EANKGEOM

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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DELAMA GEORGES, individually and on behalf of the Estate of Desilus Georges and all others similarly situated, et al.,

Plaintiffs,

v. 13 CV 7146 (JPO)

UNITED NATIONS, et al.,

Defendants.

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New York, N.Y.
October 23, 2014
10:20 a.m.

Before:

HON. J. PAUL OETKEN,

District Judge

EANKGEOM

APPEARANCES

INSTITUTE FOR JUSTICE & DEMOCRACY IN HAITI
Attorneys for Plaintiffs
BY: BEATRICE LISA YOUNG LINDSTROM
BRIAN EUGENE CONCANNON, JR.
-AND-
KURZBAN KURZBAN WEINGER TEZELI & PRATT PA
BY: IRA JAY KURZBAN

PREET BHARARA
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Attorney for Amici Curiae Haitian Lawyers Association and the Haitian Women of Miami
BY: KERTCH J. CONZE

MUNEER I. AHMAD
Attorney for Amici Curiae International Law Scholars and Practitioners

UNITED STATES DEPARTMENT OF STATE
BY: HENRY A. AZAR, JR.

ALSO PRESENT:

MARK A. SIMONOFF, United States Mission to the United Nations

THE DEPUTY CLERK: Your Honor, this is in the matter of Delama Georges et al. versus United Nations et al.

Starting with the plaintiffs' counsel, on my left, can I have all parties state their appearance for the record and who they're representing today. Thank you.

MS. LINDSTROM: Good morning, your Honor. Beatrice Lindstrom with the Institute for Justice & Democracy in Haiti, representing plaintiffs.

THE COURT: Good morning.

MR. CONCANNON: Good morning, your Honor. Brian Concannon, also with the Institute for Justice & Democracy in Haiti and also representing plaintiffs.

THE COURT: Good morning.

MR. KURZBAN: Good morning, your Honor. Ira Kurzban, of the law firm of Kurzban Kurzban Weinger Tezeli and Pratt, in Miami, Florida. I'm also representing the plaintiffs.

THE COURT: Good morning.

THE DEPUTY CLERK: Back here, please.

MS. IYER: Good morning, your Honor. Monica Iyer, I'm from Milan, Italy, representing the European Law Scholars amici.

MR. AHMAD: Good morning, your Honor. Muneer Ahmad from the Jerome N. Frank Legal Services Organization in Yale Law School representing the International Law Scholars and Practitioners amici curiae.

MR. CONZE: Good morning, your Honor. My name is Kertch Conze representing the Haitian Lawyers Association and the Haitian Women of Miami amici curiae.

THE COURT: Good morning.

MS. BLAIN: Good morning, your Honor. Ellen Blain from the U.S. Attorney's Office representing the United States.

THE COURT: Good morning.

MR. AZAR: Good morning. Henry Azar, Department of State, for the United States.

THE COURT: Good morning.

Good morning, everyone, and welcome. We are here for oral argument on the pending motions in this case. As you know, the complaint in the case was filed in October 2013, just a little over a year ago. Plaintiffs allege that the United Nations and entities affiliated with the United Nations caused a cholera epidemic, beginning in October of 2010, in Haiti, and they bring claims for negligence and related claims against the United Nations and associated entities and individuals of the United Nations. They have sought to serve those entities, the defendants.

The United Nations defendants have resisted service, and we are here for oral argument really on just the issue of whether this Court should deem service to have been made and the related issue of whether the action should be dismissed, as the United States Government has argued, on the ground of

United Nations immunity, that is, under the applicable legal governing authorities, whether the United Nations and the other defendants are immune both from service and from the lawsuit itself, the claims in the lawsuit. So we are here to address specifically those issues.

On October 17th, I indicated I would give plaintiffs and the United States 15 minutes each for argument. I don't have red and yellow lights like the Second Circuit does, so I'll just cut you off when you've reached your time, unless I don't want to. Then I've also allowed each of three groups of amici to speak for ten minutes each, first, the amici FANM and Haitian Women of Miami and the Haitian Lawyers Association, then a group of international law scholars and practitioners, and finally a group of European law scholars and practitioners. I've read all the papers, so you don't really have to repeat what's in the papers, but you're welcome to highlight any issues that you'd like to raise, and I'll question you as appropriate.

