

HAITI IS BLACK! RACIAL ESSENTIALISM AND UNITED STATES INVOLVEMENT IN THE 2004 REMOVAL OF PRESIDENT ARISTIDE

JORDAN E. DOLLAR*

"Haiti is black, and we have not yet forgiven Haiti for being black or forgiven the Almighty for making her black. In this enlightened act of repentance and forgiveness, our boasted civilization is far behind all other nations."

—Frederick Douglass¹

I.	Introduction.....	643
II.	The Historical Relationship.....	643
	A. The Slave Revolution of 1804	643
	B. The U.S. Occupation of 1915-1934	645
	C. The Duvalier Era.....	647
	D. The Rise and fall of Jean-Bertrand Aristide	650
III.	United States' Interference Preceding the Overthrow of Aristide	654
	A. 2000 Elections	654
	B. The Blocking of Humanitarian Loans.....	656
IV.	Allegation of U.S. Involvement in the Overthrow of President Aristide.....	659
	A. Support of Irregulars.....	660
	B. An International Obligation to Intervene?	662
	C. The United States Deployment of Troops as an Act of Aggression.....	664
	D. A Forced Resignation	666
V.	Final Thoughts	668

* Jordan E. Dollar is a staff attorney with Catholic Legal Services in Miami, Florida, where he works on behalf of the underserved indigent immigrant population. He also writes as a Senior Political Analyst for Americans for Informed Democracy. He is a recent graduate of FIU College of Law where he was a student-attorney for two years in the Carlos A. Costa Immigration and Human Rights Clinic. While enrolled in the Clinic, he served as counsel for a class action case on behalf of Haitian refugees. During his final year of law school, he worked as a Graduate Assistant for Dr. Jeremy I. Levitt, where he researched and wrote on humanitarian and human rights issues in Africa. He also served as a Florida Bar Fellow at the Robert F. Kennedy Center for Human Rights in Washington, D.C. He has traveled to Haiti on humanitarian missions on various occasions. He extends his deepest gratitude to Dr. Jeremy Levitt, Dr. Carlton Waterhouse, Professor Troy Elder and Professor Charles Pouncey for expanding his mind, opening his eyes, and encouraging his work.

1. Fredrick Douglass, *Lecture on Haiti, in HAITI: A SLAVE REVOLUTION: 200 YEARS AFTER 1804* 67, 69 (Pat Chin et al. eds., Greg Dunkel trans., Int'l Action Ctr. 2004).

I. INTRODUCTION

Through this paper I seek to interrogate the United States' policy toward Haiti as one based on racial essentialism. This paper will track the historical evolution of racial essentialism towards Haiti by the United States and the culmination of this essentialism through the removal of populist president Jean-Bertrand Aristide. I will show the common theme in U.S. policy towards Haiti, beginning with the successful slave rebellion in 1804, and ending with the 2004 removal of Aristide; the suppression of popular movements in Haiti based on racial essentialism. I also will attempt to provide an analysis of key actions taken by the United States preceding the removal of President Aristide.

The first section of this paper will give a general overview of the historical relationship between the United States and Haiti and explain why the United States may have directly involved itself with the internal affairs of Haiti and the removal of President Aristide in 2004. The second section describes a series of U.S. supported "interferences" with the internal affairs of Haiti in the years preceding the 2004 overthrow of Aristide. These are policies based not on overt racism of the past, but a more discrete, but equally dangerous, unconscious racism of the present. The third and final section presents the implementation of these modern-day racially essentialist U.S. policies, and the lack of recourse available though international law.

II. THE HISTORICAL RELATIONSHIP

A. THE SLAVE REVOLUTION OF 1804

Haiti has undergone a tumultuous and oppressive relationship with the United States since its independence in 1804. Haiti's independence began during a voodoo ceremony in 1791, continued through a bloody popular uprising, and resulted in the first successful black-slave rebellion in modern history.² Soon the rebellion spread throughout Haiti and a young, fledgling democracy to the north, the United States, sent \$750,000 in aid to help France end the slave uprising and protect its own interests.³ When the fighting ceased, Haiti's new and historic constitution, drafted by rebel leader Jean-Jacques Dessalines, officially declared Haiti a place of refuge for escaped slaves or anyone of African or American Indian descent, and

2. PAUL FARMER, THE USES OF HAITI 68 (Amy Goodman ed., 1994) [hereinafter FARMER, USES OF HAITI].

3. *Id.*

forbid the foreign ownership of land.⁴

The United States' reaction to the slave rebellion in Haiti was swift and tragic for a blossoming nation that had just endured a long, bloody rebellion. This reaction, based upon a fear of losing the white privilege enjoyed in the United States, was the embryonic stage of a U.S. policy towards Haiti based upon racial essentialism. Thomas Jefferson, drafter of the Declaration of Independence and slave owner, warned his country that Haiti set a bad example and that it was "necessary to 'confine the plague to the island.'"⁵ The U.S. began to preserve its own white rule and confine the slave rebellion to Haiti by supporting an indemnity in the amount of 150 million gold francs, which France forced on Haiti shortly after the rebellion.⁶

White power elites in the U.S. portrayed Haitians as ungovernable in order to preserve their own status in the U.S. as superior to black slaves.⁷ Haitians were explained to be a poor people because they killed their white slave owners and destroyed their educated class. Frederick Douglass spoke about how U.S. newspaper writers portrayed Haiti in the media during his lecture at the World's Fair in Chicago.⁸ Douglass stated:

They tell us that Haiti is already doomed – that she is on the downgrade to barbarism; and, worse still, they affirm that when the Negro is left to himself there or elsewhere, he inevitably gravitates to barbarism. . . . [t]he argument as stated against Haiti is that since her freedom, she has become lazy; that she is given to gross idolatry, and that these evils are on the increase.⁹

Douglass answered by rebutting each of these allegations one by one, relying upon his personal experience as Foreign Minister to Haiti.¹⁰ He concluded that, "[t]he mission of Haiti was to dispel this degradation and dangerous delusion, and to give to the world a new and true revelation of the black man's character. This mission she has performed and performed well."¹¹

The fear of a domestic slave revolt within the United States quickly spread after the success in Haiti.¹² The United States responded to the

4. RALPH PEZZULLO, PLUNGING INTO HAITI: CLINTON, ARISTIDE, AND THE DEFEAT OF DIPLOMACY 54 (2006).

5. Eduardo Galeano, *The White Curse*, NEW INTERNATIONALIST, Aug. 2004, at 5.

6. *Id.* at 5.

7. PEZZULLO, *supra* note 4, at 56.

8. Douglass, *supra* note 1, at 75.

9. *Id.* at 79.

10. *Id.*

11. *Id.* at 84.

12. FARMER, USES OF HAITI, *supra* note 2, at 73.

revolt by not recognizing Haiti as a sovereign nation, which in turn led to few trade options for the young nation.¹³ Before the revolution of 1804, Haiti was the United States' second largest trading partner behind only Great Britain.¹⁴ By 1810, United States exports to Haiti amounted to two percent of their pre-1804 amounts.¹⁵ When U.S. President Abraham Lincoln formally recognized Haiti in 1862, he wrote: "If any good reason exists why we should persevere in withholding our recognition of the independence and sovereignty of Haiti, . . . I am unable to discern it."¹⁶

By suffocating the black nations' trade options, the white nations (primarily France and the United States) were able to fulfill the self-created prophecy that a nation of black inhabitants could not govern themselves. This policy, based upon racial essentialism would develop into a lengthy military occupation and the beginnings of the institutionalization of this injurious policy.

B. THE U.S. OCCUPATION OF 1915-1934

The United States' first major military intervention into Haiti occurred in 1915.¹⁷ At the time of the U.S. intervention, eighty percent of Haiti's governmental resources were being paid to U.S. and French banks to service the reparations debt imposed by France after the 1804 revolution.¹⁸ The U.S. view of Haiti, as being ungovernable was espoused by the *New York Times*, which found that the establishment of an orderly government in Haiti would be "hopeless" without a U.S. military intervention.¹⁹ However, the U.S. occupation effectively halted the Haitian people's election of Dr. Rosalvo Bobo.²⁰ Unfortunately for Dr. Bobo and the Haitian masses, he was opposed to U.S. interference within Haiti, so the U.S. subverted the popular movement for his presidency and named a replacement more favorable to its own interests.²¹

The U.S. occupation forces significantly changed the same Constitution that was produced through the blood of slaves and by the pen

13. *Id.* at 78.

14. PEZZULLO, *supra* note 4, at 56.

15. *Id.*

16. *Id.* at 56-57.

