



Peace and Justice Commission

CONSENT CALENDAR
December 13, 2005

To: Honorable Mayor and
Members of the City Council

From: Peace and Justice Commission

Submitted by: Steve Freedkin, Chair, Peace and Justice Commission

Subject: Independent Commission on 2004 Coup d'Etat in the Republic of Haiti

RECOMMENDATION

Adopt a Resolution requesting that Senators Barbara Boxer and Dianne Feinstein introduce legislation similar to H.R. 946, to establish an Independent Commission on the 2004 Coup d'Etat in the Republic of Haiti, in the Senate; and supporting the amendment included in the FY 2006 Foreign Operations Appropriations Conference Report prohibiting arms transfers and sales.

BACKGROUND

On February 29, 2004, the coup in Haiti was executed through surrogates in the Dominican Republic, as well as members of the dissolved Haitian army and former paramilitary organizations. It is alleged that United States diplomats told President Jean-Bertrand Aristide and his wife that they would be killed if President Aristide did not sign a resignation letter. Under extreme duress, he signed a letter, which the State Department-hired interpreter would not characterize as a resignation. The Aristides were held incommunicado for 20 hours as they were flown to the Central African Republic. The United States had refused to send troops to protect the Aristide government. Yet one hour after President Aristide left Haiti, the United States ordered troops to Haiti.

The National Lawyers Guild delegations to Haiti have verified brutal and indiscriminate repression against the civilian population since the coup. It is incumbent upon the United Nations to immediately address this emergency. The forcible removal of President Aristide from Haiti violates the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, a treaty ratified by the United States.

Shortly thereafter, the Aristides went to Jamaica, where they were granted temporary asylum. The United States has exerted intense pressure on Jamaica and the other Caribbean Countries (CARICOM) to recognize the de facto government in Haiti. As a result, the Aristides had to

leave Jamaica and travel to South Africa, which has granted them asylum until the situation in Haiti stabilizes and they can return.

On February 17, 2005, Representative Barbara Lee re-introduced a bill, H.R. 946, to establish an Independent Commission on the 2004 Coup d'Etat in the Republic of Haiti. The duties of the Commission would be to examine and evaluate the role of the United States Government in the February 2004 coup. Currently, the bill has been referred to the House Subcommittee on the Western Hemisphere.

At its regular meeting on November 7, 2005, the Peace and Justice Commission discussed the issue of the 2004 Coup d'Etat in the Republic of Haiti. After discussion of the item, the Commission passed the following motion:

M/S/C (*sorgen, Bohn*) that the Peace and Justice Commission recommends that the City Council request that Senators Barbara Boxer and Dianne Feinstein introduce legislation similar to H.R. 946 in the Senate, and support the amendment included in the FY 2006 Foreign Operations Appropriations Conference Report prohibiting arms transfers and sales; that the City Council, in solidarity with the Haitian people in their ongoing struggle for full human rights and true democracy, encourage concerned citizens to communicate with acquaintances in the following regions and urge them to lobby Representatives Henry Hyde, Dan Burton, and Robert Menendez to consider H.R. 946 promptly:

1. District 6 of Illinois (including Chicago) - Representative Henry Hyde, Chair of the Committee on International Relations
2. District 5 of Indiana (including Indianapolis) - Representative Dan Burton, Chair of the Subcommittee on the Western Hemisphere
3. District 13 of New Jersey (including Newark) - Representative Robert Menendez, Ranking Member of the Subcommittee on the Western Hemisphere

Further, that the City Council joins with the Haitian people and human rights advocates worldwide in urging the United States government and the United Nations to change their current policy towards Haiti and exercise their influence to:

1. Free all political prisoners including Father Gerard Jean-Juste, prime minister Yvon Neptune, and folk singer Annette Auguste;
2. Stop the campaign of political repression targeting supporters of President Aristide and other pro-democracy activists;
3. Stop killings by the Haitian National Police and death squads in Haiti; and
4. Support the restoration of constitutional, democratic government in Haiti by allowing President Aristide to finish his elected term before moving on to the next round of elections.