So, unless there are any preliminary matters -- oh, yes, there is one pro hac vice motion on behalf of Muneer Ahmad, and that application is granted.

MR. AHMAD: Thank you, your Honor.

THE COURT: So we will begin with the original movants, counsel for plaintiffs, Ms. Lindstrom?

MS. LINDSTROM: Thank you, your Honor. I think I will

take it from the podium.

THE COURT: OK.

MS. LINDSTROM: Good morning, your Honor.

This is a lawsuit that was filed by Haitians and Haitian Americans who are seeking remedies for the personal injury and death that they have suffered in the worst cholera epidemic of modern time. Now, it is not seriously disputed that the U.N. is responsible for causing this devastating epidemic. In fact, the U.N.'s own independent experts have concluded that cholera reached Haiti's largest river system through the discharge of untreated sewage from a U.N. base, in a manner that was nothing short of reckless.

There is also no dispute that the U.N. is legally obligated to provide a mechanism for victims to pursue their claims out of court.

THE COURT: When you say it's not disputed, let me ask: I gather the U.N. is obviously not appearing in this lawsuit, at this point at least. Is there any official acknowledgment that the U.N. has made? I know in your papers there are some quotes of individuals like Envoy Bill Clinton and others, but there any official acknowledgment as to cause?

MS. LINDSTROM: Well, your Honor, the Secretary-General traveled to Haiti in July of this year and acknowledged that the United Nations has a moral responsibility for the cholera epidemic. And there has not been an official

acknowledgment as such where the U.N. has released an official statement, but there certainly is an extensive amount of scientific evidence that establishes that the U.N. is in fact responsible. And as far as I'm aware, the government has not taken a position on that.

With regards to the U.S. legal obligations, that is something that has repeatedly been affirmed in a number of official U.N. documents, including in The Convention on the Privileges and Immunities itself as well as the status Of forces agreement that is in force between the United Nations and the government of Haiti and that governs the U.N.'s operations in Haiti.

THE COURT: Let me ask you: To sort of get to the bottom of it, having read all the papers, your position in a sense, you have a steep hill to climb, specifically because of Second Circuit precedent. I'm not the Second Circuit; I am bound by Second Circuit precedent. Particularly, the Brzak case is a case where the Second Circuit held, in fairly clear language, that the fact that there's not an adequate settlement or claim procedure that the U.N. has set up to follow through with does not establish an implied waiver and does not in any other sense trump the language of Section 2, providing for complete immunity for the United Nations unless there is an express waiver of that immunity.

So maybe you could address the issue of whether I'm

not controlled by Brzak to acknowledge that immunity.

MS. LINDSTROM: Yes, your Honor. We believe that this Court is not controlled by Brzak because Brzak was specifically about the question of whether the United Nations had waived their immunity by providing allegedly inadequate provisions of settlement.

There are a couple of reasons why that case is not controlling here. First of all, plaintiffs have not alleged waiver here. We are raising the fact that the U.N. has breached Section 29, which is the provision that provides that the U.N. must provide for alternative modes of settlement. And that is a very separate legal question from whether the United Nations has waived its immunity under Section 2.

The fact that Section 2 is subject to an exception of waiver has no bearing on this very separate legal question. This is a question of first impression that has never before been before the courts of the United States.

THE COURT: Well, didn't Judge Castel's decision in Sadikoglu essentially address that issue? Or do you think that it was just doing the same thing that Brzak did?

MS. LINDSTROM: Well, in that decision as well, Section 29, the breach of Section 29 was not the legal issue at stake there. The focus of that case was whether the International Organizations Immunities Act was applicable to the United Nations. And the court in that case found that it

was in fact that the Convention on the Privileges and Immunities that should apply to determine whether the United Nations has immunity in any given case.

So, again, we don't believe that that case applies directly to the situation here.

