



## **Averting Immigration Emergencies**

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THE U.S. COMMISSION ON IMMIGRATION REFORM IS A BIPARTISAN COMMISSION AUTHORIZED BY THE IMMIGRATION ACT OF 1990 AND CHARGED WITH EXAMINING IMMIGRATION POLICY AND ITS IMPACT ON SOCIAL, ECONOMIC, AND COMMUNITY RELATIONS, ON POPULATION SIZE AND CHARACTERISTICS, AND ON THE ENVIRONMENT.

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REFUGEE POLICY GROUP  
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## CONTENTS

INTRODUCTION	5
EARLY WARNING AND PREVENTION	7
INTERNATIONALIZING IMMIGRATION EMERGENCIES	8
INTERNATIONAL RESPONSE TO THE INDOCHINESE MIGRATION CRISIS 1979-1989	9
UNSUCCESSFUL ATTEMPTS TO INTERNATIONALIZE THE HAITIAN MIGRATION CRISIS, 1991-1994	10
INTERDICTION	10
HISTORY OF INTERDICTION	11
JUSTIFICATION AND LEGALITY OF INTERDICTION	14
IN-COUNTRY PROCESSING	16
ORDERLY DEPARTURE PROGRAM FOR VIETNAM	17
IN-COUNTRY PROCESSING IN CUBA	18
IN-COUNTRY PROCESSING IN THE FORMER SOVIET UNION	18
IN-COUNTRY PROCESSING IN HAITI	18
TEMPORARY PROTECTION AT OFFSHORE LOCATIONS	21
REFERENCES	22

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RESEARCH  
P A P E R  
- 4 -

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## INTRODUCTION

In recent years the international community, as well as individual governments, have placed growing emphasis on preventing the movement of people across international borders. This trend is in part a response to new, post-Cold War opportunities to address the political, economic, and environmental problems—often referred to as “root causes”—that potentially could result in large-scale movements of people. The United Nations’ efforts to find a political settlement to the conflicts in the former Yugoslavia and Somalia and to provide in-country assistance and protection to victims of those crises are examples of this new emphasis on prevention. In a November 1992 speech before the U.N. General Assembly, Mrs. Sadako Ogata, the U.N. High Commissioner for Refugees, explained that her agency’s preventive activities “have taken the form of enhancing legal norms through extending technical advice, training, information and institution building, particularly in countries confronted by actual or potential refugee problems.” (Ogata 1992)

Coinciding with these efforts to resolve the root causes of population displacement is a trend toward increasingly restrictive asylum policies in a number of countries. Political and economic pressures in the

United States and Germany, for example, have led to proposed legislative and procedural changes aimed at deterring immigration. This restrictionism is also fueled by a perception that these countries are becoming overwhelmed by influxes of asylum seekers. The U.N. General Assembly’s 47th Session acknowledged the rise in “persistent problems in countries or regions seriously jeopardizing the security or well-being of refugees, including incidents of refoulement, expulsion, physical attack, and detention under unacceptable conditions,” and it called upon member states “to take all measures necessary to ensure respect for the principles of refugee protection.”

In some cases, efforts to avert mass migration are motivated by concern that the influx of migrants to an area could overwhelm local services. Even if the migrants are of humanitarian concern, a government may decide that a humanitarian crisis could ensue if receiving communities do not have the capacity to provide migrants with such basic necessities as food, housing, and medical services. In such situations, a favorable—yet often difficult to achieve—alternative is to distribute the burden of receiving the migrants among a number of countries.

When migration emergencies are the result of political repression, a subset of the

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RESEARCH  
PAPER

- 6 -

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population involved may qualify as refugees and their rights to seek asylum and not to be returned forcibly to a country where they face persecution should be protected. At the same time, many of those involved in immigration emergencies are fleeing from difficult economic conditions but have no claim to asylum. Overly generous immigration policies could leave industrialized countries open to unmanageable influxes of people seeking immigration and economic opportunities. Therefore, one of the key issues at hand for the United States in seeking to respond effectively to migration emergencies is to strike an appropriate balance between protecting the rights of refugees and maintaining reasonable control over its borders.

