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The Politicization of United States Asylum and Refugee Policies.

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THE POLITICIZATION OF UNITED STATES ASYLUM AND REFUGEE POLICIES

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I. INTRODUCTION

The immigration practices of the United States are at an intersecting point between two often conflicting public policies – on the one hand, this country has a strong desire to protect those who have been persecuted and who cannot protect themselves, and on the other hand, there is a necessity to maintain strong political ties with countries all across the world. When one applies for asylum or refugee status to the United States, inevitably, one of these public policies triumphs over the other.

World War II caused much devastation across the world, and created a refugee problem that continues to shape the world today. With the formation of the United Nations, the member states faced the challenge of drafting a proposal to deal with the refugee problem and ensuring that those who are in dire need of protection from persecution will have a place to go. In 1951, the United Nations established the Convention Relating to the Status of Refugees (hereinafter the “Convention”),¹ and on January 31, 1967 amended it to the Protocol Relating to the Status of Refugees (hereinafter the “Protocol”),² incorporating the prior Conven-

1. United Nations Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150.

2. United Nations Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267.

tion.³ These policies and definitions of asylum and refugees were instrumental in shaping United States immigration laws.

After World War II, diplomacy and foreign cooperation were essential to the prevention of another large-scale conflict or world war. The two policies of maintaining peace and diplomacy and protecting those who have been persecuted went hand-in-hand. As the international community attempted to foster peaceful resolutions to various conflicts, the community also continued to provide certain protections to persecuted persons in the meantime.

While the principles of asylum and refuge were initially formulated to protect those who were the subjects of grave persecution and who feared such persecution in the future, the operation of such immigration policies, especially in the United States, shifted away from its ideological core. The politics of international relations have changed dramatically since the formulation of the United Nations Protocol, and the humanitarian principles of asylum and refugee status have become harder to implement. Increasingly, the emphasis of asylum policies has shifted from the humanitarian practice of asylum to the use of the policy as a political tool by American foreign policy agents.

Rather than giving asylum to people who are in dire need of protection, asylum is granted to those who come from countries that the United States condemns for their political regimes or those countries that the United States does not necessarily have the strongest diplomatic relations with. Part one of this Note explains the United States policies of granting asylum and refugee relief, the different classes of relief available, and compares the United States policies to those of the United Nations Protocol. This section also outlines the different theories underlying asylum policies, with a special emphasis on the political conception of asylum. Part two of the Note discusses the politicization of United States asylum and refugee policies in response to pressure by interest groups, as well as the changes implemented after September 11, 2001. The second section also analyzes the different mechanisms that the United States has in place that exacerbate the politicization of asylum practices. Section three of the Note provides case studies of three countries—China, Cuba and Saudi Arabia—as illustrations of that politicization. Finally, the Note ends by offering ways to improve the asylum laws by detaching them from some of the political mechanisms in place. While completely divorcing politics from asylum policies is impossible, the suggested changes joined with a general awareness of the politicization can ensure a move in the right direction: protection of those who endured grave human rights abuses.

3. *Id.* at art. 1 (stating that the member parties of the Protocol apply articles two to thirty-four of the Convention to refugees).

II. UNITED STATES ASYLUM AND REFUGEE POLICY

The United States asylum and refugee policy derives its principles directly from the United Nations Protocol definition of refugees.⁴ A refugee is any person 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,” and as a result is “unable or unwilling to avail himself or herself of the protection” of “any country of such person’s nationality or in the case of having no nationality, the country in which he last resided.”⁵ The United States Court of Appeals for the Ninth Circuit has defined the standard for a well-founded fear as containing two specific requirements: (1) “the fear [must] be genuine” and (2) there must be “credible, direct, and specific evidence in the record, of facts that would support a *reasonable* fear that petitioner faces persecution.”⁶ The applicant bears the burden of establishing that he is, in fact, a refugee under Section 101(a)(42) of the Immigration and Nationality Act (INA).⁷

The grant of asylum or refugee status is only one step on the road to permanent residence status and citizenship. In essence, this status offers “a *political good–membership*” to the aliens and provides them with a sense of belonging.⁸ Recipients of asylum or refugee status are expected to integrate into society socially, economically as well as politically.⁹ If the applicants comport with United States law, they are then eligible to adjust their status to legal permanent residents, and eventually, after the applicable period of time, to citizenship.¹⁰

4. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 437 (1987) (“Not only did Congress adopt the Protocol’s standard in the statute, but there were also many statements indicating Congress’ intent that the new statutory definition of ‘refugee’ be interpreted in conformance with the Protocol’s definition.”).

5. Immigration and Nationality Act § 101(a)(42), 8 U.S.C.A. § 1101(a)(42) (West 2007) (defining the term “refugee” under the Act).

6. *Rebollo-Jovel v. INS*, 794 F.2d 441, 443 (9th Cir. 1986) (emphasis added) (citing *Diaz-Escobar v. INS*, 782 F.2d 1488, 1492 (9th Cir. 1986)). A well-founded fear contains a subjective component because the fear has to be genuine and an objective component because the fear must be reasonable. *Id.*

7. Immigration and Nationality Act § 101(a)(42), 8 U.S.C.A. § 1101(a)(42) (West 2007); see 8 C.F.R. § 208.13(a) (2007) (requiring that the applicant for asylum overcome the burden of proof to establish his or her refugee status under section 101(a)(42) of the Immigration and Nationality Act).

8. Matthew E. Price, *Persecution Complex: Justifying Asylum Law’s Preference for Persecuted People*, 47 HARV. INT’L L.J. 413, 431 (2006) (discussing that the political good–membership not only provides protection to those persecuted in their home country, but also a sense of belonging and an opportunity to become a citizen of the host country).

9. *Id.*

10. *Id.* (citing 8 U.S.C. § 1159(b)(2) (2000)).

The Refugee Act of 1980, which brought the United States into compliance with United Nations Protocol,¹¹ further divides the class of immigrants¹² into two specific categories: refugees and asylum seekers.¹³

A. *Refugees*

Refugees are aliens¹⁴ outside of the United States who are applying for relief, and may be processed for status within their homeland country.¹⁵ To qualify for refugee status, an applicant must be a refugee as defined in the INA,¹⁶ as well as be of special humanitarian concern to the United States. The President, after consultation with Congress, determines what constitutes a humanitarian concern for the purposes of refugee admis-

11. KELLY JEFFERYS, OFFICE OF IMMIGRATION STATISTICS, U.S. DEP'T OF HOMELAND SEC., *REFUGEES AND ASYLEES: 2006*, at 2 (2007), http://www.dhs.gov/xlibrary/assets/statistics/publications/Refugee_AsyLeeSec508Compliant.pdf (enacting the Refugee Act of 1980 which established an adjudication standard for refugees and brought the United States into agreement with the United Nations Protocol of 1967). The 1967 Protocol barred any country from delivering a refugee to a country where the refugee's life or liberty would be endangered. *Id.*

12. Immigration and Nationality Act § 101(a)(15), 8 U.S.C.A. § 1101(a)(15) (West 2007) (defining an immigrant as "every alien" except one that specifically falls under a category of non-immigrant aliens as delineated in the Act).

13. It should be noted that there is also a third category, temporary protection status. However, this category does not confer any permanent status on the alien and does not allow him to adjust to status of citizenship. *See* Immigration and Nationality Act § 244a(f), 8 U.S.C.A. § 1254a(f) (West 2007) (stating benefits and status under temporary protection status). Temporary protection status is generally conferred to aliens in countries that have an ongoing conflict within the state or those who experience "substantial, but temporary, disruption of living conditions" caused by an "earthquake, flood, drought, epidemic or other environmental disaster." Immigration and Nationality Act § 244a(b)(1)(B)(i), 8 U.S.C.A. § 1254a(b)(1)(B)(i) (West 2007) (stating circumstances where the Attorney General may designate temporary protection status).

14. Immigration and Nationality Act § 101(a)(3), 8 U.S.C.A. § 1101(a)(3) (West 2007) (defining an alien as any person who is "not a citizen or national of the United States").

15. KELLY JEFFERYS, OFFICE OF IMMIGRATION STATISTICS, U.S. DEP'T OF HOMELAND SEC., *REFUGEES AND ASYLEES: 2006*, at 1 (2007), http://www.dhs.gov/xlibrary/assets/statistics/publications/Refugee_AsyLeeSec508Compliant.pdf (differentiating those who qualify for refugee status and may be eligible, under the Immigration and Nationality Act, to apply for refugee status from within their country of origin).

16. *See* Immigration and Nationality Act § 101(a)(42), 8 U.S.C.A. § 1101(a)(42) (West 2007).

The term "refugee" means "any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion *Id.*

sions based on whether “an unforeseen emergency refugee situation exists” and if the admission of refugees “is justified by grave humanitarian concerns or is otherwise in the national interest”¹⁷ The applicant must also be admissible under the INA in that the applicant does not pose a danger to the United States.¹⁸ Additionally, refugees cannot qualify for status within the United States if they were previously firmly resettled in any other foreign country and received an offer of permanent status there.¹⁹ United States Refugee Admission Program (USRAP) determines eligibility for this category of relief on a case-by-case basis.²⁰

17. Immigration and Nationality Act § 207(b), 8 U.S.C.A. § 1157(b) (West 2007) (stating determinations by the President necessary for admissions of refugees for humanitarian concerns); *see generally* Immigration and Nationality Act § 207(e), 8 U.S.C.A. § 1157(e) (West 2007) (stating what constitutes appropriate consultation with Congress for determinations by the President).

18. Immigration and Nationality Act § 208(b)(2)(A), 8 U.S.C.A. § 1158(b)(2)(A) (West 2007) (listing exceptions under which the Attorney General will deny admissibility to an applicant). The Immigration and Nationality Act sets certain standards for admissibility of immigrants into the United States and declares that certain people are not admissible under the Act. *Id.* Some of the things that can preclude admission include convictions of particularly serious crimes (e.g., aggravated felonies), participation in the persecution of others, a reasonable belief that the individual has committed serious crimes outside the United States; or that the individual poses a danger to the security of the United States. *Id.*

19. 8 C.F.R. § 1208.13(c)(2)(i)(B) (2008) (compelling mandatory denial of applications for asylum filed prior to April 1, 1997, where the applicant had previously been firmly resettled in a foreign country); *see* 8 C.F.R. § 1208.15 (2008) (“An alien is considered to be firmly resettled if, prior to arrival in the United States, he or she entered into another country with, or while in that country received, an offer of permanent resident status, citizenship, or some other type of permanent resettlement”). The section includes two escape clauses by which the alien can demonstrate that he or she was not firmly resettled in another country:

(a) That his or her entry into that country was a necessary consequence of his or her flight from persecution, that he or she remained in that country only as long as was necessary to arrange onward travel, and that he or she did not establish significant ties in that country; or

(b) That the conditions of his or her residence in that country were so substantially and consciously restricted by the authority of the country of refuge that he or she was not in fact resettled. *Id.*

See also Immigration and Nationality Act § 208(b)(2)(vi), 8 U.S.C.A. § 1158(b)(2)(A)(vi) (West 2007) (“[T]he alien was firmly resettled in another country prior to arriving in the United States.”).

20. KELLY JEFFERYS, OFFICE OF IMMIGRATION STATISTICS, U.S. DEP’T OF HOMELAND SEC., REFUGEES AND ASYLEES: 2006, at 2–3 (2007), http://www.dhs.gov/xlibrary/asets/statistics/publications/Refugee_AstyleeSec508Compliant.pdf (summarizing that the USRAP has a tiered process for determining eligibility which includes individual referral by a U.S. embassy or an official of the United Nations High Commissioner for Refugees (UNHCR) and subsequent interview by a U.S. immigration officer).

The INA gives the President the power to designate certain nationalities as automatically eligible for refugee status.²¹ “In 2006, 41,150 persons were admitted into the United States as refugees.”²² The countries producing the most refugees into the United States were Cuba, Russia and Somalia.²³ Refugee admissions into the United States peaked in the 1990s but have dropped significantly since then.²⁴ This decline is due in part to the security changes implemented after September 11, 2001, and the more stringent admission requirements of the USA PATRIOT Act of 2001 and the Real ID Act of 2005.²⁵

B. *Asylum Seekers*

Unlike refugees, asylum seekers are already in the “United States or at a port of entry.”²⁶ Asylum applicants must also comply with the INA definition of refugee,²⁷ and must apply for asylum within one year of arrival in the United States.²⁸ Under the Refugee Act of 1980, there are two specific ways to qualify for asylum in the United States: affirmatively or defensively.²⁹ In order to be granted status affirmatively, the alien applies and interviews with an asylum officer of the United States Citizen-

21. *Id.* at 11.

