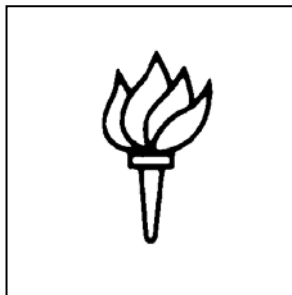


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Extracting Accountability: Special Rapporteurs and the
United Nations' Responsibility for Cholera in Haiti

Philip Alston

February 2018

Extracting Accountability: Special Rapporteurs and the United Nations’ Responsibility for Cholera in Haiti

Philip Alston*

Cholera appeared in Haiti in October 2010, almost immediately after the arrival of a new contingent of United Nations peacekeepers who had come from an area in Nepal which was known at the time to be cholera-infected. But from the outset, the United Nations authorities, supported by officials from the United States and other key countries, strongly contested the proposition that the peacekeepers had been responsible. The line taken by key officials was that it was better to devote the international community’s efforts to treating and eliminating the disease rather than worrying about its origins. This evasion succeeded in discouraging the necessary investigations and delayed essential measures that would have addressed the source and tracked its spread.¹

The materials brought together in this document trace the role played by a group of UN Human Rights Council Special Procedures mandate-holders in seeking to persuade the UN to accept its legal as well as its moral responsibility and to make appropriate compensation arrangements.

The legal saga began a little over a year after the outbreak of cholera in Haiti for the first time in its history. Haitian NGOs and their supporters lodged a petition with MINUSTAH, the UN mission in Haiti, on behalf of some 5,000 cholera victims. The applicants claimed: (a) a fair and impartial hearing; (b) monetary compensation; (c) preventive action by the United Nations; and (d) a public acknowledgement of United Nations responsibility and a public apology.

On 21 February 2013 and 5 July 2013 the UN’s Office of Legal Affairs (OLA) definitively rejected the claims of the victims as being ‘unreceivable’ on the grounds that they raised “policy

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¹ For a detailed and rigorous scientific account of this period, see Ralph R. Frerichs, *Deadly River: Cholera and Cover-Up in Post-Earthquake Haiti* (Cornell University Press, 2016).

or political matters” and could thus not be considered to be private law matters which would have required the UN to establish an appropriate mode of settlement. It also peremptorily refused a request to meet representatives of the victims or explore alternative approaches. In the years that followed, litigation was launched and continuing requests were directed at the UN to change its stance, but there was no significant movement of any sort. Silence prevailed, and OLA instructed its officials not to engage publicly in any way on the issue of responsibility.

By August 2016, when Philip Alston’s report was published, 9,145 persons had died and almost 780,000 had been infected. Those figures continued to rise thereafter. Alston’s report characterized the UN’s position in the following terms:

The legal position of the United Nations to date has involved denial of legal responsibility for the outbreak, rejection of all claims for compensation, a refusal to establish the procedure required to resolve such private law matters, and entirely unjustified suggestions that the Organization’s absolute immunity from suit would be jeopardized by adopting a different approach. The existing approach is morally unconscionable, legally indefensible and politically self-defeating. It is also entirely unnecessary. In practice, it jeopardizes the immunity of the United Nations by encouraging arguments calling for it to be reconsidered by national courts; it upholds a double standard according to which the United Nations insists that Member States respect human rights, while rejecting any such responsibility for itself; it leaves the United Nations vulnerable to eventual claims for damages and compensation in this and subsequent cases, which are most unlikely to be settled on terms that are manageable from the perspective of the Organization; it provides highly combustible fuel for those who claim that United Nations peacekeeping operations trample on the rights of those being protected; and it undermines both the overall credibility of the Organization and the integrity of the Office of the Secretary-General.

The past policy of the United Nations relied on a claim of scientific uncertainty. That is no longer sustainable given what is now known. The United Nations was clearly responsible and it must now act accordingly. (UN Doc. A/71/367).

The initiative by the Special Procedures was begun in 2014. It involved the mandate-holders responsible for (i) housing (Leilani Farha); (ii) Haiti (Gustavo Gallón), (iii) health (Dainius Pūras), and (iv) water and sanitation (Catarina de Albuquerque). By 2015, Léo Heller had replaced Ms. de Albuquerque as Special Rapporteur on water and sanitation, and the group was joined by the Special Rapporteur on extreme poverty and human rights (Philip Alston).

These materials first reproduce the letters sent by the group of mandate-holders in 2014 and 2015, and the responses received from the UN. They then document Philip Alston's engagement with the UN in the course of 2016. Most, but not all, of the documents can be found on obscure UN websites, but they are not easy to track down.

The compilation provides a comprehensive recounting of the systematic steps taken to encourage the UN to change its position. Initially, the standard techniques employed by the Special Procedures were used, consisting of 'allegation letters' outlining alleged human rights violations along with a request for a response from the Organization. This exchange generated a lot of information, but no movement on the contested issues.

The mandate-holders then sought to engage in a dialogue with the UN with a view to encouraging more open reflection on the issues. This led to a meeting between the UN Secretary-General and Philip Alston, followed by private discussions with other senior officials. Those interactions led to extensive internal discussions, and culminated in a public response described by the UN as a "new approach," and announced at exactly the same time as the detailed critical report by Philip Alston was made public.

Timeline of Special Procedures engagement on the issue of cholera in Haiti

25 September 2014: four Special Procedures mandate-holders responsible for (i) housing (Leilani Farha); (ii) Haiti (Gustavo Gallón), (iii) health (Dainius Pūras), and (iv) water and sanitation (Catarina de Albuquerque) expressed concern at the way in which the UN had handled the claims.

Document 1, page 7

25 November 2014: Assistant-Secretary-General Pedro Medrano, Senior Coordinator for Cholera sent a lengthy response which included additional details in relation to the UN's legal arguments being invoked to justify the non-receivability of the claims.

Document 2, page 15

23 October 2015: the four original mandates ((i) housing (Leilani Farha); (ii) Haiti (Gustavo Gallón), (iii) health (Dainius Pūras), and (iv) water and sanitation (Leo Heller), joined by the Special Rapporteur on extreme poverty and human rights (Philip Alston), followed up on the Medrano letter by expressing concern at the denial of the victims' right to an effective remedy and suggesting that informal consultations might be held. The letter was initially sent on 19 October 2015 to Pedro Medrano, but he had already left his post dealing with cholera and the letter was revised and addressed to the Secretary-General.

Document 3, page 49

15 January 2016 the Secretary-General met at UN Headquarters with the Special Rapporteur on extreme poverty. Two issues were discussed, one of which was the importance of UN engagement in response to the cholera communication.

Private meeting, official photograph is available, but no written record

25 February 2016: Deputy Secretary-General, Jan Eliasson, wrote a separate but identical letter to each of the five mandate-holders and welcomed their offer "to engage further on this matter and discuss what further steps the United Nations could take, in keeping with its mandates, to assist the victims of cholera and their communities."

Document 4, page 53

15 April 2016 the Special Rapporteur on extreme poverty held a closed internal meeting with senior UN officials to outline the concerns of the five mandate-holders and to suggest constructive ways for dealing with the issue.

Document 5, page 65

8 June 2016: the Special Rapporteur on extreme poverty met with the Assistant Secretary-General for Human Rights, at OHCHR in Geneva, and informed him that, following consultations with his colleagues, his report to the General Assembly in October 2016 would focus on the UN's responsibility in relation to cholera in Haiti.

No document

8 August 2016, the Special Rapporteur on extreme poverty's draft report was transmitted to the Secretary-General and other senior officials. A deadline of 19 August was provided for the receipt of comments, after which the draft report would be considered to be final.

No document

18 August 2016: A front page story in *The New York Times* reported the key details of the draft report and quoted a spokesman for the Secretary-General as saying in response that “over the past year, the U.N. has become convinced that it needs to do much more regarding its own involvement in the initial outbreak and the suffering of those affected by cholera,” and announcing that a “new response will be presented.”²

19 August 2016: The full draft report, which had apparently been leaked, was made available on the website of *The New York Times*.³

See the New York Times website

19 August 2016: The Deputy Secretary-General responded to the Special Rapporteur on extreme poverty and indicated that the Secretary-General “is developing a new approach, which, I believe, will address many of the concerns raised in your report.”

Document 6, page 69

26 August 2016: The report to the UN General Assembly was officially published as UN Doc. A/71/367, available in English, Arabic, Chinese, French, Russian, and Spanish from the UN's Official Document System, at <https://documents.un.org/>

20 September 2016: Address concerning cholera in Haiti to the General Assembly by Secretary-General Ban Ki-moon

Document 7, page 72

5 October 2016: The Special Rapporteur on extreme poverty wrote to the Deputy Secretary-General requesting the release of the UN's legal advice on the matter.

Document 8, page 74

12 October 2016: The Deputy Secretary-General replied that “the legal position of the United Nations does not constrain” the new approach. That approach is not “an act of charity,” but “is based on a sense of responsibility to assist the people of Haiti and on an acknowledgement of the Organization's own involvement in the past.”

Document 9, page 84

25 October 2016: Statement by Philip Alston, Special Rapporteur on Extreme Poverty and Human Rights, to the 71st session of the General Assembly, Third Committee, Item 68 (b&c)

Document 10, page 86

² Jonathan M. Katz, ‘U.N. Admits Role in Cholera Epidemic in Haiti,’ *New York Times*, 18 August 2016, available at http://www.nytimes.com/2016/08/18/world/americas/united-nations-haiti-cholera.html?_r=0

³ Jonathan M. Katz, ‘The U.N.'s Cholera Admission and What Comes Next,’ *New York Times*, 19 August 2016, available at <http://www.nytimes.com/2016/08/19/magazine/the-uns-cholera-admission-and-what-comes-next.html>

1 December 2016: Secretary-General Ban Ki-moon, Remarks to the General Assembly on A New Approach to Address Cholera in Haiti. It included the statement that:

On behalf of the United Nations, I want to say very clearly: we apologise to the Haitian people.

We simply did not do enough with regard to the cholera outbreak and its spread in Haiti.

We are profoundly sorry for our role.

Document 11, page 94

DOCUMENT 1

HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND

Mandates of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Independent Expert on the situation of human rights in Haiti; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on the human right to safe drinking water and sanitation

REFERENCE: AL
HTI 3/2014:

25 September 2014

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Independent Expert on the situation of human rights in Haiti; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on the human right to safe drinking water and sanitation pursuant to Human Rights Council resolutions 25/17, PRST 19/2, 24/6, and 24/18.

In this connection, we would like to bring to your attention information we have received concerning **the cholera outbreak in Haiti since 2010**.

According to the information received:

In October 2010, the first instances of cholera in Haiti were reported. It is alleged that the Meille river (also known as “Meye”) tributary of the Artibonite River was contaminated with pathogenic strains of vibrio cholerae due to human waste disposal directly into it because of lack of adequate sanitation system in place. The contaminated water continued to flow into the Artibonite River, Haiti’s longest and most important river and a critical source of water for tens of thousands of Haitians who rely on it for drinking, bathing, washing clothes, and irrigation. This resulted in outbreaks of cholera along the river and eventually throughout the entire country and to this date, around 8,500 deaths and an estimated 703,000 suspected cholera cases as reported by the Haiti Ministry of Health.

It is also alleged that peacekeepers deployed under the MINUSTAH operation were responsible for the introduction of this strain of cholera to Haiti through insufficient and inadequate sanitation management and lack of reasonable precautions and measures to prevent, control and mitigate the introduction of

cholera. This allegation is based on several factors: genetic examinations revealed that the vibrio cholera strain in Haiti is a perfect match to the strain in Nepal. It is further alleged that prior to the deployment to Haiti on or about 9, 12, and 16 October 2010, some peacekeepers had spent three months for training in Panchkhal, Nepal a cholera-affected area just outside the Kathmandu Valley as recorded by the Nepalese authorities. Before October 2010, there were no reported cases of cholera in Haiti for over a century.

Furthermore, it is alleged that waste from the three MINUSTAH bases in the Central Plateau was collected and disposed of at the MINUSTAH base in Meille, a small village approximately 1.6 kilometers south of Mirebalais (“Meille base” or Mirebalais base”). The Meille MINUSTAH base was reported to have inadequate sanitation and waste management systems insufficient to prevent faeces and discharges – as a carrier of cholera – to overflow and leak into water sources. It is also reported that the human faecal waste contained in tanks in Meille base were emptied on demand by a contracting company approved by MINUSTAH headquarters in Port-au-Prince. The area where this waste was transported and deposited was reported to have no fence around the site and children were observed playing and animals roaming in this open septic disposal pit. The first reported hospitalized cholera case in Mirebalais, in the upstream region of the Artibonite River was on 17 October 2010.

The 2011 Final Report of the Independent Panel of Experts on the Cholera Outbreak in Haiti appointed by the United Nations Secretary General concluded that “the evidence overwhelmingly supports the conclusion that the source of the Haiti cholera outbreak was due to contamination of the Meye tributary of the Artibonite River with a pathogenic strain of current South Asian type vibrio cholerae as a result of human activity.” The Panel explained that the explosive spread was due to several factors including the fact that people use river water for drinking and other purposes, the lack of immunity to cholera, poor water and sanitation conditions in the country, and the conditions in medical facilities. The Panel also concluded that construction of piping from the toilets and showers was “haphazard, with significant potential for cross-contamination through leakage of broken pipes and poor pipe connections.” The Panel noted a particularly high risk of cross contamination from pipes that run over an open drainage ditch extending throughout the camp that flows directly into the Meille Tributary System. In a paper published in 2013, the same panel of experts clarified that “the preponderance of the evidence and the weight of the circumstantial evidence does lead to the conclusion that personnel associated with the Mirebalais MINUSTAH facility were the most likely source of introduction of cholera into Haiti.”

For many years, the United Nations and international community have expended efforts and resources in providing humanitarian aid and other development assistance and cooperation improving Haiti’s water, sanitation and health facilities. This support was strengthened after the 2010 earthquake and considerable efforts and resources were deployed after the cholera outbreak. At

the same time, there are allegations that implementation of some plans for elimination of cholera remains underfunded with some of the promised financial aid allegedly not released to date. Despite the reduction of overall incidence by 50%, and the first months of 2014 registering the lowest number of cases and cholera related deaths since the beginning of the epidemic, the figures remain of deep concern: from October 2010 to July 2014, around 703,000 suspected cholera cases and estimated 8,500 deaths were reported by the Haitian Ministry of Health.

Despite ongoing efforts, lack of access to safe water, adequate sanitation and health systems in Haiti are causing cholera to persist. Over the past four years, cholera has infected about one in twenty Haitian men, women and children. It has disproportionately impacted the poor and the vulnerable. Victims include farmers, teachers, and caretakers whose illness or deaths have left families without means to meet their basic needs.

To date, the United Nations has not formally accepted responsibility for allegedly causing the outbreak nor has it provided compensation to the victims and the survivors of the outbreak. The information received alleges that individuals affected by the cholera outbreak have been denied access to justice. They submitted petitions to MINUSTAH in November 2011 and to the United Nations Office of Legal Affairs in May 2013, both of which have been denied. The United Nations Office of Legal Affairs, in its letter dated 21 February 2013, explained that “consideration of these claims would necessarily include a review of political and policy matters. Accordingly, these claims are not receivable pursuant to Section 29 of the Convention on the Privileges and Immunities of the United Nations.” The United Nations Office of Legal Affairs further stated, in its letter dated 5 July 2013, that “pursuant to paragraphs 54 and 55 of the MINUSTAH status-of-forces agreement, there is no legal basis for the United Nations to establish [a standing claims commission] in respect of claims that are not receivable.”

Section 2 of the Convention on the Privileges and Immunities of the United Nations stipulates that the United Nations shall enjoy immunity. At the same time, Section 29 requires that the United Nations shall make provisions for appropriate modes of settlements of disputes that may arise, which can be seen as a counterbalance to the immunity granted. In this regard, Article 55 of the Agreement between the United Nations and the Government of Haiti concerning the Status of Forces of the United Nations Operation in Haiti (SOFA Agreement) requires the establishment of a standing claims commissions for the settlement of disputes or claims of a private-law character. According to Article 54 of the SOFA Agreement this relates to claims for personal injury, illness or death arising from or directly attributed to MINUSTAH, except for those arising from operational necessity.

The lack of adequate sanitation and wastewater management and resulting leakage of faeces into water sources were not due to operational necessity. Moreover, both

the Convention on the Privileges and Immunities of the United Nations and the SOFA Agreement do not include any provisions that allow excluding claims requiring a review of political and policy matters. In any case, addressing the lack of sanitation and wastewater management would not imply the review of political or policy matters but concerns the practicalities of setting up facilities at a peacekeeping base. Otherwise, this would imply that the inadequate management of faeces and wastewater produced by its peacekeepers reflects the policy of the United Nations.

It is reported that the claims commission foreseen in the SOFA Agreement has never been established in spite of the petitions to MINUSTAH and the United Nations Office of Legal Affairs. In addition, the claims have not been received by a local claims review board as has been the practice for claims received during many other United Nations Peacekeeping Missions. As a result, alleged victims of human rights violations do not have any mechanism to bring their claims forward and to establish accountability, all of which has resulted in a lack of access to justice.

After failure to achieve access to justice and obtain remedy through the United Nation's system, three lawsuits have been filed in New York courts seeking compensation and an apology from the United Nations for its alleged negligence in Haiti.

In this connection, we express serious concern that, allegedly, the United Nations failed to take reasonable precautions and act with due diligence to prevent the introduction and the outbreak of cholera in Haiti since 2010. We further express serious concern that to this date, allegedly, individuals affected by the cholera outbreak have been denied access to legal remedies and have not received compensation. Finally, we express concern that to date efforts to combat cholera and to improve the water and sanitation facilities in Haiti have been inadequate. A more comprehensive response is needed to properly address the situation with particular emphasis on ensuring adequate funding of the envisaged measures.

In connection to the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the summarized facts accurate?
2. Bearing in mind that the United Nations should be bound by international human rights law, what measures are being taken by the United Nations to ensure

access to justice including provision of compensation to the individuals affected by the cholera outbreak in Haiti?

3. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to the contention by the United Nations Office of Legal Affairs that the claims by the individuals affected by the cholera outbreak are “not receivable”. If no inquiries have taken place, or if they have been inconclusive, please explain why.

4. What measures are being taken by the United Nations in response to the alleged violations of human rights to water, sanitation and health directly associated with the presence and operation of MINUSTAH in Haiti? If no measures have been taken, or if they have been inconclusive, please explain why.

5. What measures are being taken by the United Nations, in particular at the structural level, to ensure due diligence in the deployment of its peacekeeping operations, and to prevent similar impact on the human rights to water, sanitation and health by the United Nations peacekeeping operations?

6. What measures are being taken to ensure accountability and access to remedies for alleged human rights violations in ongoing and future peacekeeping operations?

