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**Refugee and Asylum Policy in the United States:
Cubans and Haitians**

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A Thesis

in

The Department

of

Political Science

**Presented in Partial Fulfillment of the Requirements
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ABSTRACT

Refugee and Asylum Policy in the United States: Cubans and Haitians

Lisa Gayle Roach

Inconsistencies in U.S. refugee policies have been due to the complex matrix of actors who participate in such policy debates as well as of the impact these concerns have had on policy formulations in the United States. This paper will explore how the United States administration implements such policies, and the problems the implementation process presents to refugees from Haiti and Cuba.

The U.S. government's treatment of Haitians contrasts sharply with that accorded to Cubans, who for years have journeyed to the U.S. to escape difficult political and economic conditions in their country. While Haitians have been routinely sent back, Cubans have been automatically paroled into the U.S. The forced return policy has been criticized both within and outside the U.S. on the grounds that the interdiction program contradicts national and international prohibitions against refoulement, and selectively discriminates against Haitians.

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THESIS SUMMARY

U.S. refugee policy is the product of both foreign policy and ideological concerns. Inconsistencies in U.S. refugee policies have been due to the complex matrix of actors who participate in such policy debates as well as of the impact these concerns have had on policy formulations in the United States. This paper will explore how the United States administration implements such policies, and the problems the implementation process presents to immigrants and refugees from Haiti and Cuba.

The U.S. government's treatment of Haitians contrasts sharply with that accorded to Cubans, who for years have journeyed to the U.S. to escape difficult political and economic conditions in their country. While Haitians have been routinely sent back, Cubans have been automatically paroled into the U.S. The forced return policy has been criticized both within and outside the U.S. on the grounds that the *interdiction program* contradicts national and international prohibitions against *refoulement*¹, and selectively discriminates against Haitians. *Interdiction* occurs when the intended asylum nation intercepts vessels suspected of carrying would-be entrants and turns them away before they reach the nation's shores.

Many do not view Haitians as refugees, but as economic migrants due to the current 'relatively stable' political situation in Haiti. In this paper, I will examine the conditions in Haiti and Cuba in order to obtain a better understanding as to why

¹ *Refoulement: Forcible return of a refugee to a country where persecution is likely*

Haitian and Cubans feel the need to flee. For many years, the government had been responding to Cubans and Haitians in disparate but politically determined ways. When Cubans arrived on U.S. shores, they were nearly always judged to be political refugees while Haitians were nearly always judged to be economic migrants. Neither country can be said to have enjoyed the freedoms of democracy, but Cuba and Haiti denied those freedoms differently. In Cuba, authority stemmed from the central government and was rigidly enforced. In Haiti, authority was delegated through the civilian security forces and was arbitrarily translated into terror and extortion. Whatever their individual motives for seeking asylum, when they arrived in the U.S., Cubans and Haitians were treated as groups. Cubans were accepted as political refugees and given resettlement assistance; Haitians were rejected as economic migrants and paced in deportation or exclusion proceedings.²

For most of the past three decades, Cubans have sought – and received – refuge in the United States. From 1959 until 1994, the U.S. operated a more or less open-door policy towards asylum seekers from Cuba, reflecting Washington’s deep hostility to the communist government of Fidel Castro. In the past few years, a number of developments have prompted the U.S. government to abandon this longstanding policy: the end of the cold war and the consequent disappearance of the communist threat; a growing sense that the U.S. is losing control of the immigration and asylum problem; and a recognition by Washington that the authorities in Havana

² Zucker, Norman L. & Naomi Zucker. Desperate Crossings: Seeking Refuge in America. Armonk, N.Y.: M.E. Sharpe, Inc, 1996. P. 67

have the capacity to create substantial problems for the U.S. by the simple means of allowing large numbers of Cuban citizens to set sail for Florida.

Unlike the situation with Cuba, refugee flows from Haiti served neither US foreign policy nor domestic interests. Even though Haitian immigrants have been coming to the United States since the 1970s, they received different treatment and few refugees have been admitted. In 1981 under the Reagan Administration, an agreement was reached with the Haitian Government whereby Haitians would be interdicted at sea and summarily returned by the United States. In 1992, following Aristide's overthrow by a military coup that led to the flight of even greater numbers of refugees, the U.S. Supreme Court ruled to uphold the U.S. Government forcible to repatriation of those interdicted at sea, since they had not "entered" United States territory. This led to an immediate reduction in the flow of potential refugees, satisfying both sides in the domestic power struggle. But it also reflects the impact which domestic concerns regarding immigration and refugee issues had on the formulation of US foreign policy and the extent to which the United States could disregard the humanitarian or legal issues involved.

CHAPTER 1

U.S REFUGEE POLICY

Domestic and economic issues have primarily influenced immigration policies. However, refugee policies have been the product of foreign policy and ideological concerns. This chapter intends to show the reader the inconsistencies in US refugee policies, and the impact these factors have on policy formulations in the United States.

One year after the creation of the United Nation High Commissioner for Refugees (UNHCR) in 1950, the United Nations adopted the 1951 Convention Relating to the Status of Refugees. Article I of the 1951 Convention defined the term 'refugee' and required each signatory to accord certain protections to those refugees physically within its territory. Most members of the United Nations, including most of the western European nations and Canada, signed the Convention. The United States, however, held off until 1968, when it became party indirectly by acceding to the 1967 Protocol.³

A refugee is defined as a person outside his country of nationality who is unable or unwilling to return 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.⁴

In 1967 the United Nations adopted the Protocol Relating to the Status of Refugees. The 1951 Convention had limited the definition of 'refugee' to those who

³ Legomsky, Stephen. Immigration and Refugee Law and Policy. The Foundation Press, 1997. P. 758

had fled as a result of events occurring prior to January 1, 1951. The main effect of the 1967 Protocol was to remove that limitation, thus leaving the international community with a more generic refugee agreement. In 1968 the United States acceded to the 1967 Protocol; by that action it accepted the 1951 Convention as modified.

The *U.S. Refugee Act of 1980* added several new provisions to the *Immigration and Nationality Act* (INA) and amended many others. It is now the principle domestic statutory law governing both “overseas refugees” and aliens who have reached United States territory and who seek either *asylum* or *non-refoulement*. The 1980 Act provided the first American statutory definition of “refugee”. The statutory definition requires “ a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.” The refugee definition is also pertinent to asylees. Nothing in the 1951 Convention or the 1967 Protocol obligates any nation to grant asylum, and until 1974 no United States statute or regulation expressly authorized it.⁵ However, over the years UNHCR has expanded its role to cover categories of people other than refugees is consistent with the Statute. Article 1 directs the UNHCR to ‘seek permanent solutions for the problem of refugees’, while Article 9 provides that the organization ‘shall engage in such additional activities... as the General Assembly may determine’. A series of General Assembly resolutions has since then provided the legal basis for many of the

⁴ OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES. Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees. HCR/IP/4/Eng/REV.1 Reedited Geneva, January 1992

⁵ See Legomsky, p.769

UNHCR's activities with non-refugee populations.⁶ The Refugee Act (1980) regulates the U.S. asylum policy and governs refugee procedures. The Act, for the first time, established a statutory basis for granting asylum in the United States consistent with the 1967 Protocol.

Terminology

One specific aspect of the tension between national self-interest and either a humanitarian or a human rights-based vision of refugee policy is selection criteria. In the United States, the subject has produced angry debate. The overwhelming majority of aliens whose refugee status in the United States has been recognized have been people fleeing Communist regimes. Those who have fled countries friendly to the U.S. - El Salvador, Guatemala, Haiti and others - have had strikingly little success. Critics of the American refugee and asylum policy charge political bias. Defenders argue that those from countries allied to the U.S. tend to be "economic migrants" fleeing poverty, not true refugees fleeing persecution.⁷

There is an important distinction between status as a *refugee* and as an *asylee*. A refugee under current U.S. law is someone who applies for admission to the United States (from their country of origin) under the special protections found in the 1980 Refugee Act. Someone seeking asylum simply has to show up at a port of entry and claims political asylum.⁸ They are those who have already managed to reach U.S.

⁶ The State of the World Refugees. Fifty Years of Humanitarian Action. UNHCR, 2000

⁷ *Ibid.*, p. 749

⁸ Rowland, Robert. United States Policy on Immigration: An Overview. University of Kansas, 1994. P.16

shores on their own, and who seek to remain in the United States or at least to avoid being sent back to the country from which they fear persecution. Within this group, some are at ports of entry while others have already effected entry, legally or illegally. Of those who have already entered, some seek relief during removal proceedings; others affirmatively apply to the *Immigration and Naturalization Service* (INS) for relief before removal proceedings are brought.

Parolees are permitted into the United States without numerical restrictions. Until 1980 the parole provision was often used to allow groups of refugees into the U.S. for indefinite periods. The current provision generally prohibits that practice and today the provision is typically used either to enable aliens to go to the U.S. temporarily for urgent personal reasons or to allow applicants for admission to avoid detention pending determinations of admissibility. Whatever the reason for allowing the particular person to come in, however, a grant of parole is not considered an admission.

Refugee terminology can be very confusing. The most common approach is to describe *refugees* as overseas refugees, and *asylees* as aliens seeking asylum to the host government. Even though many people use the word *refugee* to mean *overseas refugee*, the legal terminology in the United States is different; under the statutory definition, every asylee is also a refugee. Just as the common usage of “*refugee*” differs from its statutory meaning, there is also vagueness in the word ‘*asylum*’. Under the United States law, asylum actually refers to only one particular remedy for

persecution - permission to remain at least temporarily and usually permanently in the U.S.

The Statutory Standard for Asylum

An alien is eligible for a favorable exercise of discretion only if he qualifies as a “refugee” under section 101(a)(42)(A) of the Immigration and Nationality Act.

The term refugee means (A) 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 a person last habitually resided, and who is unable or unwilling to return to, and is unable 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.⁹

There must be four separate elements that must be satisfied before an alien qualifies as a refugee:

First of all, the alien must have a “fear” of “persecution”. An alien seeking to qualify under section (101)(a)(42)(A) ¹⁰ of the Act must demonstrate that his primary motivation for requesting refuge in the U.S. is “fear”. No other motivation, such as dissent or disagreement with the conditions in another country or a desire to experience greater economic advantage or personal freedom in the U.S. satisfies the definition of a refugee created in the Act.

Prior to 1980, “persecution” was construed to mean either a threat to the life or freedom of, or the infliction of suffering or harm upon, those who differ in a way regarded as offensive. The harm or suffering inflicted could consist of

⁹ See Legosmky, p. 773

¹⁰ Ibid., p. 773

confinement or torture. It could also consist of economic deprivation or restrictions so severe that they constitute a threat to an individual's life or freedom.

Second, the fear must be well-founded. Third, the persecution feared must be "on account of race, religion, nationality, membership in a particular social group, or political opinion. And fourth, the alien must be unable or unwilling to return to his country of nationality or to the country in which he last habitually resided because of persecution or his well-founded fear of persecution. Traditionally, a refugee has been an individual in whose case the bonds of trust, loyalty, protection, and assistance existing between a citizen and his state have been broken and have been replaced by the relation of an oppressor to a victim. Thus, inherent in refugee status is the concept that an individual requires international protection because his country of origin or of habitual residence is no longer safe for him. An alien seeking to meet the definition of a refugee must do more than show a well-founded fear of persecution in a particular place within a country - he must show that the threat of persecution exists for him countrywide.¹¹

Legomsky asks, as a matter of policy, why insist that the fear be the "primary" motivation? Suppose that an alien believes that, if returned home, she would stand a 60% chance of being persecuted and a 90% chance of starving to death because of widespread famine. Could the "primary" motivation for such an alien's fear be said to be persecution? If not, is that alien really less worthy of relief than, say, one who

¹¹ Ibid., P. 776

believed there would be a 60% chance of persecution and no significant chance of starvation?¹²

A common problem is the meaning of the word ‘persecution’. The term persecution is not defined in the 1951 Convention or in the United States statute. One issue that has arisen is how individualized an act must be in order to constitute persecution. Many courts have emphasized the need for some sort of individual targeting. According to Legomsky, a court that expressed a singling-out requirement means that exposure to the general dangers of war or other strife is not persecution. If the only danger is that an alien might get caught in the cross fire, the alien would not be eligible for asylum in any event because the consequence could not be said to occur on the victim’s race, religion, and so on. Some deny asylum even to aliens who have received personalized threats on the ground that the threatened harm was commonplace in the particular country. In the United Nations’ definition, there is certainly no room for concluding that because an applicant has only 10% chance of being shot, tortured or otherwise persecuted, that he or she has “no well founded fear” of the event happening.¹³

The lack of a definition of ‘persecution’ and ‘well-founded fear’ in the statute leaves much room for ambiguity. The word persecution usually conjures up images of execution, torture, confinement or perhaps a steady though less deniable

¹² Ibid., P. 777

¹³ Ibid., P. 855

harassment.¹⁴ In the case of the U.S., it seems that consequences the alien faces must reach a particular level of severity in order to constitute persecution. But how this is determined is in fact very difficult. This is particularly so if the aliens in question are not given fair hearings, as we will see in the case of Haiti.

For the United States administration, human rights abuses in another country have never been the primary reason to accept refugees or asylum seekers. Human rights abuses lend additional weight to what remains inherently a foreign policy decision. Mark Gibney and Michael Stohl have compared the human rights situations in countries with the United States' acceptance of refugees and asylum seekers.¹⁵ The countries were given yearly rankings from 1 to 5 to indicate "*the level of political violence and terror that country experiences.*" Levels 1 and 2 indicate rare or low levels of human rights abuse. At Level 3, "*There is extensive political imprisonment... Execution or other political murders and brutality may be common. Unlimited detention, with or without trial, for political views is accepted...*" At Level 4, "*Murders, disappearances, and torture are a common part of life...*" At Level 5, the entire population is subjected to terror. Haiti, in 1980, was ranked Level 4 using the human rights reports of Amnesty International, and Level 3 using reports of the U.S. Department of State. Cuba, in that same year was ranked 3 in both reports.