22. *Id.*

23. *Id.* (distinguishing between the 41,150 refugees admitted from leading countries like Somalia, Russia, Cuba and the 26,113 asylees who were admitted from leading countries like China, Haiti, and Colombia).

24. *Id.* (commenting that in the early 1990s, there were over 100,000 refugees admitted into the United States, but the figures continued to consistently drop throughout the 1990s and early 2000s).

25. KELLY JEFFERYS, OFFICE OF IMMIGRATION STATISTICS, U.S. DEP’T OF HOMELAND SEC., REFUGEES AND ASYLEES: 2006, at 3 (2007), http://www.dhs.gov/xlibrary/assets/statistics/publications/Refugee_AsyleeSec508Compliant.pdf. See discussion *infra* section III.B.

26. *Id.* at 4 (recognizing that, other than the location of application, an “asylee” must meet the same definition of “refugee” in the INA).

27. See Immigration and Nationality Act § 101(a)(42), 8 U.S.C.A. § 1101(a)(42) (West 2007).

28. Immigration and Nationality Act § 208(a)(2)(B), 8 U.S.C.A. § 1158(a)(2)(B) (West 2007) (“[T]he alien [must] demonstrate[] by clear and convincing evidence that the application has been filed within [one] year after the date of the alien’s arrival in the United States.”) An alien can get around the one year limitation for asylum if he can show the “existence of changed circumstances, which materially affect the applicant’s eligibility for asylum or extraordinary circumstances relating to the delay in filing an application within” the one year period. Immigration and Nationality Act § 208(a)(2)(D), 8 U.S.C.A. § 1158(a)(2)(D) (West 2007).

29. See KELLY JEFFERYS, OFFICE OF IMMIGRATION STATISTICS, U.S. DEP’T OF HOMELAND SEC., REFUGEES AND ASYLEES: 2006, at 4 (2007), http://www.dhs.gov/xlibrary/assets/statistics/publications/Refugee_AsyleeSec508Compliant.pdf (affirming that under the Refugee Act of 1980, asylum may be granted affirmatively by the U.S. Citizenship and Immi-

ship and Immigration Services (CIS) of the Department of Homeland Security.³⁰ If an alien does not qualify affirmatively, the alien is granted an opportunity to present and defend his or her case before an immigration judge of the Executive Office of Immigration Review (EOIR) of the Department of Justice through a removal hearing.³¹

The United States admits considerably less asylum applicants than refugees. In 2006, 26,113 persons were granted asylum,³² mainly from China, Haiti and Colombia.³³ Unlike the decline in rate of refugee admissions, asylum grants have risen throughout the late 1990s and 2000s.³⁴

C. *Comparison of the United States Criterion for Asylum/Refugee Grants with Those Established by the United Nations*

The 1951 United Nations Convention Relating to the Status of Refugees attempted to find a reasonable solution to the refugee problems caused by World War II.³⁵ The principle underlying the United Nations Convention is that all people must enjoy certain “fundamental rights and freedoms without discrimination.”³⁶ Under the United Nations Convention, member states must treat refugees or persons seeking asylum the same as other aliens within their country.³⁷ Additionally, as signatories to the United Nations treaty, member states commit to facilitate the naturalization of asylees and refugees as citizens and encourage their assimila-

gration Services or defensively by way of a removal hearing by the Executive Office of Immigration Review).

30. *Id.*

31. KELLY JEFFERYS, OFFICE OF IMMIGRATION STATISTICS, U.S. DEP'T OF HOMELAND SEC., REFUGEES AND ASYLEES: 2006, at 4 (2007), http://www.dhs.gov/xlibrary/assets/statistics/publications/Refugee_AsyleeSec508Compliant.pdf. (“The immigration judge may grant asylum or issue a denial and an order of removal. The applicant may appeal the denial to the Board of Immigration Appeals.”).

32. *Id.* at 5 (increasing from 25,160 persons in 2005).

33. *Id.* at 4 (citing the U.S. Department of Homeland Security and Executive Office for Immigration Review of the U.S. Department of Justice).

34. *Id.* at 3 (illustrating the increasing rate of admissions for asylees from 1990 to 2006).

35. *See* United Nations Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150. The applicability of this standard to today's modern times has often been criticized, since the asylum/refugee policy followed today is one that was drafted in response to World War II. Arguably, the refugee problem occurring in the world today is quite different than the one that resulted after World War II.

36. *Id.* (“The High Contracting Parties, considering that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination . . .”).

37. *Id.* at art. 791 (“Except where this Convention contains more favorable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.”).

tion.³⁸ The aforementioned Convention also lists several conditions under which a person is no longer considered a refugee for purposes of the statute, such as being “guilty of acts contrary to the purposes and principles of the United Nation.”³⁹

The United Nations Convention provides for a degree of accountability against the member states to ensure that they are complying with its principles and policies. As such, the United Nations High Commissioner for Refugees has the authority to supervise the international conventions providing for the protection of refugees.⁴⁰ The Convention requires the member states to provide the United Nations with information and statistical data to ensure their compliance.⁴¹

The United States has agreed to comply with the definition of refugees and the policies outlined in the Protocol.⁴² While the United States attempts to follow the United Nations refugee and asylum policies, there are some significant variations between the two. Though the United States applies the United Nations Convention’s definition of refugee,⁴³

38. *Id.* at art. 34 (requiring the contracting states to make every effort possible to expedite the naturalization process and reduce the costs of the proceedings).

39. United Nations Convention Relating to the Status of Refugees, art. 1, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150 (specifying limitations such as crimes against peace, serious non-political crimes outside the country of refuge, and an all encompassing “guilty of acts contrary to the purposes and principles of the United Nations”).

40. *Id.* at art. 35, ¶ 1.

The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention. *Id.*

41. *Id.* at art. 35, ¶ 2 (stating that in order to facilitate the Office of the High Commissioner in making reports to the United Nations, the contracting states will provide them with information and statistical data). The Convention specifically requests information and statistical data concerning “the condition of refugees,” the implementation of the Convention and any laws, regulations and decrees that could in force relate to refugees. *Id.* This was designed to ensure that the contracting states are constantly held accountable, and that they follow the conventions in a legitimate and consistent manner. *Id.*

42. See United Nations Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267. The U.S. is a signatory to the Protocol Relating to the Status of Refugees signed in New York on January 31, 1967. *Id.* The 1967 Protocol incorporates the previous Convention Relating to the Status of Refugees from July 28, 1951. *Id.*

43. United Nations Convention Relating to the Status of Refugees, art. 2, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150. (“Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.”). The United Nations Convention has many escape clauses and declares that every refugee has general obligations and duties to the country in which he is seeking refuge. *Id.* He must conform to the laws and regulations of that country. *Id.* The country is free to come up with laws and regulations for the refugees/asylees living in the country. *Id.*

the United States imposes additional limitations on those seeking asylum or refugee status and broadens the category of those inadmissible for purposes of immigration law.⁴⁴

The Convention includes an important non-discrimination clause requiring member states to “apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.”⁴⁵ This provision emerges from the previously stated principle that all human beings are entitled to certain fundamental rights and freedoms.⁴⁶ The United States has not followed this principle wholeheartedly, and under the guise of the United Nations Convention’s national security exception, the United States has discriminated against refugees and asylum seekers based on their country of origin.⁴⁷ Prior to discussing the politicization of United States asylum and refugee policies, it is necessary to understand the underlying theories and purposes that refugee status and asylum are meant to serve.

D. *Theories of Asylum/Refugee Law*

There are two prominent theories explaining why countries should grant asylum and refugee status to certain applicants—the humanitarian conception of asylum and the political conception of asylum.⁴⁸

The humanitarian conception views the origin of asylum law as the United Nations’ reaction to the moral problems created during World War II by certain countries persecuting their individual citizens.⁴⁹ This theory of asylum posits that all who need special protection from serious

44. Immigration and Nationality Act § 208(b)(2)(A), 8 U.S.C.A. § 1158(b)(2)(A) (West 2007) (noting that the INA category of inadmissibility is much broader for refugees).

45. United Nations Convention Relating to the Status of Refugees, art. 3, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150 (specifying that all of the contracting states should not discriminate against any of the refugees based on where they are from, the color of their skin, or what they believe).

46. *Id.* at Preamble.

47. *Id.* at art. 9.

Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a refugee and that the continuance of such measures is necessary in his case in the interests of national security. *Id.*

48. See Matthew E. Price, *Persecution Complex: Justifying Asylum Law’s Preference for Persecuted People*, 47 HARV. INT’L L.J. 413, 418 (2006) (identifying both the “humanitarian” and “political” conceptions of asylum). This Note will focus mainly on the political conception of asylum as it explains the U.S. policies of asylum and refugee status in a more accurate manner.

49. *Id.* at 419 (commenting that the humanitarian conception theory may have been derived from the desire of the 1951 United Nations Convention Relating to the Status of

harm, regardless of the source of harm, are entitled to asylum.⁵⁰ It expands on the principles outlined by the United Nations Convention and focuses on the applicant's *need for protection* rather than the source of the persecution.⁵¹ Furthermore, this theory calls for political neutrality in the grants of asylum and refuge as outlined in the 1967 United Nations General Assembly Resolution on Territorial Asylum.⁵²

By focusing on a person's *need* for protection, this theory provides broader rights to asylum. Under this view, nationals that face famine or war in their home countries would be better protected. The focus on the need for protection, as urged by the humanitarian conception, is misplaced, since there are a variety of other ways to protect refugees, and asylum is not always necessary.⁵³ Furthermore, this theory fails to account for the political forces and the foreign policy implications of granting asylum and refuge to nationals of other countries.

Conversely, the goal of asylum under the political conception theory is to protect those who were persecuted by the government of their home country.⁵⁴ This theory provides that the focus of granting protection is not based on the aliens' level of persecution, but rather on the legitimacy

Refugees to attract attention to the Soviet Union's mistreatment of political dissents, but hide the West's failure to provide its citizens socio-economic human rights).

50. *Id.* at 421 (“[T]he *fact* of a foreigner's *need for protection*—regardless of whether that need results from persecution, civil war, famine, extreme poverty, or some other cause—grounds a moral claim for protection in the form of asylum.” (footnote omitted)). The humanitarian conception of asylum would also provide asylum/refugee status to those who are displaced as a result of a natural disaster (the protection accorded under Temporary Protection Status). *Id.* This view believes that asylum should do away with arbitrary distinctions, and grant status to those who are similarly situated in regard to their need for protection. *Id.*

51. *Id.* at 418. The determination of which regions and nationals should receive the most protection should be based on the immediacy of the threats as well as the potential degree of human rights abuses in those countries/regions. *Id.* at 421. Arguably, some of the nationals to whom we give the most protection would be further down the list, since lack of religious freedom or democracy would not satisfy the immediacy standard. *Id.*

52. *Id.* at 423 (“[T]he grant of asylum by a state . . . is a peaceful and humanitarian act and . . . as such, it cannot be regarded as unfriendly by any other state” (quoting *Declaration on Territorial Asylum*, G.A. Res. 2312 (XXII), at 81, U.N. GAOR, 22nd Sess., Supp. No. 16, U.N. Doc. A/6716 (Dec. 14, 1967))).

53. Matthew E. Price, *Persecution Complex: Justifying Asylum Law's Preference for Persecuted People*, 47 HARV. INT'L L.J. 413, 418 (2006) (referencing financial and material aid, temporary protection, overseas refugee resettlement programs, and diplomatic or military intervention as other ways states can protect refugees).

54. *Id.*

of the country they come from as well as that country's capability to protect them.⁵⁵

Under international law, a state can exercise authority over its citizens even when they are outside its boundaries.⁵⁶ When people seek refuge or asylum in another country they are in essence requesting from that host country to protect them from the exercise of jurisdiction by their home country; thus, asylum directly interferes with a state's right to control its citizens and ensure their compliance under its own laws. By granting asylum to a person, the host country prevents the asylee's home country from exercising *any* authority over its citizen, and essentially relinquishes any citizenship status of that individual.⁵⁷ The asylees and refugees are then immune from any attempt by their home country to exercise power over them. A state that chooses to grant asylum must have justification for doing so as it is electing to interfere with the internal affairs of another country.⁵⁸ Consequently, the host country must ultimately decide whether it will risk its relationship with the home country by granting asylum or whether it will deny asylum to preserve the relationship.

