Miéville, China. (2009) **Multilateralism as terror: International Law, Haiti and imperialism**

***Finnish Yearbook of International Law* 18 (2007).**

MULTILATERALISM AS TERROR:

INTERNATIONAL LAW, HAITI AND IMPERIALISM

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Iraq, unilateralism and its discontents

At its Centennial meeting in 2006 the American Society of International Law (ASIL) took the rare step of adopting a resolution expressing what ASIL press releases – though not the text itself – described as 'the deep concern of many

[1] This paper is taken from a longer talk I gave at the 21st Helsinki Summer Seminar on International Law in August 2008, entitled 'Pollution, Power and International Law'. I am very grateful to the organisers for inviting me, and to the students for their stimulating responses. For their invaluable input to drafts of this essay, I am indebted to Brenna Bhandar, Bill Bowring, Brian Concannon, Peter Hallward, Vishaal Kishore, Rob Knox and Susan Marks, as well as to the participants of the 'Law, Colonialism and Violence II' workshop at the Altonaer Stiftung für philosophische Grundlagenforschung in Hamburg, 9–11 May 2008, and the Critical Legal Conference in Glasgow, 5–7 September 2008. Responsibility for all arguments and errors is, of course, mine.

ASIL members' with regard to recent US behaviour and actions.[2] As a 'partisan' move, this was not uncontroversial in the field. The resolution's actual wording was quite anaemic, and refrained even from mentioning the US. The fact that a general statement of well-known norms was widely understood to be a rebuke to the Bush government reflects the common tendency to conceive not just this or that particular rule, but the whole edifice of international law (IL) itself as in fundamental structural opposition to the Republican administration's agenda. The hoopla within IL that the resolution generated, and the repeated insistence that (its milquetoast specifics notwithstanding) it was 'historic', illustrate the unusual current prominence of IL in contemporary debates, and a self-consciousness about that prominence among its scholars.[3]

It has been pointed out more than once that in recent years, IL has 'become important politically, intellectually, and culturally'.[4] Books on IL make bestseller lists; international legal opinions battle it out in the pages of mass-market

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[2] ASIL, 'Resolution Adopted', <www.asil.org/events/am06/resolutions.html> (visited 6 January 2009).

[3] For discussions of the importance of and controversy around the resolution, see, for example, Roger Alford, 'ASIL Passes Historic Resolution', <opiniojuris.org/2006/03/31/asil-passes-historic-resolution/> (visited 6 January 2009); José E. Alvarez, 'Lessons From a Resolution', <www.asil.org/ilpost/president/pres060518.html> (visited 6 January 2009); 'ASIL 100th Annual Meeting Breaks Records and Makes News' (pdf) <www.asil.org/events/am06/ann%20mtg%20resolution%2006.04.05.pdf> (visited 6 January 2009).

[4] Samuel Estreicher and Paul B. Stephan, 'Taking International Law Seriously', 44 *Virginia Journal of International Law* (2003) 1–4 at 1.

newspapers, on television and radio.[5] This journey into the mainstream was discernable before the 'Global War on Terror', in part in response to the jurisprudentially troublesome Kosovo invasion of 1999,[6] but it has accelerated exponentially since 2001.

Key to this new interest in IL, of course, has been the extreme unpopularity of the Iraq War, and of a Bush administration that, it is agreed by most observers, broke IL to prosecute the former.[7] Two things are clear. First, most of the excoriation of the war as illegal is politico-moral opposition translated into juridical categories: IL is here a vocabulary for expressing political opposition, predicated on a generally untheorized equation of legality and justice. This collapse of categories must be resisted, and the equation either systematically justified, or rejected, by critical jurisprudence.

Second, in this model whatever victory IL has won in framing terms of political debate is Pyrrhic: IL enters dominant discourse as and indeed because the Iraq war and other recent actions are seen to undermine it. IL has, in this version of events, become mainstream *because* it is in crisis. The more it ails, the more visible it becomes.

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[5] See for example Philippe Sands, *Lawless World*, (Penguin: London, 2006). Also see the appearance of Jack Goldsmith on *The Daily Show*, 16 April 2008, Comedy Central.

[6] See for example Paul Virilio, *Strategy of Deception* (Verso: London, 2000) for an overview of the sense of juridical chaos around the war.

[7] I have argued this in China Miéville, 'Anxiety and the Sidekick State: British International Law After Iraq', 46 *Harvard International Law Journal* (2005) 441–58.

Exemplified in the title of Philippe Sands's recent book, the widespread concern is that we have been tugged towards a 'lawless world' by a band of, depending on one's perspective, insane/messianic/ruthless/misguided neoconservative ideologues, whose strategy of aggressive unilateralism goes hand-in-hand with international legal nihilism. Up to a point this impression is not unreasonable: it takes at face value the swaggering pronouncements of some of neoconservatism's best-known figures. When Richard Perle, for example, insisted in 2003 that the Iraq War was illegal but that 'in this case international law stood in the way of doing the right thing',[8] the lines seemed clear. Even more overtly combative and nationalist was John Bolton's refusal to 'grant any validity to international law' because 'those who think that international law really means anything are those who want to constrict the United States'.[9] The agon against IL reached a pantomime extreme with Donald Rumsfeld's lumping together, in the 2005 National Defense Strategy document, of IL and terrorism: 'Our strength as a nation state will continue to be challenged by those who employ a strategy of the weak using international fora, judicial processes, and terrorism'.[10]

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[8] Oliver Burkeman and Julian Borger, 'War critics astonished as US hawk admits invasion was illegal', *The Guardian*, 20 November 2003. Available at <http://www.guardian.co.uk/uk/2003/nov/20/usa.iraq1> (visited 19 April 2009).

[9] Quoted in Samantha Power, 'Boltonism', *New Yorker*, 21 March 2005. Available at <http://www.newyorker.com/archive/2005/03/21/050321ta_talk_power> (visited 19 April 2009).

[10] *The National Defense Strategy of The United States of America*, <www.globalsecurity.org/military/library/policy/dod/nds-usa_mar2005_ib.htm> (visited 6 January 2009).

Such ostentatious legal nihilism (which in fact comprises two distinct if often overlapping attitudes to IL, it will be argued) has clearly been used to serve the neoconservative agenda and strategy that have been corollaries of a particular analysis of US strength.[11] To oppose that agenda through IL, then, may appear to be nothing other than the taking seriously of the neoconservatives' claims – that IL is their enemy.

In fact, however, such pronouncements as Perle's and Bolton's represented only one wing of the (never monolithic) neoconservative movement. There has always been another that, far from dismissing it, takes IL seriously, and has for some years been developing a well-researched and meticulous body of jurisprudence revolving around the relationship between IL and 'imperial sovereignty', as Lorite Escorihuela has shown in a careful taxonomy of what he calls 'Nationalist International Law' (NIL).[12] Nor has this law developed in a vacuum. Lisa Hajjar has, in terming this trend the 'Israelization' of international law, given it a name that stresses an important element of its juridico-strategic antecedents: the specifically non-IL-nihilist unilateralism of some Israeli IL scholars, an approach that 'does not make international law irrelevant, contrary to the claims of eulogists and critics alike', but that engages with it 'very seriously' based on the principle

[11] See Alex Callinicos, *The New Mandarins of American Power* (Polity Press: Cambridge, 2003), for a good overview of this perspective in its '*haute*' phase.

[12] Alejandro Lorite Escorihuela, 'Cultural Relativism the American Way: The Nationalist School of International Law in the United States', 5 *Global Jurist Frontiers* (2005) 1–166, at 1.

that so-called 'absolute security is a legal right of the state'.[13] Such jurisprudence has been important to the development of NIL. At its most provocative, some neoconservative scholarship has even claimed that unilateral US action is the best hope to save IL itself, as in Mario Loyola's assertion that '[t]he United Nations is in a sense systematically destroying international law',[14] or Bush's claim that the 'Iraq war saved the UN'.[15]

Among the US neoconservative ranks, for every Richard Perle there is a Beaver, a Bybee, a Rivkin, a John Yoo, eruditely justifying neoconservative policy in legal terms. Just as Hajjar notes how 'highly sophisticated' much of the deployment of IL from the right is, so Lorite Escorihuela shows the seriousness and erudition of

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[13] Lisa Hajjar, 'From Nuremburg to Guantanamo: International Law and American Power Politics', 229 *Middle East Report* (2003). Available at <http://www.merip.org/mer/mer229/229_hajjar.html> (visited 19 April 2009).

[14] Mario Loyola, 'Mend It or End It', 10 *Weekly Standard* (2004). Available at <http://www.weeklystandard.com/Content/Public/Articles/000/000/005/028paljb.asp?pg=1> (visited 19 April 2009). I am indebted to Rob Knox for this point, and for his argument that Republican Presidential Candidate John McCain's support for 'upholding and strengthening international law' through the establishment of a 'League of Democracies' that might bypass the UN to 'form the core of an international order of peace' is a recent iteration of this tendency. See John McCain, 'Remarks by Senator John McCain at the Hoover Institute', <mccain.senate.gov/public/index.cfm?FuseAction=PressOffice.Speeches&ContentRecord_id=c35d4437-81d8-441f-ad42-71bea309a6be&Region_id=&Issue_id=73379446-ed00-4a32-8ef1-9f1e12737746> (visited 6 January 2009).

[15] Ewan MacAskill, 'Iraq war saved the UN, says president', *The Guardian*, 20 November 2003. Available at <http://www.guardian.co.uk/uk/2003/nov/20/usa.iraq> (visited 19 April 2009).

Yoo's work, and insists that many of NIL's claims are 'neither outlandish nor outrageous for international law … [but are] perfectly understandable, and a picture on the basis of which people can agree to disagree'.[16] However, liberal and left critics of NIL have tended to seek comfort in dismissing any such work as so 'replete with basic errors', in Sands' phrase, that it needs no engagement with, insisting that anyone with 'the most rudimentary understanding of international law' will immediately know it to be 'deeply flawed'.[17]

If that were true, what would be the point of NIL claims? In this liberal model, neoconservative recourse to IL, where it exists, tends to be perceived as a mere veneer, a rhetorical gloss. Hence the claim that Yoo is 'justifying the commission of a crime using false legal rhetoric', and the lament that he and his cohorts illustrate that 'in practice, "international law" exists as a justifying instrument for powerful countries to impose their will on those which are less powerful'.[18] This is obviously not wholly false: there is no dispute that IL has – among others – an ideological function. But the idea that NIL is 'merely' ideology is usually made by those horrified by what they see as the 'undermining', 'failure' or even 'death' of IL because of widespread unconscionable actions, and/or the obvious 'basic errors' of the supposed justifications. Peculiarly, then, they perceive the deployment of IL to

[16] Lorite Escorihuela, 'Cultural Relativism', *supra* note 12, at 100.