We would be most grateful to receive a response by 24 October 2014. We undertake to ensure that the information received will be reflected in the report we submit to the Human Rights Council for its consideration.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

Leilani Farha

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Gustavo Gallón

Independent Expert on the situation of human rights in Haiti

Dainius Pūras
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
standard of physical and mental health

Catarina de Albuquerque
Special Rapporteur on the human right to safe drinking water and sanitation

Cc: Mr. Zeid Ra'ad Al Hussein
High Commissioner for Human Rights
Office of the United Nations High Commissioner for Human Rights
Geneva

Mr. Miguel de Serpa Soares
Under-Secretary-General for Legal Affairs
and the United Nations Legal Counsel
United Nations Headquarters
New York

Ms. Sandra Honoré
Special Representative of the Secretary-General
and Head of the UN Stabilization Mission in Haiti
Haiti

Mr. Pedro Medrano Rojas
United Nations Assistant Secretary-General
and Senior Coordinator for the Cholera Responses in Haiti
New York

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to the applicable international human rights norms and standards.

The human right to safe drinking water and sanitation was explicitly recognised by the United Nations General Assembly and the United Nations Human Rights Council in 2010. The most recent General Assembly in October 2013 stresses that the right to water and sanitation is derived from the right to an adequate standard of living, *inter alia* guaranteed in the International Covenant on Economic, Social and Cultural Rights (ICESCR). Hence, the human right to safe drinking water and sanitation has a firm legal basis in international human rights law.

The Special Rapporteur on the human right to water and sanitation in her 2009 report has defined sanitation from a human rights perspective as a “system for the collection, transport, treatment and disposal or reuse of human excreta and associated hygiene. States must ensure without discrimination that everyone has physical and economic access to sanitation, in all spheres of life, which is safe, hygienic, secure, socially and culturally acceptable, provides privacy and ensures dignity” (para. 63). The Committee on Economic, Social and Cultural Rights, at its forty-fifth session in 2010, has endorsed this definition in its statement on the right to sanitation. Human rights bodies thus understand sanitation broadly. Sanitation does not stop simply with the use of latrines or toilets, but includes the treatment and safe disposal or re-use of faeces, urine, and associated wastewater. This understanding is warranted as sanitation not only concerns one’s own right to use a latrine or toilet, but also the rights of other people, in particular their right to health, which can be negatively impacted when faeces are not adequately confined.

According to the General Comment No. 15 of the Committee on Economic, Social and Cultural Rights, the human right to water means that everyone is entitled to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. With regard to water safety, the World Health Organization Guidelines for Drinking Water Quality specify that safe water must “not represent any significant risk to health over a lifetime of consumption, including different sensitivities that may occur between life stages”.

We would also like to recall article 11.1 of the International Covenant on Economic, Social and Cultural Rights, recognizing the right of everyone to an adequate standard of living for himself and his family, including housing, and to the continuous improvement of living conditions. The Committee on Economic, Social and Cultural Rights in its General Comment No. 4 has stressed that the right to adequate housing should not be interpreted in a narrow or restrictive sense such as merely having a roof over one’s head; rather, it should be seen as the right to live somewhere in security, peace and dignity. This General Comment outlines the following aspects of the right to housing: (a) legal security of tenure; (b) availability of services, materials, facilities and

infrastructure; (c) affordability; (d) habitability; (e) accessibility; (f) location; and (g) cultural adequacy. Specifically, when discussing availability of services, materials, facilities and infrastructure, the Committee has said that “All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services”;

We would further like to draw your attention article 12 of ICESCR, which provides for the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. We also wish to refer you to General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, which states the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment. (General Comment 14, para.4)

Where human rights violations occur, individuals have the right to a remedy. The right to a remedy is explicitly guaranteed in international human rights treaties including article 2 of the International Covenant on Civil and Political Rights (ICCPR), which states that “any person whose rights or freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.” While the ICESCR itself contains no provision on the right to a remedy, the Committee on Economic Social and Cultural Rights has consistently recognised the right to an effective remedy for economic, social and cultural rights. General Comment No. 15 of the Committee notes that any persons or groups who have been denied their right to water should have access to effective judicial or other appropriate remedies at both national and international levels (para. 55) and that all victims of violations of the right to water should be entitled to adequate reparation, including restitution, compensation, satisfaction or guarantees of non-repetition (para. 56). Based on these elements the United Nations General Assembly in its resolution 60/147 of 16 December 2005 adopted the “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law”.

The United Nations is bound by international human rights law. Article 55(c) of the United Nations Charter stipulates that the United Nations shall promote “universal respect for, and observance of, human rights and fundamental freedoms for all.” It would go against the very object and purpose of the Charter of the United Nations if the United Nations itself were not required to respect the human rights law it promotes (2011 Report of the Special Rapporteur on the human right to water and sanitation, para. 33).

United Nations  Nations Unies

HEADQUARTERS • SIEGE NEW YORK, NY 10017

TEL.: 1 (212) 963.1234 • FAX: 1 (212) 963.4879

25 November 2014

Dear Ms. Farha, Mr. Gallón, Mr. Pūras and Ms. de Albuquerque,

1. I refer to your joint communication dated 25 September 2014, in which you seek certain information concerning the cholera outbreak in Haiti. In this connection, you request a description of the actions that have been taken by the United Nations in relation to the outbreak, as well as, more generally, the measures that have been undertaken by the United Nations to ensure due diligence in the deployment of its peacekeeping operations and the policies and procedures that have been implemented to ensure that United Nations peacekeeping operations and personnel respect human rights and are held accountable for alleged violations.

2. The United Nations fully shares your concerns about the devastating impact of the epidemic in Haiti. From the outset of the outbreak, the Organization has been actively engaged in efforts to address the situation. The Secretary-General is personally committed to ensuring that the United Nations does everything in its power to help Haiti combat and eliminate cholera. The United Nations is working closely with the Government of Haiti and has established, in partnership with the Government, a joint High-level Committee for the Elimination of Cholera that focuses on the elimination of cholera and the provision of social and economic assistance to affected communities.

3. In July 2014, the Secretary-General visited Haiti and saw first-hand the tragic consequences of the outbreak. At that time, the Secretary-General reiterated his commitment to ending the cholera epidemic as soon as possible. While the United Nations stands ready to take all necessary steps to eliminate cholera, it can only do so with the continued support of the international community.

A. Background

4. The United Nations has had a long relationship with Haiti stretching over two decades. United Nations involvement in Haiti began in 1990 when, at the request of the Government, the United Nations dispatched observers to monitor the preparation and holding of elections. Following the 1991 military coup, successive United Nations peacekeeping operations were established, including the United Nations Mission in Haiti (UNMIH), the United Nations Support Mission in Haiti (UNSMIH), the United Nations Transition Mission in Haiti (UNTMIH) and the United Nations Civilian Police Mission in Haiti (MIPONUH).

5. In 2004, in light of the deteriorating political, security and humanitarian environment, as well as the conflict that had broken out in the northern part of the country, the United Nations Stabilization Mission in Haiti (MINUSTAH) was established to, among other things, support the Government in ensuring a secure and stable environment; assist in the restoration and maintenance of the rule of law, public safety and public order in Haiti; support Haiti's constitutional and political processes; support efforts by the Government to promote human rights; and monitor and report on the human rights situation in the country. Recently, in resolution 2180 (2014) of 14 October 2014, the Security Council extended the mandate of MINUSTAH until 15 October 2015, and expressed its intention to further renew the mandate of the mission. As of 30 September 2014, MINUSTAH's overall force levels consisted of 4,975 troops and 2,449 police (including formed units) as well as additional international and local civilian personnel, but pursuant to resolution 2180 (2014), there will be a drawdown of these levels.

6. In addition to the development, political and security challenges on which the United Nations has sought to assist Haiti over many years, the United Nations has been operating since January 2010 in the circumstances caused by the catastrophic earthquake, which killed approximately 220,000 people, including 102 United Nations staff, injured 300,000 and left more than 2.1 million people homeless. The United Nations led the effort to address the crisis, launching immediate humanitarian operations and providing support to life-saving assistance

efforts. Despite its own vast losses, MINUSTAH made extraordinary efforts to restore its capacity. It also acted decisively within its mandate to respond to post-earthquake needs by providing relief and security and restoring the Government's capacity.

7. Prior to the earthquake, one-third of the population did not have access to safe drinking water and basic sanitation coverage was already at a very low level of just 17% of the population. In addition, Haiti had the highest child mortality rate in the region, losing approximately 52 children per day, mostly due to preventable diseases, such as diarrhea. The 2010 earthquake compounded the challenges to Haiti's existing infrastructure. Wastewater collection systems were practically nonexistent. The earthquake destroyed or damaged the country's existing infrastructure, including more than 175,000 houses.

8. It was in this context that the 2010 outbreak of cholera in Haiti occurred. While in a different context, it might have been expected that the effects of the outbreak could have been contained, as it was in neighboring countries, in the particular circumstances of Haiti, the outbreak spread in an explosive manner with tragic results. These underlying conditions continue to expose the Haitian population to waterborne diseases and other health risks. They must be addressed by the United Nations and the broader international community in order to ensure the well-being of the entire Haitian population.

9. Immediately following the outbreak, the United Nations and MINUSTAH initiated numerous on-the-ground support activities, including the establishment of treatment centres and the provision of logistics and security support for the delivery of medical materials as well as drinking water throughout the country. The United Nations also established the Water, Sanitation and Hygiene (WASH) Cluster, which supported the efforts of the Haitian National Directorate for Water Supply and Sanitation (DINEPA) to distribute family hygiene kits that included soap, aquatab drops and oral rehydration salts. The MINUSTAH Community Violence Reduction Section provided an additional stock of 4,000 water filtration units, 500,000 aquatab drops and 870 gallons of chlorine, benefitting more than 2 million people. In addition, MINUSTAH prepared a waste water management improvement plan and

took action to construct additional septic tanks and soak pits in Port au Prince, Mirebalais, Hinche and Cap Haitien. Furthermore, MINUSTAH initiated the procurement of modular waste water treatment plants with a view to enhancing its waste water management capacity.

B. The Independent Panel

10. In January 2011, the Secretary-General convened a panel of independent experts to determine the source of the cholera outbreak and to provide the United Nations, the Government of Haiti and the international community specific recommendations on how to respond to the outbreak and avoid future epidemics. The Independent Panel presented its report at United Nations Headquarters on 3 May 2011 and to the Government of Haiti through the Special Representative of the Secretary-General for Haiti and Head of MINUSTAH on 4 May 2011. The Secretary-General subsequently made the report public. In its report, the Independent Panel noted that the explosive spread of cholera was due to several factors, including the poor water and sanitation conditions in Haiti as well as the conditions of the medical facilities in Haiti. It concluded that the outbreak was caused by a confluence of circumstances and that it was not the fault of, or due to deliberate action by, a group or individual. It also made seven specific recommendations on cholera prevention and response.

11. The Secretary-General immediately convened a senior-level integrated Task Force on 4 May 2011 to study the recommendations of the Independent Panel and to ensure prompt and appropriate follow-up on the Independent Panel's report. The Task Force was chaired by the Assistant Secretary-General for Field Support, with representatives of the Medical Services Division, Department of Peacekeeping Operations (DPKO), Office for the Coordination of Humanitarian Affairs (OCHA), United Nations Development Programme (UNDP), United Nations Children's Fund (UNICEF), the World Health Organization (WHO) and the Office of Legal Affairs (OLA). Other relevant United Nations actors and observers, including the Office of the Secretary-General's Special Envoy for Haiti, were consulted and participated in the work of the Task Force, as necessary.

12. Based on the Task Force’s evaluation, the United Nations decided that the recommendations should be implemented, with the exception of the recommendation regarding prophylaxis and screening. The Task Force found that existing scientific information and expert opinion did not provide sufficient clarity to support the implementation of this particular recommendation. The United Nations has accordingly implemented the recommendations of the Independent Panel as summarized below.

C. United Nations measures to address issues of health, sanitation and water

i. Use of prophylactic antibiotics or screening of United Nations personnel traveling from cholera endemic areas

13. In its report, the Independent Panel of Experts noted that the Haiti cholera outbreak highlighted the risk of transmitting cholera during mobilization for emergency response. To prevent the introduction of cholera into non-endemic countries, it recommended that United Nations personnel and emergency responders traveling from cholera endemic areas should either receive a prophylactic dose of appropriate antibiotics before departure or be screened with a sensitive method to confirm absence of asymptomatic carriage of *Vibrio cholerae*, or both.

14. The United Nations is committed to protecting the health of the people it serves, as well as United Nations personnel and emergency responders, and to preventing the transmission of disease through its medical policies and practices. United Nations guidelines are based on guidance provided by the WHO.

15. The United Nations has supported the objective of lowering the overall risk of spreading the disease through the promotion of proper personal hygiene and cholera prevention training for United Nations personnel. In the context of United Nations peacekeeping, DPKO and the Department of Field Services (DFS), in partnership with the Medical Services Division, have developed a training plan for Troop and Police Contributing Countries (TCCs/PCCs) designed to reinforce proper hygiene and cholera prevention. The plan is included in the Medical Support Manual for missions and stresses the requirement for, and

importance of, cholera prevention training within the established pre-deployment training programmes. The training is implemented by each TCC/PCC before deployment to the field. Further in-mission training on cholera prevention is provided systematically by civilian and military medical personnel in each peacekeeping operation. This forms part of a larger focus on prevention of water-borne diseases.

16. After careful consideration, the United Nations has not adopted the use of prophylactic antibiotics or screening. The Task Force was unable to endorse the Independent Panel’s recommendations on such measures in light of the divergent views within the medical community on their expected benefits.¹

17. Experts and institutions that recommend against the practice of mass prophylaxis have raised concerns that the prophylactic use of antibiotics would encourage selection and spread of antibiotic resistant pathogenic bacteria, leading to (i) the risk that antibiotic resistant strains of cholera may further develop and (ii) the risk that other organisms may develop resistance, which would compromise the use of that antibiotic in the management of other infectious diseases.

18. The Task Force also found that utilizing screening to confirm the absence of asymptomatic carriage of cholera poses immense challenges due to the lack of sufficiently sensitive screening methods and technology. It further found that screening of asymptomatic individuals to detect transient asymptomatic or mild infection was not possible because the relatively low levels of cholera bacteria that would be present in the individual would not be detectable.

19. The Task Force noted that the recommendation by the Independent Panel conflicted with existing WHO policy and recommendations on cholera control measures. WHO had previously stated that “mass antibiotic prophylaxis is not recommended because it has not been shown to be effective and because it contributes to the emergence of resistance”

¹ See PAHO/WHO Expert Consultation on Pharmacological Measures for Prevention of Cholera Introduction in Non endemic Areas, Report, Washington, DC (9 December 2011) PAHO/HSD/IR/A/00112; Reveiz L et al. Chemoprophylaxis in Contacts of Patients with Cholera: Systematic Review and Meta-Analysis, PLoS ONE, 2011, 6:11.

and that “antibiotics should not be used to prevent cholera except in certain very unusual circumstances”.² Extensive consultations within WHO had also found that it would be unlikely that the proposed screening method of the Independent Panel would achieve the desired objective.

20. These concerns were confirmed by a Pan American Health Organization (PAHO)/WHO Expert Group, which was convened on 9 December 2011, to specifically review this particular recommendation. The report produced by the group of experts, entitled “PAHO/WHO Expert Consultation on Pharmacological Measures for Prevention of Cholera Introduction in Non endemic Areas”, concluded that “it is not possible to endorse any recommendation about antimicrobial mass treatment of or screening for asymptomatic carriers (due to) lack of evidence on the efficacy, safety, and risks of the administered treatment and on the sensitivity and cost-effectiveness of the current technology for detecting asymptomatic carriers in a timely fashion”. The report further concluded that “the prevalence of asymptomatic cholera carriers and disseminators in any group of potential peacekeepers is unknown, and there is no evidence that similar azithromycin treatment could eradicate the state” and “implementing a policy without an evidence base is not ethical and should not be done”.³

ii. Use of prophylactic antibiotics or oral vaccines for all United Nations personnel traveling to emergencies

21. Given that United Nations missions commonly operate in emergencies with concurrent cholera epidemics, the Independent Panel of Experts recommended that all United Nations personnel and emergency responders traveling to emergencies should receive prophylactic antibiotics, be immunized against cholera with currently available oral vaccines, or both, in order to protect their own health and to protect the health of others.

² See Antimicrobial resistance in shigellosis, cholera and campylobacteriosis, 2001, WHO/CDS/CSR/DRS/2001.8.

³ PAHO/WHO Expert Consultation on Pharmacological Measures for Prevention of Cholera Introduction in Non endemic Areas, Report, Washington, DC (9 December 2011) PAHO/HSD/IR/A/00112.

22. In order to protect its personnel and the health of local populations, in the context of peacekeeping, all members of TCC/PCC contingents must undergo a pre-deployment medical screening examination to exclude all chronic diseases which could preclude a peacekeeper from deploying to a mission area. In accordance with the medical threat assessment in the mission area, the TCCs/PCCs are also advised on vaccinations that must be carried out prior to deployment based on WHO guidelines.

23. Currently, the cholera vaccine is mandatory for all peacekeepers deploying to and from cholera-endemic areas. It remains the responsibility of the TCC/PCC to provide the vaccinations.⁴

24. It should be noted that measures and guidelines implemented by the United Nations to prevent the spread of diseases during troop deployment are complementary to those instituted by States with respect to public health in general. Under Article V, paragraph 23 of the Agreement between the United Nations and the Government of Haiti concerning the status of MINUSTAH (the “MINUSTAH SOFA”), the United Nations and the Government are to cooperate with respect to sanitary services, and shall extend to each other the fullest cooperation in matters concerning health, particularly with respect to the control of communicable diseases, in accordance with international conventions.

iii. Waste water management

25. In order to prevent the introduction of contamination into the local environment, the Independent Panel of Experts recommended that United Nations installations worldwide should treat faecal waste using on-site systems that inactivate pathogens before disposal. The Independent Panel of Experts also recommended that these systems should be operated and maintained by trained, qualified United Nations staff or by local providers with adequate United Nations oversight.

26. The proper management and oversight of waste water treatment at United Nations installations, including the proper management and

⁴ The issues related to prophylactic antibiotics for cholera are addressed above in paragraphs 16 to 20.

oversight of United Nations waste water treatment services providers (where utilized), is a priority for all United Nations missions. The United Nations has undertaken substantial actions in this respect since the outbreak. In June 2011, DFS issued additional directives to all missions to reinforce existing policies and provide additional guidance on the management of waste water. All missions have provided action plans to ensure that their wastewater facilities meet the minimum required standards set by the United Nations Environmental Policy. Missions continue to implement these plans, report on the range of actions being taken, and highlight areas that require further attention and guidance from United Nations Headquarters. The actions being undertaken include the improvement and better monitoring of existing facilities, the installation of independent wastewater treatment plants, and the inspection and closer supervision of contractors involved in wastewater disposal. The United Nations also continues to strengthen its operational and oversight capacity in this regard.

27. The United Nations has established a global systems contract to facilitate the procurement of supplementary waste treatment plants and more than 119 plants have been procured by seven missions. The United Nations Headquarters has also adopted a model contract for use with waste water disposal vendors to provide guidance and outline the responsibility of the vendors, including with respect to compliance with environmental requirements.

28. Since October 2014, there has been an Environmental Officer on the staff of the DFS Logistics Support Division, who has the responsibility to support missions in the implementation of policies on sanitation and environmental issues. The Environmental Officer engages in close dialogue with all missions regarding the proper treatment and disposal of wastewater.