Although the United States was compelled to acknowledge the flagrant human rights abuses in Haiti, it needed also to offer some reasons why these abuses did not

¹⁴ Ibid., P. 779

¹⁵ See Zucker & Zucker, P. 67

make Haitians eligible for refugee status or asylum. Even though the U.S. government acknowledged that Haiti was indeed a repressive country, it chose instead to present evidence of severe poverty in Haiti as a cause of emigration, thereby failing to disclose the cruelty.

Linked to the idea that the Haitians fled poverty, not persecution, was the view that Haitians were, in essence, illegal entrants. “Unlike Cuba, The Haitian Government has permitted emigration – documented or not – to proceed freely. The Zuckers state that “We ignored the human rights abuses in Haiti, since human rights had never been the driving force behind our refugee policy. As we focused instead on economics, the economic deprivation in Haiti, the economic threat to the United States.¹⁶

The Asylum System

According to Newland, *first asylum* is the most problematic element in U.S. policy today.¹⁷ A country of first asylum is the first country where an asylum-seeker has stayed longer than the time strictly required for mere transit and where an application for asylum was or could have been made. Programs of interdiction, offshore processing centers, and a host of measures intended to prevent undocumented entry into the U.S. are blunt instruments that may restrict the ability of people in need of protection to achieve admission to safety. Unless refined considerably in both concept and execution, such practices may lead the U.S. into

¹⁶ Ibid. P.68

evading its obligation not to return refugees from its territory. If the new measures amount to a systematic *de facto* evasion of first-asylum responsibilities, then the repercussions will be felt beyond the individuals who seek protection in the U.S. Newland states that the United States is a *norm-setter* within the international refugee regime, and its actions make it easier for other states to engage in their own evasions of responsibility.¹⁸ The interdiction of Haitians, for example, has been used to justify the rejection of refugees at the borders of other states.

Since 1988, the United States has seen a variety of major developments affecting refugee and asylum policy. Some of these were very positive: “a new system for adjudicating asylum claims; a new framework for providing temporary safe haven to persons fleeing civil war or other disturbances; and a program to release asylum seekers from detention.”¹⁹ However, recent events (detailed in following pages) leading to a U.S. government policy of forcibly returning to Haiti without a hearing for persons fleeing that country as well as proposals for a new system to summarily exclude some asylum seekers from the United States have raised serious concerns. These developments suggest that while the U.S. has made great strides in recent years in increasing protection for refugees and asylum seekers already in the U.S., it has also begun a process toward restricting access to individuals facing similar situations simply because they are outside the country.

¹⁷ Newland, Kathleen. U.S. Refugee Policy: Dilemmas and Directions. International Migration Policy Program Carnegie Endowment for International Peace, 1996. P. 35

¹⁸ *Ibid.*, p. 36

Throughout the 1980s, political and foreign policy considerations figured heavily in the U.S. asylum system. Decisions that were supposed to be governed by internationally agreed-upon standards such as the 1951 Refugee Convention and its 1967 Protocol and embodied in the Refugee Act of 1980 were instead often held hostage to political considerations and bias. According to one study, from 1983 to 1990 the approval rate for Salvadoran asylum applicants was 2.6 percent, for Guatemalans 1.8 percent, and for Haitians 1.9 percent. During the same period, the

¹⁹ U.S. Refugee Policy: Where We've Been, Where We're Going. US Committee for Refugees, World Refugee Survey, 1993

approval rate for Iranian applicants as 61 percent, for Romanians 68.2 percent, and for applicants from the former Soviet Union 76.7 percent.²⁰

In response to such inequities, refugee advocates pressured the U.S. government to implement new asylum regulations that more closely reflected the standards of the 1980 Refugee Act. The INS published the new regulations in July 1990 and began implementing its new asylum system in April 1991. As part of the new system, the INS initially hired and trained 82 asylum officers to adjudicate claims, and placed them in seven asylum offices nationwide, supervised directly from INS headquarters. The officers, hired from a wide variety of backgrounds, were trained in refugee and human rights law, country conditions, interviewing techniques, and other relevant areas. Other improvements in asylum procedures included strengthened confidentiality and an attempt to eliminate gaps in work authorization while an asylum seeker awaits administrative and judicial review.

In addition to the classification between different types of *refugees* being perplexing, the debate on these issues has also been subject to many twists and turns.²¹ Presidents have supported policy on the basis of ideology, foreign policy needs, pressure from other countries, or electoral goals. Within the administration the Departments of State, Justice, and Labor are involved in various aspects of implementation. The courts have set legal precedents, struck down legislations, and contributed to modifications of administrative policy. This occurred while the number

²⁰ Ibid.

of immigrants and refugees seeking entry into the United States remained at near record numbers. According to McBride (UNHCR, 1999):

*"[The INS] must function in an environment that is subject to push and pull factors from a number of directions: Congress, presidents, Supreme Court decisions, interest groups, US domestic and foreign policy concerns, public opinion, intergovernmental organizations, and international and national guidelines. It is how the INS functions in such an environment that has the most immediate impact on immigrants, refugees, and asylum claimants."*²²

In the latter part of the eighties there was a significant shift in the primary source of refugees. No longer arriving mostly from the Middle East and communist countries, from 1984 until 1990 over 60 per cent came from the Caribbean and Central America, in particular from Cuba, Haiti, Nicaragua, El Salvador, and Guatemala.²³ This shift in the source of refugees presented the United States with a new challenge. The U.S. had to revise its refugee policy to deal with asylum seekers who had already entered the country. This was particularly so because the United States was often the country of first asylum for refugees from the Caribbean and Central America. The re-examination of policy had its greatest impact on immigrants and refugees from the Caribbean and Central America. Nowhere have the shifts or inconsistencies in US refugee and immigration policy been felt more than in the Caribbean, specifically Cuba and Haiti.

²¹ McBride, Michael J. "The evolution of US immigration and refugee policy: public opinion, domestic politics and UNHCR" UNHCR, CDR Working Paper No. 3, May 1999

²² See McBride (1999)

²³ Ibid.

CHAPTER 2

CASE STUDY I: CUBAN REFUGEES AND THE U.S.

The nearly automatic acceptance of Cubans into the United States as political refugees for 35 years clearly represented an inconsistency in U.S. refugee policy. Between 1959 and 1995, U.S. refugee policy towards Cubans was not based on humanitarian standard, as eventually mandated in the Refugee Act of 1980, but was defined by an anti-Communist political agenda. From the implementation of the 1962 Migration and Refugee Assistance Act until August 1994, when the Clinton Administration denied Cuban entry into the U.S., over 1 million Cubans received preference over refugees from other nations through an "open door" to the United States via refugee, parolee or special entrant status.²⁴ Historically, these legal statuses included federal assistance in areas such as resettlement, job training, education, housing, medical care, and social welfare benefits. This strong bias within U.S. domestic and foreign policy provides insight into the tension between national interests and international norms

In 1961, U.S. foreign policy was strongly determined by its Cold War against the USSR. This determinant played strongly with regard to Cuba, especially after Castro declared his regime to be socialist and turned to the Soviets for protection. However, the United States has maintained its interventionist policy toward Cuba even after the Cuban regime's failure in its attempts to extend revolution to other

²⁴ Nackerud, Larry. The end of the Cuban contradiction in U.S. refugee policy. *The International Migration Review*; New York; Spring 1999

countries, the end of the Cold War, and the dissolution of the USSR. U.S. policy regarding Cuba is related not only to the Cold War, but also reflects traditional U.S. interventionist foreign policy in the Caribbean, one that was established long before the socialist orientation of Castro's government.

Three basic elements define U.S. policy regarding Cuba since the early 1960s: open immigration, commercial embargo, and belligerent information policies.²⁵ U.S. open migration policy toward Cubans started formally with the *Cuba Refugee Program* in February 1961, which was extended with the Migration and Refugee Assistance Act one year later, and with the *Cuban Adjustment of Status Act* in 1966. Since the 1960s, U.S. migration policy toward Cubans has generously welcomed *emigrés* as “political refugees,” even illegal immigrants.

Exit waves from Cuba

Several successive waves of people's ‘exit’ from Cuba to the United States have occurred since the 1959 revolution. Castro's government chose to favor emigration from the beginning. The first wave of Batista supporters and other counterrevolutionaries was openly welcomed by the U.S. government, which provided them resettlement, welfare payments, language training, help in job search, medical aid, and school assistance “*well above what was available then to the U.S. citizens and residents or to other migrants to the U.S.*”²⁶ After nearly four years of continuous flow, movement of Cubans to the United States was interrupted on

²⁵ Colomer, Josep M. Exit, voice, and hostility in Cuba. *The International Migration Review*; New York; Summer 2000

October 22, 1962, during the crisis provoked by the American government's discovery of Soviet missiles on the island. The Cuban government then closed all airports to commercial traffic. But once the crisis was over, the U.S. government responded by not resuming flights. A total of 354,963 Cubans emigrated in the period of 1959-1962, mostly to the United States.²⁷

After this initial massive flight, three waves of emigration, approximately one every fifteen years, have been encouraged by the Cuban government: the Camarioca boatlift in 1965, the Mariel exodus in 1980, and the rafters' crisis in 1994. On each of these three occasions, Castro's government took the initiative in opening its borders to the exodus. Each time the United States first responded by welcoming the émigrés but eventually sought some accommodation with the Cuban government in order to stop the flow of people to the U.S.

The iteration of this interaction between the two governments over time seems to have produced a learning process in the United States, which has become less eager to respond to Cuban provocations and has moved more readily to cooperate with Castro's government to close the borders to would-be emigrants. As a consequence of this increasing cooperation between the two governments in the successive exit waves, the number of emigrants from Cuba has been lower at each wave and the duration of restrictive migration policies of both the United States and

²⁶ Ed. Jorge I. Domínguez, Democracy in the Caribbean: Political, Economic, and Social Perspectives. A World Peace Foundation Study, 1993. P. 39

²⁷ See Colomer

Cuba following each episode has been markedly longer.²⁸ The United States settled on a more restrictive migration policy.

Camarioca 1965

The first wave of Cuban migration to the United States occurred during the early years of Castro's regime. Over 200,000 individuals, highly educated and professional, managerial, and, overall, upper-middle socioeconomic status, left Cuba in the early 1960s. This group departed amidst the overturning of the old Cuban order and the political war that began between the United States and Cuba.²⁹ These initial refugees were characterized by a belief that exile would be temporary and that the United States would overthrow Castro's regime. Castro provided motivation for this second group to migrate when he consolidated his dictatorial rule, abolished the electoral system, closed private educational institutions, and silenced the Catholic Church. Comprised largely of persons from a middle socioeconomic status, the second group within the first wave had a larger constituency of skilled workers and middle managers.³⁰

Castro blamed the U.S. government for these disasters, insisting that the United States had refused to allow safer travel by air after 1962 between the two countries. He also declared that the U.S. government was exploiting the boat people

²⁸ Ibid.

²⁹ See Nackerud, Larry.

³⁰ Gay, Kathlyn. Leaving Cuba: From Operation Pedro Pan to Elian, Twenty-First Century Books, 2000. P. 63

by using them as propaganda tools.³¹ President Eisenhower implemented a policy of automatic acceptance of persons arriving during the first wave as an element of foreign policy. This migration policy was part of a larger hard-line resistance to the Cuban regime via severe economic sanctions and other restrictions. Eisenhower's policies of both opposition to the Cuban government and open door policy - both of which combined constituted an incentive to communication - set the basis of U.S. foreign policy based on national interests for the next 35 years. Consequently, Cubans in the first wave were in position to gain power and prosperity through the exceptional opportunities afforded them by the U.S. federal government³²

Although both groups of Cubans who fled to the United States in the first wave were pushed by internal political upheaval more so than by economic motivations, many did not meet the criteria outlined by the U.N. Convention Relating to the Status of Refugees. Instead, the United States used criteria contained in the Walter-McCarran Act of 1952 to grant refugee status to Cubans because they were fleeing a Communist country. President Eisenhower's use of the McCarran-Walter Act set the open door policy precedent which contradicted international norms outlined in the international definition of a refugee.

Castro announced, in 1965, that "whoever wanted to leave should do so." He also sent a first friendly message to members of the Cuban exile community in the United States with the aim of inducing domestic pressures on the White House to

³¹ Ibid., p. 63

³² See Nackerud

open U.S. borders to fleeing Cubans. Castro announced that as of October 10, 1965 the Cuban port of Camarioca would be open to the boats of "Cuban exiles" who wished to return to pick up relatives.

The U.S. government reacted to this move by opening its borders to Cuban refugees. At the same time, however, the United States was concerned about such an unexpected seelift and tried to induce Castro to stop the flow of people. Both the U.S. and the Cuban governments attempted to induce each other to close off the borders, but for the strategic reasons presented above, neither wanted to do it first.

As Wayne S. Smith, the Chief of the U.S. Interests Section in Havana at that time, explained:

"We [the United States] assumed that Castro wanted us - indeed, was trying to force us - to close off the sea lift and to announce that we would accept no more refugees. The onus would then have been squarely on us, and from that point forward Castro would have crowed that not he but the U.S. refused to permit emigration."³³

A unilateral decision to close the borders would have generated hostility toward the United States. But when the U.S. government moved to encourage Castro to close off the sea-lift, it miscalculated the advantages of an exodus for the Cuban regime. The U.S. government proposed to organize a refugee airlift with several flights a day, expecting that Castro would reject it. Instead, he immediately accepted and pressed for discussion of the mechanics.³⁴

³³ Ibid.