[17] Sands, *Lawless*, *supra* note 5, 213, 214.

[18] Michael Ratner, quoted in Marjorie Cohn, 'Torture of "enemy combatants": call for dismissal and prosecution of John Yoo', <www.globalresearch.ca/index.php?context=va&aid=8710> (visited 6 January 2009), and Glenn Greenwald, 'John Yoo's war crimes', <www.salon.com/opinion/greenwald/2008/04/02/yoo/> (visited 6 January 2009).

be ideology insofar as it is *failing* as ideology: they explain it as legitimation in claiming that it legitimates nothing. If that is NIL's main purpose, or one of them, it is hard to see why so inefficient a tool would be used.[19]

In addition, this despairing liberal *Ideologiekritik* ignores the extent to which IL-nihilism, just as much as IL's fervent citation, is ideological. Rumsfeld's, Perle's and Bolton's pronouncements against IL were, among other things, attempts to mobilise an aggressively nationalist and, crucially, triumphalist section of the neoconservative base. The ideological function of the ostentatious claim to be, perhaps not so precisely breaking as exceeding the law, has been neglected.[20]

However, such a strategy relies on success, and recently all has not been going according to plan. The US ruling elite has been split on strategy, and the decline in support for the war has been a real problem for the neoconservative agenda, as illustrated by Republican infighting, the forced departure of Rumsfeld in 2006, the administration's distancing of itself from some Yoo-isms for a putatively kinder, gentler neoconservatism, and of course ultimately the election of Barack Obama. Epitaphs for the movement, including from those previously loyal to it,

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[19] Again without denying an ideological function to IL, I have argued in more detail against the privileging of this element at the expense of attention to the ineluctable and constitutive juridicalization of modernity, the generalization of the legal form and the coercive material power of IL, in China Miéville, *Between Equal Rights: A Marxist Theory of International Law*, (Brill: Leiden, 2005) 80–84.

[20] An important exception is Nathanial Berman, 'Legitimacy through Defiance: From Goa to Iraq', 23 *Wisconsin International Law Journal* (2005), 93–125.

have become common.[21] As triumphalism has ebbed, with the fortunes of war, so has the ostentatious denunciation of IL associated with bullish early neoconservatism.[22]

In some administration quarters, even before the election of 2008 the tone had shifted even beyond of the NIL that always existed alongside the nihilists. Now in place of, or at least alongside, the braggadocio of Bolton or the arid and sinister managerialism of Yoo there are, for example, the gentlemanly and rather brilliant interventions of John Bellinger, Legal Adviser to the US Secretary of State. In an important 2007 speech in The Hague, Bellinger systematically and powerfully counters the charges that the US does not care about or abide by IL. In a move rather startling to those for whom the view that IL is fundamentally indeterminate is generally evidence of a critical and politically progressive approach to IL,[23] in the unusually nuanced way he counters the administration's legal critics, Bellinger seems not only almost to acknowledge such indeterminacy,

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[21] See for example Francis Fukuyama, *After the Neocons: America at the Crossroads* (Profile Books: London, 2006); and Kenneth Anderson, 'Goodbye to All That? A Requiem for Neoconservatism', 22 *American University International Law Review* (2007), 277.

[22] Russia's recent crushing of US ally Georgia's aspirations has meant further jeremiads from neoconservative quarters, as well as what some commentators have sardonically depicted as a renewed and hypocritical support for 'traditional' IL. See Robert Parry, 'Neocons Now Love International Law', <www.consortiumnews.com/2008/081108b.html> (visited 6 January 2009).

[23] See of course especially Martti Koskenniemi, *From Apology to Utopia* (Lakimiesliiton Kustannus: Helsinki, 1989). I have attempted to integrate the indeterminacy thesis, as expounded by Koskenniemi, into a Marxist approach to IL in Miéville, *Between*, *supra* note 19.

but to affably and strategically deploy it for the US state. '[O]ur critics often assert the law as they wish it were, rather than as it actually exists today. This leads to claims that we violate international law – when we have simply not reached the result or interpretation that these critics prefer'.[24]

No matter how one might excoriate the politics that animates them, these are hardly the crude theses that Sands – unconvincingly – ascribes to Yoo and others. Bellinger in fact turns such a Sands-ite critique of *self-evident basic error* against the liberals who level it. For example, in responding to a UN report on the detention camps at Guantánamo Bay, he explains: '[w]e think that the report is fundamentally flawed in its procedures and is riddled with inaccuracies and really was done in a way, frankly, that discredits the report overall and the work of the rapporteurs in this effort.'[25] Here, Bellinger is a reasonable man – more reasonable indeed than Sands, whose rage at Yoo is too urgent for clauses: 'Simplistic. Unilateral. Misconceived. Poorly presented. Rushed.'[26] Bellinger by contrast speaks more in sorrow than in anger, regretfully forced to speak out for the sake of the honour, let us be clear, *of the UN*, whose rapporteurs disgrace themselves with such shoddy work.

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[24] John B. Bellinger, 'The United States and International Law', <www.state.gov/s/l/rls/86123.htm> (visited 6 January 2009).

[25] Quoted in Steven Donald Smith, 'Guantanamo Detainees Being Held Legally, Official Says', <www.defenselink.mil/news/newsarticle.aspx?id=14844> (visited 6 January 2009).

[26] Sands, *Lawless*, *supra* note 5, 227

The failure of many liberal critics to take seriously the jurisprudential virtuosity of their opponents is predicated on an attempt to defend IL against (supposedly self-evident, and self-evidently inadequate) attacks. Some left and critical scholarship has taken a structurally similar approach – and is, therefore, despite its superiority to untheorized liberal nostrums, open to similar critiques – counterposing IL and the neoconservative agenda. Its most impressive iteration is Bill Bowring's important and erudite recent work on 'the degradation of the international legal order', according to which the Iraq War is '*blatantly* unlawful'.[27] Alas, the most serious neoconservative work illustrates that there is no such blatancy about the legal case.

For other radical scholars, sceptical of that 'international legal order' and suspicious of 'the rule of law', such a defence of 'legality' may be hard to sign up to. Neoconservatism, though, has traumatised the critical left as much as it has liberalism, and in response, strategies have emerged to combine fidelity to critical theories of law with juridical attacks on empire.

One has been a kind of temporary loyalty to law in the face of seeming exigency, and is thus similarly predicated on the law-versus-neoconservatism paradigm I have argued is misleading. '[W]ith key figures in the US administration so apparently cynical about international law … didn't law really need

[27] Bill Bowring, *The Degradation of the International Legal Order?* (Routledge: London, 2008), 1. Emphasis added.

championing?'[28] But in the subordination of critique to a legalism in which they have fundamental doubts, the strategy has been troublesome even to those attempting it. As Marks, Craven, Simpson and Wilde put it: 'How was it that we were international law's earnest champions? Had not some of us based our work on the effort to knock international law off its pedestal, and expose its darker dimensions?'[29]

It has recently been fashionable to construct enjoined critique and juridical attack on a reading of Agamben, following him in arguing that 'the state of exception as the original structure in which law encompasses living beings by means of its own suspension emerges clearly in the "military order" issued by the president of the United States' authorising indefinite detention of 'enemy combatants', and that those taken by the US under the PATRIOT Act, 'Taliban suspects', and above all Guantánamo detainees are subject to, 'a detention that is indefinite not only in the temporal sense but in its very nature as well, since it is entirely removed from the law and from judicial oversight'.[30] Such detainees are here paradigm figures of what Agamben terms 'bare life', victims of the exception that structures and underpins the law.[31]

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[28] Matthew Craven, Susan Marks, Gerry Simpson, and Ralph Wilde, "'We Are Teachers of International Law'", 17 *Leiden Journal of International Law* (2004) 363, at 366.

[29] *Ibid.*

[30] Giorgio Agamben, *State of Exception* (University of Chicago Press: Chicago, 2005), 3–4.

[31] See for example this 2004 interview: Ulrich Raulff, 'An Interview with Giorgio Agamben', 5 *German Law Journal* (2004), 609, at 610. For 'bare life', see Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford University Press: Stanford, 1998). A few of many

This is an ingenious approach, seeming to allow the critical IL scholar to maintain a radical position vis-à-vis the law *tout court* – which in this model is, after all, *predicated* on the violence of the exception – as well as on the specifics of post-9/11 US actions *because of* the exception into which they pitch their victims. However, this approach to recent shifts in law has come under telling criticism. Fleur Johns has brilliantly shown that, far from being the 'black box' of exceptionality, the Guantánamo regime is, in fact neurotically superlegalized.[32] The Agambenite may retort that this is to hypostasise the model, that the claim is not that the law is statically separated into 'juridicalized' and 'exceptional' spheres but that the former engenders the latter ongoingly and necessarily, and the fact that the exceptional sphere may then fill with law (which will then generate its own exception, and so on) if anything underlines the central importance of that exception.[33] There are very good reasons for scepticism about this, not least Mark

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approaches to Guantanamo drawing on this 'exceptionality' include Scott Michaelson and Scott Cutler Shershow, 'Beyond and Before the law at Guantánamo', 16 *Peace Review* (2004), 293–303; Jean-Claude Paye, 'The State of Emergency as the Empire's Mode of Governance', 16 *Multitudes* (2004), 179–190; Rens Van Munster, 'The War on Terrorism: When the Exception Becomes the Rule', 17 *International Journal for the Semiotics of Law* (2004), 141–53;

[32] Fleur Johns, 'Guantanamo Bay and the Annihilation of the Exception', 16 *European Journal of International Law* (2005) 613–35.