Further, that the City Council directs the City Clerk to send copies of this Resolution to the United Nations High Commissioner for Human Rights Louise Arbour, United States Secretary of State Dr. Condoleeza Rice, Senators Barbara Boxer and Dianne Feinstein, and Representatives

Independent Commission on 2004 Coup d'Etat
in the Republic of Haiti

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Barbara Lee, Henry Hyde, Dan Burton, and Robert Menendez. **Ayes:** Unanimous; **Absent:**
Litman, Weddle, Wornick.

FINANCIAL IMPLICATIONS

None.

CONTACT PERSON

Steve Freedkin, Chairperson, Peace and Justice Commission, (510) 595-4626
Manuel Hector Jr., Secretary, Peace and Justice Commission, (510) 981-5110

CITY MANAGER

The City Manager takes no position on the content and recommendations of the Commission's
Report.

Attachments:

1. Resolution
2. H.R. 946
3. Additional Background Information

RESOLUTION NO. –N.S.

SUPPORTING H.R. 946 TO ESTABLISH THE INDEPENDENT COMMISSION ON THE
2004 COUP d'ETAT IN THE REPUBLIC OF HAITI

WHEREAS, the Berkeley City Council adopted the Human Rights Ordinance in 1990; and

WHEREAS, Chapter 3.68.010 of the Berkeley Municipal Code found that, "...The residents of Berkeley have continually demonstrated their concern for peace and justice based on equality among all peoples..."; and

WHEREAS, Berkeley citizens have demonstrated concern for the people of Haiti, working with organizations including the Haiti Action Committee, Ecumenical Peace Institute Clergy & Laity Concerned, East Bay Sanctuary Covenant, Institute for Justice and Democracy in Haiti, TRANSCEND, Women's International League for Peace and Freedom, and Berkeley Fellowship of Unitarian Universalists' Social Justice Committee; and

WHEREAS, since the February 29, 2004 coup d'etat that toppled the elected government of Jean-Bertrand Aristide in Haiti, the human rights of the Haitian people have been violated, constitutional government has been dismantled with most of the approximately 7,500 elected government officials forcibly removed, thousands of Haitian civilians have been killed, tens of thousands have been driven into exile, and prime minister Yvon Neptune and activists such as Father Gerard Jean-Juste and Annette Auguste have been thrown in prison and subjected to inhumane conditions without due process; and

WHEREAS, the Berkeley City Council adopted Resolution 62,841–N.S., submitting The Meiklejohn Civil Liberties Institute report, *Challenging U.S. Human Rights Violations Since 9/11*, to the United States State Department, the United Nations High Commissioner for Human Rights, and the United Nations Human Rights Committee; and included in that report is a section titled, "Bush Charged with Orchestrating Removal of President Aristide in Haiti"; and

WHEREAS, as a member of the United Nations, the United States is committed not to use "threat or use of force against the territorial integrity or political independence of any state,..." and is committed to "settle ... international disputes by peaceful means..." (United Nations. Charter Arts. 2.4 and 2.3); and

WHEREAS, on February 17, 2005, Representative Barbara Lee re-introduced H.R. 946, "The Haiti Truth Act" to establish an independent commission to investigate the role of the United States government in the coup that removed President Jean-Bertrand Aristide from power; and

WHEREAS, on November 4, 2005, the United States House of Representatives overwhelmingly approved a foreign aid spending measure including Barbara Lee's amendment to ban the sale and transfer of arms for use by the Haitian National Police and require a State Department report on the involvement of Haitian police in criminal activity, and she stated, "The people of Haiti remain targets of political violence, torture and in some cases murder, and too often the

perpetrators of this violence are the Haitian National Police, armed with United States weapons free of charge...This amendment is necessary in the effort to restore democracy.”