29. In Haiti, in June 2011, MINUSTAH successfully established a fully functional Environmental Compliance Unit (ECU), which has performed a detailed analysis of the mission's wastewater facilities. The mission actively inspects and reviews its sanitation and waste management mechanisms to ensure that acceptable standards are maintained. MINUSTAH has also installed 32 wastewater treatment plants throughout

the country and closely monitors the proper disposal of untreated wastewater into Government-approved disposal sites.

30. Moreover, MINUSTAH provides environmental briefings for all deployed military, police and civilian personnel. The environmental briefings cover, among other things, solid waste management, hazardous waste management and water management.

31. During 2013 and 2014, the ECU carried out 150 environmental briefings (with a total number of 3,498 participants) and 157 environmental inspections to regional and departmental offices and military and police contingents. Where the ECU encounters non-compliance during an inspection, a second environmental briefing is scheduled to ensure that all personnel are aware of MINUSTAH's environmental initiatives.

32. In addition, MINUSTAH has established a Mission Environmental Committee (MEC), which is chaired by the Deputy Director of Mission Support. The MEC meets once per month and prepares quarterly reports on environmental initiatives, including specific recommendations and challenges, which are submitted to the Special Representative of the Secretary-General.

iv. Containment and treatment measures

33. In order to improve case management and decrease the cholera case fatality rate, the Independent Panel recommended that United Nations agencies should take stewardship in: (a) training health workers, especially at the treatment centre level; (b) scaling up the availability and use of oral rehydration salts at the household and community levels in order to prevent deaths before patients arrive at treatment centres; and (c) implementing appropriate measures (including the use of cholera cots) to reduce the risk of intra-facility transmission of cholera to health staff, relatives and other patients.

34. Since the outbreak of the disease, the United Nations, in cooperation with other partners, has taken comprehensive steps both to contain and combat the epidemic and to prevent future outbreaks. The United Nations

strategy to support the Government's National Plan for the Elimination of Cholera (2013-2022) includes activities in all aspects of cholera prevention and response, including epidemiological surveillance, health and hygiene promotion, medical treatment and strengthening water, and sanitation systems.

35. Within this context, the United Nations has been supporting national authorities to ensure free access for cholera patients to adequate treatment and safe water as a first life-saving intervention. The United Nations is further assisting national health authorities to integrate cholera treatment services into the national health system in order to guarantee the sustainability of treatment of patients, to ensure that fast and reliable data on the evolution of the epidemic is available and to ensure that there is a rapid response to all alerts detected. To this end, the United Nations provides financial, technical and logistical support for the Haiti Ministry of Health Rapid Response Mobile Teams.

36. The United Nations has also helped establish a national data collection and reporting system to monitor cholera cases, in partnership with the Centres for Disease Control and Prevention (CDC). In 2013, 1,150 alerts on suspected cases of cholera were received through the system and responded to with health and water interventions. This number was dramatically reduced to 120 in the period between January and September 2014.

37. The United Nations has further invested significantly to sensitize and equip the Haitian population with the knowledge of how to protect themselves, their families and their communities from cholera. Knowledge and practice of safe hygiene behaviour represent the most cost-effective ways of reducing the risk of cholera in the country. More than 15,375 individuals have been trained on safe hygiene practices and, on average, at least 2.9 million people have been reached annually with cholera prevention messages.

38. To date, the United Nations and its partners have also provided significant material support to facilitate Government efforts to treat cholera patients. Among the many items supplied are over 17.7 million aquatab drops or tablets; over 2,000 gallons of chlorine; more than 1.2

million bars of soap; over 1.3 million sachets of oral rehydration salts; approximately 4.9 million antibiotic pills; 6,175 hygiene kits; 9,500 water purification kits and 30,410 cholera kits. In addition, over 150 cholera treatment facilities have been established or upgraded and nearly 700 water chlorination points have been created across Haiti.

v. Improving water and sanitation

39. In order to prevent the spread of cholera, the Independent Panel of Experts recommended that the United Nations and the Government of Haiti should prioritize investment in piped, treated drinking water supplies and improved sanitation throughout Haiti. The Independent Panel also recommended that, until such time as water supply and sanitation infrastructure is established, (a) programmes to treat water at the household or community level with chlorine or other effective systems, hand-washing with soap and safe disposal of faecal waste should be developed and/or expanded and (b) safe drinking water supplies should continue to be delivered and faecal waste should be collected and safely disposed of in areas of high population density, such as the spontaneous settlement camps.

40. Currently, only 24 percent of Haitians have access to improved sanitation and only 62 percent of the population has access to safe water. These represent the lowest levels in Latin America and the Caribbean, where the regional average is 82 percent for sanitation and 94 percent for water.⁵

41. As noted above, since the beginning of the epidemic, the United Nations has established and/or upgraded over 150 cholera treatment facilities and set up nearly 700 water chlorination points across Haiti. The United Nations has also supported sensitization campaigns to increase awareness of necessary cholera prevention and basic hygiene measures. As a result of sensitization efforts made at the community level through June 2014, the United Nations and its partners have met the target of

⁵ WHO/UNICEF Joint Monitoring Programme for Water and Sanitation, Progress on Drinking Water and Sanitation 2014 Update.

ensuring that 80 percent of the population is aware of at least three hygienic and prevention practices.

42. The United Nations strategy of engagement with regard to water and sanitation includes an emergency response mechanism for water and sanitation to respond to cholera alerts and a sustainable community-based water, sanitation and hygiene programme (WASH) to increase access to safe water, sanitation and hygiene for the population, particularly women and children. As part of the emergency response strategy, the United Nations has expanded its rapid response activities to protect households and communities in areas affected by cholera outbreaks. In cooperation with NGO partners present in all 10 departments of Haiti, UNICEF and PAHO/WHO work with technical field staff from DINEPA and local authorities to deliver the emergency WASH response to cholera spikes within 48 hours. As part of its WASH strategy, the United Nations has engaged in activities including sensitization on the treatment of water consumed by households in affected neighborhoods, the delivery of materials (soap, aquatabs, etc.) to improve water quality and hygiene, as well as the immediate repair of water points and systems in communities affected by cholera. From January to October 2014, 70 percent of the WASH interventions occurred within 48 hours after an alert, providing immediate response to over 250,000 persons living in cholera-affected areas.

43. The United Nations has also carried out sustainable community-based WASH projects in areas of cholera persistence. This has included supporting a nation-wide marketing strategy to promote larger household water treatment and storage, hand-washing with soap and supporting community sanitation.

44. The United Nations, in cooperation with government partners, is supporting increased access to safe water, including through the strengthening of water systems chlorination control, along with the chlorination of water tankers in the two metropolitan areas of Port-au-Prince and Cap Haitian.

45. Furthermore, the United Nations is also supporting the collection and safe disposal of faecal waste. Since 2012, the United Nations has helped

rehabilitate water and sanitation infrastructure in department hospitals and improved water quality in 80 health centres. The United Nations continues to support desludging and disinfection of sanitation facilities in treatment centres and has funded the repair of the Government's sanitation truck fleet dedicated to ensuring the desludging of treatment centres.

46. The United Nations has also been supporting the desludging of latrines in camps established for internally displaced persons (IDPs) since 2010. In 2012, UNICEF supported desludging for over 200,000 IDPs. In 2013, UNICEF continued to support desludging in IDP camps in the metropolitan area of Port-au Prince, which accounted for 98 percent of the remaining displaced population. In 2014, UNICEF supported desludging in 80 IDP camps in the metropolitan area of Port-au-Prince, with an average of 70,000 persons benefitting from these efforts between January and July. With the support of the United Nations and its partners, DINEPA has established and is maintaining a waste site, and has recently started to desludge health facilities in the areas most affected by cholera.

47. Through MINUSTAH's Community Violence Reduction programme, 98 projects related to water-borne diseases have benefited nearly 4.8 million people. With partners, four water filtration systems (water treatment plants with ultra-filtration mechanisms) have been operationalized, providing 10,000 litres of water per day to public institutions including schools and religious, community and health centres. The Programme also provided four biodigester systems (sewage systems built to produce biogas, recycle nutrients and generate useable sub-products) and constructed 32 latrines in the most affected community schools of Cité Soleil to benefit 3,841 children.

vi. Use of vaccines after the onset of an outbreak

48. The Independent Panel of Experts recommended that the international community should investigate the potential for using vaccines reactively after the onset of an outbreak to reduce the cholera caseload and the spread of the disease.

49. The Task Force established by the Secretary-General fully endorsed the use of vaccines reactively after the onset of a cholera outbreak as part

of an integrated overall response, particularly when other interventions could not be delivered effectively, in line with WHO guidelines.

50. On 14 August 2012, the PAHO Technical Advisory Group on Vaccine-Preventable Diseases recommended the introduction of the cholera vaccine in Haiti. In 2013, PAHO/WHO and UNICEF began working with partners to support the Haitian Ministry of Health to carry out a vaccination campaign targeting 600,000 people in areas of cholera persistence. The first phase of the campaign took place in August 2013, targeting 107,906 people in two affected communes. A second phase of the campaign targeting 200,000 people was implemented in August/September 2014 and reached 99 percent of the targeted population with two doses of the oral cholera vaccine in seven high-risk areas.

51. The United Nations is appealing to the international community to urgently mobilize the necessary funds to expand the vaccination campaign. Combined with vital longer-term investments in water and sanitation, the CDC estimates that the vaccination program could prevent nearly 90,000 new cases of cholera over the next two decades and significantly contribute to defeating the disease's spread. The United Nations has worked with the global health community to create a global stockpile of oral cholera vaccine (OCV), as an additional tool to help control cholera epidemics. As global vaccine production is limited, during 2015, the stockpile will gradually have two million doses of vaccine, primarily intended for outbreak interventions.

vii. Use of molecular microbial techniques to improve the surveillance, detection and tracking of cholera and other disease-causing organisms

52. In its report, the Independent Panel of Experts noted that recent advances in molecular microbial techniques contributed significantly to the investigative capabilities of their report. The Independent Panel recommended that through its agencies, the United Nations should promote the use of molecular microbial techniques to improve surveillance, detection, and tracking of *Vibrio cholerae*, as well as other disease-causing organisms that have the potential to spread internationally.

53. The United Nations strongly supports calls for the international scientific community to enhance its research focus on the use of molecular microbial techniques and in the development of appropriate technologies to assist with the timely detection of cholera, as well as other diseases that have the potential to spread internationally.

54. WHO, with the support of the wider system, has taken proactive steps to help coordinate the efforts of the scientific community, including by reviewing the laboratory tools best adapted to the surveillance and tracking of cholera strains and the identification of WHO collaborating centres and associated partners. WHO has also initiated a mapping of the existing rapid diagnostic tests for the detection of cholera. There are ongoing plans to evaluate the technical specifications of available tests, together with assessments of their field performance in order to elaborate recommendations for their use, alone or in combination with other existing techniques. In 2013, WHO initiated a project to study the feasibility of an innovative diagnostic technology that will support the simultaneous detection of a wide range of pathogens, including agents responsible for acute diarrhoea.

D. UN measures to ensure accountability and respect for human rights in ongoing and future peacekeeping operations

i. Overview

55. The joint communication raises the question of measures that have been taken by the United Nations in response to alleged violations of the human rights to water, sanitation and health directly associated with the presence of and operation of MINUSTAH in Haiti, as well as, more generally, what measures are being taken to ensure accountability and access to remedies for alleged human rights violations in ongoing and future peacekeeping operations.

56. International human rights law is an integral part of the normative framework for United Nations peacekeeping operations. Peacekeeping personnel are trained to recognize human rights violations and respond appropriately within the limits of their mandate and areas of competence. They are also expected to respect human rights in both their public and

private activities. This is consistent with their individual obligations, and also reflects the purposes and principles of the United Nations enshrined in the Charter, as well as the obligations of the Organization to respect, promote and encourage respect for human rights.

57. The United Nations has adopted a number of specific policies and procedures to ensure that its peacekeeping operations and their personnel operate within the normative framework of international human rights law and are held accountable for alleged violations. These policies and procedures are discussed in detail below.

58. As is the case of MINUSTAH in Haiti, United Nations peacekeeping operations are frequently deployed to situations where the security, economic and political conditions present major obstacles to the protection and promotion of human rights. In these challenging environments, the mandates of peacekeeping operations often include the requirement to monitor and report on human rights, as well as to provide support to governments to assist them in fulfilling their responsibility to protect and promote human rights in their territories.

59. In implementing their various mandates, United Nations peacekeeping operations, the United Nations Secretariat and other United Nations entities are accountable to the General Assembly, the Security Council or other relevant intergovernmental bodies. Furthermore, the United Nations concludes bilateral arrangements with host States that serve to establish the terms and conditions under which it conducts its activities. These arrangements enable governments and the United Nations to address any issues or concerns that may arise out of United Nations activities in a particular host State.

60. Apart from this formal organizational accountability, the United Nations seeks to conduct its activities in a manner that is sensitive to the concerns and interests of host States and the local populations, including with respect to any concerns that the actions of the United Nations may constitute a risk for the population, or may be inconsistent with, or in violation of, human rights. This flows from the purposes and principles of the United Nations as provided for by the Charter. In this connection, the Organization has not only taken practical measures to mitigate the effects

of risks when they have occurred, but, in appropriate cases, it has also adopted new policies to reduce the probability of such risks occurring in the future. The Human Rights Due Diligence Policy and the United Nations comprehensive policy on sexual exploitation and sexual abuse by United Nations staff members and related personnel, as described in further detail below, and the various practical measures which they prescribe, are examples of policies and practical measures adopted in response to such concerns.

61. Moreover, on many occasions, the United Nations has also instituted necessary inquiries or investigations to establish facts in response to concerns from States, civil society or other relevant actors, and has subsequently taken measures based on those established facts to address the concerns raised. Such inquiries and investigations are an additional mechanism within the accountability framework, which not only demonstrate the commitment of the United Nations to be responsive to allegations of serious violations, but also ensure that any proposed measures have a solid factual basis. For example, the comprehensive policies and procedures to address sexual exploitation were adopted after a thorough process of investigation in order to establish the facts concerning the nature and scope of the problem of sexual exploitation and abuse in United Nations peacekeeping and to properly inform and advise the Secretary-General and Member States accordingly. In the case of the cholera outbreak in Haiti, the Secretary-General convened the Independent Panel of Experts discussed above to determine the source of the outbreak, which led to recommendations to the United Nations, the Government of Haiti and the international community on how to respond to the outbreak and avoid future epidemics.

62. In implementing the recommendations of the Independent Panel, the United Nations is working not only to eliminate the disease, but also to support the development of the economic and physical infrastructure capable of improving the health of the Haitian population through increased access to clean water and sanitation systems and improved medical facilities. These measures are intended to reduce Haiti's vulnerability to emergencies, such as those caused by the spread of infectious diseases. It remains the Secretary-General's strong conviction that the most effective way to address the situation in Haiti is by engaging

in sustained efforts, in cooperation with the Government, to build capacity and technical expertise so that human rights, including economic, social and cultural rights, are protected and promoted.

ii. Specific policies and procedures

a. United Nations Policy on Human Rights in United Nations Peace Operations and Political Missions

63. In September 2011, the United Nations adopted the Policy on Human Rights in United Nations Peace Operations and Political Missions, which is a joint Policy of the Office of the High Commissioner for Human Rights, DPKO, the Department of Political Affairs, and DFS. The Policy establishes, *inter alia*, that all mission personnel have a responsibility to ensure that human rights are promoted, respected and protected through and within operations in the field. It has specific provisions with regard to human rights training of all mission personnel, and outlines the role and accountability of the Head of Mission in ensuring that all staff are aware of and abide by international human rights and international humanitarian law standards.

b. The Secretary-General's Policy on Human Rights Screening of United Nations Personnel

64. The Secretary-General's Policy on Human Rights Screening of United Nations Personnel, adopted in December 2012, is another illustration of the commitment of the United Nations to promote respect for human rights by the United Nations in its operations. The policy has been established to avoid the deployment or recruitment of those convicted of, suspected of, or under investigation for human rights violations prior to their deployment with the United Nations.

65. This Policy allows the United Nations to reserve its right to deny deployment or to repatriate peacekeepers prematurely at the expense of the relevant national authority if there are grounds to believe that the person concerned has committed a criminal offence, misconduct during prior service with the United Nations, or where there are reasonable grounds to

believe that the individual has been involved in the commission of a violation of human rights or humanitarian law.

c. Pre-deployment training

66. The provision of pre-deployment training to uniformed personnel is a Member State responsibility, while the provision of pre-deployment training to newly recruited and returning civilian mission personnel is carried out by DPKO-DFS. The requirement for training in both instances has been stipulated by the United Nations at the initiative of the Secretariat and relevant intergovernmental processes, including the Special Committee on Peacekeeping Operations of the General Assembly. The minimum standards for pre-deployment training of both uniformed and civilian staff are issued by DPKO-DFS. These feature specific modules on human rights principles and standards set out in the Universal Declaration of Human Rights and international humanitarian law. The modules also include training on standards of integrity and conduct of personnel serving in United Nations peacekeeping operations.

d. Relevant obligations arising out of the Memorandum of Understanding concluded between the contributing State and the United Nations

67. With regard to formed units serving in United Nations peacekeeping operations, the national government of the TCC/PCC is requested, through a Memorandum of Understanding (MOU) between the national government and the United Nations, to ensure that all of its contingent members comply with the United Nations Standards of Conduct. The Standards of Conduct include the obligation of United Nations peacekeeping personnel to comply with the Guidelines on International Humanitarian Law for Forces Undertaking United Nations Peacekeeping Operations and the applicable portions of the Universal Declaration of Human Rights as the fundamental basis of United Nations standards. Under the MOU, it is the national government's responsibility to ensure all members of its contingent are familiar with and fully understand the Standards of Conduct and receive adequate and effective pre-deployment training in those standards. Moreover, troop contributing countries retain disciplinary authority over their personnel with respect to any misconduct

committed by such personnel while on assignment with a United Nations operation.

68. In accordance with the MOU, it is understood that the government has the primary responsibility for investigating any acts of misconduct or serious misconduct committed by a member of its national military contingent. In the event that the government has *prima facie* grounds indicating that a member of its national military contingent has committed an act of serious misconduct, it shall without delay inform the United Nations and forward the case to its appropriate national authorities for the purposes of investigation. In the event that the United Nations has *prima facie* grounds indicating that any member of the government's national military contingent has committed an act of misconduct or serious misconduct, the United Nations shall without delay inform the government.

69. If necessary to preserve evidence, and where the government does not conduct fact-finding proceedings, the United Nations may, in cases of serious misconduct and where the United Nations has informed the government of the allegation, initiate a preliminary fact-finding inquiry of the matter, until the government starts its own investigation. It is understood in this connection that any such preliminary fact-finding inquiry will be conducted by the appropriate United Nations investigative office, including the Office of Internal Oversight Services, in accordance with the rules of the Organization. Any such preliminary fact-finding inquiry shall include, as part of the investigation team, a representative of the government. The United Nations shall provide a complete report of its preliminary fact-finding inquiry to the government at its request without delay.

