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THE UNITED STATES GOVERNMENT PROGRAM OF INTERCEPTING AND FORCIBLY RETURNING HAITIAN BOAT PEOPLE TO HAITI: POLICY IMPLICATIONS AND PROSPECTS

*Arthur C. Helton**

I. Introduction

This article discusses the policy consequences of the United States government program, in operation in various forms since 1981, to intercept at sea and forcibly return Haitian boat people to Haiti. The evolution of the return program is described and analyzed in the context of refugee policy, both internationally and in the United States. Policy implications are analyzed and recommendations are made for a reformulated policy response.

II. Establishment of the Return Program

A. The Interdiction Authority

In 1981, the administration of President Ronald Reagan determined that illegal immigration had become "a serious national problem detrimental to the interests of the United States."¹ Haitian migration was of particular concern to the Reagan administration in 1980, when about 15,000 Haitians had come unlawfully to the United States by boat.² Invoking both constitutional and statutory authority,

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¹ Proclamation No. 4865, 46 Fed. Reg. 48,107 (1981), *reprinted in* 8 U.S.C. § 1182 (1988).

² Letter from Department of State to Rep. Clive Benedict (Jan. 5, 1982) (on file with the *New York Law School Journal of Human Rights*).

President Reagan announced the creation of an interdiction program designed to deter the illegal migration of Haitian boat people. The Haitian Migrant Interdiction Program was established by Proclamation 4865,³ which suspended the entry of the relevant class of individuals, and Executive Order 12,324,⁴ which implemented the proclamation, both issued on September 29, 1981. Under this program, United States Coast Guard vessels were to stop and board suspicious Haitian or unflagged vessels on the high seas, determine if their passengers were undocumented Haitians bound for the United States, and if so, return them to Haiti.⁵

According to the Proclamation, the migration of undocumented aliens to the United States, and in particular, of illegal aliens arriving by sea, had reached significant proportions by 1981. This movement of migrants had "severely strained the law enforcement resources of the Immigration and Naturalization Service" and "threatened the welfare and safety of communities" in the southeastern United States.⁶ Relying on the authority granted the President "by the Constitution and the statutes of the United States, including sections 212(f)⁷ and 215(a)(1)⁸ of the Immigration and

³ Proclamation No. 4865, 46 Fed. Reg. 48,107 (1981), *reprinted in* 8 U.S.C. § 1182 (1988).

⁴ Exec. Order No. 12,324, 46 Fed. Reg. 48,109 (1981), *reprinted in* 8 U.S.C. § 1182 (1988).

⁵ *Id.*

⁶ Proclamation No. 4865, 46 Fed. Reg. 48,107 (1981), *reprinted in* 8 U.S.C. § 1182 (1988).

⁷ 8 U.S.C. § 1182(f) (1988), the codification of § 212(f), states:

Whenever the President finds that the entry of any aliens or any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.

⁸ 8 U.S.C. § 1185(a)(1) (1988), the codification of § 215(a)(1), provides in relevant part:

Unless otherwise ordered by the President, it shall be unlawful -- (1) for any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and

Nationality Act, as amended," the Proclamation declared that the entry of undocumented aliens from the high seas was suspended and would be prevented by the interdiction of vessels carrying such aliens.⁹

Executive Order 12,324 purports to grant to the Secretary of State the power to enter into "cooperative arrangements with appropriate foreign governments for the purpose of preventing illegal migration to the United States by sea."¹⁰ The Coast Guard is empowered, pursuant to an arrangement with a specific government, to "stop and board defined vessels, when there is reason to believe that such vessels are engaged in the irregular transportation of persons or violations of United States law or the law of a country with which the United States has an arrangement authorizing such action,"¹¹ to "establish the registry, condition and destination of the vessel and the status of those on board the vessel,"¹² and to "return the vessel and its passengers to the country from which it came."¹³ These interdictions are to occur only "outside the territorial waters of the United States"¹⁴ on vessels of the United States, those without nationality, and those of foreign nations with which the United States has entered into an agreement.¹⁵ Finally, and most fundamentally, the Executive Order provides that "no person who is a refugee will be returned without his consent,"¹⁶ and that there will be "strict observance of our international obligations concerning those who genuinely flee persecution in their homeland."¹⁷

exceptions as the President may prescribe.

⁹ Proclamation No. 4865, 46 Fed. Reg. 48,107 (1981); *reprinted in* 8 U.S.C. § 1182 (1988).

¹⁰ Exec. Order No. 12,324, 46 Fed. Reg. 48,109 (1981), *reprinted in* 8 U.S.C. § 1182 (1988).

¹¹ *Id.* § 2(c)(1).

¹² *Id.* § 2(c)(2).

¹³ *Id.* § 2(c)(3).

¹⁴ *Id.* § 2(d).

¹⁵ *Id.* § 2(b)(1)-(3).

¹⁶ 8 U.S.C. § 1182, at § 2(c)(3).

¹⁷ *Id.* § 3.

B. Agreement with Haiti

Referring to its obligations under international refugee law, the United States entered into a cooperative agreement with Haiti on September 23, 1981, through an exchange of diplomatic letters.¹⁸ The agreement states:

Having regard to the need for international cooperation regarding law enforcement measures taken with respect to vessels on the high seas and the international obligations mandated in the Protocol Relating to the Status of Refugees done at New York 31 January 1967, the United States Government confirms with the Government of the Republic of Haiti its understanding of the following points of agreement.¹⁹

Specifically, the Haitian government agreed to assist the United States government to "stop the clandestine migration of numerous residents of Haiti to the United States."²⁰ At the outset of the program, the United States agreed to the presence on United States Coast Guard vessels of a representative of the Haitian Navy to act as a liaison in interdiction activities.²¹ The United States also pledged not to return to Haiti any refugee when it agreed "that under these arrangements the United States Government does not intend to return to Haiti any Haitian migrants whom the United States authorities determine to qualify for refugee status."²²

Finally, the Haitian government gave assurances that it would not prosecute intercepted Haitians for having illegally departed from Haiti. The accord specifically states: "The United States Government

¹⁸ Agreement on Interdiction of Haitian Immigration to the U.S., Sept. 23, 1981, U.S.-Haiti, 33 U.S.T. 3559, 3559.