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley requests that Senators Barbara Boxer and Dianne Feinstein introduce legislation similar to H.R. 946 in the Senate, and support the amendment included in the FY 2006 Foreign Operations Appropriations Conference Report prohibiting arms transfers and sales.

BE IT FURTHER RESOLVED, that the Council of the City of Berkeley, in solidarity with the Haitian people in their ongoing struggle for full human rights and true democracy, encourage concerned citizens to communicate with acquaintances in the following regions and urge them to lobby Representatives Henry Hyde, Dan Burton, and Robert Menendez to consider H.R. 946 promptly:

1. District 6 of Illinois (including Chicago) - Representative Henry Hyde, Chair of the Committee on International Relations
2. District 5 of Indiana (including Indianapolis) - Representative Dan Burton, Chair of the Subcommittee on the Western Hemisphere
3. District 13 of New Jersey (including Newark) - Representative Robert Menendez, Ranking Member of the Subcommittee on the Western Hemisphere

BE IT FURTHER RESOLVED, that the Council of the City of Berkeley join with the Haitian people and human rights advocates worldwide in urging the United States government and the United Nations to change their current policy towards Haiti and exercise their influence to:

1. Free all political prisoners including Father Gerard Jean-Juste, prime minister Yvon Neptune, and folk singer Annette Auguste;
2. Stop the campaign of political repression targeting supporters of President Aristide and other pro-democracy activists;
3. Stop killings by the Haitian National Police and death squads in Haiti; and
4. Support the restoration of constitutional, democratic government in Haiti by allowing President Aristide to finish his elected term before moving on to the next round of elections.

BE IT FURTHER RESOLVED, that the Council of the City of Berkeley directs the City Clerk to send copies of this Resolution to the United Nations High Commissioner for Human Rights Louise Arbour, United States Secretary of State Dr. Condoleeza Rice, Senators Barbara Boxer and Dianne Feinstein, and Representatives Barbara Lee, Henry Hyde, Dan Burton, and Robert Menendez.

ATTACHMENT 2

HR 946 IH

109th CONGRESS

1st Session

H. R. 946

To establish the Independent Commission on the 2004 Coup d'Etat in the Republic of Haiti.

IN THE HOUSE OF REPRESENTATIVES**February 17, 2005**

Ms. LEE (for herself, Mr. CONYERS, Ms. KILPATRICK of Michigan, Mrs. JONES of Ohio, Mr. OWENS, Mr. GRIJALVA, Ms. NORTON, Mr. RANGEL, Mr. TOWNS, Mr. BROWN of Ohio, and Ms. WATERS) introduced the following bill; which was referred to the Committee on International Relations

A BILL

To establish the Independent Commission on the 2004 Coup d'Etat in the Republic of Haiti.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ESTABLISHMENT OF COMMISSION.

There is established in the legislative branch the Independent Commission on the 2004 Coup d'Etat in the Republic of Haiti (in this Act referred to as the 'Commission').

SEC. 2. DUTIES.

(a) Duties- The Commission shall examine and evaluate the role of the United States Government in the February 2004 coup d'etat in the Republic of Haiti. In carrying out the preceding sentence, the Commission shall examine and evaluate the following:

(1) The extent to which the United States Government impeded the democratic process in Haiti, including the extent to which actions and policies of the United States Government contributed to the overthrow of the democratically-elected Government of Haiti.