70. If either a United Nations investigation or an investigation conducted by the competent authorities of the government concludes that suspicions of misconduct by any member of the government's national contingent are well founded, then the government shall ensure that the case is forwarded to its appropriate authorities for due action. The MOU provides that those national authorities shall take their decision in the same manner as they would in respect of any other offence or disciplinary infraction of a similar nature under their laws or the relevant disciplinary code. The government

must also notify the Secretary-General of progress on a regular basis, including the outcome of the matter.

71. National governments are further requested to certify that the personnel they nominate to serve in peacekeeping operations have not been convicted of, or are not currently under investigation or subject to prosecution for any criminal offence, including violations of international human rights law or international humanitarian law, in accordance with the Secretary-General's Policy on Human Rights Screening of United Nations Personnel.

e. Conduct and Discipline Units

72. In 2005, Conduct and Discipline Units (CDUs) were established in 2005 at Headquarters and in several missions. These units facilitate training on misconduct for all categories of peacekeeping personnel.

73. The CDU at Headquarters develops strategies and policies on conduct and discipline issues, maintains global oversight on the state of discipline and provides overall guidance and direction to missions. It further develops tools and mechanisms to monitor application of United Nations standards of conduct and implementation of policies and procedures in the field, and ensures follow-up on misconduct cases, including on disciplinary actions to be taken by Member States.

74. Conduct and Discipline Teams (CDTs) deployed in larger peacekeeping missions and conduct and discipline focal points in smaller missions are the principal advisers to the heads of mission on all conduct and discipline issues involving all categories of peacekeeping personnel in the mission. The mission teams support the heads of mission in designing and implementing measures to prevent misconduct, enforce United Nations standards of conduct and ensure remedial action where misconduct has occurred. They provide technical advice and guidance to senior mission leadership on United Nations rules, policies and procedures relating to conduct and discipline. They also receive, assess and refer allegations of misconduct for appropriate action. CDTs also maintain records on all misconduct allegations and cases relating to all categories of

personnel in the mission, and liaise with investigative officials and the CDU at Headquarters on misconduct allegations and cases.

f. Special measures for protection from sexual exploitation and sexual abuse

75. The United Nations has a zero tolerance policy towards all forms of sexual exploitation and sexual abuse by United Nations staff members and related personnel. The Secretary-General is committed to taking all necessary measures to address all complaints of sexual exploitation and abuse brought to the attention of the United Nations.

76. The Secretary-General's bulletin on special measures for protection from sexual exploitation and sexual abuse⁶ which was promulgated in 2003 and is applicable to all United Nations staff, as well as United Nations forces conducting operations under United Nations command and control, reiterates the position of the Organization that sexual exploitation and sexual abuse violate universally recognized international legal norms and standards. The measures create reporting requirements for both United Nations staff members who may develop concerns or suspicions regarding sexual exploitation and sexual abuse, and for heads of department, office or mission where there is reason to believe that such activities may have taken place. Importantly, the measures also prescribe that, if, after proper investigation, there is evidence to support allegations of sexual exploitation or sexual abuse, a case may, upon consultation with the Office of Legal Affairs, be referred to national authorities for criminal prosecution.

77. A comprehensive strategy to eliminate future sexual exploitation and abuse in United Nations peacekeeping operations⁷ was prepared at the request of the Secretary-General in 2005. The General Assembly subsequently welcomed the report in its resolution 59/300 of 22 June 2005 and the Secretariat and relevant organs of the United Nations have since taken the necessary steps to implement its recommendations. In its resolution 62/214 of 21 December 2007, the General Assembly also

⁶ See ST/SGB/2003/13.

⁷ See A/59/710.

adopted a comprehensive strategy on assistance and support to victims of sexual exploitation and abuse by United Nations staff and related personnel, which provides, *inter alia*, that victims shall receive assistance and support in accordance with their individual needs, including medical care, legal services, support to deal with the psychological and social effects of the experience and immediate material care, such as food, clothing, emergency and safe shelter, as necessary.

g. Criminal accountability for United Nations officials and experts on mission

78. It is the policy of the Secretariat that officials and experts on mission should be held accountable whenever they commit criminal acts. Such acts cause harm to victims and also undermine the work and image of the United Nations. General Assembly resolution 62/63 of 6 December 2007 prescribes measures to be undertaken by the Secretariat to ensure that United Nations officials and experts on mission are held accountable, including through prosecution by Member States, for any criminal acts that may have been committed while serving with the United Nations.

h. Human Rights Due Diligence Policy on United Nations Support to non-United Nations Security Forces

79. In response to requests from Member States and regional international organizations, the United Nations is increasingly being called upon to provide support to non-United Nations security forces—including through paying salaries, providing training, developing operational capabilities, providing logistical support, providing fire support and even conducting joint military operations. Providing such support comes with the risk that the United Nations might be implicated in violations committed by those forces. To manage this risk, the Secretary-General announced in October 2011 the institution of a Human Rights Due Diligence Policy, applicable in situations where any part of the Organization is contemplating or is involved in providing support to non-United Nations security forces.

80. The Policy sets out the basic principles regarding respect for human rights, as well as the procedures that all United Nations entities must follow in order to guide their support to non-United Nations security forces. United Nations support cannot be provided where there are substantial grounds for believing there is a real risk of the non-UN security forces committing grave violations of international humanitarian, human rights or refugee law and where the relevant authorities fail to take the necessary corrective or mitigating measures.

81. In accordance with the Policy, where a United Nations entity is contemplating providing support to non-United Nations security forces, it must first conduct an assessment of the risks involved, in particular the risk of the recipient forces committing grave violations of international humanitarian, human rights or refugee law. Where there are substantial grounds for believing that there is a real risk of such violations taking place, and it is not possible to put in place measures to eliminate that risk or reduce it to acceptable levels, then the United Nations entity concerned must refrain from supporting the non-United Nations security forces concerned.

82. If a United Nations entity provides support to non-United Nations security forces, the Policy requires the United Nations entity to put in place measures to actively and closely monitor their conduct. If the United Nations entity then receives information that gives it reasonable grounds to suspect that those forces are committing grave violations of international humanitarian, human rights or refugee law, it must immediately intercede with their command elements with a view to bringing those violations to an end. If those intercessions do not succeed and the violations continue, then the United Nations entity in question must suspend or withdraw its support from the forces concerned.

E. The legal claims

83. The joint communication requests information concerning the determination that the legal claims filed with the United Nations arising out of the cholera outbreak in Haiti were “non-receivable”. With respect to this request, I have consulted with the United Nations Legal Counsel.

i. Background

84. In November 2011, a claim was submitted with the MINUSTAH claims unit and United Nations Headquarters on behalf of certain Haitian cholera victims, seeking (i) monetary compensation (minimum of \$100,000 for each cholera death and \$50,000 for each person who contracted a non-fatal case), (ii) the establishment of a United Nations-funded nationwide program for clean water, adequate sanitation and appropriate medical treatment to prevent the further spread of cholera; and (iii) a public apology, including an acceptance of responsibility for introducing cholera to Haiti.

85. For purposes of pursuing their claims, the claimants requested the establishment of a standing claims commission under the MINUSTAH Status-of-Forces-Agreement (SOFA) concluded between the United Nations and the Government of Haiti. Paragraph 55 of the MINUSTAH SOFA provides that any dispute or claim of a private-law character, not resulting from the operational necessity of MINUSTAH, to which MINUSTAH or any member thereof is a party and over which the courts of Haiti do not have jurisdiction because of any provision of the SOFA, shall be settled by a standing claims commission to be established for that purpose.

ii. The legal framework

86. Section 29(a) of the Convention on the Privileges and Immunities of the United Nations (the “General Convention”), provides that the United Nations shall make provisions for appropriate modes of settlement of disputes of a private law character to which the United Nations is a party. Paragraph 55 of the MINUSTAH SOFA is an implementation of Section 29(a).⁸

⁸ The commission is established by mutual agreement between the United Nations and the relevant government only in respect of third party claims as envisaged in Section 29 of the General Convention. To date, as noted by the Secretary-General in several reports to the General Assembly (see A/C.5/49/65, para. 17; A/51/389, para. 22; A/51/903, para. 8), a standing claims commission has not been established pursuant to any SOFA with Member States. It has instead been the practice for a local claims review board established in the mission to examine third party claims and recommend payment of those claims it considers well-founded.

87. Section 29(a) is by its terms limited to the consideration of private law claims. In the practice of the Organization, disputes of a private law character have been understood to be disputes of the type that arise between two private parties. Section 29(a) has most frequently been applied to claims arising under contracts between the United Nations and a private party, to those relating to the use of property in the context of a mission away from Headquarters, and to claims arising from vehicle accidents.

88. Claims under Section 29(a) are distinct from public law claims, which are understood as claims that would arise between an individual and a public authority, such as a State. On the international level, these claims may be addressed in various ways, such as through political, diplomatic or other means, including a body established for that specific purpose.

89. As the Secretary-General has explained, claims “based on political or policy-related grievances,” such as those “related to actions or decisions taken by the Security Council or the General Assembly,” are excluded from the scope of any obligation to provide an appropriate mode of settlement.⁹ That is, in contrast to claims arising from circumstances in which the United Nations is acting like a private person, claims attacking the political or policymaking functions of the Organization are not private-law in character. In this context, an assertion that the United Nations has not adopted or implemented certain policies or practices does not generate a dispute of a private law character.

90. When assessing a claim under Section 29(a), the Organization does not rely solely on the allegations of the claim itself, but also assesses the character of the claim in the context of all its circumstances. The mere allegation of tortious conduct does not make a claim one of a private law character. The nature of the duty allegedly owed by the Organization, the nature of the conduct or activity at issue, and other relevant circumstances are all pertinent to determining whether the claim involves a dispute of a private law character.

⁹ See A/C.5/49/65, at para. 23.

91. On a number of occasions, the United Nations has determined that it would not entertain claims based on the above analysis. In 1996, the Government of Rwanda requested the establishment of a claims commission for the purpose of considering claims by fourteen Rwandan nationals arising out of the alleged failure of the United Nations Assistance Mission in Rwanda (UNAMIR) to provide protection in the context of the 1994 genocide. The claimants further alleged that the UNAMIR had failed to implement its mandate to ensure law and order. The United Nations declined the Government's request on the grounds that the claims of the Rwandan citizens against UNAMIR were not of a private law character within the meaning attributed to it in the General Convention or in the practice of the United Nations.

92. Similarly, in 2002, a claim was submitted on behalf of relatives of those killed after the fall of Srebrenica in 1995 alleging that the United Nations had failed to protect the inhabitants of Srebrenica and had thus violated the Security Council's resolutions and the mandate of the United Nations Protection Force (UNPROFOR). The United Nations found that these claims did not indicate any violation of the claimants' legal rights vis-à-vis the Organization.

93. In 2011, representatives of Roma, Ashkali and Egyptian communities in Kosovo filed a claim, seeking compensation for damages to their health suffered as a result of lead contamination in camps established by the United Nations Interim Administration Mission in Kosovo (UNMIK) for internally displaced persons (IDPs). In that case, the claims involved alleged widespread health and environmental risks arising in the context of a precarious security situation in Kosovo. The claims were considered by the Organization not to be of a private law character since they amounted to a review of the performance of UNMIK's mandate as an interim administration, as UNMIK retained the discretion to determine the modalities for implementation of its interim administration mandate, including the establishment of IDP camps.

94. While an individual claimant may not have recourse in some cases through Section 29, the General Convention provides for a mode of dispute settlement arising out of the interpretation or application of the provisions of the General Convention between the United Nations and a

State party. A State Party to a SOFA may also seek to resolve disputes on the interpretation or application of the SOFA through the dispute settlement provision provided for in the SOFA.

iii. The claims submitted

95. With respect to the cholera outbreak in Haiti, the claimants alleged that the United Nations breached its duty to adequately screen troops for cholera from Nepal, a country where cholera was endemic, by ignoring the risk of asymptomatic carriage and only requiring testing where individuals presented active symptoms and, further, that they failed to administer prophylaxis prior to their departure. In addition, the claimants alleged that the United Nations improperly managed its sanitation facilities and waste disposal at its encampment by maintaining inadequate disposal facilities and practices. The claimants also alleged that the United Nations breached its duty to conduct proper water quality testing by allowing equipment necessary to ensure water quality to fall into disrepair. Finally, the claimants alleged that the United Nations failed to take immediate corrective action by willfully delaying and obscuring the discovery of the source of the outbreak.

96. The claimants contended that the actions alleged above violated Haitian law, including the Haitian Constitution, the Haitian Penal Code and the Haitian Civil Code. Additionally, claimants contended that the United Nations acted in violation of petitioners' rights under international human rights law.

97. The United Nations carefully considered the claims and the circumstances in which they arose. The claims raised broad issues of policy that arose out of the functions of the United Nations as an international organization. As such, they could not form the basis of a claim of a private law character.

98. Accordingly, the Legal Counsel of the United Nations informed the claimants that the claim was not receivable pursuant to Section 29 of the General Convention, as these claims would necessarily involve a review of political and policy matters.

iv. Immunity before national courts

99. A number of lawsuits arising out of the cholera outbreak in Haiti have also been instituted against the United Nations before the courts of the United States. You will appreciate that the United Nations is not in a position to comment in detail on such cases.

100. It should be recalled, however, that under Section 2 of the General Convention, the United Nations is immune from every form of legal process unless it has expressly waived its immunity. The immunity granted to the United Nations by its Member States is neither qualified nor limited in any way under the terms of the General Convention. This immunity is a vital condition for any international organization to exist and this is why such immunity is granted to all international organizations by the agreement of their Member States. This immunity is necessary in order for international organizations to be able to conduct their operations, which are not for the benefit of the organizations themselves, but for the common interests of their Member States. Without immunity, international organizations would be reluctant to establish offices, implement projects and conduct operations in their Member States. Importantly, the fulfilment of the Organization's obligation under Section 29(a) is not, and has never been understood, to be a prerequisite or condition for the enjoyment of its immunity from legal process.

101. The Secretary-General has made it very clear, that while the claims have been deemed not receivable under Section 29 of the General Convention and that the immunity of the United Nations before national courts should be upheld, this does not in any way diminish the commitment of the United Nations to do all that it can to help the people of the Haiti overcome the cholera epidemic. The priority of the United Nations and the international community is, and must be, for the benefit of the entirety of the Haitian population. Accordingly, the focus of the work of the United Nations and requests for funding from Member States must be with respect to measures that ensure that cholera is eliminated in Haiti and that the necessary infrastructure is built in Haiti that ensures that such an outbreak will not occur again.

F. Ongoing commitment of the United Nations and its partners

102. Based on the efforts of the United Nations and its partners, the number of suspected cases of cholera through the first eight months of 2014 is one quarter of what it was in the same period in 2013. The case fatality rate is also below the 1 percent target rate set by the WHO. Since the outbreak, the United Nations has invested \$174 million on cholera-related activities.

103. In its resolutions adopted on MINUSTAH and Haiti since the cholera outbreak, the Security Council has recognized the efforts by the United Nations to combat cholera and urged the United Nations to continue to support the Government of Haiti in addressing structural weaknesses, in particular with respect to its water and sanitation systems, and underscored the importance of strengthening the Haitian national health institutions. Most recently, in its resolution 2180 (2014), the Security Council specifically recognized the Secretary-General’s initiative to support the Government’s National Plan for the Elimination of Cholera (2013-2022) and stressed the importance of adequate and sustainable support with particular attention to rapid and targeted medical responses to outbreaks designed to reduce the threat. In that resolution, the Security Council also welcomed the visit that the Secretary-General undertook in July 2014 to Haiti, and took note that the Secretary-General had, among other things, launched, jointly with Prime Minister Lamothe, the “National Sanitation Campaign” as a key initiative against cholera, as well as the creation of the High-Level Committee for the Elimination of Cholera.

i. The Senior Coordinator for Cholera Response

104. The Secretary-General has appointed me as a Senior Coordinator for the Cholera Response in Haiti. As Senior Coordinator, I have consistently underlined the need for adequate funding for the elimination of cholera and investments in water and sanitation. I have also been engaged in extensive discussions with the international community to ensure that necessary funds are provided to support the cholera elimination efforts in Haiti.

ii. The National Sanitation Campaign

105. The United Nations is working closely with the Government of Haiti to implement the National Sanitation Campaign. The campaign will strive to increase access to water and sanitation infrastructure in primary and secondary schools, as well as in health centres. It will also encourage greater household investments in durable, hygienic latrines. Project activities are reaching 200,000 people in six high-risk cholera communes.

106. At the World Bank Group's high-level conference for Haiti held in Washington, D.C. on 9 October 2014, the joint Clean Water, Improved Sanitation and Better Health for Haiti appeal was launched. The purpose of the appeal was to solicit funds for a \$310 million strategy to reach 1.9 million people in 16 high-risk cholera communes with improved water, sanitation and health infrastructure over the next three years. It also included a \$70 million appeal to improve the water supply in Port-au-Prince. This effort aims to consolidate resource mobilisation efforts by prioritising high-risk cholera communes across the 10 departments. It will also support cholera elimination efforts and begin to address both the medium-term objectives of the Government's National Plan for the Elimination of Cholera (2013-2022) and the objectives of the National Sanitation Campaign.

iii. The High-Level Committee for the Elimination of Cholera

107. The Government's National Plan was initiated on 27 February 2013 with the overarching goal of eliminating cholera from the island of Hispaniola through technical and financial support from the international community and bi-national coordination. The National Plan covers four strategic areas: water and sanitation; health care management; epidemiology surveillance; and health promotion.

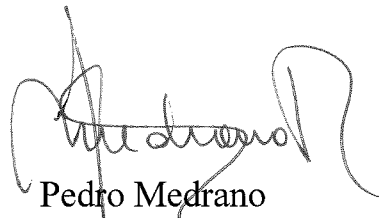
108. To support the coordinated and full implementation of the National Plan, the Government of Haiti and the United Nations established the High-Level Committee for the Elimination of Cholera pursuant to an exchange of letters in April 2014. The Prime Minister, the Minister for Foreign Affairs, the Minister of Health, the Minister of Economic Affairs

and Finance, the Minister of Public Works and the Minister responsible for extreme poverty and human rights represent the Government of Haiti within the High-Level Committee. The Special Representative of the Secretary-General for Haiti, the Senior Coordinator for Cholera Response, the Deputy Special Representative of the Secretary-General, the Representative of PAHO and the WHO in Haiti, and the Representative of UNICEF represent the United Nations within the High-Level Committee.

109. The High-Level Committee is a joint mechanism that will address the underlying conditions that have made the transmission of cholera in Haiti possible. This includes improving access to water, sanitation, hygiene and health-care facilities for the population of Haiti as a whole. The Committee is a unique collaboration between the United Nations and a Member State “to ensure the implementation of a common strategy for the elimination of cholera in Haiti and the provision of social and economic assistance to affected communities, with special emphasis on persons affected by the disease.” To date, the High-Level Committee has endorsed the National Sanitation Campaign, announced the results of a vaccination campaign and discussed approaches for social and economic assistance to affected communities.

