J. Lat. Amer. Stud. **31**, 711–734 Printed in the United Kingdom © 1999 Cambridge University Press

Haiti: International Force or National Compromise?

IAN MARTIN[1]

Abstract. The objective is clear: to reinstate the legitimate President in his functions and ensure his maintenance in power until the end of his mandate. The question which is posed is to know how to achieve this objective: international force or national compromise? – Boutros Boutros-Ghali, UN Secretary-General.[2]

As the international community seeks to bring an end to internal conflicts, its negotiators and those who would influence them face a dilemma. Should the demand for justice for human rights violations committed during the conflict be upheld, even if this makes more difficult and delays the quest for peace? Or is the requirement that perpetrators be brought to justice a moral absolute, as well as a condition for peace to be sustainable? Is justice in contradiction to reconciliation, or an essential condition for it?

The case of Haiti is unusual among the post-Cold War conflict situations which have seen a major intervention by international organisations, in that its contemporary political conflict did not give rise to civil war. It represents the purest case of political repression by a small minority with a monopoly of armed force of a people who never took to arms. The salience of human rights in the efforts to settle the Haitian conflict is correspondingly high, and it confronted the international community – including the United Nations (UN), the Organisation of American States (OAS) and the major governments involved, led by the United States – with the dual issue: will international force be used if a national compromise cannot be achieved, and should justice be compromised in the hope of achieving the latter and averting the former?

The conflict

The independent nation of Haiti was born in 1804 in the face of some of the most extreme human rights violations perpetrated by any colonial

Ian Martin is a Fellow of the Human Rights Centre, University of Essex.

[1] The author was Director for Human Rights/Deputy Executive Director of the UN/OAS International Civilian Mission in Haiti (ICM), 1993 and 1994–5. He is currently the Special Representative of the UN Secretary General in East Timor and Director of the UN Mission in East Timor (UNAMET). The views expressed in this paper are solely those of the author: they do not represent the official views of the United Nations.

[2] *Les Nations Unies et Haïti*, 1990–1996, UN Blue Books Series, Vol. XI (New York, 1996), Introduction by Secretary-General Boutros Boutros-Ghali, para. 7.

https://doi.org/10.1017/S0022216X99005398 Published online by Cambridge University Press

state. For the best part of two centuries its rulers maintained power by repression. This was true not only of a succession of predominantly military or ex-military presidents, and of the Duvalier governments of 1957–86, but also of a nineteen-year American Occupation (1915–34) in which a new gendarmerie was recruited to defend the Occupation against popular resistance.[3] This gendarmerie became the Armed Forces of Haiti (*Forces Armées d'Haïti* – FADH).

When Jean-Claude Duvalier was forced into exile in 1986, it was the military who provided two interim presidents, Generals Henri Namphy and Prosper Avril. As each sought to maintain his hold on power, it was the military, and no longer the *Tontons Macoutes*, who were again in the frontline of repression, including the voter massacre which aborted the first attempt at elections in 1987. Popular agitation and international pressure finally led to the installation of a civilian interim president and, in December 1990, the first truly free and fair elections in Haiti's history. Under the watchful eye of OAS and UN election observers, the military played a creditable role in maintaining security as the radical priest, Jean-Bertrand Aristide, swept to an overwhelming victory, with 67 per cent of the vote.

The promise of a new era of respect for the human rights of Haiti's poor majority was at the heart of Aristide's campaign and victory. His prominence and extraordinary popular support stemmed from the outspoken courage with which he had excoriated from the pulpit the violence of successive regimes, on several occasions nearly falling victim to it himself. His election campaign was founded not so much on the political party which gave him the necessary nomination, but on the popular organisations which had sprung up in the city of Port-au-Prince and throughout the countryside once the downfall of Jean-Claude Duvalier opened up some space for free association.

Soon, however, the human rights issue was turned against Aristide. He was criticised for not doing more to restrain mob killings and attacks which followed an attempted Duvalierist coup before he had even taken office, and again during his tenure as president for condoning attacks on political opponents and encouraging threats of political violence against the parliament and the courts. But violence in Haiti of all sorts was much

[3] On the creation of the Haitian gendarmerie or *Garde*, and human rights violations under the American Occupation, see Michel-Rolph Trouillot, *Haiti*: *State Against Nation* (New York, 1990), p. 104–8: … the Haitian *Garde* was specifically created to fight against other Haitians … like the army it was to sire, [it] has indeed never fought anyone *but* Haitians. Its most important campaign was its participation alongside the Marines in the war against the peasant nationalists … , when Marines and *Garde* killed at least 6,000 peasants. Another 5,500 cultivators died in the forced labour camps that the *Garde* ran for the occupiers.

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reduced under his government, and he was credited with important contributions to human rights, summarised by Human Rights Watch and the National Coalition for Haitian Refugees as:

> the abolition of the notoriously abusive and corrupt *chefs de section* and their replacement with law enforcement officers accountable to the community; the replacement of top military officers; the closure of the notorious prison detention center known as Fort Dimanche and the reduction of prison abuse; and the creation of conditions under which democratic organisations of civil society blossomed.[4]

Aristide's relationship with the military was wary at the outset and became increasingly hostile. At his inauguration he publicly retired the high command, and then chose the officer who had been responsible for the election security arrangements, Raoul Cédras, as the new army commander. In September 1991 Aristide returned from addressing the UN General Assembly to rumours of an imminent coup, and responded in a fiery address interpreted as threatening necklacing and mob violence. During the night of 29 September, the FADH overthrew him.

Aristide's life was saved by diplomatic intervention, but not before he had been personally humiliated by Cédras and his military captors. Many of his supporters were less fortunate. The coup was followed by a wave of killings, arbitrary arrests and torture, to stamp out any overt opposition. Haitian human rights groups estimated that at least 1,000 people were killed in the first two weeks after the coup. By August 1992 they had documented 1,021 cases of extrajudicial execution and estimated that the number could be as high as 3,000. Thousands had been arbitrarily arrested, with religious workers, students and teachers, peasant and urban activists among those targeted. Beating and torture of detainees were routine. Freedom of expression ceased to exist for the media or for individuals: expression of support for Aristide was a cause for arrest and ill-treatment, and sometimes death.[5] Hundreds, then thousands, of Haitian asylum-seekers took to the sea: US vessels intercepted them, and in clear breach of international law returned them to Haiti without any meaningful screening to assess their fears of persecution.

[4] Americas Watch/National Coalition for Haitian Refugees, Press Release, 22 October 1993.

