

Democracy and UN Peace-Keeping – Conflict Resolution through State-Building and Democracy Promotion in Haiti

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“Constitution is paper, a bayonet is iron.”
(Haitian saying)

“You cannot have a one-year solution to a ten-year problem.”
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- I. Introduction
- II. Peace-Keeping through State-Building and Democracy Promotion
 - 1. State-Building, Democracy Promotion and Conflict Resolution
 - a. State-Building and Conflict Resolution
 - b. Democracy Promotion and Conflict Resolution
 - c. An Integrated View on State-Building and Democracy Promotion
 - 2. Foundations for the Promotion of Democracy in International Law
 - a. Searching for Evidence: A Right to Democracy?
 - b. Examining the Regional Level: The Democracy Clause of the OAS
 - c. Defining Threat to Peace: Breakdown of Democracy
- III. The Haitian Case: Peace-Keeping through State-Building and Democracy Promotion
 - 1. State and Democracy in Haiti
 - a. Historical Overview: Legacies of the Past
 - b. Development of the State and Democracy in Haiti
 - 2. Roots, Evolution and Surfacing of the Haitian Conflict
 - a. 1991: Overthrow of the First Haitian Democratic Government
 - b. 1994-2004: The Slow, but Predictable Return to Conflict
 - c. 2004: Ousting of President Aristide's Government
 - 3. On the Ground: UN Peace-Keeping Approaches in Haiti
 - a. UNMIH (1993-1996): A Narrow View on an Ample Problem
 - aa. Deployment
 - bb. Mandate
 - cc. Composition and Implementation
 - dd. Humanitarian Aid
 - ee. State-Building and Democracy Promotion
 - ff. Fulfillment of Mandate
 - b. UNSMIH, UNTMIH, and MIPONUH (1996-2000): A Drop in the Ocean
 - c. Excursion – MICIVIH (1993-2000): Searching for a Role, though Successful
 - d. MINUSTAH (since 2004): A Comprehensive Venture
 - aa. Deployment
 - bb. Mandate
 - cc. Composition and Implementation
 - dd. State-Building and Democracy Promotion
 - ee. Fulfillment of the Mandate
 - e. Lessons Learned: UNMIH and MINUSTAH in Comparative Perspective
 - aa. Deployment
 - bb. Mandate and Design
 - cc. Form
 - dd. Composition and Implementation
 - ee. State-Building
 - ff. Democracy Promotion
 - gg. Cooperation
- IV. Conclusions

I. Introduction

UN peace-keeping has been subject to major changes since the end of the Cold War. A new, more comprehensive, concept of security, “human security” has emerged. With it the international community has widened its recognition of factors which may constitute a threat to peace. According to this view, internal state conflicts and other domestic situations, – in addition to the traditional recognition of inter-state conflicts – may cause a threat to peace. For instance, civil war, major diseases, natural disasters and poverty may be considered a threat to peace.¹ The United Nations is making efforts to adapt its organization to these challenges. It recently established a Peace-building Commission which will marshal resources at the disposal of the international community to advise and propose strategies for post-conflict recovery, reconstruction, institution building and sustainable development, in countries emerging from conflict.

UN peace-keeping has been in a state of continuous reform throughout the past decade. Peace-keeping missions evolved from purely military missions to so-called “integrated” missions, which have a new make-up and objective. Thus, peace-keeping now comprises military and civilian components,² and with respect to the latter, state-building and democracy promotion increasingly became instruments to build peace.

Haiti in particular seems to be a playground for the outlined evolution of peace-keeping missions. In no other country has the UN made so many different efforts to keep peace. Throughout the 1990s five UN peace-keeping missions were deployed to Haiti. In practice the mandates of these missions gradually evolved. They were slowly adapted to the Haitian context and also influenced the evolution of a general peace-keeping design as described above. In this respect state-building and democracy promotion are two instruments, which were widely used in UN peace-keeping in Haiti because they were assumed to be adequate means to build peace. Finally, democracy played an excep-

¹ B. Fassbender, *UN Reform and Collective Security. The Report of the UN High-level Panel on Threats, Challenges and Change of December 2004 and the Recommendations of the UN Secretary-General from March 2005*, Global Issue Papers 17 April 2005, 15-16, available at: <www.boell.de/en/04_thema/3642.html>.

² For further explanation of the development of peace-keeping see under II. 1. in this article.

tional role in UN peace-keeping in Haiti because in 1994 the UN Security Council, for the first time, authorized coercive measures to restore democracy in a Member State.³ Consequently, a discussion came into being, whether a right to democracy in international law exists and could be derived from the Haitian case. By focusing on the issue of a right to democracy, one crucial aspect has been widely underexposed, i.e. the relation between democracy and the threat to peace. The latter is the necessary precondition for the authorization for the use of force by the UN Security Council. Therefore, a rupture with democracy must constitute a threat to peace, if coercive measures need to be taken in order to promote democracy.

In spite of the qualitatively and quantitatively wide-ranging efforts undertaken in Haiti, the conflict there remains unsolved and democracy is far from consolidated. That is why this article tries to trace why the effects of UN peace-keeping have been limited at best. Since democracy – in terms of its relevance for UN Security Council mandating as well as its use as a peace-building instrument – played a crucial role in the Haitian case, special attention will be drawn to it. Against this background two aspects are of major interest: first – did the rupture with democracy in Haiti constitute a threat to peace and does the Haitian case build a precedent for the emergence or indeed, existence, of a right to democracy? Second – since the restoration of democracy was the starting point of the first UN peace-keeping mission in Haiti, one must ask, whether state-building and democracy promotion were adequate means to build sustainable peace.

The article is divided into two main parts. In the first, a conceptual framework is given to examine the relation between peace-keeping, state-building and democracy promotion. Furthermore, the relevance the Haitian case has with regard to a possible right to democracy in international law will be discussed. The second part gives the empirical foundation for the examination of the evolution and outcome of UN peace-keeping in Haiti. By using state-building and democracy promotion as instruments to build peace in Haiti, the UN assumed that a functioning state, a consolidated democracy and the conflict as such were inter-related with each other. Therefore, the description of UN peace-keeping is preceded by the assessment of the Haitian state, democracy and conflict. The final part of the article will deal with a comparative evaluation of UN peace-keeping in Haiti.

³ D. Malone, *Decision-Making in the UN Security Council. The Case of Haiti, 1990-1997*, 1998, 1.

II. Peace-Keeping through State-Building and Democracy Promotion

According to Article 2 (4) of the UN Charter all members shall refrain in their international relations “from the threat or use of force against the territorial integrity or political independence of any state ...”. This principle is subject to two exceptions, namely the right to self-defense pursuant to Article 51 UN Charter and the right of the UN Security Council to impose coercive measures in order to maintain peace, according to Arts 39 and 42 of the UN Charter.⁴ Against this background UN peace-keeping was created in order to assist states to maintain peace. In doing so the UN Security Council, by respecting the principle of sovereign equality pursuant to Article 2 (1) UN Charter, avoided intervention in internal state conflicts. Hence, peace-keeping was originally designed to support the cessation of hostile inter-state conflicts. However, already throughout the conflict in the Congo in the chaotic aftermath of independence in 1960, the devastating civil war with all its consequences was classified by the Security Council as a threat to the peace. But only throughout the 1990s the UN Security Council was increasingly willing to intervene in internal conflicts of states and in complex humanitarian situations, in as much as they constituted a threat to peace.⁵

Consequently in its early days UN peace-keeping encompassed primarily military components to support the resolution of inter-state conflicts, although, support for the solution of internal conflicts, often characterized by inter-communal strife, crises of democracy, fighting marked by the struggle to control national resources and wealth,⁶ demanded a new type of peace-keeping operation. Faced with these challenges of internal conflicts, the UN started to provide technical and humanitarian assistance, civil administrative support, and support with civilian functions, in particular police functions. In short, contemporary

⁴ The “enemy clause” of Article 107 UN Charter constitutes, indeed, a further exception, but it has lost its significance over time and is not applied anymore.

⁵ J. Cockayne/ D. Malone, “United Nations Peace Operations Then and Now”, in: H. Langholtz et al. (eds), *International Peacekeeping: The Yearbook of International Peace Operations* 9 (2004), 1 et seq. (8); C.E. Philipp, “Somalia-A Very Special Case”, in: R. Wolfrum/ A. von Bogdandy, *Max Planck UNYB* 9 (2005), 518 et seq. (527).

⁶ Cockayne/ Malone, see note 5, 9.

UN peace-keeping has changed in terms of its objectives and structure. Referring to its structure, a twofold composition of missions emerged, so-called “integrated missions”⁷ which comprise military and civilian components.⁸ With regard to their objectives, peace-keeping missions now pursue a multi-disciplinary approach which also integrates peace-building. The latter covers to a lesser extent military options, but rather aims at fostering socio-economic and political structures which, in turn, are presumed to strengthen peace and to avoid a relapse into conflict.⁹ One could say that UN peace-keeping has become more “political”.¹⁰ In this context state-building and democracy promotion evolved as instruments of UN peace-keeping.¹¹ Given this evolution, it is a moot point whether these instruments are adequate means to support conflict resolution and to build sustainable peace.

1. State-Building, Democracy Promotion and Conflict Resolution

a. State-Building and Conflict Resolution

“Stateness” can be a necessary requirement for the absence or prevention of a violent conflict within a society. As defined by Max Weber, a state requires the “monopoly of the legitimate use of physical force.”¹² Additionally following Jellinek’s concept of the state, this physical force

⁷ Although this twofold composition of UN peace-keeping missions suggests a constant homogeneous structure of missions, in fact peace-keeping missions vary especially with regard to their form and mandate.

⁸ W. Kühne, “Peace Support Operations: How to Make them Succeed”, *Internationale Politik und Gesellschaft* 4 (1999), 358 et seq. (359-360). Furthermore, the development of peace-keeping missions was highly influenced by UN Secretary-General Boutros Boutros-Ghali’s reflections, outlined in *An Agenda for Peace* Doc. A/47/277-S/24111 of 17 June 1992.

⁹ A. Cutillo, *International Assistance to Countries Emerging from Conflict: A Review of Fifteen Years of Interventions and the Future of Peacebuilding*, Policy Paper of the International Peace Academy, February 2006, 1, available at: <<http://www.ipacademy.org/Publications/Publications.htm>>.

¹⁰ E.M. Cousens et al., *Peacebuilding as Politics: Cultivating Peace in Fragile Societies*, 2001.

¹¹ Though the category “post-conflict” is widely accepted, its interpretation differs from case to case.

¹² M. Weber, *Soziologische Grundbegriffe*, 1984, 91.

must be exercised in a determined territory for the protection of the people living on it. In this spirit, the core function of a state consists in guaranteeing (physical) security to its citizens. Very often, internal violent conflicts correlate with a weak state because no or very poor state capacities, e.g. police forces, are available in order to prevent violent conflicts.¹³

Additionally, a broader understanding of the “state” includes the deliverance of public goods to a state’s people (economic and social security).¹⁴ In states which are not capable of providing and distributing equitably public benefits to their people, social conflicts are more likely to arise.¹⁵ Generally it must be assumed that a lack of economic and social security might constitute a cause of conflict, while a lack of physical security complicates dealing with such conflicts.

Against this background state-building became a means of peace-building. Indeed, the outlined concepts of the “state” enjoy widespread acceptance, but they result in varying understandings of state-building.¹⁶ This must be considered further due to the concepts’ generally high relevance for political practice, i.e., peace-keeping measures.

First, the great variety of state-building concepts is caused by diverse comprehensions of state failure. The more broadly a concept of “state” is defined, the more factors must be considered when determining state failure. In consequence, how and to what extent state-building is implemented by specific states or organizations depends on the perception or, ideally, an analysis of the *status quo* on the ground by intervening actors. Therefore, state-building may cover a wide range of measures, e.g. police training or support of administrative functions.

Second, diverse intervening actors make use of different terms when alluding to state-building due to their specific historical provenance. This becomes apparent in the inconsistent use of the terms “state-building” and “nation-building”.¹⁷ They are very often compounded

¹³ S. Chesterman et al., *Making States Work. From State Failure to State-Building*, 2004, 16.

¹⁴ A. Bogdandy et al., “State-Building, Nation-Building, and Constitutional Politics in Post-Conflict Situations: Conceptual Clarifications and an Appraisal of Different Approaches”, Max Planck UNYB, see note 5, 580 et seq. (583-584).

¹⁵ Chesterman, see note 13, 2.

¹⁶ M. Ottaway, “Rebuilding State Institutions in Collapsed States”, *Development and Change* 33 (2002), 1001 et seq.

¹⁷ Bogdandy et al., see note 14, 591.

and used synonymously.¹⁸ Here, the concepts of state-building and nation-building are distinguished, referring to different objectives: “State-building refers to the organization and physical infrastructure of a state whereas nation-building means to form the human beings living in a particular territory into a population sustaining a particular state-the nation.”¹⁹

Finally, state-building’s relevance for peace building depends on the form and causes of the specific conflict. Therefore, whether a conflict can be effectively addressed by state-building measures depends on its very specific characteristics and must be decided on a case-to-case basis.

b. Democracy Promotion and Conflict Resolution

State-building *per definitionem* does not imply a specific determined form of government. By contrast democracy promotion is a strategy or instrument utilized to establish one specific type of government, which is commonly described as the “government of the people, by the people, for the people”(emphasis added).²⁰ Hence, in democratic systems sovereignty emanates from a people, generally through free and fair elections. In a substantive sense democracy also includes social justice because it is presumed that democracy (re)distributes resources and creates welfare accessible to all citizens of a state.

Democracy is presumed not to be vulnerable to internal violent conflicts. This is principally based on the assumption that democracy in terms of its procedural dimension is a form of governance to resolve societal conflicts in a peaceful manner.²¹ Therefore, democracy promotion

¹⁸ E.g. for a synonymous use see J. Dobbin et al., *The UN’s Role in Nation-Building, from the Congo to Iraq*, 2005. S. Chesterman, *You, the People: The United Nations, Transitional Administration, and State-Building*, 2005 attributes nation-building merely to post-conflict situations. In turn, F. Fukuyama, *State-building, Governance and World Order in the 21st Century*, 2004, makes an analytical distinction, but states its synonymous use in politics.

¹⁹ R. Wolfrum, “International Administration in Post-Conflict Situations by the United Nations and Other International Actors”, Max Planck UNYB, see note 5, 649 et seq. (653).

²⁰ Well-known citation of A. Lincoln, from the U.S.-American civil war in 1863. For a systematic research on democracy see exemplarily *Democracy*, 1998 and D. Held, *Models of Democracy*, 2nd edition, 1996.

²¹ M.M. Brown, “Democratic Governance: Towards a Framework for Sustainable Peace”, *Global Governance* 9 (2003), 142 et seq.

is increasingly regarded as one possible means to create and maintain peace in post-conflict situations.²²

Indeed, this assumption can be assured in the long-run because it refers to already consolidated democracies. But it must be questioned in the short-run. Democratization processes are characterized by their destabilizing effect because thereby power within the society is redistributed and new structures and institutions are created in order to organize this very power. However, "traditional" power holders or privileged groups are often not willing to pass on power and consequently oppose democratization. Additionally, the creation of new institutions also causes an unsettled environment vulnerable to crisis. Thus, stability is at stake and descent into conflict is feasible.²³ Against this background it is obvious that external actors, like the United Nations, are only successful if their democratization policies are agreed with the respective internal actors and widely accepted within a particular society.

Generally there are two ways to promote democracy. First, democracy can be promoted through positive measures. They primarily include technical assistance which can be directly addressed to the core of democratization, that is its institutions and governance (e.g. electoral assistance, support of parliaments, etc.) or which support democracy in an indirect way by strengthening its output capacity (e.g. economic policy programs or creation of basic services).²⁴ Second, democracy promotion can appear through negative measures. They are implemented through political or economic conditionality, sanctions or the use of force. Coercive measures often aim at protecting democracy, e.g. in the case of a rupture with the democratic order in a specific state.²⁵

Regarding its legal basis, democracy promotion is generally based upon a consensus of the intervening actor and intervened state, normally a bi- or multilateral agreement.²⁶ In contrast it is ambiguous if a rupture with a democratic order constitutes a threat to peace which allows the legal use of coercive means in order to promote or protect de-

²² Ch. Kumar/ S. Lodge et al., *Sustainable Peace Through Democratization: The Experiences of Haiti and Guatemala*, IPA Policy Paper, March 2002, 6.

²³ Brown, see note 21.

²⁴ Direct measures to promote democracy refer to the enforcement of democratic institutions and procedures as well as the participation of civil society. Indirect measures focus on the output of the political system.

²⁵ For a further distinction between democracy promotion and democracy protection see below.