110. As these initiatives show, the United Nations is pursuing a comprehensive approach to eliminate cholera from Haiti. The Secretary-General has made defeating the disease a priority and significant progress has been achieved. The Organization remains committed to supporting the efforts of the Government of Haiti and will continue its work to enable all Haitians to realize a healthier and more prosperous future.

Yours sincerely,



Pedro Medrano
 Assistant Secretary-General
 Senior Coordinator for Cholera Response

cc: The Deputy Secretary-General
Ms. Malcorra
Mr. Al Hussein
Ms. Haq
Ms. Honoré
Mr. Ladsous
Mr. Serpa Soares

DOCUMENT 3

HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND

Mandates of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on extreme poverty and human rights; the Independent Expert on the situation of human rights in Haiti; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on the human right to safe drinking water and sanitation

REFERENCE: OL
OTH 7/2015:

23 October 2015

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on extreme poverty and human rights; Independent Expert on the situation of human rights in Haiti; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on the human right to safe drinking water and sanitation pursuant to Human Rights Council resolutions 25/17, 26/3, 24/6, 24/18, and PRST/28/3. We would like to take this opportunity to respond to the letter dated 25 November 2014 addressed by Mr. Pedro Medrano, Assistant Secretary-General Pedro, Senior Coordinator for the Cholera Response in Haiti, in reply to the joint communication dated 25 September 2014. We are writing to you now on the fifth anniversary of the outbreak of cholera.

We welcome the clarification provided in the letter, in particular the details of the measures the United Nations has taken in response to the cholera outbreak in Haiti, and the reaffirmation of the United Nations' commitment to help overcome the cholera epidemic. We especially appreciate the acknowledgement in para. 57 of the letter of the commitment to ensure that United Nations "peacekeeping operations and their personnel operate within the normative framework of international human rights law and are held accountable for alleged violations."

We note, however, that the cholera crisis continues in Haiti, that there has been a leap in new cases reported in 2015, and that the response to date in terms of efforts to fully eradicate cholera, to ensure safe water and adequate sanitation provision, and to mobilize sufficient funding for these purposes, appears to be clearly insufficient.

Our particular concern relates to the inability of the victims of the cholera outbreak to vindicate their rights and to obtain access to a remedy for the harms suffered

to which human rights law entitles them. In cases brought in courts in the United States the United Nations has invoked immunity from suit and the cases seem unlikely to result in the provision of an effective remedy. Without wishing to take a position on the merits of the invocation of immunity in these contexts, we would only note that the result of the claim so far successfully made by the United Nations is to leave the victims without an effective remedy, while there does not seem to be any prospect for a proper accountability.

As Special Rapporteurs appointed by the United Nations Human Rights Council we cannot fail to observe that the United Nations has a particular responsibility to ensure that a very large number of victims are not left without any effective remedy for human rights violations that result from actions of forces operating under the authority of the United Nations. The question then becomes what measures might be taken to avoid violating the right to a remedy. We are aware that the Office of Legal Affairs has deemed the claims that victims brought forward to be “not receivable pursuant to Section 29 of the Convention on the Privileges and Immunities of the United Nations.”

That Section of the Convention requires the United Nations to “make provisions for appropriate modes of settlement of [...] disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party”. The argument of the Office of Legal Affairs is that these claims would necessarily involve a review of political and policy matters and cannot therefore be considered to be a dispute of a private law matter. The conclusion drawn is that they can thus not be entertained. This wide-ranging and problematic assertion of non-receivability appears to be a very recent innovation. As a result, Section 29, which various commentators have characterized as being intended to ensure due process of law and to protect fundamental human rights, is instead being used to shut down efforts to achieve those outcomes. The result of this approach is that five years after the outbreak of the disease in 2010, victims have effectively been denied access to a body that is competent to hear their case and decide on its merits.

The effective denial of the fundamental right of the victims of cholera to justice and to an effective remedy is difficult to reconcile with the United Nations’ commitment to ‘promote and encourage respect for human rights’. We thus believe that the non-receivability approach undermines the reputation of the United Nations, calls into question the ethical framework within which its peace-keeping forces operate, and challenges the credibility of the Organization as an entity that respects human rights.

We are aware that various commentators have suggested that the position of the United Nations is informed not only by legal considerations but also by the perceived risk of opening the floodgates to claims against the United Nations in other situations and the related concerns about the impact that this might have on the budget of the Organization and on its peacekeeping role. Although we would not wish to under-estimate the significance of these concerns, we think there are good reasons to put them in proper perspective. In a variety of situations the United Nations has managed to devise innovative solutions that have sought to achieve just outcomes that accord with its human

rights commitments and these have not, despite fears expressed at the time, led to an unmanageable opening of the floodgates that are so often invoked to prevent new approaches being shaped.

In brief, we believe it is essential that the victims of cholera have access to a transparent, independent and impartial mechanism that can review their claims and decide on the merits of those claims in order to ensure adequate reparation, including restitution, compensation, satisfaction and guarantees of non-repetition. We would like to think that there are ways in which this outcome might be facilitated through further discussions within the Organization, rather than bringing our concerns to the attention of the Human Rights Council at this stage.

We would welcome the opportunity to engage further on this matter and would like to explore the possibility of meeting with representatives of the United Nations to discuss it further. As you may know, the four signatory Special Procedures will present their annual reports to the General Assembly in New York during the last week of October, which would provide for an opportunity to set up an initial meeting.

Your response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Leilani Farha

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Philip Alston

Special Rapporteur on extreme poverty and human rights

Gustavo Gallón

Independent Expert on the situation of human rights in Haiti

Dainius Puras

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Léo Heller

Special Rapporteur on the human right to safe drinking water and sanitation

cc

Mr. Jan Eliasson, Deputy Secretary-General of the United Nations

Ms. Susana Malcorra, United Nations Chef de Cabinet to the Executive Office

Mr. Atul Khare, United Nations Under-Secretary-General for Field Support

Ms. Sandra Honoré, Special Representative of the Secretary-General and Head of the United Nations Stabilization Mission in Haiti

Mr. Hervé Ladsous, United Nations Under-Secretary-General for Peacekeeping Operations

Mr. Miguel De Serpa Soares, United Nations Under-Secretary-General for Legal Affairs

Mr. Zeid Ra'ad Al Hussein, United Nations High Commissioner for Human Rights

DOCUMENT 4



THE DEPUTY SECRETARY-GENERAL

25 February 2016

Dear Ms. Farha,

Thank you for your letter of 23 October 2015 to the Secretary-General regarding the situation of victims of cholera in Haiti.

First of all, I wish to reassure you that the Secretary-General is deeply committed to the fight against cholera in Haiti, which remains a key priority for the United Nations system in Haiti. As you rightly point out, sustained efforts are still required to fully eradicate this disease. The United Nations country team continues to work with the Haitian authorities and its key partners to strengthen health systems, improve access to clean water and sanitation, and raise awareness on hygiene as a key component of its overall programming. The United Nations peacekeeping operation, MINUSTAH, has also taken steps, within its specific capabilities, to provide support to communities affected by the disease. I am attaching as an annex to this letter a description of some of the ongoing actions undertaken to date, since our previous letter of 25 November 2014.

As you are well aware, the Secretary-General and I are fully committed to ensuring that the Organization fulfills its human rights obligations. The United Nations has been a staunch defender of human rights in Haiti and has stood by the Haitian people through their struggle with dictatorship and State-sponsored human rights violations. The protection and promotion of human rights is a central pillar of the work of the United Nations in Haiti and will remain so for as long as is necessary.

I welcome your offer to engage further on this matter and discuss what further steps the United Nations could take, in keeping with its mandates, to assist the victims of cholera and their communities. Such efforts must be undertaken in close coordination with the Government and should ideally fit within the framework of existing United Nations programmes, and their capacities according to the availability of resources, some of which could be fine-tuned or expanded as needed.

Ms. Leilani Farha
Special Rapporteur on adequate housing
as a component of the right to an adequate standard of living,
and on the right to non-discrimination in this context
Office of the High Commissioner for Human Rights
Geneva

Once again, allow me to express my gratitude for your letter and your concern for the well-being of the Haitian people and the integrity of the United Nations. Your critical and independent voice is a vital part of the international human rights framework. It is essential that we listen to you.

Similar letters have been sent to the other co-signatories of your letter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jan Eliasson', with a long horizontal flourish extending to the right.

Jan Eliasson



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Special Rapporteur on extreme
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Office of the High Commissioner for Human Rights
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Mr. Gustavo Gallón
Independent Expert on the situation
of human rights in Haiti
Office of the High Commissioner for Human Rights
Geneva

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Jan Eliasson



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25 February 2016

Dear Mr. Puras,

Thank you for your letter of 23 October 2015 to the Secretary-General regarding the situation of victims of cholera in Haiti.

First of all, I wish to reassure you that the Secretary-General is deeply committed to the fight against cholera in Haiti, which remains a key priority for the United Nations system in Haiti. As you rightly point out, sustained efforts are still required to fully eradicate this disease. The United Nations country team continues to work with the Haitian authorities and its key partners to strengthen health systems, improve access to clean water and sanitation, and raise awareness on hygiene as a key component of its overall programming. The United Nations peacekeeping operation, MINUSTAH, has also taken steps, within its specific capabilities, to provide support to communities affected by the disease. I am attaching as an annex to this letter a description of some of the ongoing actions undertaken to date, since our previous letter of 25 November 2014.

As you are well aware, the Secretary-General and I are fully committed to ensuring that the Organization fulfills its human rights obligations. The United Nations has been a staunch defender of human rights in Haiti and has stood by the Haitian people through their struggle with dictatorship and State-sponsored human rights violations. The protection and promotion of human rights is a central pillar of the work of the United Nations in Haiti and will remain so for as long as is necessary.

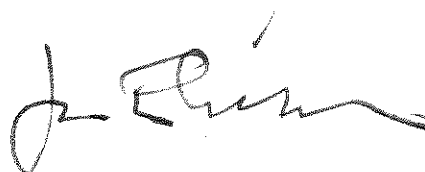
I welcome your offer to engage further on this matter and discuss what further steps the United Nations could take, in keeping with its mandates, to assist the victims of cholera and their communities. Such efforts must be undertaken in close coordination with the Government and should ideally fit within the framework of existing United Nations programmes, and their capacities according to the availability of resources, some of which could be fine-tuned or expanded as needed.

Mr. Dainius Puras
Special Rapporteur on the right of everyone
to the enjoyment of the highest attainable
standard of physical and mental health
Office of the High Commissioner for Human Rights
Geneva

Once again, allow me to express my gratitude for your letter and your concern for the well-being of the Haitian people and the integrity of the United Nations. Your critical and independent voice is a vital part of the international human rights framework. It is essential that we listen to you.

Similar letters have been sent to the other co-signatories of your letter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jan Eliasson', with a stylized, flowing script.

Jan Eliasson



THE DEPUTY SECRETARY-GENERAL

25 February 2016

Dear Mr. Heller,

Thank you for your letter of 23 October 2015 to the Secretary-General regarding the situation of victims of cholera in Haiti.

First of all, I wish to reassure you that the Secretary-General is deeply committed to the fight against cholera in Haiti, which remains a key priority for the United Nations system in Haiti. As you rightly point out, sustained efforts are still required to fully eradicate this disease. The United Nations country team continues to work with the Haitian authorities and its key partners to strengthen health systems, improve access to clean water and sanitation, and raise awareness on hygiene as a key component of its overall programming. The United Nations peacekeeping operation, MINUSTAH, has also taken steps, within its specific capabilities, to provide support to communities affected by the disease. I am attaching as an annex to this letter a description of some of the ongoing actions undertaken to date, since our previous letter of 25 November 2014.

As you are well aware, the Secretary-General and I are fully committed to ensuring that the Organization fulfills its human rights obligations. The United Nations has been a staunch defender of human rights in Haiti and has stood by the Haitian people through their struggle with dictatorship and State-sponsored human rights violations. The protection and promotion of human rights is a central pillar of the work of the United Nations in Haiti and will remain so for as long as is necessary.

I welcome your offer to engage further on this matter and discuss what further steps the United Nations could take, in keeping with its mandates, to assist the victims of cholera and their communities. Such efforts must be undertaken in close coordination with the Government and should ideally fit within the framework of existing United Nations programmes, and their capacities according to the availability of resources, some of which could be fine-tuned or expanded as needed.

Mr. Léo Heller
Special Rapporteur on the human right to safe
drinking water and sanitation
Office of the High Commissioner for Human Rights
Geneva

Once again, allow me to express my gratitude for your letter and your concern for the well-being of the Haitian people and the integrity of the United Nations. Your critical and independent voice is a vital part of the international human rights framework. It is essential that we listen to you.

Similar letters have been sent to the other co-signatories of your letter.

Yours sincerely,



Jan Eliasson

Annex

The United Nations, through the UN Country Team in Haiti, notably the Pan American Health Organization/World Health Organization (PAHO/WHO), and the United Nations Children's Fund (UNICEF), working in conjunction with the national health departments, has intensified its activities of rapid response to alerts. The distribution of chlorinated products and oral rehydration serum, enhancing community awareness, decontamination of houses, dormitories and sanitary facilities have been carried out in affected communities. In the department of the Artibonite, the International Organization for Migration (IOM) and PAHO/WHO supplied the diarrhea treatment center with medicines and human resources. In all ten departments, the mobile teams of the Haitian Ministry of Public Health (MSPP) are responsible for the community response in the most affected areas, with the support of NGO mobile teams (more than 60 teams active today). Other initiatives, including the investigation and protection of water sources, the active search for cholera patients, and awareness activities have been implemented; extra beds have also been made available in health centers in the most affected areas.

UNICEF is providing assistance to the National Sanitation campaign which aims to increase access to improved sanitation in both rural and disadvantaged urban areas. The Haitian National Directorate for Water Supply and Sanitation (DINEPA) and the MSPP have developed an operational plan for the implementation of the campaign in 16 of the priority communes as a first phase. In addition, the UNICEF-supported Community Approach to Total Sanitation, an essential element of this campaign, is being implemented in target areas with training being provided for the water and sanitation technicians and community health agents to support local villages and families in the priority communes to eliminate open defecation.

So far, the Total Sanitation campaign has been implemented in 67 localities and is already producing positive results with 1000 community-built household toilets and 2,000 in progress. Six communities have been certified open defecation free and 16 are in the process of becoming so certified. Thematic funds and donor funds have been used to build/rehabilitate sanitation infrastructures in 77 communities, 43 schools and 20 health centres.

The agreement to target 16 of the high-risk cholera communes under the National Sanitation Campaign has an estimated cost of US\$310 million (\$228 million for water, sanitation and hygiene (WASH) and \$82 million for health) over the next 3 years. A further US\$70 million is needed for investments in water supply in Port au Prince. In support of the initiative, UNICEF, focusing on rural water and sanitation, has so far mobilized US\$13 million and has internally allocated \$1.38 million. The World Bank has so far mobilized US\$50 million.

Since 2011, the Central Emergency Relief Fund (CERF) has allocated more than \$30 million to the cholera response in Haiti. In August 2015, the CERF allocated, through its Rapid Response window, a total of \$4.14 million, which will allow UNICEF and partners to keep the rapid response mechanism in place until March 2016. These CERF funds are also being used by PAHO/WHO and IOM to increase rapid response capacities of governmental and non-governmental actors, ensure safe and quality care at institutional level, support timely detection, and surveillance, and promote protective health and hygiene practices. Furthermore, in early 2015, the OCHA-managed Emergency Relief Response Fund (ERRF) provided \$2.2 million to the cholera response, contributing decisively in containing the outbreak registered in the last quarter of 2014 in Port-au-Prince's metropolitan area.

The UN Country Team in Haiti has received from GAVI 200,000 doses of oral cholera vaccine (enough for 100, 000 thousand people), and will start vaccination campaigns in February 2016. This follows on from previous UN supported vaccinations campaigns since 2012, in which some 290,000 people have been vaccinated.

The UN continues to coordinate its activities with the Government of Haiti through the High-level Committee for the Elimination of Cholera.

DOCUMENT 5

NOTES ON BRIEFING BY PHILIP ALSTON, SPECIAL RAPPORTEUR ON EXTREME POVERTY, PROVIDED TO GROUP OF SENIOR UN OFFICIALS UN Plaza meeting room, 15 April 2016

Role of the SRs

Speaking on behalf of 5 SPs: Haiti, water/sanitation, health, housing, extreme poverty. This meeting comes out of the letters we have exchanged with the UN over many months and the meeting that I had with the S-G in January.

Purpose of this meeting

Role is to canvass options and see if we can encourage a new look at the issues.

SRs, as independent experts appointed by the HRC, who are both inside and outside the system, have a potentially unique role. Many examples of situations that seemed to be closed or in which there was considerable resistance where they have helped to open space and facilitate renewed reflection.

SRs have undertaken a detailed legal and policy analysis. Our plan is to submit a full and carefully researched report on the issues to the UN Human Rights Council. This would facilitate public discussion and governmental engagement. But our hope is that before that time we can help to act as catalysts to internal reconsideration.

Legal analysis

We understand the UN position on immunity and non-receivability and have studied very carefully the various statements made, although in fact very little has been said to explain or justify the UN's approach. For reasons that I don't need to go into here, we disagree with the legal conclusions drawn. Interestingly, we are also not aware of any scholars or commentators who have sided with the UN on this. But our purpose today is not to debate those arguments, but to reflect on the options that exist for a more satisfactory resolution of the situation.

HR

Our main relevance to this process comes from the fact that even if the UN's claim to immunity vis-à-vis national courts were to be accepted, this would not nullify or even address the HR-based claims and the related right to a remedy for those whose rights have been violated.

To its credit, the UN has not contested the relevance of HR or the fact that IHRL "is an integral part of the normative framework" for UN PKOs.

Response to UN position

PK is under attack, and the UN needs to address the major causes for concern. Congressional hearings earlier this week on CAR sexual abuse manifested great hostility, the coverage of the Kosovo Advisory Panel's Opinion of 26 Feb 2016 on lead poisoning, has also generated much unfavorable publicity. But none of these other issues is as prominent in the public mind as the UN's flat refusal to take responsibility for the introduction of cholera into Haiti.

Scholars' responses

The academic literature is rapidly expanding. I would mention only a couple of the most recent, which include Kristen Boon in the Chicago Journal of International Law, Jeremy Waldron in a forthcoming paper presented at a joint NYU/UN conference; and Jose Alvarez, past President of the American Society of International Law, describing the outcome as a public relations disaster and strongly challenging the UN's legal analysis.

While we await the outcome of the Second Circuit Court of Appeals case, we should not expect that a decision to uphold the UN's immunity to suit will resolve the controversy. In many ways, this will serve to reignite the issue by forcing the well-organized advocates to find other avenues.

In analyzing how best to proceed the UN needs to factor in a range of legal, principled, and reputational considerations, and not be misled into thinking that a legal outcome alone will resolve the controversy and rescue the UN's reputation.

What is at risk?

UN immunity – existing policy becomes much less defensible if it seen as shielding results such as this.

UN legitimacy, reputation of the S-G

UN credibility on HR and rule of law

Prevention of future harm

What are the real obstacles, often unarticulated?