THE COURT: So your argument is that Burzak, despite its broad language, didn't address this question of if there's a breach of this other provision and that goes so clearly to the heart of the contract, treating it as if it's essentially a contract, that it undermines any waiver before you even get to the question of implied waiver, inferring a waiver; it just gets rid of the immunity because they breached this other provision?

MS. LINDSTROM: Yes, that's exactly right. And we argue that Section 29 should be read as a condition precedent to Section 2 under the Convention on the Privileges and Immunities. And there are three reasons for that:

First, in accordance with the rules of treaty interpretation, one must look at the language of the treaty as a whole, which includes Section 29. And, in fact, when one looks at Section 29, Section 29(b) has a textual link that directly ties Section 29 to immunity under Section 2, namely, where it says that the U.N. shall make provisions for appropriate modes of settlement of disputes involving any official of the U.N. who by reason of his official position

enjoys immunity. By using that language, it makes it clear that the obligation to settle claims and U.N. immunity are two sides of the same coin and that the two must be read together.

Now, that relationship is further reiterated in the status of forces agreement. In paragraph 55, where it says, "The third-party disputes over" -- and I quote -- "which the courts of Haiti do not have jurisdiction because of any provision of the present agreement shall be settled by a Standing Claims Commission."

So, again, the enjoyment of immunity and the obligation to provide alternative modes of settlement are envisioned together in the convention, which is a balanced framework that, on the one hand, grants broad immunities to the United Nations, and for good reason, but, on the other hand, also carefully safeguards victims' ability to seek remedy somewhere.

THE COURT: The language in Section 2, though, is very expansive and fairly clear. It says, "The United Nations shall enjoy immunity from every form of legal process except," and then there's only one exception, "except insofar as in any particular case it has expressly waived its immunity." The question I guess I have is: If Section 29 were meant to be the other side of a coin and a connected condition, given the fact of immunity, wouldn't it have been clearer, wouldn't that have been closer in the convention or wouldn't there have been some

more explicit connection between them?

MS. LINDSTROM: Well, we believe that it is clear because of that language in Section 29. But when one looks to the drafting history of the Convention on the Privileges and Immunities, that relationship becomes even more crystallized. In the study of Privileges and Immunities, which is the foundational document that the drafting committee of the Convention on the Privileges and Immunities prepared to lay the groundwork for the convention, the drafters of the convention came together and specifically noted that the U.N. should provide for appropriate modes of settlement or alternative dispute resolution if the United Nations does not want to appear before the courts.

So the drafters understood that it was a necessary precondition to the enjoyment of immunity that the United Nations in fact ensure that anyone who's harmed by the law claims, specifically tort claims and contract claims, have somewhere they can turn where they can present their case, where they can present their evidence, and then be able to seek a remedy.

In fact, that is also further reiterated by the U.N.'s own practice over the past 70 years of the United Nations' history. The U.N. has time after time again confirmed that they have this obligation under Section 29. And, in fact, in appearing before this very court, in the case of Brzak when it

was before the Southern District, the U.N. presented that Section 29 is crucial to eliminate the prospect of U.N. impunity that would attach if the U.N. could enjoy immunity without also complying with Section 29.

THE COURT: Well, how do you square the position they've taken with their acts? You point out, one of the amicus briefs points out, that in 32 different countries where the U.N. has had peacekeeping or other personnel, that there's never been a settlement claims procedure established. Does that mean that they've just been violating it for all these years?

MS. LINDSTROM: Your Honor, I think there are a couple of reasons why there has not been a Standing Claims Commission, at least going on the U.N.'s professional documents, where the U.N. Secretary-General previously, in the 1990s, undertook a study of the Standing Claims Commission and specifically speculated that the reason why there hasn't been a Standing Claims Commission is because victims have not requested one.

On the other hand, though, the U.N. does have a very long history of settling claims under Section 29 and has reported that generally what happens when there is a claim of personal injury or illness or death that arises specifically in the peacekeeping context, that what the U.N. does there is that they will offer a settlement, they will try to reach an amicable settlement with the individuals who have been injured,

and if they can't reach an amicable settlement, will then refer the claims to arbitration.