²⁶ This also applies to state-building.

mocracy.²⁷ Finally, whether democracy promotion is an effective instrument in order to build peace, or institutions for peaceful conflict resolution in society, depends on the willingness of internal actors to (re)distribute power and reform institutions as well as governance structures. Since democratization affects enrooted institutional and governance structures, a long-term commitment of external actors is indispensable.

c. An Integrated View on State-Building and Democracy Promotion

Theoretically the existence of a functioning, sovereign state is considered to be one precondition for the establishment of democracy.²⁸ Hence, a sequence between state-building and the establishment of democracy is widely assumed. Although a minimum of state structures is required, sequencing of state-building and democratization is limited in practice due to a *de facto* concomitance of differing political, societal and economic developments in transition processes.²⁹ Given these circumstances, it is impractical to pursue a linear, narrow procedure, which would automatically lead to stable state structures in a first step and to democracy in a second step.³⁰ The simultaneity between both dimensions of transition lies in the objective, state-building, itself: a form of a state is normally (re)designed at the very beginning of the transition process. This also implies the form of governance reigning within it, often determined in the constitution-building process. Due to the interdependence between both processes, external efforts to support state-building often cannot be distinguished from democracy promotion and *vice versa*.³¹ Notwithstanding, external actors, especially the United Nations, frequently “label” their civilian measures as “state-building”, although these also include aspects of democracy promotion.

²⁷ For a discussion of this issue see under II. 2. of this article.

²⁸ J.J. Linz/ A. Stepan, *Problems of Democratic Consolidation: Southern Europe, South America, and Post-Communist Europe*, 1996, 17.

²⁹ The term “transition” is here used in a twofold way. On the one hand it refers to the process from conflict to resolution of a conflict. On the other hand in the context of democracy promotion it relates to the change of a political regime.

³⁰ T. Carothers, “The End of the Transition Paradigm”, *Journal of Democracy* 13 (2002), 5 et seq. (7).

³¹ L. Zanotti, “Taming Chaos: A Foucauldian View of UN Peacekeeping, Democracy and Normalization”, *International Peacekeeping* 13 (2006), 150 et seq. (151).

This derives from two circumstances. Indeed, democracy has been the only widely accepted form of government since the end of the Cold War.³² But it is often perceived as “the Western model” of government which should be imposed on indigenous forms of government in developing countries.³³ Therefore democracy promotion is often opposed by political elites and populations in transition countries. Further, the right to self-determination pursuant to Article 1 (2) UN Charter forbids interference in internal matters of states. Since the form of its government is at the core of the internal matters of each state, states often remain sceptical or even reluctant to democracy promotion. Nevertheless, throughout the 1990s, the commitment of the United Nations to support democracy was much strengthened.³⁴

Finally, bringing together the triangle of conflict, state, and democracy, it can be assumed that the construction of a democracy, indeed, requires a minimum of state structures.³⁵ But state-building and democracy promotion might be planned and even implemented in parallel. For instance, this becomes obvious in the case of holding democratic elections: holding elections – an activity more and more supported by peace-keeping missions³⁶ – requires a state infrastructure and a stable and secure environment on election day. Hence, administrative entities are implemented while democratic rules are developed. And, state-building and democracy promotion, indeed, may be necessary, but are not sufficient means to build internal peace. Whether they can be adequate and successful means to keep and build peace greatly depends on the specific characteristics and causes of a particular conflict. Therefore only a case-to-case analysis – here below undertaken for the case of

³² J. Pevehouse, “Democracy from the Outside-In? International Organizations and Democratization”, *International Organization* 56 (2002), 515 et seq. (515).

³³ G. Crawford, “Promoting Democracy from Without – Learning from Within”, *Democratization* 11 (2003), 77 et seq. (80).

³⁴ For an overview compare: R. Rich/ E. Newman, “Introduction: Approaching Democratization Policy”, in: E. Newman/ R. Rich (eds), *The UN Role in Promoting Democracy, between Ideals and Reality*, 2004, 3 et seq.

³⁵ P. Burnell, “Democracy Assistance: The State of the Discourse”, in: id., *Democracy Assistance, International Co-operation for Democratization*, 2000, 4 et seq. (12) and Linz/ Stepan, see note 28.

³⁶ K. Kumar, “International Assistance for Post-Conflict Elections”, in: Burnell, see note 35, 191 et seq. (191-192). The elections in July 2006 in the Congo form a good example in this respect.

Haiti – allows an evaluation of the peace-building capacity of democracy promotion and state-building.

2. Foundations for the Promotion of Democracy in International Law

In general, democracy promotion consists of technical and financial assistance which is undertaken in agreement with the respective state and thus is beyond any dispute.³⁷ In contrast, democracy promotion that uses coercive measures such as military intervention causes and has caused arguments.³⁸

Democracy – as a form of government – is assigned to be an essential internal matter of a state. Therefore democracy promotion which uses coercive means by the United Nations is assumed to be critical due to its interceding nature into the internal matters of a state. Generally, military interventions must be legalized through a mandate of the UN Security Council, which is only granted if a threat to peace predominates.

In this context, Haiti sometimes was interpreted as a precedent for a universal right for “democratic interventions”,³⁹ that is military interventions mandated to promote democracy. In 1994 the UN Security Council in its Resolution 940 legalized the military, US-led intervention into Haiti in order to restore democracy in that country.⁴⁰ It resulted in the partly successful attempt to restore the first democratically elected Government of Jean-Bertrand Aristide after its military overthrow in 1991.

Resolution 940 was one of the factors which generated a wide-ranging debate throughout the 1990s as to whether a right to democ-

³⁷ T.M. Franck, “The Democratic Entitlement”, *University of Richmond Law Review* 29 (1994-1995), 1 et seq. (34).

³⁸ Although coercive measures pursuant to Chapter VII UN Charter vary, e.g. economic sanctions, use of force, in this section reference is only made to military measures due to their significance in the case of Haiti. Other coercive measures which are widely used and were also applied in Haiti will be addressed below.

³⁹ R. Falk, “The Haiti Intervention: A Dangerous World Order Precedent for the United Nations”, *Harv. Int.l L. J.* 36 (1995), 341 et seq. (345).

⁴⁰ S/RES/940 (1994) of 31 July 1994.

racy is emerging and thus constitutes a principle of international law.⁴¹ By focusing on this material aspect of international law, scholars focused the mandate of Resolution 940 and asked whether supporting democracy can be a legal and legitimate part of a UN Security Council mandate. In doing so they neglected to ask if, and if yes, under which conditions the lack of democracy constitutes a threat to peace and is therefore a sufficient reason to intervene into a states' domestic affairs pursuant to Chapter VII of the UN Charter.

Evidence shall be given as to whether a right to democracy is emerging in international law or does already exist. Second, a closer look into the international legal frameworks in the Americas especially of the OAS, shall give further insight on the specific Haitian case. Third, UN Security Council Resolution 940 will be examined with regard to the causes and content of the threat to peace emerging from the Haitian case.

a. Searching for Evidence: A Right to Democracy?

In 1992 Thomas Franck opened the scientific discussion on 'democratic entitlement', arguing that an individual right to democracy is emerging in international law.⁴² Since then a wide-ranging debate has been unfold on this subject in academia and politics. Therewith five aspects have been continuously stressed:

(1) *Democracy and Self-determination*. As Franck puts it, self-determination is the 'grandfather' of democracy.⁴³ During the 1960s, the UN translated self-determination pursuant to Article 1 (2) UN Charter into a synonym of de-colonization. Therefrom self-determination aims at the sovereignty of a state *vis-à-vis* other states, that is at "external" sovereignty. In turn, sovereignty *vis-à-vis* other states is nurtured by "internal" self-determination which is the right of a people to determine independently its political and social future. Nevertheless, the practice of the United Nations during the period of de-colonization indicates that the organization was already involved in the political affairs of the

⁴¹ Literature see below in section a. of this Chapter.

⁴² T.M. Franck, "The Emerging Right to Democratic Governance", *AJIL* 86 (1992), 46 et seq.

⁴³ Franck, see note 37, 34.

newly emerged Member States.⁴⁴ Against this background many scholars deduce a legal norm from Article 1 (2) UN Charter which could legitimize democracy promotion through coercive measures or, even further, a right to democracy.⁴⁵ The former is based on the assumption that a people living under a non-democratic rule which expresses its independent and free will to democracy can be legally supported by intervening actors in order to establish a democratic order within the affected state. The latter goes further and assumes that an individual right to democracy can be granted on the basis of Article 1 (2) UN Charter.⁴⁶

Whereas self-determination was interpreted as a legal basis of coercive “democratic interventions” in order to support a people, it can be as well interpreted in the exact opposite way. Therefore it also “... includes the right of a people to freely and without external interference decide upon its political future and the economic system it will implement.”⁴⁷ In addition referring to the practical side of the issue, no criteria exist which suggest that a people’s demand for democracy would legalize a coercive intervention. Taking also into account the principle of non-intervention pursuant to Article 2 (7) UN Charter and that the form of government, in this case democracy, constitutes a core component of internal state matters, no universal right to democracy for a people can be assumed yet.

(2) *Democracy as a Human Right*. Assumptions concerning an individual right to democracy are based on articles 1 and 25 of the International Covenant on Civil and Political Rights (ICCPR) and on Article 1 (2) UN Charter. Article 1 of the ICCPR states that “all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” Following a systematic interpretation, defenders of the human rights-approach to democracy argue that the word “freely” indicates the reference to an individual right of self-determination due to the emphasis on individual rights of freedom granted in the

⁴⁴ T. Farer, “The Promotion of Democracy: International Law and Norms”, in: E. Newman/ R. Rich (eds), *The UN Role in Promoting Democracy, between Ideals and Reality*, 2004, 32 et seq. (33).

⁴⁵ See note 42, as well as J. Wouters et al., “Democracy and International Law”, *NYIL* 34 (2003), 137 et seq. (154-156) and J. Crawford, “Democracy and the Body of International Law”, in: G.H. Fox/ B.R. Roth (eds), *Democratic Governance and International Law*, 2000, 91 et seq. (101).

⁴⁶ Franck, see note 37, 9. On this particular aspect see the next paragraph.

⁴⁷ Wolfrum, see note 19, 679.

ICCPR.⁴⁸ In addition article 25 of the ICCPR, directly referring to individuals, highlights political rights, which are interlinked with democracy: every citizen has the right “(a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.”

Although participation and free elections are core elements of democracy no universal, individual right to democracy can be deduced from the text of the ICCPR due to its insufficient definition of elections. Article 25 of the ICCPR does not include the aspect of “competition” which is fundamental to a democratic order. This is also backed by a historic perspective: adopted in 1966 and entered into force in 1976 the ICCPR was supported and ratified by states, e.g. the USSR, which indeed held elections at this time, but on an affirmatory rather than competitive basis. It is very probable that these states would not have ratified a treaty obliging them to competitive elections. Nevertheless it must be considered that state practice has probably changed since then, especially since the end of the Cold War, and this suggests a rather pro-democratic electoral practice.

Although, no universal right to democracy can be traced in international law an increasing political-practical commitment to democracy of the international community of states can be stated. The latter gives rise to the assumption that the evolution of an international right to democracy cannot be excluded. In addition recent evolutions in terms of democratic norms on the regional level back this assumption.

(3) *Democracy in Regional Organizations.*⁴⁹ In the Western world democracy was broadly included into Western international law. Mainly it was introduced as a condition for membership in regional organizations such as the North-Atlantic Treaty Organization (NATO),⁵⁰ the Council of Europe,⁵¹ the European Union (EU),⁵² and the Organization of American States (OAS).⁵³ Emanating from these provisions,

⁴⁸ Franck, see note 37, 12-15.

⁴⁹ This issue will be further elaborated by examining the OAS in the following section of this article.

⁵⁰ Article 2 of the North Atlantic Treaty of 4 April 1949.

⁵¹ Article 3 of the Treaty on the Establishment of the Council of Europe of 5 May 1949.

⁵² Article 6 (1) of the Treaty of Amsterdam of 2 October 1997.

⁵³ Article 2 of the Charter of the OAS of 30 April 1948.

policies of democracy promotion were evolved and implemented in Member States. The European Union's Cotonou Agreement of 2000 and the former Agreements of Lomé I-IV (1975-2000) with African, Caribbean and Pacific States (ACP states) also comprises democracy as one condition for development aid *vis-à-vis* third states.⁵⁴ As will be shown below the legal provisions of the OAS go even further by providing a right to democracy on the regional level.

Although these regional, mostly legally binding, commitments to democracy give further evidence of an emerging norm of democracy in international law, no universal validity can be claimed. Since democracy has its historic roots in the "Western world" it is widely perceived as a typical Western model of government, especially in developing, Arabian and Asian countries. No evidence can be given that a universal right to democracy already exists in international law. But there are further indications that the international community of states is increasing its political commitment to democracy, which, in turn, might foster the formation of a right to democracy in international law.

(4) *Democracy and the Practice of International Assistance in Elections*.⁵⁵ Since the end of the Cold War in 1989 the United Nations has played a crucial role in providing technical assistance and monitoring electoral processes.⁵⁶ Although electoral assistance became one of the core functions of the United Nations in the field of political assistance, up to the present no universal standards have been adopted in order to provide a common understanding of democratic elections. Indeed, in 1992 the General Assembly adopted a resolution on guidelines for electoral observation.⁵⁷ Instead of comprehending common guidelines, it states only that electoral assistance would be offered on a "case-by-case" basis. Apart from some other single documents,⁵⁸ no further ad-

⁵⁴ Article 9 of the Cotonou Agreement of 23 June 2000.

⁵⁵ The term electoral assistance is here used in a broad sense, comprising assistance of the organization and conduct, verification, coordination, technical assistance, follow-up and report as well as training of national observers.

⁵⁶ C.C. Joyner, "The United Nations and Democracy", *Global Governance* 5 (1999), 333 et seq. (342-349).

⁵⁷ A/RES/47/138 of 18 December 1992.

⁵⁸ See Code of Good Practice in Electoral Matters, Venice Commission in July 2002 or International Institute for Democracy and Electoral Assistance (IDEA), International Electoral Standards, Guidelines for Reviewing the Legal Framework of Elections, 2004.

vances have been made in this respect. But a closer look at the practice of the United Nations as well as that of the regional organizations shows that generally one specific type of election is supported: this is the support of free and fair elections which are based on competition between political parties – that is to say democratic elections.⁵⁹

In conclusion, continuous electoral assistance has been widely accepted and constantly made use of by Member States of the United Nations. Thus it can be assumed that its continuous practice reflects a growing acceptance of democratic principles in the community of states. This assumption is strengthened by the fact that electoral assistance is always based on an invitation by the affected state. That is to say that Member States act positively in order to receive *and* provide electoral assistance.⁶⁰ Thus, evidence of a rising commitment to democracy within the international community of states can be given.

(5) *Democracy on the Political Agenda*. In addition to the assessment made for electoral assistance, democracy became an increasingly important topic on the international political agenda. For instance, in June 1988 a series of International Conferences of New and Restored Democracies started in Manila.⁶¹ The conferences encouraged states, international organizations and civil society representatives to attempt to concentrate democratic values and elaborate common strategies to promote democracy.⁶² This intergovernmental process which enjoys strong support from the United Nations led to the adoption of various General Assembly resolutions referring to democracy which *inter alia* asked the Secretary-General to report on the actions taken by the United Nations to promote democracy.⁶³ One outcome was, amongst others, the Agenda for Democratization of Secretary-General Boutros Boutros-Ghali. On the one hand he defines democracy promotion as a

⁵⁹ R. Ludwig, “The UN’s Electoral Assistance: Challenges, Accomplishments, Prospects”, in: E. Newman/ R. Rich (eds), *The UN Role in Promoting Democracy, between Ideals and Reality*, 2004, 169 et seq. (177-179).

⁶⁰ For an overview of state practice in order to assist national elections see Joyner, see note 56, 344, Table 1. Joyner also provides the legal sources reflecting the *opinio iuris* of UN Member States.

⁶¹ Further conferences were held in Manila (1988), Managua (1994), Bucharest (1997), Cotonou (2000) and Ulaanbaatar (2003 and a follow-up conference in 2006). The next one will be in Qatar, November 2006.

⁶² Joyner, see note 56, 335.

⁶³ A/RES/49/30 of 7 December 1994; A/RES/50/133 of 20 December 1995; A/RES/51/31 of 6 December 1996; and A/RES/52/18 of 21 November 1997.

core task of the organization in order to maintain world peace. On the other hand he argues that “It is not for the United Nations to offer a model of democratization or democracy or to promote democracy in a specific case ... [because there is] ... no one model of democratization or democracy suitable for all societies ...”.⁶⁴ Since then UN Member States increasingly backed the importance of democracy as a precondition for peace and development. In their Millennium Declaration of 2000 they agreed to implement the principles and practices of democracy.⁶⁵ Finally, they confirmed this primarily rhetorical affirmation by creating the United Nations Democracy Fund in July 2005.⁶⁶

To conclude, throughout the 1990s the international community of states clearly increased its commitment to democracy on a political-rhetorical level and affirmed the importance of democracy for peace and development. Although this evolution could contribute step-by-step to the formation of an international norm of democracy, the final step in this direction has not yet been taken.