17. FARMER, USES OF HAITI, *supra* note 2, at 90.

18. RANDALL ROBINSON, AN UNBROKEN AGONY: HAITI, FROM REVOLUTION TO THE KIDNAPPING OF A PRESIDENT 22 (2007).

19. FARMER, USES OF HAITI, *supra* note 2, at 91-92.

20. HANS SCHMIDT, THE UNITED STATES OCCUPATION OF HAITI, 1915-1934 71 (Rutgers Univ. Press 1995) (1971).

21. *Id.* at 74.

of freed men to the detriment of the Haitian people. When a majority of Haiti's Congressmen refused to sign the new document, the Parliament was dissolved by "genuinely Marine Corps methods."²² The Constitution included a "special article" that laid out these specific provisions:

- (1) All the acts of the government of the United States during its military Occupation in Haiti are ratified and confirmed.
- (2) The actors of the courts martial of the Occupation, without, however, infringing on the right to pardon, shall not be subject to revision.
- (3) The acts of the Executive Power up to the promulgation of the present constitution are likewise ratified and confirmed.²³

James Weldon Johnson explained that these constitutional provisions placed the Haitian people under a U.S. military occupation from which they had no appeal.²⁴ In addition, one of Dessalines' most famous additions to the original Constitution, which forbid the foreign ownership of land, was removed.²⁵ The occupation forces added another constitutional amendment in 1928 that ended the life tenure of judges because foreigners could not secure a "fair" deal in Haitian Courts.²⁶ The United States transformed Haiti's constitution into a legal façade for carrying out its own racially essentialist policies.²⁷

Just as in 1804, a popular movement to fight against a racist occupation gained strength in Haiti. In 1929, Haitian students began to hold protests and staged riots against the occupation of U.S. Marines.²⁸ The U.S. eventually left Haiti in 1934 with a \$40,000,000 loan that was taken out in 1922, once more leaving the nation in a huge deficit.²⁹ The U.S. loan was paid off in 1947, but it left Haiti virtually bankrupt.³⁰ By depleting Haiti's treasury, the U.S. created a client-state that was dependent on foreign aid to maintain its people's basic needs.³¹ The U.S. would use this foreign dependence for decades to come. Ultimately, however, history would show that the most lingering and tragic effect of the occupation was

22. FARMER, USES OF HAITI, *supra* note 2, at 93.

23. James Weldon Johnson, *Haiti, an Eye Opener*, NEW AFRICAN, May 2004, at 52, 54 (reproduced from James Weldon Johnson, *Self-Determining Haiti*, THE NATION, Aug. 1920, at 111).

24. *Id.*

25. FARMER, USES OF HAITI, *supra* note 2, at 93.

26. SCHMIDT, *supra* note 20, at 192.

27. See Johnson, *supra* note 23, at 55.

28. FARMER, USES OF HAITI, *supra* note 2, at 99.

29. *Id.* at 102.

30. ROBINSON, *supra* note 18, at 22.

31. SCHMIDT, *supra* note 20, at 232.

2008]

HAITI IS BLACK!

647

a Congressional act that created the Haitian Army that still terrorizes the country today.³²

The United States removed its troops but left institutions that it could summon to carry out the racial essentialism that developed during the black slave rebellion of 1804.³³ This institutionalization occurred through a U.S. created Haitian army, dependence on foreign aid, and support for a dictatorship that would ravage Haiti for decades.

C. THE DUVALIER ERA

After the U.S. military invasion and the subsequent expulsion of U.S. troops by a popular uprising in Haiti, U.S. policy makers deviated from their previous overt racism and brute force when containing the popular movement in Haiti.³⁴ Domestically, the United States obviously was a nation of racial discrimination and segregation in the period following the withdrawal of troops in Haiti.³⁵ However, the United States' military experience overseas, including World War II, led to a brief period of international conflict restraint. The world saw the advent of international organizations, such as the United Nations and the Permanent International Court of Justice.³⁶ In order to show the world that the U.S. was a peace-loving nation that viewed all nations and people equally, the United States quieted its overt racist tone towards Haiti and called upon the institutions it had created during its occupation from 1915-1934 to suppress Haiti's popular movement.³⁷ The U.S. left Haiti in 1934 financially dependent upon foreign aid.³⁸ By manipulating its aid to Haiti, the U.S. was able to prop up a Haitian tyrant who would suppress Haiti's popular movement on its behalf.

François Duvalier (also known as "Papa Doc") came to power after an election held under the approval of the U.S.-created Haitian Army on September 22, 1957.³⁹ From the beginning of the election, Duvalier was

32. Paul Farmer, *What Happened in Haiti? Where Past is Present*, in GETTING HAITI RIGHT THIS TIME: THE U.S. AND THE COUP 11, 14-15 (Amy Goodman ed., 2004) [hereinafter Farmer, *What Happened in Haiti?*].

33. *Id.* at 14.

34. ELIZABETH ABBOTT, HAITI: THE DUVALIERS AND THEIR LEGACY 48-61 (McGraw-Hill 1988).

35. SCHMIDT, *supra* note 20, at 231.

36. See U.N. Charter pmlb. See U.N. Charter art. 92.

37. SCHMIDT, *supra* note 20, at 232.

38. *Id.*

39. Karen Jenkins, *Traumatized Societies: Social Cubism and the Predatory State of Haiti*, 8 ILSA J. INT'L & COMP. L. 901, 907 (2002).

the choice for Americans working within Haiti and he counted on U.S. influence to win the election.⁴⁰ Two years into his reign of terror, a strong ally of Duvalier, Cuban dictator Fulgencio Bautista, was overthrown by Communist guerilla Fidel Castro.⁴¹ Luckily for Duvalier, the U.S. viewed him as a strong anti-communist and increased aid and military assistance to the dictator.⁴²

Within Haiti, Papa Doc created an infamous paramilitary force, the *Tontons Macoutes*.⁴³ Karen Jenkins described Duvalierism as the “culmination of a particular set of historical experiences” including the United States military occupation.⁴⁴ The *Tontons Macoutes* included nearly every government employee.⁴⁵ In some way, every Haitian was affected by the *Macoutes’* curfews, roadblocks, midnight searches, indiscriminate beatings, and killings.⁴⁶

By 1962, newly elected U.S. President John F. Kennedy sought a new level of accountability in relations with Duvalier.⁴⁷ Unfortunately, his initial policy was thwarted by the communist threat in Cuba that trumped the well-being of black inhabitants in Haiti. In October 1962, Kennedy announced that the Soviet Union had established missile sites within Cuba.⁴⁸ Kennedy immediately sent a communiqué to all Latin American Heads of States asking for their support.⁴⁹ This moment in history allowed Duvalier to declare that the *Tonton Macoutes* were an official defense force fighting alongside U.S. marines in the ideological struggle against communism.⁵⁰

Kennedy officially suspended U.S. aid to Duvalier from 1962 to 1966.⁵¹ However, during this brief period that official U.S. aid was suspended, international financial institutions (“IFI’s), largely controlled by the United States, buttressed Duvalier’s financial needs by making loans to Haiti.⁵² The loans were intended for potable water, agriculture, and

40. FARMER, USES OF HAITI, *supra* note 2, at 107.

41. ABBOTT, *supra* note 34, at 92.

42. *Id.* at 92, 100-01.

43. Jenkins, *supra* note 39, at 907.

44. *Id.* at 911.

45. FARMER, USES OF HAITI, *supra* note 2, at 109.

46. *Id.*

47. Kalev Sepp, Book Note, 3 J. COLD WAR STUD. 140, 141 (2001) (reviewing CHARLES T. WILLIAMSON, THE U.S. NAVAL MISSION TO HAITI, 1959-1963 (Naval Institute Press 1999)).

48. ‘Quarantine’ on Cuba, N.Y. TIMES, Oct. 23, 1962, at 35.

49. BERNARD DIEDRICH & AL BURT, PAPA DOC: HAITI AND ITS DICTATOR 76 (1991).

50. *Haiti Offers Facilities to U.S.*, N.Y. TIMES, Oct. 26, 1962, at 9.