Now, that stands in very extreme contrast to what the victims of cholera in Haiti have experienced, trying to go through the process, trying to follow the procedures set out in Section 29. Back in 2011, in November of 2011, around 5,000 families filed claims directly with the U.N. seeking specifically to invoke their rights under Section 29. The U.N. didn't respond to that for 15 months. And finally, when they did, provided two sentences that said that these claims are not receivable because they involve a review of policy and politics.

THE COURT: Have there been similar responses from the U.N. in the past or is that new language?

MS. LINDSTROM: As far as we know, your Honor, that is new language and this is the first time that that has been used. In fact, the former U.N. legal counsel has also looked at this language and recalled, over the past year of serving as legal counsel for the United Nations, that that language had never before been used.

THE COURT: Can I ask you another question, which is: Under Article XXX of the General Convention, there's a provision that all disputes arising out of interpretation of this convention shall be referred to the ICJ. I guess my question is, is there a party that could and should bring this

to the ICJ? Perhaps if it can only be member states, perhaps it can be the United States or perhaps Haiti? Does that provision act as another sort of preemption of a court addressing this issue because, to the extent there's an interpretation question such as the condition-precedent argument you make, shouldn't that be decided by the ICJ?

MS. LINDSTROM: We do not believe that acts as a preemption. It's certainly true that under Section 30 the United States Government or the Haitian Government or any member state of the United Nations has the ability to invoke a procedure to raise any dispute that arises under the interpretation of the Convention on the Privileges and Immunities. But that clause stands separately from Section 29. And Section 29 is specifically targeted at individuals such as our clients who have suffered personal injury, who are alleging private law claims and who've brought those to the United Nations.

I think that's further reiterated in the status of forces agreement, which also has two separate clauses. In Articles LIV and LV it provides that third parties should be able to submit claims that will be heard by the Standing Claims Commission. So paragraphs LIV and LV in the Standing Claims Commission, all of that is targeted directly at third-party individuals.

Then there's a separate provision in paragraph 57 of

the status of forces agreement which provides for arbitration if the Haitian government has a disagreement with the United Nations. In the case of Immanuel versus UNMIH -- and UNMIH being the predecessor to MINUSTAH in Haiti -- the First Circuit found that specifically this language in paragraphs LIV and LV, referring to third parties, does establish that that clause specifically applies to individuals and that there is no question that it does.

So, because those are the clauses that are in question here, those are the clauses that we believe have been breached, the fact that there's also a separate clause providing for dispute resolution for governments has no bearing on this case.

THE COURT: OK. I believe your time has expired. Thank you very much, Ms. Lindstrom.

MS. LINDSTROM: Thank you, your Honor.

THE COURT: I will now hear from counsel for the United States Government, Ms. Blain.

MS. BLAIN: Thank you, your Honor. Your Honor, good morning.

THE COURT: Good morning.

MS. BLAIN: Again, my name is Ellen Blain. I'm Assistant U.S. Attorney here in the Southern District of New York, and I represent the United States, which is not a party to this action.

The United States is appearing today consistent with

its obligations as a host nation to the United Nations and because it is a party to the treaties governing the affairs and immunities of the United Nations. The question before the Court today is a narrow one, and that is, does Article II of the U.N. Convention mean what it unambiguously says, and that is that the U.N. "shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity"? And as the Second Circuit has this Court has pointed out, as well as every other court who have examined this issue, they have all held that the answer is, yes, the U.N. is absolutely immune absent express waiver.

THE COURT: But in any of the other cases really addressing this issue -- I realize that the argument you focused on in your brief is the implied waiver argument, and you can't read the violation of Section 29 to impliedly waive the Section 2 immunity. However, it seems as though at least one of the arguments plaintiffs are making is a somewhat different take on that. I'm not sure that the Second Circuit has specifically dealt with that issue, which is something like a material breach argument, that is, the breach of or the alleged breach of Section 29 goes so clearly to the heart of the contract, that it essentially prevents immunity from ever kicking in, the provisions are both so important and so connected, that the immunity just goes away. So it's sort of a structural argument based on contract principles, I guess.