To sum up, there does not exist a universal, legally binding right to democracy in international law which can generally legitimize military interventions to establish or defend democracy within a state. But taking into account the above described evolutions with regard to democracy in international law on the one hand and the practice of the UN Security Council in the past on the other, it could be stated that a legal intervention in order to promote democracy might be possible in some cases. For a close and comprehensive understanding of the Haitian “democratic intervention” it will be necessary to examine the regional context in which it took place.

⁶⁴ *Support by the United Nations System of the Efforts of Governments to Promote and Consolidate New or Restored Democracies*, Report of the Secretary-General, Doc. A/52/513 of 21 October 1997.

⁶⁵ United Nations Millennium Declaration, A/RES/55/2 of 8 September 2000.

⁶⁶ See paras 135-137, World Summit Outcome, A/RES/60/1 of 16 September 2005. The Fund will provide assistance to governmental, non-governmental, national, regional, and international organizations, including relevant UN departments, offices, funds, programmes and agencies. The Fund will complement current UN efforts to strengthen and expand democracy worldwide.

b. Examining the Regional Level: The Democracy Clause of the OAS

Throughout the 1990s the OAS evolved a strong commitment to protect and promote democracy in the Western hemisphere. In contrast to the UN's lack of binding legal provisions for democracy promotion, the OAS provides such binding legal foundations.⁶⁷

From its very beginning "democracy" was introduced into the organizations' framework. Indeed the founding Charter of the OAS, adopted in 1948, refers to representative democracy as "an indispensable condition for the stability, peace and development of the region."⁶⁸ However, this provision did not promote a corresponding OAS policy during the Cold War due to the bi-polarization of world politics. Only in the middle of the 1980s – i.e. in midst of the Latin American opening to democratization – did Member States undertake a profound change of OAS policies.⁶⁹

The starting point of the organization's reform goes back to the second amendment of its Charter in 1985 (Protocol of Cartagena de Indias). With it, democracy became a central pillar of the OAS' general mandate, especially through the modification of article 2 of the OAS Charter. It now proclaimed the promotion and consolidation of democracy as one of the organization's "essential purposes". On this general ground additional provisions to protect or promote democracy were made throughout the 1990s.

In 1991 the General Assembly of the OAS adopted "Resolution 1080" in Santiago de Chile. It was first applied in the case of Haiti. "Resolution 1080" calls upon the Secretary General of the OAS to immediately convene a meeting of the Permanent Council when facing the "sudden or irregular interruption of the democratic political institutional process or of the legitimate exercise of power by the democratically elected government in any of the Organization's member states, in

⁶⁷ For an analysis of the background of the Charter see J. Graham, *A Magna Charta for the Americas, the Inter-American Democratic Charter: Genesis, Challenges and Canadian connections*, 2002, Policy paper of FOCAL, 3, available at: <http://www.focal.ca/pdf/iad_charter.pdf>.

⁶⁸ Preamble, OAS Charter. In accordance with article 145 of the Charter it entered into force on 13 December 1951. Further references to democracy are made in arts 2b), 3d), 3f), 9a), 9d) 31, 45f), 47 and 95c) of the OAS Charter.

⁶⁹ C. Gaviria, "The Future of the Hemisphere", *Journal of Inter-American Studies and World Affairs* 39 (1997), 5 et seq. (7).

order, ... , to examine the situation, decide on and convene an ad hoc meeting of the Ministers of Foreign Affairs, or a special session of the General Assembly, all of which must take place within a ten-day period.” The ad hoc meeting of Ministers of Foreign Affairs or the special session of the General Assembly “shall ... look into the events collectively and adopt any decisions deemed appropriate, in accordance with the Charter and international law.”⁷⁰

In 1992 the Protocol of Washington introduced the suspension of a Member State subject to the overthrow of its democratically elected government.⁷¹ Furthermore, a wide range of instruments to promote democracy through positive measures such as e.g. electoral assistance, support of political parties, political dialogue or the enforcement of the legislative branch were implemented. Institutionally this is reflected in the creation of a Department for the Promotion of Democracy within the OAS Secretariat in 1990, which is currently restructured and is now part of the new Department of Political Affairs. In 2001 these and other instruments to defend and promote democracy were joined together in the IADC (Inter-American Democratic Charter),⁷² adopted unanimously at the General Assembly’s special session in Lima on 11 September 2001.⁷³

In conceptual terms the IADC for the first time enhances negative (defense of democracy) and positive (promotion of democracy) meas-

⁷⁰ Doc. OAS AG/RES. 1080 (XXI-O/91), paras 1 and 2.

⁷¹ Doc. OAS AG/ACT/3 (XVI-E/92) referring to the modification of article 9 of the Charter of the OAS. The Protocol of Washington was agreed on 14 December 1992 and entered into force in 1997.

⁷² For instance, “Resolution 1080” was thereby strengthened. In face of coup d’états which lead to the overthrow of democratic elected governments it refers to a “... sudden or irregular interruption of the democratic political institutional process or of the legitimate exercise of power by the democratically elected government.” In turn, article 19 of the IADC extends the elements defining the breach of democratic order as “... an unconstitutional interruption of the democratic order or an unconstitutional alteration of the constitutional regime that seriously impairs the democratic order in a member state.”

⁷³ All 34 Heads of State and Government signed the Charter. For an analysis of the decision-making process which led to its adoption see note 67 as well as A.F. Cooper/ T. Legler, “A Tale of Two Mesas: The OAS Defense of Democracy in Peru and Venezuela”, *Global Governance* 11 (2005), 425 et seq. (425).

ures to protect and support democracy in the Western hemisphere.⁷⁴ Its most important advancement can be seen in article 1 which contains a right to democracy of the peoples of the Americas on the one hand and which urges governments to promote and defend democracy on the other.⁷⁵ Thereby it establishes the first international norm – outside of Western Europe – referring to a “reciprocal contract of peoples with governments.”⁷⁶ It must further be highlighted that – contrary to the vague concept of democracy of the United Nations – OAS Member States correspond to a particular model of democracy when they refer to democracy, namely to representative democracy.⁷⁷

Since the legally binding OAS Charter always contained references to democracy,⁷⁸ the IADC is to be treated as a commitment to interpret the outreach of the provisions given in the OAS Charter. Moreover this is affirmed by article 1 of the IADC which states “Democracy is essential for the social, political, and economic development of the peoples of the Americas”. This is in line with the Preamble of the OAS Charter: “... Representative democracy is an indispensable condition for the stability, peace, and development of the region.” With regard to their state practice OAS Member States have been acting continuously to protect and promote democracy throughout the 1990s. They repeatedly applied Resolution 1080 as well as the IADC in several cases of a democratic

⁷⁴ Up to the adoption of the Democratic Charter, reactive instruments in order to protect democracy of Member States, once overthrown, prevailed in the OAS; Ch. Hartmann, “Demokratie als Leitbild der afrikanischen Staatengemeinschaft? Zur Theorie und Praxis demokratischer Schutzklauseln in der Afrikanischen Union”, *VRÜ* 38 (2005), 201 et seq. (205), differs between two functions of democracy clauses in regional arrangements. Firstly, the protection of democracy as in the case of the OAS and EU. Secondly, the assessment of the democratic quality of Member States, e.g. the African Union.

⁷⁵ In the words of article 1 of the IADC: “The peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it. Democracy is essential for the social, political, and economic development of the peoples of the Americas.”

⁷⁶ Gavéria, see note 69.

⁷⁷ See e.g. Preamble, arts 2b), 3d), 3f), 9a), 9d) of the OAS Charter. Only Venezuela opposes this definition and insists that the term “participatory democracy” should be included in the organization’s framework.

⁷⁸ Since even the Preamble of the Charter of the OAS refers to democracy. It was successively completed by various amendments of the Charter in 1985, 1992 and 1995. For a more detailed description see above.

breakdown in Member States.⁷⁹ Member States also act with *opinio iuris* in terms of their strong and repeated commitment to defend democracy in the Americas.⁸⁰

In addition, the achievement made by the adoption of the IADC must not be underestimated due to the traditionally crucial handling of the principle of non-interventionism into a member's domestic affairs – determined by past European and U.S.-American interventionism in the Americas.⁸¹ Against this background the strong commitment to defend democracy, especially through negative measures as envisioned in the IADC – has been lowering the threshold for multilateral action towards Member States.⁸²

Notwithstanding, a military defense of democracy by the OAS on the territory of an American state is foreseen neither in its Charter nor in the IADC.⁸³ In general, regional organizations are expected to be

⁷⁹ Resolution 1080 was applied in the cases of Haiti (1991), Peru (1992), Guatemala (1993), and Paraguay (1996). The IADC in the cases of Haiti (2001), Venezuela (2002), Bolivia (2003), Haiti (2004), Bolivia (2005) and Nicaragua (2005).

⁸⁰ E.g. OAS, *Carta Democrática Interamericana. Documentos e interpretaciones*, 2003, edited by H. Calle, available at: <www.oas.org/OASpage/esp/Publicaciones/CartaDemocratica_spa.pdf>. The evolution of an *opinio iuris* is affirmed by E. Lagos/ T.D. Rudy, “The Third Summit of the Americas and the Thirty-first Sessions of the OAS General Assembly”, *AJIL* 96 (2002), 173 et seq. (180).

⁸¹ See article 19 OAS Charter in this respect, and H. Caminos, “La OEA: Pasado, Presente y Futuro”, in: L. Perret/ A. Reus-Bazán (eds), *La Organización de los Estados Americanos en el Centenario del Sistema Interamericano*, 1990, 16 et seq. (20).

⁸² Ch. Fulda, *Demokratie und pacta sunt servanda*, 2002, 31. Furthermore Lagos/ Rudy, see note 80, 177 summarize the discussion whether the provisions of the IADC require an amendment of article 23 of the OAS Charter. The latter impairs the principle of non-intervention which is no bar to measures taken “for the maintenance of peace and security in accordance with existing treaties”. A systematic interpretation alludes to the definition of democracy which is seen as precondition for peace in the Western Hemisphere. In turn, democracy promotion is one measure to maintain peace. Therefore an amendment of article 23 of the OAS Charter can be considered as obsolete.

⁸³ Referring to its organizational nature the OAS – founded in 1948, was the first regional organization established in terms of Chapter VIII of the UN Charter. For a comprehensive analysis of the definition of regional organizations under Chapter VIII UN Charter see Ch. Walter, *Vereinte Nationen*

predestined to resolve a conflict or dispute within the region due to their proximity to regional problems and their legitimacy for its resolution.⁸⁴ Both the OAS as well as the United Nations were founded with the purpose of maintaining peace. Although Chapter V of the OAS Charter requests the Member States to resolve conflicts and disputes within the OAS, this does not impair any competences of UN organs.⁸⁵ ⁸⁶ Once military measures are to be taken they must be legalized by the UN Security Council.⁸⁷ Finally the OAS perceives democracy, in concordance with the United Nations' understanding, as one precondition for peace and development in the Western hemisphere.⁸⁸

c. Defining Threat to Peace: Breakdown of Democracy

The multinational military intervention "Uphold Democracy" into Haiti on 19 September 1994 as well as the following UN peace-keeping mission were authorized by Security Council Resolution 940 in order to support the "[...] restoration of democracy in Haiti and the prompt return of the legitimately elected President, Jean-Bertrand Aristide."⁸⁹

Thereby the Security Council mandated coercive measures in order to promote democracy for the first time in history.⁹⁰ This provoked an extensive debate. Pursuant to Article 39 of the UN Charter, the only reason for the use of force against a state consists in a threat to peace.

und Regionalorganisationen. Eine Untersuchung zu Kapitel VIII der Satzung der Vereinten Nationen, 1996, 27 et seq.

⁸⁴ R. Wolfrum, "Der Beitrag regionaler Abmachungen zur Friedenssicherung", *ZaöRV* 53 (1993), 576 et seq. (578).

⁸⁵ Walter, see note 83, 149.

⁸⁶ According to Article 54 UN Charter the Security Council must be informed of all measures taken to maintain international peace by regional organizations. For a detailed analysis see A. Frowein, "Zwangsmaßnahmen von Regionalorganisationen", in: U. Beyerlin et al. (eds), *Recht zwischen Umbruch und Bewahrung*, 1995, 57 et seq. (66-67).

⁸⁷ OAS' sanctions against the Dominican Republic in 1960 build an exception.

⁸⁸ E. Spehar, "The Role of the Organization of American States in Conflict Prevention", *International Journal on Minority and Group Rights* 61 (2001), 61 et seq. (64-65) and for the relation between democracy and development see the Declaration of Managua of 10 June 1993, OAS Doc. AG/DEC/ 4 (XXIII-O/93 as well as the Preamble of the OAS Charter.

⁸⁹ See note 40, Preamble.

⁹⁰ Falk, see note 39, 344.

Against this background it is questionable if the rupture with the democratic order in Haiti (see below for details) constituted a threat to peace.

In its Resolution 940 the UN Security Council recognized that it remained the goal of the international community to restore democracy in Haiti and assist the prompt return of the legitimately elected President. It confirmed its readiness “to consider the imposition of additional measures if the military authorities in Haiti continued to impede the activities of the United Nations Mission in Haiti (UNMIH) or failed to comply in full with its relevant resolutions and the provisions of the Governors Island Agreement.”⁹¹

The Security Council in Resolution 940 referred explicitly to a regionally destabilizing factor of the Haitian situation. In its preamble it expresses its concern not only with regard to the “humanitarian situation” and the expulsion of the UN’s civilian mission MICIVIH, but also to the “desperate plight of Haitian refugees”,⁹² constituting a destabilizing factor within the Americas. Neighboring countries, especially the United States and the Dominican Republic, refused to recognize the Haitian refugees as “political” refugees. Instead, they referred to them as “economic” refugees.⁹³ Consequently, it can be assumed that the flow of refugees constituted a destabilizing factor with regard to regional peace.⁹⁴

It is interesting to note that Resolution 940 was highly influenced by regional policies. This implies that no such resolution would have been possible in an international environment where democracy was not accepted as the only valid system of government as it was in the case of the Inter-American System.⁹⁵ Besides, American states understand democracy as one precondition for peace in the region (cf. Preamble of the OAS Charter).

Finally, Haiti was classified as a “unique” case requiring “exceptional response.”⁹⁶ This alludes that the Security Council intended to

⁹¹ See note 40, Preamble.

⁹² See note 40, Preamble.

⁹³ L. Peral, *Acción del Consejo de Seguridad en Haití: Fortalecimiento de la Democracia y Contención del flujo de Refugiados*, 2004, Working Paper of FRIDE, available at: <www.fride.org/Publications/ListPublications.aspx>, 2.

⁹⁴ Falk, see note 39, 356.

⁹⁵ Farer, see note 44, 51.

⁹⁶ See note 40, para. 2.

prevent any attempts to generalize the Haitian case in order to establish a right to “democratic intervention.”⁹⁷ But this Security Council practice cannot be welcomed because it undermines the evolution of universal international law and as the analysis of further military interventions into Haiti will show, the Security Council adapted its decision-making to a more universal approach. However, taking into account the specific circumstances of the intervention as well as general provisions of international law, it cannot be presumed that it constituted a precedent of an universal right to democracy, legalizing coercive measures in order to promote or protect democracy.

To sum up, the military intervention into Haiti in 1994 can be considered legal and legitimate. However, taking into account the specific circumstances of the intervention as well as general provisions of international law, it must not be presumed that it constitutes a precedent for a universal right to democracy which could later build a criterion for the legalization of coercive measures in order to promote or protect democracy.