[5] See Lawyers Committee for Human Rights, *Haiti: A Human Rights Nightmare* (New York, 1992); Americas Watch/National Coalition for Haitian Refugees, *Silencing a People: The Destruction of Civil Society in Haiti* (New York, 1993); Organisation of American States, *Report on the Situation of Human Rights in Haiti*, OEA/Ser.L/V/II.83, Doc. 18, 9 March 1993.

https://doi.org/10.1017/S0022216X99005398 Published online by Cambridge University Press

The search for a negotiated solution

(*a*) *First phase: the OAS response*

First diplomatic responses to the coup came through the OAS, which only in June 1991 had resolved at its General Assembly in Santiago that member states would take immediate collective action should the democratic process be interrupted in any member state. In early October, after its first mission to Haiti had been humiliatingly expelled by the military, the OAS imposed an embargo on all commercial trade with Haiti, except for humanitarian supplies. An OAS mediator began negotiations, which had their first outcome in February 1992, when Aristide and the presidents of the two houses of the Haitian parliament signed a protocol in Washington. This provided for the reinstatement of President Aristide and a government of national consensus which would work to bring about the conditions for his eventual return; Aristide's respect for the decisions of parliament, with disagreements to be referred to a Conciliation Commission; and lifting of the embargo. The parties also recognised 'the need to proclaim a general amnesty, save for common criminals'. In a second protocol signed by Aristide and the prime minister-designate, the parties pledged 'to take all necessary measures to guarantee public liberties and to halt all repression and reprisals', assisted by the civilian mission 'OEA-DEMOC' which the OAS had agreed to send at the request of Aristide, as well as by the Inter-American Commission on Human Rights, the UN and others. The military would be given particular attention, 'with a view to professionalising it and establishing better conditions, materially and as regards morale, that should enable it to participate in the democratic process and carry out its constitutional task'.[6]

This first agreement soon failed. Parliament lacked the quorum to ratify it, while the military and the *de facto* government they had installed were not party to it and obtained a decision from their supine Supreme Court that it was unconstitutional. Aristide was little more enthusiastic: he soon stated that he was opposed to an amnesty that would extend to the military's criminal as well as political offences, and complained that no date was specified for his return. But both the provisions of the Washington protocols, and the reactions of the Haitian parties, set a pattern which would be followed throughout later negotiations.

The military proceeded to establish their own so-called government of national consensus, under *de facto* Prime Minister Marc Bazin. OAS-

[6] The Washington Protocols are conveniently reproduced as an Annex to: Organisation of American States, *Report on the Situation of Human Rights in Haiti*.

https://doi.org/10.1017/S0022216X99005398 Published online by Cambridge University Press

brokered talks between representatives of Aristide and Bazin led to an agreement in September 1992 that the OAS could deploy an 18-member International Civilian Mission (ICM), with a mandate defined only in general terms:

> to help reduce the violence in general and encourage respect for human rights, cooperate in distributing humanitarian assistance and assess the progress made toward a political solution to the Haitian crisis.

But after their arrival the observers were told by the *de facto* authorities that their presence had no legal basis, and that their safety and freedom of movement in the country's interior could not be guaranteed.

(*b*) *Second phase: the UN and the Clinton administration*

The UN had been content to leave an unrewarding leading role in the Haiti negotiations to the OAS, but was pressed by Aristide to become more directly involved. Aristide hoped for the strengthening of sanctions, and for UN involvement in the civilian mission. The UN also saw in the election of Bill Clinton a possibility that had not existed under President Bush of serious US pressure for a solution to the Haitian crisis. Clinton's motivation to seek a rapid solution became all the greater when he reneged on his pledge to end the return without screening of Haitian refugees fleeing by boat; his embarrassment required him to promise an early return to democracy and an end to political repression. The UN in effect took over the lead in negotiations when, in December 1992, its Secretary-General appointed former Argentine Foreign Minister Dante Caputo as his special envoy: the OAS Secretary-General was persuaded to designate Caputo as his envoy too, so that for the first time the same envoy acted on behalf of both the UN and the relevant regional organisation.

The first progress was in respect of the ICM. Aristide's pressure for this was influenced by the successful role which UN and OAS election observers had played in ensuring a democratic outcome when he was elected in December 1990. He now wanted an international presence to end the killing and torture to which his supporters were being subjected since the coup. Since his own counterweight to the military's monopoly of arms lay in his overwhelming popular support, he also saw it as crucial in order to reopen freedom of expression and association after a period during which all forms of popular organisation had been systematically repressed, and thus to help to alter the balance of forces inside the country.

On 8 January 1993, Aristide sent to the UN Secretary-General a letter formally asking the UN and the OAS to deploy a radically enlarged ICM.[7]

[7] The UN acronym for the ICM became MICIVIH – *Mission Internationale Civile en Haïti*.

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This letter had been preceded by discussions involving the UN, Aristide, US State Department officials, and (through the latter) Haitian businessmen in contact with the military leaders. The State Department favoured a broad mandate for the ICM, including institution-building, notably the professionalisation of the army and the creation of a new police force, and development assistance, with sanctions being lifted as soon as the mission was deployed.[8] Less sympathetic to the Haitian military, the UN insisted on limiting the initial mandate to human rights observation, with the gradual lifting of sanctions to follow 'tangible progress' in the human rights situation and resolution of the political crisis. Thus Aristide's letter presented the ICM essentially as a human rights mission, which would be the first step in the negotiating process. This would lead on to the nomination of a prime minister and formation of a consensus government; the lifting of sanctions and mobilisation of financial aid; and international assistance to professionalise the military, establish a separate civilian police force, and reform other institutions. After difficult negotiations over the UN-drafted terms of reference for the ICM, which were tougher than the military and their Prime Minister had envisaged when they had given their agreement in principle, the OAS and UN began deploying observers up to an intended complement of 280 (Aristide had proposed 3,000). The future of the military seemed assured by references in both Aristide's letter and the terms of reference of the ICM to its professionalisation, but there was no reference to an amnesty or how past human rights violations would be addressed.[9]

Its experience in El Salvador had influenced the UN's willingness to join the OAS in acceding to Aristide's proposal for an enlarged ICM, and in shaping it as a human rights mission. There the deployment of the human rights division of the UN mission ONUSAL, ahead of agreement on all aspects of the political settlement and of a ceasefire, was believed to have contributed to an improvement in the human rights situation, which in turn had enhanced the climate for the remaining negotiations. As soon as agreement had been reached on the terms of reference for the expanded ICM, the UN sent a team of three human rights experts to Haiti, to advise on the needs of the UN component and prepare a plan. The team

[8] *Les Nations Unies et Haïti*, Introduction, paras 128–9.

[9] Aristide's letter is reproduced in Document 46, and the Terms of Reference of the ICM as Document 43, in *Les Nations Unies et Haïti*. For an account of the negotiations over the Terms of Reference and the launching of the UN/OAS ICM, see *Les Nations Unies et Haïti*, Introduction, paras. 136–45 and related Documents; and Ian Martin, 'Paper versus Steel: The First Phase of the International Civilian Mission in Haiti', in Alice Henkin (ed.), *Honoring Human Rights and Keeping the Peace*, Aspen Institute (Aspen, 1998).