1. Member State's head-in-the-sand approach, assuming that the issue will eventually just go away. It won't and the UN's reputation and credibility will suffer a lot in the meantime.
2. UN fears about losing immunity. It's a real concern, but the best way to protect it is to find a solution for cases like this, not just to double down on a losing approach.
3. The scale of potential payout. Figure of \$32 billion has been suggested, based on \$100k per death and \$50k per infection. These figures are not just random, but don't at all reflect the figures generally used in Haiti, nor the UN's own practice. The UN can and should put these fears to rest with a well worked-out proposal.

Important to separate out the issues and who can do what

Factual/scientific issues

Need for a straightforward acknowledgement of responsibility on the part of the UN. The current position, which is based on a clear and unsupportable interpretation of the Independent Expert's report, is entirely unconvincing and would not stand up in court. If the UN appointed an independent panel of jurists, they would conclude that the scientific evidence meets every conceivable legal test to show responsibility. No one believes the UN's fudge on this. An acknowledgement can be formulated in many ways, and it will not resolve various questions relating to the extent of the UN's liability, but it would be a huge step forward. The initiative on this rests with the UN, not the Member States. A great deal could be achieved with such an acknowledgement.

Legal/rule of law issues

The UN is ever more insistent that Member States need to be guided by the Rule of Law, which requires inter alia transparency and accountability. Yet the UN has never issued a reasoned legal opinion nor canvassed the consequences of the precedent being established.

The existing justification is terse and high-handed. This approach might have worked a decade ago but the world has changed and the UN is subject to a greater degree of scrutiny and accountability.

Institutional responses

Once an acknowledgement of responsibility has been made, it will be necessary to consider the options in order to provide a remedy. The key is to focus on the Convention's requirement for an 'appropriate mode of settlement.' This leaves a lot of leeway, provided account is taken of the 2005 GA Principles.¹ Many options have been put forward, including:

- Local claims boards
- Standing claims commission
- Arbitration
- Lump-sum settlement
- Advisory Panel ala Kosovo
- Independent expert group
- Truth Commission
- Reparations Commission, proposed by Independent Expert, Gustavo Gallon in his 2015 report to the HRC: "A reparations commission should be established for the victims of the cholera epidemic in order to catalogue the damage suffered and the corresponding indemnification, identify those responsible and halt the epidemic, among other actions."

It is not for the SRs to tell the UN which of these represents the best way forward. There are many models. The most prominent technique in comparable mass tort litigation cases in the US has been the appointment of an independent arbiter to determine how a given compensation fund should be disbursed to victims and other claimants. Ken Feinberg.

In terms of compensation, but not the institutional mechanism, the sort of principles laid out in Res 52/247 (1998) give an indication of how one might move forward.

Conclusion

The UN is at a crossroads. The choice is between defending an indefensible outcome that will continue to undermine the organization even if the lawyers continue to insist that they are on solid legal ground, and the sort of bold and creative response that has emerged in the past, albeit usually only in the wake of a crisis of credibility. Because the lawyers have dug their heels in there has been remarkably little creative thinking done about crafting solutions that would take account of all of the competing considerations.

UN inquiries into its role in the Rwandan genocide, in Srebrenica, in the final days of the civil war in Sri Lanka, and in handling the sexual abuse scandal in the CAR. The responsible S-Gs

¹ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

'bit the bullet' and commissioned greatly respected reports which in turn generated new policy responses that helped to protect the UN's reputation and avoid such disasters in the future.

DOCUMENT 6



THE DEPUTY SECRETARY-GENERAL

19 August 2016

Dear Mr. Alston,

Thank you for your letter of 8 August 2016, conveying your draft report prepared pursuant to Human Rights Council resolution 26/3 regarding extreme poverty and human rights. We are grateful for the opportunity to provide comments.

Your draft report calls on the United Nations to adopt a new approach to the tragic cholera epidemic in Haiti. The issues you raise have been of profound concern to the Secretary-General and the United Nations. The Secretary-General deeply regrets the terrible suffering the people of Haiti have endured as a result of the cholera epidemic and believes the United Nations has a moral responsibility to the victims of the cholera epidemic and for supporting Haiti in overcoming the epidemic.

Over the past months, and as part of his ongoing efforts to enhance the United Nations response to the cholera epidemic, the Secretary-General has, therefore, asked us to look very seriously at these issues. On this basis, he is developing a new approach, which, I believe, will address many of the concerns raised in your report.

The Secretary-General agrees that the United Nations approach to cholera in Haiti must include, as a central focus, the victims of the disease and their families. He intends, therefore, to develop a package that would provide material assistance and support to those Haitians directly affected by cholera.

Mr. Philip Alston
Special Rapporteur on extreme poverty
and human rights
Geneva

Consultations will be required with the Haitian national authorities, as well as with Member States, to secure the necessary mandate and funds for the support package and the mechanism through which it is delivered. We hope that such a package and mechanism could be established as soon as possible. The United Nations is committed to a transparent process and will consult with stakeholders, including victims. This support package will be in addition to our continuing support to humanitarian and development programmes tackling cholera, including those coordinated under the High-level Committee for the Elimination of Cholera, established jointly by the United Nations and the Government of Haiti in 2014.

We will intensify our efforts, alongside the Government of Haiti and the wider international community, to cut the transmission of cholera, improve access to care and treatment and address the longer-term issues of water, sanitation and health systems in Haiti. Our efforts have contributed to a 90 per cent reduction in suspected cases since the peak in 2011. However, as you point out -- in line with views of other special procedures mandate holders -- these efforts are seriously underfunded and have fallen far short of what is required to meet the objectives of the National Plan for the Elimination of Cholera or of repeated humanitarian appeals, including personal efforts by the Secretary-General. Regrettably, severe and persistent funding shortfalls remain. One of the Secretary-General's top priorities in the coming months will, therefore, be to seek the funds required to meet these goals.

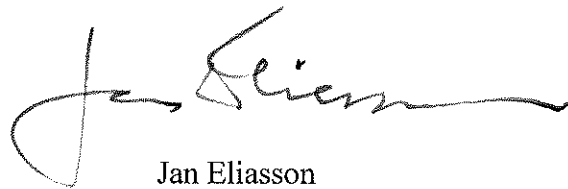
The United Nations remains committed to the elimination of cholera and building the economic and physical infrastructure capable of improving the health of the Haitian population and reducing the vulnerability of Haiti to emergencies, such as those caused by the spread of infectious diseases. To succeed, these efforts will have to be supported by a strong commitment and effective actions by the Government of Haiti, through a concerted drive by the Government to build the functioning institutions required to bring about a sustainable improvement in the country's water, sanitation and health systems.

Finally, as you state, the principle of United Nations immunity is a vitally important one for the United Nations, and is not disputed by legal experts. You are familiar with the legal position of the Organization on this matter, which we stand by. This position does not prevent action being taken through political, diplomatic or other means, along the lines described in this letter.

The Secretary-General intends to report on these issues during the seventy-first session of the United Nations General Assembly, including further details on the support package for Haitian victims of cholera. He will make an urgent appeal to Member States to support his approach and will propose measures to more effectively address tragedies such as the one in Haiti and reduce the likelihood of them recurring in the future.

For the past three decades, the United Nations has stood by the Haitian people, supporting them in their quest for democracy and the strengthening of their institutions and helping to rebuild the nation after the tragic earthquake of 2010. The approach outlined here reflects our determination to continue to support and honour the people of Haiti. We look forward to working closely with you as the new approach and support package are developed.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jan Eliasson', with a large, stylized initial 'J'.

Jan Eliasson

DOCUMENT 7

**Address to the General Assembly [Bilingual, as delivered version]
Secretary-General Ban Ki-moon
20 September 2016**

Je saisis cette occasion pour exprimer mes regrets au sujet de deux situations qui ont terni la réputation de l'Organisation et, pire encore, traumatisé les nombreuses populations que nous servons.

Premièrement, les actes odieux d'exploitation et de violence sexuelles commis par certains soldats de la paix et d'autres membres du personnel des Nations Unies ont aggravé les souffrances de populations déjà prises dans un conflit armé et sapé les efforts accomplis par tant d'autres agents de l'ONU dans le monde. Les protecteurs ne doivent jamais devenir des prédateurs. Les États Membres et le Secrétariat doivent redoubler d'efforts pour faire appliquer et renforcer la politique de tolérance zéro de l'Organisation.

Deuxièmement, Haïti a cumulé les épreuves : peu après un tremblement de terre dévastateur, le pays a été frappé par une épidémie de choléra. J'ai beaucoup de regret et de peine face aux terribles souffrances du peuple haïtien affecté par le choléra. Une nouvelle stratégie s'impose pour atténuer sa détresse et améliorer ses conditions de vie. Nous sommes fermement résolus à nous acquitter durablement de cette responsabilité morale.

Nous élaborons actuellement un ensemble de mesures d'assistance pour les personnes les plus directement touchées et redoublons d'efforts pour établir de solides systèmes d'approvisionnement en eau, d'assainissement et de santé, qui sont la meilleure défense à long terme contre les maladies. Nous n'y parviendrons qu'avec l'appui politique et financier sans faille des États Membres.

Je vous donnerai plus tard des précisions sur cette stratégie. Unissons nos efforts pour honorer nos obligations envers le peuple haïtien.

TRANSLATION

I take this opportunity to express my regret about two situations that have tarnished the Organization's reputation and, worse, traumatized populations we serve.

First, heinous sexual exploitation and abuse committed by some peacekeepers and other members of the United Nations have compounded the suffering populations already taken in armed conflict and undermined the efforts of so many other UN officials in the world. The guards must never become predators. Member States and the Secretariat must redouble their efforts to implement and strengthen the zero tolerance policy of the Organization.

Second, Haiti has accumulated challenges: shortly after a devastating earthquake, the country was hit by a cholera epidemic. I much regret and sorrow face the terrible suffering of the Haitian people affected by cholera. A new strategy is needed to alleviate their distress and improve their living conditions. We are firmly committed to fulfilling this moral responsibility.

We are developing a set of measures of assistance for the persons most directly affected, and we are redoubling our efforts to build strong systems for water supply, sanitation and health, which are the best long term defense against these diseases. We can only achieve that with the strong political and financial support of Member States.

I will provide later more details on this strategy. Let us work together to meet our obligations to the people of Haiti.



TÉLÉCOPIE · FACSIMILE TRANSMISSION

DATE: 5 October 2016

A/TO: Mr. Edmond Mulet
United Nations Chef de Cabinet to the Executive Office

E-MAIL: eliasson@un.org, mulet@un.org

DE/FROM: Beatriz Balbin Chamorro
Chief

Special Procedures Branch, Thematic Engagement, Special Procedures and Right to
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FAX: +41 22 917 90 08

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E-MAIL: srextremepoverty@ohchr.org

PAGES: 10 (Y COMPRIS CETTE PAGE/INCLUDING THIS PAGE)

OBJET/SUBJECT: **Letter from the Special Rapporteur on extreme poverty and human rights**

Please find attached a letter from the Special Rapporteur on extreme poverty and human rights addressed to Mr. Jan Eliasson, United Nations Deputy Secretary-General.



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND

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Mandate of the Special Rapporteur on extreme poverty and human rights

REFERENCE:SPB/SHD/JT/PG

5 October 2016

Dear Deputy Secretary-General,

I am writing in response to your letter of 19 August 2016 concerning the United Nations new approach to the issue of responsibility for the cholera epidemic in Haiti.

As you know, I consider the steps that have been taken in recent weeks by the Secretary-General and yourself to be extremely important and very welcome. The comments made by the Secretary-General both in his speech to the General Assembly on 20 September 2016 and in his meeting with President Obama on the same day clearly indicate a willingness to address the question of the United Nations' responsibility in a way that has been absent until now.

I especially welcome the assurance in your letter to me that:

“the United Nations approach to cholera in Haiti must include, as a central focus, the victims of the disease and their families. [The Secretary-General] intends, therefore, to develop a package that would provide material assistance and support to those Haitians directly affected by cholera.”

The Secretary-General spoke in similar terms to the General Assembly when he stated that “[w]e are developing a set of measures to assist the persons most directly affected, and we are redoubling our efforts to build strong systems for water supply, sanitation and health ...”.

It is also very encouraging to learn of the extensive efforts being coordinated by Assistant Secretary-General David Nabarro to explore additional sources of funding and to identify the elements to be addressed in a new package of assistance to Haiti. He has recently indicated that \$181 million will be mobilized to reinvigorate the emergency response and at least the same amount again will go to the victims' families.¹ Once

¹ “UN Rolls Out Aid Package for Cholera-Hit Haiti”, September 29, 2016, available at <http://www.france24.com/en/20160929-un-rolls-out-aid-package-cholera-hit-haiti>

Mr. Jan Eliasson,
Deputy Secretary-General
United Nations



finalized, this mobilization of an additional \$360 million or more will represent an immense achievement.

But a crucial element is missing from the overall package that is needed both to address the injustice that has been done and to ensure that the United Nations acts in a principled manner consistent with its international legal obligations. The package needs to be rooted in a legal framework that enables the United Nations to respect its obligations in this case, to act in accordance with the rule of law, to demonstrate that it is prepared to be held accountable, and to emerge from the shame of its previous policy on Haiti with both credit and credibility.

There are two main legal approaches available, both of which comprehensively uphold the Organization's immunity from suit in national courts. The first approach involves accepting that the actions of the United Nations in Haiti gave rise to a legitimate private law claim on the part of those who died or were made ill as a result of the Organization's negligent behaviour. This claim would be dealt with as required by the Convention on Privileges and Immunities through the establishment by the United Nations itself of an appropriate mode of settlement. In practice, this would require the Organization to do much the same as it has already indicated it will do through the other elements of the new package. It would also signal that future claims will be dealt with in a similarly principled manner and that the United Nations will accept that it is accountable, albeit in the limited range of situations in which its operations have caused serious harm that can be addressed as matters of private law such as tort or contract.

The second approach involves comprehensively denying that obligations of any sort arise from the role of the United Nations in bringing cholera to Haiti, even to the point of denying that any process for settling the dispute is needed, and instead proceeding on the basis that the new package is essentially an act of charity on the part of the Organization. In concrete terms, this means that no meaningful apology can be issued (since UN lawyers apparently fear this might carry legal significance), that no legal process is established, that no payments made can be considered as compensation or reparations since that terminology might also have legal significance, and that the best that can be hoped for is a form of voluntary (*ex gratia*) payments combined with an evasive official statement of regret.

Only the first approach provides a way forward that is consistent with the United Nations' cherished principles of respect for the rule of law and human rights, with its desire to be seen as a principled, accountable and responsible partner in peacekeeping, and with its legitimate concern to protect its legal immunity.

It will be a travesty of justice if, having moved so far in such a short time, the United Nations finds itself at the last moment unable to accept the principle of accountability, the avoidance of which has motivated the long years of total denial, and if it is similarly unable to embrace the principle of respect for the rights of victims to compensation as opposed to charitable payments.

It is clear, however, that there is very strong resistance within the Organization, driven by the position adopted by the Office of Legal Affairs (OLA), which has so far comprehensively blocked the consideration of the option for accountability. Because the issue is of such great importance, both to OLA and to those who believe that the



advice of the Office is erroneous and leads to impunity, it is instructive to examine how the matter has been dealt with to date in procedural terms and then to consider the merits of the arguments that seem to underlie the position advocated by OLA.

Procedural dimensions of the role played by OLA

At every stage, OLA advice has been the central factor which has shaped the Organization's approach to the question of its responsibility for bringing cholera to Haiti. Its advice seems to have been of particular relevance at two different stages.

The first stage involved the drafting of several sentences inserted into a letter of a more general nature written in February 2013 to the Director of the Institute for Justice and Democracy in Haiti, and subsequently slightly elaborated upon in letters to the Special Procedures mandate-holders. In these few lines of analysis the Under-Secretary-General for Legal Affairs simply asserted that since examination of the claims for compensation would require the consideration of "political and policy matters" they were therefore "unreceivable." I have explained in my report (A/71/367, paras. 28-37) why this conclusion is justified neither by the facts nor by the relevant law and practice. But here I want to draw attention to the process through which this legal advice was drawn up, and the secrecy that has followed. In a public lecture given in 2013, a former United Nations Assistant Secretary-General for Legal Affairs and highly respected international law expert, had this to say:

If ever a case cried out for the application of a concept of accountability in international law this is it.

...

Whether, in its internal deliberations, the UN's legal or moral responsibility was discussed and whether possible remedies of accountability were canvassed is difficult to say. A complete veil of silence has been drawn over this issue to the point that no official will discuss the matter on or off the record. There is, however, anecdotal information to the effect that an initial opinion agreed to by the peacekeeping and legal departments found that an obligation existed under Section 29 [of the Convention on Privileges and Immunities] but that it was rejected at the highest level, presumably for political reasons. Consequently a second opinion was ordered and was in fact prepared by outside American counsel. It was this opinion that formed the basis, such as it is, for the February 2013 letter. As we have seen this contains no legal reasoning.²

The 'veil of silence' persists until this day. I have asked senior officials of the United Nations who have been involved in discussions of the issue whether they have seen a copy of any legal opinion on the matter. The answer has always been in the negative. I have not spoken with anyone who has acknowledged seeing such an opinion and despite the fact that the relevant position is consistently cited by senior officials and has effectively determined the approach adopted, there is no evidence in the public domain for assuming that any detailed or reasoned legal opinion has ever actually been drawn up. Even if it exists, it is surely entirely unacceptable for a matter of such major importance not just to the people of Haiti but to the United Nations itself to be determined on the basis of advice, the content of which continues to remain entirely

² Ralph, Zacklin, "Accountability and International Law," Address to the 21st Annual Conference of the Australian and New Zealand Society of International Law, Canberra, 5 July 2013.



secret. This determined lack of any transparency runs counter to all that the Organization purports to stand for and to the most elementary principles of good governance and the rule of law.

The second stage of OLA's role has been its reported continuing insistence, despite the Organization's major change of direction in August 2016, that the United Nations must neither accept that this is a private law claim that requires it to provide an appropriate mode of settlement nor take any steps that would imply legal responsibility in this case. In the view of OLA it seems to follow that no meaningful apology can be issued, and that terms such as compensation or reparations cannot be used to describe any payment that might be made to victims since either of these steps might be understood as implying legal responsibility. I address below the substance of these arguments, but for present purposes the key point is that once again the Office has never made public the relevant advice, and none of its officials has ever sought to elaborate upon or explain publicly the legal reasoning involved. The result is that the proposed new package of measures is severely constrained by an undisclosed analysis that, despite its secrecy, has shaped the entire contour of the discussions.

Before looking at the legal arguments that seem to be relevant, it may be recalled that ever since its first public statement on this issue in February 2013 and at least until my draft report to the General Assembly was leaked in August 2016, OLA consistently based its arguments upon the contention that it was unclear whether or not cholera was brought to Haiti by United Nations peacekeepers. In support of this position, OLA systematically invoked the unsubstantiated arguments presented in 2011 by the panel of independent experts, despite the self-evident weaknesses and contradictions of that part of the panel's report and of its members' subsequent retraction, and despite the growing mountain of evidence pointing incontestably to the responsibility of the United Nations. The announcement in August 2016 by the United Nations that a new approach was to be adopted would be inexplicable if it were not premised upon recognition of the fact that the old approach of denying factual responsibility is no longer tenable. But it seems that this change in the official position has not led to any comparable revision of the legal analysis. Indeed, it is not clear if OLA still defends and relies upon the old position or not.