III. The Haitian Case: Peace-Keeping through State-Building and Democracy Promotion

1. State and Democracy in Haiti

a. Historical Overview: Legacies of the Past

Political and economic instability, authoritarian leadership, as well as a culture of violence in order to resolve social conflicts dominates Haiti. Haitian society is marked by a bi-polar political, social and economic structure, which divides state and nation. Political power has been occupied by the mulatto elite, which also controls the economic resources. Power is furthermore concentrated in the urban regions, especially in the capital Port-au-Prince. The political and economic elite is French speaking, well-educated and pursues a *politique du ventre*, that is the use of political power based on self-interest instead of welfare orientation. The majority of the Haitians belong to the marginalized, peas-

⁹⁷ M. Bothe, “Friedenssicherung und Kriegsrecht”, in: W. Graf Vitzthum et al. (eds), *Völkerrecht*, 2004, 608, para. 24.

antry, which has always guaranteed the revenue of the Haitian state.⁹⁸ Living in the rural hinterland, the peasantry has neither access to political power and economic resources nor to education. It consists of blacks who speak Creole rather than the official language, French.⁹⁹ Furthermore, since the end of the “Golden Age” in the 19th century, Haitian economy has been characterized by constant underdevelopment, giving Haiti its name of “the poorhouse of the Americas.”¹⁰⁰

Once the Spanish (1492-1697) and French (1697-1804) colonial rule were ended by a slavery revolution in 1804,¹⁰¹ Haitian politics have been marked by brutal and repeated changes of mainly military leadership.¹⁰² One century of chaos and tragedy prelude the authoritarian rule exercised by the 19 years U.S. occupation of Haiti (1915-1934).¹⁰³ After the occupation Haiti again was under the rule of military leaders, marked by erratic regime changes. This ended when François Duvalier came to power in 1957. He established an authoritarian system, based on personalized, centralized power and the systematic repression of the population, mainly by the so-called *Tonton Macoutes*, his paramilitary, presidential guard. Through a constitutional amendment, which determined a familial succession, Duvalier was followed by his son Jean-Claude Duvalier, also known as *Baby Doc*, in 1979. He continued the authoritarian rule of his father, although economically he was less successful. In 1985 popular protests and claims by the economic and political elite arose against the regime and finally led to the escape of Duvalier in February 1987.¹⁰⁴

⁹⁸ M.R. Trouillot, *Haiti. State Against Nation. The Origins and Legacy of Duvalierism*, 1990, 83.

⁹⁹ The peasantry comprises 90 per cent of the Haitians in total, thereof 60 per cent live in the rural areas. The remaining 10 per cent refer to the mulatto, mainly urban elite. See S. Mintz, “Can Haiti Change?”, *Foreign Aff.* 74 (1995), 73 et seq. (82-83).

¹⁰⁰ Haiti is the poorest country in the Western Hemisphere. Compare M. Gélin-Adams/ D. Malone, “Haiti: A Case of Endemic Weakness”, in: R. Rotberg (ed.), *State Failure and State Weakness in a Time of Terror*, 2003, 287 et seq. (298).

¹⁰¹ Haiti was the first nation in claiming and achieving independence in the Western Hemisphere.

¹⁰² Mintz, see note 99, 87.

¹⁰³ B. Weinstein/ A. Segal, *Haiti. Political Failures, Cultural Successes*, 1984, 17.

¹⁰⁴ *Ibid.*, 47-49.

After Duvalier's downfall a military junta was to lead the transition process until the implementation of democratic elections, scheduled for November 1987. In consequence, popular expectations were raised that elections would set an end to authoritarian rule. But they ceased very early when the elections in 1987 were brutally ruptured by the military.¹⁰⁵ Paralyzed by coups and countercoups, the country was polarized between Duvalier's supporters and his opponents. In 1990, military leader Prosper Avril, was finally forced to resign by popular demand and U.S.-American pressure.¹⁰⁶ Finally the first free and fair elections in Haitian history took place in November 1990, under intense observation of the international community, especially the UN.¹⁰⁷

b. Development of the State and Democracy in Haiti

After the departure of the Duvaliers and the holding of democratic elections in 1990, Haitians awaited a severance from their authoritarian past, which had meant the preclusion of welfare and political life for most of Haitians. But so far, in 2006, little has changed.

State structures remain underdeveloped and, consequentially, the historical cleavage between state and nation persists. The Haitian state is failing because its ability to provide physical and human security to its nation is very limited.¹⁰⁸ Physical security cannot be granted due to the lack of an adequate number of trained police forces throughout the country. Conversely where police are present, they very often create violence and fear instead of security.¹⁰⁹ Certain areas of the country are left to self-justice or have been controlled by private armed groups, often sustained by the local population.¹¹⁰ Due to the absence of an effective justice system, including a court system and functioning prisons,

¹⁰⁵ E. Mobbekk, "Enforcement of Democracy in Haiti", *Democratization* 8 (2001), 173 et seq. (79-80).

¹⁰⁶ R. Fatton, *Haiti's Predatory Republic. The Unending Transition to Democracy*, 2002, 69.

¹⁰⁷ Elections were observed by the United Nations Observer Group for the Verification of the Elections in Haiti (ONUVEH). Compare Gélina-Adams/ Malone, see note 100, 296.

¹⁰⁸ *Ibid.*, 299-300.

¹⁰⁹ J. Mendelsson-Forman, "Security Reform in Haiti", *International Peacekeeping* 13 (2006), 14 et seq. (24).

¹¹⁰ International Crisis Group, *A New Chance for Haiti?* ICG Latin America/Caribbean Report No. 10 of 18 November 2004, International Crisis Group, 14-18.

rule of law is scarcely apparent in the Caribbean country. The Constitution, which was adopted in 1987, is not yet fully implemented and this hinders the establishment of state institutions. In turn, bureaucracy is inflated by 45,000 public servants who are badly or even not paid at all. Hence, corruption has been pervading public service as well as the police, who are also linked to the increasing drug trafficking activities in Haiti.¹¹¹

Human Security requires the allocation of public benefits. But the Haitian state is marked by underdeveloped infrastructures: it lacks a functioning telecommunication, electricity and road system. For instance, parts of the country cannot be reached due to the absence of roads.¹¹² Further public benefits, such as a health and a social system are not available. Correspondingly Haiti's socio-economic performance is weak: since the 1980s the economy has shown a negative growth rate¹¹³ and the majority of Haitians live in poverty.¹¹⁴

Against this background democracy was expected to give rise to profound changes in Haitian politics at the beginning of the 1990s. Since then, Haiti has met many challenges, again moving between authoritarian rule and democratic order.

Elections have played a crucial role in Haiti since 1990. Although first the population accepted elections to legitimize power in Haitian politics, their adoption was restricted by the political elite, especially the military. In this respect they were also subject to internal conflict, mostly amongst the political elite. Later, when fraudulent elections had taken place, this acceptance also declined amongst the Haitian population. This is reflected in Haitian electoral history as follows: first, with

¹¹¹ Fatton, see note 106, 109.

¹¹² International Crisis Group, *Haiti after the Elections: Challenges for Préval's First 100 Days*, ICG Latin America/Caribbean Briefing No. 10 of 11 May 2006, 10-11.

¹¹³ UN/ World Bank et al., *Republic of Haiti, Interim International Cooperation Framework, 2004-2006*, para. 21, available at: <<http://haiticci.undg.org>>. Furthermore, in terms of the economic development, foreign aid and investments rather contributed to worsen than to improve the situation due to their massive investments, which very often were followed by sudden withdrawal.

¹¹⁴ It is estimated that 75 per cent of the Haitian people live in poverty, thereof 55 per cent with less than one dollar per day. The UN's Human Development Index of 2005 ranks Haiti on place 153 (of 177 countries). See UNDP, *Human Development Report 2005*, 221, available at: <<http://hdr.undp.org>>.

the elections in 1990 formally began the democratic rule, which was soon put to an end by a military coup against Aristide in 1991.¹¹⁵ Shortly after Aristides' return from exile Presidential elections were held in 1995. These elections were subject to conflict because many supporters of Aristide demanded the extension of the Presidents' mandate because he had not fulfilled his Presidency during his three-years in exile. Through international and oppositional pressure, Aristide acted according to the Haitian Constitution and stepped down.¹¹⁶ His former Prime Minister, ally and also member of his party *Fanmi Lavalas*, René Préval was then elected President.¹¹⁷ In contrast to the free and fair, although in organizational terms deficient, Presidential elections of 1995,¹¹⁸ the following Presidential elections in 2000 were fraudulent.¹¹⁹ Aristide and his party *Fanmi Lavalas* declared a majority, although many political parties had refused to participate in the elections and vote counting was manipulated in order to avoid a second round of the elections. Nevertheless, the Provisional Electoral Council (Conseil Electoral Provisoire, CEP), supported by President Préval, confirmed the victory of President Aristide. In consequence, Aristide governed on a weak legitimate basis, which *inter alia* led to a new outbreak of the Haitian conflict by 2001.¹²⁰

Thus, Haiti has experienced repeated elections, the latest took place in February 2006. With it the results of national elections in Haiti are for the first time widely accepted within the population and political elite. Altogether they were strongly supported by the international community. Nevertheless, the country lacks the administrative institutions and knowledge to organize regular elections. For instance, the CEP has remained provisional since 1990. This constitutes one example of the incomplete implementation of institutions foreseen in the Con-

¹¹⁵ Further information in the 1991 military coup see below.

¹¹⁶ Pursuant to article 134-3 of the Haitian Constitution of 1987, re-election of the Haitian President is prohibited. An additional term is only possible after an interval of five years. A third term is interdicted.

¹¹⁷ *Fanmi Lavalas* is a splitter of the former Movement *Lavalas*, which was created by Aristide and fell apart because many of his followers turned away and created a new party, called *Organisation du Peuple en Lutte* (Organization of the People in Battle).

¹¹⁸ I. Stotzky, *Silencing the Guns in Haiti. The Promise of Deliberative Democracy*, 1999, 146.

¹¹⁹ Parliamentary elections in 1997 were also fraudulent and weak in technical terms.

¹²⁰ See under III. 2. c.

stitution of 1987. Pursuant to the Constitution, the CEP should be composed of regional representatives, who are not in place yet because the respective regional and local organs have not been established.

Structural institutional blockades constricted democratization further. Since the return of Aristide in 1994, Parliament and the Executive could not agree on a candidate for the Prime Minister. Consequently Préval dissolved the Parliament by 1997. He nominated independently a Prime Minister and continued to govern on the basis of decrees, much as Aristide did before. But in addition to that he governed on unconstitutional ground,¹²¹ because, differing from other semi-presidential systems, the Haitian Constitution prohibits in its article 111 (8) the dissolution of the Parliament.¹²² In 2004 the Parliament was again dissolved because no parliamentary election had been held in 2003 due to the Presidents' and Legislatives' previous incapacity to assign the CEP. In consequence, Aristide governed again on the basis of decrees.

Besides these institutional problems, the political culture of the Haitian elite has also been retarding democratization. In general, political culture here is characterized by a winner-takes-all mentality, combined with a personalized, strong leadership. Throughout the 1990s, under formal democratic rule, Haitian politics were also personalized and polarized by focusing on the figure of Jean-Bertrand Aristide. Although he took office in order to oppose the traditional Haitian political and economic elite, featured with a pro-poor and anti-liberal rhetoric, he rapidly had changed his attitudes after his return to Haiti in 1994. When he was re-elected in 2000, he was characterized as an authoritarian leader. Consequentially Haitians grew increasingly disillusioned with democracy and were further alienated from politics, thus compounding the well-worn division between the politicized urban centre and the apolitical, non-participating rural areas.¹²³

Finally, after the ousting of President Aristide in 2004, the Interim Government of Alexandre Boniface was indeed legally appointed. But

¹²¹ H. Carey, "Electoral Observation and Democratization in Haiti", in: K. Middlebrook (eds), *Electoral Observation and Democratic Transitions in Latin America*, 1998, 141 et seq. (151).

¹²² Although the Haitian Constitution of 1987 adopted many provisions of the Fifth French Republic's Constitution, it differs in terms of restriction of executive, especially Presidential, powers. For a comparison of constitutional law in the Haitian case see L. Aucoin, "Haiti's Constitutional Crisis", *B. U. Int'l L. J.* 17 (1999), 115 et seq. (121).

¹²³ Ch. Kumar, *Building Peace in Haiti*, 1998, 37.

as it focused on the organization of national elections in order to fill the existent power vacuum, it missed the opportunity to implement necessary reform policies, which were necessary to produce democratic stability in Haitian politics. Instead, the *status quo* persisted.

To sum up, the Haitian state is not able to provide physical and human security to its citizens due to a lack of resources and functioning state institutions. In this respect it is a failing state. Unimplemented and weak democratic institutions prevail, especially the Parliament and elected local institutions. Furthermore Haitian political culture is characterized by authoritarian behavior of the political elite and the alienation of the population from politics. In consequence, Haiti lacks a democratic order which is not consolidated yet.

2. Roots, Evolution and Surfacing of the Haitian Conflict

a. 1991: Overthrow of the First Haitian Democratic Government

On 29 September 1991, only seven months after his inauguration, the Government of President Aristide was overthrown by a military coup d'état, which was supported by parts of the economic sector.¹²⁴ Beforehand, Aristide had also set alight the smoldering conflict by two important speeches. He first addressed the UN General Assembly by agitating against the *Force Armée d'Haiti* (FADH) and the established political elite. In Haiti he also called on the population to inflict self justice against members of the military.¹²⁵ After the coup Haiti was once more governed by a military *de facto* regime which ruled constantly by means of repressing violence. In the aftermath of the coup the military junta, led by General Cédras, ordered the persecution and killing of Aristide's followers.¹²⁶ In turn, Aristide went into exile to the United States.

The OAS reacted immediately. It applied Resolution 1080,¹²⁷ which had been adopted merely three months before, and condemned the break with the democratic order in Haiti:

¹²⁴ O.E. Sella, *La Caída de Aristide, crónica de una frustración popular*, 1996, 224.

¹²⁵ Malone, see note 3, 61.

¹²⁶ Estimated 200-300 people were killed in the direct aftermath of the coup. Compare Sella, note 124, 121.

¹²⁷ See note 70.

“[...] the grave events that have occurred in Haiti constitute an abrupt, violent, and irregular disruption of the legitimate exercise of power by the democratic government of that country.”¹²⁸

So far, this Resolution constituted the strongest commitment made to democracy in the Americas.¹²⁹ The OAS undertook various efforts to promote the restoration of democracy, e.g. delegating a fact finding mission to the Caribbean country in order to observe the situation and foster political dialogue, as well as economic sanctions.¹³⁰ In February 1992 the fact finding mission was followed by the establishment of a long-term mission, which later became a joint UN/OAS mission.¹³¹ Only when OAS measures, including economic sanctions, were unsuccessful in November 1992, did the regional organization request support from the United Nations.¹³² Then the U.S. and the United Nations, in cooperation with the OAS, took a leading function in the restoration of the regime of Aristide.

In the period from the overthrow of Aristide in September 1991 up to the decision to intervene by military force, all negotiations – mainly between the *de facto* government, Aristide and a parliamentary commission – failed. Contentious issues remained unchanged during this process. They comprised the legitimacy of the *de facto* government; the acceptance of a Prime Minister appointed by Aristide; the time for the return of Aristide; the role of the military after the return of Aristide and whether the militias would get an amnesty when abandoning the country.¹³³ Meanwhile the human rights situation deteriorated in Haiti.

¹²⁸ OAS Doc. MRE/RES/1/91 of 3 October 1991.

¹²⁹ D. Acevedo/ C. Grossman, “The Organization of American States and the Protection of Democracy”, in: T. Farer (ed.), *Beyond Sovereignty. Collectively Defending Democracy in the Americas 1996*, 132 et seq. (143).

¹³⁰ OAS Doc. MRE/RES/1/91 of 3 October 1991; OAS Doc. MRE/RES/2/91 of 8 October 1991 and OAS Doc. MRE/RES/3/91 of 8 October 1991. The OAS embargo was backed by the UN, S/RES/841 (1993) of 16 June 1993. The oil and weapon embargos’ implementation was not effective due to the reluctance of some states, above all the exceptions made by the U.S. in order to protect certain sectors of its economy. Compare also D.E. Acevedo, “The Haitian Crisis and the OAS Response: A Test of Effectiveness in Protecting Democracy”, in: L. Damrosch, *Enforcing Restraints. Collective Intervention in Internal Conflicts*, 1993, 118 et seq. Above all the Governors Island Agreement of 9 July 1993.

¹³¹ For more information on this mission see under III. 3. c.

¹³² OAS Doc. CP/RES/594 of 10 November 1992.

¹³³ Fatton, see note 106, 77-106.

Self-justice, arbitrary arrests, torture and killings of Aristide followers dominated day-to-day life in Haiti.¹³⁴ In consequence thousands of Haitians fled their country to the United States or the Dominican Republic.¹³⁵

When the Security Council authorized the military intervention in 1994, the junta handed over power in October 1994.¹³⁶ In consequence, President Aristide returned to the country on 15 October. Since the course of the conflict had been focused on the return of Aristide, it had become extraordinarily personalized. Thus the Haitian conflict was considered to be resolved for the time being.

With regard to the conflict's form, issue, structure, and actors, it showed one novelty in Haiti's history. The form to carry out the conflict – by a coup d'état – was rather ordinary than extraordinary in the Haitian context. Its issue also remained the same i.e., exercise of national power, although national power this time was linked to the exercise of democratic power, and not to authoritarian rule as in the past. The actors of the conflict and, for the time being, also its superficial structures had changed. While in the past conflicts were always carried out amongst the elite in order to maintain or gain power, now a social conflict had erupted, which had been fermenting under the surface of Haitian society for decades. This conflict was a conflict between the traditional elite and the Haitian population, represented by Aristide. Finally, it is noteworthy that the conflict was presumed to have been resolved by national as well as international actors, when President Aristide's power was restored. At the same time the conflict's originating structures remained.

b. 1994-2004: The Slow, but Predictable Return to Conflict

On his return in October 1994 President Aristide encountered the same, even more deepened power constellations and social structures as on his departure from the island. His opponents in the military and par-

¹³⁴ I. Martin, "Haiti: International Force or National Compromise?", *Journal of Latin American Studies* 31 (1999), 711 et seq. (713).