³⁴ See Smith, P. 91

The United States was trapped by its own initiative. The people remaining in the Camarioca compound were transported to Florida on boats chartered by the United States, and regular air transportation of Cuban refugees was organized at the expense of the U.S. government. The *Vuelos de la Libertad* or Freedom Flights initiated by President Johnson were maintained at two flights a day, five days a week, for almost eight years. As a result of the arrangement established as a product of the Camarioca crisis, a total of 265,644 Cubans emigrated to the United States by sea and air in the period 1965-1973.³⁵

Based upon a *Memorandum of Understanding* between the United States and Cuba in effect from 1965 to 1973, migrants seeking asylum were given transportation to the United States from Cuba via Freedom Flights. During this time, the Johnson Administration maintained the open door as an element of foreign policy to fight the Cuban government and to continue the perceived brain drain of intellectuals and powerful dissidents that began during the first wave.³⁶ The second wave of Cuban migration, was unique in both its composition and in the way in which it was coordinated. Due to the makeup of the second wave, the brain drain became a technical and administrative drain as well, which, coupled with the trade embargo, initiated a significant downward economic trend that is evident in Cuba today.

³⁵ Nackerud, Larry. The end of the Cuban contradiction in U.S. refugee policy. *The International Migration Review*, New York; Spring 1999.

³⁶ Gay, Kathlyn. Leaving Cuba: From Operation Pedro Pan to Elian, Twenty-First Century Books, 2000

Mariel 1980

The Mariel Crisis was initiated by a series of illegal boat and plane hijackings and the storming of several Latin American embassies by Cubans requesting asylum. Cuban officials, angered by perceived “U.S. encouragement of rebellion”, allowed more than 125,000 people to leave from the port of Mariel.³⁷ As the United States became overwhelmed by the sheer numbers of Cuban migrants, who became known as the *Marielitos*, a decision was made to deny them automatic refugee status. Although they were eventually granted residency status in 1984 under the Cuban Adjustment Act, most received a hostile reception in the United States.

Indeed, their political generation had grown up in the midst of the revolutionary consolidation. Their skills and political ideals reflected Cuba's limited economic and political diversity.

Cuban Vice-President Carlos-Rafael Rodriguez explicitly threatened the Chief of the U.S. Interest Section in Havana with "opening a new Camarioca," warning that *"if your [U.S.] government wants people in small boats, we can give you more than you bargained for."* The threat was repeated a few days later by President Castro himself in a public speech in which he urged the United States to learn from previous experience and to cooperate against exit: *"We have asked them [the U.S. government] to take measures ... and we hope they do. If not, we would then have to take our own*

³⁷ See Nackerud

*measures. We have reminded them that we once opened Camarioca . . . We hope we don't have to take such measures again"*³⁸

The U.S. government did not yield to this threat because it was reluctant to close its borders to Cuban refugees unilaterally. The conflict escalated in April 1980, when up to 10,856 Cubans crowded onto the grounds of the Peruvian Embassy, requesting asylum. As the Cuban government expected, the U.S. government initially reacted by confirming that its borders were open. President Carter declared that his "heart went to the freedom-loving Cubans", but he announced that the United States would accept only 3,500 Cubans as refugees.

Fidel Castro forced the situation again calling the "Cuban Overseas Community" to come to Cuba by boat to pick up refugees, an invitation widely repeated by radio broadcasts from Havana to Florida. High-ranking officials of the Cuban government confirmed to exile representatives in Havana that Castro had no objection to the refugees leaving Cuba. The government then opened the port of Mariel to privately owned boats of Miami exiles to bring back new emigrés.

Perhaps remembering the miscalculation that led the U.S. government to organize a massive and costly airlift of Cuban refugees fifteen years before in 1965 with Camarioca, the White House was reluctant to assume responsibility for organizing the flight. The U.S. State Department warned boaters that bringing illegal

³⁸ See Smith, P. 203

aliens to the United States was a felony punishable with heavy penalties and unsuccessfully asked the Cuban exile leaders to stop the uncontrolled exodus.

After two Cuban jet aircraft attacked and sank a Royal Bahamian Defense Force patrol that was helping emigrant boats, President Carter announced a five-point program to end the boatlift. This included a resolve to punish boaters who violated the order and to treat arriving Cubans no more as refugees but simply as entrants. The U.S. Coast Guard then established a blockade at sea and from June on the flow of refugees dramatically decreased. While this movement was happening in 1980, 124,770 Cubans emigrated to the United States.³⁹

Personal Account of the Mariel Boat lift

Maritza Graibe, now 36 and an employee at the World Relief Refugee Service in Miami Florida arrived in Miami in the Mariel boat lift in 1980 at the age of 15. Her story is not unlike many others who fled Cuba in 1980. According to Maritza, her parents had been trying to flee from Cuba since the late 60's when they realized that Castro's reign was 'here to stay'. Finally in 1980 the chance arrived and they took it. Maritza left with her parents and younger sisters with nothing but the clothes on their backs. They were not even able to say goodbye to their relatives.

They set sail at 9 p.m. from Cuba and arrived at Miami at 10 a.m. the following day. She remembered that the conditions on the boat were dangerous and very crowded, as everyone had to sit with their knees to their chest for the duration of

the trip. She and many others had passed out from seasickness for most of the voyage. Maritza says that arriving in the United States was very overwhelming, but they adjusted thanks to her relatives already living in Miami. They had settled there in the 1950's. Upon arrival, they were given social security and parole. After four years she and her family attained permanent residency and ten years later, U.S. citizenship.⁴⁰

The Balsero Crisis

In 1994, a large influx of migrants from Cuba led to a historic policy change that officially ended the open door. During that influx, the Clinton Administration instituted a mutually beneficial agreement with the Cuban government that: 1) eliminated the indefinite detention of over 28,000 Cubans held in safe haven camps, 2) repealed the Cuban Adjustment Act of 1966, which granted eligibility for legal status to Cuban refugees, 3) put severe new restrictions on travel to Cuba, 4) prohibited the sending of monetary remittances to Cuba, 5) equalized the number of annual visas for Cuba with the other countries of the world at 20,000, and 6) legalized the return of Cubans intercepted at sea⁴¹

The Balsero Crisis began in July of 1994 after dozens of people stormed embassies and diplomatic residences in Havana demanding asylum and protesting the impoverished living conditions. The rioting, as well as the deaths of two police officers and over 30 potential émigres were said by the Cuban government to have

³⁹ See Gay, P. 85

⁴⁰ Interview with Maritza Graibe, Mariel Boat Lift Survivor & Administrative Assistant at World Relief Refugee Services in Miami, Florida. February 20, 2001

⁴¹ Ibid.

been incited by the U.S. foreign policy in Cuba.⁴² Specifically blamed were U.S. policies that tightened the economic embargo, maintained the open door policy of accepting undocumented migrants, restricted the number of legal applications for asylum, and continued anti-Cuban propaganda via media channels. Following the riot in Havana, Fidel Castro gave orders not to discourage emigration and soon after made the following official statement:

*If the U.S. does not take rapid, effective measures to stop promoting illegal departures from [our] country, we will feel obliged to instruct our border guards to do nothing to stop any vessel that is trying to leave Cuba. We have set forth our position; we aren't opposed to solutions if they are based on sincerity and honesty, if they seek to solve the problem, if they aren't proffered as a means of deceiving us - but we cannot continue to act as border guards for the U.S.*⁴³

The Clinton Administration responded this time by declaring that the U.S. Coast Guard would interdict vessels from Cuba and would not allow another mass migration to the United States. The Administration had consulted with conservative exile groups who agreed to support his actions. Clinton also hinted at a naval blockade but did not pursue such a threat since this would have been an act of war.⁴⁴ Clinton issued a statement on August 19, 1994, denying Cubans entry to the U.S. The president announced that the U.S. Navy would intercept rafts at sea and hold them indefinitely at Guantanamo, the first screening/processing center. This was a complete reversal of a Cuban refugee policy that had been in effect since 1959.⁴⁵ Their detention lasted eight months until a mutually beneficial agreement was reached between the Cuban and U.S. governments. That agreement generated the

⁴² Arboleya, Jesus. Havana-Miami: The U.S.-Cuba Migration Conflict. Australia : Ocean Press; New York: distributed in the United States by Talman Co., 1996.

⁴³ Ibid.

⁴⁴ See Gay, P. 91

policy, effective since 1995, which insured that Cubans obtain 20,000 regular U.S. immigration visa slots, but eliminate the long-established automatic acceptance of Cubans as political refugees.⁴⁶

On May 2, 1995, the Clinton Administration announced the resolution of the Balsero Crisis as a mutually beneficial agreement between the United States and Cuba. The goals of the resolution were threefold: 1) to solve the immediate migration crisis created by the 28,000 Cubans detained at Guantanamo Bay; 2) to implement a control mechanism for preventing future waves of Cuban migrants seeking asylum; and 3) to continue opposition to Fidel Castro by upholding the historic antagonistic economic and political initiatives against Cuba.⁴⁷ Under the accord, the U.S. agreed to accept 20, 000 Cuban refugees annually, which virtually assured that refugees at Guantanamo would make up the total. Other Cuban illegal immigrants would be sent back to Cuba, but could apply for visas to the United States. Cuba agreed that returnees would not be punished and that peaceful means would be used to prevent Cubans from leaving on unsafe rafts and boats. However, Cuba frequently violated this agreement by punishing or harassing returnees.⁴⁸

Because the goals were not completely complementary, the resulting policy involved an unprecedented compromise between the United States and Castro. The Clinton Administration established an orderly migration procedure in Cuba, which

⁴⁵ Ibid.

⁴⁶ Interview with Reverend Tom Willey, Director, World Relief Refugee Services in Miami, Florida. February 20, 2001

⁴⁷ See Nackerud

guaranteed the safety of new applicants without easing the economic and political pressure on the Cuban government. In order to maintain the ongoing trade embargo and support the pending Helms-Burton Bill⁴⁹, President Clinton refused to negotiate on non-immigration issues. Consequently, Castro agreed to discourage future mass emigration and the United States agreed to eliminate the open door policy. However both parties decided the United States would accept the Cubans detained at Guantanamo, thereby resolving the immediate crisis.

Despite previous attempts, the United States failed to normalize and equalize refugee policy prior to the Balsero Crisis. Under Title II of the Refugee Act of 1980, the United States officially adopted the international definition of a political refugee. The quota for Cubans was 19,500 and the law stipulated that refugee status applied only to those who would suffer religious or political persecution if they returned to Cuba.⁵⁰ The policy was intended to require a case-by-case review of Cuban refugee applications. Technically and legally, only Cubans who could meet the standard of the Refugee Act would be granted refugee status after 1980. Within five weeks of President Carter signing the Refugee Act, 80,000 Cubans began arriving illegally in Florida. During what became known as the Mariel Crisis, over 125,000 Cubans successfully entered the United States and were eventually given legal status under the Cuban Adjustment Act⁵¹. As demonstrated by the Mariel Crisis, the preferential treatment of Cubans continued despite the Refugee Act of 1980, which was intended

⁴⁸ See Gay, p. 94

⁴⁹ The Helms-Burton Bill tightened the four-decade-old economic embargo against Cuba and sought to punish foreign-owned companies that engaged in the trafficking of property confiscated by the Castro regime.

to bring U.S. refugee policy in line with internationally developed humanitarian norms.

The resolution of the Balsero Crisis was embedded in U.S. foreign policy aimed at reestablishing a strong influence over Cuban politics and economics. U.S. foreign interests initiated and sustained both the open door policy and the economic blockading of Cuba. Together, the two created an environment that was conducive to mass migration from Cuba. Simultaneously, economic push factors created by the embargo and pull factors created by the open door policy were significant causes of the large waves of Cuban migrants. The alliance between Cuba and the Soviet Union exacerbated cold war tensions between the United States and Cuba, insuring the active use of both policies by the United States. The brief description of the historic, economic and political variables that sustained the contradiction in U.S. refugee policy provided a basis for understanding the significance of the Balsero Crisis which catalyzed the Clinton Administration's decision to discontinue the open door policy.

The significance of the Policy Change

The resolution of the Balsero Crisis was significant because it ended the preferential treatment of Cubans. It was a step towards addressing the historic selectivity of the open door policy being extended only to refugees fleeing governments that the United States directly opposed. The new policy represented progress towards improving the equality and humanitarian validity of future refugee

⁵⁰ Ibid., p. 80

⁵¹ See Gay, p. 79

admissions. The policy change may have reflected a process of proactive engagement between the United States and Cuba for a short time. The normalization of relations was not intended as part of the mutually beneficial agreement which ended the Balsero Crisis, and it does not appear to be a likely outcome in the near future.