[33] This is, indeed, a criticism levelled at Judith Butler's supposedly one-sided insufficiently Agambenite reading of the exceptionality of Guantánamo (Judith Butler, 'Guantánamo Limbo', *The Nation*, 1 April 2002. Available at: <http://www.campcampaign.info/butler-guantanamolimbo.htm> (visited 19 April 2009)). According to Michaelson and Shershow, 'Butler

Neocleous's points that the extreme elasticity of the concept of 'emergency', and the long-term and juridically explicit 'states of emergency' enshrined in countless 'un-exceptional' juridical orders, strip that 'exception' of any particular analytic edge.[34] However, even if one were to accept the model, to insist that what is theoretically pertinent and most politically dangerous about, say, Guantánamo, is its putative exceptionality, *rather* or *more than* the law that also – surely 'just as also', at a minimum – conditions it, is question-begging, indeed, ideological.

In this respect, like the liberal jurisprudential attack on neoconservatism, the 'exceptionalist' critique of post-9/11 US law and IL acts to exonerate IL itself from imperial guilt: in this model the big problem, crudely, lies where the law has a hole in it. Even if the exception is seen as inextricable from the law, through a moment of illegitimate disentangling it is somehow specifically the *exception* that is the problem, rather than the law. How much worse if Bellinger is right, that Guantánamo represents little more 'typical laws of war', and this is IL as usual?[35]

… fails to recognize that the Guantánamo prisoners are both outside and inside the normative rule of law': Michaelson and Shershow, 'Beyond', *supra* note 31, at 296.

[34] Mark Neocleous, 'The Problem with Normality: Taking Exception to "Permanent Emergency"', 31 *Alternatives* (2006), 191-213.

[35] 'When we treat a phenomenon like Guantánamo Bay as an instance of lawlessness or, in the widely circulating phrase, a "legal black hole", we make it seem like a legal mystery. Well, Guantanamo Bay is certainly a place in which people have few rights, but it is no legal vacuum or mystery. Its basis in legal stipulations (constitutional law, special regulations, extradition arrangements) is, or should be, plain for all to see.' Susan Marks, 'State-Centrism, International Law and the Anxieties of Influence', 19 *Leiden Journal of International Law* (2006) 339-47, at 347.

The embedded exoneration of IL[36] is an exoneration of the mainstream liberalism/anti-neoconservatism that considers and advertises itself the defender of IL, and by extension of an alternative model of governance. In this way, the anguished insistence that this epoch has been characterised by a bleak international novum in which IL is being murdered operates to obscure continuities of imperial power: as Perry Anderson has put it, pointing out the 'complaisance with which Clinton's successive aerial bombardements of Iraq were met', 'Europe in mourning for Clinton … can unite in commination of Bush'.[37]

This nostalgia is one half of a temporal dyad, the other being aspirationalism about the future potential of IL – see for example Samantha Power's fervent insistence that we have to 'believe in international law',[38] or Anne-Marie Slaughter's argument for 'the future relevance, power, and potential of international law'.[39] Implicit in mainstream liberalism's insistence that IL – and

[36] '[W]e obscure the possibility that international legal norms may themselves have contributed to creating or sustaining the ills from which we are now to be saved. … And we weaken our capacity to criticize international law'. Marks, 'State-Centrism', *ibid.*

[37] Perry Anderson, 'Casuistries of Peace and War', *London Review of Books*, 6 March 2003. Available at <http://www.lrb.co.uk/v25/n05/ande01_.html> (visited 19 April 2009).

[38] Samantha Power, 'Getting through these dark times', <www.salon.com/news/feature/2008/02/18/samantha_power/index1.html#> (visited 6 January 2009).

[39] Anne-Marie Slaughter and William Burke-White, 'The Future of International Law is Domestic (or, The European Way of Law)', 47 *Harvard International Law Journal* (2006) 328–52, at 330.

hence in this model liberalism itself – lies bleeding is the claim that it only does so in the present: that yesterday was and tomorrow will be better.

This goes some way to explaining the eagerness of much mainstream liberal IL to be scandalised by the rhetorical antics of the nihilists. While this has made for a liberal insistence that we are in a moment of total crisis, a jurisprudential death-drive seemingly masochistically obsessed with IL's supposed destruction and thus IL liberalism's own failure, the argumentative focus on an increasingly marginalised and straw-man neocon 'IL nihilism' has not only ducked the battle with far more sophisticated opponents but has in fact stressed IL's importance and relevance, and thus those of its liberal champions. This aggrandizement has been a tacit collaboration between IL's defenders-in-mourning, and its nihilist enemies: in Anupam Chander's words, 'there was a time when the [right-wing] critics of international law denounced it for its irrelevance … [T]he critique has shifted. International law is denounced not for being feeble, useless and irrelevant but for being vigorous, effective, and pervasive.'[40] This is precisely right, and is evident in the shift from Perle's contemptuous dismissal of IL as 'in the way', to Rumsfeld's more anxious equation of it and terrorism, and to Bolton's fear that IL might breach 'the American citadel'.[41] These later iterations of IL nihilism are of paradoxical comfort to liberal IL.

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[40] Anupam Chander, 114 'Globalization and Distrust', *Yale Law Journal* (2005) 1193–236 at 1200.

[41] John Bolton, 'The Global Prosecutors: Hunting War Criminals in the Name of Utopia', 78 *Foreign Affairs* (1999) 157–64.

There is an elegant symbiosis. The liberal mainstream has attacked the nihilist neocons for gravely injuring IL, and thus stressed neoconservative power; and those nihilists in turn have complimented IL (and by implication its advocates) by denouncing it as a mortal threat. This mutually constitutive antagonistic grooming not only helps explain why liberal IL's partisans so often fail to engage with neoconservative *advocacy* of IL, but why their excoriation of certain of the nihilists has at times been almost libidinally charged. For liberals there is a mediated enjoyment: the preposterous rhetorical excesses of Bolton and Rumsfeld have flattered them. As an American bumper sticker had it after Rumsfeld's sacking in 2006, 'I miss hating him already'.[42] Quite.

I have argued that, contrary to some claims, the neoconservative wing of the Republican administration has by no means axiomatically denigrated IL. Even the NIL scholars, however, in stressing the 'Nationalism' in IL, have underlined the recent dominance of a strategy of American unilateralism,[43] a tendency widely criticised, and usually cited as part of a claim that the US administration breaks or

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[42] Image available at <photos1.blogger.com/blogger2/3057/1365/1600/rumsfeld_miss.gif> (visited 6 January 2009).

[43] For an exposition of recent right-wing unilateralist thought from an advocate, see Charles Krauthammer, 'American Unilateralism', <www.hillsdale.edu/news/imprimis/archive/issue.asp?year=2003&month=01> (visited 6 January 2009). For analyses of the political conception underpinning that strategy (that avoid depoliticized commonplaces equating the agenda with Bush's putative cowboy stupidity) see Callinicos, *New Mandarins*, *supra* note 11, and Adel Safty, 'The Origins of the Present American Unilateralism', available at <www.zmag.org/znet/viewArticle/3453> (visited 6 January 2009).

destroys IL. For Sands, for example, unilateralism is so *self-evidently* contrary to the spirit of IL that it can be cited as one of several one-word-sentence critiques of Yoo's doctrines, as above. In similar vein, the first point of the 2006 ASIL resolution, that '[r]esort to armed force is governed by the Charter of the United Nations and other international law', insists that multilateralism and IL are inextricable, indispensable and, by implication, being undermined.

The questions of whether and to what extent multilateralism and the IL associated with it have been, in fact, in crisis, and do, in fact, offer an alternative to the brutal realities of Iraq must therefore be investigated.

Haiti

Given the millennialism of so many of its proclamations about IL, one might have thought that, faced with evidence of strong countertendencies to the US IL-nihilist unilateralism it has diagnosed as (mis-)shaping the international system, the liberal IL establishment might have reacted with surprise, pleasure, suspicion, interest, or indeed anything at all. This might seem especially appropriate if such countertendencies had been evident under the Republican administration, long predating the victory of Barack Obama in the US presidential elections.

The 2006 ASIL resolution was passed two years *after* a large-scale, multilateral international action, involving UN intervention into a sovereign state, for the

planning and prosecution of which the US closely collaborated not only with allies, but with nation-states with which relations were otherwise strained. All this occurred with the full backing of the UN Security Council. In IL terms, this action, in other words, was effectively the anti-Iraq.

The February 2004 Haitian coup that saw the overthrow of President Jean-Bertrand Aristide, the subsequent occupation of Haiti by US, Canadian and French troops, and their rapid replacement with troops of the UN MINUSTAH mission, has been exhaustively and desperately documented by activists and the alternative media. It has been followed to varying degrees, if inadequately and with shocking racism and misrepresentation, in the mainstream press.[44] As a major event in the Americas, though underdiscussed, it has been the subject of attention – if often questionable – in political science and other disciplines.[45] However, in mainstream IL literature, the very scholarship one might expect to show a particular interest in such politically controversial multilateral UN action, the coup has barely registered. In fact at the time of writing, by any reasonable

[44] See for an overview Justin Felux, 'Debunking the Media's Lies about President Aristide', at <www.dissidentvoice.org/Mar04/Felux0314.htm> (visited 6 January 2009).

[45] As examples of the attention and of its partisan misrepresentation of the situation, see Daniel P. O'Neill, 'When to Intervene: The Haitian Dilemma', XXIV *SAIS Review* (2004) 163 (which cites without evidence Aristide's 'evident authoritarianism'); and David M. Malone, 'Peace and Democracy for Haiti: A UN Mission Impossible?', 20 *International Relations* (2006) 153–74, at 164 for the airy assertion that Aristide's claim to have been 'kidnapped' by US forces was 'far-fetched'.

standards astoundingly, *not one* of the top 25 IL journals has published an article on the coup and/or the UN mission.[46]

Shortly after the event, ASIL published a scant and scandalously misleading online 'ASIL Insight' on the Security Council's Resolution 1529 endorsing a UN force in the country, which rehearsed the standard and spurious line that 'former Haitian President Jean-Bertrand Aristide, facing insurrection and public disorder, resigned and left the country'. [47] The same year saw one journalistic sketch in *The Vanderbilt Journal of International Law* consisting largely of platitudinous aspirations in the democratising potential of the Haitian judiciary (a grim joke, given that group's recent history and complicity in the coup, as will be argued) alongside rote insinuations against Aristide.[48] These two five-year-old offerings represent more or less the entirety of mainstream IL scholarship's reflections on the Haitian coup and its bloody five-year aftermath. Nor is there any more attention paid in the lively IL blogosphere, even freed of some constraints and delays of academic publication.[49]

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[46] Ranked in 2006 by the Washington & Lee Law Library: see Roger Alford, 'Top International Law Journals', <opiniojuris.org/2006/11/21/top-international-law-journals/> (visited 6 January 2009).