In June of 1980, when faced with mass migration from Cuba and Haiti, Victor Palmieri, the U.S. Coordinator for Refugees at that time, noted the difficulty of making refugee determinations in the face of a large-scale immigration emergency:

The Refugee Act of 1980 did not contemplate the kind of situation we face now, with a sudden massive influx, without overseas processing and valid documentation. The procedures for dealing with asylum seekers in this country

require lengthy examinations on a case-by-case basis that would leave many arrivals in limbo status for long periods, without eligibility for federally funded assistance.

At the same time, he noted, "we cannot stand by in silent witness to the unsafe and uncontrolled exodus" from Cuba (Palmieri 1980).

Fourteen years later, the United States continues to struggle with the challenge of planning for and responding to immigration emergencies in ways that treat migrants humanely and respect the rights of refugees without exceeding the country's capacity to absorb new immigrants. Over the past two decades, the United States has had to respond to a number of immigration emergencies, most notably from Haiti, Cuba, Central America, Eastern Europe, and Indochina. This briefing paper provides background information on the spectrum of options the United States has available to avert immigration emergencies. These options range from responding to the early warnings of an emergency before displacement occurs to redirecting the flow once people leave.

## EARLY WARNING AND PREVENTION

Early warnings of large-scale movements of people allow advance time to plan an appropriate response, whether it be alleviating the problems causing the displacement or mounting a humanitarian response for those who choose to flee. The response to early warnings should be determined in a comprehensive framework that takes into consideration conditions in the sending and receiving countries, as well as the situation of those at risk of becoming displaced. In some situations the need for people to flee across international borders can be prevented if the economic and political problems triggering their flight are identified at an early stage and reported to international or local institutions that can resolve them. Early warning depends upon the systematic collection and analysis of field observations in areas of potential displacement. Early warnings of impending population displacements can be detected in such precipitating factors as political instability, human rights violations, or the outbreak of conflict. The response to early warning information depends largely upon the amount of time between the detection of signals and the potential or actual displacement. If detected early enough, these warnings in some cases can

lead to prevention. If identified too late to avoid the displacement, they can allow for contingency planning and a more adequate and timely response to the outflow.

When a crisis breaks out and the threat of large-scale displacement is imminent, efforts can be made to provide adequate assistance and protection within the country to avoid the need for people to cross an international border. The growing emphasis that the U.N. High Commissioner for Refugees has placed on internally displaced persons in recent years is aimed at preventing international displacement. On October 4, 1993, the High Commissioner stated: "UNHCR is prepared . . . to intervene on behalf of the internally displaced when our involvement could have a preventive impact on refugee problems. For example, we could provide protection or assistance to displaced people who might otherwise feel compelled to cross the border to become refugees."

One of the most difficult challenges of assisting and protecting people within their countries is gaining access to them. Governments sometimes obstruct relief efforts by outside parties by saying that these activities infringe upon their sovereignty. This is particularly true in situa-

tions where the governments do not want outsiders to interfere with their domestic policies. A major turning point in the international community's ability to gain humanitarian access to persons at risk within their own national borders was U.N. Security Council Resolution 688 (1991) which allowed the Allied Coalition to go into northern Iraq to provide assistance and protection to persons displaced by the civil war in that country.

In addition to the humanitarian intervention in northern Iraq, other innovative approaches have been taken in recent years to provide assistance and protection within countries in the midst of war so that people do not need to flee. In Sri Lanka, for example, the UNHCR has set up Open Relief Centers [ORCs] where people affected by the conflict can obtain essential relief assistance in a safe environment until conditions stabilize.

In Somalia, "preventive zones" were planned to protect displaced victims of civil conflict. Assistance in the form of food, seeds, agricultural equipment, and livestock are brought across the border from Kenya into designated zones in Somalia. The objectives of this program are to improve the living conditions of those remaining in the preventive zones, to deliver essential supplies to people at risk of becoming displaced, and to encourage

the return of Somali refugees in Kenya.

The special provisions contained in the Immigration Act of 1990 [IMMACT] for residents of Hong Kong are an example of preventive measures taken far in advance of a potential immigration emergency. Anticipating a possible mass exodus when Hong Kong is incorporated into the People's Republic of China [PRC] in 1997, IMMACT includes provisions aimed at regulating the admission of residents of Hong Kong who may want to immigrate legally to the United States over the next twenty years.