¹³⁵ M. Morley/ C. McGillion, "'Disobedient' Generals and the Politics of Re-democratization: The Clinton Administration and Haiti", *Political Science Quarterly* 112 (1997), 363 et seq. (364). See in this respect also the wording of S/RES/940, see note 40.

¹³⁶ For a description of the events leading to the return of Aristide see below.

liamentary opposition persisted. While maintaining his anti-neoliberal rhetoric he had changed his economic policies because of financial restrictions from the international community.¹³⁷

With regard to former conflicting parties, the role of the military remained one major challenge for Aristide's government as well as his successor Préval. When in exile Aristide had decided that he would reduce the FADH from 8,000 to no more than 1,500 members. Shortly after the intervention it was reported FADH "has almost ceased to exist as an organization."¹³⁸ In February 1995, on the retirement of the four most senior officers of the army, FADH was dissolved.¹³⁹ Thus, ex-militias were not integrated into society due to a lack of job opportunities. Since then the "pay issue" had been a continuous subject of dispute between Aristide and his opponents. Whilst the ex-militias demanded pensions, Aristide insisted that the government was not able to pay the demobilized soldiers due to a limited budget.¹⁴⁰ In consequence, the discontent amongst former militias grew and formed a firm opposition against Aristide, leading to the creation of armed groups.

Aristide, in turn, worked towards his retention of power. In doing so Aristide's behavior became increasingly authoritarian. He rested his power on the Interim Public Security Forces, later the Haitian National Police (HNP) and armed gangs, the so-called *Chimères*. The latter were partly financed by Aristide and his supporters in order to intimidate political opponents.¹⁴¹ Their activities spread during the 1990s and in consequence of Aristide's return in 2000 culminated in a systematic repression of regime opponents.¹⁴²

The conflict re-emerged again when the legitimacy of Aristide's power was at stake in 2000. After his re-election in the fraudulent elections of 2000, the polarization between Aristide and his political opponents increased further because the latter did not accept the electoral results and therefore rejected Aristide's presidency. In consequence, tensions grew steadily, the number of armed quarrels mounted. In response to the discerning follow-up to the elections in 2000 the OAS had established an *OAS Special Mission to Strengthen Democracy in*

¹³⁷ Fatton, see note 106, 100.

¹³⁸ Doc. S/1994/1208 of 24 October 1994.

¹³⁹ Malone, see note 3, 122.

¹⁴⁰ Mendelsson-Forman, see note 109, 19.

¹⁴¹ *Ibid.*, 23.

¹⁴² D. Erikson, "Haiti After Aristide: Still on the Brink", *Current History*, February 2005, 83 et seq. (84-85).

Haiti in order to facilitate a national dialogue between the conflicting parties.¹⁴³ Nevertheless, on 17 December 2001 armed groups attacked the Presidential Palace in Port-au-Prince. In a counter-attack Aristide supporters set houses and offices of opposition parties on fire.¹⁴⁴ The OAS reacted again immediately by condemning the events which had taken place in Haiti.¹⁴⁵ But despite all negotiation efforts by the OAS and national parties the situation deteriorated further.

c. 2004: Ousting of President Aristide's Government

In February 2004 the conflict between Aristide supporters and his opponents worsened significantly. Armed rebel groups, composed of mainly ex-militias and former supporters of the military junta of 1991, such as the *Front Révolutionnaire Armé pour le Progrès d'Haiti* (FRAPH), demanded Aristide's resignation.¹⁴⁶ His return to presidency through manipulated elections in 2000 and his constant refusal to re-establish the army or to pay the ex-soldiers were the main accusations against him.

On 5 February 2004 armed rebels occupied the city of Gonaïve, in Northern Haiti. By 24 February 2004 they already controlled half of the country. All over Haiti police stations were occupied by rebel groups. Rebel groups consisted in large part of former *Tonton Macoutes* and soldiers. Aristide failed to regain control over the state's territory because the HNP either refused to fight against the rebels or retreated.¹⁴⁷ In turn, in many parts of the country, the rebels assumed police functions.¹⁴⁸ In Port-au-Prince some slums were also dominated by armed, partially criminal, groups. Furthermore, popular demonstrations

¹⁴³ OAS Doc. CP/RES/772 (1247/00) of 4 August 2000.

¹⁴⁴ Fifth Report of the Mission of the Organization of American States on Haiti, OAS Doc. CP/DOC354/02 of 8 January 2002, 10.

¹⁴⁵ OAS Doc. CP/RES/806 (1303/02) Corr. 1 of 16 January 2002.

¹⁴⁶ Various groups, also the *Armée Cannibale*, which formerly worked together with Aristide, formed the alliance *Front pour la Libération et la Reconstruction Nationale*. Once the alliance had reached its objective, it was dissolved and each group continued to exist on its own. See International Crisis Group, see note 110, 10.

¹⁴⁷ International Crisis Group, *Haiti's Transition: Hanging in the Balance*, Latin American Caribbean Report No. 7 of 8 February 2005, 5.

¹⁴⁸ J. Cholet/ D. Flandes, "Haiti – ein Jahr nach dem Sturz Aristides. Leitet die UN-Stabilisierungsmission die Wende ein?", *Brennpunkt Lateinamerika* 5 (2005), 46 et seq.

emerged regularly and the situation was aggravated by the violent assaults of the *Chimères* opposing the rebels. At the same time Haitians started to flee to the United States, where they were immediately sent back to their country due to a restrictive U.S.-migration policy.

In the course of the conflict both sides insisted stubbornly on the following positions, finally leading to the aggravation of the situation: on the one hand the rebels demanded Aristides resignation. On the other hand Aristide insisted on the legitimacy of his presidency. Nevertheless he vaguely offered new elections by the end of 2004.¹⁴⁹ Negotiations between the rebel groups and the government of Aristide were facilitated by the international community, especially by France and the U.S.

With regard to the international involvement in this crisis, it is noteworthy that the OAS had – as in the course of the conflict in the first half of the 1990s – taken a leading role when the crisis arose in May 2000. Only when the situation aggravated and peaceful means such as good offices and technical assistance had failed, other actors, especially the U.S. and France, took over the leading position. The U.S. again lobbied for the resolution of the conflict due to the exodus of Haitians fleeing to the U.S. In addition, France played a far more active role at the side of the U.S. than it played at the beginning of the 1990s.¹⁵⁰ Secretary-General Kofi Annan reacted by appointing the diplomat Reginald Dumas from Trinidad and Tobago as his Special Representative for Haiti in order to observe the situation in that country.¹⁵¹

Finally, on 29 February 2004 Aristide renounced the Presidency and fled the country because he was not able to control the situation. Before leaving, he submitted a letter to the U.S. American embassy through which he explained that he would resign in order to avoid a bloodbath in Haiti.¹⁵² After he had left the country in a U.S. chartered plane to the Central African Republic, he claimed that he had become the “victim of a modern kidnapping.” His position was backed by the Caribbean

¹⁴⁹ International Crisis Group, see note 110, 9.

¹⁵⁰ This evolution has probably two causes: first, the decreased interest of the U.S. in the Latin American region due to its heightened engagement in the Middle East. Second, the reluctance of France to a U.S. intervention into Iraq in 2003. In this context the Haitian case provided a good opportunity to prove France's loyalty to the last superpower.

¹⁵¹ Report of the Secretary-General on Haiti, Doc. S/2004/300 of 16 April 2004, para. 2.

¹⁵² Erikson, see note 142, 87.

Community (CARICOM), which presumed that President Aristide had been overthrown by the U.S. and France.¹⁵³

When Aristide resigned, Alexandre Boniface, President of the Supreme Court, became the Interim President of the country, a procedure pursuant to article 149 of the Haitian Constitution.¹⁵⁴ The interim government composed of technocrats and not politicians committed itself to work for the organization and implementation of national, democratic elections in order to establish a new and fully legitimized government.¹⁵⁵ In comparison with the coup in 1991, it can be stated that this time Haitians acted according to the Constitution and formally resolved the conflict in a legal way.

Although the first steps were taken on a formal level, violence persisted throughout the country. Reacting immediately to the ouster of Aristide, the Security Council had convened a special session and had authorized – as in 1994 – a multinational force, succeeded by an UN peace-keeping mission.¹⁵⁶

With regard to its issue, form, structure, and actors, the re-emerged conflict had changed in comparison to the beginning of the 1990s. First, its issue, exercise of national power, remained. It only differed in terms of its shaping. This time the legitimacy of the *de facto* government of Aristide was at stake. Second, the actors of the conflict changed gradually. While in the beginning of the 1990s Aristide was opposed merely by the traditional military and economic elite, now former followers of his own turned against him, because he had not fulfilled their expectations. In the eyes of many, Aristide's government constituted just one more corrupt regime in Haitian history.¹⁵⁷ Moreover, the conflict was penetrated by criminal groups. Third, while the form of the conflict changed from a – in the Haitian context “conventional” form of conflict – military coup to widespread rebel insurrections, its structure remained consistent with traditional conflict structures because it was a conflict amongst the elites on access to political power. Indeed, Aristide did not originate from the traditional mulatto elite of Haiti, but from the rather poor, rural majority of Haitian society. Although, his origins differ, he adapted his behavior to that of the traditional Haitian elite.

¹⁵³ Ibid., 88.

¹⁵⁴ Erikson, see note 142, para. 9.

¹⁵⁵ See note 151, para. 19 and para. 20.

¹⁵⁶ See under III. 3. d.

¹⁵⁷ Fatton, see note 106, 204.

Furthermore, he had mobilized new forces and therewith introduced new destabilizing factors into the Haitian conflict.

Finally it can be stated that the Haitian conflict is deeply rooted in the schism between the Haitian state and nation. In reference to the state, it was not capable to implement security reforms, which could have prevented a military coup or the following rebel insurgencies. With regard to the latter, this was aggravated by the fact that rebel groups took over police functions and therefore enjoyed partly popular support. With regard to human security the Haitian state could not evolve an output capacity which would have improved the socio-economic situation for its population. Here the root cause of the Haitian conflict lies. Since the access to power determines the access to resources, the conflict will not cease as long as power is not legitimately re-distributed and thereby resources made accessible for the whole population. Democracy is assumed to provide respective legitimate procedures to re-distribute power and resources in a peaceful manner. In the Haitian case, indeed, democratic elections took place. But they did not lead to a sustainable re-distribution of power due to the lack of implemented, functioning institutions and the lack of a democratic political culture. Therefore, democratic elections alone did not solve the repeated outbreak of the conflict. Against this background the state-building and democracy efforts undertaken by UN peace-keeping missions to resolve the Haitian conflict are questionable.

3. On the Ground: UN Peace-Keeping Approaches in Haiti

All over the world in no country have as many UN peace-keeping missions been stationed as in Haiti. Altogether since 1993 five missions were deployed:

- (a) United Nations Mission in Haiti (September 1993-June 1996 – UNMIH),
- (b) United Nations Support Mission in Haiti (July 1996-June 1997 – UNSMIH),
- (c) United Nations Transition Mission in Haiti (August 1997-November 1997 – UNTMIH),
- (d) United Nations Civilian Police Mission in Haiti (December 1997-March 2000 – MIPONUH),
- (e) United Nations Stabilization Mission in Haiti (since June 2004 – MINUSTAH).

Additionally two civilian missions took place, the International Civilian Mission in Haiti (December 1993-December 2000 – MICIVIH) and the International Civilian Support Mission in Haiti (March 2000-February 2001).

In the following, special attention will be drawn to UNMIH and MINUSTAH because of their significance with regard to military interventions in the context of democratic state failing. On the one hand both missions have been undertaken in direct reaction to a clear rupture with democratic order in Haiti. On the other hand their mandates addressed the support of democratic institutions. In order to complete the picture of peace-keeping in Haiti and to build a bridge between the two highlighted missions, the remaining three missions will be examined very briefly. Additionally, MICIVIH will be examined due to its interference with the implementation of UNMIH.

a. UNMIH (1993-1996): A Narrow View on an Ample Problem

The United Nations Mission in Haiti (UNMIH) was established in September 1993 for the purpose of assisting the implementation of the Governors Island Agreement.¹⁵⁸ The latter was agreed – after almost one week of negotiations – between Aristide, parliamentary representatives, and the *de facto* government of General Cédras on 3 July 1993. It comprised the facilitation of a political dialogue under the auspices of the United Nations and the OAS, the appointment of a new Commander-in-Chief by Aristide and, in turn, the early retirement of General Cédras. President Aristide was to return on 30 October 1993. Furthermore it requested the presence of the United Nations in Haiti in order to support the modernization of the army and the establishment of a police force. Subsequently another document, the New York Pact, was signed on 14 July 1993, which provided for a six month truce to guarantee a smooth and peaceful transition and invited Aristide to appoint a new Prime Minister.¹⁵⁹ When the new Prime Minister, Robert Malval, was then assigned and approved by parliament, the two month

¹⁵⁸ S/RES/867 (1993) of 23 September 1993. Governors Island Agreement, Annex to the Report of the Secretary-General of 13 August 1993, Doc. S/26297. For a detailed analysis of the Governors Island Agreement see Malone, see note 3, 78-98.

¹⁵⁹ New York Pact, Doc. A/47/1000 Annex.

old UN oil and arms embargo was suspended on 25 August 1993.¹⁶⁰ On 8 September 1993 an advance team, led by the UN/OAS Special Representative Dante Caputo, traveled to Haiti.¹⁶¹ It concluded that a deep polarization between the conflicting parties and the violation of human rights persisted.¹⁶²

aa. Deployment

Although promising at the beginning, the deployment of UNMIH turned out to be difficult. Amid tensions, provoked by the scheduled return of Aristide, the human rights situation deteriorated significantly.¹⁶³ UNMIH was finally dispatched on 11 October 1993, but when it was about to land on the island, its disembarkation was prevented by organized civilian armed groups – supported and instructed by the *de facto* military regime. These incidents, obviously obstructive to the implementation of the Governors Island Agreement, were additionally aggravated by further human rights abuses against supporters of Aristide and the dismissive posture of the army against UNMIH.¹⁶⁴ In consequence the Security Council, reacted immediately with the re-imposition of its oil and arms embargo.¹⁶⁵

In the period from October 1993 to September 1994 disruptions between the conflicting parties were further deepened and accordingly the climate of repression increased in Haiti, when the bulk of MICIVIH staff was withdrawn and the impossibility to deploy UNMIH became evident. Diplomatic efforts by the UN and OAS continued and the “Group of the Friends of the Secretary General for Haiti” fostered fur-

¹⁶⁰ S/RES/861 (1993) of 27 August 1993. The oil and arms embargo was imposed by the Security Council upon request of the OAS (OAS Doc. CP/RES/594 of 10 November 1992). The OAS had previously imposed a regional trade embargo which had remained ineffective (OAS Doc. MRE/RES/2/91 of 8 October 1991). After the imposition of the embargo in August 1993, the UN undertook, alongside the U.S., the lead position in the Haitian crisis.

¹⁶¹ Report of the Secretary-General on Haiti of 21 September 1993, Doc. S/26480.

¹⁶² *Ibid.*, para. 22.

¹⁶³ S. Schnably, “The Santiago Commitment as a Call to Democracy in the United States: Evaluating the OAS Role in Haiti, Peru, and Guatemala”, *Inter-American Law Review* 25 (1994), 293 et seq. (6).

¹⁶⁴ Malone, see note 3, 91-92.

¹⁶⁵ S/RES/841 (1993) of 16 June 1993.

ther political dialogue.¹⁶⁶ Despite these initiatives the conflict remained unsolved. The mandate entrusted to UNMIH could not be implemented, but still the Security Council prolonged the mandate.¹⁶⁷ Since no further advancements were made, it intensified the economic sanctions, reaffirming that:

“[...] the goal of the international community remains the restoration of democracy in Haiti and the prompt return of the legitimately elected President, Jean-Bertrand Aristide, under the framework of the Governors Island Agreement.”¹⁶⁸

It also demanded the creation of the proper environment for the deployment of UNMIH.¹⁶⁹ Given that these conditions were not established, the use of alternative means was first hesitantly discussed.¹⁷⁰ Once more the Security Council, supporting a request of the Ministers of Foreign Affairs of the OAS, highlighted the need to rapidly dispatch UNMIH as soon as conditions would permit. Therefore the UNMIH mandate was extended for one month until 31 July 1994.