51. Sepp, *supra* note 47, at 142.

52. Tad Szulc, *Bank Aid to Haiti Approved by U.S.*, N.Y. TIMES, Mar. 20, 1964, at 1.

education; however, like most funding directed towards Haiti, it was used to maintain Duvalier's power.⁵³ The Inter-American Development Bank ("IDB") loaned Duvalier \$3.5 million, \$2.4 million, and \$1.3 million in separate loans during this period.⁵⁴ Sadly, IDB loans for similar projects effectively would be blocked by the United States when intended to aid Haiti's suffering masses shortly before the removal of Jean-Bertrand Aristide in 2004.⁵⁵

Duvalier's son, Jean-Claude, assumed the role of President for Life in 1971.⁵⁶ Baby Doc suppressed the popular movement in Haiti and preserved the status quo of U.S. policy toward Haiti.⁵⁷ By 1985, the U.S. Government provided \$34 million in annual aid to Haiti.⁵⁸

As a result of public tortures and the killing of students, a popular movement carrying the theme of freedom from oppression, similar to the uprisings against the French in 1804 and the United States in 1934, arose in towns throughout Haiti against the U.S. supported dictatorship.⁵⁹ Baby Doc, pressured by the popular movement in Haiti and international pressure, left the country aboard a U.S. cargo plane in 1986.⁶⁰ The U.S. Government's initial response to the new Haitian military junta was a gift of riot control equipment in order to respond to the continuing popular uprising that ousted Baby Doc and was now predicated upon the idea of disemboweling Haiti of any remnants of Duvalierism.⁶¹

Despite the suppression of the Haitian masses by a continuum of U.S.-backed Haitian military leaders, a new constitution was adopted in 1987.⁶² Under the Constitution, a Provisional Electoral Council ("CEP") was created that consisted of one member from various sectors of Haitian civil life.⁶³ This election article would later prove to be one of the most influential articles of the constitution. At the time, Catholic Priest Jean-Bertrand Aristide prophetically opposed this article of the constitution and felt it was "a trap that would lead [Haiti] into sham elections directed by the U.S. government and the Haitian army, and into a continuation of the

53. *Id.*

54. See *id.* Henry Raymond, *U.S. Quietly Seeks Better Haiti Ties*, N.Y. TIMES, May 24, 1964, at 30.

55. Farmer, *What Happened in Haiti?*, *supra* note 32, at 18-19.

56. ABBOTT, *supra* note 34, at 161.

57. *Id.* at 195-96.

58. *Id.* at 276.

59. *Id.* at 294-97.

60. *Id.* at 328-30.

61. *Id.* at 341.

62. ABBOTT, *supra* note 34, at 342-43.

63. *Id.*

downward political spiral begun when the United States supported François Duvalier's rise to power.”⁶⁴

Tensions in Haiti came to a breaking point in 1990 after an eleven-year old school girl was shot when a protest in Gonaïves intensified.⁶⁵ This popular uprising eventually led to the departure of General Prosper Avril.⁶⁶ Again, the United States provided his transportation out of the country.⁶⁷ After a constitutional transfer of power to Supreme Court Justice Ertha Pascal, plans for an election were again under way.⁶⁸

D. THE RISE AND FALL OF JEAN-BERTRAND ARISTIDE

A constant critic of the military junta and its suppression of the poor masses was Father Jean-Bertrand Aristide.⁶⁹ Through Father Aristide, the popular movement which overcame slavery, forced out U.S. occupation forces, and led to the ouster of an oppressive dictatorship, but was held in check by U.S. backed military leaders in the post-Duvalier era, again had a voice.⁷⁰ However, U.S. policy based on racial essentialism knew no other course of action than to suppress this popular movement just as it had previously done to all popular movements in Haiti.

As Thomas David Jones wrote, “On December 16, 1990, Jean-Bertrand Aristide, a Catholic priest, won the first democratically held presidential election in Haiti’s history with a two-thirds majority of the vote. With the election of Aristide, respect for and protection of human rights and fundamental freedoms improved dramatically.”⁷¹ President Aristide said, “It is not me who will deliver the country, it is the entire

64. AMY WILENTZ, THE RAINY SEASON 131 (Simon & Schuster 1989).

65. Jerry Timmins, *Haitian Troops Shoot Unarmed Demonstrators*, THE INDEPENDENT (London), Mar. 10, 1990, at 12. See also FEDERAL RESEARCH DIVISION, LIBRARY OF CONGRESS, DOMINICAN REPUBLIC AND HAITI: COUNTRY STUDIES 299 (Helen Chapin Metz ed., 3rd ed. 2001) [hereinafter DOMINICAN REPUBLIC AND HAITI].

66. Lee Hockstader, *Avril leaves Haiti; Opposition Chooses Woman Judge as Interim President*, WASH. POST, Mar. 13, 1990, at A14. DOMINICAN REPUBLIC AND HAITI, *supra* note 65, at 299.

67. *Id.*

68. Jill Smolowe, *A New Start, a Ray of Hope; with the Dictatorial Avril now in Exile and a Civilian President at the Helm, Haitians hope to begin Building a Democracy*, TIME, Mar. 26, 1990, at 29.

69. Ron Howell, *Haiti's Outspoken Priest*, NEWSDAY, May 14, 1990, at II.4. See also DOMINICAN REPUBLIC AND HAITI, *supra* note 65, at 300.

70. Howard W. French, *A Duvalier Ally and a Foe Seek Election in Haiti, Raising Fears of Violence*, N.Y. TIMES, Nov. 5, 1990, at A3.

71. Thomas David Jones, *The Haitian Refugee Crisis: A Quest for Human Rights*, 15 MICH. J. INT’L L. 77, 84 (1993).

country which will deliver itself.”⁷² Aristide’s grassroots movement for the poor became known as Lavalas, or “the flood.”⁷³

Officially, the United States congratulated Aristide as the “clear winner” and promised its support.⁷⁴ What the U.S. actually delivered was funding for opposition groups and payment to their leaders. Declassified records have revealed that the Central Intelligence Agency (“CIA”) and the Defense Intelligence Agency (“DIA”) helped create and fund a paramilitary group called The Front for the Advancement and Progress of Haiti (“FRAPH”).⁷⁵ In an article appearing in the *Nation*, FRAPH leader Emmanuel “Toto” Constant told the reporter that he was approached by Colonel Patrick Collins, who was the DIA attaché in Haiti at the time, about forming a front “that could balance the Aristide movement.”⁷⁶

On September 30, 1991, with less than a year in office, Aristide’s government was overthrown in a *coup d’etat* in response to attempted reforms of the Haitian Army and supposed attacks on the status quo of the economic elites.⁷⁷ A paid CIA informant alleged that CIA agents were at the Haitian Army headquarters during the coup.⁷⁸ The immediate aftermath of the coup would be one of the bloodiest in Haiti’s already bloody history with an estimated 250 to 600 killed in the first few days alone.⁷⁹

In response, both the United States and the Organization of American States (“OAS”) imposed a trade embargo against Haiti and the coup leaders.⁸⁰ The Clinton administration took an additional step by imposing travel sanctions and freezing the assets of the de facto military government in 1993.⁸¹ After the United Nations (“U.N.”) imposed worldwide oil and arms embargoes on Haiti, *de facto* military leader Lieutenant General Raul Cédras agreed to begin discussions with Aristide about his return to power.⁸² United States, OAS, and U.N. officials successfully negotiated the Governor’s Island Agreement between Aristide and General Cédras that

72. Haiti-Progrés Staff, *Aristide: The People’s Candidate, in HAITI: A SLAVE REVOLUTION: 200 YEARS AFTER 1804* 127-28 (Pat Chin et al. eds., Greg Dunkel trans., Int’l Action Ctr. 2004).

73. *Id.* at 128.

74. Julie Ann Waterman, *The United States’ Involvement in Haiti’s Tragedy and the Resolve to Restore Democracy*, 15 N.Y.L. SCH. J. INT’L & COMP. L. 187, 190-91 (1994).

75. Farmer, *What Happened in Haiti?*, *supra* note 32, at 11, 16.

76. George J. Church, *Lying Down with Dogs*, TIME, Oct. 17, 1994, at 26.

77. *Id.*

78. Kathleen Marie Whitney, *SIN, FRAPH, and the CIA: U.S. Covert Action in Haiti*, 3 SW. J.L. & TRADE AM. 303, 320 (1996).

79. FARMER, USES OF HAITI, *supra* note 2, at 185.

80. *Id.* at 185-86.

81. *Id.* at 210.

