. No. 6577 at 3, 606 U.N.S.T. at 268 (1967).

20. See Refugee Act §207(e), *supra* note 12, at 103-104, which defines appropriate consultation "with respect to the admission of refugees and allocation of refugee admissions, [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 . . ." *Id.* at 104.

21. Canada adopted the Convention definition in its 1976 Immigration Act. See *supra* note 18. Prior to 1976, Canada required special action by the federal government to admit refugees into Canada. See Stein, *Commitment to Refugee Resettlement*, ANNALS 187, 193-94 (May 1983) [hereinafter *Commitment to Refugee Resettlement*]. "Until the refugee situation reached sizeable dimensions, they were not seen as part of the government's regular agenda . . ." Finally, in 1979, Canada formally established annual refugee admission plans. *Id.* at 194.

22. Switzerland developed the Convention definition in its recent law on asylum in 1979. See GOODWIN-GILL, *THE REFUGEE IN INTERNATIONAL LAW* 16 (1983) [hereinafter GOODWIN-GILL].

23. See *id.* at 18.

24. *Non-refoulement* policy states that no refugee should be returned to any country where he or she is likely to face persecution or danger to life or freedom. See Refugee Act §203(e). The applicability of the rule distinguishes refugees from other aliens in the territory of a given state.

termination is problematic.²⁵

While many countries have instituted the core definition of refugee, an individual whose life or freedom is endangered by remaining in their country of origin,²⁶ gray areas are evident. In principle, a person becomes a refugee at the moment he or she satisfies the definition. Difficulties arise, however, when states decline to determine refugee status or when different determinations are reached by states and by the Office of the United Nations High Commissioner for Refugees (UNHCR).²⁷

The 1980 Refugee Act allows for discretionary determinations in awarding refugee status because the declaration of human rights in the Act does not have the force of law in the United States. The Act holds only that refugees have a right to enjoy asylum when a state confers it voluntarily.²⁸ Hence, the United States may concede to its biases and make status determinations out of convenience because admission is discretionary. A group of persons seeking entry may be classified as 'illegal immigrants,' 'quasi-refugees,' 'aliens,' 'departees,' 'boat people,' or 'stowaways.'²⁹ This result is inconsistent with the intent of the framers of the Act.³⁰

Additionally, the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status*³¹ describes some of the diffi-

25. See A. Helton, *The Proper Role of Discretion in Political Asylum Determinations*, 22 SAN DIEGO L. REV. 999, 1013-14 (1985). Helton argues that the "injection of discretion into the asylum standards threatens to swallow the right to apply for asylum in the United States." *Id.* at 1014. The use of discretion will cause refugees to run the risk of *refoulement* to countries of persecution. *Id.* at 1020.

26. See *supra* notes 17-22 and accompanying text.

27. See G.A. Res. 428(v), 5 U.N. GAOR Supp. (No. 20) at 46, U.N. Doc. A/1775 (1950). The UNHCR was established by the General Assembly to provide the necessary legal protection for refugees and to seek permanent solutions for the problem of refugees. According to its statute, the UNHCR is to be humanitarian and social. *Id.*

28. See Refugee Act §208(a), *infra* note 53.

29. See GOODWIN-GILL, *supra* note 22, at 16, 19. Each classification imposes varying legal consequences. Illegal immigrants do not receive *non-refoulement* privileges like the refugees because they are not fleeing persecution. *Id.* at 73. There is an international obligation to provide for the safety of boat people when they are found floundering on the high seas, while stowaways may be detained by the flag country of the boat they are on and deported. *Id.* at 92.

30. See *supra* note 13.

31. *Office of the UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and 1967 Protocol Relating to the Status of Refugees* (Geneva 1979) [hereinafter *Handbook*]. The *Handbook* provides for a number of procedural protections designed to prevent refugees from being arbitrarily refused asylum. The *Handbook* requires that if the applicant's account appears credible, he should be given the benefit of the doubt and allowed entry unless good reasons exist to the contrary. See *id.* at 47-8.

culties experienced by aliens in pursuing their asylum claims due to language barriers, fear of authorities, and lack of proper documentary resources. Hence, international protection remains incomplete insofar as refugees and asylum seekers may be denied admission in ways not obviously amounting to a breach of international law.³²

Even though the Refugee Act emphasizes the need for nonideological standards,³³ the second thread is more pervasive. Present practices reflect a response to the national desire for protectionism.³⁴ The standards of proof which refugees must meet in order to enter the United States (the refugee screening process) and the influence of foreign policy, all act as deterrents to the admission of refugees.³⁵ Additionally, the nonpolitical ideology of the Act is thwarted because the U.S. Immigration and Naturalization Service (INS)³⁶ is dependent upon the assistance of the State Department in rendering decisions on asylum claims.³⁷

A. Standard of Proof

During the past several years, the Supreme Court has handed down a multitude of decisions shaping the details of refugee law.³⁸ In *INS v. Stevic*,³⁹ the Court issued its first ruling on the Refugee Act. The Court focused on the textual differences between the granting of asylum and the withholding of deportation proceedings and suggested that the distinctions might warrant separate standards of proof concerning the probability of persecution.⁴⁰ As a re-

32. See *supra* notes 26, 29 and accompanying text.

33. See *supra* note 16.

34. See generally Schuck, *supra* note 14.

35. See generally *infra* notes 43-78.

36. The INS has the dual mission of providing information and service to the general public while concurrently exercising its enforcement responsibilities. It serves to administer and enforce the immigration laws, promote and protect the public health and safety, economic welfare, national security and humanitarian interests of the United States. United States Government Manual 385-86 (rev. ed. June 1987).