When all attempts to support the solution of the conflict ended in an impasse and when the internal pressure grew on U.S. President Clinton due to the increasing flows of Haitian refugees into the U.S. and due to parliamentary pressure groups condemning Clinton's restrictive migration policy,¹⁷¹ the U.S. campaigned for the use of military means in order to restore democracy in Haiti. Aristide, in his letter to the Security Council on 31 July 1994 stated:

“[...] take prompt and decisive actions, under the authority of the United Nations, to allow for [the Governors Island Agreement] full implementation.”¹⁷²

¹⁶⁶ The “Group of Friends” was initiated by France and Venezuela in 1992. It comprises Canada, France, United States and Venezuela from the outset, Argentina since 1994 and Chile since 1996.

¹⁶⁷ S/RES/905 (1994) of 23 March 1994.

¹⁶⁸ S/RES/917 (1994) of 6 May 1994.

¹⁶⁹ Ibid.

¹⁷⁰ OAS Doc. MRE/ACT/94 and Ch.R. Thomas, *Medio siglo de la Organización de los Estados Americanos – Panorama de un compromiso regional*, 1999, 13.

¹⁷¹ Clinton defined the Haitian refugees as “economic” and not “political” refugees. Therefore no asylum could be granted to them and all refugees – estimated 38,000 from 1991 to 1994 – were sent back to Haiti. Compare Morley/ McGillion, see note 135, 364–366.

¹⁷² Doc. S/1994/905 of 29 July 1994.

On 31 July 1994, the Security Council adopted its Resolution 940. By the terms of this resolution, the Council acting under Chapter VII of the Charter, authorized Member States to form a multinational force under unified command and control, to use all necessary means to facilitate the departure of the military leadership, the prompt return of the President and the restoration of the legitimate government authorities. In Haiti the *de facto* government of Joinassant, previously appointed by the military, proclaimed the emergency status over Haiti. At the end of August 1994 Venezuela, supported by the “Group of Friends”, tried to arbitrate in the dispute once more. Since this remained ineffective, Secretary-General Boutros Boutros-Ghali declared that all attempts had failed.¹⁷³ While a military intervention was prepared, the United States took a further unilateral, diplomatic initiative by sending a mission, headed by former U.S. President Jimmy Carter to Haiti. On 18 September 1994 the Carter Mission, composed of Jimmy Carter, U.S. General Colin Powell and U.S. Senator Sam Nunn, attempted to negotiate an agreement which called upon Haitian military to cooperate with U.S. military and for Cédras to retire and leave the country peacefully, no later than 15 October 1994.¹⁷⁴ Hence, on 19 September 1994 the lead elements of the multinational force (MNF) landed without opposition on the island.¹⁷⁵ One month later, on 12 October 1994, General Cédras and his followers resigned from power and went into exile to Panama.¹⁷⁶ Finally, on 15 October 1994 President Aristide returned triumphantly to his country and assumed power.¹⁷⁷ In a short-term perspective the MNF had completed its mandate and successfully restored democracy in Haiti. The weeks following the arrival of the MNF were marked by further improvements and politically motivated violence as well as human rights abuses declined.

bb. Mandate

With Resolution 940 the Security Council had reinforced and extended UNMIH’s mandate. It decided that the MNF would terminate its mission and UNMIH would assume the full range of its functions de-

¹⁷³ Kumar, see note 123, 26.

¹⁷⁴ Sella, see note 124, 247.

¹⁷⁵ Malone, see note 3, 110.

¹⁷⁶ Stotzky, see note 118, 40-41.

¹⁷⁷ In consequence of Aristide’s return economic sanctions were lifted, S/RES/944 (1994) of 29 September 1994, para. 4.

scribed when a secure and stable environment had been established and UNMIH had adequate force capability and structure.¹⁷⁸ According to Resolution 940 UNMIH should assist the democratic Government of Haiti to: sustain the secure and stable environment; professionalize the Haitian armed forces and create a separate police force and establish an environment conducive to the organization of free and fair elections.¹⁷⁹ While the MNF had to create a stable and secure environment UNMIH should support the consolidation of the democratic order later on.

cc. Composition and Implementation

With regard to its implementation UNMIH advance teams were deployed on the ground in order to observe the stabilization efforts of the MNF and coordinate the foreseen transition from the MNF to UNMIH in the months from September 1994 to January 1995.¹⁸⁰ UNMIH took over from the MNF on 31 March 1995. Nearly two years after its establishment, UNMIH started its work with a maximum of 6,000 troops and 900 civilian police officers (CIVPOL). The latter was armed and disposed of arrest authority – a novelty in peace-keeping.¹⁸¹ CIVPOL next to its police functions unexpectedly helped to provide security.¹⁸² Additionally, 460 civilian, international and local staff were employed. It worked under the oversight of the newly appointed Special Representative of the Secretaries General of the UN and OAS, who also oversaw the activities of MICIVIH¹⁸³ – a form of close cooperation between the UN and a regional organization which constituted an innovation in UN peace-keeping missions. Once deployed on the ground, the mandate of UNMIH was extended twice, until its final withdrawal on 30 June 1996. At this time its contingent had been greatly decreased to 1,200 troops and 300 police personnel.¹⁸⁴

¹⁷⁸ Ibid., para. 8.

¹⁷⁹ Ibid., paras 9 and para. 10.

¹⁸⁰ S/RES/944 (1994) of 29 September 1994, para. 1. In January 1995 its mandate was extended until 31 July 1995, S/RES/975 (1995) of 30 January 1995.

¹⁸¹ See for its functions in detail, A. Dobbin et al., *America's Role in Nation-Building: From Germany to Iraq*, 2003, 76.

¹⁸² As to the unforeseen duties see, Background information on UNMIH, UN Department for Peace-keeping, 1997, 17, available at: <http://www.un.org/Depts/dpko/dpko/co_mission/unmihbackgr2.html>.

¹⁸³ See S/RES/867 (1993) of 23 September 1993, para. 5.

¹⁸⁴ S/RES/1048 (1996) of 29 February 1996, paras 6 and 7.

Immediately after its arrival UNMIH undertook successfully various security measures such as carrying out patrols and escort of humanitarian relief convoys in order to sustain “the secure and stable environment”.¹⁸⁵ It faced major challenges only once with regard to the Haitian security situation. In November 1995 social tensions increased and led to the killing of two deputies. UNMIH reacted with the deployment of Quick Reaction Forces and re-established control.¹⁸⁶

dd. Humanitarian Aid

One of UNMIH’s major tasks was to make humanitarian assistance available. Thereby it provided assistance in areas such as power supply, security of food supplies, engineering support and nutrition management.¹⁸⁷ In conjunction with these duties an innovative approach was developed: for the first time a UN peace-keeping mission integrated the work of UNDP.¹⁸⁸ The Secretary-General of the United Nations appointed C. Ossa as his Deputy Special Representative and concurrently UNDP Resident Representative. This was the first time that the United Nations had linked a peace-keeping mission to development activities in this manner. The linkage was intended to promote closer cooperation between all concerned and to facilitate the transition from UNMIH to continuing peace-building activities by the United Nations in Haiti.

ee. State-Building and Democracy Promotion

Throughout its implementation UNMIH’s mandate, as outlined in Security Council Resolution 940, underwent a shift from a combination of military and police functions to primarily police functions in order to assist an effective state-building. This evolution was determined by the disintegration of the police forces from the FADH and the following dissolution of the military. Against this background UNMIH supported the establishment of a 5,000-strong Haitian National Police (HNP).¹⁸⁹ CIVPOL mainly monitored and guided this process, most

¹⁸⁵ See note 40, para. 9 (a).

¹⁸⁶ *Ibid.*, 17.

¹⁸⁷ *Ibid.*, 15.

¹⁸⁸ C. Kumar/ E. Cousens, *Policy Briefing: Peacebuilding in Haiti*, IPA Report, 5, available at: <www.ipacademy.org/Publications/Reports/Research/PublRepoReseHaitiPrint.hmt>.

¹⁸⁹ Kumar/ Cousens, see note 188, 5.

notably by offering a trainee program.¹⁹⁰ With reference to the concept of UNMIH's efforts to support the establishment of HNP, it was embedded in an exceptional, comprehensive understanding of peace-keeping, as noted by the Security Council: "[The Security Council] reaffirms the importance of a fully functioning, national police force of adequate size and structure to the consolidation of democracy and revitalization of Haiti's system of justice."¹⁹¹

Thereby, peace-keeping was closely linked to the establishment of a solid democratic system, including a secure environment and a functioning justice system. Nevertheless, although police officers were trained, it was not sufficient that police officers knew how to arrest somebody, while at the same time an effective court system was not available.¹⁹² Furthermore the size of HNP was too small with regard to a Haitian population of more than 7 million. Rural areas and slums in Port-au-Prince – the main source of violence – were partly not covered by police forces and consequently lapsed into self-justice.¹⁹³ Insufficient numbers of HNP were mainly determined by difficulties in recruiting adequate personnel and by a lack of resources. Finally one major problem of the Haitian conflict was left open: former militias were neither disarmed nor reintegrated into society. UNMIH missed to respond to this problem due to its narrow approach, only focusing policing issues. Apart from that UNMIH paid special attention to the planning of a smooth and orderly transfer to the government of Haiti of its responsibilities and functions. The Security Council had stressed the importance of a fully functioning national police force for the consolidation of democracy in Haiti.¹⁹⁴ In accordance with its mandate UNMIH provided a twofold assistance to the local and legislative as well as to the Presidential elections in June and December 1995. In cooperation with the OAS and MICIVIH it provided successfully logistic and financial assistance as well as technical assistance to the CEP.¹⁹⁵

¹⁹⁰ Mendelsson-Forman, see note 109, 20-21.

¹⁹¹ S/RES/1007 (1995) of 31 July 1995, para. 6.

¹⁹² Mendelsson-Forman, see note 109, 21.

¹⁹³ Kumar/ Cousens, see note 188, 6 and 7.

¹⁹⁴ See S/RES/1007 (1995) of 31 July 1995.

¹⁹⁵ See note 182, 15.

ff. Fulfillment of Mandate

After 15 months (dated from the 31 of March) on the ground, UNMIH left Haiti in June 1996, its comprehensive mandate only partly fulfilled. Although it was effective in providing humanitarian aid and electoral assistance, it did not achieve its primary goal of establishing a functioning police force. Due to a lack of man-power, equipment and knowledge, the HNP was not able to protect Haitian society on its own. Nevertheless UNMIH adopted various innovations – amongst them the integration of UNDP.

b. UNSMIH, UNTMIH, and MIPONUH (1996-2000): A Drop in the Ocean

The security situation in Haiti remained unchanged after the completion of UNMIH. With regard to HNP's incapacity to fulfill its main functions, the UN Secretary-General had already recommended continuing engagement up to June 1996.¹⁹⁶ Although the need for assistance was obvious, the permanent Security Council members' willingness to extend UNMIH's mandate or to establish another mission decreased. This was aggravated by the reluctant position of China which did not agree to an extension of the mission due to Haiti's relations with Taiwan.¹⁹⁷ Nevertheless up to the beginning of 2000 three more missions followed UNMIH, the United Nations Support Mission in Haiti (UNSMIH), the United Nations Transition Mission in Haiti (UNTMIH) and the United Nations Civilian Police Mission in Haiti (MIPONUH). Owing to their similarity, the missions will be described altogether briefly, followed by an assessment of the special issues of each mission.¹⁹⁸

UNSMIH, UNTMIH and MIPONUH were all requested by the Haitian President, René Préval, in order to support the establishment and training of the HNP.¹⁹⁹ Only UNSMIH's mandate was broadened in order to support the coordination of the UN system's efforts to

¹⁹⁶ Doc. S/31996/416 of 5 June 1996.

¹⁹⁷ Malone, see note 3, 134 and 137-138.

¹⁹⁸ For an informative overview of these missions compare K. v. Hippel, *Democracy by Force, US-military Intervention in the Post-Cold War World*, 2000, 104-126.

¹⁹⁹ Doc. S/1996/431, Annex of 31 May 1996; Doc. S/1996/956 of 13 November 1996 and Doc. S/1997/832, Annex II of 29 October 1997.

“promote institution-building, national reconciliation and economic rehabilitation.”²⁰⁰ In the case of the other two missions, the mandates were reduced to police activities due to the decreasing disposition of Member States to stay strongly engaged in the Haitian case and to the conviction that coordination functions should be undertaken by other UN agencies. Instead of enlarging the mission’s mandates Member States opted for using the specialized agencies in order to provide further international assistance.²⁰¹ In consequence the size of all missions was successively reduced.²⁰²

At the same time the UN Security Council continued to stress that only a functioning police force would lead to democratic consolidation. Compared to UNMIH, the Security Council went even further by stating:

“[...] the importance of a *professional, self-sustaining*, fully functioning national police force of adequate size and structure, *able to conduct the full spectrum of police functions*, to the consolidation of democracy and revitalization of Haiti’s system of justice.”²⁰³

In the case of MIPONUH this affirmation was further strengthened by encouraging Haiti “to pursue its plans in these respects.”²⁰⁴ Unlike the previous missions, MIPONUH had no military component.²⁰⁵ Its mandate was to continue the work of the United Nations to support the Haitian national police and to contribute to its professionalism. France, initially reluctant to this solution due to its possible effect on UN peace-keeping in Africa, insisted on an exception clause in Resolution 1141: “[...] all special arrangements accorded to MIPONUH will not constitute precedents for other operations of the same nature that include civilian police personnel.”²⁰⁶

²⁰⁰ S/RES/1063 (1996) of 28 June 1996, para. 2.

²⁰¹ S/RES/1141 (1997) of 28 November 1997, para. 3. For a short description of the new concepts see the introduction of this article.

²⁰² UNSMIH: 1,297 military and 291 civilian police personnel, available at: <www.un.org/Depts/dpko/co_mission/unsmih.htm>; UNTMIH: 250 civilian police personnel and 50 military personnel available at: <www.un.org/Depts/dpko/co_mission/untmih.htm>; MIPONUH: 300 civilian police personnel, available at: <www.un.org/Depts/dpko/co_mission/miponuh.htm>.

²⁰³ See note 200 para. 1 (emphasis added).

²⁰⁴ See note 201, para. 1.

²⁰⁵ Malone, see note 3, 145-147.

²⁰⁶ See note 201, para. 4.

Once ended, MIPONUH was substituted by a civilian support mission, MICAH (International Civilian Support Mission in Haiti), which worked during a one year period.²⁰⁷ It was then fully deployed and ready to work when the mandate expired.

One could state that UNSMIH, UNTMIH and MIPONUH concentrated on genuine state-building measures by supporting the establishment, training and monitoring of HNP. Alike UNMIH they did not apply a comprehensive approach in respect of the establishment of a police force, what lead to partially ineffective implementation of their mandates. Furthermore the success of all three missions was restricted due to their successively reduced contingents. To sum up, the peace-keeping missions' narrow focus on police reform was rather to the disadvantage of democratization in Haiti than to its advantage.²⁰⁸ Furthermore it hardly complemented the strong efforts to promote economic growth and rule of law made by other UN agencies, especially UNDP.

c. Excursion – MICIVIH (1993-2000): Searching for a Role, though Successful

In the environment of UN peace-keeping missions in Haiti, the International Civilian Mission in Haiti (MICIVIH²⁰⁹) reveals an exception. It will be very shortly discussed, primarily with regard to its significance for the UN decision-making process in order to intervene coercively in Haiti. It requires further attention because it was unique in being a joint mission between the UN and a regional organization, namely the OAS.²¹⁰

MICIVIH's was established in December 1993. The joint UN/OAS mission was given the mandate to monitor and report on the Haitian human rights situation during the negotiation process between the military junta and Aristide.²¹¹ After the latter's return MICIVIH's mandate, indeed, still focused on human rights, but it was further broadened to

²⁰⁷ S/RES/1277 (1999) of 30 November 1999; A/RES/54/193 of 17 December 1999.

²⁰⁸ Hippel, see note 198, 117-126.

²⁰⁹ Acronym accordant to its French naming Mission Internationale Civile en Haiti.

²¹⁰ C. Granderson, "Institutionalizing Peace: The Haiti Experience", in: A. Henkin (ed.), *Honouring Human Rights*, 2000, 383 et seq. (384).