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concluded that the deployment of an observer presence throughout Haiti could indeed have an initial inhibiting effect on political repression, but offset this positive assessment with a warning:

> … we predict the rapid emergence of serious problems for the Mission if many months elapse before a legitimate government enjoying public confidence returns to power. If the Mission is indeed initially successful in raising the confidence of the population, it will lead rapidly to increasingly assertive attempts to exercise freedom of expression. The overwhelming preponderance of freely expressed political, popular and journalistic activity can be expected to challenge the *de facto* authorities and the human rights record of the military and to demand the early return of President Aristide. On the other hand, we found little indication that the military and *de facto* authorities are prepared to tolerate such activity in practice … . We find it hard to envisage the Mission performing successfully the role of protecting human rights, including freedom of expression and association, for more than a few months, without clear progress towards a political solution of the crisis satisfactory to the majority of the population.[10]

The prospects for an overall political solution were highly uncertain. While there was a measure of agreement on several of the steps that lay ahead, there were sharply differing views on their sequence and timing. The military hoped for the rapid nomination by Aristide of a prime minister acceptable to them, the lifting of sanctions, and US assistance to 'professionalise' the military (and guarantee its future). If they were prepared to envisage Aristide's return at all, it was a far-distant prospect, and their leaders had no intention of leaving – rather than merely sharing – power. Aristide wanted – and was encouraged by the UN and the new US Administration to expect – his early return to Haiti. He sought a commitment to the departure of the coup leaders before he would nominate a prime minister; and he was most reluctant to see sanctions fully lifted or assistance to professionalise the military commenced until both these events had taken place. UN negotiation backed by US pressure was supposed to find a rapid path forward, and the ICM to improve the situation on the ground while it did so.[11]

In March, Caputo and the US Special Envoy appointed by Clinton, Lawrence Pezzullo, sought to get the agreement of the High Command of the FADH to their first comprehensive proposals. These went beyond the Washington Accord in envisaging the removal of the High Command, and replacement of the chief of police of Port-au-Prince: the incumbent,

[10] The experts' report is reproduced as Annex III of Document 46 in *Les Nations Unies et Haïti*.

[11] Aristide's position is set out in a document submitted by him to Caputo on 3 March 1993, Document 44 in *Les Nations Unies et Haïti*; and the UN's in a letter of 4 March 1993 from Secretary-General Boutros-Ghali to the Friends of Haiti (Canada, France, USA and Venezuela), Document 45.

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Colonel Michel François, was not a member of the high command, but was the most powerful figure in carrying out the coup and the repression which followed, and the most serious threat to Aristide's own security. Not surprisingly, this was resisted by the military: they were offered US guarantees of security and bilateral assistance, but said they feared being victims of bloody reprisals. In a draft agreement put by Caputo to Commander-in-Chief Cédras,[12] the former set out his proposals for an amnesty as follows:

(*a*) President Aristide publishes an amnesty decree, in conformity with article 147 of the Constitution (art. 14: He can only grant amnesty in political matters and according to the requirements of the law);

(*b*) Parliament tables and adopts a bill of general amnesty (including all crimes and misdemeanours committed since the coup d'état of 30 September 1991);

(*c*) The President commits himself to promulgate this law.

These proposals were designed to address Aristide's reluctance to agree to a broad amnesty. His position ever since the issue first surfaced at the Washington negotiations had been that while the military leaders might be pardoned for the political offence of carrying out the coup against constitutional order, no amnesty should be granted for murder and other common crimes committed by the army. In defending this position against those who urged that it was necessary to assure the military that they would escape prosecution if they handed back power, Aristide was able to cite the provision in the Haitian Constitution which restricted the power of the president to grant amnesty to political matters (*matière politique*). But the power of the parliament was not similarly constrained. According to the UN, in a *tête-à-tête* on 8 April, Aristide gave Caputo the assurance that he would not oppose a wider amnesty that parliament could vote, and would not take the initiative in prosecutions.[13] But he followed this by referring publicly to the amnesty granted by Haiti's historical hero Toussaint-Louverture, which was in fact followed by the slaughter of opponents.

Caputo conveyed Aristide's agreement to this manner of dealing with the amnesty issue in a letter of 14 April to Cédras.[14] As they awaited a response, UN diplomats suggested that a rejection of the terms on offer

[12] Document 47 in *Les Nations Unies et Haïti*.

[13] *Les Nations Unies et Haïti*, Introduction, para. 162.

[14] Document 50 in *Les Nations Unies et Haïti*: Je tiens à confirmer par cette lettre l'accord du président Aristide pour octroyer, à compter du jour de l'entrée en vigueur de la démission du commandant en chef et du haut état-major des forces armées ainsi que du commandant de la zone métropolitaine, d'une amnistie couvrant les crimes et délits de nature politique ou connexe commis entre le 30 septembre 1991 et la date de cette lettre, en vertu de l'article 147 de la Constitution. Le Président s'est aussi engagé à ne pas prendre l'initiative de poursuites judiciaires dans le cadre de l'amnistie accordée et, si une loi d'amnistie était adoptée par le Parlement, à ne pas s'y opposer.

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would lead to immediate targeted sanctions.[15] Yet when this failed to secure the agreement of the military leaders to step down, the United States preferred to seek to assuage rather than confront the military, and the negotiators turned to designing a police and military 'assistance' mission, to give the military the guarantee of security the negotiators thought necessary to overcome the fears they expressed.[16] When this too was rejected, the negotiators decided it was time to apply the pressure of UN sanctions, and on 16 June the Security Council voted to impose an oil and arms embargo.

While the negotiations were thus failing to establish even the starting-line for the transition, the ICM was encountering the predicted difficulties. Its deployment had undoubtedly initially discouraged flagrant abuses where its presence was visible. But soon a marked deterioration was experienced, as the observers had been present long enough for the novelty to wear off and military irritation at their intrusive behaviour to grow. The hard line taken by the high command in rebuffing the negotiators was reflected in defiant behaviour of the FADH at the local level, with no expectation that a transition was imminent. Most importantly, the predicted dynamic was developing, as the presence of the ICM encouraged Haitians to assert the freedom of expression it was intended to promote. Students, peasant activists and trade unionists who attempted to demonstrate or resume organisational work became victims of arrests and beatings: it was clear that whatever degree of repression was felt essential to maintaining the military grip on a hostile population was not going to yield to the mere presence of human rights observers.[17]

Once UN sanctions were imposed, it took only five days for Cédras to reverse his initial adamant refusal to participate in negotiations in New York, and on 3 July the Governors Island Agreement was signed first by Cédras and then by a reluctant Aristide. This provided for the nomination of a prime minister by the president; a political dialogue to secure the parliamentary truce necessary for the prime minister's ratification and the passage of essential legislation; suspension of sanctions; international assistance for development, administrative and judicial reform, and 'the modernisation of the Haitian armed forces and creation of a new police with the presence of UN personnel'; an amnesty; passage of a law creating

[15] See Howard French, 'Offer of amnesty removes obstacle to accord in Haiti', *New York Times*, 14 April 1993; and 'Haiti army spurns offer of amnesty', *New York Times*, 17 April 1993.