## **INTER- NATIONALIZING IMMIGRATION EMERGENCIES**

When an immigration emergency cannot be prevented by resolving the problems causing displacement, strategies must be found that put the least strain on the countries trying to respond to the exodus. The United States' experience with large scale immigration emergencies during the past two decades testifies to the tremendous challenge of providing a humane response that does not exceed the country's capacity to receive immigrants. Ideally the burden of responding to an immigration

emergency should be distributed among a number of countries. Such an arrangement often requires skillful diplomacy and a commitment on the part of governments to the principle of burden-sharing.

### **International Response to the Indochinese Migration Crisis 1979-1989**

The 1975 victories of communist forces in Vietnam, Cambodia, and Laos led to a migration crisis of such urgency and magnitude that in July 1979, the U.N. Secretary-General convened an international conference attended by sixty-five governments to formulate an international emergency response. Neighboring countries agreed to allow temporary refuge to Indochinese asylum seekers, the UNHCR committed resources for their care and maintenance, and third countries pledged to resettle refugees.

While this system was effective in alleviating some of the pressure on neighboring countries, by 1989 such factors as continuing arrivals, high birth rates in the camps, and a decline in admissions to third countries led to considerable con-

cern in the countries of first asylum. Therefore, in June 1989, the Secretary-General convened a second conference, the International Conference on Indo-chinese Refugees. The seventy-four governments that attended the conference adopted the Comprehensive Plan of Action [CPA] that called for: controls on clandestine boat departures from Vietnam; an expanded Orderly Departure Program for legal exit from Vietnam; guarantees of safe arrival and humane treatment for Vietnamese and Laotian asylum seekers by neighboring countries; a region-wide refugee status determination process; continued resettlement abroad; and the eventual return of nonrefugees to their countries of origin (Knowles 1989).

As of August 31, 1993, there were approximately 110,000 Indochinese in UNHCR camps throughout Southeast Asia; 742,000 Vietnamese, 235,000 Cambodians, and 300,000 Laotians had been resettled. Through the CPA approximately 46,000 Vietnamese, 23,000 Cambodians and 14,000 Laotians had repatriated. The CPA is an example of how the international community, working with the countries of a region, can collaborate to distribute the burden of responding to an migration emergency.

## **Unsuccessful Attempts to Internationalize the Haitian Migration Crisis, 1991-1994**

The immigration emergencies from Cuba and Haiti in the past two decades have been viewed by other nations almost exclusively as an United States problem. Efforts to internationalize the migration aspect of the crisis in Haiti since the overthrow of President Aristide demonstrate the tremendous challenge of brokering an international program of burden-sharing. At a meeting held at the Organization of American States [OAS] headquarters in Washington on November 19, 1991, the UNHCR asked Caribbean states to take screened-out Haitians. Venezuela took 100, Suriname 60, and Honduras 250. Without success, the United States also searched for alternative sites for temporary camps in Jamaica, the Bahamas, the Turks and Caicos Islands, and the Dominican Republic. One senior Administration official stated that other countries would not share in the burden without an economic incentive, "Nobody is going to take them off our hands without getting something in return."

With prospects for a political settlement to the Haitian stalemate looking increas-

ingly grim in 1993, the UNHCR renewed its efforts to find an international solution to the plight of those wanting to flee Haiti. UNHCR offered to establish one or more regional processing centers for Haitians in the Caribbean. Modelled on the Comprehensive Plan of Action, this would permit UNHCR to screen Haitians for a fear of persecution in accordance with international standards. Those who were screened in would be resettled, those who were screened out would be given temporary safe haven at the center or elsewhere in the region.

## **INTERDICTION**

In situations where people are fleeing by boat, interdiction allows the U.S. to control the movement of migrants before they reach U.S. shores. In the past twelve years, the United States' policy of interdiction, whereby the Coast Guard intercepts boats on the high seas, has affected nationals from China, Cuba, the Dominican Republic, and Haiti. Between 1981 and 1993, the U.S. Coast Guard interdicted 3,188 Chinese, 7,142 Cubans, 5,256 Dominicans, and 66,122 Haitians. Upon interdicting migrants, the U.S. can (1) bring them to the United States, (2) return them to their country of origin, or (3) bring them to a third location for temporary protection. The fate of those interdicted has

varied depending largely on the country that they have left. The clearest example of this differential treatment is the contrast between the reception of interdicted Haitians and Cubans. Haitians are returned directly to Haiti. Most Cubans are brought to the U.S. and given automatic parole.

As the United States' interdiction policy was first established in response to the threat of massive numbers of Haitians arriving in the United States and continued to evolve as such, this section focuses primarily on the interdiction of Haitians.

