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 newly established UN Stabilization Mission in Haiti (MINUSTAH) and ultimately demands the reform of the immunity clause before the UN's, leading to a global culture of legal immunity. This paper examines the implications outside the case of Haiti.

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
- Compile a comprehensive literature review of the primary, secondary, and scholarly work surrounding the subject of international accountability
- Understand the reigning philosophies with international law and attain justice for the Haitian people

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 as a unique harm in the existing peacekeeping missions. This study draws strongly from primary and secondary sources including UN mandates and other documents supplemented by individual governmental (primarily US and Haitian) analyses and recommendations, data and inferences from NGOs operating on the ground in Haiti, peer-reviewed literature 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 proposals and 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 antimilitarism between the various economic blocs. 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 use its full force. During the surge of troops after the earthquake of 2010, the UN failed to suppress 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 world’s largest 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 UN is to protect and serve the people and ensure their rights. Specifically, the Universal Declaration of Human Rights states that “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family.” The interpreter of the immunity clause is to ensure no UN peacekeepers are accountable for their crimes, 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 it was “apparent that within the command structures 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 it was “apparent that within the command structures 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 in the international sphere: The United Nations and the International 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 within the UN. In particular, 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 African States. Although all three 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.

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: “United Nations… shall enjoy immunity from every form of legal process except in so far as 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 absolute following several court cases (Muertos de Sobreinja 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.

CONCLUSIONS/POTENTIAL SOLUTIONS

Ideally, revoking the immunity clause in its entirety would be the best solution to provide a symbolically strong demonstration of the UN’s commitment to international law and humanist norms over the security and interests of the organization. However, as 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 peace to affect the dynamics of the organization and the interests of survival on behalf of its participatory states. Thus, tackling the immunity of the United Nations appear to be a fashionable symbol that has been measured ever so 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 begin cases to evaluate 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 joint 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 it were to move to this procedure, it would function as an additional funding to substantiate reparations and should have an active presence surrounding every peacekeeping council meeting.

- 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, a system of command and control that is needed 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 up 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. Additional 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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