[16] For accounts of this stage of the negotiations, see *Les Nations Unies et Haïti*, Introduction, paras. 146–91; Martin, 'Paper versus Steel', p. 104–6; and Ian Martin, 'Haiti: Mangled Multilateralism', in *Foreign Policy*, No. 95 (Summer 1994), p. 76–9.

[17] See the report of the ICM on the human rights situation from 9 Feb. to 31 May 1993, Document 62 in *Les Nations Unies et Haïti*.

https://doi.org/10.1017/S0022216X99005398 Published online by Cambridge University Press

a new police force and nomination of a new chief of police; 'early retirement' of Cédras as commander-in-chief, followed by Aristide's designation of his successor, who would appoint a new High Command; and return of the President to Haiti on 30 October.[18]

The amnesty issue was not itself central to the difficulties which required heavy US, UN and other diplomatic pressure to be applied to induce Aristide to sign the Governors Island Agreement. The formula already arrived at was repeated: 'amnesty granted by the President in the context of article 147 of the Constitution and implementation of other instruments which may have been approved by the Parliament on this question'. But the human rights issue, and its omission from the agreement, was a major preoccupation for Aristide. He was concerned about the extent to which his supporters would be free to express themselves without becoming the victims of human rights violations: he believed that the four-month period before his return, with the coup leaders still in place, would give them ample scope to frustrate his return. He agreed to sign only after receiving assurances, formalised in a letter from the Special Envoy and summarised in a public report of the UN Secretary-General, in which it was specified that one ground for the reimposition of sanctions would be if 'numerous' human rights violations were committed.[19]

Shortly afterwards Haitian parliamentarians met and representatives of different factions signed the New York Pact regarding the implementation of the Governors Island Agreement: amongst the measures they committed themselves to enact, on the basis of an emergency procedure, was an act 'concerning the amnesty', but its scope was again undefined.[20] The public position of UN/OAS and US negotiators was that the scope of an amnesty was a matter for the Haitian decision-makers. In fact, however, having successfully pressed Aristide to commit himself not to oppose action by the parliament, the negotiators now pressed parliament to adopt a draft law intended to cover all criminal offences, which would include murder, enforced disappearance, torture and rape. While Aristide's amnesty decree, issued on 3 October,[21] covered political offences from the

[18] The Governors Island Agreement is reproduced in Document 70 in *Les Nations Unies et Haïti*. See also Secretary-General Boutros-Ghali's comments in his Introduction, paras. 192–205.

[19] Document 70 in *Les Nations Unies et Haïti*, para. 11.

[20] The New York Pact is in Document 74 in *Les Nations Unies et Haïti*.

[21] The text was as drafted by the Minister of Justice, but it had been delayed by a dispute over the text between Aristide and his recently-appointed Council of Ministers in Port-au-Prince: see the account of the then Prime Minister, Robert Malval, in his *L'Année de toutes les Duperies* (Port-au-Prince, 1996), p. 247–51, where he reproduces the text proposed by Aristide. Aristide's text would have specified the exclusion of 'the principal authors of crimes against humanity' from the amnesty, and this would have come into effect only when the President returned to Haiti.

https://doi.org/10.1017/S0022216X99005398 Published online by Cambridge University Press

date of the coup to the date of the Governors Island Agreement, the draft bills prepared for the two houses in the Office of the Special Envoy were open-ended in date up to the time of their passage: the military could thus continue to commit grave human rights violations with the expectation, encouraged by the international community, that they would be immune from prosecution.

The signing of the Governors Island Agreement had been followed by a short period of relative calm and optimism in Haiti, and after parliament had ratified the new Prime Minister chosen by Aristide, Robert Malval, sanctions were suspended on 27 August. But by this date it had become all too clear that there had been a major deterioration in the human rights situation since Governors Island, with a spate of killings and disappearances in Port-au-Prince. The violence was carried out with an impunity which implied police complicity, and the purpose seemed to be to terrorise those localities which had been hotbeds of support for Aristide. Supporters of the pro-Aristide mayor of Port-au-Prince and bystanders were killed and savagely wounded when he was reinstated in his office. The testimony of people who had reappeared after being seized, tortured and interrogated, and the pattern of abductions and killings, afforded growing evidence of targeted political assassinations and disappearances carried out by paramilitary groups linked to the FADH or by members of the FADH themselves.

The military's declaration that public political activity would not be permitted was reinforced in a calculated message to the whole nation when Antoine Izméry, a financial backer and prominent supporter of Aristide, was publicly assassinated on 11 September. Outside Port-au-Prince, there was a continuation but not a marked increase in cases of arbitrary arrest, torture and ill-treatment. But if the military had been preparing for a transfer of authority to legitimate government, and were afraid of possible popular reprisals with the return of Aristide, then they should have been relaxing the repression. In fact there was no greater tolerance of freedom of expression, and threats and harassment of activists prevented any revival of popular organisations. There were many reports of the increased numbers and distribution of arms to *attachés* – the thugs linked to the military – and threats of killings of Aristide's supporters in the event of his return.[22]

The military's determination to strengthen rather than relax their control was also evident in the establishment of the neo-Duvalierist political party FRAPH (*Front Révolutionnaire pour l'Avancement et le Progrès en Haïti*), drawing on much the same elements as the military had always

[22] See reports of the ICM covering the period up to its evacuation on 15/16 Oct.1993, Document 90 in *Les Nations Unies et Haïti*.

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relied upon for civilian terror. FRAPH was allowed the use of arms, and its intimidatory demonstrations were clearly not just tolerated but assisted – and probably directed – by the military, while enabling them to deny responsibility and to claim merely to permit 'freedom of expression' – so blatantly denied to Aristide's supporters.

