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## The UN Is Not Above the Law

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# The UN is not above the law

*The US should support accountability claim for the cholera epidemic in Haiti*

March 6, 2014 9:00AM ET

by [Lauren Carasik](#) @LCarasik

Few people dispute that the United Nations peacekeeping mission in Haiti, known by its French acronym, MINUSTAH, is culpable for introducing the devastating cholera epidemic to that country. Yet the U.N. continues to evade responsibility. The U.S. government [must decide](#) Friday whether to support the victims' right to their day in court or bolster the U.N.'s impunity. The U.S. is [authorized by law to file a statement of interest](#) with the court outlining its position, as it has done in [previous cases](#).

The deadly outbreak first hit Haiti in October 2010, ten months after a calamitous earthquake killed more than 200,000 people and ravaged the country's already crumbling infrastructure. The diarrheal disease, which had not been seen in Haiti in at least a century, infected hundreds of thousands within months. Haiti now hosts the world's largest cholera epidemic: Between 2010 and 2012, cholera cases there represented half of the total [reported](#) to the World Health Organization. To date, 8,500 people have died and more than 700,000 have been sickened by the waterborne pathogen. By the [U.N.'s own estimate](#), another 2,000 Haitians may die from cholera in 2014.

The U.N.'s liability has been independently verified. At least 10 studies, including [a comprehensive report](#) by Yale University's Law School and School of Public Health, have confirmed the U.N.'s responsibility for the outbreak. "By causing the epidemic and then refusing to provide redress to those affected, the U.N. has breached its commitments to the Government of Haiti, its obligations under international law, and principles of humanitarian relief," the Yale report said.

A host of voices have demanded that the U.N. take responsibility for the tragedy. U.N. Special Envoy to Haiti and former U.S. President [Bill Clinton](#) identified U.N.

peacekeepers from South Asia as “the proximate cause of cholera” in Haiti. More than 100 Democratic members of the U.S. House of Representatives have [called on the U.N.](#) to take responsibility for bringing the cholera bacteria to Haiti. The U.N.’s independent expert on human rights in Haiti, [Gustavo Gallon](#), has called for compensation for the victims, decrying the world body’s refusal to respect the victims’ [right to a remedy](#). Even the U.N.’s own high commissioner for human rights, Navi Pillay, expressed support for compensating those harmed by the illness.

Yet the U.N. has consistently refused to accept responsibility.

Lawyers for those killed and afflicted by cholera tried for almost two years to seek redress through internal U.N. mechanisms. Thwarted at every turn, they filed a [groundbreaking class-action lawsuit](#) against the U.N. in U.S. District Court in New York last October. They presented three demands: that the U.N. invest in the water and sanitary infrastructure required to stanch the spread of this deadly epidemic, that it publicly accept responsibility and provide compensation to the victims. The U.N. continually refused to accept the notice of the complaint.

### **A poor person’s disease**

Cholera is a poor person’s plague. The waterborne disease kills over 100,000 people around the world each year. In areas with developed systems of water, sanitation and health care delivery, it is infrequent and manageable. When the stricken receive prompt medical attention, almost all recover quickly. Left untreated, however, cholera can kill within hours. And it spreads with lethal speed in the absence of proper preventive measures.

Haiti is the most impoverished country in the Western Hemisphere. More than 80 percent of the population lives on less than \$2 a day. With an already dismal water and sanitary infrastructure, earthquake-ravaged Haiti was a perfect host for the spread of cholera. Despite massive pledges of international aid, only a fraction materialized on the ground for those most in need. Earthquake recovery efforts were agonizingly slow, and hundreds of thousands languished in ragged

displacement camps. In the aftermath of the quake, conditions in the camps were grim — they were overcrowded, poorly constructed, under constant threat of eviction, plagued by sexual violence and lacking even the most rudimentary services. Proper hygiene was all but impossible. Sanitary facilities were woefully inadequate to meet the demand where they were available at all. Potable water was scarce. Those residing in the substandard housing stock elsewhere fared little better.

Given these conditions, Haiti's enhanced vulnerability to waterborne and infectious disease should have surprised no one, least of all those dispatched to provide humanitarian relief. In fact, credible warnings predated the outbreak. In July 2010, a [report by the United Nations Children's Fund \(UNICEF\)](#) warned about the lack of potable water and sanitary infrastructure, which left Haitians even more susceptible to the outbreak of infectious diseases. The report specifically mentioned the risk of cholera.

### **Shielding the U.N. from liability erodes its mission and runs contrary to the guiding principle of 'do no harm' in humanitarian emergencies.**

[MINUSTAH](#) is the only U.N. mission serving in a country not at war. It was charged with stabilization, helping to ensure a safe and secure environment, and strengthening democratic governance and institutional development. That mandate was expanded after the earthquake to include post-disaster humanitarian assistance. Instead, MINUSTAH unleashed a deadly epidemic.