37. See *infra* notes 42, 47, 57-60 and accompanying text.

38. See *INS v. Assibi Abudu*, 56 LW 4195 (U.S. March 1, 1988)(No. 86-1128)(after overstaying a student visa, a claim was made to seek asylum as a refugee for fear of life if deported. The Court looked to see if any new significant evidence arose as to danger which would excuse the student for not having filed for asylum originally); see also *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987); *INS v. Stevic*, 467 U.S. 407 (1984).

39. 467 U.S. 407 (1984). Petitioner contended that the standard of "clear probability of persecution" needed to be met in order to support a withholding of deportation. See *id.* at 413. Additionally, he argued that a finding of a "well-founded fear of persecution" required to support a claim for asylum, was synonymous with the aforementioned standard. *Id.*

40. See *id.* at 424.

sult, the Court held the clear probability test applicable to deportation decisions leaving the standard to be applied in asylum claims unresolved.⁴¹

The U.S. Board of Immigration Appeals (BIA)⁴² continued to use the clear probability standard in deciding asylum claims until forced to revise its standard after the Court's decision in *INS v. Cardoza-Fonseca*.⁴³ The Court declared that the congressional intent behind the reference to "fear" in section 208(a) of the Refugee Act requires that eligibility determination turn on case by case adjudication looking at the subjective mental state of the alien.⁴⁴

Section 208 (a)(42) places a burden on asylum applicants, requiring them to establish that they are unable to return to their country of nationality because of a "well-founded fear of persecution."⁴⁵ Examined in the context of the general turmoil of the area, the burden to prove "fear" in an individual situation is substantially less difficult than requiring an individual to prove that the "fear" is unique.⁴⁶

The BIA, in determining whether an applicant has displayed a well-founded fear of persecution, adopts the general standard set forth in *Guevara Flores v. INS*.⁴⁷ *Guevara* held that an applicant for asylum has established fear if he can show that a reasonable person in his circumstances would fear persecution.⁴⁸ Hence, there

41. *See id.* at 430.

42. The primary mission of the BIA is to ensure that immigration law receive uniform application throughout the United States. Congressional Quarterly Federal Regulatory Directory at 708 (5th ed. 1986). It is the highest administrative tribunal in the immigration field. Decisions by the BIA are usually binding unless modified by the Attorney General's office. *Id.*

43. 480 U.S. 421 (1987). Petitioner claimed that she maintained a "well-founded fear of persecution" in that if she was deported, the Sandinistas would torture her until she told them the whereabouts of her politically active brother. *See id.* at 1209.

44. *See id.* at 1212-13. *See also* Refugee Act §201 (a)(42), *supra* note 12, stating that a refugee is one who is "unable or unwilling to return to and is unable or unwilling to avail himself or herself of the protection of that country because of persecution or well-founded fear of persecution".

45. Refugee Act §208 (a), *supra* note 12. *See also* 8 C.F.R. §208.5 (1985).

46. The Reagan administration has recognized the need for general litigation to some extent. It has allowed certain persons who would not otherwise qualify for admission to be considered as refugees of special humanitarian concern to the United States. *See* G. Melander, 9 IN DEFENSE OF THE ALIEN 100 (1986). An example of such persons would be those in Vietnam and Laos with past or present ties to the United States and persons who have been or who are currently in reeducation camps in Vietnam or Laos. *See Proposed Refugee Admissions for Fiscal Year 1988: Report to Congress* 7.

47. *Guevara Flores v. INS*, 786 F2d 1242 (1986) *cert. denied*, 480 U.S. , 107 S. Ct 1565 (1987).

48. *See id.*

is considerable ambiguity in the term "well-founded fear of persecution."

Courts have held that the definition of "fear" can only be given meaning through an INS determination.⁴⁹ The Court in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*⁵⁰ explained that an administrative agency must fill, by regulation, any gap left implicitly or explicitly, by Congress. Furthermore, the Court should respect and allow for statutory interpretation by the agency to which Congress has delegated the responsibility for administering the statutory program.⁵¹ This deference is conferred upon the INS because Congress has given this agency exceedingly broad discretion to implement its policies.⁵²

After an eligibility determination has been made, the language used in section 208 of the Refugee Act must be examined closely.⁵³ A refugee eligible for asylum does not have a right to entry; final asylum decisions are instead granted at the discretion of the U.S. Attorney General (or his designee) and then delegated to the INS and immigration judge by regulation.⁵⁴ The determination of asylum claims using the well-founded fear of persecution standard appears to be more *ad hoc* than the "clear probability" standard thus, allowing the discretion to be governed by foreign policy and national sentiment.⁵⁵

B. Outside Influence

U.S. admission of asylum seekers and refugees has been influenced by foreign policy considerations and, in a number of in-

49. See *supra* note 36, 37 and accompanying text. See generally *INS v. Stevic*, 467 U.S. at 424.

50. 467 U.S. 837 (1984).