¹⁹ *Id.*

²⁰ *Id.*

²¹ LAWYERS COMMITTEE FOR HUMAN RIGHTS, REFUGEE REFOULEMENT: THE FORCED RETURN OF HAITIANS UNDER THE U.S.-HAITIAN INTERDICTION AGREEMENT 13 (1990).

²² Agreement on Interdiction of Haitian Immigration to the U.S., Sept. 23, 1981, U.S.-Haiti, 33 U.S.T. 3559, 3560.

appreciates the assurances which it has received from the Government of the Republic of Haiti that Haitians returned to their country and who are not traffickers will not be subject to prosecution for illegal departure."²³

C. Implementation of the Interdiction Program

The Haitian interdiction program was implemented in four phases. The first phase lasted from the inception of the initiative in 1981 to early 1991, when certain administrative changes, including enhancements in interviewing procedures, were made. The second phase was comprised of the re-configured program and it lasted until September 1991, when Haitian President Jean-Bertrand Aristide was deposed. The third phase lasted from the overthrow of Aristide until President Bush issued a May 24, 1992, Executive Order that purported to authorize the return of intercepted Haitians without prior inquiry into any claims of persecution. The fourth phase concerns the program subsequent to the 1992 Executive Order to the present.

According to the Immigration and Naturalization Service (INS), since the inception of the interdiction program in 1981 until September 1991, 433 boats were intercepted and 23,551 Haitians were returned to Haiti.²⁴ According to the bilateral agreement, INS interviewers and interpreters examined the intercepted Haitians on a designated Coast Guard cutter. If a person was found to have a reasonable fear of returning to Haiti, that person was to be taken to

²³ *Id.*

²⁴ See Susan Freinkel, *A Slow, Leaking Boat to Limbo*, THE RECORDER, Dec. 19, 1991, at 1. See also Lizette Alvarez, *Refugee Policy Hits Crossroads*, MIAMI HERALD, Dec. 1, 1991, at 1A (refugee advocates said it was inconceivable that of 22,000 Haitians intercepted at sea through 1990, only eight were truly attempting to escape political persecution); Howard W. French, *U.S. is Holding 200 Haitians on 2 Ships*, N.Y. TIMES, Nov. 8, 1991, at A3 (between the signing of the treaty in 1981 and November 1991 more than 23,000 Haitians have been intercepted at sea by the Coast Guard; only 28 were allowed to enter the United States in order to pursue their claims of political asylum). Compare *246 Fleeing Haiti Are Rescued*, N.Y. TIMES, Nov. 23, 1991, § 1, at 1 (U.S. official stated that about 100 Haitians had been given the right to apply for asylum in United States); Howard W. French, *U.S. Starts to Return Haitians who Fled Nation After Coup*, N.Y. TIMES, Nov. 19, 1991, at A1 (U.S. official stated that "about 50" Haitians had been allowed into the U.S. to apply for asylum).

the United States to apply for asylum in accordance with the Immigration and Nationality Act. As the agreement states: "It is understood that under these arrangements the United States government does not intend to return to Haiti any Haitian migrants whom the United States authorities determine to qualify for refugee status."²⁵

Yet of the over 23,000 Haitians who were intercepted over the decade since the beginning of the program, only 28 individuals were taken to the United States to apply for asylum.²⁶ Indeed, by March 1990, nine years after the interdiction program was established and one year before enhanced interviewing procedures were implemented, "only six had been taken to the U.S. to apply for asylum."²⁷ This was during a period when Haiti had several governments with records of serious human rights abuses, including the government of Jean-Claude "Baby Doc" Duvalier.²⁸

Over an eight month period after President Jean-Bertrand Aristide was ousted in September 1991,²⁹ over 38,000 Haitian boat people were intercepted by United States Coast Guard vessels.³⁰ Initially, they were encamped on those vessels, and later in a United States military base in Cuba.³¹ Out of that total, INS interviewers identified 10,747 Haitian boat people as having plausible asylum

²⁵ Agreement on Interdiction of Haitian Immigration to the U.S., Sept. 23, 1981, U.S.-Haiti, 33 U.S.T. 3559.

²⁶ Howard W. French, *U.S. Is Holding 200 Haitians on 2 Ships*, N.Y. TIMES, Nov. 8, 1991, at A3.

²⁷ LAWYERS COMMITTEE FOR HUMAN RIGHTS, REFUGEE REFOULEMENT: THE FORCED RETURN OF HAITIANS UNDER THE U.S.-HAITIAN INTERDICTION AGREEMENT 3 (1990).

²⁸ *See In the Army's Hands: Human Rights in Haiti on the Eve of the Elections*, HUMAN RTS. REP. (Americas Watch, New York, N.Y.), Dec. 1990, at 1; *The More Things Change . . . Human Rights in Haiti*, HUMAN RTS. REP. (Americas Watch, New York, N.Y.), Feb. 1989, at 1.

²⁹ For a general discussion of the coup of Aristide, see Howard W. French, *Troops, Storming Palace, Capture Plotters and Free President*, N.Y. TIMES, Jan. 8, 1991, at A1.

³⁰ *Islands of Inequality*, WASH. POST, Nov. 4, 1992, at A18.

³¹ *See* Deborah Sharp, *Haitian Refugees see Hope with a New Administration*, USA TODAY, Nov. 27, 1992, at 3A. The vast majority of the Haitians were held at the U.S. naval base at Guantanamo Bay, Cuba. *Id.*

claims warranting further consideration by the United States.³² Others were interviewed at sea by INS officials under difficult conditions that included overcrowding, sickness, and fatigue.³³

In the early stages of the influx, the United States State Department sought a regional arrangement in order to share the burden.³⁴ Foreign policy-makers were concerned that the return of those screened out would be inconsistent with the sanctions imposed by the Organization of American States and supported by the United States.³⁵ United States diplomats thus searched for other Caribbean and South American countries to accept the intercepted Haitians.³⁶ However, the authorities of those countries were skeptical that the emergency justified the dispersal of the boat people in the region.³⁷

Some United States officials argued for the return of those who did not appear to need refugee protection in order to deter more Haitians from arriving.³⁸ Ultimately, this argument prevailed and about 30,000 boat people have been forcibly returned to uncertain fates in Haiti.³⁹ This includes over 5000 who have been summarily repatriated without inquiry into their claims of persecution.⁴⁰ The repatriation came as a result of an Executive Order issued by President George Bush on May 24, 1992.⁴¹

The so-called "Kennebunkport Order" of May 24, 1992, purports to authorize the Coast Guard forcibly to repatriate Haitians interdicted at sea, without even a cursory inquiry to ascertain whether

³² See Al Kamen, *Large Wave of Boat People Sails from Haiti*, WASH. POST, Apr. 16, 1992, at A6.