Asylum provides foreign nationals with protection against harm inflicted on them for unjustifiable reasons by state actors or by non-state actors with the approval of the state.⁵⁹ Those seeking asylum must establish that they have been persecuted in the past or that they have a well-founded fear of future persecution.⁶⁰ By granting asylum under this standard, the host country acknowledges that the home country has acted illegitimately by persecuting people directly or approving such persecution by others. A grant of asylum or refugee status sends a clear message

55. *Id.* (“The political conception [theory] does not focus on the mere *fact* of an asylum seeker's need for protection; instead, it focuses on the *legitimacy* of, and the *state's culpability* in the asylum seeker's exposure to harm.”).

56. *Id.* at 424.

57. *Id.* (“Granting asylum to someone makes him *inviolable* in relation to his state. Asylum places him beyond the authoritative reach of his sovereign, sheltering him against prosecution or punishment by *immunizing* him against his sovereign's claim to exercise jurisdiction over him.”). When a country grants asylum or refugee status, it expects the asylees/refugees to cut all ties with their home country. *Id.* In theory, this should not be a difficult thing to do since the government of their country persecuted those persons and they have a well-founded fear of future persecution, so they should not want to return there. *Id.*

58. See Matthew E. Price, *Persecution Complex: Justifying Asylum Law's Preference for Persecuted People*, 47 HARV. INT'L L.J. 413, 424–25 (2006) (“To immunize a person against her state's authoritative processes requires justification, because granting such immunity affects the legal interests of her state.”).

59. *Id.* at 424 (discussing the function of the political conception of asylum theory).

60. See *supra* Part II (establishing the prerequisites for obtaining asylum status).

to the home country: “You cannot take care of your own people—your people are suffering and you are abusing them.”⁶¹

Countries can also use asylum for its probationary effect.⁶² If the oppressive regime does not change their treatment of their citizens, then it risks a more large-scale interference with its domestic affairs. In most situations, the number of persecuted people is small enough that asylum can provide adequate protection.⁶³ However, the case becomes more difficult when the oppressive regime produces so many victims that it is not possible to absorb them all into other countries. The more appropriate expression of condemnation in such a case is dealing with the regime directly, often times by military intervention.⁶⁴

When a host country resorts to asylum, it opens the door for the home country to change its ways. Asylum and refugee status do not give people immediate permanent status; rather, it gives them the opportunity to apply for legal permanent resident status and then for citizenship. Until the asylees and refugees receive permanent status, they are subject to a cessation clause, which allows the granting country to cancel the refugee/asylee status if conditions in their home country are safe enough for their return.⁶⁵

61. See Matthew E. Price, *Persecution Complex: Justifying Asylum Law's Preference for Persecuted People*, 47 HARV. INT'L L.J. 413, 425 (2006) (“Because [granting asylum] reflects a judgment that the asylum seeker was being *abused*, not merely that she was suffering, asylum communicates condemnation of the asylum seeker’s state of origin.”).

62. *Id.* at 444 (“Granting asylum thus expresses to a state not only that its treatment of a particular citizen is unacceptable, but also that it is on probation.”). Asylum policy is just one of the many ways to show disapproval of the government; the other more extreme ways include overthrowing the oppressive regime or liberalizing the country through military intervention. *Id.*

63. *Id.* (“In most cases, the number of people persecuted by any given government is small enough to be absorbed abroad without much difficulty, and more coercive interference would be grossly disproportionate to the harms that would be prevented.”).

64. *Id.* at 444–45 (exposing the “other tools in the refugee policy toolkit” used to protect “victims of persecution,” other than asylum). When the persecution of persons within a certain country reaches a very high number, where it is impossible to grant asylum or refuge to many people, the international community often chooses the other means of showing disapproval of the regime: international intervention in the domestic affairs of the country. *Id.*

65. See Matthew E. Price, *Persecution Complex: Justifying Asylum Law's Preference for Persecuted People*, 47 HARV. INT'L L.J. 413, 431 (2006) (comparing the grant of asylum to Temporary Protection Status, under which “recipients of such status are given permission to remain in the country for a predetermined period of time, which can be extended at the discretion of the executive, and, in most countries, are ineligible to adjust their status to legal permanent residence regardless of their length of stay”). Arguably, the hope that the home country will change its ways is not present when the United States resorts to other forms of condemnation. When the United States decides to engage in military intervention

Regardless, asylum sends a strong negative message, and a country may choose to deny entirely applications from a particular country or reserve it for the most extreme cases. When two countries have a strong, strategic diplomatic relationship, the host country may be reluctant to grant any status that condemns the policies of their “strategic diplomatic partner.”⁶⁶ Such interference in the internal policies of one nation can be detrimental to the relationship between the two countries, and denying asylum is often times as strategic as granting asylum.⁶⁷

III. THE POLITICIZATION OF UNITED STATES ASYLUM AND REFUGEE POLICIES

The structure of United States immigration law, as well as reactions to political pressures from interest groups and growing security concerns, have exacerbated the politicization of asylum and refugee policies in the United States.

A. *Asylum Policies in Response to Pressures from Interest Groups*

United States immigration law gives power to the President and Congress to designate certain nationalities as warranting particular humanitarian concern and admission ceilings for specific countries and regions.⁶⁸ Oftentimes, this power is used for political means as a way of currying favor with domestic constituents. As a result of lobbying efforts, Congress might raise the admission caps as to one country, which consequently reduces the chances of refugee/asylum applicants from other countries.⁶⁹

in response to human rights abuses in a country, there is no hope retained that the regime will change its ways, and the appropriate remedy is a new regime altogether.

66. In this instance, “strategic diplomatic partner” is in quotes to signify that often times two particular countries maintain a relationship not because they agree with each other’s policies, but because they desire certain benefits from each other such as military support or the exchange of goods and resources (e.g., the relationship between the United States and Saudi Arabia).

67. See discussion *infra* Part IV.C.4 (discussing the relationship between the United States and Saudi Arabia in the context of asylum and refugee policy).

68. See KELLY JEFFERYS, OFFICE OF IMMIGRATION STATISTICS, U.S. DEP’T OF HOMELAND SEC., REFUGEES AND ASYLEES: 2006, at 2 (2007), http://www.dhs.gov/xlibrary/assets/statistics/publications/Refugee_AsyLeeSec508Compliant.pdf (noting that the President consults with Congress at the beginning of the fiscal year to determine the admissions ceilings and allocations).

69. See Matthew E. Price, *Persecution Complex: Justifying Asylum Law’s Preference for Persecuted People*, 47 HARV. INT’L L.J. 413, 448 (2006) (“[P]oliticians attempting to curry favor with domestic constituencies may reserve scarce slots for ethnic groups who do not have objectively strong claims for admission, let alone membership. This sort of hijacking has clearly been in evidence in U.S. refugee policy.”). There is a general cap on

Political attempts to curry favor with domestic constituents are reflected in asylum/refugee admission rates from certain regions of the world. In 2006, the admission cap was set at 70,000, and out of those, 15,000 were allocated to applicants from Europe and Central Asia.⁷⁰ Many of those admitted were Jews, Evangelical Christians and Ukrainian Catholics from former Soviet Union countries.⁷¹ Interestingly, the figures from the late 1990s are even more significant. In 1998, there was an admission cap of 83,000 refugees, with 51,000 reserved for people from Europe and only 7000 reserved for people from Africa.⁷²

These striking statistics demonstrate the politicization of U.S. asylum and refugee policy. Rather than assign larger admission caps to those regions of the world that are suffering the gravest political, social or economical turmoil, refugee slots are often allocated according to the groups that exert the most political pressure. The weakest groups often do not have a voice and a lobby on their behalf. That is not a principled reason for curtailing their admission into the United States.

B. *The Changes Post–September 11th Terrorist Attacks*

The terrorist attacks of September 11, 2001 not only changed United States foreign policy, but also completely restructured United States immigration law. On March 1, 2003, the United States Immigration and Naturalization Service (INS) merged into the newly created Department of Homeland Security.⁷³ In addition, Congress introduced and passed many statutes regarding immigration, foreign exchange and other more specific laws to deal with the growing security concerns.

After the September 11th attacks, immigration and related U.S. policy came under close scrutiny. The terror attacks of September 11th brought memories of the prior 1993 bombing of the World Trade Center, where one of the alleged perpetrators originally entered the United States under

admission, both for asylum and refugees. *Id.* If the U.S. increases the numbers of one country or region, naturally this will reduce the asylum and refugee grants for the rest of the world. *Id.*

70. *Id.*

71. *Id.*

72. *Id.* (citing Determination No. 97–37, 62 Fed. Reg. 53219 (Sept. 30, 1997)).

73. See Donald Kerwin, *The Use and Misuse of “National Security” Rationale in Crafting U.S. Refugee and Immigration Policies*, 17 INT’L J. REFUGEE L. 749, 749 (2005); Eleanor Acer, *Refugee in an Insecure Time: Seeking Asylum in the Post – 9/11 United States*, 28 FORDHAM INT’L L.J. 1361, 1372 (2005) (“On March 1, 2003, the INS was abolished and its functions transferred to the new DHS.”). See generally GEORGE W. BUSH, THE DEPARTMENT OF HOMELAND SECURITY 2 (2002), <http://www.dhs.gov/xlibrary/assets/book.pdf> (“The mission of the Department of Homeland Security would be to: [p]revent terrorist attacks within the United States; [r]educe America’s vulnerability to terrorism; and [m]inimize the damage and recover from attacks that do occur.”).

the guise of seeking asylum.⁷⁴ The years immediately following the September 11th attacks had the lowest numbers of refugee and asylum admissions in a quarter of century.⁷⁵

The resulting effects on asylum and refugee seekers have been vast. The practice of asylum/refuge policies became even more politicized when the United States merged immigration policies with other national security laws.⁷⁶ Under the USA PATRIOT Act, the category of those held inadmissible for purposes of immigration law has been broadened to include individuals involved in terrorist organizations or individuals who have provided support to any foreign terrorist organization or similar group that publicly endorsed acts of terrorism.⁷⁷ Furthermore, under the Real ID Act of 2005,⁷⁸ asylum seekers now have to show that their “race, religion, nationality, membership in a particular social group, or political opinion” represented “one central reason” for the persecution they endured.⁷⁹ The asylum/refugee seeker is also required to demonstrate the

74. David A. Martin, *Two Cheers for Expedited Removal in the New Immigration Laws*, 40 VA. J. INT'L L. 673, 676 (2000) (listing examples of high-profile events related to asylum seekers).

75. See Donald Kerwin, *The Use and Misuse of “National Security” Rationale in Crafting U.S. Refugee and Immigration Policies*, 17 INT'L J. REFUGEE L. 749, 756 (2005) (“In 2002 and 2003, the United States admitted 26,839 and 28,306 refugees respectively . . .”). United States refugee admissions and asylum grants have increased substantially since 2004, but not to the levels of pre-September 11th. *Id.*

76. Eleanor Acer, *Refuge in an Insecure Time: Seeking Asylum in the Post – 9/11 United States*, 28 FORDHAM INT'L L.J. 1361, 1361 (2005) (“[R]efugee and asylum policy is being securitized as a result of the horrific terrorist attacks of September 11. . . . Yet those who seek refuge in the United States have been profoundly affected by the many new immigration policies and practices that were initiated in the months and years following the attacks.” (footnote omitted)).

77. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, (USA PATRIOT Act) Pub. L. No. 107-56, § 411, 115 Stat. 272, 345–50 (2001). In addition to those engaged in terrorism, inadmissibility applies to those who provided material support to them, and under this principle, asylum/refuge could be denied to the families of those involved in terrorism. *Id.* This has had an effect on those nationals who actively resisted the governmental forces in their countries. *Id.* For example, under this provision, Burmese nationals of the Christian minority, who were victimized by their government, were deemed as inadmissible because they provided support to a dissent movement, which also engaged in armed force as means of resistance. See Eleanor Acer, *Refuge in an Insecure Time: Seeking Asylum in the Post – 9/11 United States*, 28 FORDHAM INT'L L.J. 1361, 1365 (2005) (“In the wake of the September 11th attacks, the U.S. government took a number of steps to broaden its authority to detain non-citizens.”).