82. *Id.*

would allow for Aristide's peaceful return.⁸³

Shortly after the Agreement was signed, President Aristide complained that the Governor's Island Agreement was forced upon him by the United States.⁸⁴ Aristide fought against proposals for a blanket amnesty that would cover what he referred to as "common criminals."⁸⁵ Aristide wanted Truth Commissions, such as those established in South Africa that allowed for national healing by requiring human rights violators to publicly acknowledge their crimes in order to receive a pardon.⁸⁶

In July 1994, the U.N. Security Council voted 12-0 for the approval of a multinational force to restore Aristide to Haiti.⁸⁷ President Clinton summarized that; "Even with Aristide's serious problems, the Haitians would have been far worse off under Cédras and his murderous coup."⁸⁸

The U.S. intervention ended some of the bloodiest years in Haiti's history and restored Aristide to power. Yet, some question the motivation of the United States' intervention after three years as being "a show."⁸⁹ In a *Nation* article, it was reported that:

According to documents and extensive conversations with U.S. military and intelligence planners, no matter how Lieut. Gen. Raoul Cédras is removed – through invasion, coup, or deal – the United States intends to contain Haiti's popular movement, by force if necessary. The objective, in the words of one U.S. Army Psychological Operations official, is to see to it that Haitians 'don't get the idea that they can do whatever they want.'⁹⁰

The U.N. Commission on Human Rights and its Sub-commission on Prevention of Discrimination and Protection of Minorities has found that impunity, like the impunity given to the Haitian coup leaders, is one of the "main reasons for the continuation of grave violations of human rights throughout the world."⁹¹ This long-term view of the implications for a blanket amnesty of human rights was apparent when U.S. policymakers

83. See generally PEZZULLO, *supra* note 4, at 86-106.

84. *Id.* at 104.

85. IRWIN P. STOTZKY, *SILENCING THE GUNS IN HAITI: THE PROMISE OF DELIBERATIVE DEMOCRACY* 32 (Univ. of Chicago Press 1997).

86. Michael P. Scharf, *Swapping Amnesty for Peace: Was there a Duty to Prosecute International Crimes in Haiti?*, 31 TEX. INT'L L.J. 1, 7 (1996).

87. *Id.*

88. BILL CLINTON, *MY LIFE* 649 (Vintage Books 2005) (2004).

89. FARMER, *USES OF HAITI*, *supra* note 2, at 17.

90. Ben Dupuy, *The Real Objectives of the Occupation*, in *HAITI: A SLAVE REVOLUTION: 200 YEARS AFTER 1804*, 137, 139 (Pat Chin et al. eds., Greg Dunkel trans., Int'l Action Ctr. 2004) (citing Allan Nairn, *Occupation Haiti: The Eagle is Landing*, THE NATION, Oct. 3, 1994, at 344).

91. Scharf, *supra* note 86, at 12.

were focused upon the former Yugoslavia, but was evidently not a concern in implementing racially essentialist policy toward the darker Haitians. During the Balkan peace agreement, U.S. officials stated that, “[T]he United States will never allow amnesty for those who have committed atrocities in the former Yugoslavia, even as the price for a Balkan peace settlement.”⁹²

The negotiations that led to the blanket amnesty for coup leaders has been described as “unprecedented” because the decision to grant the amnesty of the coup leaders “was by and large imposed upon the Aristide government by the United States and United Nations, who had their own interests which did not necessarily correspond with the long-term interests of the Aristide government.”⁹³

After the coup leaders secured a blanket amnesty through the forceful negotiation tactics of the international community, they were essentially rewarded by the Clinton government for their successful suppression of a popular movement in Haiti. Upon leaving Haiti for Panama, the United States government provided transportation and financial support for Cédras, his chief of staff, Brig. Gen. Phillippe Biamby, and twenty-three other members of his staff for the first year.⁹⁴ The United States also unfroze \$79 million kept in U.S. bank accounts by hundreds of Haitian Army members.⁹⁵ Perhaps most alarming was the decision by the Clinton government to lease three homes owned by Cédras and his mother at a cost of tens of thousands of dollars a year to U.S. taxpayers that was paid directly to Cédras.⁹⁶

Once U.S. troops finally arrived in Haiti, they refused to intervene in general security operations, leaving this role to the feared and corrupt Haitian police.⁹⁷ By October, 70% of the 3,000 man police unit had deserted, forcing U.S. troops to play an increasing albeit reluctant role in maintaining security.⁹⁸

Once Aristide returned to power on the United States’ terms and at the United States’ will, then there was little financial, political, or military support to help President Aristide succeed.⁹⁹ The overall goal of U.S.

92. *Id.* at 11-12.

93. *Id.* at 8.

94. Editorial, *Why Reward These Thugs? Payoff to Cédras is a Blot on American Honor*, L.A. TIMES, Oct. 15, 1994, at B7.

95. *Id.*

96. *Id.*

97. STOTZKY, *supra* note 85, at 43.

98. *Id.*

99. *Id.* at 45

policy, based on racial essentialism, was realized when the popular movement, led by Aristide, was undermined and subsequently placed under the control and continuing influence of the United States.

III. UNITED STATES' INTERFERENCE PRECEDING THE OVERTHROW OF ARISTIDE

Signs of U.S intentions to undermine Jean-Bertrand Aristide's presidency during his second term began before a group of irregulars launched an assault on Haitian cities.¹⁰⁰ There were a series of events leading to the overthrow of President Aristide that reveal an organized and coordinated attempt to undermine the Aristide government in 2004.¹⁰¹ These actions would become the latest in a long line of policy decisions based upon racial essentialism that would lead to the suppression of the popular movement in Haiti. The same popular movement that overthrew the chains of slavery, the military might of the U.S., the brutality of a U.S.-backed dictatorship, and the covert activities of the CIA was once again targeted by U.S. policy makers.

A. 2000 ELECTIONS

During the May 2000 elections, Fanmi Lavalas ("FL"), overwhelmingly won positions at all levels of government, including almost total control of Parliament, departmental, and local positions.¹⁰² However, opposition groups "accused Aristide of rigging the elections, inciting violence, intimidating opponents, and even using bombings against political rivals."¹⁰³ Much of the blame for "irregularities" in the May 2000 Parliamentary elections was placed upon Aristide even though he was not in power at the time and would not be re-elected until November 2000 in an election boycotted by opposition groups.¹⁰⁴

The alleged problems with the 2000 election were due to the fact that the Provisional Electoral Council ("CEP") only counted votes cast for the top four candidates in each race instead of every candidate who may have run when determining whether a run-off was necessary.¹⁰⁵ A FL opposition party, the Democratic Convergence ("DC"), disputed eight Senate seats calculated using the CEP's method, seven of which Lavalas had received

100. *Id.*

101. *Id.*

102. Peter Hallward, *Operation Zero in Haiti*, 27 NEW LEFT REVIEW, June 2004, at 36.

103. Jenkins, *supra* note 39, at 908.

104. *Id.*

105. Hallward, *supra* note 102, at 38.

the most votes for, but which were declared the winners without a run-off. Even if FL had lost all seven seats, it still would have retained majority control of the Parliament.¹⁰⁶

The OAS, while calling into question the voting method employed, condemned allegations of fraud made by the DC and later reiterated by United States' officials.¹⁰⁷ The OAS final report on the election observation stated, "The Mission noted with regret the irresponsibility of some party leaders who soon after the election, made unfounded accusations of fraud that exacerbated the political crisis and the precarious security situation."¹⁰⁸

The Constitution of Haiti mandates the establishment of the CEP as an independent body and grants it the power to determine Haiti's electoral process.¹⁰⁹ The CEP is composed of various functions of Haitian civil and political society.¹¹⁰ Any "flaws" due to the electoral methodology chosen, stem from the decisions made by this constitutionally mandated body of a sovereign nation, not from a candidate in a future presidential election.

Fernando Tesón points out that U.N. General Assembly Resolution 45/150, "Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections," is composed of two parts: (1) the requirement of democracy and free elections and (2) a sovereignty limitation.¹¹¹ He says that these two parts are reconciled by a "need to tolerate a diversity of actual electoral procedures . . .".¹¹² Therefore, member countries have a duty to respect "decisions taken by other states in freely choosing and developing their electoral institutions."¹¹³ As Tesón believes, the word

106. Tracy Kidder, *Third World Traveler: Trials of Haiti*, THE NATION, Oct. 27, 2003, at 28.

107. OAS Permanent Council, *Note From the Secretary General Transmitting the Final Report of the Election Observation Mission for the Legislative, Municipal, and Local Elections in Haiti*, OAS Doc. OEA/Ser.G/CP/doc.3383/00 at 34, 41, 72 (2000) [hereinafter OAS Final Report]. Compare OAS Final Report with *Situation in Haiti: Hearing Before the Subcommittee on the Western Hemisphere of the H. Comm. on International Relations*, 108th Cong. 33 (2004) (Statement of Undersecretary of State Richard Noriega) (describing the 2000 elections as "fraudulent") [hereinafter Subcommittee on the Western Hemisphere].

108. OAS Final Report, *supra* note 107, at 72.

109. CONST. OF THE REPUBLIC OF HAITI Title VI, Chapter 1: The Permanent Electoral Council. The Constitution of the Republic of Haiti art. 191 (1987) states: "[t]he Permanent Electoral Council is responsible for organizing and controlling with complete independence all electoral procedures throughout the territory of the Republic until the results of the election are announced." *Id.*

110. David Stoelting, *The Challenge of Un-monitored Elections in Independent Nations*, 28 STAN. J. INT'L LAW 371, 400-01 (1992).

