

The Kidnapping of President Jean Bertrand Aristide

Violates International Law and US Law

By Marjorie Cohn

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Background

Beginning in early February 2004, the democratically elected President of Haiti, Jean-Bertrand Aristide, faced an armed rebellion starting from the North of his country and moving South. The rebel leaders, whom U.S. Secretary of State Colin Powell characterized as "thugs and criminals," include former members of the dissolved Haitian army, drug dealers, and members of the former paramilitary organization universally recognized as having operated terrorist/execution squads during the 1991-1994 military coup.

The driving force behind these rebels was Jean Tatoune, a formerly a member of the Front Revolutionnaire pour l'Avancement et le Progres d'Haiti (FRAPH), and Jodel Chamblain, the co-founder of FRAPH. Both are convicted human rights violators. The nominal rebel leader was Guy Phillippe, a well-known drug dealer, who had been implicated in masterminding another coup attempt against the democratically elected government of Haiti under President Preval.

The movement of the rebel army towards the South was rapid, as it was armed with M-16s and M-60s of American manufacture, and the national police had been eviscerated by the financial and arms embargo imposed on Haiti for the past few years, under the false pretenses of faulty elections.

President Aristide had accepted the proposals of the international community, and had entreated the opposition

to agree to the proposed political solution in order to avoid the return to power of the forces who in the past had terrorized the Haitian people.

On February 26, the rebel army threatened to enter Port-au-Prince, and threatened President Aristide's government and his life. The civil opposition that had been calling for President Aristide's resignation rejected the international proposals. At this point, Colin Powell stated that the U.S. would not send troops to protect the democratically elected government until a political solution had been reached.

Two days later, the Steele Foundation, a U.S. company which had provided President Aristide with security under contract, informed him that the U.S. government had forbade the company from bringing in additional security forces to protect President Aristide. The same day, U.S. diplomats told the President that if he remained in Port-au-Prince, the U.S. would not provide any assistance when the insurgents attacked, and that they expected the President, his wife and supporters would be killed.

Later that night, the U.S. Depute Charge de Mission (DCM) in Haiti, Luis Moreno, accompanied by a contingent of U.S. Marines, met with the President. Moreno told him that only if he left at that moment, the U.S. would provide aircraft for him to leave, but that assistance was contingent on the President providing the United States with a letter of resignation.

In the early morning hours of February 29, the President and some family members were taken by Moreno and the Marines to an airplane rented by the U.S. State Department. Moreno told the President that he must give Moreno a letter of resignation and agree to ask no questions about where he would be taken, or the President and his wife would be left at the airport and they would be killed.

Under extreme duress, President Aristide signed a letter of resignation and boarded the plane. During the flight, despite their repeated requests, the President and his wife were forbidden from communicating with anyone in the

outside world. They were never asked whether their destination, the Central African Republic, was acceptable to them. Because they were prevented from having any communication, the President and his wife were prevented from seeking the agreement of other countries to accept their arrival.

Although both George W. Bush and Colin Powell had said they would not send U.S. troops to Haiti until there was a political solution, U.S. troops were ordered to Haiti within one hour of President Aristide's departure. Dick Cheney denied that the United States arrested or forcibly ousted President Aristide, saying that President Aristide, who had "worn out his welcome with the Haitian people," had "left of his own free will."

Shortly after President Aristide's "resignation," Boniface Alexandre was named acting president of Haiti. All 3,000 people held in the National Penitentiary were freed on March 14, according to the Associated Press. Several of these prisoners had been convicted of massive human rights violations, or were awaiting trial for massive human rights violations. The UN news wire reported on March 5, that in Fort Liberte, recently released prisoners were said to be in charge of security.

The *Observer* reported a security vacuum throughout the country, and the BBC reported that rioters in Port-au-Prince looted stores, ransacked police stations, and set fire to gas stations. There have been many brutal reprisal attacks on political opponents, extra-judicial arrests and killings, lack of effective civil authority, and disruption of humanitarian aid efforts. Serious human rights abuses, political violence, and social turbulence have escalated to the level of a humanitarian crisis.

There has been a serious attack on the freedom of the press since February 29. Staff from the Aristide government media continue to be attacked and beaten, some journalists have been forced into exile, and the U.S.-supported opposition now controls most of the airwaves.

Human Rights Watch reported on March 2 that the U.S. Coast Guard had already repatriated at least 867 Haitians.

Joanne Mariner, deputy director of Human Rights Watch's Americas Division, said, "With people being shot dead in the streets by gangs of criminal thugs, it was unconscionable for the United States to dump entire families into this danger zone." According to Mariner, "Haiti remains unstable and insecure. The international community must take rapid steps to take the country back from armed criminals and thugs who are now in control of the country."