78. Real ID Act of 2005, Pub. L. No 109-13, 119 Stat. 231 (2005) (codified as amended at 8 U.S.C. § 1158). The Real ID Act, along with making significant changes to the immigration policies, also created certain minimum nationwide standards for state driver's licenses or ID cards that states are required to follow. *Id.* at 312.

79. *Id.* § 101(a)(3)(B)(i)

persecutor's motive and provide corroborating evidence to help establish such claims.⁸⁰ In addition, the Real ID Act of 2005 gives immigration judges and asylum officers more discretion to make credibility judgments about the asylum seekers; they have the authority to deny any such application as a result of negative findings of credibility.⁸¹

The War on Terror allows the United States to craft its new immigration policies around its national security concerns without wholly violating the principles outlined in the United Nations Protocol. The United Nations Convention Relating to the Status of Refugees provides a national security exception, which states that the Convention does not prevent the member states "in time of war or other grave and exceptional circumstances" from taking certain actions that it believes are essential to the national security of its homeland.⁸² The United States, however, has failed to define precisely what "national security" means.⁸³

C. *The Structure of United States Immigration Law Exacerbates the Problem of Politicization*

United States immigration law contains several features that allow for the relationship with the country of refuge to determine the outcome in a particular case and exacerbates the politicization of its asylum policies.

1. Reliance on State Department Country Reports for Factual Background on Conditions in the Home Country

In trying to ascertain whether a national deserves a positive grant of status in the United States, the immigration authorities must not only consider whether the applicants showed a "well-founded fear of persecution," but also whether the conditions in the country of origin provide a risk of future persecution.⁸⁴ Thus, the immigration judge deciding an ap-

80. *Id.* § 101(a)(3)(B)(ii) (resulting in substantial changes in the burden of proof and the type of proof required in order to be granted asylum).

81. *Id.* § 101(d)(2) (codified as amended at 8 U.S.C. § 1229a) (stating that an immigration judge makes a credibility determination based on witness testimony even if it is not at the heart of witness' claim).

82. United Nations Convention Relating to the Status of Refugees, art. 9, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150 (giving a contracting state the ability to act when there is a national security crisis).

83. See Donald Kerwin, *The Use and Misuse of "National Security" Rationale in Crafting U.S. Refugee and Immigration Policies*, 17 INT'L J. REFUGEE L. 749, 750 (2005) ("Despite its prominence as a rationale for immigration restrictions, 'national security' has not been rigorously defined or applied in the U.S. immigration context.").

84. Eliot Walker, *Asylees in Wonderland: A New Procedural Perspective on America's Asylum System*, 2 Nw. J. L. & SOC. POL'Y 1, 4 (2007) (outlining the requirements necessary for an applicant to establish in order to receive an affirmative grant of asylum). This claim is ascertained according to the reasonable person standard. *Id.*

plicant's status must look at the current country conditions and human rights practices in order to make such a determination.⁸⁵

In presenting factual information regarding the country conditions, the Department of Homeland Security relies heavily on the United States Department of State Country Reports on Human Rights Practices. While the respondent is allowed to present contrary evidence on the home country conditions, the State Department country reports hold much more weight.⁸⁶ Similarly, when a respondent is trying to receive asylum defensively, the immigration judge often relies on the information provided by the Department of Homeland Security in making credibility determinations of a respondent's claim.⁸⁷ If the respondent's testimony conflicts with the information presented in the country reports, that can often lead to an adverse credibility finding by the immigration judge, and ultimately a denial of status.⁸⁸

There are many problems with the over-reliance on the State Department country reports. The authors of the country reports are unknown, and the respondent is not given a chance to cross-examine those who oftentimes are providing the strongest evidence against his case.⁸⁹ Repeatedly, those reports provide only a generalized summary of the recent conditions in the country and may not actually discuss specific occurrences in different or remote regions of the country.⁹⁰

85. *Id.* (“[T]he applicant’s claim ‘cannot . . . be considered in the abstract, and must be viewed in the context of the relevant background situation.’ Country conditions reports, therefore, regularly play a central role in substantiating the objective reasonableness of an applicant’s subjective fear of persecution.” (footnotes omitted)).

86. *See* *Mati v. Gonzales*, 133 F. App’x 844, 846–47 (3d Cir. 2005) (finding respondent’s claims of political persecution insufficient to meet the requisite burden of proof for reversal where respondent failed to introduce “sufficient evidence to support a legitimate threat to life or freedom”). Often times, the applicant does not always know that he has to rebut the information in the State Department country reports by presenting contrary information about the human rights practices in his home country from a reputable source. *Id.*; *see also* Eliot Walker, *Asylees in Wonderland: A New Procedural Perspective on America’s Asylum System*, 2 *Nw. J. L. & Soc. POL’Y* 1, 4 (2007) (“Country conditions reports, regardless of their comprehensiveness or veracity, may be fatal to an asylum application where those reports contradict the asylum seeker in virtually any way.”).

87. *See id.* at 3 (discussing the authority asylum officers have over asylum determinations).

88. *See* Susan K. Kerns, *Country Conditions Documentation in U.S. Asylum Cases: Leveling the Evidentiary Playing Field*, 8 *IND. J. GLOBAL LEGAL STUD.* 197, 200 (2000) (discussing the relevance and importance given to evidence regarding country conditions).

89. *Niam v. Ashcroft*, 354 F.3d 652, 658 (7th Cir. 2004) (citing *Gailius v. INS*, 147 F.3d 34, 46 n.7 (1st Cir. 1998)) (stating that country reports “have the status of official reports”).

90. *See* Eliot Walker, *Asylees in Wonderland: A New Procedural Perspective on America’s Asylum System*, 2 *Nw. J. L. & Soc. POL’Y* 1, 3 (2007) (discussing one of the problems asylum seekers face at asylum hearings).

Furthermore, the United States has a strong preference for democratic regimes. One of the primary missions of the State Department is to “create a more secure, *democratic*, and prosperous world for the benefit of the American people and the international community.”⁹¹ As a result, the United States presumes non-democratic regimes are oppressive. The United States has used asylum grants to condemn Communist regimes, in particular. In fact, by 1990, over ninety percent of United States asylum grants were granted to those fleeing from Communist regimes.⁹²

Perhaps the most significant problem in the use of the State Department country reports is the concern that the State Department drafts its country reports with consideration of the diplomatic relations with the home country.⁹³ As Judge Richard Posner stated: “[T]here is a perennial concern that the Department soft-pedals human rights violations by countries that the United States wants to have good relations with.”⁹⁴ The United States can avoid this politicization by creating a neutral organization for analyzing the country conditions, detached from the foreign policy goals of the State Department.

2. Discretion of the Attorney General

While the immigration judges and asylum officers have the authority to determine the status of individual applicants, the Attorney General has specified powers to designate certain nationals as warranting more, or less, protections. The INA provides that the Attorney General has the discretion to grant asylum, as well as the authority to designate nationals from certain countries as eligible to receive temporary protection status⁹⁵

91. U.S. DEP’T OF STATE & U.S. AGENCY FOR INT’L DEV., STRATEGIC PLAN FISCAL YEARS 2004-2009, at 9 (2003), <http://www.state.gov/documents/organization/24299.pdf> (emphasis added) (alleging that the State Department mission statement provides a framework in which it routinely favors democratic regimes and condemns non-democratic regimes). The State Department country reports analyze the conditions of the respective countries according to the United States standards on human rights, rather than fully accounting for the social values of that country and what is important to the people there.

92. MARÍA CRISTINA GARCÍA, SEEKING REFUGE: CENTRAL AMERICAN MIGRATION TO MEXICO, THE UNITED STATES, AND CANADA 88 (2006) (reiterating that a vast majority of the refugees admitted into the United States were originally from Communist countries).

93. *See* *Manzoor v. U.S. Dep’t of Justice*, 254 F.3d 342, 348 (1st Cir. 2001) (illustrating a case in which the State Department’s country report asserted that resettlement outside a certain area within the country was a safe alternative despite contrary evidence supporting the fact that political persecution *would* persist outside of the area in question).

94. *Gramatikov v. INS*, 128 F.3d 619, 620 (7th Cir. 1997) (alleging the United States does not recognize human rights violations by countries with which it is advantageous to maintain good relations).

95. Immigration and Nationality Act § 208(b)(1)(A), 8 U.S.C.A. § 1158(b)(1)(A) (West 2007) “[T]he Attorney General may grant asylum to an alien who has applied for

Temporary protection status is available to foreign nationals if the Attorney General finds that there is an ongoing armed conflict within the state, which poses as a threat to the people.⁹⁶ Furthermore, under the USA PATRIOT Act, the Attorney General can designate certain nationals as possessing terrorist threats, which in turn allows the United States immigration authorities the power to detain them.⁹⁷

The powers of the Attorney General have significant implications for the asylum/refuge grants in the United States, since such powers are unchecked. The Attorney General essentially has the power to overstep the Department of Homeland Security as well as the determinations made by the asylum officers and the immigration judges.

3. The Power of the President and Congress

The INA gives the President and Congress the power to determine who comes into the United States, from which countries and in what numbers. The President can specify certain nationalities that can process their refugee applications from within their home country.⁹⁸ In 2006, the President designated Cuba, Vietnam and the countries of the former Soviet Union as those that allow for processing abroad.⁹⁹ Additionally, in the beginning of each fiscal year, the President, in consultation with Congress, determines the refugee admission maximums and allocates a certain percentage of those numbers to each of the six geographic regions.¹⁰⁰ To-

asylum in accordance with the requirements and procedures established by the Secretary of Homeland Security or the Attorney General . . . if the Secretary of Homeland Security or the Attorney General determines that such alien is a refugee . . ."); see § 208(a).

96. *Id.* § 244a(b)(1)(A) (stating circumstances in which the Attorney General can designate temporary protection status); see *supra* note 13 (discussing temporary protection status).

97. See Eleanor Acer, *Refuge in an Insecure Time: Seeking Asylum in the Post – 9/11 United States*, 28 *FORDHAM INT'L L.J.* 1361, 1365 (2005) (“The PATRIOT Act gave U.S. immigration authorities unprecedented power to detain non-citizens who are designated as terrorist threats by the Attorney General.”).

98. See KELLY JEFFERYS, OFFICE OF IMMIGRATION STATISTICS, U.S. DEP'T OF HOMELAND SEC., *REFUGEES AND ASYLEES: 2006*, at 1 (2007), http://www.dhs.gov/xlibrary/assets/statistics/publications/Refugee_AstyleeSec508Compliant.pdf (including Cuba, Vietnam, and former countries of the Soviet Union which were designated by the President in 2006 to allow for refugee status processing from their home country).

99. *Id.*

100. *Id.* at 1–2 (referring to the following 2006 ceilings: Africa with 20,000 admissions, East Asia with 15,000 admissions, Europe/Central Asia with 15,000 admissions, Latin America/Caribbean with 5000 admissions, Near East/South Asia with 5000 admissions and an unallocated reserve with 10,000 admissions).

tal admission caps and the percentage of admission for each region can be altered in the case of unforeseen emergencies.¹⁰¹

IV. COUNTRY COMPARISONS AS ILLUSTRATIONS OF THE POLITIZATION

United States asylum policy toward three countries, China, Cuba and Saudi Arabia, illustrates how relations with a foreign country affect asylum and refugee status grants to those fleeing from that foreign country.¹⁰²

A. *People's Republic of China*

1. United States Policy of Asylum/Refuge for Chinese Nationals

The People's Republic China (China) represented one of three leading countries of origin for asylum grants in the United States.¹⁰³ Out of 26,113 asylum applications that were granted in the United States in 2006, 5568 were granted to Chinese nationals.¹⁰⁴ In 2006, the number of affirmative grants¹⁰⁵ of asylum to Chinese nationals was at 1508, which constituted 11.7% of the total grants during that year.¹⁰⁶ The number of Chinese nationals who received asylum defensively is even more striking with 30.7% of total defensive asylum¹⁰⁷ grants given to persons from China.¹⁰⁸ These figures increased significantly in recent years largely due

101. *Id.* at 2. This is another way U.S. immigration policy can be changed. This standard of flexibility allows the President and Congress to adjust admission from certain countries if relations with the country escalate or the political regime in the country implements oppressive measures against its people.