111. Fernando R. Tesón, *Collective Humanitarian Intervention*, 17 MICH. J. INT'L L. 323, 334-35 (1996).

112. *Id.* at 335.

113. *Id.*

“freely” prohibits interference by foreign powers as opposed to domestic interference.¹¹⁴

The hypocrisy of the U.S. allegations of the voting fraud during 2000 is profound, given the United States’ own disputed Presidential election the very same year.¹¹⁵ The United States would use questions surrounding the 2000 elections in Haiti as a pretext for blocking humanitarian loans to Haiti in violation of international law.¹¹⁶ The United States would then allow, if not actively support, a *coup* against President Aristide and attempt to drive the death nail of the popular movement Lavalas.¹¹⁷

B. THE BLOCKING OF HUMANITARIAN LOANS

The Clinton and Bush administrations took actions that blocked the release of previously approved humanitarian loans from international financial institutions, such as the World Bank and the Inter-American Development Bank.¹¹⁸ The United States Executive Director sent a letter that effectively blocked the IDB loans, which had been previously approved by the IDB’s Board of Directors and the Haitian government.¹¹⁹ The grounds of opposition stated by U.S. Executive Director Lawrence Harrington in his letter to the IDB on April 6, 2001 are not those that are allowed under the U.S. or international law.¹²⁰

In his letter, Harrington wrote, “At this point disbursements could normally begin, assuming all loan conditions had been met. However, we do not believe that these loans can or should be treated in a routine manner and strongly urge you not to authorize any disbursements at this time.”¹²¹ He added that the U.S. remained “concerned about the risk of future repudiation of these loans due to questions relating to the status of the Haitian Parliament at the time these loans were ratified.”¹²² Haitian Prime Minister Jean-Marie Chérestal responded to the withholding of the loans with a letter to the IDB President concerning the Bank’s “unusual

114. *Id.*

115. See *Bush v. Gore*, 531 U.S. 98, 100-01 (2000).

116. See Kidder, *supra* note 106, at 27.

117. *Rep. Maxine Waters Charges US is Encouraging a Coup, in GETTING HAITI RIGHT THIS TIME: THE U.S. AND THE COUP*, 37, 37 (Amy Goodman ed., 2004) [hereinafter *Rep. Maxine*].

118. See Kidder, *supra* note 106, at 27.

119. Letter from Lawrence Harrington, U.S. Representative to Inter-American Development Bank to Enrique Iglesias, President of Inter-American Development Bank (Apr. 6, 2001) [hereinafter Harrington Letter] (on file with author).

120. See 22 U.S.C. § 262d(a)(1)-(2) (2007).

121. Harrington Letter, *supra* note 119.

122. *Id.*

behavior” and the “reasons that motivate it.”¹²³

The Human Rights and United States Assistance Policies with International Institutions Act, states that actions of the U.S. Executive Director in relation to international institutions, such as the IDB, are to be guided by human rights concerns in those countries and prescribes certain instances in which the Executive Director may oppose loans.¹²⁴ None of the reasons for opposition listed in 22 U.S.C. § 262d(a)(1) and (2) are the grounds by which the Executive Director blocked the loans.¹²⁵

In addition, the Agreement Establishing the Inter-American Development Bank states, “The purpose of the Bank shall be to contribute to the acceleration of the process of economic and social development of the regional developing member countries, individually and collectively.”¹²⁶ The Bank’s Agreement also states, “The Bank, its officers and employees shall not interfere in the political affairs of any member, nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions . . .”¹²⁷

U.S. Ambassador to Haiti, Dean Curran, made it clear that political factors were at play when he stated, “What there is now is a certain number of loans of the Inter American Development Bank that are not yet disbursed with the objective of trying to request of the protagonists of the current situation, in the current political crisis, to reach a compromise.”¹²⁸ On June 4, 2001, the government of Haiti received a letter from the IDB that acknowledged its deviation from its own mandates and expressed that “the position of certain members of the IDB Administrative Council regarding the situation in Haiti is temporarily preventing the institution from strictly conforming to the norms and procedures agreed to with respect to the management of the project [with Haiti].”¹²⁹

In May 2002, Bank Management concluded that “reactivation was

123. Letter from Jean-Marie Cherestal, Prime Minister of Haiti, to Enrique Iglesias, President of IDB (Sept. 10, 2001) (on file with author).

124. 22 U.S.C. § 262d(a)(1)-(2) (2007).

125. *Id.*

126. *See* Agreement Establishing the Inter-American Development Bank, Apr. 8, 1959, art. 1, § 1, 10 UST 3029, 389 UNTS 69 (effective Dec. 30, 1959).

127. *Id.* at art. VIII, § 5(f).

128. Interview by Richard Archi with Brian Dean Curran, U.S. Ambassador to Haiti, in Haiti (Nov. 21, 2001), http://www.rfkmemorial.org/human_rights/2002_Loune/DOT9.pdf.

129. Melinda Miles, The Withholding of Humanitarian Aid: Consequences of Refusing Structural Adjustment (Aug. 2003) (unpublished manuscript, on file with author). *See also* Press Release, Embassy of Haiti, *The Embargo on International Loans and Assistance to Haiti* (Feb. 7, 2003), www.haiti.org/whatsnew/emb.htm.

essential to help preserve key institutions and prevent delays in resuming development efforts once arrears have been cleared.”¹³⁰ On June 19, 2002 the Board of Executive Directors endorsed the management’s proposal for a “gradual reactivation process” that would “work with the Government on an arrangement to clear arrears to the Bank”¹³¹ The first technical mission visited Haiti from July 29 through August 2, 2002, where it agreed on the arrangements for the settlement of arrears.¹³²

On May 21, 2003, Haiti announced to the IDB that it had secured funding to finance its arrears.¹³³ On July 23, 2003, the IDB announced the reactivation of Haiti’s loan program through the signing of amended contracts for the four loans approved in 1998.¹³⁴ As the first phases of the overthrow of President Aristide began in December 2003, the social sector loans, approved in 1998, ratified in 2000, and “amended” in 2003 still were not disbursed.¹³⁵

The cause of blocking the IDB loans was the racial essentialism that created a false yet prevailing view among U.S. policy makers that Haiti was ungovernable. The effect of blocking these loans was to further destabilize an already weak Aristide government and to withhold resources that could have led to substantial improvements in the lives of ordinary Haitians. In blocking these loans, the United States was able to manipulate Haiti’s dependence on foreign aid that it created in 1934 when it left Haiti in massive debt after a prolonged invasion. In the same way that the United States was able to support a vicious dictator through foreign aid, it was also able to undermine the stability of a populist President by blocking foreign aid. Blocking the IDB loans would be the first major step in the United States’ dismantling of the popular movement, Lavalas.

It is also alleged that the International Republican Institute (“IRI”), a federally funded democracy-building group, was instrumental in undermining the Aristide government.¹³⁶ Under the George W. Bush administration the budget of the IRI tripled, in three short years, from \$26

130. Investment Sector Loan (989/SF-HA) Reformulation Proposal, § I(A)(1.3), available at <http://www.iadb.org/exr/doc98/apr/HA989RE.pdf> (last visited Apr. 13, 2008).

131. *Id.*

132. *Id.* at § I(A)(1.4)-(1.5)

133. *Id.* at § I(A)(1.9)

134. Press Release, Inter-American Development Bank, IDB Reactivates Haiti Loan Program (July 23, 2003), available at <http://www.iadb.org/news/articledetail.cfm?artid=392&language=En>.

135. Dan Beeton, *What the World Bank and IDB Owe Haiti*, GLOBAL POLICY FORUM, July 25, 2006, <http://www.globalpolicy.org/opinion/2006/0724beeton.htm>.

136. Walt Bogdanich & Jenny Nordberg, *Mixed U.S. Signals Helped Tilt Haiti Toward Chaos*, N.Y. TIMES, Jan. 29, 2006, at 1.1.

2008]

HAITI IS BLACK!