The policy change had an immediate consequence for the Cubans involved in the Balsero Crisis and long-lasting consequences for other Cuban nationals who hoped to emigrate to the United States. For many Cubans, it eliminated the possibility of migration to the United States as a durable option if the economic or political conditions became unbearable in Cuba. The policy change was also significant to Cuban Americans, particularly in the Miami area many of whom believed that the special treatment afforded to them was evidence that the U.S. government agreed with their resolve to unseat Fidel Castro.⁵²

The consequence of the policy change on future migration from Cuba was extensive because it eliminated the provision by which thousands of undocumented Cubans had traditionally entered the United States. The U.S. has accepted over 1 million Cubans throughout the open door period.⁵³ The United States had experienced problems in accommodating the Cubans during the waves of mass migration. The

⁵² Interview with Reverend Tom Willey, Director, World Relief Refugee Services in Miami, Florida. February 20, 2001

⁵³ See Nackerud

new policy was designed to limit the number of legal migrants from Cuba to a maximum of 20,000 per year in fiscal year 2000.⁵⁴

Although resolution of the Balsero Crisis diminished the pull factors from the United States, it did not ease the push factors created by the economic embargo and Fidel Castro's restrictions on human rights and freedoms. Since Castro's rise to power in 1959, the Cuban government has had a poor human rights record. This alone continues to constitute a significant push factor. The U.S. agreement to resolve the Balsero Crisis did not address the underlying conditions that catalyzed the mass migrations, which have characterized the movement of people from Cuba to the United States. Economic conditions such as the scarcity of basic necessities, ongoing food shortages, energy blackouts, and inadequate medical supplies are linked to Cuban economic distress. While the U.S. economic embargo is not the only variable influencing these conditions, it continues to be a primary contributor. The embargo exacerbates the very conditions that fueled the Balsero Crisis and therefore contradicts the purpose of closing the open door. Due to the proximity of the two nations, any civil upheaval in Cuba, especially of the magnitude needed to challenge Castro's power, may create another wave of Cuban migration, irrespective of the recent policy change.

As for the future of Cuban migration to the United States, it appears that the open door era is over for now. Since the resolution of the Balsero Crisis there has

⁵⁴ **Proposed Refugee Admissions for Fiscal Year 2001: Report to the U.S. Congress, Department of State, Department of Justice and Department of Health and Human Service, July 2000**

been no recurrence of a large migration influx from Cuba. Nonetheless, the economic, political and social factors creating a push from within Cuba have not subsided. Today in Cuba there are an increasing number of people jailed for peacefully exercising their rights to freedom of expression. This clearly demonstrates the level to which the government will go in order to weaken the political opposition and suppress dissidents. All these factors remain embedded in the context of U.S. foreign policy, providing powerful reasons for yet another mass exodus from Cuba that neither Castro nor the United States could control.

CHAPTER 3

CASE STUDY II: HAITIAN REFUGEES IN THE U.S.

Since the 1970s, the successive U.S. government's treatment of migrants arriving by boat has severely restricted Haitian's access to asylum procedures. Throughout the 1960s and 1970s, there was great disparity in the way in which U.S. authorities treated asylum seekers from Cuba and Haiti. Critics argue that the U.S. government treated Cubans as refugees because they were fleeing a communist government, while it viewed Haitians as economic migrants, despite evidence of widespread persecution in Haiti.

For 30 years, two harsh dictators rules Haiti: first, Francois Duvalier – Known as 'Papa Doc' – from 1957 to 1971, and then his son Jean-Claude Duvalier – know as 'Baby Doc' – from 1971 to 1986. The country's first democratically elected president, former priest Bertrand Aristide, took office in February 1991, but was ousted seven months later by a military coup. In July 1993, the military leaders, in the face of military sanctions and pressure, agreed to step down but did not. They remained in power until late 1994, when the United States intervened and restored Aristide to government.

The Duvaliers

The Duvaliers adopted an ideological stance of being pro-black, but they were indiscriminately brutal against all forms of resistance, across race and class lines. Their regime used terror against all its opponents, including the peasantry and the

urban working class, although history more frequently remembers the persecution of the Haitian elite during this period. Between 1958 and 1986, hundreds of thousands of Haitians fled the country in an attempt to seek political asylum. The exodus resulted in approximately 1 million Haitians living outside Haiti. Many did so elsewhere in the Caribbean including the Dominican Republic, as well as in the United States, Canada, and Europe.

According to the Zuckers, the first of the Haitian boat people drifted onto the Florida shore in December of 1972. Among the sixty-five Haitians on board were twelve political prisoners who had bribed their way out of one Jean-Claude Duvalier's infamous jails. They, and the family members with them, were denied the political asylum they were requested. The INS ruled that the escaped prisoners had nothing to fear from the Haitian government.⁵⁵ In Haiti, however, rather than the government, one feared the army or the Tonton-Macoutes.

The Tonton-Macoutes were some 300 000 national security volunteers who gave the Duvalier government a monopoly on psychological and physical violence. They were a militia created by Francois Duvalier in 1959, whose members were recruited from taxi drivers, the unemployed and criminal as well as Voodoo priests and priestesses. They were like civil servants but pledged their allegiance to the president. *"No successful attempt to depoliticise the army could have hoped to*

⁵⁵ See Zucker & Zucker, P. 35

succeed without support from such a parliamentary organization."⁵⁶ The National Security Volunteers effectively neutralized the army and were quick to carry out Duvalier's orders. *"Within the space of a few years it was clear that the best way of staying alive in Haiti was to have a powerful macoute as guardian angel"*⁵⁷ Haiti was in many ways a police state, not a tightly controlled police state with central lines of authority, such as existed in communist countries, but a state maintained by petty thieves and mercenaries. They ruled not by law, but by absolute terror, wining tribute from impoverished populace and enforcing their demands with arbitrary arrests, imprisonment, torture, and killings. The macoutes who managed to do away with annoying individuals were nicely rewarded. If Duvalier thought an enemy was troublesome, he would have their whole family wiped out. Despite all the bloodshed, Haiti still received support from the US.

Due to the close proximity of Haiti to the United States, Haitians have since long been crossing American borders. The numbers stated souring during the first Duvalier regime.⁵⁸ It was the upper stratum of Haitian society who, at first, began to migrate out of fear that expressing their political beliefs under such a regime would become costly. When the second Duvalier came to power and expressed his unwillingness to incorporate the middle class into his government, as was the promise, they started fleeing in great numbers as well. As a way of placing pressure on Jean-Claude Duvalier, the United States toughen up its immigration laws. As legal migration became more

⁵⁶ Nicholls, David. From Dessalines to Duvalier Cambridge: Cambridge University Press, 1979. P. 217

⁵⁷ Farmer, Paul The Uses of Haiti Maine: Common Courage Press, 1994. P. 108

difficult, the building of small boats became more widespread. In 1980, an estimated 25,000 illegal migrants showed up on American shores from Haiti.⁵⁹

In *Haitian Refugee Center v. Civiletti*, a federal court concluded that the INS was not providing due process for Haitians and ordered the INS to “*follow the principles of due process and equal protection in formulating a plan for reprocessing Haitians’ asylum claims*”.⁶⁰ The Carter administration responded with a temporary program that was designed to deal with both Cuban and Haitian immigrants. Under the program, Haitians were granted a six-month renewable parole that was never revoked. In 1978, the U.S. government had begun carrying out the ‘*Haiti Program*’. This was aimed at deterring Haitian asylum seekers and migrants from entering the United States. Critics saw this as a program to deny Haitians fair hearing and hasten their deportation. In 1979, the U.S. stopped the program and ordered new hearings for rejected Haitian asylum seekers still in the United States.

Haitian boat arrivals increased on 1979 and accelerated dramatically in 1980, the same year that more than 125,000 Cubans arrived in the U.S. during the *Marief Boatlift*. Immediately afterwards, many Haitians benefited from pressure on the U.S. government to treat Haitian and Cubans equally and equitably. Haitian arrivals were awarded a special ‘entrant’ status, permitting them to stay while their status was resolved, but unlike the Cubans, barring them from applying for permanent residence.

⁵⁸ Center for Strategic & International Studies. The Haitian Challenge: US Policy Considerations. CSIS: Washington. 1993. p.33

⁵⁹ Ibid.

In late 1981, President Ronald Reagan's new administration took a series of steps that paved the way for the interdiction of Haitians on the high seas. In response to Haitian's fleeing their nation, the Reagan administration built a policy with "three principle components: detention of new arrivals, interdiction and return of Haitians in boats at sea, and cooperation of the Haitian government in stopping flow".⁶¹ The United States government agreed with the Haitian authorities in Port-au-Prince that it would return Haitians who left illegally. President Reagan ordered the U.S. Coast Guard to interdict vessels that might be carrying undocumented aliens to the United States. If the U.S. Coast Guard determined that the passengers were seeking to enter the United States without documentation from a country with which the U.S. had an agreement to return them to that country. Haiti was the only country with which the U.S. had such an agreement at the time. The Reagan administration instructed the Coast Guard not to return people who might be refugees. Yet the procedures that it put in place to identify potential refugees aboard Coast Guard boats were such that it was extremely difficult for anyone to qualify for entry into the U.S. to apply for asylum.⁶²

The U.S. government, disturbed by the arrival of thousands of Haitian refugees yet reluctant to openly criticize a "friendly" noncommunist government,

⁶⁰ Rowland, Robert. United States Policy on Immigration: An Overview. University of Kansas, 1994. P. 98

⁶¹ The State of the World's Refugees. In search of solutions. Oxford University Press. UNHCR, 1995

⁶² . McBride, Michael J. The evolution of US immigration and refugee policy: public opinion, domestic politics and UNHCR. UNHCR Working Paper, 1999

attempted to make the Duvalier regime ameliorate its human rights record. Non-centralized Vodou communities based in the *ounfò* (temples) and Catholic grassroots communities based on the teachings of the theology of liberation known as *Ti-Legliz* provided ready-made organizational networks that helped destabilize the regime.

In a visit to Haiti in March 1983, Pope John Paul II called for political change, inspiring a more concerted political and social mobilization on the part of the Church. The business sector and the bourgeoisie, consisting of the old 19th-century aristocracy of affranchis-descended families and the nouveaux riches (wealthy black middle-classes and assorted merchants of diverse ethnic backgrounds who had settled in Haiti), also became dissatisfied with the regime. Specifically, they were dissatisfied with the deterioration of the economy and with the increase in social and political tensions. Finally, widespread riots in 1985 proved that the regime had lost control of the country. Duvalier declared a state of siege in January 1986. In February he fled to France on a U.S. transport plane, after emptying the national treasury.

Aristide

Armed with the doctrine of liberation theology, the support of the Haitian people, as well as that of the *National Front For Change and Democracy* (the political party which provided the legal and organizational skills necessary for his candidacy), Jean-Bertrand Aristide emerged out of the December 1990 elections as the official winner with 67% of the Haitian people's confidence.⁶³ He associated his triumph to

⁶³ Knight, Franklin and Collin Palmer. The Modern Caribbean. University Of North Carolina Press: North Carolina. 1989. P.177

Operation Lavalas.⁶⁴ With this organization his new mandate was to fight injustice and use it as a “flood that would sweep away all the after effects of a shameful past.”⁶⁵ Aristide was inaugurated on February 7, 1991. According to Aristide, human rights violations fell a record 75 per cent during the few months in which Aristide was in office.⁶⁶ Freedom of the press and expression were also given back to the people. More important though, were his plans to perform a complete overhaul on the military, turning it into a professional corps under the management of soldiers who showed him loyalty. Unfortunately, a new member of the armed forces General Raoul Cedras, who Aristide himself appointed was used (by both the military and the elites) as an instrument, depriving Aristide of his victory.⁶⁷ The Haitian people, already battered by years of terror, illiteracy, and underdevelopment, were again handed a fate worse than death itself.

As a parish priest at the Calgary of St.-Jean Bosco,⁶⁸ Aristide yearned to tear down what he perceived as the familiar barriers -- military, police, judicial system, and commercial elites -- to Haiti's achievement of democracy. His attempt to do so in 1991 only resulted in his forced deposition from power, and a subsequent drawn-out 21 months in exile.⁶⁹

⁶⁴ Aristide, Jean Bertrand and Christophe Wargny. *Aristide: An Autobiography*. Orbis Books: MaryKnoll, New York: 1993. Chapter 10: This former organization which was at the root of Aritide's electoral campaign has now been turned into a political party, of which he is the leader.

⁶⁵ Ibid.

⁶⁶ Ibid. p.15

⁶⁷ Aristide, Jean Bertrand and Christophe Wargny. *Dignity*. University Press of Virginia: Charlottesville. 1996.. p.42

⁶⁸ See Aristide: *An Autobiography*. pp 89-106. It was at this church where Aristide, as a priest, communicated with followers.

⁶⁹ Perusse, Roland I. *Haitian Democracy Restored 1991-1995*. University Press of America. Maryland: 1995. p.51

The cost, socially, economically, and politically, of the 1991 coup was enormous. Those who remained in Haiti, and are still alive today are fortunate not to have died from gun wounds, machetes, or even starvation. Approximately 5,000 individuals died,⁷⁰ while many others fled the country – primarily by boats to the United States.⁷¹ It is believed that some 20,000 people went into exile.⁷²

The resulting human rights crisis intensified the flow of Haitians to the United States, setting up a difficult and embarrassing problem for the U.S. government. The Coast Guard interdicted more than 40,000 Haitians following the coup. Given the ongoing violence in Haiti at the time, the inability of the interdiction program to fairly identify those with legitimate claims of asylum, and the inability of the United States Government to meaningfully ensure that the Haitians returned would not be harmed, the *Haitian Interdiction Program* represented a serious violation of several provisions of international law.

The Bush administration, troubled by severe criticisms of the policy which extradited refuge-seeking Haitians back to their homelands (graphic news reports also showed many drowning, or otherwise dying of starvation on the high seas), began taking interdicted Haitians to the U.S. naval base at Guantanamo Bay, Cuba in the fall of 1991. Asylum officers then carried out interviews at the base, and "screened in" approximately 11,000 Haitians to pursue their asylum claims in the United States.

⁷⁰ Ibid. p.10

⁷¹ Ibid. p.164

The Bush administration complained that other countries in the Caribbean did not take in more than a token number of Haitians, and that Great Britain and France refused to offer camp space in their Caribbean territories. Soon, the U.S. military declared that Guantanamo was filled to capacity--at one point, more than 12,000 Haitians were at the base. In response, in May 1992, President Bush issued an executive order directing the Coast Guard to forcibly return interdicted Haitians to Haiti, without first allowing them to be interviewed for plausible asylum claims. By the end of 1992, only a handful of persons, most of whom were infected with the AIDS virus, remained at Guantanamo.