102. These three countries were selected as representing three different regions of the world as well as varying diplomatic relations. While the United States currently has no diplomatic ties with Cuba, the United States does maintain diplomatic relations with China and Saudi Arabia; although, the U.S. relations with China and Saudi Arabia may be considered strategic relations based on the neighborhood in which those countries are located.

103. KELLY JEFFERYS, OFFICE OF IMMIGRATION STATISTICS, U.S. DEP'T OF HOMELAND SEC., REFUGEES AND ASYLEES: 2006, at 4 tbl.6 (2007), http://www.dhs.gov/xlibrary/assets/statistics/publications/Refugee_AsyLeeSec508Compliant.pdf (tabulating asylees by the country of origin in which China led all other countries with 21.3% of total asylees in 2006).

104. *Id.*

105. *Id.* (stating that applicants may obtain asylum status affirmatively by applying and interviewing with an officer of the U.S. Citizenship and Immigration Services).

106. *See id.* (placing Chinese nationals as the third largest group to receive affirmative asylum grants).

107. *Id.* (explaining that asylum status may be granted defensively when an applicant appears and defends his case before an immigration judge from the Executive Office of Immigration Review in a removal hearing).

108. *See* KELLY JEFFERYS, OFFICE OF IMMIGRATION STATISTICS, U.S. DEP'T OF HOMELAND SEC., REFUGEES AND ASYLEES: 2006, at 5 tbl.8 (2007), <http://www.dhs.gov/>

to new legislation passed by Congress.¹⁰⁹ Oddly, Chinese refugee amounts have not increased; in 2006, only twenty-one Chinese nationals came to the United States with their refugee status after having processed it abroad.¹¹⁰

Prior to 2005, the United States only allowed a maximum 1000 Chinese nationals who claimed persecution through China's "one couple, one child" program, otherwise known as its coercive population control program.¹¹¹ However, in 2005 Congress passed the Real ID Act that lifted the annual cap on asylum grants, based on coercive population control programs, thus essentially allowing for an unlimited number of grants based on such claims.¹¹²

The United States asylum law has been especially favorable to Chinese asylum claims, specifically those dealing with coercive population control programs. The INA specifically defines "a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program" as having been persecuted on account of a political opinion.¹¹³ Arguably, meeting this standard should not be difficult as the applicant only has to show that a reasonable person would fear a forced abortion or sterilization in the event he or she has another child.

2. Country Conditions

China is the most populous country in the world with an estimated population of 1,330,044,605 inhabitants as of July 2008.¹¹⁴ China has an authoritarian regime, with control of all top positions by members of the

xlibrary/assets/statistics/publications/Refugee_AstyleeSec508Compliant.pdf (referring to the fact that there were 4060 applicants from China who received asylum in the United States by defending their case in removal proceedings before an immigration judge).

109. *Id.*

110. OFFICE OF IMMIGRATION STATISTICS, U.S. DEP'T OF HOMELAND SEC., 2006 YEARBOOK OF IMMIGRATION STATISTICS 40 (2007), http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2006/OIS_2006_Yearbook.pdf.

111. KELLY JEFFERYS, OFFICE OF IMMIGRATION STATISTICS, U.S. DEP'T OF HOMELAND SEC., REFUGEES AND ASYLEES: 2006, at 5 (2007) http://www.dhs.gov/xlibrary/assets/statistics/publications/Refugee_AstyleeSec508Compliant.pdf (indicating that prior to the Real ID Act of 2005 any applicants above the 1000 cap who were approved were given conditional asylum grants). "The Real ID Act of 2005 eliminated the annual cap on asylum approvals based solely on CPC, and conditional grants of asylum are no longer issued." *Id.*

112. *Id.*

113. Immigration and Nationality Act § 101(a)(42)(B), 8 U.S.C.A. § 1101(a)(42)(B) (West 2007).

114. CENTRAL INTELLIGENCE AGENCY, WORLD FACT BOOK 132 (2008), *available at* <https://www.cia.gov/library/publications/the-world-factbook/geos/ch.html>.

Chinese Communist Party (CCP).¹¹⁵ The United States Department of State classifies the Chinese government as having a poor record on human rights, and cites to an increasing inclination for abuse of those opposed to the government.¹¹⁶ Additionally, many of the major human rights abuses are related to its authoritarian regime and the government's attempt to maintain its leadership.¹¹⁷

The United States is especially concerned with the Chinese policy of coerced population control programs. In the 1950s, China began to implement the population control ideology; however, the 1970s marked the government's strict enforcement of the "one couple, one child" policy. The various population control laws in China restrict the ability of families to decide for themselves how many children to have and when to have them.¹¹⁸ Often, penalties for violating the "one couple, one child" program include forced abortions and forced sterilizations.¹¹⁹

In recent years, however, Chinese law has become increasingly flexible in its policies. In September 2002, the government passed the National Population and Birth Planning Law in order to standardize the national birth control policies throughout the country.¹²⁰ Now, Chinese law allows married couples to have one child and gives them the ability to have

115. U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2006, at 787 (2008), http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_senate_committee_prints&docid=f:33723.waiswais.pdf (describing the state as specified by its constitution and the CCP's claim to the top state positions).

116. *Id.* (contracting China's constitutional assertion of respect for human rights and citing increased instances of "monitoring, harassment, detention, arrests, and imprisonment of journalists, writers, activists, and defense lawyers"). In this analysis, the State Department country reports are meant to provide factual background to the country conditions. Granted, there may be valid criticism of the inherent partiality contained in State Department country reports, as mentioned throughout this piece, but the country reports currently offer the most reliable source of information regarding country conditions.

117. *Id.* (including abuses such as denial to change the government; harassment, detention, and imprisonment of those perceived as threatening to government authority; a politically controlled judiciary and a lack of due process in certain cases, especially those involving dissidents; house arrest and other non-judicially approved surveillance and detention of dissents, as well as other abuses).

118. *Id.* (pointing to the government's birth control policy, which can lead to "forced abortion and sterilization"). Chinese law requires that if a family is allowed to have a second child (there are various obstacles for the family to go through in order to gain permission for this), they will have to space out the birth of the second child. *Id.* at 796.

119. OFFICE OF COUNTRY REPORTS AND ASYLUM AFFAIRS, U.S. DEP'T OF STATE, CHINA PROFILE OF ASYLUM CLAIMS AND COUNTRY CONDITIONS ¶ 83 (2007) (discussing the extreme measures taken in some instances to ensure that Chinese women comply with national population control laws). Chinese women in danger of violating the population control laws may believe their only choice is to abort pregnancies. *Id.* In addition, one parent may be pressured into sterilization procedures. *Id.*

120. *Id.* ¶ 88.

a second child if they meet certain conditions.¹²¹ Couples that have an “unapproved child” are required to pay a “social compensation fee” to a special fund created for raising children in society.¹²² In addition, the law makes it illegal to exercise physical force to compel a forced abortion or sterilization.¹²³

The application of the “one couple, one child” policy varies between the regions, municipalities and provinces. Each province has the responsibility to enforce the national population control laws and make sure that the implementation is done in a legal manner.¹²⁴ The cities apply the birth control limitations in a more stringent manner than the rural areas.¹²⁵ In the rural areas, which comprise approximately two-thirds of the country’s population, the law is more relaxed.¹²⁶ The rural areas often allow families to have another child if the first child has a disability or is a girl.¹²⁷ In addition, the various provinces have the authority to amend their laws to allow more exceptions for families having a second child.¹²⁸

121. *Id.* (indicating that under most circumstances, married couples are legally permitted to have one child, but local regulations provide limited circumstances that allow them to have a second child).

122. *Id.* (outlining the financial consequences of having a second child under the law). The social compensation fee is assessed at up to ten times a person’s yearly disposable income. *Id.* ¶ 84. While couples theoretically have this option, in practice, many of the couples are unable to afford the social compensation tax, since it is often very expensive.

123. *Id.* ¶ 83 (emphasizing the government’s prohibition of enforcement of the law by force). Though the law prevents physical coercion to enforce the law, there are still reports of physical coercion being used. *Id.*

124. OFFICE OF COUNTRY REPORTS AND ASYLUM AFFAIRS, U.S. DEP’T OF STATE, CHINA PROFILE OF ASYLUM CLAIMS AND COUNTRY CONDITIONS ¶ 89 (2007) (discussing the delegation to the provinces the duty to draft regulations for implementation of the population control law). Local regions are also assigned the task of ascertaining a scale for assessing social compensation fees. *Id.*

125. *Id.*

126. *Id.*

127. *Id.* (reiterating the exceptions to China’s one-child policy). Chinese, especially in the rural areas, traditionally prefer to have boys because they can help more with the work. U.S. DEP’T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2006, at 797 (2008), http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_senate_committee_prints&docid=f:33723waiswais.pdf. There was/is a practice to abort female babies, in hope that the next child will be a male; this practice, however, is illegal in the country. *Id.*

128. OFFICE OF COUNTRY REPORTS AND ASYLUM AFFAIRS, U.S. DEP’T OF STATE, CHINA PROFILE OF ASYLUM CLAIMS AND COUNTRY CONDITIONS ¶ 84 (2007) (describing the allowance of exceptions to the one-child policy to eligible families). Some provinces allow for certain categories of couples to have a second child. *Id.* ¶ 46. For example, Anhui Province allows coal miners, some remarried divorcees, some farm couples and certain ethnic minorities (e.g., Uighurs, Tibetans) to have a second child. U.S. DEP’T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2006, at 797 (2008), <http://>

Policy analysts have cited to a trend decreasing enforcement of the “one couple, one child” policy and perhaps even an indication that China is rethinking its population controls policy altogether.¹²⁹ In 2004, the Chinese government appointed a special task force to investigate the country’s demographic trends as well as its implications for the Chinese society.¹³⁰ Later that year, there were signs that the government was considering different proposals for amending the population controls policy, including even a proposal to abandon the one-child policy altogether.¹³¹ Research has shown that the one-child policy has some negative implications on the Chinese economy, especially because of the large and rapidly aging population compared to the decreasingly younger, working age population to support the elderly.¹³²

3. United States Relations with China

Although relations with China were fairly stable during the administration of President George W. Bush, the United States still continued to apply pressure on the Chinese government to become “a ‘responsible stakeholder’ in the global system.”¹³³ China is a major player in the economic arena whereby it is “signing trade agreements, oil and gas contracts, scientific and technological cooperation, and multilateral security arrangements with countries around the world.”¹³⁴ The United States has been especially concerned with the increasing role China plays in the international arena and the implications it has on the United States.¹³⁵

In recent years, the United States-China relationship has focused on the escalation of North Korea militarization and nuclear weapons activ-

frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_senate_committee_prints&docid=f:33723wais.pdf.

129. Kerry Dumbaugh, *China-U.S. Relations: Current Issues and Implications for U.S. Policy*, at 24 (Cong. Research Serv., CRS Report for Congress, Order Code RL32804, 2006), available at <http://fas.org.sgp/crs/row/RL32804.pdf>

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.* (discussing the tougher stance that the United States has taken against China due to their concerns about economic growth and diplomacy in international relations). In becoming a “responsible stakeholder,” China can enjoy greater economic benefits and responsibilities as a force within the global system. *Id.*

134. Kerry Dumbaugh, *China-U.S. Relations: Current Issues and Implications for U.S. Policy*, at Summary (Cong. Research Serv., CRS Report for Congress, Order Code RL32804, July 14, 2006), available at <http://fas.org.sgp/crs/row/RL32804.pdf> (expressing concern over China’s political and economic expansion).