[47] Frederic L. Kirgis, 'Security Council Resolution on Multilateral Interim Force in Haiti', <www.asil.org/insights/insigh128.htm> (visited 6 January 2009).

[48] Ben J. Scott, 'Order in the Court: Judicial Stability and Democratic Success in Haiti', 37 *Vanderbilt Journal of Transnational Law* (2004) 555.

[49] The most important IL blog, Opinio Juris, <www.opiniojuris.org>, has never mentioned the events. UN Dispatch has presented one anodyne 'snapshot' (its own term) of MINUSTAH (and

Since 2004 there has been little but the odd line in passing in essays on other topics, rehearsing propaganda such as that by some ineluctable and tragic Haitian logic divorced from any imperialist machinations, '[i]n February of 2004, Haiti *slipped back* into chaos and despair',[50] that the foreign military presence has meaningful Haitian government consent,[51] that more than once the US 'forced the dictators and their Tonton Macoute death squads out of Haiti',[52] and so forth.

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repeated the spurious claim that Aristide 'fled') <www.undispatch.com/archives/2007/05/there_are_six_t.php> (visited 6 January 2009); Democracy Arsenal has made two one-line mentions of Aristide's overthrow, once even mentioning in passing '[t]he U.S. role in helping depose Haitian President Jean-Bertrand Aristide', but not to condemn it: rather to condemn South Africans for their 'virulent animosity towards America' <www.democracyarsenal.org/2005/08/bad_bad_sam.html> (visited 6 January 2009). Of the whole of the extensive Opinio Juris blogroll, which covers all the most important IL blogs, only two blogs deserve credit for raising critical questions about the event (or indeed mentioning it for more than one line): those of legal philosopher Brian Leiter and of the lawyer Jeralyn Merrit, each of whom twice questions the official story <leiterreports.typepad.com/blog/2004/03/what_exactly_is.html> (visited 6 January 2009) and <leiterreports.typepad.com/blog/2004/03/more_worrisome_.html> (visited 6 January 2009); and <www.talkleft.com/story/2004/03/02/162/41286> (visited 6 January 2009) and <www.talkleft.com/story/2004/02/27/708/07955> (visited 6 January 2009).

[50] Kirsti Samuels, 'UN Reform: Post-Conflict Peace-Building and Constitution-Making', 6 *Chicago Journal of International Law* (2006) 663, at 663 (emphasis added).

[51] Adam Roberts, 'Transformative Military Occupation: Applying the Laws of War and Human Rights', 100 *American Journal of International Law* (2006) 500.

[52] John Davenport, 'The Just War Tradition and Natural Law: A Discussion: Just War Theory Requires a New Federation of Democratic Nations', 28 *Fordham International Law Journal* (2005)

While the prestigious IL fora have had nothing to say about the IL of this situation, there have been stalwart efforts in other arenas by activist lawyers, such as Brian Concannon, Marjorie Cohn and Ira Kurzban (President Aristide's attorney), to question the legality of the coup and occupation.[53] The progressive National Lawyers Guild has organised two human rights delegations to the country, and set up a subcommittee on Haiti 'to promote justice and sovereignty for the Haitian people'.[54] In 2006, a group of Haitian citizens and human rights organisations filed a petition at the Inter-American Commission on Human Rights, claiming that the coup violated IL that 'protects citizens' democratic

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763, at 776–7. For an explicit attempt to equate Aristide's supporters with Duvalierist death squads, see Malone, 'Peace and Democracy', *supra* note 43, at 163: 'Aristide's much feared militia supporters, the Chimères, elicited nightmare memories of the Tontons Macoutes'.

[53] See for example Brian Concannon, 'Can the New Congress Help Uncover the Truth?', <www.counterpunch.org/concannon01092007.html> (visited 6 January 2009); Marjorie Cohn, 'The Illegal Coup in Haiti', <www.counterpunch.org/cohn03312004.html> (visited 6 January 2009); and Ira Kurzban, 'Diplomacy by Death Squad', <www.counterpunch.org/kurzban05032005.html>, (visited 6 January 2009). See also the University of Miami School of Law's two important investigations into human rights violations in Haiti since 2004: Thomas M. Griffin, *Haiti: Human Rights Investigation November 11–21, 2004* (pdf), <www.law.miami.edu/cfshr/pdf/CSHR_Report_1111-21_2004.pdf> (visited 6 January 2009); and Anna Mance, Quinn Smith and Rebecca Yagerman, *Haiti: Human Rights Investigation March 11–16, 2006* (pdf), <www.law.miami.edu/cfshr/pdf/CSHR_Report_0311-162006.pdf> (visited 6 January 2009).

[54] The subcommittee's website is at <www.nlginternational.org/com/main.php?cid=3> (visited 6 January 2009), from where the damning summary reports of the Human Rights Delegations can be accessed.

choice of government'.[55] In March 2004, the National Conference of Black Lawyers filed a complaint with the International Criminal Court's prosecutor, requesting investigation on 'whether charges may be brought against Bush Administration officials for war crimes in the kidnapping of Jean-Bertrand Aristide'.[56] 2005 saw the first session of the International Tribunal on Haiti, organised by a coalition of solidarity groups and activist lawyers, at which not only Haitian police commanding officers but leading UN and MINUSTAH representatives 'were convicted of violations of Haitian law and international law including crimes against humanity'.[57]

Some who share the anti-imperialist agenda of these activists, but whose jurisprudential perspective is one of critical legal scepticism, might be unconvinced about the juridical precision and/or strategic efficacy of expressing opposition to

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[55] 'On Eve of Haiti's Elections, Haitian Citizens and Four Human Rights Groups File Petition against United States for Overthrowing Haiti's Democracy in 2004 Coup D'Etat', <www.ijdh.org/articles/article_iachr_BAI_IJDH_Yale_1-31-06.htm> (visited 6 January 2009). For more material on this petition, see <www.ijdh.org/articles/article_iachr_BAI_IJDH_Yale.htm> (visited 6 January 2009).

[56] The text of the complaint is at <archives.econ.utah.edu/archives/a-list/2004w13/msg00007.htm> (visited 6 January 2009). The group claimed ICC jurisdiction on the grounds that though neither the US nor Haiti are parties to the Rome Statute, the Central African Republic, to where Aristide was taken, is.

[57] 'Summary of the First Session of the International Tribunal on Haiti', <www.lasolidarity.org/haiti.shtml> (visited 6 January 2009). Details of these prosecutions were passed on to the International Criminal Court, without result.

the coup in these legal terms.[58] Any such comradely disagreement and debate notwithstanding, however, it is *trivial and self-evident* that the Haitian coup raises key issues of IL, and therefore telling that such discussions have overwhelmingly had to take place in relatively marginalized grassroots, activist and alternative media.

The silence of the 'invisible college' of IL with regard to this issue is damning.[59] Even absent appropriate political urgency – even if, in the face of the evidence, the 'official' version of the Haitian coup is adhered to – the simple facts of the controversy, violence and international legal mechanisms invoked, and therefore issues at stake, mean that at a level of scholarly due diligence, if nothing else, this is a shameful omission. What lies behind this ignoring? And what does it tell us about IL and the system of and reasons for dominance exerted by powerful states over weaker – imperialism?[60]

The details of the coup, its context and aftermath, the systematic misrepresentation of Aristide, Lavalas, and the 2000 elections that Lavalas overwhelmingly won (repeated insinuations to the contrary notwithstanding), the situation since 2006, and the Préval presidency are beyond the remit of this paper. They have been outlined elsewhere, particularly in Peter Hallward's outstanding

[58] For my version of left IL-scepticism, see Miéville, *Between*, *supra* note 19, especially 295–320.

[59] The categorisation is Oscar Schachter's, in 'The Invisible College of International Lawyers', 72 *Northwestern University Law Review* (1977) 217–226.

[60] On various 'broad' and 'narrow' definitions of imperialism – never an uncontroversial category – and my own usage, see Miéville, *Between*, *supra* note 19, 226–30.

and exhaustive *Damming the Flood*.[61] Here I mention only a few salient facts and issues.

The officially sanctioned story has it that after his initial election in 1990, the liberation theologist Aristide began to morph into yet another brutal tinpot dictator; that he was overthrown in 1991; replaced by the good graces of the US in 1994; degenerated even further, engaging in large-scale electoral fraud in 2000; until a mass movement finally overthrew him in 2004. At this point, as the 'ASIL Insight' quoted above dutifully alleges, Aristide resigned and left.

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[61] Peter Hallward, *Damming the Flood: Haiti, Aristide, and the Politics of Containment* (Verso: London, 2007). Also see his 2004 article, 'Option Zero in Haiti', 27 *New Left Review* (2004) 23. Unsurprisingly, his analysis has not been without its critics. His book was savagely and lengthily criticized by Michael Deibert (the author of *Notes on from the Last Testament: The Struggle for Haiti* (Seven Stories: New York, 2005), a book supportive of Aristide's overthrow), at <michaeldeibert.blogspot.com/2008/03/review-of-peter-hallwards-damming-flood.html> (visited 6 January 2009). The dignified tone of Hallward's reply, available at <mostlywater.org/peter_hallward_responds_michael_deibert's_review_damming_flood> (visited 6 January 2009), is admirable, but almost disappointing in its restraint. By comparison, one can be glad that Justin Podur overcame his stated reluctance to debate Deibert (whose response to Podur's 2006 review of his book is available at <www.zmag.org/znet/viewArticle/4405> (visited 6 January 2009): the original review is Justin Podur, 'Kofi Annan's Haiti', 37 *New Left Review* (2006)). Podur's 2006 rebuttal of Deibert's claims, at <www.zmag.org/znet/viewArticle/4398>, (visited 6 January 2009), also devastatingly lays bare his *ad hominem*, tendentious, imperially apologetic and, according to at least one of his supposed informants (Patrick Elie), mendacious methodology.