51. See *id.* at 843-44 (holding that the definition of the ambiguous term "major stationery source" was intentionally left vague by Congress in order that the an agency may create a sound definition of the term); See also *Morton v. Ruiz* 415 U.S. 199, 231 (1974) (holding that the geographical limitations placed on general assistance eligibility was intended by Congress to mean "on or near").

52. See *supra* note 50, at 862; see also *infra* note 53.

53. "The Attorney General shall establish a procedure . . . and the alien may be granted asylum in the discretion of the Attorney General if the Attorney General determines that such alien is a refugee within the meaning of [the Act]" [emphasis added]. See Refugee Act §208 (a), *supra* note 12; see also 8 C.F.R. §208.1 (a)(b)(1987).

54. See Refugee Act, *supra* note 12.

55. See generally *Handbook*, *supra* note 31, at 12-13. Asylum determinations should be based on factors such as an alien's character and background as well as the conditions of their country. *Id.*

stances, has been an actual instrument of foreign policy.⁵⁶ The U.S. State Department plays a decisive role in asylum adjudications, despite the need for separation of functions which is required by section 554(d) of the Administrative Procedure Act (APA),⁵⁷ because INS agents do not consider themselves qualified to assess political and human rights conditions of various countries and still conform with the intent of Congress.⁵⁸

The State Department's Bureau of Human Rights and Humanitarian Affairs (BHRHA) renders advisory opinions on asylum claims and evaluates applications on the basis of the information available to the State Department on the applicant's country.⁵⁹ Bias is prevalent in these approval ratings because the human rights conditions in an applicant's country are analyzed by the country desk officer of the applicant's country of origin.⁶⁰ As a result, there is great potential for these officers to skew information and allow foreign policy considerations to enter into their decision making process in order to advance U.S. political ideologies.

At the outset, refugees are divided into two groups: those fleeing from noncommunist regimes and those fleeing communist regimes.⁶¹ Inherent problems are evident when, in order to assess a refugee's claim of persecution, the State Department first attaches a label to the regime.⁶² The label attached may be the result of

56. See IN DEFENSE OF THE ALIEN, *supra* note 46, at 95, n.14 (opinion of Professor Aristotle R. Zollberg voiced at the Conference on Refugees and Right of Asylum in France and the United States held in Paris on March 14 and 15, (1985); see generally Chamberlain, *supra* note 10.

57. See Administrative Procedure Act, 5 U.S.C.A. §554(d) (1977). "An employee or agent engaged in the performance of investigative or prosecuting functions for an agency in a case may not, in that or a factually related case, participate or advise in the decision . . ."

58. Hence, the opinions of the State Department become "recommended" conclusions, making a mockery of the asylum determination process. See U.S. Committee for Refugees, *Despite a Generous Spirit: Denying Asylum in the United States* 29-30 (Dec. 1986).

59. See Comment, *Asylum Adjudications: Do State Department Advisory Opinions Violate Refugee's Rights and United States International Obligations?*, 45 MD. L. REV. 91, 109 (1986) [hereinafter *Asylum Adjudications*] (discussing the factors which impinge upon the determination of State Department advisory opinions in asylum adjudications).

60. Country desk officers are concerned with the effects of their actions on U.S. policy toward their assigned countries. Furthermore, the inability of applicants to present their cases to or question those who prepare the advisory opinions is also inconsistent with notions of due process. See *Despite a Generous Spirit*, *supra* note 58, at 30; see also *Asylum Adjudications*, *supra* note 59, at 110.

61. See Note, *Political Legitimacy in the Laws of Political Asylum*, 99 HARV. L. REV. 450, 462 (1985) (arguing that the deficiency of current asylum analysis is that it inquires into whether certain acts and conditions are legitimately political rather than whether they are politically legitimate).

62. See U.S. DEPT. STATE BULL., 54, 55 (June 11, 1987). By labeling countries, the es-

pure propaganda or public image and sentiment, favoring one group of refugees from a particular region over those from another region.⁶³ For example, refugees from communist countries are presumed to be political⁶⁴ and, as a result, are admitted more frequently.⁶⁵ The present economic and social instability in the United States has further encouraged the practice of tainted discretionary decisions, limiting even the number of political refugees admitted.⁶⁶ Hence, it can be discerned that despite the desire to achieve a nonideological refugee admission's policy and the guidelines provided in the UNHCR *Handbook*⁶⁷ requiring all nations to accord asylum applicants the benefit of the doubt unless good reasons to the contrary are present, bias continues.⁶⁸

An alternative to the present system of classification could be the creation of one specific criteria for determining whether persecution exists. A standard definition should halt the equivocating which determines the success or demise of claims for asylum based on political grounds.⁶⁹ Further, State Department advisory opin-

sence of the 1980 Refugee Act is undermined because asylum claims are treated differently. See *supra* note 16. Threats to the purpose of the Act are intensified by reduction in resources available and an increase in the demand for those resources. U.S. DEPT. STATE BULL., 54, 55 (June 11, 1987) (Statement by Jonathan Moore, Ambassador at Large and Coordinator of Refugee Affairs).