659

million in 2003 to \$75 million in 2005.¹³⁷

Former U.S. Ambassador to Haiti, Brian Dean Curran, has accused the IRI of sending “mixed signals” to the government of Haiti during his time as Ambassador immediately following the 2000 elections.¹³⁸ Mr. Curran accused IRI and its leader Stanley Lucas of representing itself as the true voice of the United States to both the government of Haiti and opposition groups.¹³⁹

Along with Stanley Lucas, key leaders in the U.S. policy towards Haiti were Otto Reich, who served as “Special Presidential Envoy to the Western Hemisphere,” and Richard Noriega, who was sent as an envoy to “work-out” the Haitian crisis in 2004.¹⁴⁰ Despite being the top diplomat in the region, Reich was appointed during a Congressional recess even though the Senate never approved him.¹⁴¹

During the 1980s, Reich was involved in the Iran-Contra affair during which the U.S. Comptroller General concluded that a public diplomacy office run by Reich “engaged in prohibited, covert propaganda activities.”¹⁴² Richard Noriega worked as a Congressional aide for Senator Jesse Helms, who among other questionable policies, supported former Haitian dictator Jean-Claude Duvalier and opposed Aristide.¹⁴³ As the coup unfolded, Noriega replaced Reich at the State Department in his role as the Bush administrations leader in the region.¹⁴⁴

IV. ALLEGATION OF U.S. INVOLVEMENT IN THE OVERTHROW OF PRESIDENT ARISTIDE

Numerous allegations have been levied against the United States concerning its direct action and inaction during the overthrow of President Aristide.¹⁴⁵ These allegations have come from a wide spectrum of sources, including members of the United States Congress and President Aristide himself.¹⁴⁶

137. *Id.*

138. *Id.*

139. *Id.*

140. See Farmer, *What Happened in Haiti?*, *supra* note 32, at 25-26.

141. *Id.* at 25.

142. *Id.* at 26.

143. *Id.* at 26-27.

144. *Id.* at 25.

145. Brian Concannon, Jr., *U.S. Congress Should Make New Year’s Resolution for Haiti*, AMERICAS PROGRAM COMMENTARY, Jan. 10, 2007, available at <http://americas.irc-online.org/pdf/commentary/0701haiti.pdf>.

146. *Id.*

A. SUPPORT OF IRREGULARS

Under the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States, “[E]very state has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands. . .for incursion into the territory of another state.”¹⁴⁷

Two international tribunals have given somewhat differing legal opinions over the control of irregular groups by a foreign state.¹⁴⁸ The International Court of Justice (“ICJ”) in the *Case Concerning Military and Paramilitary Activities in and against Nicaragua* found that “while the concept of an armed attack includes the dispatch by one State of armed bands into the territory of another State, the supply of arms and other support to such bands cannot be equated with an armed attack.”¹⁴⁹ Ultimately the court found that the controlling factor for liability by the foreign state was “effective control.”¹⁵⁰

The International Criminal Tribunal for the former Yugoslavia (“ICTY”) disagreed with the ICJ’s determination that the proper test was “effective control.”¹⁵¹ The ICTY argued that by relying on the “effective control” test, State actors could shield themselves from responsibility under international law by simply not giving specific instructions to the irregular forces.¹⁵²

The United States Ambassador to Haiti at the time of the coup acknowledged that the United States knew about armed groups ammassed across the Dominican border.¹⁵³ Ambassador James Foley stated that the U.S., “[H]ad been aware . . . that there had been these groups that were over in the Dominican Republic for several years. I had believed and had trusted that the Dominican government was keeping an eye on them.”¹⁵⁴

147. *Principles of International Law Concerning Friendly Relations & Cooperation Among States*, G.A. Res. 2625, UN GAOR, 25th Sess., Supp. No. 18 at 123, U.N. Doc. A/8082 (1970).

148. See generally *Case Concerning Military and Paramilitary Activities* (Nicar. v. U.S.), 1986 I.C.J. 14 (Judgment of June 27, 1986) [hereinafter *Military and Paramilitary Activities*]; Prosecutor v. Tadic, 38 I.L.M. 1518, 1540-45 (Judgment of July 15, 1999) [hereinafter Prosecutor].

149. *Military and Paramilitary Activities*, 1986 I.C.J. at 103-04.

150. *Id.* at 65.

151. Prosecutor, 38 I.L.M. at 1540.

152. *Id.* at 1540-41.

153. See DVD: *Failing Haiti* (Primary Pictures 2005).

154. See *id.* The Dominican Republic may also be liable under international law for allowing the insurgent groups to organize at its border. Yoram Dinstein writes that “a State must not knowingly permit its territory to be used as a sanctuary for terrorists or armed bands bent on attacking military targets or civilian objects in another country.” YORAM DINSTEIN, WAR, AGGRESSION, AND SELF-DEFENSE 206 (2005). The *Corfu Channel* case announced that every

Besides the United States' knowledge that armed groups were amassed at the Dominican border, there are even more striking allegations that the United States armed and provided training for the rebels in clear violation of international law. The Center for Defense Information said, "Evidence does point to a flow of weapons to Haitian rebels from the Dominican Republic in the leadup [sic] to the unrest . . ."¹⁵⁵ This evidence lends credibility to reports that the United States shipped military weapons and uniforms to the Dominican Republic to be used by the rebels leading up to the incursion.¹⁵⁶

There were also questions about possible U.S. training of coup leaders Guy Philippe and Louis Joel Chamblain.¹⁵⁷ It is alleged that US Special Forces in Ecuador trained Philippe and Chamblain, who was the second in command for the FRAPH paramilitary group that received CIA funding, either directly or indirectly.¹⁵⁸

Congressman Donald Payne questioned Assistant Secretary of State Richard Noriega concerning the issue of CIA support for FRAPH.¹⁵⁹ He stated, "[A]s you know [Mr. Noriega], the CIA paid and protected the FRAPH-squad people in the old days."¹⁶⁰ In answering these questions, Mr. Noriega stated that he did not have any knowledge of CIA involvement with FRAPH, despite declassified documents and acknowledgements by the U.S. intelligence community that show, at a minimum, FRAPH's leader and organizer was being paid with U.S. government funds.¹⁶¹

Military training may have gone beyond the initial training of the coup leaders in the early 90s. The Investigation Commission on Haiti reported that two hundred American Special Forces soldiers came to the Dominican Republic under the invitation of Dominican Republic President Hipólito Mejía.¹⁶² The U.S. Special Forces allegedly came to the

State is under an obligation "not to allow knowingly its territory to be used for acts contrary to the rights of other States." Corfu Channel (U.K. v. Alb.), 1949 I.C.J. 4, 22 (Merits) (Apr. 9, 1949).

155. Rachel Stohl, *Haiti's Big Threat: Small Arms*, CHRISTIAN SCIENCE MONITOR, Mar. 23, 2004, at 09.

156. *Id.*

157. Allan Nairn et al., *Different Coup, Same Paramilitary Leaders*, in *GETTING HAITI RIGHT THIS TIME: THE U.S. AND THE COUP*, at 59 (Amy Goodman ed., 2004).

158. *Id.*

159. *Subcommittee on the Western Hemisphere*, *supra* note 107, at 33.

160. *Id.*

161. *Id.*

162. *Witnesses: U.S. Special Forces Trained and Armed Haitian Anti-Aristide Paramilitaries in D.R.*, DEMOCRACY NOW!, Apr. 7, 2004, available at www.democracynow.org/2004/4/7/witnesses_u_s_special_forces_trained.

Dominican Republic to train Haitian rebels as part of “Operation Jaded Task.”¹⁶³

Ultimately, these actions resulted in a campaign of violence through the country that led to the overthrow of President Aristide, but not by the rebel group.¹⁶⁴ As the rebels marched toward Gonaives, the United States received appeals from various actors to intervene on behalf of President Aristide.¹⁶⁵ The U.S. would refuse these requests, and the 2000 elections provided a basis for its inaction.

B. AN INTERNATIONAL OBLIGATION TO INTERVENE?

There have been various claims that the United States failed to uphold its obligations under international law when it failed to come to the aid of the President Aristide.¹⁶⁶ Senator Christopher Dodd asserted that the Inter-American Democratic Charter “state[s] that when asked for help by a democratically elected government being threatened with overthrow, we should respond.”¹⁶⁷

Article 2(4) of the United Nations Charter states, “All members shall refrain . . . from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”¹⁶⁸ Article 2(7) of the United Nations Charter states, “Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter . . .”¹⁶⁹

Thomas Franck has argued that the international system is moving towards a democratic entitlement.¹⁷⁰ According to Franck, a basis for upholding this entitlement through the international system is because “legitimate governments should be assured of protection from overthrow

163. See ROBINSON, *supra* note 18, at 102.

164. See *id.* at 98-99; see also Amy Goodman & Jeremy Scahill, *Haiti's Lawyer: US is Arming Anti-Aristide Paramilitaries*, in GETTING HAITI RIGHT THIS TIME: THE U.S. AND THE COUP 47, 47 (Amy Goodman ed., 2004).

165. Maggie Farley, *Haitian's Plea for International Help Draws a Muted Response*, L.A. TIMES, Feb. 18, 2004, at A3.

166. Susannah A. Nesmith & Nancy San Martin, *Aristide Supporters Denounce Bush*, PITTSBURGH POST-GAZETTE, Mar. 6, 2004, at A4.