### History of Interdiction

One of the only early recorded incidents of interdiction was of the *St. Louis* in 1939. The *St. Louis* carried 1,128 German Jews who went to several points in the Western hemisphere, including the United States, seeking asylum. As the ship approached the United States, a Coast Guard cutter patrolled the waters off the Florida coast to prevent any passengers from attempting to come ashore. The passengers wired a plea for admission to President Roosevelt who did not respond. The State Department decided that no one without a visa would be allowed to enter the U.S. As no one on board had a visa, the *St. Louis* returned to Europe where some of

its passengers were killed by Hitler (Zucker & Zucker 1987).

In part because of the experience in Nazi Germany during the Holocaust, U.S. policy regarding refugees shifted in the years following World War II. A number of special laws established programs permitting the entry of displaced persons, Hungarians, Cubans, and Indochinese. In 1980, after four decades of *ad hoc* arrangements, the Refugee Act of 1980, which adopted the U.N. definition of refugees and a process for the orderly admission of refugees from abroad, was passed. The law also contained a brief reference to asylum in the United States, a provision tested soon after the law's passage by the Mariel boatlift of Cubans. At the same time, advocates of asylum for Haitians urged that their cases be reviewed under the new legal framework and that Haitians be granted the same special status given to the Cubans. Toward the end of 1980, the flow of Cubans had all but stopped. Haitians continued to arrive by boat, however.

On September 23, 1981, through an exchange of letters between the U.S. government and the Haitian government of President Duvalier, the two countries agreed to the "establishment of a cooperative program of interdiction and selective return to Haiti of certain Haitian

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RESEARCH  
P A P E R

- 12 -

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migrants and vessels involved in illegal transport of persons coming from Haiti.”<sup>1</sup> On September 29, 1981, President Reagan issued an executive order expressing concern for the “continuing problem of migrants coming to the United States, by sea, without necessary entry documents . . .” and stating that the Secretary of State “shall undertake to enter into, on behalf of the United States, cooperative arrangements with appropriate foreign governments for the purpose of preventing illegal migration to the United States by sea” (Reagan 1981a).

The interdiction agreement stated that the United States “does not intend to return to Haiti any Haitian migrants whom United States authorities determine to qualify for refugee status.” Therefore, during the period from 1981 to 1991, interdicted Haitians were brought on board Coast Guard cutters and interviewed by INS officials to determine whether or not they had “a credible fear” of persecution. The “credible fear” standard is more lenient than the “well-founded fear” standard that must be met to qualify for political asylum. According to one INS officer, a more generous standard on the cutters was used as a procedural safeguard to compensate for the difficult conditions under which the applicants were presenting their claims. Of the 24,600 Haitians screened on the cutters during

that period, only 28 were allowed to enter the United States to seek asylum (US GAO 1992). Those who did not meet the “credible fear” standard were returned to Haiti.

Following the September 30, 1991 coup that overthrew President Aristide, the number of Haitians fleeing by boat exceeded the capacity of the Coast Guard cutters to accommodate them during the screening process. In November 1991, the U.S. government established an emergency camp at the U.S. naval base on Guantanamo Bay, Cuba, where the INS screened Haitians with the “credible fear” standard that had been used on the cutters since 1981. (A fuller discussion of the reception of Haitians on Guantanamo is provided below.)

On January 19, 1978, the National Security Council issued a Presidential Directive [P.D. 27] calling for interagency discussion and decisionmaking when non-military incidents that could adversely affect foreign relations occur. In the case of interdiction, when a Coast Guard ship interdicts a vessel carrying undocumented migrants, the passengers are held until an interagency decision is made on how to handle the case. The Coast Guard initiates the interagency call, recommending to the other agencies the action that it believes to be appropriate. The discus-

sion involves the Coast Guard, State Department, Justice Department, and, at times, the National Security Council. In arriving upon an interagency decision, the various agencies weigh in with their respective operational, legal, and diplomatic concerns. P.D. 27 is not invoked in the case of interdicted Haitians as that policy is based on the 1981 agreement between the two countries and the foreign policy implications, therefore, do not need to be assessed case-by-case. As the U.S. does not have such an agreement with any other country, the interdiction of nationals of any other country is, therefore, implemented according to P.D. 27.