63. U.S. policy has provided easier entry and looser requirements for refugees fleeing a communist regime than it does for refugees fleeing a regime to which the United States is more ideologically sympathetic. See Chamberlain, *supra* note 10, at 104. Southeast Asian refugees must make out a claim of family ties and overcome adverse public sentiment. See *Refugee Arrival*, *infra* note 65.

64. See *supra* note 61.

65. See generally *Refugees Arrival in United States Fiscal Year 1975-1987* (July), Dep't. of State Bureau for Refugee Program.

66. See *Proposed Refugee Admissions for Fiscal Year 1988*, Report to Congress 100th Cong., 1st Sess. 38. Appendix B:

E.g., Admitted refugees from East Asia:

1975: 135,000 1987: 23,407.

Admitted refugees from Latin America:

1975: 3,000 1987: 173.

Another reason for discretionary decisions may be the effects of the Gramm-Rudman-Hollings Act 1986 and deficit fighting efforts. The foreign affairs budget has come under severe strain. Also, the adverse public reactions to the large influx of refugees may simply be due to public weariness of the refugee problem. The masses look upon the refugees as a destabilizing force and a hinderance to progress and development. See Chamberlain, *supra* note 10, at 94.

67. See *Handbook*, *supra* note 31.

68. See *id.*

69. Announcement of Ambassador Victor H. Palmieri, U.S. Coordinator of Refugee Affairs (June 20, 1980). Procedures for processing applications are currently inadequate and difficult to implement. As a result of the complexity, the 1980 Carter administration bypassed all processing requirements and created special Cuban/Hatian entrance designations.

ions should be replaced with file profiles of human rights conditions in each country.⁷⁰

It is highly probable, however, that these suggestions are not legal alternatives which the United States is willing to consider. When assessing refugee claims, statutory law and public policy may not be able to coexist. The Refugee Act, in this instance, may appear only to legitimize government action.⁷¹

Both International and U.S. law draw a distinction between refugees and immigrants but in practice, these groups are often treated as similar.⁷² Under the Reagan administration, U.S. immigration laws were designed to focus primarily on deterring unauthorized entrance into this country.⁷³ The Immigration Reform and Control Act of 1986 was enacted to control illegal immigration to the United States by establishing "penalties for employers who knowingly hire undocumented aliens, thereby ending the [employment] magnet that lures them to this country."⁷⁴

The Refugee Act, however, provides a legal mechanism for ad-

See id.

70. See Scanlan, *Regulating Refugee Flow: Legal Alternatives and Obligations Under the Refugee Act of 1980*, 56 NOTRE DAME LAW. 618, 637 (1981). File profiles would provide only information about conditions abroad and their impact on U.S. foreign policy which was common to a number of applicants being evaluated. Thus, determinations would be free of the individual opinions of country officers and allow for more consistency. *See id.* at 638; see also 22 SELECT COMMISSION ON IMMIGRATION & REFUGEE POLICY, U.S. IMMIGRATION POLICY AND THE NATIONAL INTEREST 169-171 (1981).

71. *See supra* notes 62-69 and accompanying text discussing the influences of political ideologies and domestic pressures on the implementation of the Refugee Act.

72. *See generally* Zucker, *Refugee Resettlement in the United States: Policy and Problems*, 467 ANNALS, 172, 181 (May 1983) (suggesting that the Reagan administration reduction and retrenchment on refugee policies was due to loss of compassion and fatigue of the issue on the part of conservative members of Congress.); see also Simpson, *Immigration Reform and Control Act: Immigration Policy and National Interest*, 17 U. MICH. J.L. REF. 147 (1984) (discussing the xenophobic climate in the United States); see also *supra* notes 62-66 and accompanying text for a discussion of the inherent problems of labeling regimes in order to assess a refugee's claim of persecution. *See also infra* note 73 for discussion on immigrants.

73. *See* Immigration Reform and Control Act of 1986 (IRCA) Pub. L. No. 99-603, reprinted in 1986 CODE CONG. & ADMIN. NEWS (1986).

74. *See id.* at 5649-50. The legislative history of the IRCA states that many immigrants come from countries with high population growth and few employment opportunities and that the United States can not redress this imbalance by absorbing the foreign workers into our economy or population. *See id.* The legislative history continues that unemployment is much higher among the minority groups [and lower class citizens] with whom undocumented workers compete for jobs most directly. *See id.* at 5656. Additionally, in March 1984, Alan C. Nelson, INS commissioner praised the appeals court decision in *Haitian Refugee Center v. Smith*, 676 F.2d 1023 (5th Cir. 1982) when the court recognized that the INS need not inform every alien attempting to enter the United States that they have a right to apply for asylum. *See Despite a Generous Spirit, supra* note 58, at 12.