The ICM and journalists familiar with Haiti reported this situation in similar, increasingly alarming terms. The negotiators and the US Embassy, however, insisted that the process remained on track and that Cédras would respect his commitment to retire on 15 October. Their efforts, and the hopes of the Malval government, centered on the deployment of the police and military components of the UN mission (UNMIH), which they believed could yet bring about a crucial psychological shift in the country. The military leaders however devoted themselves to creating problems rather than cooperating in the deployment, while preventing the parliament from meeting with the quorum needed to pass the law separating the police from the army. Although Cédras had agreed at Governors Island to the assistance of UN personnel in the modernisation of the army and creation of a new police force, he maintained that this should be technical assistance and not a peace-keeping mission mandated by the Security Council.[23] The military saw their opportunity in the US reaction to the deaths of its troops in Somalia, and were handed a final card when then US Defence Secretary Les Aspin, now on the defensive as the Haiti mission was characterised as 'another Somalia', stated that the arms available to US military on their way to Haiti included M-16 automatic weapons – hardly the 'little pistols' of earlier assurances. A hostile demonstration by a few dozen armed thugs, with the FADH standing by, was allowed to prevent the *USS Harlan County*, with its major UNMIH contingent of US and Canadian troops, from docking at Port-au-Prince on 11 October, and the next day it was recalled by Clinton without the UN even being informed of the decision.[24] Within 48 hours, Canada had withdrawn its police contingent; in the afternoon of their departure Aristide's minister of justice was gunned down in the streets of Port-au-Prince, and shortly thereafter the UN decided (against the advice of its director) to evacuate the human rights mission.

(*c*) *Third phase: the path to military intervention*

The retreat of the *Harlan County* signified the collapse of the entire UN/OAS and UN strategy to bring about Aristide's reinstatement by peaceful means. Sanctions were re-imposed, and for some months Caputo

[23] *Les Nations Unies et Haïti*, Introduction, para. 226, and letter of 29 Sep. 1993 from Cédras to the Secretary-General, Document 83.
[24] *Les Nations Unies et Haïti*, Introduction, para. 231.

https://doi.org/10.1017/S0022216X99005398 Published online by Cambridge University Press

and Pezzullo sought in vain to promote a compromise between the Haitian parties. Since the military's conviction that they could defy the international community had been dramatically indicated, this meant seeking further concessions from Aristide, whom the negotiators regarded as partly responsible for the failure to secure implementation of the Governors Island Agreement. Aristide, his suspicions of the military's willingness to implement the Agreement confirmed by events, became still less flexible and mistrustful of Prime Minister Malval, who resigned in January 1994 after the President had undermined his efforts to convene a national conference. Departing from the sequential process envisaged at Governors Island, Aristide now insisted that sanctions must be maintained until most other requirements, especially the departure of the military leadership, had been met. The negotiators' attempts to work around Aristide, first with Malval and then with Haitian parliamentarians, only fed his suspicions.[25]

Although there had been no breakthrough, in January 1994 the UN and OAS decided to send ICM observers back to Haiti: the security situation was regarded as adequate, and the constitutional government favoured the redeployment. Cédras did not respond either to a request to meet the director of the ICM or to a letter informing him of the return of observers. The observers found the human rights situation worse than at any time during the ICM's presence in 1993. It included killings of activists in popular organisations, abductions and enforced disappearances, interrogation in clandestine detention centres routinely accompanied by torture, and – a new phenomenon – the frequent use of rape as a weapon of political repression. FRAPH had established a pervasive presence throughout the country, and any attempts by Aristide supporters to exercise freedom of expression had been eliminated.[26]

The ICM began visits to the provinces, and initially believed that it would be possible to reopen at least some offices outside the capital. But visiting human rights observers were chased outside one town and prevented from travelling to the sites of alleged violations in other departments. The FADH had ceased to give any recognition to the legitimacy of the presence of the ICM in Haiti: the High Command continued to refuse to meet with it, although some local commanders did so. Only on one occasion were observers allowed access to detainees. But although it was clearer than ever that the ICM could offer no security to

[25] For an account of this phase of the negotiations, see *Les Nations Unies and Haïti*, Introduction, paras. 234–75. See also Malval, *L'Année de Toutes les Duperies*.

[26] See report of the ICM covering the period 31 Jan. to 30 June 1994, Document 90 in *Les Nations Unies et Haïti*.

https://doi.org/10.1017/S0022216X99005398 Published online by Cambridge University Press

its contacts, many people brought information on violations outside the capital to the ICM's Port-au-Prince offices.

The evident lack of progress towards a settlement, and the efforts of the negotiators to press Aristide for concessions, gave rise to a tide of criticism of US policy in the Congress and the media. Outrage at the gravity of the human rights situation in Haiti played a significant part in this, with the ICM's statements being well-publicised. This was only intensified when criticism of the ICM's findings by the US embassy in Port-au-Prince was leaked.[27] Faced with a hunger strike by black activist Randall Robinson, Clinton in April signalled a major change in policy, and replaced Pezzullo with former Congressman William Gray. The hope was still to force the military to give up power by the application of sanctions, strengthened to the maximum and targeted – albeit too late to have full effect – on the military leaders and those associated with their *de facto* regime. But the use of military force if peaceful pressure failed was no longer ruled out, and by undertaking to establish safe havens where Haitian asylum-seekers would be screened in third countries rather than automatically returned, the Clinton Administration placed itself under enormous pressure for a rapid outcome.

The military now sealed their own fate. They finally turned their backs on the Governors Island Agreement by installing a puppet president, and on 5 July their new *de facto* government told the ICM that its mandate had expired; despite renewal of the mandate by the General Assembly on 8 July, it was given 48 hours to leave. While the legitimacy of the *de facto* government and its decree were not recognised, security considerations led the UN and OAS to withdraw the ICM.

On 31 July the Security Council voted to authorise a multinational force to use 'all means necessary' to bring about the departure of the military and the return of Aristide.[28] Aristide's reluctance to be seen to call for military intervention had finally been overcome, and he wrote that 'the moment has come for the international community … to take a prompt and decisive action' to permit the full application of the Governors Island Agreement. Lest there could be any remaining ambiguity about the request for military intervention, the Permanent Representative of Haiti was required to put in writing his government's agreement with the draft Security Council resolution.[29] Once preparations for military action were

[27] Susan Benesch, 'Embassy had disputed human rights reports', *Miami Herald*, 8 May 1994; Murray Kempton, 'Blindness in Haiti', *New York Review of Books*, 9 June 1994. The Administration later apologised publicly for the criticisms of the ICM.

[28] S/RES/940 (1994), 31 July 1994, Document 137 in *Les Nations Unies et Haïti*.

[29] Letter of 29 July 1994 from Aristide to Secretary-General Boutros-Ghali, *Les Nations Unies et Haïti*, Document 135; and letter from the Permanent Representative of Haiti to the President of the Security Council, 30 July 1994, Document 136.

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complete, Clinton publicly addressed the American public and the Haitian military, stressing the human rights violations committed so close to the USA and the refugee problem to which it gave rise. A last effort to persuade the military to step aside without military combat was entrusted to former President Jimmy Carter, Sam Nunn and Colin Powell. With US troops already on their way to Haiti, Cédras acceded to an agreement negotiated with him but signed by Carter and *de facto* President Jonaissant, under which certain military leaders would take 'early and honourable retirement' as soon as a 'general amnesty' had been voted into law, or in any case by 15 October: the FADH would cooperate with the US-led multinational force.