The substance of OLA's legal position

Since there is no available legal opinion, no significant official explanation of the policy, no public attempt to justify the approach, and no assessment of its consequences for future claims, it is difficult to know exactly what the arguments are for insisting that no responsibility or accountability can or should be accepted in this case.

What is known from the scant official record is that on 21 February 2013, claims made on behalf of cholera victims were deemed "not receivable pursuant to Section 29 of the 1946 Convention on the Privileges and Immunities of the United Nations". Although that section requires the United Nations to provide for appropriate modes of settlement of disputes of a private law character, these claims were excluded because it was said that their consideration "would necessarily include a review of political and policy matters". A challenge to this 'finding' was rejected without further explanation and a request for a follow up meeting was rebuffed.



This 'finding' has drawn no support from legal commentators. Contrary to OLA's assertion, the Haiti claims in fact have all of the characteristics of a private law tort claim and are directly comparable to many claims processed by the Organization in the past, although the affected population is notably larger. The sole reason cited for rejecting the claims is that they raise "political or policy matters," but these matters are never specified and OLA has not sought to reconcile this assessment with the detailed legal advice provided to the General Assembly in 1995 which would require a very different result. Again, contrary to OLA's assertion, the duties owed by the United Nations are directly analogous to those owed by a company or private property owner to ensure adequate waste management and to take adequate precautions to prevent spreading diseases, and can thus be dealt with entirely without prejudice to the Organization's legal immunity.

Moreover, OLA's approach is inconsistent with longstanding practice. It has long been accepted that the United Nations can incur obligations and liabilities of a private law nature. And the Organization has long recognized its international responsibility for damages caused by the activities of its forces within this framework. As a result, many such claims have been made and settled, albeit on a confidential basis.

Given the lack of justification for the assertion of non-receivability, as well as indications given to me in recent weeks by officials acting in accordance with the instructions of OLA, it would seem that the real reason for the approach adopted is the fear that any acceptance of responsibility would potentially jeopardize the immunity of the United Nations in relation to this case or future lawsuits. In other words, officials perceive a risk that the Organization might be sued and believe that a meaningful apology on the part of the Secretary-General, or the provision of compensation payments to the victims, must be avoided for fear that they could be used to challenge its claim to immunity.

An assessment of the validity of these concerns requires an evaluation of the likelihood that the legal immunity of the United Nations could really be at risk if responsibility under Section 29 of the Convention were to be accepted in this case, or if an apology was issued or compensation paid. Article II of the Convention on Privileges and Immunities provides that the United Nations "shall enjoy immunity from every form of legal process" unless it decides to expressly waive its immunity. In August 2016 the United States Court of Appeals resoundingly upheld the claim of immunity brought on behalf of the United Nations and unanimously dismissed the case brought by the Haitian victims. The time in which an appeal could be lodged has almost expired and there is in any case no prospect that the United States Supreme Court would agree to hear an appeal given the strength of the lower court's opinion and the overwhelming weight of existing precedent. In my report I suggested that the only real risk that this immunity could be challenged in courts in other countries would be if the United Nations insists on refusing to abide by the obligation that is specifically imposed upon it in Section 29 of the Convention to provide a mode of settlement in private law cases of this nature. In other words, in my view, the approach currently being insisted upon by the OLA is, ironically, the only real threat to the long-term sustainability of the United Nations' legal immunity. If the OLA sees other threats, the burden should surely be on its shoulders to spell out what it considers these might be.



There is almost always some element of residual uncertainty in the legal positions adopted by large organizations in relation to complex issues, in the sense that there can be no absolute guarantees that an apparently watertight legal position will not be subject to a challenge of some sort. But to elevate an almost entirely hypothetical and speculative concern that there might someday somewhere be a legal challenge to a level at which it trumps an otherwise compelling case for respecting international legal obligations is surely unconscionable. It is impunity masquerading as legal prudence.

The result of OLA's approach is that UN peacekeepers not only enjoy absolute immunity, as they rightly should under international law, but also that they enjoy absolute non-accountability, which is an unprincipled, unacceptable and unsustainable approach. OLA is effectively defending impunity, rather than immunity.

In addition, if the existing approach is maintained it would set a precedent for any future legal claims for compensation resulting from egregious conduct by the United Nations of the type that occurred in Haiti to be rejected. Instead, future claimants would be condemned to going through the same long drawn out process required in the Haiti case of needing to mobilize sufficient outrage in the international community as to provoke the United Nations to offer to make a charitable payment to the victims. In other words, the OLA approach would represent a major step back from long established practice and would lock in a new principle that the United Nations does not and will not accept claims for private law wrongs directly attributable to its peacekeeping and other operations, despite the explicit provision for doing so contained in the Convention on Privileges and Immunities. In practice, the United Nations is, without ever acknowledging it, adopting a two-tier approach under which it will accept small-scale claims (such as motor accidents) but will avoid claims involving larger-scale harms or where a significant number of persons are involved. This cannot be justified under the Convention and creates immense difficulty in drawing the line.

Explaining the position

Given the total lack of transparency, those concerned are driven to speculate as to the reasons underlying the OLA position, and it seems important to do so if there is to be the possibility of bringing about change.

The first seems to be the approach taken by the United States of America. It has a particular interest in this issue not only because of its role in relation to its close neighbour, Haiti, but also because it is the principal contributor to the overall United Nations peacekeeping budget.

Large numbers of congressional representatives have pressed the US Government to "utilize its leadership position to stress the importance of UN accountability," and on 20 September 2016 Senators Markey, Rubio, Menendez, and Leahy wrote to the Secretary-General calling for "a public apology" and "a transparent and comprehensive plan, consistent with the requirements for the settlement of disputes of a private law nature enshrined in Section 29 of Article VIII of the Convention on Privileges and Immunities of the United Nations."

As with the legal position of the United Nations, the United States has never publicly stated its legal position on this matter. I have made a number of requests for



clarification of the position but none has been provided. Responses by United States officials to Congressional inquiries have carefully avoided all reference to the legal responsibility of the United Nations, and have not provided any indication of the Government's legal position. It has, however, been consistently suggested to me by a range of persons that the position eventually adopted by the Under-Secretary-General for Legal Affairs in 2013 was consistent with views strongly pressed within the Organization at the time by the United States.

As far as can be ascertained, the position of the State Department's lawyers seems to be that the United Nations must follow the advice generally given to negligent drivers and dishonest corporations being sued in the United States' legal system which is to never, ever, accept legal responsibility when it can be avoided. Instead, the advice is to seek a settlement that resolves the immediate situation but does not make any concession on matters of principle. "We accept neither responsibility nor liability in this matter, but we have agreed to make a payment of one billion dollars to the Federal Treasury."

It is difficult to reconcile this approach with President Obama's statement to the General Assembly on 20 September 2016 that "binding ourselves to international rules over the long term ... enhances our security," or with the position expressed by the four United States Senators on 20 September 2016 calling for a settlement based on Section 29 of the Convention.

The problem with transposing assumptions relevant to the United States legal system is that the United Nations operates in a radically different context. Its reputation for compliance with the rule of law and international law, including human rights, is part of its *raison d'être*. In both the 1946 Convention and in its practice the United Nations has accepted responsibility for the private acts of its peacekeepers in recognition of the fact that as a creature established by international law it needs to respect it itself. The significance of this is clear from the UN's recent experience with respect to sexual assault allegations against peacekeepers. And unlike United States' corporations or government agencies, the United Nations enjoys absolute legal immunity from suit in national courts under the 1946 Convention. Since it does not therefore bargain under the shadow of litigation as do most of those working within the US legal system, insistence that it should never accept legal responsibility under international law is both misplaced and inappropriate. Instead, the UN stands to lose immeasurably in reputational terms if it simply denies responsibility when it is demonstrably liable, as is so clearly the case in Haiti.

To the extent that the United States' Government's preference for handling this case has influenced the otherwise difficult-to-explain posture of OLA, this is ironic given the fact that since 1942, the US Foreign Claims Act has required the United States Government to promptly settle meritorious claims of exactly the sort that have arisen in Haiti. That legislation explicitly states the reason for adopting such an approach: "to promote and to maintain friendly relations" with the States in whose territories it is operating. It is especially puzzling therefore if the United States is taking the position that the United Nations should not adopt this very same approach.

A second explanation for OLA's position that has been suggested to me is that granting a legal remedy to the Haitians would open the floodgates to endless claims



from the Central African Republic or South Sudan or elsewhere. But the only remedies the United Nations can provide, under the terms of the 1946 Convention, relate to private law matters such as contract, property or tort. As far as is publicly known, there are relatively few such claims. If this is not the case, and there are in fact a significant number of such claims, this is surely a matter that should be made public to enable Member States and others to better assess the position of OLA. It is surely better to establish a principled and manageable way of dealing with these than to force the United Nations to deny all such claims, thereby refusing to be held accountable and bringing widespread opprobrium upon itself.

A third explanation is that any willingness to be accountable in relation to Haiti will lead to massive payouts either in this or in later cases. Again, this is not the case since it is the United Nations itself that determines the size of any payout, and there is no appeal to any court from such a determination. The Haiti case is the perfect illustration. While claimants in the failed US litigation sought over \$40b, the claim is likely to be resolved through the payment of as little as \$200m.

The United Nations leadership and its Member States do have a viable and principled alternative to the present course. The UN can follow the procedure clearly laid out in the Convention on Privileges and Immunities and provide an appropriate mode of settlement for the victims' claims. This would not create a new precedent, it would not in any way jeopardize the Organization's immunity, it would not lead to any higher financial settlement than has already been proposed, it would not open any floodgates of future claims for crimes such as sexual abuse by peacekeepers since these are not private law matters, and it would enable the United Nations to live up to its international legal obligations as well as its commitment to the rule of law, human rights, transparency, and accountability.

The second option is to accept the lawyers' view that all conceivable legal risks should be avoided, no matter how attenuated, speculative, and unlikely they might be. This option involves the rejection of legal responsibility even in cases in which the law and longstanding precedent would demand it. The result represents the rejection of accountability and the embrace not just of immunity, which is indeed vital, but also of impunity, which is supposed to be contrary to everything for which the Organization stands.

Sadly, there is a substantial risk that the Organization will choose a different course and continue to reject any accountability for resolving these claims. This would in my view be a lamentable outcome that is inconsistent with the rule of law, contrary to human rights, and undermines the principles and credibility of the Organization. It could, however, be easily avoided if the political will were present.

While recognizing the immense progress that you and the Secretary-General have brought about on this issue in recent weeks, my hope is that the United Nations will choose the first course. To that end, I would be grateful for any information you could provide in response to the following questions:

1. Would the Secretary-General make public the legal advice provided by the OLA in relation to its potential responsibility for the introduction of cholera in Haiti? If not, can it at least be made available to Member States?



2. What exactly are the “political and policy matters” that are said by OLA to have been raised by the claim lodged in 2011 and which apparently prevented it being ‘received’ by the United Nations as a private law claim requiring the application of Section 29 of the Convention?

3. Has the legal advice been revised or updated in recent weeks to take account of what now seems to be the Organization’s acceptance of its central role in relation to the arrival of cholera in Haiti in 2010?

4. Does the United Nations consider that there are unacceptable legal risks to offering an unqualified apology? If so, what are those risks?

5. Is it the case that the United Nations considers that payments to the families of victims of cholera in Haiti can only be made on an ex gratia basis, since to make them in the form of ‘compensation’ or ‘reparations’ would necessarily imply legal responsibility and must thus be avoided?

I would be very grateful for a reply by 12 October 2016. I recognize that this is a short period of time but the matter is urgent for many reasons and a response by then would assist me in determining whether or not to make public the concerns expressed in this letter.

Please accept, Deputy-Secretary-General, the assurance of my highest consideration.

Philip Alston

Special Rapporteur on extreme poverty and human rights



12 October 2016

Dear Mr. Alston, *Dear Philip,*

Thank you for your letter dated 5 October 2016, on the cholera epidemic in Haiti. I appreciate your commitment to the issue and your positive words on the new approach of the United Nations to the epidemic.

In our view, the legal position of the United Nations does not constrain the Secretary-General's new approach to the issue of cholera in Haiti. Nor is it correct to see our approach as an act of charity. It is based on a sense of responsibility to assist the people of Haiti and on an acknowledgement of the shortcomings of the Organization's own involvement in the past.

I hope that you recognize this, as well as the positive outcomes expected from the new approach, notably the significant impact on those who have been affected by cholera.

As you know, the first track of the approach consists of intensified efforts to respond to and reduce the incidence of cholera in Haiti. These efforts have been greatly affected by the recent hurricane that has devastated Haiti. This latest tragedy has strengthened our resolve to reduce, and ultimately end, the transmission of cholera, improve access to care and treatment and address the longer-term issues of water, sanitation and health systems in Haiti.

The second track of the new approach is the development of a proposal for a package of material assistance and support to Haitians most directly affected by cholera. As we pursue these two tracks, I can assure you that we are reflecting and taking action on the lessons of the tragedy of cholera in Haiti and doing everything we can, as an organization, to ensure it is not repeated.

Mr. Philip Alston
Special Rapporteur on extreme poverty
and human rights
Geneva

Due to the hurricane, we have had to change some of the timelines of our work. The country should be given time to get back on its feet before we proceed with consulting Haitian stakeholders on the proposed support package. We intend to pursue this process with considerable care, to ensure that it is transparent and inclusive. In the meantime, consultations with experts are under way in order to benefit from their expertise in developing the package.

The main constraints we face in carrying out the new approach are financial and political. Without the support of Member States, we will not succeed. We are making every effort to engage Member States and raise funds and support for both tracks. This, too, has been complicated by the hurricane as our organizational resources are, understandably, focused on emergency humanitarian response.

In the coming days, the Secretary-General will visit Haiti, as an act of solidarity and support to the Haitian people. He is then committed to presenting a proposal to the General Assembly before he leaves office. He hopes that Member States will agree to support and implement this proposal.

The people of Haiti deserve tangible expressions of our responsibility, support and solidarity. The United Nations is determined to seize this opportunity to address a tragedy that has negatively affected its reputation and global mission.

I count on your support now and in the future.

With best regards,
Yours sincerely,



Jan Eliasson



**Statement by Philip Alston
SPECIAL RAPPORTEUR ON EXTREME POVERTY AND
HUMAN RIGHTS**

71st session of the General Assembly
Third Committee
Item 68 (b&c)

25 October 2016
New York



Statement by Professor Philip Alston, Special Rapporteur on extreme poverty and human rights

UN responsibility for the introduction of cholera into Haiti

Mr President, distinguished delegates,

Exactly six years ago, United Nations peacekeepers brought cholera to Haiti for the first time in that country's history. Soon, 10,000 people will have died as a result, and 800,000 will have been infected. Eight per cent of Haiti's total population has thus been affected.

1. The abdication of responsibility

For most of those six years, despite valiant and dogged efforts by civil society groups such as the Bureau des Avocats Internationaux and the Institute for Justice and Democracy in Haiti, the UN opted to abdicate its responsibility. It:

- refused to accept factual responsibility for the introduction of the epidemic;
- contested the scientific evidence on the basis of a self-evidently flawed and unjustified assessment;
- insisted that no legal claim for negligence could be brought against it, despite the clear provisions of the relevant treaty and its agreement with Haiti;
- refused to countenance the payment of any form of compensation even to the relatives of those who had died; issued no apology; and
- did not do enough to promote and strengthen efforts to achieve eradication.

2. The negative consequences

This approach was a disaster because it:

- flouted the applicable international law;
- enshrined a double standard which exempts the UN itself from having to respect human rights;
- reinforced the perception that UN peacekeeping operations can trample with impunity on the rights of those being protected;
- undermined the credibility of the Organization;
- jeopardized the UN's immunity by making it synonymous with impunity, and thus rendering it indefensible; and
- left the UN vulnerable to eventual claims for damages and compensation in this and subsequent cases, because the legally required settlement will never have been provided.

In the report I am presenting today (A/71/367), I characterize the UN's approach as "morally unconscionable, legally indefensible ... politically self-defeating [and] entirely unnecessary".

Since September 2014, a group of mandate-holders, including those responsible for Haiti, water and sanitation, health, and housing, have challenged the UN to do more. These efforts culminated in my meeting with the UN Secretary-General in January 2016, a meeting in April 2016 at which I briefed senior officials, and finally the submission of my report in August. A detailed timeline of events is annexed to this statement.

A draft of the report that I am presenting today was submitted to the UN in New York for comments on 8 August. It was leaked by someone in the Organization to *The New York Times*, but this turned out to have the wholly beneficial effect of galvanizing the UN to announce on 18-19 August a “new approach,” which I was informed would address many of the concerns I had expressed.

Today, I want to review what has happened in the intervening period. There is some extremely good news and some very bad news. But the bottom line is that all of the bad news could be eliminated if one single simple decision is taken to acknowledge the Organization’s legal obligations. None of this has any effect on the UN’s immunity from suit in national courts which has been powerfully vindicated.

3. The good news

The good news, and it is remarkable and a cause for celebration, is that the UN has, since late August, reversed course on some of the most problematic aspects of its Haiti cholera policies. In particular, through the courageous leadership of the Secretary-General and the Deputy Secretary-General, the UN has set up a two-track Haiti Cholera Response Multi-Partner Trust Fund (MPTF) which aims to: (i) intensify efforts to treat and eliminate the disease; (ii) develop a framework proposal to Member States for material assistance to those Haitians most affected by cholera after the 2010 outbreak. The goal is to raise at least \$400 million for the MPTF, to be roughly evenly divided among the two tracks.

The devastation caused by Hurricane Matthew has both exacerbated the problems and complicated fund-raising, but the Trust Fund is now up and running. And, in response to the review of the scientific literature contained in my report, there has been an extremely important de facto abandonment of the long-held position that it was unclear whether or not the UN forces had introduced cholera. More generally, the ‘new approach’ adopted since August has given new energy to efforts in this area after a prolonged period in which the institution’s head remained buried in the proverbial sand.

4. The bad news

The bad news can be summarized all too easily. In brief, there has been:

- no formal acceptance, as a factual matter, that the UN was responsible;
- no apology has been made, as of today, although I remain hopeful;
- no recognition of legal responsibility;
- no agreement on the use of terms such as ‘compensation’ or ‘reparations’; and
- no legal settlement, as required by law.

5. The blocking role of the lawyers

In light of the undoubted political will of the Secretary-General to resolve this festering sore by taking all necessary and feasible measures, the question is why the relevant steps have not been taken? While no-one in the Organization has been prepared to publicly acknowledge the fact, it is clear from all of the inquiries I have made that the most significant obstacle in the way of resolving the matter in a way that comports with the rule of law, respects human rights, restores the UN's credibility, and honors the victims, is insistence by the UN's Office of Legal Affairs (OLA) that the UN must, at virtually all costs, avoid accepting responsibility in this or any comparable case. The position is compounded by what a former Assistant Secretary-General for Legal Affairs has described as the "complete veil of silence [that] has been drawn over this issue to the point that no official will discuss the matter on or off the record."¹ In fact, OLA has never made public the relevant advice, nor has it even been provided to other UN offices. There has been no satisfactory official explanation of the policy, no public attempt to justify it, and no known assessment of its consequences for future claims. In sum, the procedure is the antithesis of the accountability, transparency and respect for the rule of law that the UN urges others to follow.