mitting an applicant who is the object of special humanitarian concern.⁷⁵ The need for resettlement, not the desire of the refugee to enter the United States, is the governing principle behind the management of the U.S. refugee admissions program.⁷⁶

The Immigration Reform and Control Act of 1986⁷⁷ has clarified a great amount of the ambiguity surrounding admission of immigrants, but it appears that no adequate assurance can be given to ensure the examination of legitimate refugee claims. Although the two Acts attach to different groups and possess polar objectives, public and official sentiment have become so concentrated around the desire to stem the arrival of immigrants that the number of legitimate arrivals under the Refugee Act are being limited.⁷⁸

III. THE REFUGEES OF SOUTHEAST ASIA

There is presently an accelerating loss of safe asylum for refugees in Thailand despite the fact that refugee protection and resettlement needs remain undiminished. The number of Vietnamese boat refugees who have arrived in Thailand in recent months has more than doubled,⁷⁹ with the present number of displaced persons living in the sixteen camps around Thailand estimated at 370,000.⁸⁰

Despite these figures, U.S. policies of traditional resettlement have become increasingly restrictive. The U.S. government has

75. See *supra* notes 12, 16, 17 and accompanying text for a discussion on the purposes for the creation of the Refugee Act and its effects.

76. See *Refugee Resettlement Program: Report to Congress, 100th Cong., 1st Sess. 5-6* (1987). It appears that Southeast Asian refugees with family ties in the United States are given priority by the United States. There is a proposed ceiling for the Orderly Departure Program of 8,500 persons departing from Vietnam, identical to last year's ceiling. This admissions level demonstrates the importance the United States places on this program. Amerasians and former United States Government employees are also priority refugees. See *Proposed Refugee Admissions, supra* note 66, at 12.

77. See *supra* note 73.

78. See Appendix B, *supra* note 66; see also Kondracke, *Politics, Mercy and Immigration: Moral Borders*, THE NEW REPUBLIC, (Nov. 23, 1987).

79. Between January and April 19, 1988, 2,231 Vietnamese arrived in Thailand. FBIS-EAS-88, 19 April 1988 at 48. Additionally, 4,956 Vietnam boat refugees arrived during the first five months of 1987 as compared to 2,094 during the same period in 1986. See *World Refugee Report, supra* note 59, at 15. The Thai government will not take in these refugees for fear of ethnic conflict. Western countries, having absorbed hundreds of thousands during the 1970's appear to have lost interest; see generally L. HAWTHORNE, REFUGEE: THE VIETNAMESE EXPERIENCE (a collection of stories on people living in communist Vietnam and their subsequent migration).

80. See 8 REFUGEE REP. No. 7, 10 (July 10, 1987).

proposed an admissions ceiling for East Asian refugees for the 1988 fiscal year of 29,500.⁸¹ This was a reduction of 2,500 from fiscal year 1987.⁸² The proposal attributed the decrease to the fact that camp populations in Southeast Asia have declined and that there were fewer qualified applicants.⁸³

Nevertheless, officials and their constituents argue that Southeast Asian refugees are still seeking entry into this country in unprecedented numbers.⁸⁴ In recognition of the continuing need for refuge and for alleviation of the overcrowded refugee camps, the UNHCR signed an agreement with Thailand on April 20, 1988, providing for a new holding center for arriving Vietnamese boat people.⁸⁵ Despite the increasing number of claimants, an applicant seeking refuge in the United States must also proceed through an exhaustive border screening process which often screens out eligible applicants for reasons inconsistent with the purpose of the process.⁸⁶

The purpose of the border screening process is to identify the Khmer Rouge who fled after the 1978 Vietnam invasion and prevent their resettlement in the United States.⁸⁷ The screening consists of three steps. First, the Joint Voluntary Agency (an arm of the International Rescue Committee) identifies, intervenes, and arranges for refugee sponsorship. Second, a refugee suspect of being

81. See *Proposed Refugee Admissions*, *supra* note 66, at 12.

82. See *id.*

83. In 1980, at the height of the refugee crisis in Southeast Asia, more than 90,000 refugees left Thailand for resettlement in the United States. In 1985, fewer than 24,000 refugees were able to leave Thailand for the United States. See Ranard, *Thailand: The Last Bus*, ATL 26, 28 (Oct. 1987).

84. Thailand still has over 130,000 refugees, "a slight increase over the previous year." "More than 290,000 Cambodian "displaced persons" are on the Thai-Cambodian border with no option for resettlement in the West." See *id.* In addition to the rise in the number of boat refugees seeking entry, another reason for the increase could be that a solution to the long stayer problem is finally being examined. Long stayers are those who do not qualify as refugees, but are those for whom the United States has special humanitarian concern because they have been in refugee camps for an extended period of time. See *Annual Consultation with the Admin. on the Admission of Refugees in Fiscal Year 1987: Hearing Before the Committee on the Judiciary United States Senate*, 99th Cong., 2d Sess. 94-5 (1986).

85. The new camp is planned to house up to 8,000 people and "will be built by the United Nations Border Relief operation along the Cambodian frontier south of Site 2 where the 290,000 displaced Cambodians live." See N.Y. Times, Apr. 21, 1988, at A10, col. 2.