MS. BLAIN: Right, your Honor. And the whether you style the question as one of waiver or one of condition-precedent, the analysis is exactly the same, and that is, is Section 2 and Section 29 linked. And the courts have held that there is no linkage between Section 29 and Section 2 such that a failure to adhere partly or even completely to Section 29 at all eviscerates the immunities in Section 2.

So even though the Burzak Second Circuit case does not analyze it under the condition-precedent rubric, the analysis is exactly the same for this Court. And, in fact, in Bisson, as the Court acknowledged, Judge Crotty examined this exact issue and found that a complete failure to adhere to one portion of the convention in no way eviscerates the immunities provided to the U.N. in Section 2.

Also, in the Sadikoglu -- and I'm sure I'm pronouncing that incorrectly -- a case in the Southern District in 2011 before Judge Castel, the Court wrote, "Nothing in Article XXIX or in any other part of the Convention refers to or limits the U.N.'s absolute grant of immunity as defined in Article II, expressly or otherwise."

It continues: "Furthermore, any purported failure of the U.N. to submit to arbitration or settlement proceedings does not constitute a waiver of its immunity under Section 2." That is directly on point here, regardless whether you style the analysis as one of waiver or condition-precedent.

THE COURT: But think about the argument as -- I'm not sure that the specific argument was presented -- it's just sort of a contract argument, let's treat this, as courts sometimes do, as a contract even though it's a convention. And in a contract, if one provision says, I'm going to sell you a cow and the other provision says, you will pay me a hundred dollars, but there's no explicit language connecting that, if the person does not give you the hundred dollars, you don't have to give them the cow because there's been a material breach and there are two important things.

Why isn't this like that, in that they are obviously substantively connected, but why do you need some statutory connection or condition precedent in order to see them as sufficiently connected such that it undermines the immunity? The immunity never kicks in because they have completely violated, not just done a bad job as in Burzak, but they have completed violated this obligation to create some sort of settlement?

MS. BLAIN: Well, your Honor, in that connection, the Second Circuit found that treaties are construed more liberally that private agreements and contracts. That's Tachiona case, Second Circuit 2004.

So the Second Circuit directs courts to look at, in the first instance, the treaty language and, secondly, the intent of the treaty drafters, and the context in which the

treaty was drafted.

Here, if the Court looks at the plain language of the treaty, there is absolutely nothing in Section 29 that at all refers to the immunities in Section 2 or anything in Section 2 that eviscerates the U.N.'s immunity, absent one thing, as this Court noted, express waiver.

So, as a separate matter, I should say, the United States is not taking a position today on whether or not the U.N. has breached Section 29 or whether or not that breach is material to the treaty, because even if the U.N. has completely breached a material portion of the treaty, that breach is entirely irrelevant to the question of whether that breach impacts Section 2.

THE COURT: As to the two-sentence rejection of the claims and the citing of the reason being these are not receivable because this involves political and policy matters, do you have a view on whether that is consistent with Section 29?

MS. BLAIN: Again, the United States is not taking a position on whether or not the U.N. has complied with its obligations under Section 29. And Section 29 is an acknowledgment on some level that the U.N. shall provide methods of dispute resolution, but it is not the same thing as a direct connection to eviscerating its immunity should it not uphold those obligations.

THE COURT: Now, Section 29 does say "shall." It says that the United Nations "shall make provisions or 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."

Why isn't the view that -- you're reading out the word "shall"? Why isn't that making it "may"?

MS. BLAIN: We are not asking the Court to read out the word "shall." An obligation, again, is distinct from eviscerating Section 2. So the U.N. may indeed have an obligation to provide these means of settlement, but its failure to do so, assuming it has completely failed to do so in this case, Section 29 does not say that that failure turns back to Section 2 and adds another condition of eviscerating its immunity other than express waiver. There's just no linkage.

THE COURT: If there is a failure, is there any court or body that has the power and ability to enforce Section 29?

MS. BLAIN: Yes, your Honor. And as this Court was previously asking, the proper fora for a dispute between the treaty's parties belong in the International Court of Justice.

THE COURT: Who could bring that claim here?

MS. BLAIN: If there is a breach of this convention, the only remedy would be to go to the ICJ, and the people who could bring in that cause of action, that claim, would be the parties to the convention.