So it was under the Bush Administration that the policy of returning Haitians to Haiti, without a full hearing, began. Under this approach, boats containing Haitians were intercepted and the refugees returned to Haiti without a hearing. In early 1992, a Federal judge banned the U.S. administration from shipping Haitians back to Haiti. That ban was overturned by the United States Supreme Court of February 1, 1992.

Bill Clinton, who on the eve of the presidential campaign criticized Bush for his cruel policy of returning Haitian refugees to a brutal dictatorship would soon find himself in the midst of the retraction.⁷³ After the November 1992 presidential election in the U.S., many refugees and advocates expressed hopes that President Clinton would rescind the May 1992 executive order. They pointed to statements that he made during the campaign that he would change U.S. policy. Throughout the

⁷² Ibid.

⁷³ See Perusse. p. 45

presidential campaign, Mr. Clinton stated that he was opposed to the Bush administration's policy on Haitian refugees, in particular the May 1992 executive order. He promised to change the policy, noting that it was wrong to deny Haitians the right to make their case for asylum. Shortly before his inauguration, however, Mr. Clinton announced that he would temporarily continue the forced return policy, to avoid thousands of persons suddenly leaving Haiti in unseaworthy boats.

On July 16, 1993, the United Nations Security Council (UNSC) voted unanimously in favor of their first, of several, "world-wide" oils and arms embargo on Haiti.⁷⁴ According to Peruse, these sanctions were one of the principal reason for the flooding of Florida shores with Haitian refugees. Life in Haiti became simply unbearable as the rich got richer by profiting from the embargo (smuggling contraband items, particularly petroleum products), while the poor got poorer, and often at times, starved to death.⁷⁵ Two days later, President Clinton announced that the United States would no longer summarily repatriate Haitians fleeing their homeland. Despite the announcement, officials continued, for more than a month, to turn back refugees until facilities could be set up for processing the Haitian boat people for asylum. Next, the administration shut down U.S. commercial air links with Haiti, cut off travel visas to the United States, and froze the U.S. assets of Haitians, marking the first time that Washington had frozen individual assets of another country's nationals since the Vietnam War.

⁷⁴ See Perusse. p.160

⁷⁵ Ibid. p.128

The embargo led to some 150, 000 job losses, each one leading to the suffering of six dependents on average.⁷⁶ These embargoes which caused the death of an overall estimate (boat people included) of about 10, 000 persons, were ineffective right from the start.⁷⁷ To begin with, in the early days of the embargo, a more sophisticated contraband trade by the military began to weave its way across the borders of the Dominican Republic. Members of the elite class (or their families) were not affected since they were able to pay their way into the United States and get whatever it was they needed. Furthermore, the United States, who was supposed to be leading this so-called embargo, *"increased . . . almost 50% over the previous years due to a US exemption"* from the ban.⁷⁸

Although the influx of Haitians into the U.S. was said to be for purely economic reasons due to the embargo, it must be brought to the reader's attention that between 1991 and 1994, various factions of the armed forces, Manigat, Namphy, Avril, and Abraham (all of whom were army generals) vied for power in a succession of coups. This period of Haiti's history is marked by a high level of human rights abuses, especially against left-wing and/or pro-Aristide activists. Labeling Haitians as economic migrants was simply an excuse on the part of the U.S. government.

In fact, an estimated 3, 000 political murders took place during Aristide's exile.⁷⁹ Most of the atrocities were against his supporters. International human-rights observers,

⁷⁶ Ibid. p.36

⁷⁷ Ibid. p.66

⁷⁸ Ibid. p. 67

⁷⁹ Ibid p.39

for example, watched a "group of 276 HIV-positive Haitians, including 42 children . . . live in a barbed wire encampment, under inhumane conditions."⁸⁰ Often times, with the Peace Corps standing by, the military "arrested and beat" individuals, while "some were forced to walk naked in the streets."⁸¹

Personal Accounts of Persecution⁸²

On February 10, 1994, a hearing was held before the *Inter-American Commission for Human Rights*. At the hearing, three witnesses, Dukens Luma, Fito Jean, and Pierre Esperance were present. Dukens Luma and Fito Jean testified at the hearing before the Commission in relation to their experiences, after they were interdicted twice by the U.S. Coast Guard cutter. After being interdicted the first time by the Coast Guard cutter, they were returned to Haiti without adequate interviews. They also testified that upon being interdicted a second time by the Coast Guard they were taken to Guantanamo Naval Station, interviewed and later paroled into the United States.

Dukens Luma testified and stated in his affidavit that he fled Haiti for the first time immediately after the coup for political reasons and because of his support for President Aristide. He was being pursued by the military for his political activities and resistance to the coup. He fled from Haiti with the military in hot pursuit, fell and broke his leg, hid from them and finally left Haiti. He was interdicted by a Coast

⁸⁰ Ibid. p.39

⁸¹ Ibid. p.36

⁸² The Haitian Centre for Human Rights et al. v. United States, Case 10.675, Report No. 51/96, Inter-Am.C.H.R.,OEA/Ser.L/V/II.95 Doc. 7 rev. at 550 (1997).

Guard cutter, who put a cast on his broken leg and then repatriated him to Haiti on the first occasion. Upon his arrival he was detained by the police, was struck at least fifteen times with a stick on the left buttock, which was on the same part of his body where his leg was broken. He later escaped, was interdicted by the Coast Guard, and upon being given a reasonable opportunity to present his claim he was paroled into the United States.

Fito Jean testified and stated in his affidavit, that he supported President Aristide and left Haiti for political reasons in November of 1992. He was being pursued by the police for his activist's actions, e.g. demonstrating against and showing resistance to the de facto regime. He was interdicted and repatriated to Haiti. Upon arrival to Haiti, Mr. Jean was put on a bus. There he witnessed physical abuse of other persons on the bus by the in order to ascertain who the repatriates were. When questions were asked about Mr. Jean, the bus driver informed the military that he worked for him and thus he escaped abuse. He fled Haiti for a second time in January of 1993 was interdicted, and upon being given a reasonable opportunity to present his claim, he was paroled into the United States.

Pierre Esperance, Research Associate for the *National Coalition for Haitian Refugees*, in Port-au-Prince, Haiti, since December of 1991, testified and supplied an affidavit of his experiences as a witness to the treatment of Haitian repatriates by the police and military upon their arrival in Port-au-Prince, Haiti. His testimony revealed that as a research associate, he investigated cases of human rights abuses in Haiti,

which involved interviewing victims and witnesses of abuse, and visiting scenes of incidents for the purpose of intervening on behalf of victims and prisoners in urgent need of assistance. However, his principal functions also included monitoring the treatment of repatriated boat people once they disembarked in Port-au-Prince and assisted people who applied for refugee status through the United States In-Country Processing program. He stated that the refugee crisis was caused by three serious problems in Haiti: first the human rights situation there; second, the treatment of repatriated boat people; and third, the in-country processing of refugees by the United States Government.

Pierre Esperance testified that the human rights situation in Haiti was critical: rape, random arrests, torture and bodies in the street were common every day occurrences. The principal targets of repression were members of popular movements, syndicates and pro-democracy activists in rural and urban centers. The perpetrators of this repression were the section chiefs, soldiers of the Haitian army and armed civilians known as *attachés*. The Front for the Advancement and Progress of Haiti (FRAPH) was a political party composed of *attachés* and supported by the army which was involved in repression throughout the country.

Political activists were unable to assemble or associate, except for the pro-military activists. For example, on December 27, 1993, in *Cite Soleil*, armed civilians and members of FRAPH burned down over three hundred houses in retaliation for an attack on one of their members. Over fifty people were killed and thousands were left

homeless. In Sartre, the army raided a meeting of community activists and opened fire on the house, killing 12 men. There was no punishment for these acts. The same people who committed these acts were the ones to whom the United States returned fleeing refugees.

Pierre Esperance also testified that the soldiers did not like the boat people because of the fact that they attempted to flee, which indicated that there was repression in Haiti and reflected poorly on the army. The real reason for the interrogation was to identify people suspected of political activity. The army intimidated refugees into saying that the reason for their flight was economically motivated. Those who did not state that their flight was for economic reasons or remained silent ran the risk of being presumed politically active being arrested. The police also forced repatriates to say to the National TV and Radio, that they fled Haiti for economic reasons.

The petition states that these examples were representative of many documented cases of repatriated boat people who had been persecuted upon their return to Haiti. For each case which had been investigated, there were dozens more that were undocumented because so many people were in hiding.

With regard to the United States in-country processing of refugees (ICP), the refugees who wished to apply to the program had to go through the same channels as everyone else. Returnees were given questionnaires on the boat. Most people did not

know the destination of the questionnaires and who might read them. Therefore, they were reluctant to put information on the questionnaires that might endanger them. People who wanted to apply to ICP had to go to specific addresses that were well known to all. They waited in line outside the building. Everyone knew the reason why they were there. Therefore, soldiers were able to easily identify them.

The questionnaires were difficult to complete without help. Often only two or three people were at the center to help 200 applicants complete the forms. They spoke loudly and were very indiscreet. The situation was very dangerous to an applicant with so many out-of-uniform soldiers in the area.

Intervention

In a hearing on U.S. policy toward Haitian refugees held to review what many in Congress regarded as an increasing series of callous, inhumane and illegal actions by the administration toward those fleeing Haiti,⁸³ the Honorable Howard L. Berman, Chairman, Subcommittee on International Operations, admitted that since the illegal takeover, there had been many credible reports of mass killings, selected assassinations, disappearances, political arrests and several beatings. He recognized that the coup in Haiti, the impact of the subsequent embargo, and the outflow of thousands of Haitian refugees presented a very difficult problem to which there were no easy answers. He stated that the refugees were a 'symptom of a much deeper,

⁸³ U.S. policy toward Haitian refugees: joint hearing and markup before the Subcommittees on Western Hemisphere Affairs and International Operations of the Committee on Foreign Affairs, House of Representatives, One Hundred Second Congress, second session, on H.R. 5360, June 11 and 17,

more intractable series of problems' and also recognized that 'addressing the problems is key to finding a long-term solution'.

Berman admitted that ever since the mass exodus began, the administration underwent everything it could to impede a fair and non-prejudicial screening process to ascertain which of these Haitians might have credible claims to asylum. Those seeking to establish claims found themselves victims of an arbitrary process that allowed them no right to independent review. Thousands of others, determined under the system not to have a credible basis for asserting that they were political refugees, were returned with vague assurances that the U.S. felt their safety could be protected. Berman also stated that U.S. policy to intercept boats carrying Haitian refugees and send them back home without any attempt to find out why they might be fleeing violated U.S. Treaty obligations and was a 'violation of every standard of human decency to which the civilized world adheres'.

President Clinton announced an expanded effort to make it easier for Haitians to apply for refugee status in Haiti, both in Port-au-Prince and in the countryside. He also pledged to increase efforts to reach a political solution in Haiti, thereby reducing a major incentive for Haitians to flee. Many refugee advocates, however, renewed their criticism of the forced return policy, arguing that in-country refugee processing is inadequate to protect legitimate refugees in Haiti. According to some reports, as many as 150,000 to 200,000 Haitians were getting ready to set sail at the time of Mr.

Clinton's inauguration, though some argued that those numbers were greatly inflated.⁸⁴

If there is one clear lesson from the developments of the refugee regime in the 80s and 90s, it is that a more interventionist approach to the cause, treatment and cure of refugee flows is unavoidable.⁸⁵ The Clinton administration found itself having to support 14, 000 of these individuals (among them were 233 HIV-infected persons)⁸⁶ who now resided at Guantanamo Bay. With this 200 million dollar realization⁸⁷ that "*if we don't act, there could be the next wave of refugees at our door . . . (and) continue to face constant threat to stability in our region and (loose) control of our borders.*"⁸⁸ Clinton finally decided to send troops into Haiti in 1994.

In response to the influx of Haitians interdicted at sea in 1994 (see Table 1) President Clinton addressed the nation on September 15 to explain the reasons for the impending US intervention, which began four days later. He spoke of the impact of the refugee exodus from Haiti at length:

Thousands of Haitians have already fled toward the United States, risking their lives to escape the reign of terror. As long as Cedras rules, Haitians will continue to seek sanctuary in our nation. This year, in less than two months, more than 21,000 Haitians were rescued at sea by our Coast Guard and Navy. Today, more than 14,000 refugees are living at our naval base in Guantanamo. The American people have already expended almost \$200 million to support them, to maintain the economic embargo, and the prospect of millions and millions more being spent every month for an indefinite period of time looms ahead unless we act. Three hundred thousand more Haitians, 5

⁸⁴ Ibid., p. 23

⁸⁵ Roberts, Adams. More Refugees, less Asylum: A Regime in Transformation. Journal of Refugee Studies Vol. 11, No. 4 1998. P.395

⁸⁶ See Peruse. p.27

⁸⁷ Estimated costs for housing refugees in Guantanamo and to keep embargo on Haiti.

⁸⁸ See CSIS. p.17. Clinton in a speech to the American people in 1994.