86. See *Staff Rep. of S. Comm. on For. Rel.*, 98th Cong., 2d Sess., United States Process of Khmer Refugees for Overseas Refugee Processing (Comm. Print Processing August 1983); see also Note, *Rejected Cambodian Refugees: Prior Persecutors or Victims of an Illegal Screening Process?*, 20 CORNELL INT'L L.J. 170, 181 (1987).

87. See *supra* note 86.

Khmer Rouge, is sent to the Ethnic Affairs Office (EAO) of the Department of State Refugee Bureau for further screening. Third, the INS makes a final determination of an applicant's eligibility.⁸⁸

The Thai government introduced its own procedure for screening asylum seekers in 1985.⁸⁹ The process was designed to separate refugees from economic migrants and offer admission to the former.⁹⁰ The United States further uses the procedure to screen out Khmer Rouge persecutors.⁹¹ Implementation of this procedure has resulted in a current INS rejection rate of over sixty percent for Lao refugees and of nearly fifty percent of the claims made by the Khao I Dang refugees.⁹²

Moreover, it is evident that the initiative to expedite family reunification for Cambodians and Laotians with relatives in the United States, a policy serving a marginal number, has occurred at the expense of most other criteria and applicants. Although the proposed ceiling for the Orderly Departure Program in Fiscal Year 1988 was meritorious (8,500 people), the program primarily benefited those within specified groups.⁹³ It appears that present policy has been unfaithful to the original intent behind the Refugee Act of 1980.⁹⁴

The Thai government responded to the diminished U.S. and world commitment to refugee placement by announcing the closure of Khao I Dang on December 31, 1986, the last place of safe asy-

88. See *id.*

89. See CERQUONE, *supra* note 7, at 13. The Thai procedure was created in response to international criticism of the government's pushback policy and promised that the applicants would be provided with a degree of order and safety. See *id.*

90. See *id.* at 43.

91. National Security Council Decision Memorandum 93, May 13, 1983, sets forth the guidelines. In recent years the predilection of INS decision makers is to assume applicants are guilty until proven innocent in order to limit the number of successful asylum claims. See *Cambodians in Thailand: Refugee and Immigration Processing*, ISSUE BRIEF REFUGEES INT'L 2 (July, 1987). See also *Rejected Cambodian Refugees*, *supra* note 86, at 180.

92. See *Refugee Processing and Protection in Thailand*, ISSUE BRIEF REFUGEES INT'L 2 (April 1987); see also *Cambodian Refugees in Southeast Asia: Hearing Before the Subcomm. on Asian and Pacific Affairs of the Comm. on Foreign Affairs House of Representatives*, 99th Cong., 1st Sess. 61 (1985)(statement of Senator John Glenn: "I believe that the screening process has been inherently incapable of showing that an applicant was Khmer Rouge.")

93. For a discussion of the Orderly Departure Program see *infra* note 118; see also *Proposed Admissions*, *supra* note 46. The Orderly Departure Program provides for the following qualified groups: (1) those meeting family reunification requirements, (2) former United States government employees, (3) Amerasian children and accompanying relatives, (4) former reeducation prisoners and accompanying relatives. See *World Refugee Report* (1987) 1, 15; see also *IN DEFENSE OF THE ALIEN*, *supra* note 46, at 64.

94. See *supra* notes 16-17 and accompanying text.

lum for Cambodians in Thailand.⁹⁵ Its population of 25,000 was relocated to Site 2, an area one mile from the contested border zone where rival Cambodian factions, Vietnamese army units stationed in Cambodia, and Thai forces often exchange fire.⁹⁶

There have also been reports of forced repatriation and numerous accounts of violence inflicted upon Cambodian civilians at the hands of Vietnamese soldiers, bandits, Thai rangers, and Cambodian guerilla forces.⁹⁷ Protection of refugees needs to remain a high priority in order for the United States to fulfill its commitment to the Thai government, the refugees, and the international community.

IV. RECOMMENDATIONS

The legal labyrinth within which the refugee is caught consists of sentiments of national supremacy, concerns over economic stability, and humanitarian rights deriving from international law. In order to unite these principles, the world community should join together under an obligation to resolve the refugee problem, regardless of which country is affected. The above discussion has shown that refugees are allowed to leave countries, but there is no guarantee that they will be allowed into another⁹⁸ - the 1951 Convention, the 1967 Protocol and the 1980 Refugee Act were not intended to create individual rights, only to set forth humanitarian concerns.⁹⁹

“First asylum” countries, like Thailand, should not bear the burden of placing Southeast Asian refugees;¹⁰⁰ all nations must aid in the protection and placement of the refugees. A model for future programs is demonstrated by the 560 member civilian unit which will be working under Task Force 80, a military unit, to protect the 290,000 refugees on the Thai-Cambodia border.¹⁰¹ This collaborative effort appears promising because it demonstrates that safety problems in refugee camps are being recognized and attempts at remedies are being made.