THE COURT: So Haiti?

MS. BLAIN: So Haiti could bring it, the United States, the U.N., any of the other multiple parties to this multinational agreement that's been in place since 1945. And because no party has done that, plaintiffs here cannot pursue these claims in this court, in a federal district court, in the United States. The treaty simply does not provide for that mechanism of redress, but it does provide for a mechanism of redress for a breach. It's simply that those remedies and that mechanism belongs to a separate set of parties than a private set of plaintiffs here.

THE COURT: What's your response to -- first of all, do you believe the U.S. Government would have standing to bring this case in the ICJ?

MS. BLAIN: Your Honor, I don't know that I'm authorized to opine on that question today, but certainly under the terms of the convention, the treaty partners do have the ability to bring a breach of the treaty to the ICJ.

THE COURT: What's your response to plaintiffs' argument that the drafting history requires, assuming it were in contract world, that if there's ambiguity in the contract, you look at the drafting history, sort of like legislative history, what's your view that that drafting history essentially calls for viewing Section 29 as a condition precedent or some connected provision?

MS. BLAIN: So, your Honor, there is nothing in the drafting history that indicates the drafters at all intended the U.N.'s immunity to be contingent upon anything other than express waiver. So in Exhibit 2, which plaintiffs' counsel just pointed to -- Exhibit 2 is attached to their memorandum docket 33 -- they point to two sentence. One is that privileges should not be asked for which are not necessary, in effect. But that sentence refers to the privileges belonging to, quote, specialized agencies. The specialized agencies are governed under entirely separate conventions under the U.N., a government with a specialized agency convention, which has no relation to this case today.

THE COURT: Do they have general immunity, like the U.N.?

MS. BLAIN: They do, they do.

The second sentence they point to is, if the U.N. is, quote, "not prepared to go before the courts, it shall provide an alternate means of redress." However, that sentence does not suggest that the U.N.'s immunity is contingent upon providing such a mechanism; and, furthermore, nothing in that sentence provides that -- when it says "should be prepared to go before the courts," "should" is different than "shall," of course.

But, secondly, there is no precondition mentioned in the drafting history here. If you look at Exhibit 9,

Exhibit 10, and Exhibit 11, also attached to the plaintiffs' brief, there is nowhere an indication that there is any precondition upon the U.N.'s immunity in Article II?

THE COURT: But there is one thing that you acknowledge in your brief, which was very well written, by the way --

MS. BLAIN: OK.

THE COURT: -- both of them: In one of them, your July letter, you said, "If anything, the drafting history reflects a bargain between the U.N. and its member states in which in exchange for Section 2, which establishes the U.N.'s absolute immunity, the U.N. in Section 29 agreed to provide for dispute resolution mechanisms for third-party claims." And if it agreed to provide that, isn't plaintiffs' argument here simply they didn't provide it so the bargain has been breached?

MS. BLAIN: Well, whether the bargain has been breached is a separate question of whether the breach of that bargain, again, affects the U.N.'s immunity. And there is nothing in the treaty's language and in the drafting histories that at all reflects this linkage between a failure to provide these means for redress for private parties and the U.N.'s immunity in Section 2.

So a bargain is simply not the same thing as an express intention which the Court will require for a treaty drafters, in interpreting treaties, to show that the treaty

drafters intended the U.N.'s immunity to be entirely contingent upon a failure to adhere to this.

THE COURT: So the U.N. charter does say that immunity is provided for the U.N. for actions necessary for the fulfillment of its purpose. Don't you read there something less than complete immunity in all situations?

MS. BLAIN: Your Honor, no, because Section 2 again has absolutely no conditional language absent one thing, which is express waiver, and that is really the only question before the Court today -- whether or not there has been express waiver here, which, of course, there hasn't.

But, secondly, if that is a material or germane portion of the treaty, the parties who have the right to contest the interpretation of that language and how the U.N. has gone about upholding that language or its mission, are the signatory parties, in this case the multiple signatory parties to the U.N. Convention of 1945, not private parties in a federal court in the United States.