²¹¹ Granderson, see note 210, 386.

human rights education, support to police and prison reform as well as strengthening democracy, namely through electoral observation.²¹²

With reference to its implementation MICIVIH rapidly took office in various regions of the country. It was also distinguished by a special, comprehensive training program for its personnel, and its effective reports on the human rights situation. Since MICIVIH was not directly involved in negotiations between the conflicting parties, it was able to act in a relatively neutral way. Consequently, the mission could establish widespread relations with various sectors of Haitian society, especially civil society and local actors. Generally, given its broad mandate, MICIVIH was poorly assigned in terms of human power and material equipment.²¹³

With regard to MICIVIH's fulfillment of its mandate, human rights education programs were first delayed because of a lack of expertise within the mission. Step by step they were effectively enhanced throughout MICIVIH's duration on the ground, reaching many Haitians. Electoral observation was granted in 1995, but was characterized by incertitude with regard to determining MICIVIH's role in the electoral process. Police and prison reform was slowly addressed, partly inhibited by the unclear repartition of labor and competences between MICIVIH and UN peace-keeping missions.²¹⁴ This illustrates a general problem during the implementation process, which was marked by continuous discussions on MICIVIH's role on the ground.

Although cooperation between MICIVIH, OAS and the UN Special Representative was repeatedly underscored, it was inadequate on the operational level. MICIVIH complained that it would report to the Special Representative instead of the UN Secretary-General. Indeed, MICIVIH's direct influence at UN level was minimized, but nonetheless its effective reporting practice had influenced UN Security Council's decision making.²¹⁵ Finally, MICIVIH's knowledge of the Haitian situation, especially referring to its work on the local level could have complemented and improved the peace-keeping missions work on the

²¹² The terms of trade on which MICIVIH's mandate was based, were not officially published by the United Nations. Martin provides the full text of the terms of reference in the annex of his article. See note 134, 113 et seq.

²¹³ Granderson, see note 210, 386-287.

²¹⁴ Martin, see note 134, 713.

²¹⁵ *Ibid.*, 735.

ground, if communication between MICIVIH and peace-keeping missions would have been closer.²¹⁶

Twice during its mission, MICIVIH was evacuated. The first time in December 1993 which is to be interpreted as the UN's response to the hindrance of UNMIH's deployment by the military junta. Second, MICIVIH staff were expelled by the military when tensions during the negotiation process increased. Both occasions influenced the UN Security Council decision-making process and lead successively to intensifying coercive measures.

To sum up, no other mission ever spent more time in Haiti than MICIVIH. During its work in Haiti it contributed significantly to human rights education. Furthermore it was able to evolve valuable relations with Haitian organizations, especially on the local level, which unfortunately have not been used any further in order to deepen UN activities. The same applies to the successful, inter-cultural trainee course to train MICIVIH personnel. Although it could not fulfill its entire mandate due to material restrictions and to uncertainty about its role amongst donor agencies at the beginning of its mandate, MICIVIH may be considered as a successful mission in the domain of human rights.

d. MINUSTAH (since 2004): A Comprehensive Venture

MINUSTAH – the UN Stabilization Mission in Haiti – constitutes the international reaction to the ousting of President Aristide on 29 February 2004. In its Resolution 1529 of 29 February 2004 the Security Council stated that: “[...] the situation in Haiti constitutes a threat to international peace and security, and to stability in the Caribbean especially through the potential outflow of people to other States in the subregion.”²¹⁷

Thereby, Resolution 1529 may be considered as a continuation of Resolution 940²¹⁸ by making special emphasis on the type of threat which would endanger international peace, especially in the Caribbean. In contrast to Resolution 940 of 1994, which just mentioned the desperate plight of Haitian refugees. This time explicit reference is made to the threat to international peace and security, and to the Caribbean region in particular, through “the potential outflow of people to other States in

²¹⁶ Kumar/ Cousens, see note 188, 5.

²¹⁷ S/RES/1529 (2004) of 29 February 2004.

²¹⁸ For an interpretation of Resolution 940 see under II. 2. c.

the subregion.” This must be seen against the background of previous disputes between the neighboring Dominican Republic on Haitian refugees which had illegally entered Dominican territory.²¹⁹ In addition, this definition of threat to international peace and security also reflects United States interests, which are based on the fear of an exodus of Haitian refugees to the United States.²²⁰

aa. Deployment

The UN Security Council acting under Chapter VII authorized the immediate deployment of a Multinational Interim Force (MIF), and declared its readiness to establish a follow-on United Nations stabilization force to support continuation of a peaceful and constitutional political process and the maintenance of a secure and stable environment.²²¹ Consequently, the US-led MIF was immediately deployed in order to contribute: “to a secure and stable environment in the Haitian capital and elsewhere in the country ... in order to support the constitutional political process under way in Haiti.”²²²

Despite MIF’s presence, destruction of businesses, killings and other acts of violence continued. MIF took several weeks to deploy throughout the country and to intervene decisively to stabilize the situation.²²³ When MINUSTAH took over the command from MIF on 1 June 2004, parts of the country were still under control of rebel groups, which took over state functions. Furthermore violence in the Aristide supporting slum areas in Port-au-Prince increased.²²⁴ MINUSTAH faced major challenges in terms of the security situation and the political process. Additionally, a flood, which caused the death of 2,000 people, aggravated the situation.²²⁵ Against this background MINUSTAH’s deployment was too slow. In consequence, in its initial phase, MINUSTAH lacked sufficient manpower.

²¹⁹ Peral, see note 93, 4-5.

²²⁰ *Ibid.*, 4.

²²¹ See note 217, paras 2 and 3.

²²² *Ibid.*, para. 2 (a).

²²³ International Crisis Group, see note 110, 11.

²²⁴ Interim Report of the Secretary-General on the United Nations Stabilization Mission in Haiti, Doc. S/2004/698 of 30 August 2004, paras 1 and 13.

²²⁵ Report of the Secretary-General on the United Nations Stabilization Mission in Haiti, Doc. S/2004/908 of 18 November 2004, paras 34 and 35.

bb. Mandate

In order to define MINUSTAH's mandate according to the needs on the ground, Secretary-General Annan dispatched an assessment mission, which worked under the auspices of Annan's Special Adviser on Haiti.²²⁶ On the basis of the mission's recommendations the Security Council adopted a comprehensive and detailed mandate for a peace-keeping mission.²²⁷ Although its content has not been substantially changed throughout the peace-keeping process, different emphases were made, at different points of time, according to primary needs on the ground. In general, three main areas for MINUSTAH activities were stressed in the mandate: (a) to ensure a secure and stable environment,²²⁸ comprising inter alia support to secure the environment needed for the continuation of the constitutional and political process, assistance to reform the HNP, the establishment of a disarmament, demobilization and reintegration (DDR) program and assistance to restore and maintain the rule of law; (b) the political process,²²⁹ encompassing the support of the Transitional Government in order to foster democratic governance, institutional development, decentralization and to organize as well as carry out national elections; (c) human rights,²³⁰ comprehending monitoring and reporting on the human rights situation as well as the support to guarantee human rights.

While security issues dominated the agenda in the first half year of MINUSTAH's work, the support of the political process, primarily elections, became more important throughout the process.²³¹ Enhancing elections accorded to the *Consensus on the Political Transition Pact*, which various Haitian actors – *inter alia* the Interim Government, political groups and civil society organizations, except the *Fanmi Lavalas*, which refused the pact – had agreed on 4 April 2004.²³² Furthermore, MINUSTAH's mandate was successively adapted to the *Haitian In-*

²²⁶ Report of the Secretary-General on Haiti, Doc. S/2004/300 of 16 April 2004, paras 2 and 20.

²²⁷ S/RES/1542 (2004) of 30 April 2004, para. 7 (I-III).

²²⁸ *Ibid.*, para. 7 (I).

²²⁹ *Ibid.*, para. 7 (II).

²³⁰ *Ibid.*, para. 7 (III).

²³¹ S/RES/1576 (2004) of 29 November 2004, para. 2.

²³² See note 226, para. 4.

terim Cooperation Framework (HICF), which sets out priorities to advance the Haitian situation.²³³

In reference to state-building, the mandate focuses again on the establishment of a functioning police force, but this time emphasizing the need of a so called democratic policing. In addition, “the restoration and maintenance of the rule of law” by institutional strengthening of the correction system was also enhanced.²³⁴

Democracy and the need to support it, were addressed differently throughout the mandating process. In its Resolution 1542 the Security Council scarcely referred to the democratic process in Haiti. It is mentioned only once:

“[...] to support the constitutional and political process under way in Haiti, including through good offices, and foster principles and democratic governance and institutional development.”²³⁵

Although the fulfillment of this mandate would have required activities beyond electoral assistance, between 2005 and February 2006 further Security Council resolutions concentrated explicitly on the need to support elections.²³⁶ Referring to the wording of Resolutions 1542 and later 1608, elections are not explicitly related to a democratic order, but indirectly to the continuation of the “constitutional process.” In contrast, the post-electoral Security Council Resolution 1658 marks a shift concerning MINUSTAH’s mandate, now referring explicitly to democracy promotion:

“Stressing that the consolidation of Haitian democratic institutions will be crucial for achieving stability and development, and that MINUSTAH and the international community should continue to assist in building the capacity of national and local authorities and institutions.”²³⁷

In general, this paragraph reflects the assumption that democracy might be one precondition for peace and stability. Whether this is true for the Haitian case depends indeed on the will of the Haitian politi-

²³³ See note 224, para. 25. The HICF applied from 2004 to 2006. In 2006 the new government of Haiti prolonged the HICF until 2007. A consensus document, agreed by the international donor community and Haitian actors, exclusively Fanmi Lavalas.

²³⁴ See note 227, para. 7 I (d).

²³⁵ See note 227, para. 7 II (a).

²³⁶ See note 231.

²³⁷ S/RES/1658 (2006) of 14 February 2006.

cians, recently elected in February 2006. But with regard to MINUSTAH, its post-electoral activities must be adjusted if effective support of Haitian authorities in order to consolidate democratic institutions will be granted. In addition, Resolution 1658 also states that rule of law and human rights are vital components of democratic societies.²³⁸ Former Security Council mandating practice in the case of Haiti relates rule of law and human rights merely in respect to policing tasks, that is state-building. In turn, in its constitutive mandate of resolution 1542 the Security Council highlights the need for “democratic policing standards.”²³⁹ In consequence, with resolution 1658, the Security Council bridges the conceptual gap between state building and democracy promotion; rule of law and human rights are supposed to be a result of successful policing on the one hand and preconditions for democracy on the other.

Moreover, further aspects stand out in the Security Council resolutions referring to peace-keeping in Haiti: first, the Security Council adapted a broad concept of peace. Bridging the gap between poverty and conflict, it assumes that poverty is a root cause of conflict in Haiti.²⁴⁰ Consequently its peace-keeping approach has changed, at least rhetorically.

On the operative level, cooperation and coordination with other donor agencies, especially of the UN, was increased because of their complementary relevance in the fight against poverty.²⁴¹ This is also backed by the assignment of a Special Representative of the Secretary-General. Additionally, the inclusion of the Special Representative, appointed by the Secretary-General, in a Security Council resolution can be interpreted as validation of this post, already initiated in the first Haitian conflict.²⁴² Further the UNDP Resident Representative was assigned Deputy Special Representative of the Secretary-General to the Mission. This composition gives rise to the assumption that MINUSTAH and UNDP exercised job-sharing, according to their complementary objectives on the ground.

²³⁸ Ibid.

²³⁹ See note 227, para. 7 I (b).

²⁴⁰ S/RES/1608 (2005) of 22 June 2005.

²⁴¹ See note 227. Additionally, a Core Group of all relevant actors and an *ad hoc* group of the ECOSOC were established in order to improve the coordination of external actors in Haiti. See note 225, para. 47.

²⁴² S/RES/1542 (2004) of 30 April 2004.

The Security Council asserts its above-mentioned long-term perspective by completing each extension of MINUSTAH with the following: "with the intention to renew for further periods."²⁴³ In its initial phase, between 2004 and February 2006, MINUSTAH was extended for one year terms. This extension practice turned more restrictive in February 2006.²⁴⁴ Whether this can be interpreted as a decreasing willingness of Security Council members to stay engaged in Haiti depends on the further evolution of MINUSTAH.

cc. Composition and Implementation

With regard to its composition, MINUSTAH constitutes a novelty as the mission is led and mainly composed of Latin American states.²⁴⁵ The Latin American reluctance to interventionism, has been slowly softened throughout the 1990s.²⁴⁶ Moreover, with regard to international power politics, Brazil, Argentina and Chile might have attempted to compensate for their dismissive posture against the United States' intervention in Iraq in 2003.²⁴⁷ Also, the Brazilian commitment can be interpreted in the scope of its engagement in UN-reform, especially in its campaigning for a permanent seat for Brazil in the Security Council,²⁴⁸ as engagement in UN peace-keeping missions was one criterion to measure the ability of candidates for potential additional permanent seats during the attempted reform process in 2005. MINUSTAH's composition shall not exceed a maximum of 6,700 military troops and 1,622 civilian components.²⁴⁹ Only for the election period 2005 to 2006, was the size of the mission temporarily augmented to 1,897 police officers and 7,500 military troops.²⁵⁰ Additionally, 1,160 international civilian and local staff supports the work of MINUSTAH on the ground.

²⁴³ See note 240, para. 1; S/RES/1576 (2004) of 29 November 2004, para. 1 and S/RES/1601 (2005) of 31 May 2005, para. 1.

²⁴⁴ S/RES/1658 (2006) of 14 February 2006, para. 1.

²⁴⁵ Peral, see note 93, 2.

²⁴⁶ See under II. 2. b.

²⁴⁷ M. Aguirre, *The United Nations and Spain in Haiti, 2006*, Working Paper of FRIDE, available at: <www.fride.org/Publications/ListPublications.aspx>, 2.

²⁴⁸ International Crisis Group, *Spoiling Security in Haiti?*, Latin American Caribbean Report No. 13 of 31 May 2005, 19.

²⁴⁹ See note 227, para. 4.

²⁵⁰ S/RES/1608 (2005) of 22 June 2005, para. 2.

In its initial phase MINUSTAH focused on security and humanitarian issues. It pursued rather a reactive than proactive approach, which was provoked by the limited commitment of UN Member States and led to security problems. MINUSTAH's deployment was too slow. In consequence, in its initial phase, MINUSTAH lacked sufficient manpower as well as equipment.²⁵¹ This was further aggravated by the slow disbursement of funds by donors.²⁵² Full deployment took place only after violent campaigns of street gangs against the Interim Government and the presence of MINUSTAH which led to the killing of Aristide opponents and police officers in September 2004.²⁵³ Initially, MINUSTAH followed a defensive approach. It acted hesitantly and failed to improve the security situation in the countryside as well as in the slums of Port-au-Prince. Only in 2005 MINUSTAH changed its tactics in order to secure slum areas for scheduled elections.²⁵⁴ In consequence MINUSTAH was accused and suspected of siding with Aristide opponents. These criticism deepened, when further accusations emerged that MINUSTAH had killed civilians during its attacks in slum areas. Consequently MINUSTAH's general acceptance amongst Haitians decreased.

At the same time efforts to disarm rebel groups, former military and gangs, proved to be difficult. Although an effective DDR program was continuously discussed, its launching was delayed due to the discord amongst decision-makers, especially the Transitional Government, which did not fully agree on an effective program and changed its views repeatedly.²⁵⁵ In consequence, estimated 300,000 weapons circulate illegally in Haiti and still remain being a major problem.²⁵⁶

²⁵¹ International Crisis Group, *Haiti's Elections: The Case for a Short Delay?*, Latin American Caribbean Report No. 9 of 25 November 2005, 3-4.

²⁵² See note 225, para. 65.

²⁵³ *Ibid.*, para. 4, para. 5 and para. 65.

²⁵⁴ Report of the Security Council Mission to Haiti, 13 to 16 April, Doc. S/2005/302 of 6 May 2005, para. 4.

²⁵⁵ Although the Transitional Government insisted that the army issue should be addressed by a legitimate elected government, it had announced compensation paying for former soldiers. But due to unavailable resources payments could not be made. See International Crisis Group, see note 147, 5-7.

²⁵⁶ Report of the Secretary-General on the United Nations Stabilization Mission in Haiti, Doc. S/2006/60 of 2 February 2006, para. 26-27; International Crisis Group, see note 147.

dd. State-Building and Democracy Promotion

State-building measures were focused on policing issues. MINUSTAH cooperated mainly with the HNP in order to recruit police officers and address vetting. Furthermore certification trainings were offered.²⁵⁷ Although advancements to reform the HNP were made, the police forces still constitute one part of the problem. On the one hand the police system is pervaded by criminals – also linked with drug trafficking – and former military members, likely to oppose democratization. On the other hand, police officers lack adequate education in terms of their capacity, role in society and human rights issues.

Democracy promotion measures were above all undertaken in the field of elections. Besides securing the environment for parliamentary, presidential and local elections, MINUSTAH – in close cooperation with the OAS – also assisted the CEP to plan, organize and hold elections.²⁵⁸ Thereby two major challenges were faced. On the one hand major organizational problems emerged due to the lack of permanent state structures for the preparation of elections. For instance, the CEP lacked capacity, voter registration moved very slowly and the insufficient installation of polling stations throughout the country and in the slum areas of Port-au-Prince threatened the access of all citizens to elections.²⁵⁹ On the other hand, political polarization increased because Aristide supporters refused elections and demanded Aristide's return from exile. Also the registration process was boycotted and further slowed down. Consequently elections were delayed several times. Finally, on 7 February 2006, free and fair elections took place in Haiti.