95. See 8 REFUGEE REP. No. 9, 5-6 (Sept. 11, 1987); see also *Cambodians in Thailand*, *supra* note 84, at 1. General Prime Minister Prem announced at the camp closure on December 29, 1986 “so many have promised and taken no action.”

96. See *id.*; see also *supra* note 8, at A15.

97. See *Hearings on Admission*, *supra* note 84, at 104-5.

98. See *e.g.*, *Mass Migration*, *supra* note 11, at 93.

99. See *supra* notes 17-19 and accompanying text.

100. See *supra* notes at 21-31 and accompanying text.

101. See FBIS-EAS-88-075 at 48 (April 19, 1988).

In the United States, prospects for reform are difficult to assess because of the problem created by the large scale administration of the Refugee Act. Firstly, the INS must work within the confines of a changing federal budget and quota system.¹⁰² The limits created are not based on the amount of assistance needed, but on finances and public sentiment.¹⁰³ Additionally, imprecise guidelines and foreign policy goals are major impediments to the proper implementation of the Act.¹⁰⁴

The INS should be bound by the Administrative Procedural Act, section 554(d), which provides for the separation of functions when an agency is conducting formal adjudication.¹⁰⁵ Despite the decision in *Marcello v. Bonds*,¹⁰⁶ in which the Court held that the deportation proceedings of the Immigration and Nationality Act of 1952 superseded the hearing provisions of the Administrative Procedure Act, the Court discussed the extremely high risk of unfairness inherent in combining the investigatory and adjudicatory procedures needed to assess refugee claims.¹⁰⁷

Under the Refugee Act, the decisional process concerning asylum claims should occur independent of outside influences.¹⁰⁸ The rationing and queuing processes established by the U.S. government in handling asylum claims are obstacles to the independent determinations necessary for faithful implementation of the Refugee Act.¹⁰⁹

Furthermore, nothing in current domestic or international law

102. There does not appear to be a valid reason for making it more difficult for refugees to obtain admission merely because a new fiscal year has begun. See *Regulating Refugee Flow*, *supra* note 70, at 642.

103. See *id.*

104. See *supra* notes 58-66 and accompanying text discussing the inherent bias of advisory opinions in evaluating an applicant's country and the influences of social and economic pressures on claim determinations.

105. See APA, *supra* note 57.

106. See *Marcello v. Bond*, 349 U.S. 302, 309-10 (1955). Petitioner, an alien, was convicted of violating the Marijuana Tax Act and, as a result, deportation proceedings began. The deportation order was challenged as a violation of the separation of functions requirement of the Administrative Procedure Act.

107. To safeguard against a lack of fairness, the Administrative Procedure Act prohibits the combination of investigating and adjudication. See APA, *supra* note 57; see also IN DEFENSE OF THE ALIEN, *supra* note 46, at 36.

108. See *supra* notes 13, 16 and accompanying text.

109. See generally M. LIPSKEY, STREET-LEVEL BUREAUCRACY: DILEMMAS OF THE INDIVIDUAL IN PUBLIC SERVICES (1980). By setting a ceiling on the number of refugees to be admitted, creating an ordering process, and accepting refugees based on priority, the humanitarian purpose for the Refugee Act becomes subservient to numbers.

commits the United States to a policy of admitting refugees.¹¹⁰ As a result, an inefficient, ineffective policy has been established to meet humanitarian obligations.¹¹¹ One alternative to the execution of the present timely and costly process entailed in examining each refugee claim, could be the creation of a parole system whereby refugees are provisionally admitted until their ultimate legal status is determined.¹¹²

Another alternative may be to establish a standing requirement. A standing requirement would ensure that those who are in immediate danger of sustaining a direct injury,¹¹³ not merely suffering in some indefinite way common with the majority, are processed first. This would be a general policy applying to all countries and would thus help curtail the bias in processing claims. Additionally, through the effective separation of the INS from the State Department, asylum determinations would return to the agency originally delegated to render such decisions.

A. *The Ray Panel Report*

In April 1986, the Ray Panel, a special independent panel appointed by the U.S. Secretary of State, was created to study the refugee situation in Southeast Asia.¹¹⁴ The panel recommended that the United States begin processing refugees from the current population without ties to the United States, taking into account the length of stay in camps and other compelling circumstances.¹¹⁵ Additionally, the panel suggested that conditions of the holding ar-

110. See *supra* notes 17-21 and accompanying text.

111. Refugee officials speak of three "durable" solutions to refugee problems: (1) voluntary repatriation; (2) settlement in the country of first refuge; (3) resettlement in third country. See *The Last Bus*, *supra* note 83, at 28. A durable solution means helping the refugees to become more self-sufficient, and enabling them to integrate and participate fully in the social and economic life of their new country. *Id.* To many refugees, these are non-solutions, for they only wish to return to their country of origin without being singled out for harsh treatment. *Id.*

112. See *Regulating Refugee Flow*, *supra* note 70, at 629-30. President Johnson's administration used this process when it paroled over 168,000 Cubans. Act of November 2, 1966 Pub. L. No. 89-732, 80 Stat. 1611 (1966). A problem with this alternative is that individuals whose claims are denied might disappear into an underground system of hiding.