135. *Id.* (“China’s benign economic development and growth . . . may pose critical future challenges for U.S. economic and political interests.”).

ity.¹³⁶ The two countries have worked closely together to deal with the growing security concerns over the situation in North Korea.¹³⁷ The United States and China were involved in Six-Party Talks on North Korea's nuclear program, and both were instrumental in the adoption of the first written agreement in which North Korea agreed to dismantle its nuclear weapons program.¹³⁸

In 2005, however, the United States-China relationship began to decline as the United States took a tougher stance on China's authoritarian regime and related policies.¹³⁹ Furthermore, the United States was displeased with China's inaction and inconsistencies in that China promised to put pressure on North Korea yet still supplied food and resources to North Korea.¹⁴⁰ In December 2005, the United States and China agreed to engage in meetings to discuss the relations between the two countries.¹⁴¹

In addition, tensions between China and Taiwan have affected the United States-China relationship as the United States supports Taiwan's attempt at democratization and independence.¹⁴² China, on the other hand, views Taiwan's attempt as dissent and continues to claim that Taiwan is part of China's sovereign territory.¹⁴³

136. *Id.* at 1 (“After North Korea began a series of missile launches on July 4, 2006, the North Korea issue has dominated the agenda in U.S.-China relations.”).

137. *Id.* at 4 (“[China and the United States] worked closely on a multilateral effort to restrain and eliminate North Korea's nuclear weapons activities.”). It was beneficial for the United States to partner with China, since China was the main ally of North Korea, serving as both a trading partner and military ally. *Id.*

138. *Id.* at 3–4 (“Six-Party Talks on North Korea's nuclear program began again in Beijing [T]he talks resulted in the adoption of the first written agreement arising from the talks—a joint statement of principles drafted with heavy Chinese involvement.”). After initially agreeing to dismantle its nuclear program based on the written agreement, North Korea quickly reversed its position based on a differing view about the “sequencing and timing” of certain agreed upon events. *Id.*

139. Kerry Dumbaugh, *China-U.S. Relations: Current Issues and Implications for U.S. Policy*, at 1 (Cong. Research Serv., CRS Report for Congress, Order Code RL32804, July 14, 2006), available at <http://fas.org.sgp/crs/row/RL32804.pdf> (“U.S.-China relations, remarkably smooth from 2001-2004, became more problematic again in 2005 as some U.S. policymakers appear to be adopting tougher stances on issues involving China and U.S.-China relations.”).

140. *Id.* at 4 (“Beijing has stopped short of promising to put further pressure on North Korea, and in fact continues to prop up the North Korean regime with supplies of food and fuel and to advocate bilateral U.S.-North Korean dialogue.”).

141. *Id.*

142. *Id.* at 2.

143. *Id.* at 8 (“Beijing continues to lay sovereign claim to Taiwan and vows that one day Taiwan will be reunited with China either peacefully or by force. Beijing has long maintained that it has the option to use force should Taiwan declare independence from China.”).

4. Critique

The United States has historically disapproved of Communist regimes, and China's authoritarian regime has received similar condemnation throughout its existence. While the United States continues to object to China's political regime, policy makers realize that it is important for the United States to maintain a stable relationship with China. China, being one of the most populous and largest countries in the world, is a major player in the international arena.

While United States-China relations remained stable during most of the George W. Bush administration, relations began to strain in 2005 as the United States began adopting firm postures on issues related to China. Interestingly, that same year was also the year when Congress passed the Real ID Act of 2005. The Real ID Act removed the cap on asylum claims based on coercive population controls¹⁴⁴ and essentially allowed an unlimited grant of asylum requests under the claim of persecution based on a political opinion.¹⁴⁵ As discussed earlier, the granting of asylum allows a country to express condemnation of the applicant's home country by suggesting that the home country abuses its citizens.¹⁴⁶ Through the provisions of the Real ID Act, the United States is able to express its disapproval of China's government, laws and policies in a backhanded manner.

Just as Chinese coercive population control laws have been shifting to favor families having more than one child, Congress has also changed the law to make it more favorable for Chinese nationals to gain asylum. Instead of having a cap on Chinese asylum claims, the United States now provides an unlimited number of asylum seekers, who are potentially taking away asylum status from other regions in the world.¹⁴⁷

144. See KELLY JEFFERYS, OFFICE OF IMMIGRATION STATISTICS, U.S. DEP'T OF HOMELAND SEC., REFUGEES AND ASYLEES: 2006, at 5 (2007) http://www.dhs.gov/xlibrary/assets/statistics/publications/Refugee_AsyLeeSec508Compliant.pdf (including under the definition of coercive population control (CPC), such practices as forced abortions and involuntary sterilizations).

145. Such grants would still have to conform with the general cap of total asylum and refugee grants for that year.

146. See discussion *supra* Part II.D.

147. KELLY JEFFERYS, OFFICE OF IMMIGRATION STATISTICS, U.S. DEP'T OF HOMELAND SEC., REFUGEES AND ASYLEES: 2006, at 5 (2007), http://www.dhs.gov/xlibrary/assets/statistics/publications/Refugee_AsyLeeSec508Compliant.pdf. See Immigration and Nationality Act § 101(a)(42)(B), 8 U.S.C.A. § 1101(a)(42)(B) (West 2007). There is an annual cap on the number of asylum applications that can be granted a year in the United States from all parts of the world. Arguably, if there are now an unlimited number of asylum applicants from China, that can significantly decrease the asylum grants from other parts of the world.

Furthermore, Chinese asylum applications pose another problem as each individual asylum claim must be analyzed and the credibility of the applicant determined. As part of each request for asylum, it is important to determine whether the country conditions are so grave that a reasonable person has grounds to fear future persecution. Because China is such a large country, with a numerous population, it would seem difficult to have accurate data and facts about the various regions, including all the small villages, and their application of the coercive population control policies. Each small village may have its own enforcement of the laws—either extremely stringent through forced abortions or sterilizations or extremely lenient by turning a blind eye to the birth of a second child. In addition, it would also be necessary to evaluate whether the applicant could relocate to another region of the country in order to avoid future persecution.¹⁴⁸

B. *The Republic of Cuba*

1. United States Policy of Asylum/Refugee for Cuban Nationals

The Republic of Cuba (Cuba) is a designated country that allows for Cuban nationals to process their applications for refugee status abroad within their homeland country.¹⁴⁹ In addition to Somalia and Russia, Cuba was one of the leading countries for refugee grants in 2006.¹⁵⁰ In 2006, 3143 refugees arrived from Cuba into the United States, comprising 7.6% of total refugee arrivals into the country that year.¹⁵¹ In addition, seventy-six Cuban applicants were granted asylum in the United States in 2006, both affirmatively¹⁵² and defensively.¹⁵³

148. OFFICE OF COUNTRY REPORTS AND ASYLUM AFFAIRS, U.S. DEP'T OF STATE, CHINA PROFILE OF ASYLUM CLAIMS AND COUNTRY CONDITIONS ¶ 132 (2007) (discussing that while many asylum applicants claim that they “would be unable to avoid mistreatment by moving elsewhere within China,” since the 1980s with the shift to a market economy, the obstacles to relocation become “essentially obsolete”).

149. See KELLY JEFFERYS, OFFICE OF IMMIGRATION STATISTICS, U.S. DEP'T OF HOMELAND SEC., REFUGEES AND ASYLEES: 2006, at 1 (2007), http://www.dhs.gov/xlibrary/assets/statistics/publications/Refugee_AsyLeeSec508Compliant.pdf (allowing for certain nationalities to apply for refugee status from within their home countries).

150. *Id.* at 2 tb1.3 (including Cuba with 7.6%, Russia with 14.6%, and Somalia 25.2% as making up the three leading countries).

151. *Id.* (showing that, in 2005, the figure was even more striking: 6360 refugees from Cuba arrived in the United States, comprising 11.8% of total refugee arrivals into the country that year).

152. OFFICE OF IMMIGRATION STATISTICS, U.S. DEP'T OF HOMELAND SEC., 2006 YEARBOOK OF IMMIGRATION STATISTICS 44 (2007), http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2006/OIS_2006_Yearbook.pdf (noting that fifty Cuban applicants were granted asylum affirmatively in 2006).

The trend of welcoming Cuban applications for refugee or asylum status is not a recent one. In April of 1980, close to 10,800 Cuban nationals sought refuge in the Peruvian Embassy in Havana.¹⁵⁴ In accordance with the Refugee Act of 1980, President Carter allowed up to 3500 Cuban nationals to enter the United States as political refugees and President Carter also allocated up to \$4.25 million for their relocation.¹⁵⁵ Following three days of airlift, then-Cuban President Fidel Castro opened the border and proclaimed that anyone who wished to leave could leave through the Mariel Harbor.¹⁵⁶ Unfortunately, along with those seeking political refuge in the United States, Castro also sent Cubans housed in prisons and mental institutions.¹⁵⁷ This chain of events led to close to 125,000 Cubans arriving in the United States.¹⁵⁸

2. Country Conditions

Cuba is an island with a population of more than eleven million citizens.¹⁵⁹ Cuba has a totalitarian regime that is currently led by Cuban President Raúl Castro, with major control held by the Communist Party.¹⁶⁰ Socialism provides the basis for the Cuban government, and the constitution specifically prohibits any political organizations other than the Communist Party.¹⁶¹ The United States is particularly critical of this totalitarian regime and the inability of the Cuban people to choose their own government. When Cuban President Fidel Castro became incapacitated,

153. *Id.* at 47 (noting that twenty-six Cuban applicants were granted asylum defensively in 2006).

154. *Cepero v. BIA*, 882 F. Supp. 1575, 1577 n.1 (D. Kan. 1995) (quoting *United States v. Frade*, 709 F.2d 1387, 1389 (11th Cir. 1983)).

155. *Id.*

156. *Id.* (quoting *United States v. Frade*, 709 F.2d 1387, 1389 (11th Cir. 1983)). Members of the Cuban-American community financed many boats to go between Cuba and Key West, Florida. *Id.*

157. *Id.*

158. *Id.*

159. U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2006, at 2657 (2008), http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_senate_committee_prints&docid=f:41618.pdf.

160. *Id.* (“[Cuba] is a totalitarian state led by an acting President, General Raúl Castro.”). Raúl Castro officially became President in February 2008 after Fidel Castro decided to step down from his presidential post. See Manuel Roig-Franzia, *Party Elders Triumph in Cuba*, WASHINGTONPOST.COM, Feb. 25, 2008, at A01, available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/02/24/AR2008022400336.html>.

161. U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2006, at 2657 (2008), http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_senate_committee_prints&docid=f:41618.pdf (“The Government exercises control through the Communist Party (CP) and its affiliated mass organizations, the bureaucracy, and the state security apparatus.”). “The constitution defines socialism as its ‘irrevocable’ basis and proscribes any political organization other than the CP.” *Id.* at 2670.

tated, his brother, Raúl Castro, automatically took charge of the country without giving the people the ability to decide their government for themselves.¹⁶²

The United States Department of State cites to a poor human rights record with numerous and grave abuses.¹⁶³ The majority of such abuses were cited in relation to political dissidents and human rights advocates.¹⁶⁴ Members of the police and security forces of the government beat and harass those that the government classifies as political rebels.¹⁶⁵ Prison conditions are extremely harsh and life threatening to those detained there, with lack of medical treatment, malnutrition and no ability to contact one's family.¹⁶⁶

Cuba lacks civil liberties. While the Cuban Constitution provides for freedom of speech and the press, such speech must "conform to the aims of socialist society."¹⁶⁷ In addition, there exist specific laws against anti-government propaganda and any messages that allude to lack of respect for governmental officials.¹⁶⁸ Similarly, Cubans are not able to get infor-

162. *Id.* at 2670 ("On July 31, the president's chief of staff announced that President Castro had been incapacitated by surgery, leaving Raúl Castro in charge of the country.").

163. *Id.* at 2675 ("The government's human rights record remained poor, and the government continued to commit numerous, serious abuses."). Some of the abuses cited include "frequent harassment, beatings, and threats against political opponents by government-recruited mobs, police, and state security officials; frequent arbitrary arrest and detention of human rights advocates and members of independent professional organizations; denial of fair trial, particularly to political prisoners;" as well as countless other abuses. *Id.* at 2658.

164. *Id.* at 2657–58 ("There were at least 283 political prisoners and detainees at year's end.").

165. *Id.* at 2658 (referencing the case of a political prisoner, Agustin Cervantes, who served four years for "dangerousness"). As part of the torture and abuse he encountered, the prison guards left him suspended by his handcuffed hands for at least twenty-four hours. *Id.*

166. U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2006, at 2659 (2008), http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_senate_committee_prints&docid=f:41618.pdf.