A major turning point in the U.S. interdiction policy was the May 24, 1992 Executive Order issued by President Bush that revoked the 1981 Executive Order and replaced it with expanded authority to "suspend the entry of aliens coming by sea to the United States without necessary documentation . . ." and "to repatriate aliens interdicted beyond the territorial sea of the United States." A controversial aspect of the implementation of this order is that Haitians no longer were given the opportunity to present their claim to asylum as they had been in the previous eleven years. Instead, those interdicted were returned directly to Haiti.

Despite campaign promises to end interdiction, which he characterized as a "callous response to a terrible human tragedy," on January 14, 1993 President-elect Clinton announced that he would continue the policy on a temporary basis. Far from moving away from Bush's interdiction policy, the Clinton Administration has reinforced it with additional ships and resources. In January 1993, the U.S. increased the presence of U.S. Coast Guard cutters, Navy ships, and helicopters to blockade the island and prevent refugee flight (National Coalition 1993). Under Operation Able Manner, as the blockade is named, the Coast Guard deployed as many as twenty-two vessels at one time to surround Haiti and contain anyone trying to leave.

While interdiction has affected Haitians more than any other group, it is increasingly being used to control the movement of other groups of migrants. On July 6, 1993, the Coast Guard intercepted three ships in international waters southwest of San Diego. The vessels were carrying 658 Chinese emigrants. This incident came in the wake of heightened public outcry over alien smuggling, precipitated by the June arrival of the *Golden Venture*, a ship carrying 300 Chinese immigrants who had paid to be smuggled into the United

States. When the ships arrived off the coast of California, the U.S. asked Mexico to accept the U.S.-bound Chinese for processing. Vice President Gore described this action as a “no nonsense response to this wave of criminal smuggling of illegal immigrants into the US. They will be given careful attention under the law, and those who do not have legitimate requests, and historically that has been the vast majority in these cases, will be returned directly to China.” Mexico eventually agreed to accept the Chinese for processing and most of them were returned to China within a week.

### **Justification and Legality of Interdiction**

The U.S. government traditionally has justified interdiction by emphasizing that it is aimed at curbing illegal immigration. In a proclamation issued on the same day as his 1981 executive order on interdiction, President Reagan stated that:

. . . the ongoing migration of persons to the United States in violation of our laws is a serious national problem detrimental to the interests of the United States. A particularly difficult aspect of the

problem is the continuing illegal migration by sea of large numbers of undocumented aliens into the southeastern United States. These arrivals have severely strained the law enforcement resources of the Immigration and Naturalization Service and have threatened the welfare and safety of communities in that region (Reagan 1981b).

The U.S. government also has interdicted Haitians out of concern for the safety of migrants risking their lives in boats. In announcing his decision to continue the interdiction policy in 1993, President Clinton stated that “boat departures will result in further tragic losses of life” (Clinton 1993). The Coast Guard also has noted the danger involved in fleeing Haiti by boat. One Coast Guard lieutenant commander explained that the Caribbean waters are unpredictable and that it is “common to have beautiful sunny weather when you leave and a short distance away localized heavy thunderstorms with forty-mile-per-hour winds and fifteen-foot seas.” He explained that many of the Haitians fleeing are from rural areas and have no nautical experience. “They are crammed in horrible conditions with inadequate food, water, and sanitation.” In the late 1980s, another Coast Guard official reported that “50 percent of the sail-

boats departing from Haiti never land, capsizing or foundering with total loss of life" (*Refugee Reports* 1987). The U.S. government's concern for the safety of those fleeing Haiti by boat is, therefore, clearly not unfounded.

An internal UNHCR memorandum of October 29, 1981 documents the agency's early concern about interdiction by noting that "whether or not the measures [interdiction] can be challenged from a legal point of view is not certain. The newly introduced interdiction measures, of course, deprive asylum seekers of access to counsel and of the appeal possibilities which they would have had they entered the USA . . . the new interdiction measures could certainly constitute an undesirable precedent for other areas of the world" (Shawcross 19??).

After months of lower court battles over interdiction and forced return, on June 21, 1993, the policy was upheld by the Supreme Court. The eight-to-one decision concluded that the policy was legal under U.S. immigration law and that it did not renege on the U.S.'s obligations as a signatory to the 1967 U.N. Protocol Relating to the Status of Refugees. One of the central points raised by the plaintiff was that the interdiction policy violated Article 33 of the 1951 Refugee Convention and its 1967 Protocol, which states, "No

Contracting State shall expel or return a refugee in any manner whatsoever to 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."