TABLE 1**COAT GUARD MIGRANT INTERDICTIONS AT SEA****FISCAL YEAR 1982-2001**

	FY82	FY83	FY84	FY85	FY86	FY87	FY88	FY89	FY90	FY91
Haiti	171	511	1581	3721	3422	2886	4262	4902	871	2065
Dominican Republic	0	6	181	113	189	40	254	664	1426	1007
Cuba	0	44	7	51	28	46	60	257	443	1722
People's Republic of China	0	0	0	12	11	0	0	5	0	138
Mexico	0	0	2	0	1	1	11	30	1	0
Ecuador	0	0	0	0	0	0	0	0	0	0
Other	0	5	37	177	74	38	13	5	95	58
Total	171	566	1808	4074	3725	2991	4600	5863	2836	4990

	FY92	FY93	FY94	FY95	FY96	FY97	FY98	FY99	FY00	FY01
Haiti	37618	4270	25302	909	2295	288	1369	1039	1113	702
Dominican Republic	588	872	232	3388	6278	1200	1097	583	499	578
Cuba	2066	2882	38560	525	411	421	903	1679	1000	154
People's Republic of China	181	2511	291	509	61	240	212	1092	261	0
Mexico	0	0	0	0	0	0	30	171	49	10
Ecuador	0	0	0	0	0	0	0	298	1244	220
Other	174	48	58	36	38	45	37	24	44	17
Total	40627	10584	64443	5367	9080	2194	3648	4826	4210	1681

Source: U.S. Coast Guard Web Site: <http://www.uscg.mil/hq/g-o/g-opl/mle/amiostats1.htm#fy>

*percent of their entire population, are in hiding in their own country. If we don't act, they could be the next wave of refugees at our door. We will continue to face the threat of a mass exodus of refugees and its constant threat to stability in our region, and control of our borders.*⁸⁹

So overwhelming was the influx of Haiti's boat people that Clinton instituted a naval blockade off Haiti's coast to stem the waves of refugees while his new administration sought solutions to the Haitian problem. This can be seen by the number of Haitians interdicted at sea in Table 1 having significantly diminished in 1993 to just over 4,000 (a far cry from the nearly 40,000 Haitians that were interdicted in 1992).

In the face of an imminent invasion by a multi-national force led by the United States and supported by the United Nations Security Council, the military junta in Haiti surrendered on September 18, 1994.⁹⁰ While giving a speech before the United Nations a few days before his return, Aristide spoke of going back to a *"festival of reconciliation, democracy, and peace . . . [of establishing] justice, so that there will be no trace in it of violence or vengeance."*⁹¹ On October 15, 1994, Jean Bertrand Aristide made history by being the first Haitian exile ruler to ever return to office.

The hardening of attitudes towards refugee influxes, coupled with a growing media-induced awareness of refugees-causing situations, has had major political and military consequences. It causes feelings of guilt, especially in countries with

⁸⁹ Newland, Kathleen. *The Impact of US Refugee Policies on US Foreign Policy: A Case of the Tail Wagging the Dog?* Published in *Threatened Peoples, Threatened Borders: World Migration and U.S. Policy*. New York: The American Assembly, 1995.

⁹⁰ See Peruse. p.162

⁹¹ Ibid. p.112

traditionally liberal immigration policies. It adds to political pressures to tackle refugee issues in or near the country of origin, for example by creating safe areas and semi-permanent camps like Guantanamo. All these developments have pointed to the need for international action, not just through UNHCR and other agencies, but also through the United Nations Security Council. Adams states that it may be possible to take a cynical view of the Security Council's repeated references to refugee issues as a basis for action. In this view, when major powers like the United States want to see action taken under the Security Council, a refugee flow can be a convenient excuse to for classifying a situation as a threat to international peace and security. Where they do not want to see any Security Council action, they turn a blind eye to the plight of refugees.⁹²

There are many lessons to be learned from the bloody 1991 coup. First, the United States hesitation to intervene could possibly be due to its occupation of the island between 1915 and 1934 which was still viewed with hostility by many Haitians.⁹³ Second, it might also due to the U.S.' 'partner in crime' type relationship with the Haitian military. The 1991 coup and Raoul Cedras' overzealous rise to power both articulated the fact that Duvalierism had not been eradicated. When the US marines arrived in Haiti, they were welcomed as quasi-liberators by a population suffering from the combined effects of three years of military dictatorship and a US-led international economic embargo. The last U.S. troops, by contrast, slipped away without fanfare in either Haiti or Washington. President Clinton, who once

⁹² See Adams. P. 379

⁹³ See Aristide: An Autobiography. p.16

proclaimed Haiti's democratic development and economic revival one of his administration's main foreign policy goals, now seldom mentions the country.

Haiti was a country that was allied with the U.S. and was geo-politically critical to containing communist Cuba. The U.S. military used Haitian ports, and during the Cuban Missile Crisis, Haitian airfields. For its part, Haiti voted in the OAS to expel Cuba from the organization and impose sanctions on it. In exchange, the United States provided economic aid, while ignoring Haiti's abuse of Human rights. From 1957 until 1994, when the U.S. intervened in Haiti to restore Aristide, the U.S. ignored the killings, violence, terror, and repression that characterized "the successive kleptocratic regimes" of the Duvaliers and the military oligarchies.⁹⁴

Outcome of U.S refugee policy towards Haitians

The Bush/ Clinton Haiti policy came under strong attack, as some charge that the policy was racially motivated and that Haitians are genuine refugees, who desperately need assistance. Even U.S. officials agreed that one-third of the refugees, "have claims for asylum that deserve to be examined."⁹⁵ Clinton's campaign promise to restore Haitian democracy caught up with him. The forced return policy has been criticized both within and outside the U.S. on the grounds that the interdiction program flies in the face of national and international prohibitions against refoulement. The Democratic dominated Congressional Black Caucus in the House of Representatives publicly pressured the president to stop returning refugees and

⁹⁴ See Zucker & Zucker. P. 35

⁹⁵ Ibid., p. 99

intervene in Haiti. Human rights groups charged that the president's policy of forcing Haitians to repatriate constituted a repudiation of his campaign promises. Aristide denounced the administration's refugee policy as racists and criminal.⁹⁶ Aristide's followers compared the administration's refugee program to returning Jews to Nazi Germany. In an unusual admission, President Clinton acknowledged the failure of his Haitian policy but gave the impression that he was without the power to change it.

The Clinton administration's uneasiness with its Haitian policy was manifest almost from the beginning. Fearing Haiti would turn into a low-intensity battleground similar to Somalia, the administration was reluctant to devote huge amounts of American tax dollars and years of commitment to nurturing economic development and political pluralism in Haiti.⁹⁷ Fortunately for the Clinton administration, media attention on Haiti waned after the military intervention and Aristide's return. But political violence has continued to plague Haitian politics.

America's Watch and the *National Coalition for Haitian Refugees* had sent a very harsh message to President Clinton in 1993, claiming that:

"Your Administration's failure to support and protect the fundamental human rights of Haitians has contributed to a human rights disaster that has tarnished your Presidency and discredited your stated commitment to democracy and human rights around the World".⁹⁸

According to Rowland, the policy on Haiti is important, *"because if we do not act in response to the terrible abuses, that will send a signal to the military in other*

⁹⁶ Henriksen, Thomas H. Clinton's Foreign Policy in Somalia, Bosnia, Haiti, and North Korea. Stanford University: Hoover Institution, 1996. P. 24

⁹⁷ *Ibid.*, p. 27

Caribbean nations that they can oppress their own people without U.S. interference".⁹⁹ The Clinton administration has tried to resolve the issue with a partial embargo against Haiti and diplomatic pressure. Clearly, this policy did not work. The embargo, which applied to oil supplies and arms failed, largely because oil flowed across the border from the Dominican Republic.

In a 1993 World Refugee Survey, the US Committee for Refugees stated that while there are legitimate concerns about people setting sail in dangerous makeshift boats, there should have been equal concern about guaranteeing access to refugee and asylum protections for people caught in a chaotic and terrible human rights situation. They insisted that a policy change initiated by President Clinton was greatly in order if the situation of inadequate refugee processing did not change and especially if the political situation dragged on.

Regardless of President Clinton's stated policy designed to deal with the crisis, World Refugee Survey called for an effective long-term strategy that must seek to improve the political and economic conditions in Haiti. And a return to Haiti of a democratic government would be a crucial component of such a strategy, which should be implemented as part of a multilateral effort involving the United Nations and the OAS. Without such a strategy to improve conditions in Haiti, the pressures

⁹⁸ See Henriksen. P. 100

⁹⁹ Rowland, Robert. United States Policy on Immigration: An Overview. University of Kansas, 1994

that move people to make the desperate and dangerous journey to the U.S. would continue into the foreseeable future.¹⁰⁰

The interdiction policy deprived Haitians of a fair opportunity to articulate and substantiate claims for political asylum. This can be seen by the program's results. An interdicted Haitian's likelihood of being considered to possess a legitimate claim was approximately .005%. A Haitian who avoided interdiction and arrived in the United States had at least a 5% chance of being considered to possess a legitimate asylum claim. The strength of the asylum claims did not suddenly change once Haitian boat people got around the interdiction program, instead, what changed was the opportunity to be heard.¹⁰¹ Given the ongoing violence in Haiti, the inability of the interdiction program to fairly identify those with legitimate claims of asylum, and the inability of the United States Government to meaningfully ensure that the Haitians returned would not be harmed, the Haitian Interdiction Program represented a serious violation of several provisions of international law.

U.S. policy toward the Haitian boat people was composed of two separate elements: (1) the interdiction of Haitian boats by the U.S. Coast Guard to prevent refugees from reaching the United States, and (2) the resettlement of refugees in temporary safe havens outside the United States. According to Guest, this policy was inappropriate for the kind of emergency that existed in Haiti. Political violence coupled with the impact of an economic embargo worsened conditions. *A 1993 study*

¹⁰⁰ U.S. Refugee Policy: Where We've Been, Where We're Going. US Committee for Refugees, World Refugee Survey, 1993

by Harvard University suggested that sanctions had exacerbated malnutrition. By the second full year of the crisis, the United Nations and the AOS¹⁰² mission of human rights observers reported 141 probable political killings between June and September of 1993.¹⁰³ The mission's report noted an increase in political killings in Port-au-Prince, from 9 May to more than 60 in September. Hundreds of politically active Haitians went into hiding, and the tightening of sanctions on May 21, 1994 increased the pressure to flee.¹⁰⁴

Guest states that in such a climate, it was inhumane to deny Haitians the right to seek asylum and to return them to Haiti against their will. Although improvements were made in the in-country refugee-processing program, this program could not substitute for the right to seek asylum - a point that was made to the Clinton administration by the UN High Commissioner for Refugees. U.S. policy also damaged the international regime for the protection of refugees at a time when the institution of asylum was under growing pressure.

This particular Haitian migration should have been viewed as an emergency action rather than as a traditional refugee exodus. The U.S. was remiss in probing refugees for individual motives, when repression was directed against entire neighborhoods where President Jean-Bertrand Aristide enjoyed support.¹⁰⁵ It may

¹⁰¹ See World Refugee Survey 1993.

¹⁰² Organization of American States

¹⁰³ Guest, Ian in Haitian frustrations: dilemmas for U.S. policy: a report of the CSIS American Program. Georges A. Fauriol. Washington D.C.: Center for Strategic and International Studies, 1995. P. 75

¹⁰⁴ *Ibid.*, P. 75

¹⁰⁵ *Ibid.*, P. 75

also be said that it is inappropriate to distinguish “economic” from “political” motives, when so much of Haiti’s poverty can be ascribed to repression and misrule.¹⁰⁶

The emergency exodus of Haitians required an emergency response. The U.S. administration had been urged to suspend or modify interdiction and to work with the UN and OAS to establish a policy of safe haven in the region. The UNHCR offered to help establish one or more centers in the region where fleeing Haitians could be given temporary safe haven until constitutional rule was restored in Haiti, regardless of their motive for fleeing. In the event that Haitians reached the United States, they should have been given temporary protected status, such as that afforded to Bosnians, Liberians, Somalians.

The history of the U.S. government’s treatment of Haitians gives no reason to believe that most Haitians should attach hopes on asylum processing. According to Judith Pierre-Okerson, Director of Church World Services (CWS) in Miami Florida and a Haitian herself, there are still many refugees still arriving from Haiti and the current political situation was dicey at best. When asked if she felt that Haitians were treated better than Cubans, she answered that she had absolutely no doubts in her mind that Haitian were treated unfairly by INS.¹⁰⁷ Emmanuel Galbeau, a case-worker at CWS, stated that at least 30 to 40 Haitians were arriving on the shores of Miami

¹⁰⁶ Ibid., p. 76

¹⁰⁷ Interview with Judith Pierre-Okerson, Director, Church World Services (CWS) in Miami Florida. February 20, 2001

every month. He also informed me that, within the past three or four years, it is very rare for a Haitian to be granted refugee status. Out of 200,000 applicants only one percent are accepted as being persecuted and worthy of refugee status. When asked about the motives of Haitians fleeing he stated that given the ongoing political turmoil in the country the people do in fact have valid fears of persecution.¹⁰⁸ Proving this to INS is very difficult, however. Furthermore, unlike the Cubans, Haitians have absolutely no rights once they enter the U.S. as refugees.

Haiti Today

On December 20, 1998, the Clinton Administration announced that it would extend work authorization for certain Haitians granted *Deferred Enforced Departure* (DED), allowing them to continue to work while they apply to adjust status under the *Haitian Refugee Immigration Fairness Act* of 1998. Under that law, some Haitians who fled during the political violence in the early 1990s are eligible to become legal permanent residents of the United States. Among those eligible for residency are Haitian refugees who before the end of 1995 were either paroled into the United States from the U.S. naval base in Guantanamo, Cuba or applied for asylum in the United States. Unaccompanied, orphaned, and abandoned children are also eligible for residency.

