

Accountability, Immunity, & Impunity: How the UN Avoids Justice in Haiti



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ABSTRACT

Following the devastating 2010 earthquake, the world's largest cholera epidemic broke out on the island of Haiti, taking the lives of an estimated 8,500 and continuing to afflict more than 685,000. Scientific analysis undeniably traced the cholera strain to the improper disposal of waste and negligent screening standards of United Nations (UN) Nepalese Peacekeeping troops, garnering calls for the UN to take responsibility and provide reparations for the outbreak. Despite legal attempts on behalf of the victims, the Peacekeeping troops and the UN as a whole have escaped accountability for their crimes. This paper comprehensively evaluates the accountability literature to demonstrate that the interpretation of the UN's immunity clause directly contradicts the humanitarian norms and international laws the UN was created to uphold, creating a disparity between the intentions of the institution and the actions that result. I argue that the immunity clause has shaped an institutional culture of impunity, one in which the lack of legal recourse for victims allows the UN to shirk basic responsibilities and abuse host populations. This in turn has set a precedent of immunity for today's international sphere, wherein most IGOs (intergovernmental organizations) and NGOs (non-governmental organizations) have modeled their own immunity clauses after the UN's, leading to a global culture of legal immunity. This paper ultimately demands the reform of the immunity clause before discussing potential accountability mechanisms, including the enforcement of SOFAs (Status of Forces Agreements) and the trial of the UN in national courts, in order to reconcile peacekeeping actions with international law and attain justice for the Haitian people.

OBJECTIVES

- Determine what role the UN played in the Cholera Epidemic
- Identify the root cause of the difficulty in holding the UN and individual peacekeepers accountable for its/their actions
- Understand the implications of the norm of immunity
- Compile a comprehensive literature review of the primary, secondary, and scholarly work surrounding the subject of international accountability to:
 - Understand the reigning philosophies
 - Apply specifically towards the United Nations
- Begin to discuss and evaluate the various avenues for holding the UN accountable if the immunity clause were to be revoked
- Identify the next steps in my research

MATERIALS & METHODS

A qualitative analysis of a single case study, this method allows for a deeper and more nuanced understanding of the individual case, the causes of the issue at hand, and is appropriate considering the Cholera Epidemic caused by the UN is a unique harm in the existing peacekeeping missions. This study draws strongly from primary and secondary sources including UN mandates and other documents complemented by individual governmental (primarily US and Haitian) analyses and recommendations, data and inferences from NGOs operating on the ground in Haiti, news accounts and investigations as well as scholarly research on international law and humanitarian norms, case studies of UN peacekeeping missions, as well as the newly-burgeoning literature of policy recommendations to improve the system of international accountability. This theoretically-grounded study provides one of the first, widely comprehensive looks at the issue with holding the UN accountable in Haiti for the cholera epidemic while grounding it in a criticism of the immunity clause as well as the clause's implications outside the case of Haiti.

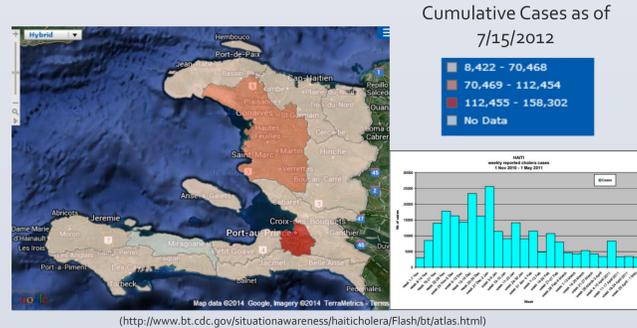
CASE STUDY: UNITED NATIONS STABILIZATION MISSION IN HAITI (MINUSTAH) – CHOLERA EPIDEMIC

Colonized by the Spanish and French, populated almost entirely by the African slave trade, and forced to pay a \$20 billion debt to France in return for its freedom and sovereignty, Haiti still bears the crippling legacy of its dark history. Caught in a cycle of poverty and the power struggles of the great powers of the world, Haiti is characterized by volatile political climate, shaky economy, and explosive animosity between socio-economic classes. Following an armed conflict which forced then President Aristide into exile, the international community mandated the establishment of a peacekeeping mission in Haiti in June of 2004. After the Earthquake of 2010, the Secretary-General approved a surge of additional troops and civilian workers into the country, where they were expected to carry out a mission to:

"restore a secure and stable environment, to promote the political process, to strengthen Haiti's Government institutions and rule-of-law structures, as well as to promote and to protect human rights."

(MINUSTAH: United Nations Stabilization Mission in Haiti, <http://www.un.org/en/peacekeeping/missions/minustah/>).

Unfortunately, the UN failed to rise to its lofty goals. During the surge of troops after the earthquake of 2010, the UN failed to screen Nepalese peacekeepers arriving from known cholera-infected areas of their home country. These same troops were then housed in poor sanitation facilities and, moreover, proceeded to dispose of their waste in an improper manner. This led to the contamination of the Artibonite River, the greatest water source in Haiti, leading to the deaths of over 8,500 and the sickening of an estimated 685,000.



Considering MINUSTAH's strong emphasis on the rule of law, one would think the UN would comply with attempts to hold them accountable for their obvious wrongdoing. However, the UN refused to claim responsibility for the outbreak in the immediate aftermath, stating that it was not 100% proven they were directly culpable and that the fault lay with Haiti (citing the country's poor water and sanitation infrastructure). Even four years later, after the scientific and international community have undeniably proven UN wrongdoing through a wealth of evidence, the UN remains adamant in their stance. Lawyers representing the most severely affected have tried to take the UN to court for years, the most recent attempts filed in US courts in March of 2014. Ranging in the size and scope of their demands, all of the lawsuits seek three common goals: 1) reparations to the victims, 2) rebuilding of infrastructure, and 3) a formal apology. The cases were dismissed.