³³ Arthur C. Helton, *Haitian Refugees in Political Limbo*, MIAMI HERALD, Nov. 24, 1991, at L1, L6.

³⁴ Arthur C. Helton, *U.S. Refugee Policy: African and Caribbean Effects*, 9 TRANSAFRICA FORUM 93, 99 (Summer 1992).

³⁵ Arthur C. Helton, *Haitian Refugees in Political Limbo*, MIAMI HERALD, Nov. 24, 1991, at L1, L6.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at L1.

³⁹ See *Islands of Inequality*, WASH. POST, Nov. 4, 1992, at A18; Arthur C. Helton, *Haitian Refugees in Political Limbo*, MIAMI HERALD, Nov. 24, 1991, at L1.

⁴⁰ *Islands of Inequality*, WASH. POST, Nov. 4, 1992, at A18.

⁴¹ Exec. Order No. 12,807, 57 Fed. Reg. 23,133 (1992).

they have valid asylum claims.⁴² Specifically, the order states that refugee treaty obligations "do not extend to persons located outside the territory of the United States."⁴³ The order provides: "However, that the Attorney General, in his unreviewable discretion, may decide that a person who is a refugee will not be returned without his consent."⁴⁴ It specifies that the order is not to be "construed to require any procedures to determine whether a person is a refugee."⁴⁵

III. The Global Refugee Context

Currently, more people are in flight around the world from persecution, war, human rights violations, and other events seriously disturbing public order than at any time since World War Two.⁴⁶

⁴² *Id.*

⁴³ *Id.* The Kennebunkport Order permitting summary return reiterates a position taken in 1989 by the State Department, when it stated, "the Refugee Convention obligation [against *non-refoulement*] only pertains to persons who have already entered the territory of the state. In the U.S. view, it does not apply to persons who arrive at the frontier of the state or who are travelling with the intention of entering the state." Arthur C. Helton, *Open Letter to Ambassador Jewel S. Lafontant, United States Coordinator for Refugee Affairs, U.S. Department of State, Washington, D.C.*, 2 INT'L J. REFUGEE L. 130, 132 (1990) (quoting an official in the State Department's Refugee Bureau).

⁴⁴ Exec. Order No. 12,807 § 2(c)(3), 57 Fed. Reg. 23,133 (1992).

⁴⁵ Exec. Order No. 12,807 § 3, 57 Fed. Reg. 23,134 (1992).

⁴⁶ See generally *House Permanent Select Intelligence Committee Hearing*, Reuters, Mar. 9, 1993, available in LEXIS, Nexis Library, Omni File (cultural and religious intolerance is leading to new violations of human rights in Africa, the Middle East, and South Asia); Tatyana Krasnova, *Dissidents Flee to Moscow*, Russian Press Digest, Mar. 4, 1993, available in LEXIS, Nexis Library, Omni File (Uzbekistan human rights advocates are forced to flee to Moscow); Susan Mazur, *In the Sands of Sudan People Flee for Their Lives*, NEWSDAY, Feb. 21, 1993, at 32 (United Nations condemns Sudan Government for human rights violations); Alan Ferguson, *War Crimes Clues Sifted in Croatia*, TORONTO STAR, Feb. 20, 1993, at A1 (citing to gross violations of international law in Croatia); Henry Kamm, *In Europe's Upheaval, Doors Close to Foreigners*, N.Y. TIMES, Feb. 10, 1993, at A1 (in the past ten years Western Europe has seen a tenfold rise in the number of migrants seeking asylum); Stephen Kinzer, *Rights Groups Attack German Plan on Refugees*, N.Y. TIMES, Feb. 7, 1993, § 1, at 11 (citing Amnesty International report indicating that gross human rights violations are officially tolerated in India, Turkey, Romania, Bulgaria, and other nations); Javier Rodriguez, *Latinos are Selling out on Free Trade*, L.A. TIMES, Aug. 3, 1992, at B5 (violations of human rights

The United Nations High Commissioner for Refugees reports "no less than 18 million" refugees around the world.⁴⁷ Even more people are displaced within their home countries; they have not yet crossed a border, in which case they would become of concern to the international community as refugees under international law with a fear of persecution upon return.⁴⁸

Apart from the magnitude of the situation, the end of the Cold War has changed the context for refugee protection. Governments, particularly those of Western developed countries, increasingly treat those once considered to be part of refugee movements as unauthorized migrants. Foreign policy ceases to be a motivating force to assist and protect refugees. Instead, budgetary constraints come to the fore.⁴⁹ Migration management becomes a guiding principle, and most asylum seekers are considered economic migrants from less developed countries.⁵⁰

IV. United States Refugee and Asylum Policy

Refugees can gain status in the United States in one of two ways. They can either be determined a "refugee"⁵¹ and be admitted

in Mexico include increased use of torture, persecutions, and political assassinations).

⁴⁷ Sadako Ogata, United Nations High Commissioner for Refugees, Statement to the Third Committee of the General Assembly of the United Nations (Nov. 10, 1992) (on file with the *New York Law School Journal of Human Rights*).

⁴⁸ See LAWYERS COMMITTEE FOR HUMAN RIGHTS, UNCERTAIN HAVEN: REFUGEE PROTECTION ON THE FORTIETH ANNIVERSARY OF THE 1951 UNITED NATIONS REFUGEE CONVENTION 3 (1991) ("There are up to 35 million additional persons displaced within their home countries, who have not yet crossed a border to become refugees with a fear of persecution upon return under international law.").

⁴⁹ See Reena Shah, *Foreign Aid May Help U.S. More*, ST. PETERSBURG TIMES, Dec. 30, 1990, at 1A (many U.S. citizens are critical of aiding foreign nations due to budget constraints).