The majority held that protections against forced repatriation of refugees apply "only to aliens who reside in or have arrived at the border of the United States." It, therefore, did not apply when the Coast Guard interdicted vessels outside of U.S. territorial waters. The majority also noted, however, that while repatriation did not violate the letter of the law, it may violate its spirit: "the drafters of the Convention . . . may not have contemplated that any nation would gather fleeing refugees and return them to the one country they had desperately sought to escape."

The lone dissenter, Justice Harry Blackmun argued that:

. . . the refugees attempting to escape from Haiti do not claim a right of admission to this country. They do not even argue that the Government has no right to intercept their boats. They demand only that the United States, land of refugees and guardian of freedom, cease forcibly driving them

back to detention, abuse and death. That is a modest plea, vindicated by the Treaty and the statute. We should not close our ears to it.

In response to the decision the UNHCR stated that “This decision is contrary to the views of UNHCR’s Executive Committee that refugees should not be refused entry to a country where they are seeking asylum, and that asylum seekers rescued at sea should always be admitted, at least on a temporary basis. . . . UNHCR considers the Court’s decision a setback to modern international refugee law” (UNHCR 1993).

## **IN-COUNTRY PROCESSING**

Like interdiction, in-country processing aims to avert a potential immigration crisis by directing the flow of migrants before they reach U.S. shores. In-country processing is similar to overseas resettlement processing in that both of these programs determine whether or not a person is a refugee before he or she enters the United States. This differs from the affirmative asylum process that makes such a determination after a person is already in the United States. Admissions through

both in-country and overseas refugee processing fall under the refugee ceilings set annually by Congress in consultation with the Administration. The principal difference between in-country processing and the resettlement program is that in the former, applicants are still within the country where they fear persecution, whereas in the latter, they have already reached the safety of a first country of asylum. The United States has in-country refugee processing programs in the former Soviet Union, Cuba, Vietnam, and Haiti. It also has participated in in-country processing programs run by the International Organization of Migration [IOM] in Chile, Argentina, Nicaragua, El Salvador, and Bolivia.

Critics of in-country processing point out that the people most in fear are the very ones who likely would be too afraid to come forward with a persecution claim. People in fear might mistrust an in-country processing program’s intentions, fearing that it could be a device for identifying subversives. After exposing themselves, applicants have no guarantee of escaping from the country. Proponents of in-country processing argue that it allows for the humane and orderly departure of legitimate refugees. They also point out that it avoids the arrival of large numbers of asylum seekers in the United States

where, due to backlogged and protracted asylum procedures, they can remain for years without ever having established their claim to asylum.

### **Orderly Departure Program for Vietnam**

The April 1975 collapse of the Republic of Vietnam uprooted thousands of people. By the end of the 1970s, thousands of Vietnamese boat people were journeying across the South China Sea to find refuge in squalid camps throughout Southeast Asia. It will never be known how many perished at sea during their attempts to escape. It became clear that an alternative to the dangerous and uncontrolled flight of Vietnamese boat people had to be found. The United States worked with the UNHCR—and through the UNHCR with the Government of Vietnam—to establish a more ordered, legal means of departure. The resulting U.S. Orderly Departure Program [ODP] began operations in December 1980 (Migration and Refugee Services 1986; Aynes 1992). Those wishing to participate in the program first needed to obtain an exit permit from the Vietnamese Ministry of Internal Affairs. Applicants would then be transported to the U.S. embassy in Bangkok where U.S. consular

officers would make the determination as to whether or not to issue a U.S. entry visa.

A few months prior to the inception of the ODP, in May 1980, a U.S. presidential determination (No. 80-17) was issued allowing Vietnamese “with past or present ties to the United States” to be considered “refugees of special humanitarian concern to the United States even though they are still within their country of nationality or habitual residence.” (The determination also applied to present and former political prisoners and their families in Argentina and Cuba.) The U.S. established criteria for categories of people eligible for the program: Category 1, family members of persons in the U.S. not currently eligible for immigrant visas; Category 2, former employees of the U.S. government; and Category 3, other persons closely associated or identified with the U.S. presence in Vietnam prior to 1975. Amerasians and their immediate family members fell under this third category. By the end of 1992, more than 300,000 Vietnamese had departed for the United States via the ODP. This included 161,400 family reunification cases, 81,500 Amerasians and their relatives, 61,500 former political prisoners and their families (US Committee for Refugees 1993).