This is a risible misrepresentation. Aristide was and remains the key leader of Lavalas, the popular movement that arose in the 1980s and represented a significant threat to the power of the (US-supported) Haitian elite: a military coup under General Raoul Cédras in 1991 in response to Aristide's election victory in 1990 left about 5,000 people dead. In 1994 Aristide, suitably hamstrung, or so the US and its allies thought, was allowed to return (when the Haitian junta became too unseemly to its sponsors). After winning a second election in 2000, and proving that despite the extreme financial and political constraints that straitjacketed him, Aristide still had unacceptable aspirations to shift power in Haiti somewhat towards the poor and grassroots, in 2004 he was forcibly expelled from his country by US marines, as the culmination of a sustained campaign against him and his renewed Lavalas movement by (above all) the US, France, Canada and Haitian domestic elites. The core of the domestic opposition, far from being the broad-based movement of 'civil society' as which it was represented, was a somewhat fractious alliance between old-school Duvalier-style *Macoutistes*, right-wing officers who never forgave Aristide for disbanding the army in 1995, and sweatshop owners such as Andy Apaid (an American citizen and leader of the 'Group of 184', the International Republican Institute-backed collective of business leaders invariably described in the mainstream media as a 'grassroots initiative'). Lavalas was and remained the most popular political movement in the country, in large part because despite the concerted and unrelenting pressure of the US, France and the international financial institutions, and their success in insisting on neoliberal 'reforms', Lavalas continued to attempt to build what Aristide called 'poverty with dignity', placing what meagre bulwarks

were possible against the total collapse of social programs and labour standards. Discussing Haiti as long ago as 1922, one IL scholar expressed concern that '[f]ree elections in a good many countries would mean the elimination of those most fit to govern', and 78 years later, so, from the US point of view, it proved.[62]

Law, especially *qua* legitimation, was key to the coup. Far from representing 'Haiti's most promising source of strong, domestically oriented progress',[63] much of the Haitian judiciary, as organised in the Haitian Judges' association (ANAMAH), was a key partner in the UN overthrow of Aristide, reflecting the organisation's creation with the careful planning and participation of the US and Canada through USAID-proxy IFES (International Federation of Electoral Systems), as part of a deliberate campaign of 'sensitization' of the judiciary to accentuate elite opposition to Aristide.[64] After Aristide's overthrow, ANAMAH made itself eminently useful to the coup regime, for example keeping awkward cases in legal limbo. When then-minister of justice Bernard Gousse dismissed Judge Jean-Sénat Fleury, who had demanded the release of an opponent of the Latortue government detained without evidence, not only did ANAMAH raise no objections, but the head of the organisation, Judge Jean Peres Paul, who had been active in the anti-Lavalas opposition before the coup, took over the case and

[62] Philip Marshall Brown 'International Responsibility in Haiti and Santo Domingo', 16 *American Journal of International Law* (1922) 433, at 434.

[63] Scott, 'Order', *supra* note 46, at 574.

[64] This is brilliantly researched and laid out in Griffin, *Haiti*, *supra* note 53.

kept the prisoner, Father Gerard Jean-Juste, in jail.[65] The pious international mantra of 'judicial independence', in other words, did not mean independence from those plotting a coup against a democratically elected and popular government.

Crucially for the consideration of IL, the coup, its preparations, and the occupation, have been astonishingly successful exercises in multilateral diplomacy. The preparations for the coup were an opportunity for the US and France to put some of the ill-temper over Iraq behind them, as the new and old colonial powers worked together to orchestrate the vilification of Aristide and to plan for his overthrow, with the enthusiastic collaboration of Canada. The three countries collaborated to train right-wing paramilitary rebels in the Dominican Republic in preparation for the coup,[66] support the anti-democratic rightwing forces that

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[65] Stuart Neatby, 'The Politics of Finger Wagging', <www.zmag.org/content/print_article.cfm?itemID=10121^sectionID=1> (visited 6 January 2009); Brian Concannon, 'In Haiti, the Chickens are Coming Home to Roost', <www.counterpunch.org/concannon12302005.html> (visited 6 January 2009). Judge Peres Paul also personally ordered the arrest of two journalists investigating the harassment of Fr. Jean-Juste, Kevin Pina and Jean Ristil, for 'disrespect to a magistrate': 'Police in Haiti Arrest Two Journalists', <www.ijdh.org/articles/article_arrest_journalist_9-14-05a.htm> (visited 6 January 2009).

[66] 'Witnesses: U.S. Special Forces Trained and Armed Haitian Anti-Aristide Paramilitaries in D.R.', <www.democracynow.org/2004/4/7/witnesses_u_s_special_forces_trained> (visited 6 January 2009). On Canada's preparations, see Anthony Fenton and Dru Oja Ja, 'Declassifying Canada in Haiti: Part I', <www.dominionpaper.ca/foreign_policy/2006/04/07/declassify.html>(visited 6 January 2009), and

would replace Lavalas, the brutal Interim Government of Haiti led by Gérard Latortue between 2004 and 2006, and ultimately, when massive electoral fraud (including ballots burnt and dumped)[67] failed to halt the 2006 election to president of René Préval (seen by the populace as the candidate closest to Aristide and Lavalas), ensured that his administration would not stray from permitted paths. (Préval, indeed, has dutifully requested the extension of the hated MINUSTAH mandate.)[68]

UN declaration 1529 was backed by the Security Council and was read out at a self-congratulatory press conference by John Bolton, the very anti-multilateralist bogeyman so denounced by IL liberals. International support was never total: both the African Union and Caricom, the Caribbean Community, opposed the coup (Caricom suspending Haiti's membership after Aristide's overthrow). However, the UN invasion has gained the active support of countries, such as Spain, opposed to the Iraq War, and has seen the enthusiastic collaboration of Latin American states in other contexts considered progressive (though notably not Venezuela, whose President Chavez continues to support Aristide): indeed, the military operation is under Brazilian leadership. The head of the UN

'Declassifying Canada in Haiti: Part II', <www.dominionpaper.ca/foreign_policy/2006/04/09/declassify.html> (visited 6 January 2009).

[67] See Joseph Guyler Delv, 'Burned Ballots Inflame Haitian Election Tensions', <www.commondreams.org/headlines06/0215-08.htm> (visited 6 January 2009).

[68] 'Minustah Mandate Extended in Haiti, Recognizes Risks of Premature Withdrawal', <goliath.ecnext.com/coms2/gi_0199-6834493/MINUSTAH-MANDATE-EXTENDED-IN-HAITI.html> (visited 6 January 2009).

Stabilising Mission has been Chilean, Guatemalan, and is at the time of writing (Hédi Annabi) Tunisian. The military force includes personnel from Argentina, Bolivia, Brazil, Canada, Chile, Croatia, Ecuador, France, Guatemala, Jordan, Nepal, Morocco, Pakistan, Paraguay, Peru, Philippines, Spain, Sri Lanka, the US and Uruguay. Police and civilian personnel also include members of many African nations, including Benin, DR Congo, Burkina Faso, Chad, Rwanda, Senegal, Togo, et al, as well, importantly, as China. The lack of attention paid by the discipline of IL to MINUSTAH is even more astonishing given this amazingly successful multilateral cooperation, this rainbow nation of imperial proxy invaders.

Despite racist reporting that undermines the testimony of victims,[69] it is clear that MINUSTAH and the UN unleashed, supported, and participated in a reign of terror. In 2006, based on an extensive survey of households the prestigious British medical journal *The Lancet* calculated that 8000 murders and 35000 rapes had occurred in greater Port-au-Prince alone in the two years since the coup. For the murders, 'almost half of the perpetrators [were] identified as political actors', the overwhelming majority opponents of Aristide, protected and collaborated with by the UN, including '[a]rmed anti-Lavalas groups and their partisans, along with the HNP [Haitian National Police] and other government security forces'. UN troops were identified as responsible for serious abuses including violence and arbitrary arrest and were, besides criminals, '[t]he most commonly identified

[69] ITN television news on 18 January 2006, for example, reporting an injured woman telling her story, explained that 'this woman *insists* she was shot by [UN] peacekeepers' (emphasis mine, but audible in the original), as if that claim was self-evidently questionable.

perpetrators of death threats'[70] – on which threats, as will be clear, they have had little hesitation in acting.

UN troops have justified Haitian police death-squad attacks against Lavalas supporters, and, in the words of a Harvard report, 'effectively provided cover for the police to wage a campaign of terror'.[71] The UN has also taken a more direct role, with what one writer has described approvingly as 'robust raids'.[72] MINUSTAH troops have repeatedly besieged, occupied and attacked pro-Lavalas slums like Bel Air and Cité Soleil, in the name of 'anti-gang' activity, sometimes accompanied by Haitian police, leading to arbitrary mass arrests and many civilian deaths.[73] Hospitals have not been spared from UN attack.[74] MINUSTAH has

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[70] Athena R. Kolbe and Royce Hutson, 'Human rights abuse and other criminal violations in Port-au-Prince, Haiti: a random survey of households' *The Lancet* (2006), <www.globalpolicy.org/security/issues/haiti/2006/0831abusesurvey.pdf> (visited 6 January 2009). The article is discussed by one of the authors at <www.democracynow.org/2006/8/31/shocking_lancet_study_8_000_murders>(visited 6 January 2009).

[71] Harvard Law Student Advocates for Human Rights and Centre de Justiça Global, 'Keeping the Peace in Haiti?', <www.reliefweb.int/rw/RWB.NSF/db900SID/VBOL-6B5J5U?OpenDocument>(visited 6 January 2009); see also Reed Lindsay, 'Police terror sweeps across Haiti', *The Observer*, 31 October 2004. Available at <http://www.guardian.co.uk/world/2004/oct/31/theobserver> (visited 19 April 2009).

[72] Malone, 'Peace and Democracy', *supra* note 43, at 166.

[73] Isabel MacDonal, 'DDR in Haiti: The UN's cleansing of Bel Air ahead of elections', <www.haitiaction.net/News/HIP/12_17_5/12_17_5.html> (visited 6 January 2009); 'Haiti: New Attacks on Cite Soleil Residents by UN Troops',

fired on mass demonstrations demanding a return to democracy and protesting the electoral fraud committed against Preval in 2006.[75] To this day MINUSTAH maintains a checkpoint controlling entrance and egress to Cité Soleil.