⁵⁰ LAWYERS COMMITTEE FOR HUMAN RIGHTS, UNCERTAIN HAVEN: REFUGEE PROTECTION ON THE FORTIETH ANNIVERSARY OF THE 1951 UNITED NATIONS REFUGEE CONVENTION 5 (1991).

⁵¹ The term "refugee" is defined as:

(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 person last habitually resided, and

from abroad,⁵² or they can apply for and be granted "asylum" once in the United States.⁵³ Both procedures can lead to permanent resident status.⁵⁴

The Refugee Act of 1980⁵⁵ gave United States officials the power to establish annual ceilings for overseas admissions. Political considerations are integral to the design of the admissions system. The President, in consultation with Congress, establishes the ceilings for refugee admissions each year, and may consider "foreign policy" in determining which refugees are of "humanitarian concern" to the United States.⁵⁶ These factors permit the application of political and geographical standards in the overseas procedure. As a consequence, the vast majority of refugees admitted from abroad over the past decade have been those fleeing communism in Eastern Europe, the Soviet Union, and Indochina.⁵⁷

who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or (B) in such circumstances as the President after appropriate consultation . . . may specify, any person who is within the country of such person's nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The term 'refugee' does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.

8 U.S.C. § 1101(a)(42) (1988).

⁵² *Id.* § 1157 (1988).

⁵³ *Id.* § 1158 (1988).

⁵⁴ *Id.* § 1159 (1988).

⁵⁵ Pub. L. No. 96-212, 94 Stat. 102 (1980).

⁵⁶ 8 U.S.C. § 1157(e) (1988).

⁵⁷ See Arthur C. Helton, *Political Asylum Under the 1980 Refugee Act: An Unfulfilled Promise*, 17 U. MICH. J.L. REF. 243 (1984) (also discussing experience in the asylum area).

Seventy-eight percent of the Russian, sixty-four percent of the Ethiopian, fifty-three percent of the Afghan, and forty-four percent

Once an asylum seeker arrives at the United States border, he or she is exempt from admissions ceilings. In such a case, an asylum applicant can seek protection irrespective of immigration status.⁵⁸ The protection claim can be made affirmatively to the INS or raised as a defense to removal in immigration court proceedings.⁵⁹ Final asylum rules issued in 1990 created a professional corps of adjudicators who are to be assisted by a documentation center on conditions in an applicant's country of origin.⁶⁰ The professionalism of the corps was designed to keep it separate from immigration enforcement functions.⁶¹ Its access to country conditions information was designed to reduce reliance on State Department foreign policy preferences.⁶² Adequate resources will be required, of course, for effective implementation in order to achieve the objective of insulation from foreign policy and immigration enforcement considerations contemplated in the issuance of the 1990 rules.⁶³

V. Policy Implications of the Haitian Return Program

The policy of summarily returning Haitian boat people established under the May 24, 1992 Executive Order⁶⁴ departs from accepted international practice. Countries much less capable of absorbing asylum seekers are much more generous than the United States. In many cases, those countries are refraining from returning

of the Romanian cases decided received political asylum, all involving persons fleeing Communist-dominated regimes. On the other hand, asylum was granted in less than eleven percent of the Philippine, twelve percent of the Pakistani, two percent of the Haitian, two percent of the Guatemalan and three percent of the Salvadoran cases.

Id. at 253.

⁵⁸ 8 U.S.C. § 1158(a) (1988).

⁵⁹ 8 C.F.R. § 208.2 (1992).

⁶⁰ 55 Fed. Reg. 30,680 (1990).

⁶¹ Arthur C. Helton, *Final Asylum Rules: Finally*, 67 INTERPRETER RELEASES 789, 790 (1990).

⁶² *Id.* at 792.

⁶³ *Id.* at 793.

⁶⁴ Exec. Order No. 12,807, 57 Fed. Reg. 23,133 (1992).

asylum seekers to places where the violence is not as threatening as that in Haiti. For example, neither Pakistan nor Iran is making an effort to deport the six million Afghan refugees that have lived on their territories for the last decade, some of whom are now voluntarily returning.⁶⁵ In Africa, 300,000 Ethiopians, Somalis, and Sudanese have recently found asylum in Kenya.⁶⁶ Beleaguered Bangladesh is sheltering about 270,000 Rohingyas who fear return to the oppression in Burma; they are encamped in makeshift housing in an already overcrowded and impoverished region of Bangladesh.⁶⁷

The conduct of the United States in returning Haitian boat people without inquiry into their claims of feared persecution constitutes a drastic departure from the international practice in favor of protection. Indeed, the United States return policy is a remarkable exercise in hypocrisy. When it was politically expedient, the United States government argued against forced repatriation. Most notably, the United States used strong language to promote in Southeast Asia the very principles it has derogated in Haiti.⁶⁸ In 1989, the Deputy Secretary of State urged nations receiving Vietnamese boat people to do the following:

We must, first of all, unequivocally reaffirm the practice of first asylum [C]ountries of first asylum would commit to:

- Treating all asylum seekers in a humane manner,
- Granting the UNHCR immediate access to all new arrivals, and
- Working in close collaboration with the UNHCR

⁶⁵ See *Afghanistan: The Will But Not the Means*, REFUGEES, Sept. 1992, at 20.

⁶⁶ See *Sudanese Planes Fly Over Boarder Town; Security Forces Said to be Ready*, Brit. Broadcasting Corp., June 8, 1992, available in LEXIS, Nexis Library, Omni File (according to UNHCR Information Officer Panos Moutzsis, the Sudanese influx brings the total number of asylum seekers in Kenya to close to 300,000).

⁶⁷ See *Repatriation or Refoulement*, REFUGEES, Sept. 1992, at 38.

⁶⁸ *Haitian Refugees Sent Back Without Interview*, Nat'l Public Radio, May 27, 1992, available in LEXIS, Nexis Library, Omni File.

on screening mechanisms for determining refugee status.⁶⁹

In fact, it is generally recognized that the right of *non-refoulement* is a principle of customary international law, binding even on those states which are not parties to the international conventions.⁷⁰ Article 33 of the 1951 United Nations Convention relating to the Status of Refugees,⁷¹ as incorporated into its 1967 Protocol,⁷² specifically imposes on all nations an obligation not to expel or return ("*refouler*") refugees⁷³ "[t]o the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."⁷⁴ The United States Supreme Court has called the

⁶⁹Arthur C. Helton, *Open Letter to Ambassador Jewel S. Lafontant, United States Coordinator for Refugee Affairs, U.S. Department of State, Washington, D.C.*, 2 INT'L J. REFUGEE L. 130, 132 (1990).