Many suspected early on that the outbreak originated from the MINUSTAH base in Mirebalais, a small town northeast of the Haitian capital, Port-au-Prince. A contingent of troops had recently arrived from Nepal, which was experiencing a known outbreak of cholera. As is typical of the disease, many of those infected were asymptomatic but capable of shedding live bacteria that could sicken others. Yet the U.N. did not test the troops for cholera prior to deployment, nor did it provide any preventive treatment. Later, several studies confirmed that the strain in Haiti was essentially genetically identical to the Nepalese pathogen.

The U.N.'s failure to screen the soldiers was compounded by its unwillingness to comply with even the most basic sanitary standards. In addition to [documented](#) sewage pipes leaking from its base, MINUSTAH's inadequate waste disposal allowed black water — untreated raw sewage — to flow into a tributary of the Artibonite River, Haiti's largest, which serves as a major source of drinking water. Despite this, the U.N. failed to take immediate corrective action, and the disease [spread explosively](#).

## **Legal claims**

To advance its mission on the global stage, the Convention on the Privileges and Immunities of the United Nations confers several exceptions on the U.N., but also requires the organization to “provide for appropriate modes of settlement” for private law claims. The U.N. says its immunity is absolute. But lawyers for the victims argue that its immunity is premised on its obligation to implement appropriate dispute-resolution mechanisms.

The U.N. is also required to provide a forum to those aggrieved by its behavior under the 2004 [Status of Forces Agreement](#) with the government of Haiti. Among the provisions is a requirement that mandates the U.N. to set up a standing Claims Commission in order to resolve disputes involving private law claims. The U.N. has entered into 32 agreements in which it commits to set up standing Claims Commissions. [It has yet to establish a single one.](#)

In November 2011, 5,000 cholera victims in Haiti [petitioned the U.N.](#) for redress of their claims. As cholera continued to destroy lives, the U.N. took its time responding. After months of silence, on Feb. 21, 2013, the victims' lawyers received a [terse letter](#) from the U.N. stating that the claims were “not reviewable” because any review “would necessarily include a review of political and policy matters.”

In a follow-up letter last July, the U.N. summarily reiterated its previous position insisting that the claims were not reviewable. Mounting casualties and the U.N.'s intransigence left the victims with a few avenues to seek redress. The lawsuit

was filed on behalf of U.S. citizens and permanent residents who have been harmed by the outbreak.

### **Narrow precedent on immunity**

Legal observers warn that granting relief in the lawsuit would set a dangerous precedent. They claim that relief for Haitian victims would undermine the U.N. mission and deter the deployment of future multilateral forces to disaster- and conflict-affected areas. But that fear is misplaced. Attorneys for the plaintiffs are not suggesting that immunity should be pierced for all cases in which the U.N.'s behavior causes harm.

Nor are they arguing that the U.N. should be held to account for unavoidable missteps that inevitably occur in crisis situations when well-intentioned people rush in to alleviate suffering in the midst of chaos. Such a standard would be counterproductive and unfair. But shielding the U.N. from liability when it acts with gross negligence erodes both its mission of reinforcing the rule of law and its moral authority, and runs contrary to the guiding principle of “do no harm” in humanitarian emergencies. It would also send a dangerous message that those who are imperiled or impoverished are inherently less entitled to accountability and human dignity.

Had the U.N. taken responsibility and invested in prevention, treatment and infrastructure development when the disease first surfaced, the price tag for remediation and reparations would have been exponentially lower, and much suffering could have been avoided. The slow pace of aid continues to stall efforts to eradicate cholera in Haiti. As of December, [less than 10 percent](#) of the estimated \$2.2 billion cost of the 10-year cholera eradication plan had been donated or pledged. Unchecked, the [disease, which continues to kill Haitians, has now spread](#) to Mexico, Cuba and the Dominican Republic, and has affected U.S. citizens and residents.

## **U.S. interests**

The U.S. government, responsible for [22 percent of the United Nations' overall budget](#), has a financial stake in the current lawsuit because any reparations to Haitian victims would presumably be drawn from its contribution. But legal and moral accountability and the principle of responsible global governance should prevail over matters of the purse. As critics of the U.N.'s response note, [the funds expended on MINUSTAH, which totaled \\$644 million in 2013 alone](#), could be spent on righting the cholera tragedy instead of on patrolling Haiti's streets.

If the U.N. wants to bolster rather than undermine its legitimacy as a global leader on human rights, justice and the rule of law, it must take responsibility for the suffering it has caused in Haiti. The U.S. should stand with the cholera victims and support their right to access the courts. The victims of U.N. negligence deserve nothing less than a full and fair resolution of their claims.

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*The views expressed in this article are the author's own and do not necessarily reflect Al Jazeera America's editorial policy.*