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

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ABSTRACT

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 exploitive animosity between the various diaspora. 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.”

Unfortunately, the UN failed to rise to its lofty ideals. 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.

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 immunity clause is that the UN cannot be held accountable for crimes, effectively creating 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 if it was “apparent to the French that not only have the policies not been enforced, but the command structures have not always given investigators their full cooperation.”

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 if it was “apparent to the French 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 for immunity for the international community. The UN’s immunity and the immunity of the United Nations will likely be looked back upon as the development that embroiled 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. For example, the WTO 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 United Nations.”

Considering MINUSTAH’s strong emphasis on the rule of law, one would think the UN is an organization that holds them accountable for their obvious wrongdoing. However, the UN refused to claim responsibility for the outbreak in the immediate aftermath, stating that, they would not be held 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 undeniable 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 for individuals (victims), 2) reform 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?

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 Chain of Command as 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, academic work as well as scholarly research on international law and humanitarian norms, case studies of UN peacekeeping missions, as well as the newly-burgeoning literature on accountability and recommendations to improve the system of international accountability. This theoretically-grounded study provides one of the first, widely comprehensible 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 of the case of Haiti.

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 clause 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 (Monthy of Sorbonne 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.

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

Unquestioned 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 exploitive animosity between the various diaspora. 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.”

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Why can’t we hold the UN accountable for its actions?

MINUSTAH: United Nations Stabilization Mission in Haiti

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UN

2. Why can’t we hold the UN accountable for its actions?

CONCLUSIONS/POTENTIAL SOLUTIONS

Ideally, revoking the immunity clause in its entirety would be the best solution to provide a symbolic gesture demonstrating the UN’s commitment to international law and humanitarian norms over the security and interests of the organization itself, but the precedent it 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 political and economic climate of the organization and the insticts of survival on behalf of its participatory states. Thus, tackling the immunity of the United Nations may be the best solution, as it would start to reverse the measures worsened 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 Megan 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 national standing Claims Commission to handle the cases of those wronged by the UN and would allow for a fair and judicial processing of claims. If the responsibility to hold UN Troops accountable would require additional funding to substantiate reparations and should have an active presence surrounding every peacekeeping structure.

• 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 cases as well as possible prescriptions can be generalized as case-study lessons, as well as new dimensions added. In addition, primary research including interviews will be conducted of key agents in these case studies, and in order to garner a more thorough and more complete understanding of what possible accountability solutions should be recommended.

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