- (2) The circumstances under which Haitian President Jean-Bertrand Aristide resigned his office and went into exile in the Central African Republic, including the role of the United States Government in such resignation and exile.
- (3) In the events leading up to the coup d'etat, the extent to which the United States Government fulfilled its obligations under article 17 of the Organization of American States (OAS) Inter-American Democratic Charter requiring that each OAS member country come to the aid of another OAS government under attack.
- (4) The extent to which the United States Government impeded efforts by the international community, particularly efforts by Caribbean Community (CARICOM) countries, to prevent the overthrow of the democratically-elected Government of Haiti.
- (5) The role of the United States Government in influencing decisions regarding Haiti at the United Nations Security Council and in discussions between Haiti and other countries that were willing to assist in the preservation of the democratically-elected Government of Haiti by sending security forces to Haiti.
- (6) The extent to which United States assistance was provided or United States personnel were used to support, directly or indirectly, the forces opposed to the government of President Aristide, including the extent to which United States bilateral assistance was channeled through nongovernmental organizations that were directly or indirectly associated with political groups actively involved in fomenting hostilities or violence toward the government of President Aristide.
- (7) The involvement of the Central Intelligence Agency, directly or indirectly, in operations that contributed to the overthrow of the democratically-elected Government of Haiti.
- (8) The impact of the International Republican Institute, the National Democratic Institute for International Affairs, and other organizations funded by the United States Agency for International Development on the political process in Haiti.
- (9) The political and economic impact on Haiti of the decision by the United States Government to discontinue all United States bilateral assistance to Haiti and United States efforts to block loans and support for Haiti from international financial institutions.
- (10) The broader implications for Haiti and the Caribbean region of the events culminating in the coup d'etat.

(b) Scope of Duties- In carrying out the duties described in subsection (a), the Commission may examine the actions and representations of the current Administration as well as prior Administrations.

SEC. 3. COMPOSITION OF COMMISSION.

(a) Members- The Commission shall be composed of 10 members, of whom--

(1) 3 members shall be appointed by the majority leader of the Senate;

(2) 2 members shall be appointed by the Speaker of the House of Representatives;

(3) 2 members shall be appointed by the minority leader of the Senate; and

(4) 3 members shall be appointed by the minority leader of the House of Representatives.

(b) Qualification Requirement; Deadline for Appointment; Meetings-

(1) NONGOVERNMENTAL APPOINTEES- An individual appointed to the Commission may not be an officer or employee of the Federal Government or any State or local government.

(2) DEADLINE FOR APPOINTMENT- All members of the Commission shall be appointed not later than 45 days after the date of the enactment of this Act.

(3) MEETINGS- The Commission shall meet at the call of the Chairperson or a majority of its members.

(c) Chairperson; Vice Chairperson- The Chairperson and Vice Chairperson of the Commission shall be elected by the members of the Commission.

(d) Quorum; Vacancies- 6 members of the Commission shall constitute a quorum. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

SEC. 4. POWERS OF COMMISSION.

(a) Hearings and Sessions-

(1) IN GENERAL- The Commission shall, for the purpose of carrying out this Act, hold public hearings and meetings to the extent appropriate, sit and act at times and places, take testimony, and receive evidence as the

Commission considers appropriate.

(2) ADDITIONAL REQUIREMENTS-

(A) PUBLIC HEARINGS- Any public hearings of the Commission shall be conducted in a manner consistent with the protection of information provided to or developed for or by the Commission as required by any applicable statute, regulation, or Executive order.

(B) PUBLIC VERSIONS OF REPORTS- The Commission shall release public versions of the reports required under section 8.

(b) Subpoena Power-

(1) IN GENERAL- The Commission may issue a subpoena to require the attendance and testimony of witnesses and the production of evidence relating to any matter under investigation by the Commission.

(2) FAILURE TO OBEY AN ORDER OR SUBPOENA- If a person refuses to obey a subpoena issued under paragraph (1), the Commission may apply to a United States district court for an order requiring that person to appear before the Commission to give testimony, produce evidence, or both, relating to the matter under investigation. The application may be made within the judicial district where the hearing is conducted or where that person is found, resides, or transacts business. Any failure to obey the order of the court may be punished by the court as civil contempt.

(3) SERVICE OF SUBPOENAS- The subpoenas of the Commission shall be served in the manner provided for subpoenas issued by a United States district court under the Federal Rules of Civil Procedure for the United States district courts.

