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 affect more than 650,000. Scientific analysis repeatedly traced the cholera epidemic 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 of the United Nations have enjoyed absolute immunity for their crimes. 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 missions 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 and fundamental freedoms.”

Unfortunately, the UN failed to do its fiduciary duty. 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 widest source of water in Haiti, leading to the deaths of over 8,500 and the sickening of an estimated 685,000.

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 their actions
- Understand the implications of immunity in international law as it pertains to the UN
- Compile a comprehensive literature review of the primary, secondary, and scholarly work surrounding the subject of international accountability
- Understand the reigning philosophies
- Specify exactly towards the United Nations and individual peacekeepers, the role the UN played in the epidemic
- Begin to discuss and convince the audience of the need for the UN to be held accountable if the immunity clause was 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. 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, and reports on the operations of the UN 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 accountability 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 the various ethnic groups. 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 missions 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 and fundamental freedoms.”

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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. The article states that:

‘The United Nations ... shall enjoy immunity from every form of legal process except inter alia 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 (Mother of Socorevta 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 motif is the international community’s sovereignty in exchange for service, the understanding that they will not always require accountability. However, the UN is unable to satisfy the norms of accountability as defined by the UN. Peacekeeping troops and the UN as a whole have escaped 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 action that resulted.

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 5 wrote, that “it was apparent that the chain of command is 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 community: The United Nations and its immediate mandates lose their moral authority and are treated similarly in the eyes of the international community.

CONCLUSIONS/POTENTIAL SOLUTIONS
Ideally, revoking the immunity clause in its entirety would be the best solution to provide justice and accountability. Unfortunately, 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 unrealistic, at the very least unlikely, because it would pose too great of a threat to the political structures of the organization and the interests of survival on behalf of its participatory states. Thus, tackling the immunity of the United Nations and peacekeepers fairly is a much more measured endeavor with small steps away from immunity and towards accountability.

1) 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 evaluate their viability and potential threat to the organization’s aims before accepting or dismissing the claim. If this were to occur, lawyers such as Megan Joseph and Brian Concannon would have a chance at attaining justice for the victims of the Cholera epidemic.

2) Honoring the SOFA Claims Commission: The SOFA with Haiti detailed the implementation of a just and 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 the United Nations were to honor their SOFA, it would restore additional funding to substantiate reparations and should have an active presence surrounding every peacekeeping operation.

3) 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 a result, the chain of command needs to be targeted at 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 generalized to other 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 gather a more thorough understanding of what possible accountability solutions should be recommended.

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