Forcible regime change violates international law

Haiti's democratically elected President Aristide was removed from Haiti by the United States, by threat of force. Forcible regime change violates the well-established principle that people should be able to choose their own government. The International Covenant on Civil and Political Rights recognizes *self-determination* as a human right, and specifies that all peoples have the right to "freely determine their political status and freely pursue their economic, social and cultural development." The United Nations Charter also prohibits the use of force "against ... [t]he political independence" of another state.

The governing charters of the Americas also prohibit forcible regime change. The Charter of the Organization of American States (OAS) affirms that "every State has the right to choose, without external interference, its political, economic, and social system and to organize itself in the way best suited to it, and has the duty to abstain from intervening in the affairs of another State."

Likewise, the Inter-American Democratic Charter, signed on September 11, 2001, reiterates the indispensability of representative democracy and the principle of non-intervention. It provides that when a government of a member state considers its legitimate exercise of power at risk, it may request assistance from the Secretary General or the Permanent Council for the strengthening and preservation of its democratic system. Jean-Bertrand Aristide, as duly elected President of Haiti, is entitled to request such assistance. The Charter further provides, "In the event of an unconstitutional alteration of the constitutional regime that seriously impairs the democratic

order in a member state, any member state or the Secretary General may request the immediate convocation of the Permanent Council to undertake a collective assessment of the situation and to take such decisions as it deems appropriate."

The Security Council recognized President Aristide's resignation

On February 29, the Security Council adopted Resolution 1529, which took note of the resignation of President Aristide and the swearing in of Boniface Alexandre as acting president "in accordance with the Constitution of Haiti." The Council stated in Resolution 1529 that it was acting under Chapter VII of the UN Charter, which gives Council decisions binding effect. In the Libya case, the ICJ deferred to the Security Council, saying that the Council's imposition of sanctions on Libya preempted the Court's jurisdiction. However, the Council has not imposed sanctions in Haiti, but merely taken note of President Aristide's resignation and the swearing-in of Boniface Alexandre as acting president. Additionally, when Resolution 1529 was adopted, President Aristide had not had a full opportunity to present his allegations that he had been kidnapped and forced to sign a letter of resignation. Any subsequent attempt to secure a new Security Council resolution would invariably be vetoed by the United States and France, which also supported the ouster of President Aristide. Since President Aristide did not truly resign, as head of state of Haiti he still has a seat at the United Nations General Assembly, and can request a resolution condemning the coup.

Resolution 1529 also authorized the immediate deployment of a Multinational Interim Force to Haiti. If President Aristide returned to Haiti, the United Nations troops would be compelled to protect him.

The U.S. violated a treaty it ratified by kidnapping President Aristide

In 1976, the United States ratified the multilateral treaty, Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic

Agents. The Republic of Haiti is also a party to this treaty. It prohibits the intentional kidnapping or other attack upon the person or liberty of an internationally protected person. A Head of State and his wife - President Aristide and Mildred Trouillot Aristide - are considered to be internationally protected persons under this treaty.

The terms of the treaty require the U.S. to punish those responsible for an intentional kidnapping. President Aristide could sue the United States in the name of Haiti, on the basis of a "dispute" arising from the failure of the U.S. to punish. Haiti could also sue for the perpetration of the kidnapping by the U.S., based on the Bosnian precedent. The Genocide Convention, at issue in the Bosnia case, similarly requires states to prohibit and prevent genocide. Bosnia argued that this also means a state can be sued for its own perpetration of genocide. Yugoslavia as respondent objected and said it could not be sued for perpetration. The International Court of Justice (ICJ) agreed with Bosnia and said that even though the Convention requires only that a state prevent and prohibit, that impliedly includes an obligation not to perpetrate. The ICJ would likely conclude that Haiti and the U.S. have a "dispute" by virtue of their disagreement over whether the U.S. perpetrated kidnapping of an internationally protected person. The ICJ would take oral testimony and would determine whether a kidnapping occurred.

On March 8, 2004, President Aristide's lawyer, Ira J. Kurzban, presented a written demand to Colin Powell that the United States fulfill its international legal obligations to the Republic of Haiti under this treaty. This letter demanded that the U.S. government submit, without undue delay, the case to its competent authorities for the prosecution of the U.S. nationals who organized and implemented the kidnapping of President Aristide and his wife.

Under the terms of this treaty, any dispute between two or more States Parties concerning its interpretation or application, which is not settled by negotiation or arbitration, can be referred to the ICJ by any one of those parties. Since the U.S. did not file a declaration relating to

the dispute settlement provision, it did not opt out of ICJ jurisdiction.

The U.S. kidnapping of President Aristide violates U.S. law

United States law makes it a criminal offense for United States persons to kidnap an internationally protected person. See 18 U.S.C. sections 112, 878 and 1201. A prima facie case of violation of this statute has been made out since President Aristide and his wife were taken against their will on an aircraft registered in the United States and owned, leased or controlled by U.S. persons.