US troops landed in Haiti without resistance. On 7 October the parliament adopted an amnesty bill, and it was signed into law by Aristide. The three key military leaders, Cédras, his closest colleague Biamby, and François went into exile in Panama and the Dominican Republic. On 15 October President Aristide returned to his country.

The role of third parties

Formally, the Haiti negotiations were mediated by the UN/OAS, through their special envoy, Caputo. In reality, they were conducted by the USA/UN: Caputo and Pezzullo worked closely together, and although Caputo reported periodically to the OAS, it played a lesser role which diminished further once the UN began to plan the police and military operation. The USA can hardly be regarded as a third party: it was the key player to whom both Aristide and the Haitian military looked in determining their margins of manoeuvre, and whose willingness to apply pressure on each determined Caputo's negotiating options.

The next circle of involvement was that of the 'Friends of the UN Secretary-General on the question of Haiti'. In addition to the USA, they were Canada, France and Venezuela, to which were added Argentina and Chile when they became members of the Security Council. The Friends played an important role not only through frequent consultations in New York, but also through their ambassadors in Haiti, and were represented at key negotiations, most notably at Governors Island.[30]

The Haitian crisis was a major political issue in the United States: because of the presence of a large Haitian community, because it was the destination of Haitian asylum-seekers, because of liberal outrage at their treatment, and because of the solidarity of black activists with the first

[30] On the role of the Friends, and of the UN Security Council in general, see David Malone, 'Haiti and the International Community: A Case Study', in *Survival*, vol. 39, no. 2 (Summer 1997).

https://doi.org/10.1017/S0022216X99005398 Published online by Cambridge University Press

independent black republic. Thus the US Congress and its Black Caucus became significant actors, and the proximity of Haiti to Washington encouraged a constant flow of US political visitors to the country. Most were on the liberal side of the US debate, but not all: they included Republican critics of Aristide, who although reluctant to be identified with the military directly, were allies of the supporters of the *de facto* governments in the Haitian parliament.

Aristide's decision to make Washington his place of exile was a recognition of its centrality to the fate of Haiti, and in turn served to heighten the US debate. In addition to his ambassadors in Washington and New York, several paid and unpaid US lobbyists acted on his behalf: his Haitian and American lobbyists were often not well coordinated, although all claimed to speak with the voice of the president. Aristide's delegation to Governors Island included an extraordinary array of US as well as Haitian advisers. The non-recognition of the *de facto* government made it more difficult for it and the military to work openly through US lobbyists. One leading Haitian business family played an active role through a Washington law firm.

Non-governmental organisations constituted the outer circle of influence on the negotiations, and on the human rights issues in particular. They ranged from solidarity groups which supported Aristide (or indeed were critical of him from the left when he appeared willing to compromise), to one or two which were highly critical of his human rights record in office. The most objective and influential were the major human rights NGOs, which saw more positive than negative features in his period in office, and were adamantly opposed to amnesty for human rights violations or concessions which left the military who had been responsible for them in effective control.

The Black Caucus and the human rights NGOs played significant roles in the swelling tide of criticism of the bankruptcy of policy in early 1994. Caputo and Pezzullo were in an unenviable position. Both felt bitterly let down by Clinton's withdrawal of the *Harlan County* yet both were personally opposed to military intervention, and increasingly critical of what they saw as Aristide's obduracy. With Pezzullo's replacement by Gray, Caputo's role became less central as the United States moved towards military intervention. He resigned on the day that American troops disembarked on Haiti.

The final actor to enter upon the scene was Jimmy Carter. He had maintained an interest in Haiti, although his dealings with Aristide during the December 1990 election, when the United States had expected a Bazin victory, had left a legacy of mutual mistrust. The agreement Carter signed with the illegitimate President Jonassaint was greeted with dismay by

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those close to Aristide and by the human rights NGOs. Although Cédras and some others would retire, it seemed that they would be able to remain in Haiti and the military would continue to enjoy substantial power, protected by a general amnesty. Aristide's advisers said that administration officials had promised that the high command would have to leave the country immediately, and that the illegitimate *de facto* president would not be involved in any way in the negotiations. Carter indeed acknowledged that at the last minute he got Clinton to reverse a specific instruction that Jonassaint could not be a signatory. Much more significant, however, was the fact that Carter intended to omit any reference to a timetable for the departure of Cédras and his lieutenants, relating this only to the passage of an amnesty law, which could easily have been stalled. Clinton insisted on the inclusion of the 15 October deadline, amnesty or no amnesty.[31]

In various press conferences and comments after the agreement, Carter assured the Haitian people that American soldiers were 'coming in as a partner for your own military', praised Cédras and his colleagues as honourable men, said that he had told Cédras that he was 'ashamed of my country's policy', noted that under the terms of the agreement Cédras could (unless convicted of a crime) run for president in a year's time, and revealed that he had invited Cédras to teach at his Sunday school.[32] The consternation was not confined to the Aristide camp and the human rights NGOs; it was also shared by the administration. But once US troops were in Haiti, the reality of power asserted itself. The final negotiations with Cédras and his wife were reduced to the issue of requiring the US embassy to agree to rent their house before their departure for Panama.

The interplay of these actors in relation to the human rights issues was complex. Parts of the US administration had an interest in playing down the seriousness of human rights violations in Haiti. This was necessary to defend the policy of returning Haitian asylum-seekers without screening, as well as the low success rate of in-country asylum applicants, by portraying them as economic migrants rather than refugees from repression. Close US ties with the FADH, and the fact that some of them and their associates were intelligence assets, went in the same direction, while an acknowledgement of the true extent of repression would strengthen the position of Aristide, regarded by these elements as a dangerous leftist. Other parts of the Administration were more ready to recognise and condemn the military's human rights violations. The deployment of the ICM was strongly supported, as a means of being able to say that human rights violations were being addressed; there was less interest in listening to and acting upon its findings. Once Administration

[31] See Michael Kelly, 'Letter from Washington: It all co-depends', *The New Yorker*, 3 Oct. 1994, p. 85–6.

[32] *Ibid.*, p. 80–1.

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policy hardened and it was necessary to build support for military intervention, human rights violations were suddenly to be trumpeted rather than played down.[33]

The other Friends of Haiti, and black and liberal members of Congress, were more consistently willing to share Aristide's perspective regarding the human rights situation. But as political actors, they mostly took a 'realistic' position in seeing an amnesty as necessary to persuade the military to cede power. The amnesty issue did not strike them as particularly controversial: Aristide seemed willing to grant an amnesty for the political offence of carrying out the coup, while the question of a broader amnesty was left open by the formula of reference to the parliament. It was only behind the scenes that the negotiators were pressing for a general amnesty. The human rights NGOs were alert to the issue and stated their opposition. They also recognised that even without an amnesty, there would be limited prospects of successful prosecutions within Haiti's feeble and corrupt justice system, and engaged in consultations with Aristide's advisers about a possible truth commission.