MINUSTAH has also perpetrated more targeted – if hardly 'precision' – attacks. On 6 July 2005, 350 UN troops, 'not even using Haitian proxies',[76] backed by helicopter and armoured vehicles, stormed Cité Soleil and as part of a massive assault, assassinated the immensely popular community organiser and Lavalas militant – 'gang leader' in the parlance of the Haitian business elite and the *New York Times*[77] – Emmanuel Dread Wilme. The attack and its aftermath were

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<www.haitiaction.net/News/HAC/11_28_5.html> (visited 6 January 2009); Wadner Pierre and Darren Ell, 'Brutalized and Abandoned: Residents of Cite Soleil Speak Out', <www.haitianalysis.com/2007/2/28/brutalized-and-abandoned-residents-of-cité-soleil-speak-out> (visited 6 January 2009).

[74] Aaron Lakoff, 'The Politics of Brutality in Haiti', <www.dominionpaper.ca/accounts/2006/01/21/the_politi.html> (visited 6 January 2009).

[75] Melissa McNamara, 'Haiti Election Results Spur Violence', <www.cbsnews.com/stories/2006/02/13/world/main1311869.shtml> (visited 6 January 2009).

[76] Kim Ives, editor of *Haiti Progres*, interviewed on *Between the Lines* July 2005, available at <btlonline.org/2005/ram/ives072905.ram>, transcript at 'U.N. Troops Accused of July 6th Massacre in Haiti's Cite Soleil', <www.thewe.cc/weplanet/news/americas/haiti/haiti_un_massacres_continue.htm> (visited 6 January 2009).

[77] Walt Bogdanovich and Jenny Nordberg, 'A Haitian Slum's Anger Imperils Election Hopes', *New York Times*, 29 August 2005. Available at <http://query.nytimes.com/gst/fullpage.html?res=9B0CE1D9113CF93AA1575BC0A9639C8B63&sec=&spon=&pagewanted=3> (visited 19 April 2009).

caught on film, making a mockery of UN claims to be returning fire against 'armed bandits':[78] in fact their indiscriminate attacks led to the deaths of at least 26 civilians including many children. On 22 December 2006, MINUSTAH again assaulted Cité Soleil with an 'anti-gang' justification (and were again caught on film), killing around 30 civilians, again including children.[79] With such a record, the claim that MINUSTAH should be 'criticized for not being aggressive enough' is chilling,[80] and the formulation that '[*d*]*espite* the arrival of more than 7,000 United Nations peacekeepers, Haiti continues to spiral downward into chaos and violence'[81] grotesquely backwards.[82]

This is multilateralism as terror.

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[78] Stills available at <www.haitiaction.net/News/HIP/7_13_5/out/index.htm> (visited 6 January 2009), a discussion of the events and evidence at 'Haiti: Revelations of UN's role in massacres', <www.haitiaction.net/News/HIP/1_29_7.html> (visited 6 January 2009).

[79] 'UN in Haiti accused of second massacre', <www.haitiaction.net/News/HIP/1_21_7/1_21_7.html>, (visited 6 January 2009).

[80] Bathsheba N. Crocker, 'Excerpt from *Mission Not Accomplished*, <journal.georgetown.edu/72/crocker.cfm> (visited 6 January 2009).

[81] Daniel P. Erikson and Adam Minson, 'The Caribbean: Democracy Adrift?', 16 *Journal of Democracy* (2005) 159, at 165. Emphasis added.

[82] The hope that a focus on human-rights law might ameliorate these brutalities, that such 'reminds everyone that the purpose of the mission is to measurably improve the full-spectrum of human rights of human rights as tied to the root causes of the conflict in Haiti' (Todd Howland, 'Peacekeeping and Conformity with Human Rights Law: How Minustah Falls Short in Haiti', 13 *International Peacekeeping* (2006) 462, at 469) is quite utopian. As will be argued, the purpose of the mission is very different.

The ramifications of multilateral terror

An issue of this political magnitude and controversy, informed by bread-and-butter IL problematics such as intervention, sovereignty, the UN and multilateralism, that in passing undermines the given of a supposedly inexorable US unilateralism, should obviously be of central interest to IL scholars. Liberal IL's ignoring of Haiti cannot, then, be apologised away as oversight. This no-discussion is not an absence but an absent presence, a structuring silence in mainstream IL.

On the foundational grounds according to which mainstream opposition to the Iraq War has been based – the unilateral intervention against another country's sovereignty without UN Security Council Resolution backing – the Haitian coup against democracy is easily seen as legal. With this, though silently, the mainstream agrees and makes no complaint. When John Yoo, perhaps cheekily, mentions Haiti in passing as a situation as one where the US stops a 'murderous civil war',[83] he does not risk being disagreed with by most of his fiercest critics.

Two factors have underlied not just this implicit agreement, but liberalism's silence about it. One has been the risk for mainstream IL in interrogating the

[83] John Yoo and Robert J Delahunty, 46 'Statehood and the Third Geneva Convention', *Virginia Journal of International Law* (2005), 131.

case. The Haiti invasion, in its cross-continental multilateralism, is best safely ignored lest it undermine the liberal claim to be defending a multilateralism under attack. Here that multilateralism is, after all, a fabulously successful strategy employed by the dreaded neoconservatives. If *they* can be multilateral too, liberal IL might have to ask, then what are we? This is IL's negative silence of anxiety.

The fact of the neoconservatives and the Manichean politics that have characterised their power has led liberals and even some radicals to construct a series of political binaries, and then to equate those binaries with each other. Thus in this discourse:

Unilateralism———versus ———Multilateralism

equals

IL nihilism———versus———IL advocacy

equals

Neoconservatism———versus———Liberalism

equals (in some iterations)

Imperialism———versus———Anti-Imperialism

equals (in the crudest formulations)

Republicans———versus———Democrats

Even if one accepts a temporary heuristic use to any of those schema individually, *none* of the 'equal's follows. I have argued through the examples of Yoo and others against the equation of neoconservatism and IL nihilism: now the Haiti invasion of 2004 shows that multilateralism can be just as if effective an imperial strategy as, if not a more effective one than, unilateralism.

Liberal IL may have avoided considering that, but the right is not so coy. In a fascinating 2004 article in the hard-right *National Review* – the title of which, 'Safety in Numbers: the Limits of Unilateralism', makes clear the thesis – influential conservative writer (and ex-advisor to Thatcher) John O'Sullivan engages with this issue precisely through the optic of Haiti.[84]

O'Sullivan warns that because of the potential for 'imperial overstretch', the US has worked with the international community, and that 'global isolationism is

[84] John O'Sullivan, 'Safety in Numbers: the Limits of Unilateralism', *National Review*, 22 March 2004. Available at <http://www.thefreelibrary.com/Safety+in+numbers%3a+the+limits+of+unilateralism.-a0130931877> (visited 19 April 2009).

dead', replaced with a 'limited institutional multilateralism'.[85] He is clear that the purpose of this multilateralism is to further American interests. Despite indulging an obligatory swagger when invoking 'multilateral respectability' ('don't laugh – it shuts up France and the UN General Assembly'), the substantive argument is not that the US is just shamming, but that it is sometimes easier – even 'necessary' – to rule multilaterally. The Haitian coup proves that such multilateralism does not necessarily mean only an effort at some effete, touchy-feely hegemony over hearts and minds, but can be manifest in the violence of shock-and-awe, as in the UN-sponsored terror in Port-au-Prince.

For scholars for whom multilateral IL is a progressive bulwark against a hypostasized unilateralism, this is why Haiti is difficult to engage with – it rebukes their project. Of course, many of those who express support for multilateralism would be horrified to think that the carnage of Port-au-Prince is what they are signing up for. But in the current context of international power, that is the multilateralism officially on offer. The units of such actually-existing multilateralism are capitalist states engaged in inevitable inter- and sub-imperialist rivalries and violence. As embedded in the modern international system, official multilateralism is not a *Weltanschaung* but an imperialist strategy, and one which can coexist with its supposed opposite, unilateralism, without much difficulty.

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[85] For another argument from the right on the limitations of unilateralism, see Clyde Prestowitz, *Rogue Nation* (Basic Books: New York, 2003) and his discussion of the book at <www.cceia.org/resources/transcripts/972.html> (visited 6 January 2009), where he claims, similarly to O'Sullivan, that 'unilateralism can have very high costs'.

A key problem with the 'unilateral-versus-multilateral' discourse is that these units have been evacuated of any fundamental dynamic. In reality they are not the drivers of state behaviour, but functions of underlying interests, with concomitant strategies and methodologies, and as such their iterations are liable to shift suddenly, as with any decent and flexible strategy. Getting at those underlying dynamics leads us, finally, to the second reason that the liberal IL mainstream does not interrogate the Haiti action: the silence is of complicity.

Though explicit liberal legal engagement with the coup has been largely absent, where necessary, law being a 'maze of plausibilities',[86] it has not been difficult to take a position contrary to the coup's radical legal critics, and defend it. As I have argued, its multilateral UN-backed nature has made it legally uncontroversial, to the point of near-invisibility, in mainstream IL. Those few inclined to more explicit, fashionable legal justifications, and/or more robust liberal interventionism, have cited the porously bordered categories of peacekeeping, human rights and humanitarian intervention, and the emerging 'new international norm', that is, it is claimed, on its way to becoming part of customary IL, the 'responsibility to protect' (R2P).[87] (It is further evidence of the coup's looming

[86] Alfred Thayer Mahan, *Naval Strategy* (Little, Brown: New York, 1911) at 120.

[87] On the intervention as 'peacekeeping', see for example Boleslaw Adam Boczek, *International Law: A Dictionary* (Scarecrow Press: Lanham, MD, 2005) at 409, 410; and Alex J. Bellamy and Paul Williams, 'Who's Keeping the Peace? Regionalization and Contemporary Peace Operations', 29 *International Security* (2005) 157–195. For an example of approval of the intervention on the grounds that 'there was little question but that human rights and humanitarian concerns … were

absent presence to liberal and liberal IL discourse that while Haiti was recently 'characterized by some as an "ideal R2P situation" … [s]ince the coup, however … Haiti has dropped off the R2P radar. Dozens of papers, panels, symposiums, and conferences seem to have studiously avoided Haiti when discussing R2P'.)[88]

There are not only no mainstream qualms over the legality but, crucially, over the *politics* of the action, to lead to investigation or attention, let alone dissent. It is not that the imperialism of multilateralism is hidden. Whatever a *grassroots* 'unofficial' invocation of multilateralism might mean – and such might perhaps operate on some anti-imperialist axis[89] – for the liberal *establishment* the appeal of multilateralism is precisely that it is part of an imperialist strategy.