Since OLA's position draws no support from longstanding practice in this area or from its own prior advice, the question is why it has taken such an uncompromising and utterly destructive position. The only plausible explanation I can suggest is a fear that any acceptance of responsibility would potentially jeopardize the immunity of the United Nations in relation to this case or future lawsuits. But there is no basis in law or practice to justify elevating an almost entirely hypothetical and speculative concern that there might someday, somewhere, be a legal challenge to UN immunity to a level at which it trumps an otherwise compelling case for respecting international legal obligations. This is impunity masquerading as legal prudence. It also raises serious questions about the ethical duties of legal advisers.

In seeking to understand OLA's position, it seems relevant to note that the United States of America, which has a strong interest in this issue both as a close neighbor of Haiti and as the principal contributor to the UN's peacekeeping budget, has itself never publicly stated its legal position on this issue, despite many requests that it do so. There is reason to believe that the position adopted by OLA in 2013 was consistent with views strongly pressed at the time by the United States. The reasoning behind the US position seems to be that the UN must follow American legal practice which generally takes the view that legal responsibility should never be accepted when it can possibly be avoided, because one never knows the consequences for subsequent litigation.

But the UN operates in a radically different context from the US legal system. Its reputation for compliance with the rule of law and international law, including human rights, is part of its *raison d'être*. It enjoys absolute legal immunity from suit in national courts, and the governing international law specifically requires it to deal with private law claims. Ironically, the US Government has itself followed exactly this two track approach since 1942 when the US Foreign

¹ Ralph, Zacklin, "Accountability and International Law," Address to the 21st Annual Conference of the Australian and New Zealand Society of International Law, Canberra, 5 July 2013.

Claims Act required the US Government to promptly settle meritorious claims of exactly the sort that have arisen in Haiti.

The United Nations leadership and its Member States do have a viable and principled alternative to the present course. The UN can follow the procedure clearly laid out in the Convention on Privileges and Immunities and provide an appropriate mode of settlement for the victims' claims. This would in no way jeopardize the Organization's immunity, it would not lead to any higher financial settlement than has already been proposed, it would not open any floodgates of future claims for crimes such as sexual abuse by peacekeepers since these are not private law matters, and it would enable the United Nations to live up to its international legal obligations as well as its commitment to the rule of law, human rights, transparency, and accountability.

The second option is to accept the lawyers' view that all conceivable legal risks should be avoided, no matter how attenuated, speculative, and unlikely they might be. This option involves the rejection of legal responsibility even in cases in which the law and longstanding precedent would demand it. The result represents the rejection of accountability and the embrace not just of immunity, which is indeed vital, but also of impunity, which is supposed to be contrary to everything for which the Organization stands.

6. The consequences

Even informed and concerned people with whom I have spoken have asked me: "What difference does it make?" "Isn't this just a 'lawyers' thing'?" Does it have any real significance for the victims or anyone else, as long as monetary payments are made?"

The answer is that in both law and in practice, it actually makes a huge difference. These are some of the consequences of following OLA's advice:

1. The UN will never be able to formally accept factual responsibility in this case and the ambiguity about the causes of the outbreak will remain unresolved.
2. Instead of statements accepting that the UN was responsible, there will be a stream of euphemisms and platitudes formulated and approved by lawyers.
3. Instead of paying reparations, all payments will be on an *ex gratia* basis, which would reasonably be viewed by many as simply an act of charity.
4. All of the evidence pointing to the indispensable cathartic role played by an appropriate apology as well as recognition of responsibility for suffering, and all of the international law norms about reparations and assurances of non-recurrence, are mocked.
5. In the absence of accountability there is no incentive for UN practices to change. It was hardly surprising that an Internal Oversight report revealed that, as late as 2014, MINUSTAH forces in Haiti were still discharging their waste into public waterways.

6. When the overriding concern of an international organization is avoiding responsibility and controlling potential damage to its own reputation, the Haiti case shows what happens. Attention is distracted from the actual cause of the epidemic, appropriate action is delayed, attention is focused elsewhere, and the peacekeepers are slow to draw the essential lessons.²

7. The UN does nothing to salvage its reputation which was definitively tarnished by its clear responsibility for cholera, combined with its interminable and adamant denials of responsibility. This inexorably causes grave damage to its reputation among the very people whom it is supposed to be assisting.

8. The position taken in this case will haunt all future cases in which the UN might be involved. Instead of providing for a mechanism capable of resolving disputes quickly and consistently with the rule of law, OLA's approach condemns any future comparable claims to go through the long-drawn out process of public demands, shaming of the UN, and perhaps an eventual settlement of the sort that the UN is now finally contemplating after six long years of agitation, litigation, congressional pressure, and internal agonizing.

7. Conclusion

In conclusion, two steps are required if the UN is to turn the Haiti debacle into a success story for all concerned and for its own work in the future. The first is to revisit the fundamentally flawed 2013 legal advice in light of the changed circumstances, and replace it with a procedure that enables such claims to be resolved in a way that totally protects the Organization's immunity, while avoiding the impunity that OLA seeks to enshrine for the foreseeable future.

The second is for Member States to back up their words of sympathy and concern for the victims of cholera in Haiti with generous contributions to the newly established Trust Fund.

* * *

ANNEX: Timeline of Special Procedures engagement on the issue of cholera in Haiti

On **21 February and 5 July 2013** OLA definitively rejected the claims of the victims as being unreceivable on the unexplained, and indeed inexplicable, grounds that they raised "policy or political matters" and could thus not be considered to be private law matters which would have required the UN to establish an appropriate mode of settlement. It also peremptorily refused a request to meet representatives of the victims or explore alternative approaches.

On **25 September 2014** the Special Procedures mandate-holders responsible for (i) Haiti, (ii) water and sanitation, (iii) health, and (iv) housing, expressed deep concern at the way in which the UN had handled the claims.

On **25 November 2014**, Assistant-Secretary-General Medrano sent a lengthy response which provided some more detail on the legal argument being invoked to justify rejecting the claims.

² See the compelling and rigorous account in Ralph R. Frerichs, *Deadly River: Cholera and Cover-Up in Post-Earthquake Haiti* (Cornell University Press, 2016)

On **23 October 2015**, the four original mandate-holders, joined by the Special Rapporteur on extreme poverty, responded expressing particular concern at the denial of the victims' right to an effective remedy and suggesting that informal consultations might be held.

On **15 January 2016** the Secretary-General met with the Special Rapporteur on extreme poverty. Two issues were discussed, one of which was the importance of UN engagement in response to the cholera communication.

On **26 February 2016** the Deputy Secretary-General wrote to the five mandate-holders and welcomed their offer "to engage further on this matter and discuss what further steps the United Nations could take, in keeping with its mandates, to assist the victims of cholera and their communities."

On **15 April 2016** the Special Rapporteur on extreme poverty held a confidential internal meeting with senior UN officials to outline the concerns of the five mandate-holders and to suggest constructive ways for dealing with the issue.

On **8 June 2016** the Special Rapporteur on extreme poverty informed the Assistant Secretary-General for Human Rights that he had agreed with his colleagues that his report to the General Assembly in October 2016 would focus in detail on these issues.

On **8 August 2016**, the Special Rapporteur's draft report was transmitted to the Secretary-General and other senior officials. Comments were sought by the deadline of 19 August 2016.

On **18 August 2016** *The New York Times* reported the key details of the draft report and quoted a spokesman for the Secretary-General as saying in response that "over the past year, the U.N. has become convinced that it needs to do much more regarding its own involvement in the initial outbreak and the suffering of those affected by cholera," and announcing that a "new response will be presented."³ The following day, the full draft report was made available on the website of *The New York Times*.⁴

On **19 August 2016**, the Deputy Secretary-General responded to the Special Rapporteur on extreme poverty and indicated that the Secretary-General "is developing a new approach, which, I believe, will address many of the concerns raised in your report."

On **5 October 2016**, the Special Rapporteur on extreme poverty wrote to the Deputy Secretary-General requesting the release of the UN's legal advice on the matter.

On **12 October 2016**, the Deputy Secretary-General replied that "the legal position of the United Nations does not constrain" the new approach. That approach is not "an act of charity," but "is based on a sense of responsibility to assist the people of Haiti and on an acknowledgement of the

³ Jonathan M. Katz, 'U.N. Admits Role in Cholera Epidemic in Haiti,' *New York Times*, 18 August 2016, available at http://www.nytimes.com/2016/08/18/world/americas/united-nations-haiti-cholera.html?_r=0

⁴ Jonathan M. Katz, 'The U.N.'s Cholera Admission and What Comes Next,' *New York Times*, 19 August 2016, available at <http://www.nytimes.com/2016/08/19/magazine/the-uns-cholera-admission-and-what-comes-next.html>

Organization's own involvement in the past." The letters of 5 and 12 October 2016 are available at <http://www.ohchr.org/EN/Issues/Poverty/Pages/SRExtremePovertyIndex.aspx>

DOCUMENT 11

REMARKS TO THE GENERAL ASSEMBLY ON A NEW APPROACH TO ADDRESS CHOLERA IN HAITI

Secretary-General Ban Ki-moon
New York, 1 December 2016

[English version] <https://www.un.org/sg/en/content/sg/speeches/2016-12-01/remarks-general-assembly-new-approach-address-cholera-haiti>

Thank you for coming together today in a spirit of solidarity, respect and support for the people of Haiti.

Let me begin by congratulating the people of Haiti for the peaceful conduct of the recent elections, the preliminary results of which were announced earlier this week.

I urge all candidates and their supporters to settle any disagreements through the appropriate legal channels. I commend all Haitians on this important milestone for their country's stability and democracy.

The Haitian people have faced enormous hardships and obstacles over the years. Endemic poverty. Political instability. And, of course, the devastating earthquake of 2010.

The cholera epidemic that soon followed added a deeper layer of tragedy and suffering. Most recently this was compounded by the horrendous hurricane that put the country under new serious strains.

Over the last six years, cholera has afflicted nearly 800,000 people and claimed the lives of more than 9,000 Haitians.

I travelled to Haiti to meet affected families. It was one of the most difficult journeys I have made as Secretary-General. I heard stories of families who suffered, breadwinners who were lost, daughters and sons who are gone forever.

As a father and grandfather, I felt tremendous heartache at the pain so many families have had to endure. I will never forget it.

There are no easy answers to our challenges in Haiti. There are no perfect solutions. But that must not deter us from doing our utmost to respond.

In my address to the General Assembly on September 20, I expressed tremendous regret and sorrow at the profound suffering of Haitians affected by cholera.

I said that it was time for a new UN approach to ease the plight of the Haitian people and to better their lives.

I have come before you today to present the elements of that new approach and seek your support.

If you will permit me, I would like to deliver the following lines in French and then English.

But I want to begin with a message directly to the Haitian people, and so I will begin in Creole.

(Creole)

Jodi a map di pèp ayisyen : Onè. Respè

Nou pran gwo lapenn

Poutet kantite moun ki pèdi lavi yo nan kolera,

Ak kantite soufrans maladi a mennen nan peyi Dayiti.

Nan non Nasyon Zini, mwen vle di aklè :

nap mandé pèp ayisyen padon .

Nou pat fè ase lè maladi kolera a rive, epi lè li blayi

nan péyi a.

Nou regrèt anpil.

(French)

I will repeat in French :

Laissez-moi, à ce stade, m'adresser directement au peuple haïtien:

Les Nations unies regrettent profondément les pertes en vies humaines et les souffrances causées par l'épidémie de choléra.

Au nom des Nations unies, je veux vous le dire très clairement: nous nous excusons auprès du peuple haïtien.

Nous n'avons tout simplement pas fait assez concernant l'épidémie de choléra et sa propagation en Haïti.

Nous sommes profondément désolés pour notre rôle.

The United Nations deeply regrets the loss of life and suffering caused by the cholera outbreak in Haiti.

On behalf of the United Nations, I want to say very clearly: we apologise to the Haitian people.

We simply did not do enough with regard to the cholera outbreak and its spread in Haiti.

We are profoundly sorry for our role.

This has cast a shadow upon the relationship between the United Nations and the people of Haiti. It is a blemish on the reputation of UN peacekeeping and the Organization world-wide.

For the sake of the Haitian people, but also for the sake of the United Nations itself, we have a moral responsibility to act. And we have a collective responsibility to deliver.

In the wake of the cholera outbreak, the United Nations family provided emergency health and humanitarian assistance to reduce the incidence of the disease.

Over the years, we mobilized resources and took concrete action.

Thanks to concerted international and Haitian efforts, the overall incidence of the disease has been reduced by approximately 90 per cent since its peak in 2011.

But funding to sustain these efforts has proven difficult to secure.

As a result, cholera continues to take a heavy toll on the Haitian people. Today, Haiti remains home to the highest number of cholera cases in the world.

Already at the beginning of this year, we were seeing a rise in cases. Then in October, Hurricane Matthew multiplied the challenge. I personally went to Haiti and saw the suffering and utter devastation.

The number of people suspected with cholera tripled as a result of the hurricane. Thankfully, that number is going down now as a result of determined action.

Our new approach to Haiti and cholera is founded on and follows two tracks. The assistance requested amounts to around \$400 million over two years divided between Track One and Track Two.

Track One consists of a substantially intensified effort to respond to, and reduce, the incidence of cholera in Haiti.

Haitians clearly have told us that eliminating cholera must be priority number one.

We would like to see improvements in people's access to care and treatment when sick, while also addressing the longer-term issues of water, sanitation and health systems.

Work on Track One is [well] under way.

The number of rapid response teams has increased from 32 in April to 88 today. When there are reports of new cases, these teams work to provide immediate care within 48 hours and prevent further transmission.

In addition, vaccinations against cholera are being provided to people in vulnerable areas.

Last month, PAHO/WHO and UNICEF helped launch a massive vaccination campaign that reached some 729,000 people living in areas most affected by Hurricane Matthew.

In total, more than 1.2 million people will soon have been vaccinated – with further vaccination campaigns on the way.

At the same time, we are intensifying support to the Haitian Government in building sound water, sanitation and health systems. This is the best long-term defence against cholera and other water-borne diseases.

The World Bank, the Inter-American Development Bank, the United Nations and others are working to expand access to water and sanitation for all Haitians over a 10- to 15-year horizon.

The World Bank has focused on small towns and rural areas most affected by cholera, committing \$50 million for water and sanitation projects in 2015-2016 and a further \$20 million next year.

The Inter-American Development Bank has committed over \$95 million for water and sanitation in Haiti over the past six years – with an additional \$62 million planned for next year.

I want to warmly thank donors who have provided support for Track One through multiple channels. We hope that further contributions will become available soon.

Several Member States have expressed serious and imminent interest in contributing to our Trust Fund.

This effort also will contribute to advancing the Sustainable Development Agenda, in particular SDG 6 to ensure clean water and sanitation for all.

I keenly recognize the financial pressures that you face – indeed, that we all face.

I understand the reaction of being overwhelmed by what seems to be a never-ending list of pressing humanitarian needs around the world.

In Haiti's case, the hurricane has brought added suffering and understandably diverted resources.

Yet, I want to stress that on the scale of global humanitarian and development needs, limited sums are required to eliminate cholera in Haiti.

This mission is realistic and doable. Cholera is a treatable and preventable disease. It can be controlled and eliminated.

What is standing in the way is adequate resources and means of delivery.

We have accomplished much. It would be tragic for our efforts to be derailed due to insufficient funding. It would be even worse to stand by and watch as more lives are lost and more families suffer.

A fully resourced cholera response for 2016-2018 to support the Government's mid-term plan would be a great step forward and ensure that our efforts to end the disease are not left to ebb and flow.

We cannot turn away from the task until the job is done. I count on all of you to see this effort through – to continue and increase your support until cholera is defeated.

In addition to the forward-looking steps under Track One, our new approach includes a second track – Track 2 - that focuses specifically on those Haitians most directly affected by cholera, their families and communities.

We have been consulting with the Government of Haiti on both tracks and will be discussing all aspects of implementation with them. I am pleased that the Permanent Representative of Haiti will make the first statement from the floor today.

Track Two is a concrete expression of the regret of our Organization for the suffering so many Haitians have endured.

On that basis, we propose to take a community approach that would provide a package of material assistance and support to those most severely impacted by cholera.

The support would be based on priorities established in consultation with communities, victims and their families.

These consultations will continue into 2017 and can take place in earnest once the electoral process in Haiti is complete.

This support could take many forms, including projects to alleviate the impacts of cholera and strengthen capacity to address the conditions that increase cholera risk. It could also include projects reflecting community needs not directly related to cholera, such as education grants, micro-finance or other initiatives.

These community projects and initiatives would be complementary and, to the extent possible, consistent with work under Track One.

Some have urged that the package also include an individual component, such as the payment of money to the families of those who died of cholera.

This approach would require identification of the deceased individuals and their family members. It would also require the certainty of sufficient funding to provide a meaningful fixed amount per cholera death.

We need to do further on-the-ground consultations, while acknowledging the difficulties involved. Additional evaluation is needed on whether and how the limitations of information on deaths from cholera – including the identities of the victims -- can be addressed and on the challenges and costs associated with that effort.

Whatever the eventual design of the package, a familiar obstacle once again stands in the way: adequate funding.

We have clearly said that given humanitarian and development needs, funding for Track One needs to be prioritized. And it would be wrong for the Track Two effort to compete with voluntary funding for Track One.

We strongly encourage voluntary funding to both Tracks from Member States, which can be channelled through the newly established UN Haiti Cholera Response Multi-Partner Trust Fund.

However, this is premised on the assumption that we will receive the required resources for Track Two through voluntary funding. Should such funding not materialize, other innovative, multi-funded solutions may need to be pursued.

At a time when so many of UN values and principles are under threat, the Haiti cholera challenge represents an important test.

It is a test of our commitment to the most vulnerable.

It is a test of our long-standing relationship with the Haitian people.

It is a test of our ability to demonstrate compassion while preserving our ability to do good in many other places around the world.

It is a test of our collective responsibility for the crucial endeavour of peacekeeping.

I will not pretend that this new approach is without risks or difficulties.

Eliminating cholera from Haiti, and living up to our moral responsibility to those who have been most directly affected, will require the full commitment of the international community and, crucially, the resources necessary.

With their history of suffering and hardships, the people of Haiti deserve this tangible expression of our solidarity.

The United Nations should seize this opportunity to address a tragedy that also has damaged our reputation and global mission. That criticism will persist unless we do what is right for those affected.

In short, UN action requires Member State action.

Without your political will and financial support, we have only good intentions and words.

Words are powerful—yes. Words are necessary-- yes. But words cannot replace action and material support.

So many people have suffered grievously. The United Nations and its Member States have the power to recognize and respond to that suffering.

Let us step up in solidarity to our moral duty and do the right thing for the Haitian people and our United Nations.

Thank you. Merci beaucoup. Merci anpil.