⁷⁰See, e.g., GUY S. GOODWIN-GILL, *THE REFUGEE IN INTERNATIONAL LAW* 99 (1983) ("[Otherwise i]f each state remains absolutely free to determine the status of asylum-seekers and either to abide by or ignore the principle of *non-refoulement*, then the refugee's status in international law is denied and the standing, authority, and the effectiveness of the principles and institutions of protection are seriously undermined.")

⁷¹Convention relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6260.

⁷²Protocol relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223.

⁷³Article 1(A)(2) of the 1951 Convention, as amended by article 1(2) of the 1967 Protocol, defines a refugee as any person who:

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

Protocol relating to the Status of Refugees, Jan. 31, 1967, art. 1(a)(2), 19 U.S.T. 6223, 6225.

⁷⁴Protocol relating to the Status of Refugees, Jan. 31, 1967, art. 33, 19 U.S.T. 6223, 6276.

obligation of *non-refoulement* "mandatory."⁷⁵ It is binding on the United States not only because the United States acceded to the 1967 Protocol, but also because it is customary international law that it is binding irrespective of accession.⁷⁶

It is also well established that the right of *non-refoulement* applies equally to refugees seeking to enter a country as it does to those who have already entered it. The text of Article 33 of the Convention and Protocol specifies that refugees cannot be returned "in any manner whatsoever," including by sea after interdiction.⁷⁷ Notwithstanding the plain language of the Protocol, however, the United States government argues otherwise. The State Department has relied heavily on brief comments made by the Dutch, French, and Swiss representatives during the drafting of the 1951 Convention.⁷⁸ Specifically, the Swiss delegate expressed the view that "return" applied only to refugees already within the territory and that "Article 33 does not cover mass migrations or attempted mass migrations

⁷⁵ *Immigration and Naturalization Serv. v. Cardoza-Fonseca*, 480 U.S. 421, 429 (1987) (accession to the 1967 Protocol "imposed a mandatory duty . . . not to return an alien to a country where his 'life or freedom would be threatened.'").

⁷⁶ On a subsidiary point, Article 33 of the 1967 Protocol should be considered self-executing and not requiring any implementing legislation to be enforced in U.S. courts. Many courts addressing this question have found it to be self-executing. *See, e.g., Coriolan v. Immigration and Naturalization Serv.*, 559 F.2d 993, 996 (5th Cir. 1977) (Attorney General's authority to withhold deportation of aliens must be measured "in light of the United Nations Protocol"); *Kashani v. Immigration and Naturalization Serv.*, 547 F.2d 376 (7th Cir. 1977) (Protocol is binding on the U.S.); *Fernandez-Roque v. Smith*, 91 F.R.D. 117 (N.D. Ga. 1981) (claims under Article 33 state valid cause of action for which relief may be granted); *Sannon v. United States*, 427 F. Supp. 1270 (S.D. Fla. 1977), *vacated and remanded on other grounds*, 566 F.2d 104 (5th Cir. 1978) (Protocol establishes the right to a hearing for aliens threatened with exclusion). *But see Haitian Refugee Ctr. v. Baker*, 953 F.2d 1498 (11th Cir. 1991), *cert. denied*, 112 S. Ct. 1245 (1992) (Article 33 of the Protocol is "not self-executing and thus provides no enforceable rights"); *Bertrand v. Sava*, 684 F.2d 204 (2d Cir. 1982) (Article 31 of the Protocol creates no rights for detained Haitians beyond those in domestic law). In any event, the United States is bound by dictates of customary international law, including that of *non-refoulement*. *See supra* note 70 and accompanying text.

⁷⁷ Protocol relating to the Status of Refugees, Jan. 31, 1967, art. 33, 19 U.S.T. 6223, 6276.

⁷⁸ Letter from Edwin D. Williamson, Legal Adviser, U.S. Department of State, to Timothy E. Flanigan, Acting Assistant Attorney General, U.S. Department of Justice (Dec. 11, 1991) (on file with the *New York Law School Journal of Human Rights*).

across frontiers."⁷⁹

The State Department's reliance on this language to interpret the meaning of the word "return" (or "*refouler*") in the Protocol is misplaced for several reasons. First, it is undisputed that, according to the Vienna Convention,⁸⁰ the plain language of the treaty governs its interpretation, unless its meaning is ambiguous or would produce unreasonable results. The language here is unambiguous. The Convention and Protocol plainly bar the return of a refugee "in any manner whatsoever."⁸¹ Therefore, return of a refugee by land, by air, or by sea, including high seas interdiction, is forbidden according to the Protocol.

Moreover, the Dutch delegate's comments are inapposite. The concerns he expressed were of a mass migration across the land borders of Europe.⁸² Having just witnessed the mass dislocations caused by World War Two, the delegate surely sought to ensure that his small country would not have to admit huge numbers of fleeing Europeans. An exodus by sea was clearly not within his or the other delegates' contemplation.

Interestingly, the United States delegate to the conference took an entirely different view during the drafting phase. He explained:

It did not, however, follow that the convention would not apply to persons fleeing from persecution who asked to enter the territory of the contracting parties. Whether it was a question of closing the frontier to a refugee who asked admittance, or of turning him back after he had crossed the frontier, or even of expelling him after he had been admitted to residence in the territory, the problem was more or less the same.⁸³

⁷⁹ *Id.* at 4.

⁸⁰ Vienna Convention on the Law of Treaties, May 23, 1969, U.N. Doc. A/CONF 39/27, reprinted in 8 I.L.M. 679 (1969).

⁸¹ Protocol relating to the Status of Refugees, Jan. 31, 1967, art. 33, 19 U.S.T. 6223, 6276.

⁸² Letter from Edwin D. Williamson, Legal Adviser, U.S. Department of State, to Timothy E. Flanigan, Acting Assistant Attorney General, U.S. Department of Justice 5 (Dec. 11, 1991) (on file with the *New York Law School Journal of Human Rights*).