The need for justice and accountability in this case is undeniable. As an institution which lauds the rule of law and due process, why is the UN avoiding the same principles it preaches? Why can't we hold the UN accountable for its actions?

WHY NO ACCOUNTABILITY? THE IMMUNITY CLAUSE

To avoid the plethora of lawsuits being brought against the UN, they simply cited Article II Section II of the Convention on the Privileges and Immunities of the United Nations. This article states that:

"The United Nations... shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity."

This original reading of the Article seems to imply that the potential to hold the institution or individual peacekeepers accountable is possible; so long as it does not interfere with the functioning of a UN operation, the immunity clause can be waived and a lawsuit may take place. However, the interpretation of the clause has become absolutist following several court cases ((Mothers of Srebrenica v. The Netherlands & The United Nations; Mario Joseph and Brian Concannon's attempt in US court), leading to a blanket immunity for the UN and only repatriation with no other consequences for peacekeepers.

IMPLICATIONS OF THE NORM OF IMMUNITY

The implications of this norm of immunity are numerous, however, my research identifies three of the most prominent:

- 1) **Directly contradicts UN goals and harms UN legitimacy:** The heart of the UN mandate is about international peace and security, nation-building, and building the rule of law. An international organization cannot require a democratic principle (accountability) from the government it is seeking to reform and at the same time exempt itself from this rule. Not only does this go against the ideals of the organization itself, but the blatant hypocrisy harms its credibility as a tool of peace and rule of law in the international sphere.
- 2) **Creates a culture of impunity:** When the UN grants troops immunity in exchange for service, the understanding that they will not be held accountable for crimes creates a feeling of impunity among the ranks. It starts with the infiltration of command structures: for example, Special Secretary of the General for MONUC 3 wrote, that it was "apparent that the feeling of impunity is such that not only have the policies not been enforced, but the command structures have not always given investigators their full cooperation."
- 3) **Sets an alarming precedent of immunity for the international sphere:** The Convention on the Privileges and Immunities of the United Nations will likely be looked back upon as the development that enshrined the principle of immunity. Following its adoption in 1947, other burgeoning international organizations took their lead from the wording, interpretation, or implication of the immunity clause. The World Trade Organization created decades after the UN Convention specifically modeled their immunity clause from the UN's, stating that "the privileges and immunities... shall be similar to the privileges and immunities stipulated in the Convention on the Privileges and Immunities of the Specialized Agencies, approved by the General Assembly of the United Nations on 21 November 1947." As a result of this modeling, the WTO has been able to avoid countless lawsuits despite policies that exploit and harm developing countries. Other political bodies have used almost identical language to create their immunity, such as the Council of Europe and the Organization of American States, whose general agreements state that they "shall enjoy immunity from every form of legal process." Also, organizations such as FIFA and the IOC are both widely acknowledged to be guilty of corruption and wrongful displacement of host populations, yet cite the UN Convention as precedent for not being able to be held accountable.

CONCLUSIONS/POTENTIAL SOLUTIONS

Ideally, revoking the immunity clause in its entirety would be the best solution to provide a widely symbolic gesture demonstrating the UN's commitment to international law and humanitarian norms over the security and interests of the organization. In addition, this would start to reverse the precedent it originally set for the international community, no longer allowing its Convention to be used to excuse the actions of other international organizations. However, the goal and the process of revoking the immunity clause is quite simply unfeasible, at the very least unlikely, because it would pose too much of a threat to the path dependent nature of the organization and the instincts of survival on behalf of its participatory states. Thus, tackling the immunity of the United Nations will have to initially be a far more measured endeavor, with small steps away from immunity and towards accountability.

- **Return to a norm of "functional" rather than "absolute" immunity:** If the original wording and intent of the immunity clause were to be newly recognized by the international community, then the blanket immunity afforded the UN as an institution would be replaced with a case-by-case norm. This would allow national courts to at least hear cases to examine their validity and potential threat to the organization's aims before accepting or dismissing the claim. If this were to occur, lawyers such as Mario Joseph and Brian Concannon would have a chance at attaining justice for the victims of the Cholera epidemic.
- **Honoring the SOFA Claims Commission:** The SOFA with Haiti detailed the implementation of a local standing Claims Commission to hear the cases of those wronged by the UN and would allow for a fair and judicial processing of claims. If this were to be enforced, the commission would require additional funding to substantiate reparations and should have an active presence surrounding every peacekeeping base, ensuring accessibility.
- **Internal Governing Mechanism for Chain of Command:** Ensuring the enforcement of UN standards and rules by leaders is crucial to keeping individual peacekeepers in line. As such, the chain of command needs to be targeted by establishing an internal governing mechanism for those in leadership positions, whereby consequences of pay, loss of duties, or bringing of a lawsuit need to be used as mechanisms of compliance.

IMPLICATIONS FOR FUTURE RESEARCH

The research will continue to be built upon for at least an additional year (ultimately serving as a Senior Honors Thesis and seeking publication), in which this basis will be further elaborated upon and new dimensions added. Additional case studies will be added in order to understand how applicable causes as well as possible prescriptions can be generalizable across UN peacekeeping missions as a whole. In addition, primary research including interviews will be conducted of key agents in these case studies, and in order to garner a more thorough understanding of what possible accountability solutions should be recommended.

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