From 1998 to 1999, U.S. Coast Guard high-seas migrant interdictions increased by 24 percent. In fiscal year 1999, the Coast Guard interdicted 4,826

¹⁰⁸ Interview with Emmanuel Galbeau, Caseworker, Church World Services (CWS) in Miami Florida. February 20, 2001

migrants. Cubans (1,619) were the largest nationality group to be interdicted, significantly increasing from 903 in 1998 and 421 in 1997. The number of interdicted Haitians was 1,039.¹⁰⁹ (See Table 1)

Today, there is still a significant flow coming from both countries. By the end of year 2000, nearly 21,000 Haitian asylum applications were pending in the United States. More than 4,700 Haitians applied for asylum in the United States in 2000 (at least 1,700 more than in 1999). Haitians had a *first-instance approval rate* of 22 percent with INS asylum officers, up dramatically from 1999's approval rate of 7.6 percent. The approval rate by immigration judges declined from about 15 percent in 1999 to about 10 percent in 2000. In 2000, the U.S. Coast Guard interdicted 1,113 Haitians (see Table 1) at sea and returned almost all of them to Haiti.

Haiti today is a fragile democracy at best. Human rights violations have always been present in Haiti. Unfortunately they are still flourishing under the current "democratic" government. Nearly four years after the restoration of a democratically elected government in Haiti, impunity and lack of speedy progress on judicial reform are placing human rights on the edge of a dangerous precipice.

According to Amnesty International, "*Although the scale of serious human rights violations is much lower than under the military government, Haiti is still struggling precariously to consolidate the gains that have been made.*" Torture and

¹⁰⁹ Coast Guard Interdictions : U.S. Country Report

ill-treatment, extra-judicial executions, and killings in suspicious circumstances are still cause for serious concern, and over the past two years people have been arrested for allegedly conspiring against the government on what looks like flimsy evidence and often without adhering to correct legal procedures.¹¹⁰

Since 1994, little real progress has been made in bringing to justice those responsible for human rights violations, past or present. Upon President Aristide's return, victims and relatives of victims were encouraged to lodge complaints; however, insufficient resources were provided to follow up the complaints and very few reached the courts. In 1998, only three prominent human rights cases were brought to trial.

Poverty, violence, and political instability intensified in Haiti last year. In response to international pressure, including the U.S. government's suspension of aid, Haiti held elections throughout 2000 after three years without a fully functioning government and more than one year without a parliament. In an election characterized by low voter turnout, political violence, and allegations of fraud, Jean-Bertrand Aristide was re-elected President of Haiti in November.

On January 9 of this year, representatives of popular organizations claiming to support the dominant Fanmi Lavalas party issued threats of physical violence against members of opposition parties and journalists during a press conference in the Saint

¹¹⁰ Haiti: Human rights violations still flourishing under democratic government
News Service: 132/98. Amnesty International INDEX: AMR 36/05/98. 22 JULY 1998

Jean Bosco church in Port-au-Prince.¹¹¹ In issuing the threats, the speakers referred to a list of public figures reportedly opposed to the upcoming inauguration on 7 February of president-elect Jean Bertrand Aristide of Fanmi Lavalas. The list is said to contain up to one hundred names, including some opposition politicians who have announced plans to form a "shadow government" following the inauguration. Journalists and religious leaders were also reportedly named. During the press conference, the speakers warned the individuals concerned to change their position or face violence.

¹¹¹ Haiti: Amnesty International urges immediate response to threats of political violence. AI Index AMR 36/001/2001 - News Service Nr. 7. 11 January 2001

CHAPTER 4

COMPARATIVE ANALYSIS

The open door policy for Cubans may have ceased, but there is still little doubt that they remained favored due to the ease in which they are able attain residency. (See Table 2) U.S. policy toward Haitians touched upon different interests. Foreign policy dictated that the Haitian government, no matter how vicious, was considered an ally in the fight against Cuban communism. Haiti was a country that was geo-politically critical to containing communist Cuba. The U.S. military used Haitian ports, and during the Cuban Missile Crisis, Haitian airfields.

Adams observes that the greatest single change in modes of humanitarian action in recent years has been the relentless pressure to tackle refugee-producing situations at or near the source.¹¹² In the Haiti situation, domestic pressure groups carried little weight. The Haitian communities in the United States were economically and political insignificant. The churches and civil rights groups that defended the Haitians were politically unimportant.¹¹³ From 1957 until 1994, when the U.S. intervened in Haiti to restore Aristide, the U.S. ignored the killings, violence, terror, and repression that characterized the Duvalier regimes and the military oligarchies. A number of factors contributed to the failure of the United States to open the door as widely for Haitians as it had for Cuban refugees. The U.S. essentially had a better relationship with the Haitian leadership and had ties to Haitian economic interests.

¹¹² See Adams. P.

TABLE 2

**INS - REFUGEES AND ASYLEES GRANTED LAWFUL PERMANENT RESIDENT STATUS
BY REGION AND SELECTED COUNTRY OF BIRTH, FISCAL YEARS
1987-98**

Country of birth	1987	1988	1989	1990	1991	1992
Bahamas, The	9	1	-	1	3	2
Cuba	26,817	10,846	5,245	7,868	7,953	9,919
Dominica	1	5	3	4	1	-
Dominican Republic	10	16	10	20	14	27
Grenada	-	-	-	1	-	-
Haiti	11	39	11	-	31	16
Jamaica	2	-	2	5	2	1
St. Vincent & Grenadines	-	-	-	-	-	-
Trinidad & Tobago	-	-	1	-	-	-

Country of birth	1993	1994	1995	1996	1997	1998
Bahamas, The	4	-	1	2	1	-
Cuba	11,603	11,998	12,355	22,542	30,377	14,915
Dominica	4	-	-	1	-	1
Dominican Republic	18	8	22	19	26	18
Grenada	-	-	-	1	-	-
Haiti	68	664	2,502	4,028	1,074	537
Jamaica	3	1	4	3	-	2
St. Vincent & Grenadines	-	1	-	-	-	-
Trinidad & Tobago	-	-	2	1	-	2
	-	-	2	-	1	5

Source: INS Web Site:

http://www.ins.usdoj.gov/graphics/aboutins/statistics/Ref.Asy98Excel/Table_34.xls

¹¹³ See Zucker & Zucker P. 34

Therefore, it had little desire to embarrass the Haitian Government by accepting large numbers of Haitian immigrants, many of whom were assumed to be fleeing for economic rather than humanitarian reasons.

According to Zucker and Zucker, among all the groups to seek refuge in the United States, the Haitians were an anomaly. They were much fewer in number than other groups, yet they became the *"single-minded focus of State and Justice department efforts to bar unwanted asylum seekers"*.¹¹⁴ The Haitian dictatorships were among the world's more brutally repressive, yet the American government insisted that Haitians were fleeing for purely economic reasons. One cannot help but agree with the Zuckers when they affirm that the insistence on economic motives was both deliberate and duplicitous.

The roots of the Mariel boatlift lay in first Cuba and Haiti – in the political and economic conditions in both countries and the United States' response to them. Mariel also had its roots in the United States – in the way previous migrations of Cubans and Haitians had been received and integrated. Mariel's branches, as well, were both foreign and domestic. Unresolved issues from the boatlift continue to influence United States policy even now. The ashes of Mariel banked the fires of *restrictionism* that grow stronger each year. That *restrictionism* fed the decision, in 1994, to reverse decades of American policy toward Cuba and Haiti. And that *restrictionism* still influences voter attitudes and domestic policies.¹¹⁵

¹¹⁴ Ibid., p. 34

¹¹⁵ Ibid.,

Barred from applying for refugee admission, ignored as recipients of parole, the Haitians had only one avenue left – to flee their country illegally and ask for asylum in the United States. In every respect, this avenue was by far the more treacherous. An individual who comes to the United States and asks to be given asylum must prove that she has a well-founded fear of being persecuted in her country of origin. Applying for asylum is a difficult and time-consuming, case-by-case process. Asylum was not designed as an avenue wide enough to accommodate masses of people.

Cubans and Haitians who arrived on the shores of Florida in the spring and summer of 1980 should have been seen not as a *mass asylum* but rather as what should be called *mass escape*.¹¹⁶ As mentioned before, to claim asylum, an individual must show that she or he has a well founded fear of persecution because of race, religion, nationality, membership in a particular social group, or political opinion. Mass asylum applies to large numbers of people with some common basis for fearing such persecution. The humanitarian response, in such cases, would be to determine that the entire group is entitled to refugee status and resettlement.

Considered individually, many Cubans and Haitians could demonstrate as well-founded fear of persecution and would, therefore, have been eligible for refugee status. But there were others who could not prove such a fear; even these, however, had had their freedom restricted, had been oppressed, even if they had not been

persecuted. The Zuckers claim that Cubans and Haitians did not, as a whole represent either *mass asylum* or an undocumented labor migration. They represented the phenomenon of mass escape, a phenomenon not envisioned in U.S. immigration laws, nor responded to by U.S. law makers.

The very concept of “mass asylum” begs an important question. If any single country is forcing masses of its citizens to flee, and large numbers of those people then request asylum, clearly there is some basis for giving that country a refugee allocation.

“The U.S. ignored the repression in Haiti, refused to process refugees from there, failed to give fair asylum hearings to Haitian escapees, and eventually barred them even from leaving their country, all the while staring with unseeing eyes at the egregious abuses of human rights that were driving them out.”¹¹⁷

Mass escape arose not from the absence of freedom but from the absence of immigration controls. This line of reasoning, however, lends yet another argument in favor of the American anti-Cuba, pro-Haiti bias: a hostile Castro was manipulating emigration; an amicable Duvalier was willing to contain it. A corollary to this argument was that Castro refused to take back Cubans returned from the United States, while Duvalier agreed to take back Haitians. Therefore, the U.S. could not send back Cuban asylum seekers, but it could deport Haitians.

¹¹⁶ Zucker & Zucker. P. 66

¹¹⁷ Ibid. P. 67

US policymakers have addressed migration and refugee problems in the Caribbean only in times of crisis, developing ad-hoc, short-term solutions. Post-crisis Haiti policy has been equally limited. The U.S. maintained just enough of a military presence in Haiti to maintain order and support an economic restructuring program that may have generated additional poverty¹¹⁸ and thus additional out-migration, as well as patrolling Haitian waters with Coast Guard cutters to pick up any Haitians who do leave. This strategy aimed to hold off Haitian migration flows for the short-term. It did nothing to address the root causes of migration in the Caribbean. Nor has it prepared it for a potential increase in Cuban outflows.

Many advocates for the Haitians argue that they were the targets of *racism*. The Cubans trying to enter the U.S. were predominantly white while the Haitians were predominantly black. Certainly racism has played a part in American *restrictionism*. But for the government, there was supposedly a more pressing concern – the fear of another Mariel. Almost every government spokesperson and every government report raises that fear. “*The fear of a sudden flood of refugees, however, had to be given a larger justification and was placed in the context of anti-communist dogma*”.¹¹⁹

In the 1980s and 1990s the foundations for a paradigm shift in international refugee policy and law began to be laid, among other things through the creation of

¹¹⁸ NCHR Caribbean Migration and Human Rights Project. National Coalition for Haitian Rights. <http://nchr.org/rmp/caribpro.htm>

what Chimni refers to as the *myth of difference*.¹²⁰ The myth of difference is that the nature and character of refugee flows in the Third World is represented as being radically different from the refugee flows in Europe since the end of the WWI. Thereby, an image of a 'normal' refugee was constructed – white, male and anti-communist – which clashed sharply with individuals fleeing from the Third World. By producing the image of a 'normal refugee', Chimni asserts that a clear message was sent to the population with regard to the 'new asylum seeker': that asylum seekers were here for no good reason, that they abused hospitality, and that their numbers were too large. It simply confirmed xenophobia. She concluded that there is thus a dialectic between state action and the rise of xenophobia.

The myth of difference went hand in hand with an internalist interpretation of the root causes of refugee flows, which laid the blame at the door of post-colonial societal and states, underestimating the significance of external factors. What followed was the advice to reject the exilic bias of international refugee law as unsuited to provision of assistance and protection to refugees from the Third World. A new approach, expressed in the language of human rights, was articulated. It called for providing assistance and protection for refugees in the region of origin. The rejection of the exilic bias legitimized what Chimni refers to as the *non-entrée regime*, when after the Cold War refugees no longer possessed ideological or geographical value and the rethinking translated into a series of restrictive measures.

¹¹⁹ Ibid., 73

According to Dacyl, the core dilemma posed by humanitarian intervention lies in the fact that even though the intervention should be based on objective criteria of humanitarian emergency, it also needs to take account of the political considerations of both donors and recipient states, as well as of the prevailing structural features of the global system. It appears that only a well balanced approach to the issue of humanitarian intervention will have a realistic chance to make *'a violation of law and right in one place felt in all others'* and *'heighten the sensitivity of people in one place to wrongs done in another in the interest of the achievement of global justice'*.¹²¹

She writes that a full-fledged parity regarding human rights in situations of humanitarian crisis implies that genuine protection seekers should be given a right to cross foreign state borders in search of protection. This would also necessitate subjects of international law. The question is whether human civilization is mature enough to take up such a challenge of reshaping the basic principles of global governance. "The core problem is that for externally displaced individuals to gain an unconditional right of entry into the host state's territory is probably more challenging for the post-Westphalian nation-state system than external interventions."¹²² Western democracies are pursuing simultaneously two courses, one illiberal, the other liberal, but both of which challenge the fundamentals of the international refugee regime.