The outcome

In the early stages of the intervention, it seemed possible that those responsible for human rights violations might retain a degree of power which would destabilise the restored constitutional government. The Carter agreement envisaged a continuing role for the military, and the continuing presence in Haiti of those retired from command. The Pentagon was committed to retaining and professionalising the Haitian army, at the same time as a separate civilian police force was introduced; the need to find alternative employment for demobilised soldiers led to an assumption that many of them would, after screening, become police. The paramilitary group FRAPH, responsible for serious human rights violations, was initially treated as a legitimate political party because of the continuing mistrust of Aristide and his supporters. Early briefing within the multinational force presented a need to balance Aristide and his *Lavalas* supporters on the one hand, with the FADH, FRAPH and *attachés* on the other. If the latter predominated, it would mean police brutality and the rule of the gun, but if the former were not balanced by the latter, it would mean riots, looting and mob rule.

This perspective was altered by a number of factors. The US military were genuinely shocked by what they saw and uncovered of the behaviour of the FADH and FRAPH. At the same time, Aristide preached

[33] Andrew Downie, 'US accused of flip-flop on Haiti', *Reuter/Washington Times*, 15 July 1994.

https://doi.org/10.1017/S0022216X99005398 Published online by Cambridge University Press

reconciliation, and there was little of the anticipated thirst for vengeance among the Haitian people towards their oppressors. There was public criticism of the posture of even-handedness between a legitimate government and its supporters, and those who had usurped power and acted with brutality, fed by the exposure of CIA links with FRAPH. In this context, Aristide manoeuvred brilliantly to bring about the complete dismantling of the FADH, aided by some sympathy in the administration for the view that Haiti would be better off without any army. The extent to which the multinational force was doing all it could to round up arms from those to whom the military had liberally distributed them remained a point of contention between Aristide and the US forces. But in March 1995, the situation in Haiti having been declared secure and stable, the UN mission UNMIH took over from the US-led multinational force.

The ICM had returned to Haiti in October 1994 and resumed its monitoring of the human rights situation. With few state-sponsored violations to investigate, the ICM turned to monitoring the human rights conditions for successive elections and engaging in longer-term human rights education and institution-building. It played a leading role in addressing the need to improve prison conditions and train a new penal administration, and a supportive role in efforts to train the new Haitian National Police force (HNP) and reform the justice system, which were US-led, with the civilian police of UNMIH monitoring the performance of the HNP once they were deployed.[34]

Although popular reprisals against those believed to have been involved in human rights violations were fewer than most had expected, the public demand for justice was apparent. Aristide in his speeches called for 'reconciliation with justice' and created a National Commission for Truth and Justice, mandated to establish the truth regarding violations committed from the time of the coup until his return: there was some criticism of the exclusion of the record of his own government from the period covered. Following debate over whether this should be a Haitian body or the task should be entrusted to an international organisation (a role the Inter-American Commission on Human Rights was interested in playing), Aristide chose to establish his own presidential commission, to which he appointed a Haitian chairperson and three other Haitians, together with three non-Haitians recommended by the OAS and the UN.

In establishing the Truth and Justice Commission, Aristide was

[34] For the later work of the ICM, see Colin Granderson, 'Institutionalising Peace: The Haiti Experience', in Alice Henkin (ed.), *Honoring Human Rights: From Peace to Justice*, Aspen Institute (Aspen, 1998); and Colin Granderson, 'Military–Humanitarian Ambiguities in Haiti', in Jonathan Moore (ed.), *Hard Choices: Moral Dilemmas in Humanitarian Intervention* (Lanham, Md., 1998).

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conscious that the prospects for prosecutions within the Haitian justice system were limited. This was not, however, because of the amnesty law passed by Parliament in October 1994, which did not grant a general amnesty and merely defined in broad terms the scope of the president's constitutional authority to grant amnesty in political matters, as he had already done in his October 1993 decree. This law was obscure[35], but did not appear to block any prosecutions for murder in human rights cases, and to date has not been pleaded to this effect in any trials. The real constraints were the lack of investigative resources and the reluctance of witnesses to come forward in a climate in which they were uncertain of their future protection. A few people, including one of the alleged killers of Izméry, were convicted of human rights crimes in unimpressive proceedings, Aristide sought to overcome the weakness of the capacity of the justice system to pursue even the most major cases effectively by establishing his own team of foreign (chiefly US) lawyers, but these efforts suffered a major setback when an ill-prepared case against persons accused of responsibility for the October 1993 assassination of the minister of justice collapsed. An impediment to both judicial investigations and the work of the Truth and Justice Commission was the refusal of the US authorities to return to Haiti FRAPH documents seized by the US troops and taken out of the country.

Four years after the restoration of constitutional government, the stability of Haiti remained uncertain and only precariously maintained by a continuing international presence. But the threats to that stability do not stem from a determination to pursue the human rights violators at the expense of national reconciliation; nor do they appear to come from popular dissatisfaction at the failure to deliver justice for past abuses. The most serious threats are surely in the spheres of economic and social rights, and political maturity: the disastrous economic legacy, the political divisions over how it should be addressed, and the inability of a police force and justice system which had to be newly created or re-created to contain the criminal violence which it breeds.

[35] For an English translation of the French text, see William O'Neill, 'Human Rights Monitoring vs. Political Expediency: the Experience of the OAS/UN Mission in Haiti, in *Harvard Human Rights Journal*, vol. 8 (Spring 1995), p. 123: [T]he right to amnesty granted to the President by the Constitution only applies to political matters, that is to say in all cases of crimes and misdemeanors against the state, internal and external security, crimes and misdemeanors affecting public order and accessory crimes and misdemeanors as defined by the Penal Code. On the interpretation of the amnesty law, see Michael P. Scharf, 'Swapping Amnesty for Peace: Was There a Duty to Prosecute International Crimes in Haiti?', in *Texas International Law Journal*, vol. 31, no. 1 (Winter 1996): he cites one legislator quoted as saying: 'We approved the amnesty that Jean-Bertrand Aristide presented. Go ask President Aristide if the text he sent down is restrictive or broad', p. 16.

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The lessons

Human rights played an important part in the Haiti negotiations. This was at Aristide's insistence, and because the obvious responsibility of Haiti's military rulers for major human rights violations could not be hidden behind any civilian façade. It was taken up by a UN positively influenced by the success of its human rights initiative in El Salvador, and was reflected in the deployment of the ICM before any broader agreement was reached. The hope was that an improvement in the human rights situation would contribute to success in the overall negotiations, and a peaceful transition. This strategy, now applied with success in Guatemala as well as in El Salvador, is certainly worthy of consideration in future peace processes.