Ira Kurzban sent a letter to Attorney General John Ashcroft asking the Justice Department to investigate the circumstances of President Aristide's departure from Haiti on February 29.

The U.S. repatriation of Haitians violates international law

International law prohibits *nonrefoulement*, or sending people back to places where they risk being persecuted, tortured or killed. On February 25, the United Nations High Commissioner for Refugees recommended that neighboring countries suspend forced returns to Haiti. Nevertheless, the U.S. Coast Guard repatriated at least 867 Haitians, which puts them in grave danger due to the current conditions of violence and instability. The United States violated international law by repatriating these people.

The Inter-American Commission on Human Rights should conduct an investigation

On February 26, the Inter-American Commission on Human Rights issued a statement deploring the violence occurring in Haiti and called attention to the urgent need for a response from the international community.

On March 8, President Aristides' attorney Ira Kurzban, on behalf of the Government of the Republic of Haiti, extended a standing invitation to the Commission to

effectuate as many on-site human rights visits as necessary to document the human rights situation in the country, and make such recommendations as it deems necessary to reestablish the rule of law and respect for fundamental rights. The same day, more than 100 law professors and human rights organizations wrote to the executive secretary of the Inter-American Commission on Human Rights, urging that the Commission conduct an on-site visit to Haiti to investigate the critical human rights situation there.

CARICOM, U.S. representatives, and human rights organizations call for probe

Fourteen Caribbean nations that comprise the Caribbean Community (CARICOM) were reportedly "extremely disappointed" at the involvement of "Western partners" in the departure of President Aristide from Haiti, and called for a probe into the President's charge that the United States forced him out of office.

Several members of Congress, including Maxine Waters, called for an investigation into the United States' role in the ouster of President Aristide.

An international team of lawyers filed a petition in a Paris court alleging that officials from the French and United States governments kidnapped President Aristide and led a coup in Haiti.

The American Association of Jurists (AAJ), while recognizing that during the government of President Aristide, violations of the political and human rights of the Haitian people were committed, declared that jurists have a duty to condemn the U.S. participation in the planning and execution of a modern day coup d'état which is part of the U.S. policy of imperial conquest of the American continent. The AAJ condemns the Haitian intervention directed by the U.S., with France's collaboration; calls for the formation of an independent commission of Latin American and Caribbean parliaments to investigate the conditions under which Aristide left the Presidency and the country, including the possible role played by the government of the Dominican Republic in the training of

armed militias and invasion from Dominican soil; invites Latin America to demand the immediate pullout of U.S. and French occupation troops from Haiti, and replacement with a Latin American contingent according to the procedures in the Interamerican Democratic Charter, in consultation with legitimate Haitian authorities; and invites the OAS to conduct an investigation to establish the circumstances which put Aristide out of the office of the Presidency of Haiti.

The National Conference of Black Lawyers (NCBL) expressed "its maximum outrage and disgust with the imperialist, lawless and brutal campaign of terrorism that has been inflicted on the people of Haiti by the Bush administration." The organization demanded immediate answers to questions about "U.S. involvement with armed terrorists who have destabilized the island nation," and called for "the formation of a global Pan-African alliance of organizations that will be prepared to counter future imperialist intervention through coordinated economic warfare."

On March 27, NCBL filed a complaint with the International Criminal Court's (ICC) prosecutor, requesting investigation of whether charges may be brought against the Bush administration for war crimes in the kidnapping of President Aristide from Haiti. The complaint noted that even though neither the U.S. nor Haiti is a party to the ICC's statute, the Central African Republic, to which President Aristide was forcibly removed and detained, is a party to the ICC, and thus jurisdiction would lie. It further noted that unlawful deportation or transfer or unlawful confinement constitutes a grave breach of the Geneva Convention, which, in turn, constitutes a war crime.

The National Lawyers Guild and several organizations and institutions working for global justice denounced the U.S. government for its role in the coup overthrowing the democratically elected government of Haiti and the forced removal of President Aristide by the U.S. military. They demanded a Congressional investigation into the role of the U.S. government in the deliberate destabilization of the Haitian government and the implementation of the coup; an immediate end to the repression and daily attacks on

those demanding the return of President Aristide; and support for Haitian refugees.

The National Lawyers Guild will send a delegation to Haiti to meet with victims, witnesses and their families and with grassroots leaders. The delegation will investigate detention conditions for those held in Haitian prisons and by the international occupation troops.

The United States has rejected calls for an inquiry into President Aristide's removal from Haiti. State Department spokesman Richard Boucher said, "There is nothing to investigate, we do not encourage nor believe there is any need for an investigation. There was no kidnapping, there was no coup, there were no threats." As with the Cheney energy task force, the 9/11 commission, and the inquiry into the intelligence leading to the war on Iraq, the Bush administration is resisting an independent investigation.