¹²⁰ Chimni, B.S. *The Geopolitics of Refugee Studies: A View from the South*. *Journal of Refugee Studies* Vol. 11, No. 4 1998. P. 351

¹²¹ Dacyl, Janina W. *Sovereignty versus Human Rights*. *Journal of Refugee Studies* Vol. 9, No. 2 1996. P. 146

¹²² *Ibid.*, P. 159

Western states are making systematic attempts to keep asylum seekers away from their border.¹²³

This unwillingness or incapacity to protect populations is very much connected with the erosion of state authority under the pressures of economic globalization. The erosion of an international commitment to the refugee regime is accelerated, of course, by downward standard-setting led by the migrant and refugee receiving countries of the North. With globalization processes continuing to exacerbate global inequity of all kinds, what moral authority Northern states ever had to press governments of the South to respect and apply refugee and supporting human rights instruments is all but disappearing.¹²⁴

¹²³ See Adams. P. 379

CHAPTER 5

CONCLUSION

It is difficult to determine all the factors that influenced the various U.S. presidential administrations as they moved from one policy to another. There is no doubt, however, that refugee flows so close to U.S. shores became the trigger that engaged the U.S. policy process. Did the United States learn any lessons? That is not clear, but U.S. policy towards Cuban and Haitian asylum seekers have undergone a succession of rapid changes. On many occasions, it would appear the government has found itself caught between a number of divergent pressures: the nature of its relations with both Cuba and Haiti, its obligations under international refugee law, and the competing demands of different domestic constituencies. Ultimately, the most important determinant of recent policy towards the Cubans and Haitians has been the country's desire to prevent the unpredictable and irregular arrival of people upon its shores.

Refugees in the world today are growing in number, but are losing ground in terms of legal protection. It seems that many states are undertaking radical changes through legislative and inter-state arrangements which result in restricting access to asylum and the provision of legal rights to refugees. These restrictions include, notably but not exclusively, limiting access to refugee status determination procedures and employing an increasingly restrictive interpretation of the refugee definition.

¹²⁴ Gorlick, Brian. Human rights and refugees: enhancing protection through international human

It is essential that the U.S. revise its policy on refugees. Unfortunately, U.S. policymakers have addressed migration and refugee problems in the Caribbean only in times of crisis, developing ad-hoc, short-term solutions. Large-scale refugee flows can only be solved by long term planning and commitment to economic growth, development and more importantly, peace building. Refugee policy should be a humanitarian project designed to relieve the suffering of those who have been forced to leave their home countries out of fear for their lives. After reviewing the evidence, it is quite clear that Haitians had legitimate rights to asylum, or at least to be allowed to take part in appropriate processing in both the past and today.

Article 14.1 of the Universal Declaration of Human Rights states that "everyone has the right to seek and to enjoy asylum from persecution". While governments are entitled to control immigration and entry to their territory, the United States must ensure that asylum-seekers have access to a fair and satisfactory asylum procedure. The U.S. should also ensure that there are no restrictions on entry or border control measures that in practice obstruct access.

Mass human rights violations cause mass exodus. In some circumstances, when hundreds of thousands of people flee their country, governments may not be in a position to examine every individual case, but in an ideal system, they will grant asylum to the whole group. In effect, there is a presumption of refugee status. Before any person who has been part of a mass exodus is returned to the country they fled,

rights law. UNHCR Stockholm, Sweden , October 2000.

they should be given an opportunity to identify themselves as having individual grounds for continuing to fear persecution if returned.

In situations of mass exodus asylum seekers should be admitted to the state where they first seek refuge. If that state is unable to admit them on a long-term basis it should always admit them on at least a temporary basis pending arrangements for a durable solution. In all cases the fundamental principle of non-refoulement must be observed scrupulously. Asylum seekers in mass exodus situations should not be penalized or treated unfavorably solely on the grounds that their presence in the country is considered unlawful or they do not fit the category of a 'normal' refugee.

Asylum applicants should have the opportunity to be heard in person by the decision-maker when their claim is examined in the first instance. There should be an individual and thorough examination of all the circumstances of each case. All officials and procedures dealing with asylum-seekers should take into consideration the special situation of refugees. It is not always possible for an asylum-seeker to "prove" every part of her or his case, but if one's account is credible, she or he should be given the benefit of the doubt.

BIBLIOGRAPHY

Adelman, Howard. Refugee Policy: Canada and the United States. *Center for Migration Studies*, 1991

Arboleya, Jesus. Havana-Miami: The U.S.–Cuba Migration Conflict. Australia : Ocean Press; New York: distributed in the United States by Talman Co., 1996.

Brenner, Philip and Peter Kornbluh Clinton's Cuba Calculus *NACLA Report on the Americas* v 29 Sept/Oct 1995. P. 33-40

Brune, Lester H. The United States and post-cold war interventions: Bush and Clinton in Somalia, Haiti, and Bosnia, 1992-1998. Claremont, California: Regina Books, 1999

Catanese, Anthony. Haitians: Migration and Diaspora. Westview Press, 1999

Chamberlain, Greg. Electoral turmoil in Haiti. *NACLA Report on the Americas*; New York; Jul/Aug 2000

Colomer, Joseph M. Exit, voice, and hostility in Cuba; *The International Migration Review*, New York; Summer 2000; Vol. 34, Iss. 2

Dacyl, Janina W. Sovereignty versus Human Rights. *Journal of Refugee Studies* Vol. 9, No. 2 1996

Doherty, Carroll J. Influx of Cubans forces Clinton to halt automatic asylum. *Congressional Quarterly Weekly Report* v 52 Aug 20 1994. P. 2464-5

Farmer, Paul The Uses of Haiti Maine: Common Courage Press, 1994

Ed., **Fauriol, Georges A.** Haitian frustrations: dilemmas for U.S. policy: a report of the CSIS American Program. Washington D.C.: Center for Strategic and International Studies, 1995

Fernandez, Alfredo. Adrift: The Cuban Raft People, Arte Publico Press, 2000

Gay, Kathlyn. Leaving Cuba: From Operation Pedro Pan to Elian, Twenty-First Century Books, 2000

Gorlick, Brian. Human rights and refugees: enhancing protection through international human rights law. UNHCR Stockholm, Sweden , October 2000

Gorman, Robert F. Mitigating Misery: An Inquiry into the Political and Humanitarian Aspects of U. S. and Global Refugee Policy. University Press of America, 1993

Haines, David W. Desperate Crossings: Seeking Refuge in America. *The International Migration Review*; New York; Spring 1998;

Haines, David W. Refugees in America in the 1990s: A Reference Handbook. Westport, CT, and London: Greenwood Press, 1996.

Henriksen, Thomas. Clinton's Foreign Policy in Somalia, Bosnia, Haiti, Hoover Institution, 1996

Isgro, Francesco. New immigration law grants amnesty to Nicaraguans and Cubans and alleviates harsh rules for certain Central Americans and Eastern Europeans-- President orders interim relief for Haitians. *Migration World Magazine*; Staten Island; 1998

Ed. Jorge I. **Dominguez,** Democracy in the Caribbean: Political, Economic, and Social Perspectives. A World Peace Foundation Study, 1993

Knight, Franklin and Collin Palmer. The Modern Caribbean. University Of North Carolina Press: North Carolina. 1989

Laguerre, Michel. Diasporic Citizenship. St. Martin's Press, 1998

Legomsky, Stephen. Immigration and Refugee Law and Policy. The Foundation Press, 1997

Masud-Piloto, Felix Roberto. From welcomed exiles to illegal immigrants: Cuban migration to the U.S., 1959-1995. Maryland.: Rowman & Littlefield, 1996.

McBride, Michael J. "The evolution of US immigration and refugee policy: public opinion, domestic politics and UNHCR" UNHCR, CDR Working Paper No. 3, May 1999

McFadyen, Deidre. The "violence" of Aristide; NACLA Report on the Americas, New York; Jan 1996; Vol. 29, Iss. 4; pg. 5

Miller, Mark F. Between Revolution and Stasis: U. S. Immigration and Refugee Policy in 1996. *Center for Migration Studies*, 1997

Mitchell, Christopher. U.S. policy toward Haitian boat people, 1972-93. *The Annals of the American Academy of Political and Social Science* v 534 July 1994. P.69-80
ISSN: 00027162

Nackerud,-Larry; Springer,-Alyson; Larrison,-Christopher, The end of the Cuban contradiction in U.S. refugee policy. *The International Migration Review* v 33 no1 Spring 1999. p. 176-92.

Nicholls, David. From Dessalines to Duvalier Cambridge: Cambridge University Press, 1979. P. 217

Newland, Kathleen. U.S. Refugee Policy: Dilemmas and Directions. International Migration Policy Program Carnegie Endowment for International Peace, 1996

Newland, Kathleen. The Impact of US Refugee Policies on US Foreign Policy: A Case of the Tail Wagging the Dog? Published in *Threatened Peoples, Threatened Borders: World Migration and U.S. Policy.* New York: The American Assembly, 1995.

Roberts, Adams. More Refugees, less Asylum: A Regime in Transformation. *Journal of Refugee Studies* Vol. 11, No. 4 1998

Rowland, Robert. United States Policy on Immigration: An Overview. University of Kansas, 1994

Smith, Wayne S. and Esteban Morales Dominguez. Subject to Solution: Problems in Cuban-U.S. Relations. Boulder, Colo: L. Rienner Publishers, 1988.

Stepick, Alex with the assistance of Dale Frederick Swartz. Haitian refugees in the U.S. London: Minority Rights Group, 1986

Stepick, Alex. Pride Against Prejudice: Haitians in the United States. Boston: Allyn and Bacon, 1998.

Tomasi, Lydio F. The unfinished U.S. immigration agenda. *Migration World Magazine*; Staten Island; 2000

Zolberg, Aristide R. (1995). "From Invitation to Interdiction: US Foreign Policy and Immigration since 1945" in Michael S. Teitelbaum and Myron Weiner (eds.). Threatened Peoples, Threatened Borders: World Migration Policy. New York: The American Assembly, Columbia University

Zucker, Norman L. & Naomi Zucker. Desperate Crossings: Seeking Refuge in America. Armonk, N.Y.: M.E. Sharpe, Inc, 1996

The Haitian Challenge: US Policy Considerations. Center for Strategic & International Studies. CSIS: Washington. 1993.

Haitian Refugee Immigration Fairness Act: hearing before the Subcommittee on Immigration of the Committee on the Judiciary, United States Senate, One Hundred Fifth Congress, first session, on examining legislation that will provide relief for Haitian refugees, Miami, FL, December 17, 1997.

Washington: U.S. G.P.O. : For sale by the U.S. G.P.O., Supt. of Docs., Congressional Sales Office, 1998.

Cuban and Haitian immigration: hearing before the Subcommittee on International Law, Immigration, and Refugees of the Committee on the Judiciary, House of Representatives, One Hundred Second Congress, first session, November 20, 1991.

Washington: U.S. G.P.O. : For sale by the U.S. G.P.O., Supt. of Docs., Congressional Sales Office, 1992.

U.S. policy toward Haitian refugees: joint hearing and markup before the Subcommittees on Western Hemisphere Affairs and International Operations of the Committee on Foreign Affairs, House of Representatives, One Hundred Second Congress, second session, on H.R. 5360, June 11 and 17, 1992.

Washington: U.S. G.P.O. : For sale by the U.S. G.P.O., Supt. of Docs., Congressional Sales Office, 1992.

Haitian democracy and refugees: problems and prospects: a staff report / prepared for the use of the Subcommittee on Immigration and Refugee Affairs of the Committee on the Judiciary, United States Senate, One Hundred Second Congress, second session

Washington: U.S. G.P.O. : For sale by the U.S. G.P.O., Supt. of Docs., Congressional Sales Office, 1992.

The Haitian Centre for Human Rights et al. v. United States, Case 10.675, Report No. 51/96, Inter-Am.C.H.R.,OEA/Ser.L/V/IL95 Doc. 7 rev. at 550 (1997).
DECISION OF THE COMMISSION AS TO THE MERITS OF CASE 10.675.
March 13, 1997

Proposed Refugee Admissions for Fiscal Year 2001: Report to the U.S. Congress. Department of State, Department of Justice and Department of Health and Human Service, July 2000

Refugees, Fiscal Year 1997. Annual Report. U.S. Department of Justice. *Immigration and Naturalization Service*, July 1997

Asylees, Fiscal Year 1997. Annual Report. U.S. Department of Justice. *Immigration and Naturalization Service*, July 1997

"Cuban and Haitian asylum seekers" *UNHCR. The State of The World's Refugees - A Humanitarian Agenda*, 1997

Five Years After Asylum Reform: The INS Regains Control; Practitioners Say Reform Still Needed. US Committee for Refugees, Refugee Reports, Vol. 21, No. 2 (2000)

Haiti: the new old policy. *NACLA Report on the Americas* v 28 July/Aug 1994.

Haiti undone. *NACLA Report on the Americas*; New York; Nov/Dec 1999.

Haitians protest unequal treatment. *NACLA Report on the Americas*; New York; Mar/Apr 2000.

Haiti: Human rights violations still flourishing under democratic government
News Service: *Amnesty International Index*: AMR 36/05/98. 22 July 1998

Haiti: Amnesty International Urges immediate response to threats of political violence. News Service: *Amnesty International Index* AMR: 36/001/2001 11 January 2001

Refugee Refoulement: The Forced Return of Haitian under the U.S. – Haitian Interdiction Agreement. *Lawyers Committee for Human Rights (U.S.)*, 1990

Interview with **Irwin Stotzky**, Law Professor at University of Miami. February 19, 2001

Interview with **Reverend Tom Willey**, Director, World Relief Refugee Services in Miami, Florida. February 20, 2001

Interview with **Maritza Graibe**, Mariel Boat Lift Survivor & Administrative Assistant at World Relief Refugee Services in Miami, Florida. February 20, 2001

Interview with **Judith Pierre-Okerson**, Director, Church World Services (CWS) in Miami Florida. February 20, 2001

Interview with **Emmanuel Galbeau**, Caseworker, Church World Services (CWS) in Miami Florida. February 20, 2001

Interview with **Ulysses Artega**, Project Coordinator, Department of Human Services in Miami Florida. February 20, 2001