(c) Contract Authority- The Commission may, to such extent and in such amounts as are provided in appropriation Acts, enter into contracts to enable the Commission to discharge its duties of this Act.

(d) Information From Federal Agencies- The Commission may secure directly from any Federal department or agency information necessary to enable it to carry out this Act. Upon request of the Chairperson of the Commission, the head of that department or agency shall provide that information to the Commission.

(e) Assistance From Federal Agencies-

(1) GENERAL SERVICES ADMINISTRATION- The Administrator of General Services shall provide to the Commission on a reimbursable basis

administrative support and other services for the performance of the Commission's duties.

(2) OTHER DEPARTMENTS AND AGENCIES- In addition to the assistance described in paragraph (1), departments and agencies of the United States may provide to the Commission such services, funds, facilities, staff, and other support services as they may determine advisable and as may be authorized by law.

(f) Gifts- The Commission may accept, use, and dispose of gifts or donations of services or property.

(g) Postal Services- The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

SEC. 5. STAFF OF COMMISSION.

(a) Appointment and Compensation- The Chairperson of the Commission, in consultation with the Vice Chairperson of the Commission, in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its duties, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such Act relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code.

(b) Detailees- Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(c) Consultant Services- The Commission is authorized to procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

SEC. 6. COMPENSATION AND TRAVEL EXPENSES.

(a) Compensation- Each member of the Commission may be compensated at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315

of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission.

(b) Travel Expenses- While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

SEC. 7. SECURITY CLEARANCES FOR COMMISSION MEMBERS AND STAFF.

(a) In General- Subject to subsection (b), the appropriate Federal agencies or departments shall cooperate with the Commission in expeditiously providing to the Commission members and staff appropriate security clearances to the extent possible pursuant to existing procedures and requirements.

(b) Exception- No person shall be provided with access to classified information under this Act without the appropriate required security clearance access.

SEC. 8. REPORTS OF COMMISSION; TERMINATION.

(a) Interim Reports- The Commission may submit to Congress and the President interim reports containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members.

(b) Final Report- Not later than 18 months after the date of the enactment of this Act, the Commission shall submit to Congress and the President a final report containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members.

(c) Form of Report- Each report prepared under this section shall be submitted in unclassified form, but may contain a classified annex.

SEC. 9. TERMINATION.

(a) In General- The Commission, and all the authorities of this Act, shall terminate 60 days after the date on which the final report is submitted under section 8(b).

(b) Administrative Activities Before Termination- The Commission may use the 60-day period referred to in paragraph (1) for the purpose of concluding

its activities, including providing testimony to committees of Congress concerning its reports and disseminating the final report.

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

(a) In General- There is authorized to be appropriated to carry out this Act \$5,000,000 for fiscal year 2006.

(b) Availability- Amounts appropriated pursuant to the authorization of appropriations under subsection (a) are authorized to remain available until the date on which the Commission terminates pursuant to section 9(a).

END

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ATTACHMENT 3

ADDITIONAL BACKGROUND INFORMATION

Presentation of Brian Concannon, Jr., (Director, Institute for Justice & Democracy in Haiti (www.ijdh.org, member, National Lawyers' Guild) to the Congressional Black Caucus Foundation Legislative Forum Panel- *Haiti: The Time For Action Is Now* (9/22/05)

“Haiti is in the midst of a comprehensive program of electoral cleansing. Its ballots are being cleansed of political dissidents, its voting rolls cleansed of the urban and rural poor. The streets are being cleansed of anti-government political activity. The cleansing violates the fundamental human rights guaranteed by the charters and other instruments of the OAS and the UN. It also violates the electoral standards that are applied to elections in other countries, and that were applied to elections run by Haiti’s constitutional governments. The persecution and disenfranchisement of political opponents is being conducted openly, notoriously and under the eyes of the international community. The persecution is not the result of a government unable to assure adequate security, but of a deliberate and multifaceted campaign against opponents by Haiti’s Interim Government. This government’s primary benefactor is the American taxpayer.”