167. 150 CONG. REC. S1976 (daily ed. Mar. 2, 2004) (statement of Senator Dodd).

168. U.N. Charter art. 2, para. 4.

169. U.N. Charter art. 2, para. 7.

170. Thomas M. Franck, *The Emerging Right to Democratic Governance*, 86 AM. J. INT'L L. 46, 50 (1992).

by totalitarian forces through concerted systemic action after - and only after - the community has recognized that such an exigency has arisen.”¹⁷¹ In order to uphold a democratic entitlement there is a “near consensus” on the “legitimacy of collective intervention for the restoration of democracy.”¹⁷²

The Inter-American Democratic Charter (“Democratic Charter”) of the OAS attempts to establish an external collective right for “the peoples of the Americas [who] have a right to democracy and [that] their governments have an obligation to promote and defend it.”¹⁷³ The standard under which the OAS may take action is found in Article 20 as an “unconstitutional alteration of the constitutional regime.”¹⁷⁴ Article 17 of the Charter allows the threatened government to request aid through either the Secretary General or Permanent Council.¹⁷⁵ As the coup unfolded, the OAS expressed its “firm support for the Government of the President of Haiti, Jean-Bertrand Aristide.”¹⁷⁶

U.S. Undersecretary of State Richard Noriega was asked before a Congressional committee why the U.S. had not intervened.¹⁷⁷ He responded that Aristide was not democratically elected and pointed to what he inaccurately described as *fraudulent* vote counting in the 2000 election.¹⁷⁸

While the United States did not have a legal obligation to intervene unilaterally in Haiti, its actions certainly violated the spirit of the Democratic Charter.¹⁷⁹ The Democratic Charter imposes an obligation upon OAS members to promote and defend democracy.¹⁸⁰ The actions of the United States undermined the democratically elected President of Haiti by actively supporting opposition groups and remaining idle as the

171. *Id.* at 91.

172. Reginald Ezetah, *The Right to Democracy: A Qualitative Analysis*, 22 BROOK. J. INT'L L. 495, 505 (1997).

173. Inter-American Democratic Charter, art. 1, OAS Doc. OEA/Ser.P/AG/RES.1 (XXVIII-E/01) (Sept. 11, 2001) [hereinafter Inter-American Democratic Charter].

174. *Id.* at art. 20.

175. *Id.* at art. 17.

176. OAS Permanent Council, *Support for Public Order and Strengthening Democracy in Haiti*, OAS Doc. OEA/Ser.G/CP/RES. 861, at para. 4 (1400/04) (Feb. 19, 2004).

177. Subcommittee on the Western Hemisphere, *supra* note 107, at 111 (questioning of Assistant Secretary Noriega).

178. *Id.* at 38.

179. See generally Inter-American Democratic Charter, *supra* note 173.

180. *Id.* at art. 1.

overthrow unfolded.¹⁸¹ The United States would eventually intervene, but only to ensure Aristide's departure.¹⁸²

C. THE UNITED STATES DEPLOYMENT OF TROOPS AS AN ACT OF AGGRESSION

In 1974, the General Assembly of the United Nations adopted a consensus Definition of Aggression.¹⁸³ Article 3 of the Definition of Aggression describes seven specific acts that constitute an act of aggression. One of these acts is, "The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement."¹⁸⁴

On February 23, 2004, a contingent of fifty U.S. marines were deployed to Port-au-Prince to aid the U.S. embassy security forces.¹⁸⁵ U.S. President George W. Bush stated that this action was "undertaken solely for the purpose of protecting American citizens and property."¹⁸⁶ As a result, the deployment was consistent with consular functions established in the Vienna Convention on Consular Relations, which allows a consular post to protect itself and its nationals.¹⁸⁷

The initial troop deployment may have been allowed to secure the U.S. Embassy, but the troops that arrived were not traditional troops.¹⁸⁸ If one believes President Aristide's recollection, the initial deployment of U.S. troops consisted of special operation forces most likely deployed from Afghanistan or Iraq.¹⁸⁹

181. See Farley, *supra* note 165.

182. *Id.*

183. *Definition of Aggression*, G.A. Res. 3314, U.N. GAOR, 29th Sess., Supp. No. 31, at 142, U.N. Doc. A/9631 (Dec. 14, 1974).

184. *Id.* at art. 3(e).

185. Michael Bowman, *US Marines Deployed to Protect American Embassy in Haiti*, VOICE OF AMERICA NEWS (Port-au-Prince), Feb. 24, 2004.

186. Letter from George W. Bush, President of the United States, to Dennis Hastert, Speaker of the United States House of Representatives, and Theodore Stevens, President Pro Tempore of the United States Senate (Jul. 18, 2006), www.whitehouse.gov/news/releases/2006/07/20060719-1.html.

187. Vienna Convention on Consular Relations art. 5(a), Apr. 24, 1963, 21 U.S.T. 77, 596 U.N.T.S. 261, 265.

188. Richard F. Grimmett, Cong. Res. Serv., *Instances of Use of United States Armed Forces Abroad, 1798-2004*, Report RL30172 of Oct. 5, 2004, available at <http://www.au.af.mil/au/awc/awcgate/crs/r130172.htm>.

189. Amy Goodman & Jerry Scahill, *Haiti's Lawyer: US is Arming Anti-Aristide Paramilitaries, Calls for UN Peacekeepers*, in *GETTING HAITI RIGHT THIS TIME: THE U.S. AND*

U.S. Ambassador James Foley readily admitted that the initial troop deployment was not intended solely to protect the U.S. embassy and U.S. nationals in Haiti.¹⁹⁰ Foley said that the United States feared a “bloodbath” in which President Aristide would be killed and consequently brought “specialists” to facilitate his departure from Haiti.¹⁹¹ Foley said that the U.S. “at that point decided to send in a team, a small team of experts, who were specialists who could mount a rescue of the President in case of need.”¹⁹²

One of the few eyewitnesses present as the events of February 29, 2004 unfolded was security officer Frantz Gabriel.¹⁹³ In an interview with Randall Robinson, he described the situation at the President’s home just outside of Port-au-Prince.¹⁹⁴ He described the President’s personal residence being surrounded by twenty to thirty soldiers from the U.S. Special Forces.¹⁹⁵ Also present from the U.S. embassy was Luis Moreno.¹⁹⁶ Gabriel stated that he heard Moreno say, “Mr. President, I’m from the U.S. Embassy. Ten years ago, I was there when you came in. I was there to greet you. It’s too bad that ten years later, I’m the one that has to announce that you’ve got to go.”¹⁹⁷

Gabriel then described how the President and his wife were boarded onto a large white plane with only an American flag on the tail to identify it.¹⁹⁸ They were flown along with the thirty Special Forces soldiers to the Central African Republic, although they would not know their destination until they arrived.¹⁹⁹

President Aristide did not authorize the deployment of such troops and he certainly did not authorize the alleged coercion, intimidation, and kidnapping which he says occurred after their arrival.²⁰⁰ If the accounts by President Aristide are true, then the deployment and use of U.S. armed

THE COUP 47, 49 (Amy Goodman ed., 2004) (2004),
http://www.democracynow.org/2004/2/25/haitis_lawyer_u_s_is_arming.

190. David Adams, *Aristide's Last Days*, St. Petersburg Times, Feb. 28, 2006, at 1A.

191. *Id.*

192. See DVD: Failing Haiti, *supra* note 153.

193. ROBINSON, *supra* note 18, at 198.

194. *Id.* at 198-203.

195. *Id.* at 200.

196. *Id.* at 199.

197. *Id.* at 199-200.

198. ROBINSON, *supra* note 18, at 200.

199. *Id.* at 203.

200. Paul Farmer, *Exclusive Interview: President Jean-Bertrand Aristide*, in GETTING HAITI RIGHT THIS TIME: THE U.S. AND THE COUP, 107, 108-09 (Amy Goodman ed., 2004) [hereinafter Interview with President Jean-Bertrand Aristide].

forces in Haiti constitute an act of aggression and his subsequent removal from Haiti a “kidnapping.”²⁰¹

D. A FORCED RESIGNATION

There is no basis in international law for the use of coercion in order to reach a peaceful end. Under international law, a treaty is void if it is “procured by the threat or use of force in violation of international law.”²⁰² The legality of treaties for peace and/or power-sharing agreements may also be deemed void if enacted under coercion or duress.²⁰³ Similarly, the choice of a political system may not be changed under coercion by another state. The ICJ stated in the *Nicaragua Case* that interventions are unlawful if they interfere with the free choice of a sovereign state.²⁰⁴

The ICJ has also found that coercion and intimidation from one country to another can stem from “recruiting, training, arming, equipping, financing, supplying and otherwise encouraging, supporting, aiding, and directing military and paramilitary actions.”²⁰⁵ The court found that these types of actions by Yugoslavia violated the sovereignty of Bosnian & Herzegovina under Article 2(4) of the U.N. Charter and customary international law.²⁰⁶

Senator Christopher Dodd stated that “it is indisputable, based on everything we know, that the U.S. played a very direct and public role in pressuring [Aristide] to leave office by making it clear that the United States would do nothing to protect him from the armed thugs who are threatening to kill him.”²⁰⁷

The Heads of Government of the Caribbean Community and Common Market (“CARICOM”) “expressed dismay and alarm” over the

201. ROBINSON, *supra* note 18, at 204.

202. Vienna Convention on the Law of Treaties, May 23, 1969, entered into force Jan. 27, 1980, art. 52, 1155 U.N.T.S. 331, 349 (1969).