⁸³ *Ad Hoc Committee on Statelessness and Related Problems*, Summary Record of the Twentieth Meeting, 1st Sess., U.N. Doc. E/AC.32/SR.20 at 11-12 (1950).

This elegantly simple statement of principle is persuasive.

All other interpretations of the provisions of Article 33 are consistent with the view that it applies extraterritorially.⁸⁴ The Reagan Administration, the inspiration for the interdiction program, considered itself bound by Article 33 when it began interdicting Haitians in 1981. In an opinion issued by the Office of the Legal Counsel, the Assistant Attorney General explicitly considered the obligations imposed on the United States government by the Protocol.⁸⁵ According to that opinion, Article 33 applies to refugees interdicted on the high seas and mandates that "individuals who claim that they will be persecuted for one of these [enumerated] reasons must be given an opportunity to substantiate their claims."⁸⁶

In fact, the Reagan Administration did implement a screening procedure.⁸⁷ While the procedure was criticized as inadequate,⁸⁸ it reflected at least an acknowledgement of the existence of this obligation. When the governmental Executive Committee of the Office of the United Nations High Commissioner for Refugees (UNHCR) has been called upon to interpret Article 33, it has found that the protection against *non-refoulement* extends to refugees seeking to enter a country. For example, the Executive Committee has found Article 33 to have "reaffirm[ed] the fundamental importance of the observance of the principle of *non-refoulement* -- both at the border and within the territory of a State -- of persons who may be subjected to persecution if returned to their country of origin irrespective of whether or not they have been formally

⁸⁴ Proposed legislation introduced in 1992 in the U.S. House of Representatives would have explicitly reaffirmed that "the obligations of the United States under Article 33 . . . have applied to the actions of the United States with respect to individuals outside the United States." H.R. 5360, 102d Cong., 2nd Sess. (1992).

⁸⁵ Proposed Interdiction of Haitian Flag Vessels, 5 Op. Off. Legal Counsel 242, 248 (1981).

⁸⁶ *Id.*

⁸⁷ Laurence H. Tribe & Jonathan S. Massey, *Haiti's Refugees*, MIAMI HERALD, Feb. 9, 1992, at 1C.

⁸⁸ See, e.g., LAWYERS COMMITTEE FOR HUMAN RIGHTS, REFUGEE REFOULEMENT: THE FORCED RETURN OF HAITIANS UNDER THE U.S.-HAITIAN INTERDICTION AGREEMENT (1990).

recognized as refugees."⁸⁹

Similarly, in detailing the procedures to be used when determining refugee status, UNHCR has explicitly concluded that: "The competent official (e.g. immigration officer or border police officer) to whom the applicant addresses himself at the border or in the territory of a Contracting State . . . should be required to act in accordance with the principle of *non-refoulement*"⁹⁰

The UNHCR has gone so far as to appeal to governments to "grant first asylum to refugees and displaced persons rescued at sea."⁹¹ The UNHCR has clearly recognized that the right of *non-refoulement* protects refugees before they enter the country of asylum -- a rejection of the United States government's assertion that the right of *non-refoulement* does not extend to persons located outside the United States. That push-backs and other forms of rejection, implemented before asylum seekers reach the border, constitute *refoulement* is a broadly accepted principle.⁹²

The logic here is straightforward. The right of *non-refoulement* becomes a hollow promise if nations can circumvent it by stopping the refugees before arrival. Surely, this would be a perverse outcome.

⁸⁹ *U.N. Conclusions Adopted by the Executive Committee on International Protection of Refugees and on the Sub-Committee of the Whole*, 28th Sess., Conclusion No. 6(c), at 14 (1977). The United States is a member of the UNHCR Executive Committee.

⁹⁰ *U.N. Conclusions Adopted by the Executive Committee on International Protection of Refugees and on the Sub-Committee of the Whole*, 28th Sess., Conclusion No. 8(e), at 16 (1977).

⁹¹ *U.N. Conclusions Adopted by the Executive Committee on International Protection of Refugees and on the Sub-Committee of the Whole*, 27th Sess., Conclusion No. 2(h)(i), at 10 (1976).

⁹² In addition to Article 33 of the Protocol, other international instruments and expressions of state practice affirm the principle of *non-refoulement* for those seeking entry after crossing an international border. Article II of the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa prohibits "rejection at the frontier, return or expulsion, which would compel him to return to, or remain in, a territory where his life, physical integrity, or liberty would be threatened." 1001 U.N.T.S. 45, 48. Other agreements and accords specifically recognizing the protection against rejection and forcible return include Comm. of the Ministers, Eur. Consult. Ass. Rec. No. R(84)1, Jan. 25, 1984 and Res(67)14, June 29, 1967 and the Asian-African Legal Consult. Comm., Principles Concerning Treatment of Refugees art. VII(3), (1966) *reprinted in* UNHCR, COLLECTION OF INTERNATIONAL INSTRUMENTS CONCERNING REFUGEES 201 (1979).

*VI. Race as a Factor in United States
Immigration and Refugee Policy*

The early years of the United States were characterized by an open immigration policy. This period was also noteworthy for the homogeneity of those arriving: the majority of settlers were of English origin.⁹³ In the 1830s, a nativist movement emerged and became influential, directing its animosity principally against Catholic immigrants.⁹⁴ The "Know-nothing" party was founded on the idea that accepting immigrants of diverse backgrounds could lead to the destruction of national identity and the erosion of American culture.⁹⁵ Only when people of different races arrived of their own volition in the United States did race appear as an explicit factor in the formulation of United States immigration policy.

The first racially identifiable group to arrive voluntarily in the United States was the Chinese.⁹⁶ Their arrival was spurred by the discovery of gold in California in 1848 and the subsequent need to link its burgeoning economy with the East Coast by rail.⁹⁷ The first law of Congress to restrict immigration based on ethnicity or race was the Chinese Exclusion Act of 1882, which effectively stopped the flow of Chinese immigrants.⁹⁸

Japanese immigration became a factor after the turn of the century. In the first decade of the 1900s, 129,000 Japanese immigrants arrived.⁹⁹ President Theodore Roosevelt negotiated in 1907 the so-called "Gentlemen's Agreement" under which the Japanese government agreed to screen the number of Japanese-issued passports for the United States.¹⁰⁰ The numbers dropped

⁹³ Arthur C. Helton, *U.S. Refugee Policy: African and Caribbean Effects*, 9 TRANSAFRICA FORUM 93, 95 (Summer 1992).