“Wrongful use of U.N. Peacekeepers in Haiti” Meiklejohn Civil Liberties Institute report, Fall, 2005

“On July 6 more at 400 United Nations ‘Blue Helmets’ serving the Mission des Nations Unies pour la Stabilisation en Haiti (MINUSTAH) entered Cite Soleil district of Port-au-Prince with the aim of ‘apprehending and bringing to justice a prominent gang leader....’ (Note: the people of the district considered him to be a ‘community leader’) ...23 civilians were killed including six children, and Doctors Without Borders reported 26 treated...for gunshot wounds... [The] U.N. Security Council, in Resolution 1608, ...extended the mandate of MINUSTAH and formally requested that these forces and ‘the Haitian authorities’ take all necessary steps to achieve optimal coordination between MINUSTAH’s civilian police and HNP... the Haitian National Police. The problem here is that the authorities in question are the illegitimate government established by the U.S. and Canada in February 2005. This coup government – called the transitional government – has been using the HNP to carry on constant low intensity warfare against the major political party in Haiti, Lavalas, which demands the return of their democratically elected President, Aristide.”

“*Keeping the Peace in Haiti*” Harvard Law School Report, March 2005, p 38
www.law.harvard.edu/programs

“In effect, MINUSTAH... has provided cover for abuses committed by the HNP...during operations in poor... neighborhoods. Rather than advising and instructing the police in best practices, and monitoring their missteps, MINUSTAH has been the midwife of their abuses. In essence, MINUSTAH has provided to the HNP the very implements of repression.”

Haiti Human Rights Investigation: November 11 – 21, 2004, Center for the Study of Human Rights, University of Miami School of Law, Conclusion: "...Life for the impoverished majority is becoming more violent and more inhuman as the months pass since the elected government's removal on February 29 2004....rich businessmen appear to be fueling the fire.... the police, backed by UN forces, routinely carry out indiscriminate...killing operations. The ...army is back, protecting the rich and attacking the poor. The justice system is twisted against poor young men, dissidents, and anyone calling for the return of the constitutional government. Prisons fill with young men who are arrested without warrants and are denied due process. Partisanship and corruption occupy the electoral council's attention, leaving little hope for free and fair elections."

"Keeping the Peace in Haiti?: An Assessment of the United Nations Stabilization Mission in Haiti Using Compliance with its Prescribed Mandate as a Barometer for Success." Clinical Advocacy Project, Human Rights Program, Harvard Law School, 11/13/05

"After eight months under MINUSTAH's watch, Haiti is as insecure as ever. MINUSTAH has failed even to begin to implement a comprehensive program for disarmament, leaving large pockets of the country effectively ruled by illegal groups with guns and other weapons. Civilian casualties remain common.... Large swaths of the poor countryside remain under the control of the former military, historically the major domestic force behind coups d'etats and among the foremost violators of human rights.

In the area of human rights, MINUSTAH has been equally lax. Numerous allegations of severe human rights abuses by the Haitian National Police remain uninvestigated.... Instead of following the specific prescription of its mandate by putting an end to impunity in Haiti, MINUSTAH's failures have ensured its continuation."

Political Prisoners: It is estimated that 1000 political prisoners are being detained without legal justification. Most were arrested without a warrant. Many have been imprisoned for up to a year without charges, court appearances or any evidence of having committed a crime. Some are being held despite orders from a judge to release them. www.haitiaction.net.

(Miami School of Law report p 19): "Defense attorney Mario Joseph currently represents approximately 60 of the most high-profile political prisoners. Joseph contends that his clients were arbitrarily arrested and held on false charges due to their support for Lavalas or for the return of the constitutional government. Among the political prisoners are elected officials (e.g. Yvon Neptune, former Prime Minister...." declared prisoner of conscience by Amnesty International)