Prison conditions continued to be harsh and life-threatening; conditions at detention facilities were even worse. Prison authorities frequently beat, neglected, isolated, and denied medical treatment to detainees and prisoners, particularly those convicted of political crimes or those who persisted in expressing their views. Authorities also often denied family visitation, adequate nutrition, exposure to natural light, pay for work, and the right to petition the prison director. The government sent most political convicts to prisons located far from their families, increasing their and their families' sense of isolation. *Id.*

167. *Id.* at 2664. Arguably, this constitutional provision bars freedom of speech: if people have to conform to the ideals of a socialist society, they are probably not able to speak freely about everything.

168. *Id.* ("Laws against antigovernment propaganda, graffiti, and disrespect of officials impose penalties of between three months and one year in prison.").

mation from the outside world as the government exercises strict control over media access.¹⁶⁹ Furthermore, freedom of association and peaceful assembly can theoretically be exercised, but not in a way that goes against the objectives of the socialist state.¹⁷⁰

3. United States Relations with Cuba

Since the 1960s, the United States has practiced a policy of isolation towards the totalitarian regime of Cuba.¹⁷¹ This policy of isolationism has become more rigid during the George W. Bush administration as the United States increased economic sanctions and tightened restrictions on agricultural exports to Cuba.¹⁷² Furthermore, the United States has a policy of supporting the Cuban people in their quest for democracy through humanitarian donations as well as U.S. sponsored radio and television broadcasts into Cuba.¹⁷³

Since the departure of Fidel Castro from the political scene and the new government of Cuban President Raúl Castro, the status of the United States-Cuba relations is currently subject to debate. While the United States remains critical of the totalitarian regime and its grave human rights abuses, there is no consensus as to the best way to deal with the new emerging government.¹⁷⁴ There are several different policy directions that are being advocated: maintaining pressure on Cuba to reform, removing some sanctions in exchange for dialogue with the Cuban regime, and some even call for lifting the Cuban embargo altogether.¹⁷⁵

4. Critique

The Republic of Cuba inhabits only eleven million citizens, yet in 2006, 3143 Cuban refugees arrived in the United States, comprising 7.6% of all

169. *Id.* at 2666 (“The government controlled nearly all Internet access.”). Authorities control most of the Internet access by reviewing and censoring emails, blocking access to certain websites as well as regulating where citizens can access the Internet (generally through government approved institutions). *Id.*

170. *Id.* (“The law punishes any unauthorized assembly of more than three persons, including those for private religious services in private homes, by up to three months in prison and a fine.”).

171. Mark P. Sullivan, *Cuba: Issues for the 110th Congress* at Summary (Cong. Research Serv., CRS Report for Congress, Order Code RL33819, Aug. 8, 2008), available at <http://www.fas.org/sgp/crs/row/RL33819.pdf>.

172. *Id.* (explaining that the United States has recently rejected legislation that would have loosened restrictions on agricultural exports to Cuba).

173. *Id.*

174. *Id.* (referencing the debate over the direction of U.S. policy in Cuba).

175. Mark P. Sullivan, *Cuba: Issues for the 110th Congress* at Summary (Cong. Research Serv., CRS Report for Congress, Order Code RL33819, Aug. 8, 2008), available at <http://www.fas.org/sgp/crs/row/RL33819.pdf>.

United States refugee grants that year. Similar to China, these disproportionate numbers allude to a certain bias in the designation of Communist countries that allows for Cuban nationals to process their refugee applications abroad.

C. *The Kingdom of Saudi Arabia*

1. United States Policy of Asylum/Refugee for Saudi Arabian Nationals

The United States grants very few requests for asylum from the Kingdom of Saudi Arabia (Saudi Arabia). In 2006, there were no refugee arrivals from Saudi Arabia into the United States,¹⁷⁶ and only thirteen Saudi Arabian individuals were granted asylum defensively.¹⁷⁷ Similarly, the number of Saudi Arabians granted asylum affirmatively was only seven individuals.¹⁷⁸ In 2005, the figures were even lower: only six individuals were granted asylum defensively,¹⁷⁹ and five individuals were granted asylum affirmatively.¹⁸⁰ Contrary to China and Cuba, there exists no specific immigration law that is directed towards Saudi Arabia.¹⁸¹

2. Country Conditions

Saudi Arabia has a population of 22.7 million inhabitants, with 6.1 million foreigners.¹⁸² Saudi Arabia has a monarchical regime ruled by the Al Saud family with King Abdullah bin Abd al-Aziz Al Saud as the head of government.¹⁸³ The Saudi Constitution is derived from the Koran and

176. See OFFICE OF IMMIGRATION STATISTICS, U.S. DEP'T OF HOMELAND SEC., 2006 YEARBOOK OF IMMIGRATION STATISTICS 40 (2007), http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2006/OIS_2006_Yearbook.pdf. No Saudi Arabia nationals processed their applications for refugee status abroad. This is because the President did not designate Saudi Arabia as a country that allows for processing of the applications abroad.

177. *Id.* at 48.

178. *Id.* at 45.

179. *Id.* at 48.

180. *Id.* at 45.

181. The only immigration provision that deals with Saudi Arabia required registration of Saudi nationals in the United States post the September 11 terrorist attacks. See Registration of Certain Nonimmigrant Aliens from Designated Countries, 67 Fed. Reg. 77, 642 (Dec. 18, 2002).

182. U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2006, at 2137 (2008), http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_senate_committee_prints&docid=f:41618.pdf (reporting country demographics and human rights problems in Saudi Arabia related to population, current political leaders, and governmental structure).

183. *Id.* ("The Kingdom of Saudi Arabia is a monarchy ruled by the Al Saud family Since August 2005 King Abdullah bin Abd al-Aziz Al Saud has ruled as custodian of Islam's two holiest sites in Mecca and Medina.").

the traditions (Sunna) of the Prophet Muhammad.¹⁸⁴ The government follows Islamic law and forms its laws and policies in accordance with Islamic teachings of the Koran.¹⁸⁵ Since the government is ruled by a monarchy, there is no right to change the government or to elect the rulers.¹⁸⁶ There are only several elected posts in the government, mainly representatives for municipal counselors elected by the men.¹⁸⁷

Saudi Arabia has a terrible human rights record. The government detains, often without charge, persons who publicly criticize the monarchy and holds them incommunicado in special prisons for weeks or even months.¹⁸⁸ There have been numerous reports of severe abuses of prisoners, many conducted by the Ministry of Interior Officials, including “physical abuse and torture of prisoners . . . beatings, lashings and suspension from bars by handcuffs.”¹⁸⁹ For those political prisoners who were provided a trial, these trials were conducted in closed settings, if conducted at all.¹⁹⁰

Women have few rights in Saudi Arabia. Women must receive government approval before being allowed to marry non-citizens and are not permitted to marry non-Muslims.¹⁹¹ Women may not make any major decisions, including travel or hospital visits, without the consent of their

184. *Id.* (“[T]he Koran and the Traditions (Sunna) of the Prophet Muhammad serve as the country’s constitution.”).

185. *Id.* (“The government bases its legitimacy in governance according to its interpretation of Islamic law . . .”).

186. *Id.* at 2150 (reporting on governmental structure and human rights in Saudi Arabia including a citizen’s right to change the government and the rights of the detained). This form of government can be maintained by preventing dissidents from peacefully changing the government. *Id.*

187. U.S. DEP’T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2006, at 2137 (2008), http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_senate_committee_prints&docid=f:41618.pdf (“The only elected representatives were half of the municipal counselors, elected by men . . . on a nonparty basis.”).

188. *Id.* at 2140 (“The authorities may detain without charge . . . persons who publicly criticize the government.”) In one particular raid by the religious police, certain members of a “non-Muslim” religious group were detained and held in special prisons during the initial investigation whereby the detainees were denied communication with family or lawyers. *Id.*

189. *Id.* at 2138 (reporting cruel and inhuman treatment or punishment of prisoners in Saudi Arabia). Corporal punishment is allowed under the law, and it can include “public execution by beheading, amputation, lashing” or any other punishment that the judicial authorities may choose. *Id.*

190. *Id.* at 2141 (“Despite 2002 laws providing for suspects’ rights to legal counsel and requiring public trials, most trials reportedly were held in secret and without defense lawyers.”). While the prisoners were held incommunicado, they were not given access to their lawyers or any family members. *Id.* at 2140.

191. *Id.* at 2142 (reporting on women’s rights in Saudi Arabia including the right to marriage and transportation as well as abuse towards women). Men must also ask for

husbands.¹⁹² Furthermore, women are not allowed to drive cars in Saudi Arabia, and when using public transportation, they must enter the buses through the back entrance and sit in designated sections.¹⁹³ Spousal abuse is reported as a common occurrence within Saudi society, and there have also been many cases of abuse of foreign women working as domestic servants.¹⁹⁴

Religious freedom in Saudi Arabia is lacking, and the religious police strictly enforce Islamic law throughout the country.¹⁹⁵ There have been accounts of religious police abusing, harassing, arresting as well as detaining both citizens of Saudi Arabia and foreigners, often for failing to follow strict dress code or for non-related men and women socializing together.¹⁹⁶ Non-Muslims within the country have no public places of worship, even though there are significant numbers of non-Muslims.¹⁹⁷

Saudi Arabia does not provide respect for civil rights and liberties as judged by U.S. standards. Under Saudi law, there is no freedom of speech or of the press, and the only form of media allowed in the country promotes national unity.¹⁹⁸ While there is access to the Internet, the government restricts viewing of certain sites that have “un-Islamic” content, and there have also been cases of the government monitoring and censor-

permission to marry non-citizen women, but unlike women, they are allowed to marry Christians, Jews and Muslims. *Id.*

192. U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2006, at 2153 (2008), http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_senate_committee_prints&docid=f:41618.pdf (“The law provides that women may not be admitted to a hospital for medical treatment without the consent of a male relative [W]omen may not undertake domestic or foreign travel alone”).

193. *Id.* at 2152–53 (“Women may not legally drive motor vehicles and were restricted in their use of public facilities when men were present. Women must enter city buses by separate rear entrances and sit in specially designated sections.”). In addition, women can be arrested by the religious police if they are in a car driven by a man who is not related to them or who is not their employee. *Id.*

194. *Id.* at 2152 (“Hospital workers reported many women were admitted for treatment of injuries apparently the result of spousal violence.”).

195. *Id.* at 2146 (“There is no legal recognition or protection of religious freedom, and it is severely restricted in practice.”).

196. *Id.* at 2143 (reporting on the practices of religious police in Saudi Arabia).

197. U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2006, at 2148 (2008), http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_senate_committee_prints&docid=f:41618.pdf (“Although significant numbers of Christians, Hindus, and Buddhists, and a few Jews resided in the country, there were no public churches, temples, or synagogues.”). In addition, there is also wide discrimination against both foreigners and Non-Muslims. *Id.*

198. *Id.* at 2143 (reporting on freedom of speech and the press and how the government controls the Internet and classrooms).

ing of e-mails and chat rooms.¹⁹⁹ In addition, the government prohibits the study of certain subjects in schools, and largely restricts academic freedom.²⁰⁰ The government also limits people's ability to assemble and proscribes public demonstrations.²⁰¹

3. United States Relations with Saudi Arabia

Saudi Arabia, because of its unique position in the Middle East and its large deposits of oil, has a strategic and significant relationship with the United States.²⁰² Saudi Arabia claims that they are allied with the United States in combating terrorism since they have been victims of such attacks as well.²⁰³ Saudi Arabia maintains that its government will monitor and arrest those who promote, engage in or fundraise for terrorism.²⁰⁴ Though Saudi Arabia opposed the United States invasion of Iraq in 2003, it allowed certain United States and British military forces to station troops within the country.²⁰⁵

There has been much criticism of the "warm" United States relations with Saudi Arabia because a high percentage of the September 11th hi-

199. *Id.* at 2144 ("The government restricted access to the Internet, and there were reports that the government monitored e-mail and Internet chat rooms.").

200. *Id.* (discussing the restriction of academic freedom in schools in Saudi Arabia). Some of the prohibited subjects include "evolution, Freud, Marx, Western music and Western philosophy." *Id.*

201. *Id.* at 2145 (reporting that the Saudi Arabia government requires public meetings to be segregated by gender, and it is not uncommon for the government to monitor large non-family gatherings).