### **In-Country Processing in Cuba**

The U.S.'s in-country processing program in Cuba is based on a 1984 migration agreement between the U.S. and Cuban governments that established procedures for U.S. processing of nonimmigrant and immigrant visas, as well as of refugee applications. Cuba, to show its opposition to Radio Marti, unilaterally suspended the program almost immediately after its inception. The processing program, therefore, did not begin to operate fully until the Cuban suspension was revoked in November 1987. It operates out of the U.S. Interests Section in Havana. Those applying for refugee status must fall into one of the following seven categories: former political prisoners; members of persecuted religious minorities; human rights activists; forced labor conscripts; persons who have lost their professional credentials and are unable to practice their profession because of their political activity; dissidents; or other refugees of compelling concern to the United States.

### **In-Country Processing in the Former Soviet Union**

Under the Lautenberg Amendment to the Foreign Assistance Appropriations Act for

FY 1990, selected groups of Indo-chinese and Eastern Europeans with a "credible fear of persecution" can qualify for refugee status. To be eligible for in-country processing in the former Soviet Union, an applicant must fall into one of the categories given special consideration under the Lautenberg Amendment: Soviet Jews; evangelical Christians; members of the Ukrainian Catholics and Ukrainian Orthodox religions. The in-country processing program that the U.S. operates in the former Soviet Union gives priority to those who fall into one of the Lautenberg categories with close family members in the United States. Since the in-country processing program began in 1989, 750,000 preliminary applications have been received. The program has brought approximately 250,000 people to the United States.

### **In-Country Processing in Haiti**

In February 1992, in-country processing began at the consular section of the U.S. embassy in Haiti. The program was established to facilitate the exit of those most likely to face persecution, such as high-ranking officials from the Aristide government, Aristide's bodyguards, and pro-Aristide academics. Since May 1992, when the U.S. government began its policy of interdicting Haitian boats and returning

them directly to Haiti without an opportunity to make a claim to asylum, the in-country processing program has served as the only means by which Haitians can apply for asylum in the United States (unless, they are able to slip through the blockade and arrive on U.S. shores without being interdicted). The critical difference between in-country processing in Haiti and its use in other countries is that, coupled with interdiction, in-country processing in Haiti acts as a deterrent to the immigration emergency that could ensue if departure from the island were unrestricted during this period of political instability. In contrast, the ODP was established under emergency circumstances similar to those in Haiti when thousands of people were risking their lives in boats, but Vietnamese who fled by boat were not turned back because the ODP existed (Frelick 1993).

In October 1992, the IOM, under contract with the State Department, assumed the responsibility of running the in-country processing program from an office outside of the embassy. According to the State Department, one reason for this transfer was that the high security at the embassy did not offer the unthreatening atmosphere that would make fearful people feel safe enough to come forward with their refugee claims. An American Immigration Lawyers Association [AILA]

delegation that went to Haiti in January 1993, reported that the IOM office was threatening because it is close to the police headquarters and has very intimidating security—applicants must pass through two layers of Haitian guards. The State Department counters that those guards work for the IOM and offer a level of security that is appropriate to the situation.

The in-country processing program operates on a vetting system that determines the level of priority of each application. While the State Department oversees the vetting of applications, the INS makes the final determination as to whether applicants are allowed to go to the United States as refugees. Those determined to have valid claims are admitted to the United States within the refugee ceiling set annually by Congress. Between February 1992 and January 1994, the program's vetting system consisted of three categories. The "A" category was for likely targets of persecution, such as officials in the Aristide government, academics, and journalists. The "C" category was for those who, as one State Department official put it, "want to work in Miami." The "B" category was for those who fell in the middle, such as those who do not appear to fear individual persecution but rather fear generalized violence in their neighborhoods.