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the driving force behind the Chapter VII action', see Christopher J. Le Mon and Rachel S. Tayler, 'Security Council Action in the Name of Human Rights', 11 *African Yearbook of International Law* (2005) 263–298, at 292; For an invaluable critical look at the arguments over P2P in Haiti, see Anthony Fenton, 'Haiti and the Danger of the Responsibility to Protect (R2P)', <upsidedownworld.org/main/content/view/1638/1/> (visited 6 January 2009). For an overview of NGOs tacit support for the coup, in particular those of Canadian organisations, by reference to human rights, see Kevin Skerrett, '*Rights and Democracy*: A Government-Owned "Human Rights" Group', <canadahaitiaction.ca/?p=83> (visited 6 January 2009), and Yves Engler, 'NGOs and Imperialism, <www.zmag.org/znet/viewArticle/14572> (visited 6 January 2009).

[88] Fenton, 'Haiti', *supra* note 87.

[89] Though inchoate, one might, for example, see a seed of some such alternative multilateralism of activists and progressive organisations in the Porto Allegre Haiti Declaration agreed at the World Social Forum in 2005, <auto_sol.tao.ca/node/1146> (visited 6 January 2009), condemning the coup.

This should be entirely uncontroversial, as that establishment makes few bones about it. With the increasing troubles and costs of unilateralist neoconservatism – now that, in O'Sullivan's words, 'global isolationism is dead' – a shift in emphasis and attention towards multilateralism has been occurring,[90] and the multilateralist-imperialist wing of US politics is becoming more confident. I have argued that this phenomenon is not isolated to the Democrats. However, such an emphasis is less alienating to sections of that party's base than to the Republicans', and exemplary of the trend is the new assertiveness of the Truman National Security Project, an organisation of Democrats 'dedicated to educating progressive leaders in national security'[91] (of which Anne-Marie Slaughter, that leading figure in the anti-neoconservative IL establishment, is on the advisory board). For the Truman Project, multilateralism is inextricable from US imperialism, as the founders' breathless paean to violence illustrates.

> American power was real, vast, and a force for good. We never knew the pain of military stalemate and the self-doubt of the Vietnam generation. Instead, we watched our first war on television, culminating in the first Gulf War's stunningly rapid victory. That war showed us both the power of military force, and the broad potential of multilateralism.[92]

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[90] See Grant T. Harris, 'The Era of Multilateral Occupation', 24 *Berkley Journal of International Law* (2006) 1.

[91] According to their website, <www.trumanproject.org> (visited 6 January 2009).

[92] Rachel Kleinfeld and Matthew Spence, *The September 11 Generation: The National Security Beliefs of Voters Under 30*, <trumanproject.org/training/publications/papers/the-september-11th-generation> (visited 6 January 2009). It is notable that in this passage the problem that beset the

Speaking to the ASIL, Hillary Clinton was clear about the instrumentalism of multilateralism and IL for US imperialism, and about the non-opposition between unilateralism and multilateralism (while indulging in the traditional oversimplification of the Republicans as IL-nihilist unilateralists described above).

> Contrary to what many in the current administration appear to believe, international law and international institutions are tools that help us to promote and advance our interests and values, not traps that limit American power. … The Bush Administration has presented the American people with a series of false choices: force versus diplomacy, unilateralism versus multilateralism, and hard power versus soft. Seeing these choices as mutually exclusive alternatives reflects an ideologically blinkered vision of the world that denies America the tools and the flexibility necessary to lead and succeed.[93]

In neither case is the terminology of 'world community' or 'international society' even used – there is no dissembling that this is multilateralism in the service of American 'interests' and 'power'. In a discussion at the Carnegie Council in 2003,

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'Vietnam generation' was their 'self-doubt', rather than what might reasonably have provoked it: the Vietnam War itself. See also the 2003 paper 'Progressive Internationalism: A Democratic National Security Strategy', published by the Progressive Policy Institute, <www.ppionline.org/ppi_ci.cfm?contentid=252144&subsecid=900020&knlgAreaID=450004> (visited 6 January 2009).

[93] In her responses to an ASIL survey, <www.asil.org/clintonsurvey.cfm> (visited 19 April 2009).

this problematic was made clear in a question to writer and ex-Reagan advisor Clyde Prestowitz, when he was asked to 'explain to Americans why a multilateral approach is in America's interest, *as opposed* to being in the interest of the rest of the world'[94] – a challenge he took up. Then-President-elect Obama put the case in its simplest form in his own response to the ASIL survey of presidential candidates: 'Since the founding of our nation, the United States has championed international law because we benefit from it.'[95]

Such 'American interests and power', however, are of course not abstract (though they often appear so in the *realpolitik*al discourses of both the right and of liberalism): in the modern epoch they, and the imperialism of which they are another way of speaking, are functions of competitive accumulation in a framework of capitalist states. It is not only a belief in the efficacy of this imperial methodology that motives the widespread, untheorised, often unspoken, and unproblematised mainstream support for the Haitian coup: it is also its specific fruits and the sectors of capital that benefit from it.

Aristide's government, though hemmed in by crushing instruments of international financial coercion, had put in place important social progams, that had, for example, substantially reduced illiteracy, and transmission rates of HIV.[96]

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[94] See the discussion at <www.cceia.org/resources/transcripts/972.html> (visited 6 January 2009). Emphasis mine.

[95] In his answers to the ASIL survey, <www.asil.org/obamasurvey.cfm> (visited 6 January 2009).

[96] For these and other achievements see Laura Flynn and Robert Roth, 'We Will Not Forget: The Achievements of Lavalas in Haiti', < www.haitiaction.net/News/WWNF/2_28_5.html> (visited 6

Unsurprisingly, such gains were immediately undermined by the post-coup government, which, for example, abolished the Ministry of Literacy and eliminated subsidies for schoolbooks. The Latortue government turned its back on the Lavalas administration's efforts to crack down on tax evasion by the rich, instead announcing a three-year tax holiday to large businesses. Fertilizer subsidies for poor farmers were cut, leading to a doubling in price.[97] The agenda of the new administration, and the basis for its domestic and international support, were quickly clear.

Aristide had been criticized even by some of his own supporters for allowing the setting-up of free-trade zones favoured by sweatshops on the Dominican/Haitian border: he did, however, retain some collective bargaining rights for workers in those zones. These rights were rolled back almost immediately after the coup, and the minimum wage, that had been doubled in 2003 (though it had remained inadequate) was cut. In January 2005, worldwide textile quotas which had been in place since 1961 were lifted, with the end of the 10-year WTO Agreement on Textiles and Clothing. This had long been a cause for tremendous concern among textile manufacturers, particularly in the US, with 'the expectation that there

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January 2009). See also Stephen Lendman, 'Before the Coup: Haiti's Achievements under Aristide and Lavalas', < towardfreedom.com/home/content/view/719/1/> (visited 6 January 2009).

[97] See Justin Felux, 'Let Them Eat Gruel', <www.dissidentvoice.org/May2004/Felux0527.htm> (visited 6 January 2009). Nikolas Barry-Shaw, 'The Crucifixion of Haiti', <www.zmag.org/znet/viewArticle/6137> (visited 6 January 2009).

would be 'a major shift in sourcing clothing and textile imports to China'.[98] The opening up of this Haitian zone of brutalized and super-cheap labour just before this date (the timing, it has been claimed by some, not coincidental) was of great help to 'big textile' such as the Canadian company Gildan, which swiftly moved in – and whose clothes are made in Haiti by sweatshops belonging to Andy Apaid, leader of the Group of 184.[99]

The brutalities of the sweatshop labour and their cost-reducing effects are of course not side-effect but the specific desiderata of capital, particularly US and Canadian capital in their newly tariff-less battles with China and other textile manufacturing economies. In the formulation of Lloyd Wood, spokesperson for the American Textile Manufacturers Institute, with the enormous weight of China in the industry, a 'basketcase' like Haiti will be competing for any textile work.[100] In an enthusiastic if coy reference to Haiti's poverty wages and devastating conditions, Gildan's 2004 end-of-year report explained that its 'new

[98] Michael F. Martin, 'CRS Report for Congress: U.S. Clothing and Textile Trade with China and the World: Trends Since the End of Quotas' (pdf), <www.fas.org/sgp/crs/row/RL34106.pdf> (visited 6 January 2009).

[99] On the conditions in the Apaid factories, see among other reports Andréa Schmidt, 'Andy Apaid and Us', <www.zmag.org/znet/viewArticle/5178> (visited 6 January 2009).

[100] Anthony Fenton, 'Gildan Activewear', <www.zmag.org/znet/viewArticle/8154> (visited 6 January 2009).

hubs in Dominican Republic/Haiti and Nicaragua are expected to have even lower cost structures than Honduras'.[101]

This is not to say that there will be no inter-capitalist disputes on these issues. The US's 2006 HOPE bill (Hemispheric Opportunity through Partnership Encouragement – and its 2008 'sequel', HOPE II),[102] that with various qualifications allowed the duty-free export of clothes made from cheap (often Chinese) textiles from Haiti to the US, was unsurprisingly opposed by the American National Council of Textile Organizations, which understood it as a threat to their export of fabric to Haiti, while 'U.S. clothing importers strongly support[ed] the measure'.[103] This bickering was between different sectors of the garment industry: crudely, material producers who were sceptical of the act; versus sub-contracting producers of and/or dealers in finished clothes (such as Gildan), who, of course, supported it.

The Haitian textile workforce, while massively below its 1990 high of 80,000, between 2006 and 2008 has continued to creep up, from 14,000 to 22,000,

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[101] See the report (pdf) at <gildan.com/corporate/downloads/annual_report_2004_en.pdf> (visited 6 January 2009).

[102] HOPE was passed into law in 2007, and HOPE II passed as part of the Food Conservation and Energy Act of 2008.

[103] 'An easy and smart way to help impoverished Haiti', *Tacoma News Tribune*, 10 July 2006. For the oppositional NCTO testimonies see (pdfs) <www.ncto.org/Newsroom/VerbalTestimonyHaiti.pdf> (visited 6 January 2009), and <www.ncto.org/Newsroom/USITCHaitiTestimony110607.pdf> (visited 6 January 2009).

thereby increasing the profits of the sweatshop owners and, it is claimed by the Act's supporters, bringing much-needed prosperity to working Haitians. Tellingly and unsurprisingly, however, the HOPE act did not gain much support from Haitian labour unions or activists precisely because it provided no requested safeguards against the brutal conditions. (HOPE II eventually gained a measure of critical support from the Confederation of Haitian Workers, on the grounds that space for trade union organisation has increased somewhat under Préval, and that the desperate economic situation makes any jobs better than none.)[104] In other words, debates between different sectors of the garment industry notwithstanding, the HOPE bill was seen as an integral part of the same process as that marked by the collapse of the minimum wage – foreign capital's neoliberal penetration of Haiti and the rollback of Lavalas's minimal social protections.