⁹⁴ See JOHN HIGHAM, STRANGERS IN THE LAND: PATTERNS OF AMERICAN NATIVISM 1860-1925 3-11 (1955).

⁹⁵ *Id.* at 4.

⁹⁶ Arthur C. Helton, *U.S. Refugee Policy: African and Caribbean Effects*, 9 TRANSAFRICA FORUM 93, 95 (Summer 1992).

⁹⁷ *Id.*

⁹⁸ *Id.* at 95-96.

⁹⁹ *Id.* at 96.

¹⁰⁰ *Id.*

dramatically.¹⁰¹

The restrictionist movement peaked in the 1920s. The Ku Klux Klan was active.¹⁰² In 1921, the Johnson Act, also called the Emergency Immigration Restriction Act, was passed. It was the first bill to base all immigration on a strict quota system on national origin.¹⁰³ The Immigration Act of 1924, or the Johnson-Reed Act, lowered national origins quotas.¹⁰⁴

In 1952, Congress passed the McCarran-Walter Act¹⁰⁵ over President Harry Truman's veto.¹⁰⁶ It purported to remove racially based restrictions on immigration. In reality, it allowed only a trickle of immigration from Asia by creating the "Asian-Pacific Triangle." Only one hundred emigres from each country in the triangle area were permitted, making for a total quota of 2000 from the area.¹⁰⁷ In addition, the Act continued using a quota system based on national origins, thereby reinforcing the discriminatory effects of the earlier laws.¹⁰⁸ The Senate Committee's report concerning the bill explicitly favored northwestern Europeans by stating that United States immigration policy should continue to prefer those more readily assimilable due to their affinity with the majority of the population of the country.¹⁰⁹

The national origins quota system, despite much opposition, remained intact until 1965. The 1965 amendments to the Immigration and Naturalization Act established a ceiling of 20,000 immigrant visas to persons in any one country in the Eastern hemisphere and 120,000 for the Western hemisphere.¹¹⁰ The Act also ranked preference categories based on family relations and occupation; sons and daughters of United States citizens had first

¹⁰¹ *Id.*

¹⁰² JOHN HIGHAM, *STRANGERS IN THE LAND: PATTERNS OF AMERICAN NATIVISM 1860-1925* 286-99 (1955).

¹⁰³ *Id.* at 308-11.

¹⁰⁴ *Id.* at 316-24.

¹⁰⁵ Pub. L. No. 414, 66 Stat. 163 (1952).

¹⁰⁶ Arthur C. Helton, *U.S. Refugee Policy: African and Caribbean Effects*, 9 *TRANSFRICA FORUM* 93, 97 (Summer 1992).

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 97-98.

¹¹⁰ Pub. L. No. 89-236, 79 Stat. 911 (1965).

priority.¹¹¹ In the decade after the passage of the 1965 amendment, immigration increased, including arrivals from Asia.¹¹²

Provisions in the Immigration Act of 1990,¹¹³ designed to diversify the migrant stream, instead reflect a continued preference for European immigrants. The provisions initially make 40,000 immigrant visas available to nationals of countries adversely affected by the 1965 amendments, mainly Europeans.¹¹⁴ Race thus continues to resonate as a factor in the development of United States immigration policy.

In terms of refugee admissions, only about two percent of the one million-plus refugees brought to the United States since 1980 have come from Africa, the continent with the largest number of refugees.¹¹⁵ Specifically, in 1991, 112,811 refugees were admitted to the United States from places of first asylum abroad -- but only 4424 were from Africa, and eighty-nine percent were from communist Ethiopia.¹¹⁶ This figure reflects an ideological predilection and legacy which has all too frequently dominated United States refugee policy in the past.¹¹⁷

¹¹¹ *Id.*

¹¹² Arthur C. Helton, *U.S. Refugee Policy: African and Caribbean Effects*, 9 *TRANSAFRICA FORUM* 93, 98 (Summer 1992).

¹¹³ 8 U.S.C. § 1255a note (Supp. III 1991).

¹¹⁴ Arthur C. Helton, *U.S. Refugee Policy: African and Caribbean Effects*, 9 *TRANSAFRICA FORUM* 93, 98 (Summer 1992).

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ See Arthur C. Helton, *Political Asylum Under the 1980 Refugee Act: An Unfulfilled Promise*, 17 *U. MICH. J.L. REF.* 243 (1984). The United States, as well as other countries with programs of overseas refugee admission, has long promoted a "regional" solution which has the effect of keeping African refugees in Africa. At the same time, the United States has taken hundreds of thousands of refugees from other regions of the world. The only region of the world less represented this decade in overseas admissions is Latin America, from which scores of thousands of individuals have come and sought political asylum within the territorial confines of the United States. *Id.* at 253-54.

VII. A New Policy Response

President Bill Clinton has vowed to reverse the Bush Administration policy concerning the Haitian boat people.¹¹⁸ More recently, the Clinton Administration has expressed concern about not provoking a large-scale departure of boat people in establishing a new policy.¹¹⁹ Since President Clinton's inauguration, three boats have been intercepted and 280 Haitians have been summarily returned to Haiti under the Kennebunkport Order.¹²⁰

Clearly, an overly hesitant or minimalist approach risks a violation of a campaign promise and loss of credibility; an activist approach without a contingency plan could invite an influx and create an unwanted immigration emergency. A delicate balancing act will be required.

A balanced policy could involve the following elements:

- *Work to end violations of fundamental human rights in Haiti.* It will be crucial to recognize that widespread human rights abuses committed against the civilian population by the military authorities is a basic cause of the flight of Haitian refugees. The work of the United Nations Secretary-General's recently appointed Special Envoy to Haiti, Dante Caputo, could be usefully enhanced by deploying a substantial corps of human rights monitors, who would remain until the situation in Haiti has improved. The presence of such international monitors would document and could prevent rights violations. A concerted political effort to address the problem at the source would give Haitians cause to

¹¹⁸ On May 27, 1992, then-presidential candidate Bill Clinton stated: "I am appalled by the decision of the Bush Administration to pick up fleeing Haitians on the high seas and forcibly return them to Haiti before considering their claim to political asylum. This process must not stand." Anthony Lewis, *Abroad at Home; The Two Clintons*, N.Y. TIMES, Feb. 22, 1993, at A17. On November 12, 1992, shortly after Mr. Clinton was elected president, he stated: "We should have a process in which these Haitians have a chance to make their case. *Id.*"

¹¹⁹ J.F.O. McAllister Washington, *Lives on Hold*, TIME, Feb. 1, 1993, at 50.