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RESEARCH  
P A P E R

- 20 -

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In January 1993, the U.S. government resolved to work within Haiti to restore democracy, protect human life, and improve in-country processing. A technical team consisting of representatives from the INS and the State Department, as well Members of Congress, travelled to Haiti to look at ways to improve in-country processing. Their recommendations, which have now been implemented, were:

1. To double the capacity of the in-country processing from 100 to 200 per week (i.e., that IOM would interview enough applicants for the INS to adjudicate 200 per week);
2. To streamline the in-country processing for Category A so that the INS interviews A applicants the very day that they submit their application and they can be fully processed and ready to leave Haiti within seven days;
3. To open regional processing centers in rural areas where people find it difficult to travel to the IOM office in the capital (two such programs were set up in the spring of 1993 in Les Cayes and Cape Haitian and are being run by nongovernmental organizations, World Relief and the U.S. Catholic Conference respectively);
4. To provide additional security to those afraid to go to the processing centers, including IOM hiring of a human rights liaison person to remain in contact with the Haitian human rights community for alerts on cases of people in particular fear or danger;
5. To pass out a preliminary questionnaire to returnees on cutters, and then upon their return, the Refugee Coordinator and his staff go onto the cutters and prioritize the questionnaires, taking those in category A directly to the INS for processing.

The U.S. Government's justification for this program is that it enables legitimate refugees to leave the country without risking their lives in boats. Following a Federal Appeals Court decision in March 1992 to suspend the forced return of Haitians (later overturned by the Supreme Court), one Justice Department official stated, "The Administration remains convinced that in-country processing is the most equitable and humanitarian way to deal with this situation. We are extremely concerned that as a result of today's actions, Haitians may be lured into embarking on dangerous journeys on the high seas in the false hope of reaching the United States" (Washington Post 1992).

The three categories of the vetting system were abolished in January 1994, and they were replaced by a more narrow set of criteria. As of January 31, 1994, to be eligible for in-country processing, a person must fall into one of the following groups: former senior or mid-level members of the Aristide government; close Aristide associates; journalists or educational activists who have experienced significant or persistent persecution; highly visible members of social, political, or development organizations that have experienced persecution or significant harassment by the *de facto* authorities; or others of compelling concern to the U.S. because they are in immediate danger.

Some who criticize the in-country processing program in Haiti hold that in-country processing in itself is not necessarily harmful. It is when it is the only means of protection that it becomes a dangerous tool of containment.

## TEMPORARY PROTECTION AT OFFSHORE LOCATIONS

One objective of planning for immigration emergencies is to avoid the economic,

political, and social problems that can result when an influx of migrants suddenly arrives, overwhelming the local capacity to absorb them. A middle ground between sending all migrants involved in an immigration emergency back to their country of origin and admitting them all into the United States, is to provide temporary protection and refugee processing at an offshore location. In 1975, the U.S. temporarily housed fleeing Vietnamese on Guam, and at the time of the Mariel boatlift some Cubans were temporarily accommodated in Puerto Rico. The United States' experience of temporarily housing Haitians at the U.S. Naval Base at Guantanamo Bay, Cuba provides insights into how this option may be used in the future.

Within the first few months after the September 1991 coup in Haiti, the Coast Guard cutters being used for INS screening became overwhelmed and an alternative location for conducting the interviews needed to be found. In November 1991, the U.S. government dispatched a military task force to erect an emergency camp at the U.S. Naval Base at Guantanamo Bay. Once the Guantanamo site was established, the Coast Guard brought the intercepted Haitians to Guantanamo for screening rather than keeping them on the cutters.

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RESEARCH  
P A P E R

- 22 -

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During the course of the next seven months, approximately 12,000 Haitians were picked up by the Coast Guard and brought to Guantanamo. A number of problems developed during this period that led the U.S. government to decide to close the camp in May 1992. First, the U.S. government became concerned that by picking up Haitians at sea and bringing them to Guantanamo, the U.S. was encouraging increasing numbers to flee. One State Department official pointed out that Haitians were beginning to leave Haiti in boats that were not fit to take them to Miami but rather were intended only to take them a few miles off the coast of Haiti where they knew they would be picked up by a Coast Guard ship.

A second problem was that the number of Haitians needing accommodation on Guantanamo soon exceeded the capacity of the facilities that the U.S. had set up to receive them. The Administration explored a number of options to try to alleviate the problem of overcrowding, ranging from expanding the facilities on Guantanamo to accelerating the process of repatriation. The Administration also made diplomatic efforts to persuade other governments to accept some of the overflow. In June 1992, the Administration ultimately decided to close the camp. Between the November 1991 opening of

the camp at Guantanamo and its closing, the INS prescreened 36,596 cases there. Approximately 11,000 were screened in and allowed to pursue asylum claims in the United States. With a few exceptions, who were allowed into the U.S. for medical reasons, the remaining screened out Haitians were returned to Haiti.

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