113. See, e.g., *Massachusetts v. Mellon*, 262 U.S. 447, 448 (1923). Respondent challenged the constitutionality of the Maternity Act by saying that the appropriations provided by this Act and similar legislation falls unequally upon several states.

114. See *Refugees from Laos*, *supra* note 7, at 16-17.

115. See *Hearings on Admission*, *supra* note 84, at 103. Refugee processing and admissions must remain available for those who qualify regardless of their location, date of arrival, and connections abroad. See also *Cambodians in Thailand: Refugee and Immigration Processing*, ISSUE BRIEF REFUGEES INT'L. 3, 5 (1987).

eas for applicants be improved.¹¹⁶

The panel also suggested that resettlement was not necessarily the appropriate solution for all refugees.¹¹⁷ Realistically, it is impractical, if not impossible, for the United States to grant immediate asylum to every applicant. Restrictions are necessary to ensure an orderly flow of deserving refugees.¹¹⁸ While applicants wait for the processing of their claims, or even before they have made a decision to flee their country, the United States and the world needs to direct attention to educating potential refugees in the hope of stabilizing their country of origin.¹¹⁹

By proposing that U.S. immigration policy be redirected so to lessen the influence the U.S. economy has on it, this Note does not argue that the United States should continue its policy of discouraging possible valid asylum claims. Policies need to be developed which would work to prevent the economic collapse of Southeast Asia. Policies should try to stem the migration of a country's strong economic work base and temper the deluded refugees who remain at the Thai border for years, waiting for their claims to be processed.¹²⁰

Energies should be focused on minimizing the effect of ideologies and biases in asylum determinations. It is conceded that total objectivity is impossible; however, the United States should attempt to return to the original intent of the Refugee Act of 1980.¹²¹

B. The Role of Congress

Although it is possible that Congress may not want to create

116. See *supra* note 115, at 16.

117. See *Refugees from Laos, supra* note 7; see also *The Last Bus, supra* note 111 and accompanying text.

118. The Orderly Departure Program was established through an agreement between Vietnam and the UNHCR as part of the international response to the Indochinese boat people crisis of 1978-79. It is a critical element of the long-term solution to the Indochinese refugee problem. It provides a safe legal alternative method of emigration. The program interviews applicants and looks to the reasons for their departure rather than mode of departure for bestowing refugee status (testimony of George Schultz, Secretary of State submitted to the Committee on the Judiciary House of Representatives on Sept. 23, 1987). *Id.*

119. See generally *Despite a Generous Spirit, supra* note 58. One way to stem the flow of incoming refugees is to make their own countries economically appealing so that they will decide to stay and help develop their country. As a result of the surge in trade and commerce, their nation can grow and develop to offer residents opportunity. *Id.*

120. Children are growing up in refugee camps without education, in crowded conditions, never having the desire to work or knowing the feeling of permanent residence. See CERQUONE, *supra* note 7, at 14-15.

121. See *supra* notes 16-17 and accompanying text.

specific guidelines for determining the status of an asylum applicant because noncommunists may be granted entrance more swiftly than the refugees from a communist regime, the increasing recognition and debate of the refugee problem by the Congress and the Senate may be viewed as a positive trend. The role of Congress is essential to clarifying the terms of the Refugee Act. Congress needs to make clear the items required to establish a "well-founded fear of persecution."¹²² While the definition of persecution must be specific in order to assure fairness of its application, some flexibility in favor of the applicant is needed. Flexibility may be necessary in order to abide with the Declaration of Human Rights displayed by the 1951 Convention, 1967 Protocol, and the Refugee Act.¹²³

Congress should assert its authority in the area of asylum. It needs to monitor implementation of the refugee laws to ensure that the intent behind the Refugee Act is not frustrated.¹²⁴ Congress should take action necessary to establish sound asylum policies. Biases will dissipate by limiting the discretion in determining refugee status and by not applying differing standards of proof to different applicants. Finally, the nation as a whole needs to be educated about refugees and how they differ from immigrants in order to change public sentiment toward the admission of refugees.

V. CONCLUSION

The United States must renew its commitment to the recognition that every person has a right to belong or emigrate to a country, to seek work, decent living conditions and freedom from persecution. Domestic and foreign policy objectives should be secondary when determining whether an application for asylum warrants admission. The United States and the international community needs to come together and establish a means for equitably sharing the refugee burden.

As the United States had an open and compassionate policy

122. See FBIS-EAS-88-075, *supra* note 101.

123. See *supra* notes 17-22 and accompanying text. All changes should reflect U.S. commitment to the Universal Declaration of Human Rights to treat individuals a particular way regardless of race, creed, sex, national origin, and political persuasion. The Refugee Act should explicitly mention the Khmer Rouge and delineate any criteria for determining connections with the oppressive regime. *Id.* A data base should also be developed to assess conditions in the applicant's country of origin. *Id.*

124. Congress can ask for annual reports detailing the criteria used by the INS to make asylum determinations.

for refugees over ten years ago, so too should it provide the protection and assistance duly owed to these people continuing to experience the repercussions of a war long finished, but still a prevalent part of their lives.

Jan Hillary Klinek