This project represented the furthering of an agenda of transnational capital 'in general', the particular accumulation regime of privatisation and neoliberalism, which in the throes of the ongoing economic meltdown of 2008–9 is rapidly losing whatever ideological sheen it had for the developed world but is still, and was particularly at the time, considered appropriate for the starving.[105] The sums involved are admittedly paltry by comparison with the revenues from Iraq, which was a gift to the Republican elite base, oil-capital in particular, but that very

[104] 'Confederation of Haitian Workers Gives Critical Support to Préval/Alexis HOPE Initiative', <www.haitianalysis.com/2008/2/12/confederation-of-haitian-workers-supports-hope-initiative> (visited 6 January 2009).

[105] See also Patrick Bond, 'End of Neoliberalism? Sorry, Not Yet', <www.counterpunch.org/bond12262008.html> (visited 6 January 2009).

economic 'particularity' of the neoconservatives has been a sore point for those capitalists without such access to the rewards (explaining in part why the Democratic candidates for the 2008 Presidential election easily garnered more contributions from the financial industry than their Republican opponent).[106] The Haitian coup went a small way to redressing that, benefiting textile capital directly, but more generally underscoring the preferred contemporary dynamics of capital-in-general towards outsourcing, privatization and the race to the bottom.

With Canada taking a leading role in the discussions on Haiti's future, the 'Willson House process', named after the location in which the talks started in 2005, has featured 'open exchanges between the private sector and donors'.[107] Furthering the neoliberal assumptions embedded in the Interim Cooperation Framework agreed between the World Bank, UN, and Inter-American Development Bank, among others, and Haiti's Latortue administration, for the period 2004 to 2006, the Willson House process has put forward a model according to which large-scale privatization of Haitian state enterprises is a *sine qua non* of development.[108] Education was chosen as a laboratory for the

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[106] Janet Hook and Dan Morain, 'Clinton, Obama are darlings of Wall Street', *LA Times*, 21 March 2008. Available at <http://articles.latimes.com/2008/mar/21/nation/na-wallstdems21> (visited 19 April 2009).

[107] 'The Role of the Private Sector in Improving Educational Outcomes in Haiti', <www.cifalatlanta.org/workshops/partnerships/02072007/index_haiti.htm> (visited 6 January 2009).

[108] See for example the 'suggestion' that 'donors incorporate a focus on privatization in addition to the traditional focus on infrastructure in their development strategy'. Inter-American Dialogue

privatisation of public services.[109] The concern of the participants that the elections of 2006 would put in place another 'anti-business' government explained the insistence, in the official record of the inaugural meeting, that 'it is imperative to act in anticipation of the elections' – in other words, to begin a process that a democratically elected government could not undo.[110] In 2007, the Préval government duly announced the privatization of Haiti's national telephone service Téléco, ED'H (Electricity of Haiti), and APN, the national port authority.[111]

The coup and post-coup political economy of Haiti have, then, been exemplary: they make clear that prioritizing democracy and grassroots development over the requirements of capital will not be permitted. This is why Aristide's government

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and FOCAL, 'The Role of the Private Sector in Rebuilding Haiti' (pdf), <www.focal.ca/pdf/haiti_dialogue.pdf> (visited 6 January 2009). On the ICF, see Mark Schuller, 'Haiti's Interim Cooperation Framework: Tail Wagging the Dog?', <www.haitianalysis.com/2007/2/22/haiti-s-interim-cooperation-framework-tail-wagging-the-dog> (visited 6 January 2009), and Cecilia Ann Winters, 'Institution Building in Haiti: An Assessment of the Interim Cooperation Framework', 9 *Journal of Human Development* (2008) 283–303.

[109] See the hope that 'the Willson House process will carry on and produce new development initiatives beyond education': Leslie Filion-Wilkinson and Carlo Dade, 'Public-Private Collaboration in Education: A New Development Model for Haiti', <www.focal.ca/publications/focalpoint/fp1007/?article=article3&lang=e> (visited 6 January 2009).

[110] *Ibid*. For an invaluable analysis, see Kabir Joshi-Vijayan, 'FOCAL's Role in the Privatization of Haiti', <canadahaitiaction.ca/?p=86> (visited 6 January 2009).

[111] 'Haiti: Preval to Privatize Téléco, ED'H, and APN', <www.haitianalysis.com/economy/haiti-preval-to-privatize-téléco-ed-h-and-apn> (visited 6 January 2009).

was not allowed to stand. It was the furthering of this overarching neoliberal agenda (currently taking a serious ideological battering) that made this a popular coup for most sections of American capital, and supported (if quietly) by liberals as well as neoconservatives.

The coup and occupation have, then, been, in the mainstream, legally uncontroversial. The understanding that a key function of IL has always been to maximize profit is not a paranoia restricted to leftists, but has been proclaimed by some of IL's most honoured practitioners. In a 2005 speech at Goldman Sachs entitled 'The Dividends of International Justice', Carla del Ponte, Prosecutor of the International Criminal Tribunal for the former Yugoslavia, admirably clearly makes the argument that 'international justice', in making countries safe for investment, brings 'the best dividends'. With typical liberal opposition of IL and the Iraq war ('The yearly cost of the Tribunal is less than one day of US military presence in Iraq'), she stresses to her corporate audience that 'international justice is cheap' – 'Our [the ICTY's] annual budget is well under 10% of Goldman Sach's profit during the last quarter' – and that capital should back IL because, she says, 'I can offer you high dividends for a low investment.' [112]

[112] Carla Del Ponte, 'The Dividends of International Criminal Justice', <www.un.org/icty/pressreal/2005/speech/cdp-goldmansachs-050610-e.htm> (visited 6 January 2009).

Del Ponte is quite right to point out IL's role in capital accumulation.[113] Contrary, however, to her line that it is solely as a maintainer of 'good governance' and peace that IL performs this function, Haiti illustrates that IL can also do the job efficiently through the propagation of instability and the unleashing and legitimation of murderous violence.

Whither the unspoken consensus?

Had there been many more Haitis, that is, multilateral imperial adventures committed under the watch of the supposedly 'unilateralist' neoconservatives, the strategy of liberal silence might have become unsustainable: even with all the explanations for the inattention I have attempted to outline, there is a limit to the number of such global events that can go unremarked before the situation becomes embarrassing. Even had John McCain won the Presidential race, however, this would have been unlikely to become an issue: within Republican circles the Bellingerite wing of 'soft', even tentatively multilateral, neoconservatism was on the rise, and McCain, his spurious 'maverick' credentials neurotically asserted by supporters to distance him from Bush, would likely have claimed to be breaking from (heavily mythologized) neoconservatism back to 'traditional', less multilaterally disinclined conservatism.

[113] For historical examples of this tendency, from the earliest iterations of IL, see Miéville, *Between*, *supra* note 19, 153–260.

The new president, of course, is in fact a Democrat, who has insisted that he 'will have to prioritize restoring our traditions of adherence to international legal regimes and norms'.[114] This deliberate projection of a radical break with the past is pronounced – though it is not a foregone conclusion that the perception will also be, as a growing sense of let-down among Obama supporters (what Naomi Klein calls a 'hopeover'),[115] particularly with regard to his administration's attitude to the law, attests.[116] The strategy for the US is likely to continue to shift towards multilateral imperialism: in the words of one commentator, 'what's still going on in Iraq with the surge represents the past, but Haiti is the future'.[117] This will be a rational corollary of the growing current sense among the US ruling establishment that, as the US National Intelligence Council put it in its recent report, 'Global Trends 2025: A Transformed World', '[a]lthough the United States is likely to

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[114] See <www.asil.org/obamasurvey.cfm>, (visited 6 January 2009).

[115] Naomi Klein, 'A Lexicon of Disappointment', <http://www.naomiklein.org/articles/2009/04/lexicon-disappointment> (visited 19 April 2009).

[116] For an interesting comment from the right on the possible continuities between an Obama and a Bush administration in IL, see Eric Posner, 'Obama and international law', <volokh.com/posts/1228509500.shtml> (visited 6 January 2009). See also Bruce Fein, 'Barrack Obama's czarlike wielding of executive power', <http://www.slate.com/id/2215818/pagenum/all/#p2> (visited 19 April 2009). For a liberal critique on such legal and IL issues, see Glenn Greenwald, 'An emerging progressive consensus on Obama's executive power and secrecy abuses', <http://www.salon.com/opinion/greenwald/2009/04/13/obama/index.html> (visited 19 April 2009).

[117] Mike Davis, 'Models of Coming U.S. Interventions: Iraq, or Haiti?', <www.solidarity-us.org/node/1471> (visited 6 January 2009).

remain the single most powerful actor, the United States' relative strength – even in the military realm – will decline and US leverage will become more constrained'. For this reason, there will be 'a growing demand for multilateral cooperation'.[118]

With the passing of the mutually parodic 'unilateral' and 'multilateral' discourses of the neoconservative era, the shameful non-attention of liberal IL to this key international legal imperial event, this terrorist legitimacy, might plausibly remain more or less unnoticed. As a matter of theoretical reportage this would be a cause for regret, but more importantly, it might delay a salutary examination of theoretical nostrums among scholars for whom the illegitimacy of imperialism is inextricable from its supposed 'unilateralism' and disdain for IL.

Haiti should forcefully remind us that relatively uncontroversial 'legality' and multilateralism need stand in no opposition at all to strategies of murderous imperial control. If, indeed, that very legality helps mute criticism, as seems to have been the case here, one might go further, and suggest that multilateral UN-sanctioned imperialism is *more* of a threat to justice and emancipation than its unilateralist Rumsfeldian sibling. The only thing more oppressive than a lawless world might be a lawful one.

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[118] *Global Trends 2025: The National Intelligence Council's 2025 Project*, <www.dni.gov/nic/NIC_2025_project.html> (visited 6 January 2009).