203. DINSTEIN, *supra* note 154, at 39. See generally Jeremy I. Levitt, *Illegal Peace?: An Inquiry into the Legality of Power-Sharing with Warlords and Rebels in Africa*, 27 MICH. J. INT’L L. 495, 575 (2006) (discussing the illegality of power-sharing agreements in Africa under international law).

204. *Case Concerning Military and Paramilitary Activities in and Against Nicaragua* (Nicar. v. U.S.), 1984 I.C.J. 392, 435 (Jurisdiction of Court and Admissibility of the Application) (Nov. 26, 1984).

205. *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide*, (Bosn. & Herz v. Yugo.), 1996 I.C.J. 595, 601 (Preliminary Objections) (July 11, 1996).

206. *Id.*

207. 150th Cong. Rec. § 1976.

events that led up to the resignation of President Aristide.²⁰⁸ They went on to express the view that the circumstances leading up to the removal of President Aristide “set a dangerous precedent for democratically elected governments everywhere as it promotes the unconstitutional removal of duly elected persons from office.”²⁰⁹

President Aristide’s own words are both telling and chilling. In an interview conducted while he was exiled in the Central African Republic, he told the world, “I didn’t leave Haiti because I wanted to leave Haiti. They forced me to leave Haiti. It was a kidnapping, which they call *coup d’etat* or [inaudible] . . . forced resignation for me. It wasn’t a resignation.”²¹⁰ Then President Aristide placed the blame directly upon United States officials:

I saw US officials with Ambassador Foley. Mr. Moreno, [inaudible] at the US Embassy in Haiti I saw American soldiers. . . . [t]hey all did the kidnapping using Haitian puppets like Guy Philippe, [inaudible], and Chamblain, already convicted, and basically, this night, I didn’t see Haitians, I saw Americans.²¹¹

The U.S. government maintains that President Aristide’s resignation was voluntary and that he did it for the good of his country.²¹² According to Undersecretary Noriega, Aristide “agree[d] to leave if [his] resignation [could] prevent a bloodbath.”²¹³ Noriega also said that Aristide resigned because he knew that leaving the country without resigning would create a “power vacuum” to be filled by the rebels, thus preventing his successor from taking office.²¹⁴

However, attorney Ira Kurzban reveals that the so-called resignation was actually a carefully worded conditional letter that was made to look like a resignation.²¹⁵ In fact, the official U.S. translator has told him that the letter he translated was not a resignation letter and that a complete copy of the translation was never given to the OAS or the U.N.²¹⁶ Dr. Bryan Freeman, who has completed numerous editions of a 55,000-word Kreyol-English dictionary analyzed the “resignation” letter given to him by Mary

208. Statement Issued by CARICOM Heads of Government at the Conclusion of an Emergency Session on the Situation in Haiti (Mar. 3, 2004), available at www.caricom.org/jsp/pressreleases/pres22_04.htm.

209. *Id.*

210. Interview with President Jean-Bertrand Aristide, *supra* note 200, at 108.

211. *Id.*

212. See *Subcommittee on the Western Hemisphere*, *supra* note 107, at 49.

213. *Id.*

214. *See id.*

215. Interview with Ira Kurzban, General Counsel for Haiti, in Miami, Fla. (Nov. 7, 2006).

216. *See id.*

Ellen Gilroy, director of the Office of Caribbean Affairs at the State Department in Washington.²¹⁷ Dr. Freeman determined that President Aristide's language was conditional and never contained the language, "I am resigning," as put forth by the U.S. government.²¹⁸

The resignation of President Aristide may be the most contentious allegation made against the United States. If one believes the United States version of events, then President Aristide resigned for the good of his country. However, if one believes President Aristide, he was not only forced out of Haiti by the United States, but was also kidnapped. Given the history of racial essentialism that has plagued U.S.–Haiti relations, the kidnapping would be just another sad chapter in a sorrowful anthology.

V. FINAL THOUGHTS

A common theme can be seen between this paper and the U.S.-Haiti relationship: U.S. support of oppressive tactics that thwart popular movements in Haiti. Haiti overthrew white, French slave owners in 1804 and was met with an oppressive foreign policy by the U.S.²¹⁹ When U.S. interests were at risk in 1915, the U.S. sent in troops to quell the election and establish its own oppressive policies on the Haitian people.²²⁰ When a popular movement in Haiti responded with protests, the U.S. finally withdrew, but left behind an administrative structure, army, and massive financial debt that would ensure the continuation of foreign meddling in Haiti.²²¹ After leaving Haiti, the U.S. called on these assets to prevent any popular movement within Haiti by supporting, both politically and financially, the tyrannical Duvalier regime.²²² When Haiti's popular movement responded by ousting Baby Doc, the U.S. began blindly supporting leaders from the Haitian Army it created.²²³ Finally, in 1990 the popular movement was given a name, Lavalas, and Jean-Bertrand Aristide was elected as its representative.²²⁴ However, the U.S. again intervened by creating a new asset in Haiti, FRAPH.²²⁵ When Aristide was removed from power, he was returned under the United States' terms that included impunity for the coup leaders who had killed and terrorized Haiti's

217. See ROBINSON, *supra* note 18, at 216.

218. See *id.*

219. See *supra* Part II.A.

220. See *supra* Part II.B.

221. FARMER, USES OF HAITI, *supra* note 2, at 99, 102.

222. See *supra* Part II.C.

223. See generally ABBOTT, *supra* note 34, at 328-340.

224. See Pamela Constable, *Violence Once Again Stalks Haiti*, BOSTON GLOBE, Dec. 22, 1991, at A19.

225. See Farmer, *What Happened in Haiti?*, *supra* note 32, at 11, 17.

masses.²²⁶ In 2000, the popular movement in Haiti re-elected Aristide, but his opponents disputed the results.²²⁷ The United States used the 2000 election as a pretext to call upon its assets once more to destroy the popular movement, Lavalas.²²⁸

The United States' actions in 2004 were highly questionable, immoral, and destructive. There is evidence of U.S. support for the irregulars amassing at the Haitian border.²²⁹ Under international law there is no obligation, even under the OAS Democratic Charter, for a unilateral intervention to save a democratic government.²³⁰ Eventually, however, U.S. troops were deployed in Haiti under the guise of legality, even though the actions of these troops exceeded any legal mandate and constituted an act of aggression under international law.²³¹ Finally, the legality of President Aristide's resignation is contingent upon whose story one believes. Ultimately, allegations against the U.S. do not seem inappropriate, especially since it is just another example of the U.S. suppressing a popular movement in Haiti.

Patrick Elie, former Police Administrator under Aristide, best summarized the effect of the 2004 removal of President Aristide through Haiti's tragic history:

I'm not saying I was completely satisfied with President Aristide's governance, but I really think the solution that the U.S. engineered was the worst that one could dream of. It's like we've gone back or we've been thrown back to our old demons, of change of governments by force, by insurrection, change of government by interference by foreign powers and the people themselves been sent back to their cages.²³²

The United States has taken one of the greatest heroic stories in history, a successful slave rebellion, and turned it into a story of tragedy. By these acts, the United States is a civilization behind most others. The foregoing analysis within this paper leaves many questions unanswered, but chief among these is: will the United States ever forgive Haiti for being black?²³³

226. Michael P. Scharf, *Swapping Amnesty for Peace: Was There a Duty to Prosecute International Crimes in Haiti?*, 31 TEX. INT'L L. J. 1, 7 (1996).

227. See Jenkins, *supra* note 39, at 908.

228. See generally Rep. Maxine, *supra* note 117.

229. See *supra* Part IV.A.

230. See *supra* Part IV.B.

231. See *id.*

232. See DVD: Failing Haiti, *supra* note 60.

233. See Douglass, *supra* note 1, at 69.