202. *See generally* Alfred B. Prados, *Saudi Arabia: Current Issues and U.S. Relations at Summary* (Cong. Research Serv., CRS Report for Congress, Order Code IB93113, Apr. 28, 2005), <http://fpc.state.gov/documents/organization/46488.pdf> (discussing how Saudi Arabia's relationship with the United States is strengthened by its unique position in the Islamic world and its access to oil).

203. *Id.* ("Saudi officials maintain that they are working closely with the United States to combat terrorism, which they say is aimed as much at the Saudi regime as it is at the United States.").

204. *Id.* ("On several occasions . . . the Saudi Embassy issued a comprehensive white paper detailing initiatives undertaken by Saudi Arabia in the war against terrorism . . . with particular emphasis on apprehension of suspected terrorists, establishment of joint task forces with the United States . . . intelligence cooperation, and various steps against terrorism financing.").

205. *Id.* ("Saudi officials expressed opposition to the U.S.-led military campaign launched against Iraq in March 2003 (Operation Iraqi Freedom), although Saudi Arabia reportedly permitted certain support operations by U.S. and British military forces, in addition to making some facilities available to them.").

jackers were from Saudi Arabia.²⁰⁶ There have also been reports of growing anti-American sentiments throughout Saudi Arabia.²⁰⁷

4. Critique

While Saudi Arabia has some of the gravest human rights abuses, there are strikingly low numbers of asylum and refugee grants within the United States. According to Western standards, Saudi Arabia violates many of the major aspects of human rights, yet the United States does not seem to provide much protection to such persons in Saudi Arabia. Conceivably, there could be fewer Saudi nationals seeking asylum or that because of the travel restrictions, especially on women, Saudi nationals are unable to travel to apply for asylum status.

In comparison with other Arab countries and Islamic regimes, Saudi Arabia has a lower number of nationals granted status within the United States. In 2006, 2792 refugees from Iran were granted refugee status,²⁰⁸ and 252 Iranians were granted asylum in the United States.²⁰⁹ In 2006, 240 Egyptian nationals were granted asylum defensively,²¹⁰ and 177 Egyptians were granted asylum affirmatively in the United States.²¹¹ Arguably, those countries have cases of similar human rights abuses, yet the statistics are significantly different.

Perhaps one of the reasons for such disproportionate numbers is the importance of maintaining the strategic United States-Saudi relationship. The United States relationship with Saudi Arabia is strategic both for military and economic reasons. Saudi Arabia occupies a major role in the Arab and Islamic world, and the United States desires an ally for security and defensive concerns. Similarly, the oil wealth of Saudi Arabia is im-

206. *Id.* (“The September 11, 2001 attacks kindled criticisms within the United States of alleged Saudi involvement in terrorism or of Saudi laxity in acting against terrorist groups. Commentators have pointed to the high percentage of Saudi nationals among the hijackers (15 out of 19).”).

207. Alfred B. Prados, *Saudi Arabia: Current Issues and U.S. Relations* at Summary (Cong. Research Serv., CRS Report for Congress, Order Code IB93113, Apr. 28, 2005), <http://fpc.state.gov/documents/organization/46488.pdf> (“Bombing attacks against several U.S. and foreign operated installations in Saudi Arabia have raised some concerns about security of U.S. personnel and what appears to be growing anti-Americanism in some segments of the Saudi population.”)

208. OFFICE OF IMMIGRATION STATISTICS, U.S. DEP’T OF HOMELAND SEC., 2006 YEARBOOK OF IMMIGRATION STATISTICS 40 (2007), http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2006/OIS_2006_Yearbook.pdf.

209. *Id.* at 44, 47. Out of the 252, 118 Iranians were granted asylum defensively and 134 were granted asylum affirmatively. *Id.* It could be argued that the high numbers for Iranian asylum and refugee status grants could also be due to the strained relations between the United States and Iran.

210. *Id.* at 47.

211. *Id.* at 44.

portant to the United States economic interests. Consequently, the United States is often willing to turn a blind eye towards many of the human rights abuses in Saudi Arabia. If the United States were to grant asylum and refugee status to Saudi nationals at numbers similar to other Arab countries, it could be considered as a statement condemning Saudi Arabia for its grave human rights violations. Such expression of condemnation would significantly alter the United States relationship with Saudi Arabia.

V. RECOMMENDATIONS FOR UNITED STATES ASYLUM AND REFUGEE POLICIES

From a practical point of view, it is difficult to come up with a reasonable solution to the politicization of asylum dilemma. The United States has important strategic and diplomatic relationships with certain key countries, and risking them can have strong ramifications on foreign affairs. Similarly, the United States often wants to use immigration policy as a way of expressing condemnation for a country to encourage them to change their political regime. Immigration law cannot operate in a vacuum, completely detached from the political forces in the international arena.

There are, however, certain mechanisms that the United States has in place that contribute significantly to the politicization and perhaps can be amended without having strong ramifications for United States foreign policy. The Department of Homeland Security relies heavily on information supplied to it by the State Department, without equal consideration given to information and accounts by the applicant regarding the country conditions of his or her homeland.²¹² Oftentimes, such State Department reports might not be applicable to the specific applicant, because the biases surrounding their publication, and the generality in which they are written do not always provide accurate information about the applicant's

212. Eliot Walker, *Asylees in Wonderland: A New Procedural Perspective on America's Asylum System*, 2 Nw. J. L. & Soc. POL'Y 1, 4 (2007).

An anonymous State Department report announcing to a bona fide asylum seeker that his or her testimony is no longer valid is indeed a difficult pill for the asylum seeker to swallow. Country conditions reports, regardless of their comprehensiveness or veracity, may be fatal to an asylum application where those reports contradict the asylum seeker in virtually any way. *Id.*

In addition, the immigration judges of the EOIR of the Justice Department rely heavily on such information when conducting removal proceedings and determining whether to grant the applicant asylum defensively. *Id.* Often times, immigration judges and asylum officers do not accord the same weight to information supplied by the applicant/respondent about the country conditions from which he is fleeing. *Id.*

remote village.²¹³ Furthermore, the President and Congress have a unique power to designate certain nationalities for processing of refugee applications in their homeland country, as well as setting annual refugee and asylee admission caps, without an adequate system of balance of power.

A. *The Quest for Neutrality*

The United Nations Convention specifically urges for non-discrimination in providing asylum/refugee status to those in dire need and declares a non-discrimination standard.²¹⁴ The question arises whether the United States has departed from the humanitarian focus of asylum and refugee principles. The United States has many different mechanisms that augment the lack of neutrality in the current U.S. system—a system that needs to be restructured.

Many United Nations member states and various regions of the world are signatories to different treaties that call for neutrality in immigration policies. In 1969, the Organization of African Unity Convention declared, “[T]he grant of asylum to refugees is a peaceful and humanitarian act and shall not be regarded as an unfriendly act by any Member State.”²¹⁵ Similarly, Latin American states signed the 1984 Cartagena Declaration on Refugees, calling for a “peaceful, non-political and exclusively humanitarian nature of grant of asylum or recognition of the status of refugees and . . . the importance of the internationally accepted principle that nothing in either shall be interpreted as an unfriendly act towards the country of origin of refugees.”²¹⁶ Finally, the Council of Europe declared asylum to be a humanitarian act.²¹⁷ The United States is not a

213. *Id.* at 6–7 (“State Department reports are, by nature, only generalized summaries of recent country conditions.”).

214. United Nations Convention Relating to the Status of Refugees, art. 3, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150 (“The contracting parties shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.”).

215. Organization of African Unity: 1969 Convention on the Specific Aspects of Refugee Problems in Africa, art. II, June 20, 1974, 1000 U.N.T.S. 46, *reprinted in* GUY S. GOODWIN-GILL, *THE REFUGEE IN INTERNATIONAL LAW* 431 (2d. ed. 1996) (demonstrating the desire of the member states of the Organization of African Unity to call for peace through the granting of refugee asylum).

216. Cartagena Declaration on Refugees, art. III, ¶ 4, Nov. 22, 1984, *reprinted in* GUY S. GOODWIN-GILL, *THE REFUGEE IN INTERNATIONAL LAW* 446 (2d. ed. 1996) (calling for an opening in the grants of asylum to political refugees due to humanitarian nature and the desire for peace in Latin American countries).

217. EUR. PARL. ASS. DEB. 40th Sess. 1088 (Oct. 7, 1998), *available at* <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta88/EREC1088.htm> (“Recalling that granting the right to territorial asylum is a humanitarian act based on the principles of political freedom and human rights . . .”).

signatory to any such agreements. While the United Nations High Commissioner for Refugees has authority to supervise the member states in ensuring that they comply with the international Convention providing for the protection of refugees, perhaps it would be important for the United States to have a heightened degree of accountability by being a signatory to such similar treaties.

B. *A Neutral Organization*

An important aspect of each asylum and refugee application is a consideration of current country conditions and human rights practices of the country from which the applicant is fleeing. Oftentimes, country conditions are some of the most important factors in determining a person's application for refugee or asylum. Caution should be exercised in placing the burden on the applicants to show country conditions, because often times they can be penalized through adverse credibility findings if their information or story goes against the State Department country reports.

It is, therefore, necessary to have some neutral organization that analyzes country conditions, rather than the State Department, which has its own diplomatic mission and political bias. To further ensure neutrality of such an organization, it would be beneficial to collect country information, data, as well as specific instances of conduct from a wide variety of sources—international media, newspaper sources from within the specific country, non-governmental organizations, Internet blogs, research conducted by academic organizations and professors, in addition to the State Department country reports—to ensure that many different accounts are receiving a voice.

This organization does not need to be separate from the Department of Homeland Security, and, in fact, it would be extremely beneficial if it were a part of the same agency. The Department of Homeland Security is in a unique position to hear many stories and incidents of human rights violations in certain countries.²¹⁸ Such knowledge should be combined with the country conditions research, and should take account of any trends in increasing applications from certain areas and regions within a specific country.

C. *Balancing of Power*

The President has a unique power to designate certain nationalities as being able to process their application for refuge abroad from within their

218. KELLY JEFFERYS, OFFICE OF IMMIGRATION STATISTICS, U.S. DEP'T OF HOMELAND SEC., REFUGEES AND ASYLEES: 2006, at 4 (2007), http://www.dhs.gov/xlibrary/assets/statistics/publications/Refugee_AsyLeeSec508Compliant.pdf (stating that asylum and refugee determinations occur within the Department of Homeland Security).

homeland. This power has the potential to be abused. It is necessary to balance some of the power the President has in designating such countries that can process applications for refuge abroad.

The President, in consultation with Congress, determines the refugee admission maximums for each year and after setting an annual cap of asylum grants, allocates a certain percentage of those numbers to each of the six geographic regions.²¹⁹ While the President still has the authority to change those numbers if the political situation changes, for the most part, such numbers remain stable throughout the year.²²⁰ Instead of setting maximum caps for asylum admissions for specific regions, the law should be amended to set only a general cap for asylum for that fiscal year. There is a degree of unfairness in denying an application of a person seeking asylum or refuge in the United States because a large number of applicants from that country have already been granted. If the goal of asylum is to provide protection to those in need without discriminating based on the country of origin, setting regional caps on asylum violates the underlying premise of such goals.

D. *Conclusion*

There are continuous reports on the news of atrocious human rights abuses all across the world, and there is a hope that the United States, as a major world super power, carries a responsibility to help alleviate some of the abuses going on. The United States has dealt with this “duty” in various ways, including sanctioning the abusive regimes, engaging in diplomatic discussions, persuading the involvement of the United Nations and other countries, and in the more extreme cases, through military intervention. The United States also has the power to provide protection for those specific individuals who are victims of such atrocious conduct through the granting of asylum or refugee status. In practice, however, the United States has used these powers in accordance with its foreign policy goals and based such grants on the relationships with the applicant’s home country.

The law on the subject of the grants of asylum and refugee status should be amended to protect those who are in dire need. By separating the practice of granting refugee status and asylum from the political and diplomatic agencies of the government, Congress can begin to ensure that victims of grave human rights abuses are accorded some protection from such future abuses. While it is perhaps not possible to exercise such poli-

219. Immigration and Nationality Act § 207(e), 8 U.S.C.A. § 1157(e) (West 2007).

220. *Id.*

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cies in a way that is completely disconnected from the international political climate, certain amendments can ensure that the process has an increased degree of fairness and humanitarianism behind it.