In the aftermath of the elections, with a new elected government, headed by President René Préal, MINUSTAH is now redefining its future tasks.

ee. Fulfillment of the Mandate

To sum up, during its first two years on the ground MINUSTAH has only partly fulfilled its mandate. Initially the stabilization of the Haitian security situation was delayed due to its defensive and reactive ap-

²⁵⁷ Ibid., paras 29-34.

²⁵⁸ Memorandum of Understanding between the United Nations and the General Secretariat of the Organization of American States Concerning Electoral Assistance to Haiti of 3 November 2004.

²⁵⁹ International Crisis Group, see note 251, 6.

proach, which was intensified through the slow deployment of troops. Once it adapted a more robust approach, the security situation, especially in the slum areas of Port-au-Prince, improved, but did not completely stabilize. Although the organization of elections was marked by major problems, MINUSTAH's efforts to support the electoral process, in close cooperation with the OAS, finally helped to make the holding of free and fair elections possible. In turn, the support to establish a functioning police force was unsuccessful due to HNP's composition, partly pervaded by criminal subjects, and its incapacity to deal adequately with the situation. As mentioned also disarmament of former militias and criminals remains a major task for MINUSTAH. Moreover the human rights issue was limited to the observation of the human rights situation and lacked measures to enhance the rule of law. In general, throughout MINUSTAH's implementation, cooperation with the Transitional Government turned out to be difficult. Furthermore, accusations that MINUSTAH had sided with Aristide opponents and killed civilians, led to only a partial acceptance of MINUSTAH within the Haitian population.

e. Lessons Learned: UNMIH and MINUSTAH in Comparative Perspective

Already at a first glance the genesis from UNMIH to MINUSTAH gives evidence of the initially outlined evolution of UN peace-keeping during the past decade. Actually, MINUSTAH had adopted the lessons learned from four previous peace-keeping missions in Haiti by generally applying a broader concept of peace and especially, by adapting it to the Haitian context. While UNMIH pursued a narrow, policing-focused approach MINUSTAH now applies a multidisciplinary approach. Taking a comparative perspective will show how this evolution can be explained.

aa. Deployment

Both missions, UNMIH as well as MINUSTAH had difficulties with regard to their punctual deployment, though, for differing reasons. In the case of UNMIH external factors, that is the obstruction of the military junta, hindered its deployment. Consequently, a fast restoration of democracy was obstructed. MINUSTAH's deployment – like MI-PONUH at the end of the 1990s – was delayed due to internal organizational factors. The low commitment of UN Member States to be ready to deploy troops for the mission hindered the effective dispatch

on the ground. In consequence, the only partly deployed mission was not capable of facing emerging security issues on the ground.

bb. Mandate and Design

Obviously, the formulation of MINUSTAH's mandate is much more detailed and comprehensive than that of UNMIH. This is determined mainly by two factors.

First, the circumstances of the missions' establishment played a crucial role. Indeed, both missions were undertaken in reaction to the rupture with the democratic order in Haiti. But UNMIH was established before the conflict was finally settled. UNMIH's deployment was first precluded by negotiation efforts and economic sanctions, which altogether led to a strong involvement and commitment of the international community to support successfully the solution of the Haitian conflict. Whereas, in the case of MINUSTAH its establishment took place in the context of a lowered international interest. It was further established after a temporary conflict solution, that is the ousting of President Aristide and the following Haitian response to it in accordance with the Constitution. It was also voluntarily requested by the Interim Government of Haiti. These points of intervention and circumstances resulted in two different definitions of conflict resolution, which, in turn, determined the mission's design in the case of UNMIH. Here the resolution of the conflict the "restoration of democracy", that is Aristide's return to factual power, was the task. Thereby a purposeful and punctual perspective was taken. Once Aristide's power was restored, the conflict was presumed to be solved for the time being, and an actor-focused state-building design was implemented, which primarily lacked the sustainable prevention of a renewed outbreak of the conflict. In contrast, MINUSTAH, was established in accordance with the constitutional Interim Government, following a temporary conflict resolution. It should *inter alia* support the constitutional process in Haiti. This enabled mission drafters to adopt a process-oriented and comprehensive design, arranged with the Interim Government.

Further, on the one hand MINUSTAH's relatively detailed mandate and design is owed, *inter alia*, to the results of the primarily unsuccessful UN peace-keeping story in Haiti. Repeated failure of peace-keeping missions urged the re-designing of such efforts in Haiti. Against this background MINUSTAH had become the last resort to make UN peace-keeping in Haiti a success story. On the other hand, the design of MINUSTAH results from a general evolution of a broad concept of

peace, which widened the objectives of UN peace-keeping and also includes strategies of peace-building.

cc. Form

Both missions show a rather conventional form. Generally, following the majority of UN peace-keeping missions, UNMIH and MINUSTAH had a two-step approach. A multinational force was deployed in order to secure and stabilize the environment. Successively, the force was substituted by UNMIH/MINUSTAH.

dd. Composition and Implementation

MINUSTAH is the first mission to be under the command of a Latin American force commander, namely Brazil. This reflects the lowering of the traditionally high threshold to interventionism in the Americas. Latin American states now seem more willing to take responsibility for security tasks in their region. This fact could increase the acceptance of UN peace-keeping in the region further. But this development also shows the reduced interest of the U.S. in the Americas, triggered by an increasing interest in other world regions, especially the Middle East.

Furthermore, UNMIH and MINUSTAH do not differ considerably with regard to the size of their military component, which shall/did not exceed a maximum of 6,000, and 6,700 troops, respectively. In contrast the civilian component increased. This increase of civilian staff reflects the adoption of a more comprehensive peace-building approach, which requires the knowledge and capacity of civilian experts.

In reference to their implementation UNMIH and MINUSTAH faced a common organizational problem, namely problems in connection with their late deployment. Moreover MINUSTAH met further challenges during its first implementation period from 2004-2006. It was, on the one hand, confronted with a difficult cooperation with the Interim Government. On the other hand, its acceptance amongst the Haitian population was at stake when it started its robust security campaign in the Port-au-Prince slums. In consequence, the implementation of planned and crucial policies such as the DDR program were held up.

ee. State-Building

State-building meant merely narrow policing measures throughout the 1990s. UNMIH and its succeeding missions ignored the structures and

root causes of the Haitian conflict and instead focused its symptoms. Whereas it was obvious that the Haitian state could not grant physical security to its citizens due to a lack of a functioning police force, UNMIH limited its activities to reinforce the HNP. In doing so it failed to address major challenges, interlinked with the security issue, such as the integration of former militias, which evolved to an armed group and were responsible for the a renewed outbreak of the conflict in 2004.

In contrast, MINUSTAH now follows a more comprehensive and political state-building approach, which addresses issues of physical and human security. With regard to policing it makes use of a more systemic design by applying “democratic policing standards”. One of the main tasks is the vetting of police officers in order to prevent the engagement of non-loyal officers within the HNP. Additionally, disarmament and integration of the former military and other armed groups is focused and shall be implemented through a wide-ranging DDR program. On the political level MINUSTAH also tends to foster a national dialogue amongst all relevant parties. Thereby an agreement on the role of the military in Haitian society shall be envisioned, because besides being a major security problem, the military is still provided for in the Haitian constitution.

ff. Democracy Promotion

While an evolution of state-building during the last decade is obvious, democracy promotion has hardly changed in the scope of UN peace-keeping.²⁶⁰ UNMIH’s mandate accentuated the restoration of democracy, whereas MINUSTAH’s mandate focus does not primarily refer to democracy, but to the support of the “constitutional process”, both missions’ efforts to promote democracy show no major differences on an operational level.

UNMIH’s as well as MINUSTAH’s mandate emphasize the holding of elections. They both were based on the assumption that elections led to the consolidation of democracy. Since a relation between consolidated democracies and peace is assumed, elections were perceived as a significant precondition to solve the Haitian crisis. Consequently, electoral assistance was presumed to be an adequate instrument. Although elections should not be underestimated, they are only the first – formal

²⁶⁰ Here, only activities of peace-keeping measures are taken into account. Whereas, it must be stated meanwhile UNDP has undertaken various efforts in order to promote democracy in Haiti.

– step to be taken on the road to democracy. In the case of Haiti it became clear, that elections did not solve the Haitian crisis in a sustainable manner. Further measures, addressing the root causes of the Haitian conflict, which lie in the dual structure of the Haitian society, must be addressed if democratization in order to build peace, is to be achieved.

In this spirit UNMIH had clearly failed to support democratic consolidation in Haiti, despite its major objective to restore democracy. MINUSTAH, in turn, is still on the ground. Its success – assuming that UN Member States maintain their commitment – now depends on its capacity to assess the Haitian post-electoral situation of 2006 in order to evolve adequate strategies and measures for peace-building through democracy promotion.

Finally, an evolution with regard to democracy on the conceptional level has been made since UNMIH and its succeeding missions. UNMIH based its work on a narrow concept of democracy which primarily comprised that of a functioning police which is a prerequisite of democratic order. Whereas, the concept of democracy underlying MINUSTAH's mandate primarily is a means and not the objective of UN peace-keeping, as it was in the 1990s. In the former spirit it is presumed to be the precondition for stability and development and is closely interlinked with rule of law and the guarantee of human rights.²⁶¹ This is also institutionally reflected in MINUSTAH's organization: MINUSTAH disposes of a unit to monitor and support human rights. In contrast, UNMIH had no such entity, but cooperated with MICIVIH, instead. As already stated, in consequence of these conceptual and organizational evolutions a more comprehensive peace-keeping approach emerges. Although this is to be welcomed, it must be critically stated that a global, wide-ranging approach alone does not solve any conflict. If a comprehensive approach shall be successful, its single components – human rights, democracy, rule of law, peace and development – must be systematically and transparently related to each other in order to establish a complementary approach.

gg. Cooperation

Since UNMIH's and its successor's missions one more aspect has gained crucial relevance in UN peace-keeping, marching in step with the evolution of a more integrative and multidisciplinary approach, where institutionalized cooperation with other authorities became more

²⁶¹ See under III. 3. d. in this article.

relevant. First, MINUSTAH – alike UNMIH – integrated UNDP into its mission. But this integration was formal at best. *De facto* cooperation between both UN entities has been limited due to their overlapping mandates. Second, the HIICF (Haitian International Interim Cooperation Framework) set a framework for organized cooperation between MINUSTAH, the Haitian Government and other donors.²⁶² Third, further enhancements were made through the creation of a Core Group and several groups linked to ECOSOC for better coordination between development partners, including financial organizations.²⁶³ Whether these cooperation structures will finally merge into a complementary donor strategy in Haiti, which in the long-run enables Haitians to sustain their society without external support, will depend on the further developments made by the new Government of President Préval who assumed office in May 2006.

IV. Conclusions

More than ten years after the first UN peace-keeping mission in Haiti, peace-building in this country is still in its infancy. Since 1991 the deep-rooted conflict has endured. Five UN peace-keeping missions could not reverse this. Recently, in February 2006, democratic elections promised another start to resolve the Haitian conflict sustainably. If the international community wants to effectively support this new process, it must think over its peace-building strategies. MINUSTAH, which was established in 2004, had already made a start on this.

Coming back to the initial interest of this article, it must be first stated that the Haitian case of 1993 does not constitute a precedent for a right to democracy in international law. No such universal right to democracy exists, although, democracy is anchored in regional international law like that of the EU or the OAS. In particular the Inter-American Democratic Charter constitutes an exception. Pursuant to its article 1 peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it. The international community increased its commitment to democracy on a political level, e.g. through electoral assistance or the creation of the already mentioned United Nations Democracy Fund.

²⁶² See note 113.

²⁶³ D. Wolter/ J. Möller, "The United Nations at Sixty: Getting Serious with Conflict Prevention", *Friedens-Warte* 80 (2005), 333 et seq. (335).

With regard to the rupture with democracy as a threat to peace, it must be assumed that the effects for the democratic order in Haiti in 1991 constituted a threat to peace, above all international peace. The combination of an outflow of Haitian refugees to neighboring countries and the sensitiveness of American states to the rupture with democracy – as democracy is perceived as a precondition for peace within the region –, were defined as threats to peace and therefore, built a legal precondition for the use of force pursuant to Article 39 of the UN Charter. On the empirical level, the comparative examination of UN peace-keeping in Haiti brought to light that the UN developed over time a comprehensive and political approach to keep and build peace in Haiti, which was more and more sensitive to the specific characteristics of the Haitian context.

With regard to the appropriateness of UN peace-keeping missions the UN, indeed, made use of state-building and democracy promotion as peace-building instruments in Haiti. But they were inadequate, as on the one hand they were to some extent inadequate instruments to solve the Haitian conflict and on the other inadequate use was made of them. Consequently, state-building's and democracy promotion's effectiveness in terms of a positive contribution to resolve the Haitian conflict were limited. They failed to address the root causes of the Haitian conflict as well as, partly, its symptoms in terms of enabling the Haitian authorities to guarantee physical security.

State-building was narrowly focused as the establishment of a functioning police force during the 1990s. By pursuing an apolitical policing-focused approach, UN peace-keeping missions missed the chance to take a systemic view of the Haitian conflict. Consequently, major challenges like the integration of ex-militias into society were not addressed. Instead, ex-militias evolved to be a new destabilizing factor in Haiti and contributed strongly to the further outbreak of the Haitian conflict in 2004.

If state-building is to be an adequate measure to support peace-building in Haiti, it must first develop an integrative approach to support the necessary security reform. MINUSTAH's "democratic policing" strategy might be the beginning of that. Secondly, even more important, is that state-building must address the dual, deep rooted structure of the Haitian society which divides the urban elite with access to resources from the marginalized rural population, excluded from state revenues. Only if the output capacity of the state, that is its socio-economic performance, can be improved and equitably distributed, can peace be built.

Democracy promotion in the scope of UN peace-keeping missions in Haiti was mainly an equivalent to electoral assistance. But, since “an election by itself can seldom, if ever, resolve a conflict about which people feel strongly enough to resort to bloodshed,”²⁶⁴ electoral assistance had a very limited effect in terms of peace-building. Nevertheless, with regard to democracy promotion MINUSATH continues to focus on electoral assistance.²⁶⁵ Furthermore, it was – although partly successful in the short-run – too punctual and did not enable Haitian authorities and institutions to hold elections without the support of the international community.

Since democracy is built between elections, and not on election day, UN peace-keeping missions, mutually with other international actors, must take further measures to promote democracy. For instance, it is necessary to support the implementation of the Constitution of 1987, that is the establishment and strengthening of crucial institutions on the national and, especially on the local level as well as to build the capacity of the population and political elite in order to create a democratic political culture. In this respect MINUSTAH has already endorsed successful activities on the local level. But if these shall be sustainable, cooperation between UNDP and MINUSTAH will be essential due to the limited duration of MINUSTAH on the ground.

Moreover, with regard to state-building and democracy, UN peace-keeping lacks a common understanding of state and democracy. Only if all actors on the ground, above all the national authorities and respective populations are aware of what democracy and state should be like not only in Haiti, could an adapted state-building and democracy promotion be an adequate means to build peace. Therefore, the UN should foster a national dialogue between the political elite, civil society and

²⁶⁴ UN Secretary-General Kofi Annan, *Why Democracy is an International Issue*, Lecture at Oxford University, Doc. SG/SM/7850 of 19 June 2001.

²⁶⁵ Besides electoral assistance local authorities and institutions shall be supported, particularly, on the local level. Altogether the support of democratic governance plays a subordinate role in the current formulation of MINUSTAH's mandate. Instead the Secretary-General identifies two main areas for its work. First, support of institutions of rule of law and state administration. Second, ensuring a secure and stable environment as well as police and justice/prisons system support; cf. Report of the Secretary-General on the United Nations Stabilization Mission in Haiti, Doc. S/2006/592 of 28 July 2006, paras 44 and 45 and 77-80. The Security Council recently extended MINUSTAH's mandate until the 15 February 2007, S/RES/1702 (2006) of 15 August 2006.

the donor community in order to define common visions for the political future of Haiti, and like cases.

Finally, the international community has now been engaged for more than a decade in Haitian conflict resolution – but without continuous and sustainable success. However, for these efforts to be eventually brought to a successful end, a long-term effort of the international community in the Caribbean country is clearly needed. Since UN peace-keeping missions in Haiti had a short-term perspective, other UN mechanisms should be given a try. In that respect, the recently established UN Peace-building Commission should take the Haitian case into account. This would constitute an important symbolic gesture to confirm the international community's commitment to Haiti and to prevent the Haitian case from again sinking into oblivion, as has happened many times before.