The case of Haiti teaches the obvious lesson that the human rights presence can succeed only if the broader political strategy of which it is a part is realistic. The heart of the Haitian problem was that the military could only be induced to relinquish power if they were left no other choice. Perhaps this could have been achieved by a serious determination to apply the toughest of targeted sanctions immediately after the coup, instead of belatedly in mid-1994. There was no way the military would have gone peacefully unless they feared that they would be removed by force, which in the case of Haiti could only mean international force. Short of this, they would accept a return to constitutional forms only if they retained much of their power behind a façade of democracy: their parliamentary allies were skilled at designing such façades, but they could not conceal the reality of overwhelming popular support for Aristide and repudiation of any who recognised the coup.

All actors tried to evade this conclusion – including Aristide, who wanted to believe that US influence and international sanctions could oust the military without his having to sanction the return of American troops to Haiti. Until Clinton's change of policy in April 1994, the negotiators made clear that force was excluded. Both Caputo and Pezzullo were not only true to the brief they were given but also personally opposed to the use of force. Congressional attitudes, and the message conveyed in US contacts with the Haitian military, served to strengthen the latter's confidence that force would never be an option, with the result that even when the administration had in fact reached the decision that it would use force if necessary, the FADH still thought it was bluffing. With the use of force excluded, the negotiating strategy was to lower the hurdle that the military were expected to jump, by pressing Aristide to include their allies in a new government, and by giving assurances of the future of the FADH as an institution through its professionalisation, and as individuals

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through an amnesty. This would have been a form of national compromise, but a compromise that would have left the military and their allies with a share of power hugely disproportionate to their tiny base of support within the country, and thus have been unlikely to endure.

Having put human rights at the starting-point of their strategy with the deployment of the ICM, the negotiators failed to give their human rights mission adequate political support or pay due attention to its findings. The UN/OAS and the United States were dealing directly with the FADH when its continuing serious human rights violations and its failure to respect the agreed terms of reference of the ICM had been clearly reported. Yet these were never made an issue in the negotiations, up to and including Governors Island. Most of the time the negotiators were seeking reluctant cooperation from the military; only when they were rebuffed was the human rights situation brought into play. The US embassy, influenced by its political hostility to Aristide and conditioned to downplay political repression in the interests of defending an indefensible refugee policy, publicly cited the ICM as an indication of improvement in the situation; privately, however, it criticised its assessment of violations as exaggerated and distorted it in its reporting to Washington. In 1993 the human rights situation was indeed less acute than immediately after the coup; the negotiators believed that the best hope for human rights lay in the success of their negotiations, which would not be aided by a tough line on human rights when the military were being coaxed into accepting the transition. But the ICM's work and the human rights situation have been better served if the lack of cooperation by the FADH had been strongly taken up at the outset. This would also have helped the political process, which ultimately foundered on the military's perception of the weakness and divisions of the international community.[36]

A major opportunity was lost at Governors Island to require Cédras to sign on to a commitment to respect human rights, and although efforts were made to assuage Aristide by assuring him in writing that 'numerous' human rights violations could lead to the reimposition of sanctions, there was no sign that Cédras felt this pressure. In the weeks that followed the negotiators were reluctant to accept the growing evidence that the FADH was blocking the agreed transition, interpreting the violence as criminal rather than a calculated campaign of political repression. Even if that reality had been recognised and the negotiators' lingering belief in any good faith on the part of the military leadership had been abandoned, it

[36] For further analysis of the experience of the ICM and its interplay with the political situation in 1993–4, see Martin, 'Haiti: Mangled Multilateralism', and 'Paper versus Steel'; O'Neill, 'Human Rights Monitoring vs. Political Expediency'; and Lawyers Committee for Human Rights, *Haiti: Learning the Hard Way* (New York, 1995).

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was probably already too late to bring new pressures to bear to save the process.

The key issue behind the scenes, from Governors Island to the Carter negotiations, was which of the coup leaders besides Cédras would have to leave the military and whether they would remain in the country. This was more vital for the stability of any transition than was the question of amnesty. The Haitian justice system was clearly not capable of bringing to justice those responsible for the gravest of human rights violations. But the negotiators saw the promise of amnesty as one significant way of lowering the hurdle for the military, and had little regard for principle in the manner in which it was addressed. The Office of the Special Envoy obtained, with the assistance of the UN Centre for Human Rights, possible model amnesty laws from other countries[37] and drafted open-ended amnesty bills for the parliament. Pressure to adopt this legislation was applied not only in September/October 1993 but also in the months which followed the collapse of the Governors Island Agreement, when parliament was subject to military intimidation, some constitutionalist legislators had fled the country, others felt unable to participate for reasons of personal security, and senators elected in illegitimate elections in January 1993 had resumed their participation. Perhaps the most shameful moment came in April 1994, when a draft bill which would have covered all crimes stemming from the coup (*toutes les infractions découlant du coup d'état*) right up to the date the law would be promulgated was presented by a group of Haitian senators. At a time of egregious human rights violations, the ceremony was attended by representatives of the Friends, and welcomed by the UN spokesperson in Haiti as 'a step in the right direction that may help unblock the situation'.[38]

An amnesty covering such crimes would of course have been contrary to international human rights law, as it has been developed and defined within both the UN and Inter-American systems.[39] The UN Secretary-General expressed concern when the legislature of El Salvador adopted an amnesty law, and UN participation in the Guatemala negotiations assisted an agreement which includes a 'commitment against impunity', in which the government promised that it 'shall not sponsor the adoption of legislative or any other type of measures designed to prevent the prosecution and punishment of persons responsible for human rights violations'. The positions of the United States and the UN in relation to amnesty in the Haitian context also contrasted with their commitment to prosecutions for crimes against humanity in former Yugoslavia and Rwanda. The international community did not even advance proposals

[37] See Lawyers Committee for Human Rights, *Haiti: Learning the Hard Way*, p. 142.
[38] *Ibid.*, p. 145.
[39] *Ibid.*, p. 145–6.

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for a truth commission to investigate past violations in Haiti, analogous to the initiatives in either El Salvador or Guatemala; and when one was created by Aristide after his return, there was little willingness on the part of governments to support it, although the UN and the ICM did so.

Some opponents of an amnesty, however, tended to minimise unduly its significance as a potential stumbling block in the negotiations. There is no avoiding the dilemma for negotiators: maintaining the principle of accountability may well raise the hurdle to a peaceful transition. In the case of Haiti, a refusal of amnesty could have become one factor compelling the use of force to oust the military, although the resort to force was probably unavoidable irrespective of the amnesty issue. But however uncomfortable this conclusion, an amnesty in breach of international human rights principles should never be the outcome of pressure through the very organisations which are the guardians of international law, at a time when a genuine national choice is impossible.

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