¹²⁰ *Coast Guard Intercepts 280 Haitians*, MIAMI HERALD, Jan. 24, 1993, at 2B.

hope and avert the perceived need to flee.

- *Establish regional protection arrangements for boat people under the auspices of the U.N. High Commissioner for Refugees.* A United States-led senior diplomatic effort could identify a few countries in the region to provide temporary refuge to Haitians until dangers in Haiti subside. Financial resources would have to be committed, and the United States naval base at Guantanamo Bay in Cuba could be used for this purpose until suitable diplomatic arrangements can be made. Screening by specially trained adjudicators should occur under reliable circumstances to determine which Haitians qualify for admission as refugees with a well-founded fear of persecution. Voluntary return to Haiti of non-refugees could be promoted. Improved procedures could be established in Haiti to admit true refugees and avoid the need to flee by boat.¹²¹

¹²¹ In-country refugee processing should not, however, be regarded as an exclusive method of protection of Haitians. The Immigration and Naturalization Service, in a confidential plan prepared in January 1993, specifically observed that interviewing refugee applicants outside Port-au-Prince would be "problematic" and "would require the use of buildings or offices normally used for other purposes. Such facilities might not provide INS officers with space in which they could ensure the confidentiality of their interviews. Additionally, even minimal security standards could not be met." IMMIGRATION AND NATURALIZATION SERV., CARIBBEAN MASS MIGRATION PLAN App. A (Jan. 15, 1993) (on file with the *New York Law School Journal of Human Rights*). INS observed in particular:

While some individuals believe that provincial processing will reduce the risk of interview for refugee applicants, the opposite may be found to be true. The large numbers of people in Port-au-Prince also provide refugee applicants with anonymity. Individuals coming forward for interview in provincial locations will be more visible and, therefore, perhaps more vulnerable to retribution. The expansion of the in-country program to sites outside Port-au-Prince is dependent on the good will of the de facto government. Should the regime now in power object to an expansion, the U.S. refugee program will not locate outside Port-au-Prince. The United States will not negotiate such an expansion, as it does not formally deal with the de facto government of Haiti.

Last year, a relatively low-level diplomatic effort was undertaken by the Bush Administration to find Caribbean and South American countries willing to permit Haitians to remain temporarily.¹²² This initiative occurred early in the emergency and at a time when the United States had agreed to accept but a tiny number of boat people. Subsequently, the United States accepted some 11,000 Haitians who established a credible fear of persecution upon return.¹²³ Now, the United States can demonstrate that it is willing to accept a fair share of the burden, and countries in the region can be assured that they would not be hosts to long-staying populations of asylum seekers.

A public information campaign in Haiti to deter non-refugees from departing could be instituted, followed by a pilot program of rescuing Haitian boat people at sea. This is a workable approach that deserves serious and urgent consideration. A few hundred Haitians who were transported temporarily to Honduras and Venezuela last year returned to Haiti shortly thereafter.¹²⁴ Similar arrangements have helped to control the movement of Vietnamese boat people in Asia and provide protection to genuine refugees.¹²⁵

- *Provide temporary status to Haitians currently in the United States and at Guantanamo.* A grant by the Attorney General of Temporary Protected Status to Haitians in the United States under our immigration law could provide them with protection from return and authorization to work in yearly increments. Such a measure would permit individuals to remain in dignity in the United States, including the almost 11,000 who were recently brought from Guantanamo to the United States whose cases burden an already

Id.

¹²² See Arthur C. Helton, *Clinton's Challenges: Haiti*, MIAMI HERALD, Jan. 10, 1993, at M1.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ See Arthur C. Helton, *The Comprehensive Plan of Action for Indochinese Refugees: An Experiment in Refugee Protection and Control*, 8 N.Y.L. SCH. J. HUM. RTS. 111, 112-14 (1990).

poorly resourced asylum procedure.¹²⁶ The approximately 250 Haitians who have tested positive for HIV and their dependents, who are currently confined on Guantanamo, should be brought to the United States on humanitarian grounds in view of the limited treatment and care facilities available at the naval base.¹²⁷

In a misguided attempt to balance United States policy, some have called on the authorities to repeal the Cuban Refugee Adjustment Act of 1966,¹²⁸ resulting in "equal mistreatment" of Cubans. A better approach would be to ensure the fair treatment of Haitians, including a special legislative remedy for the boat people who, prior to the executive order, were determined to warrant full asylum procedures and were brought to the United States. Many of these Haitians will win asylum. A special residence provision for Haitians, like that for Cubans, would conserve the scarce administrative resources of an already overburdened asylum system. Generosity, not equal deprivation, is the best solution for the policy disparity.

VIII. Conclusion

The United States government program to intercept and forcibly return Haitian boat people to Haiti is violative of the international law norm of *non-refoulement* and destructive to international solidarity. The erosion in refugee protection under United States policy also raises disturbing implications regarding race as a factor in the formulation of policy.

The Haitian summary return program presents an agenda for

¹²⁶ See Cheryl Little, *Viewpoints*, MIAMI HERALD, Dec. 3, 1992, at 25A; *Some Refugees Miss Health Checks*, MIAMI HERALD, Aug. 3, 1992, at 6B; *Struggle Goes on After Guantanamo*, MIAMI HERALD, June 22, 1992, at 1A.

¹²⁷ See Arthur C. Helton, *Clinton's Challenges: Haiti*, MIAMI HERALD, Jan. 10, 1993, at M1.

¹²⁸ Cuban Refugee Adjustment Act of 1966, Pub. L. No. 89-732, 80 Stat. 1161 (1966).

reform in the Clinton Administration. The task will be to reconcile migration control interests in such a way as to preserve protection for genuine refugees. How the balance is finally struck will have a lasting effect on the future of refugee protection in the United States and abroad.