THE COURT: What do you think about the argument that Burzak, the Second Circuit decision that we have been talking about, can be distinguished on the ground that their internal dispute resolutions had failed or were not effective, whereas here there really has been no dispute resolution, at least on the obligation, there seems to be just a complete rejection of any dispute resolution or settlement procedure?

MS. BLAIN: Right, your Honor. I think that's a distinction without a difference because it was not germane, it doesn't appear, in the Second Circuit's reasoning that there was a partial compliance with Section 29 or a partial compliance with any portion of the conditions. Instead, it says or held, quote: "Although the plaintiffs argue that purported inadequacies with the U.N.'s internal dispute resolution mechanism indicated waiver of immunity, crediting this argument would leave the word "expressly" out of the U.N. Convention."

So the Second Circuit was evaluating Section 2 and holding the U.N.'s immunity, the evaluation of the U.N.'s immunity, entirely under Section 2. And because Section 2, the Second Circuit found, has only one exception to immunity, express waiver, the rest of the convention and whether or not the U.N. partly or fully or completely or sort of, kind of, maybe, complied with the convention was entirely irrelevant to Section 2's language.

THE COURT: OK. Thank you.

MS. BLAIN: Thank you.

THE COURT: We will now hear from counsel for the first amici.

MS. LINDSTROM: Your Honor, may I be allowed just one minute to respond?

THE COURT: Sure, yes.

MS. BLAIN: Your Honor, in that case, may I be allowed one minute for rebuttal as well?

THE COURT: Sure.

MS. BLAIN: Thank you.

MS. LINDSTROM: Thank you, your Honor.

Most of the points that were raised by the government have been addressed in great detail in our briefs, so I don't want to go on at length here. I want to raise quickly two points.

When counsel for the government states that one should really only look to Section 2 and that is the narrow question before that Court, that is in fact the narrow question that was before the courts in the many cases that have preceded this case but it is not the question that is before this Court here. And the government cited to the case of Bisson, and I think that that case provides a good example of the ways in which this case is different.

THE COURT: That is Judge Crotty's case?

MS. LINDSTROM: Yes, your Honor.

So that was Bisson versus United Nations. And in that case, the plaintiff was an employee of the United Nations who suffered personal injury during the course of her employment. She filed suit specifically alleging that after she had received compensation from the United Nations, that that compensation was inadequate and that the inadequacies of that

compensation constituted an implied waiver of Section 2 of the convention.

So that was the exact reason why the court in that case was looking specifically at the language of Section 2 in determining whether an implied waiver was in fact an exception to Section 2. But, again, that is a very different question from the one that is before this Court today, which is: What happens when the U.N. completely and entirely fails to comply with Section 29? What are the legal consequences of that?

And to respond quickly to the second point raised by the government, that this is entirely something that should be resolved by the International Court of Justice, there are a couple of reasons why that's not the case.

First of all, in this case, we are not suing for relief because of breach of Section 29, which is the context in which -- the standing doctrine that the government cites to may apply, but here it is the government that's trying to enforce the treaty to prevent plaintiffs from invoking their rights to come before this court to seek remedies for the torts that they have suffered, and these are torts that arise under common law, United States law.

Even if this Court were to find that it is not within this Court's power to hear this case because of breach, there is still the question of whether Section 29 constitutes the condition precedent. That is a separate question from whether

the United Nations has materially breached the convention. And the Court is correct to be looking at this as a contract.

The Supreme Court has in Sullivan versus Kidd has found that it is appropriate for the courts to be applying contract principles in interpreting a treaty. And that has been applied by this Court in the case of Bank of New York, which is cited in our brief.

So, for those reasons, your Honor, we would ask that the Court find that the U.N. does not have immunity in this case. In this very narrow case on these specific facts, this is a sui generis case, and we think that because the case is so unique, it merits a ruling that is also similarly narrow.

Similarly, we then ask that the Court affirm that service of process has indeed been made on the United Nations or, in the alternative, that plaintiffs be allowed to serve using alternative means.

Thank you, your Honor.

THE COURT: Thank you, Ms. Lindstrom.

Ms. Blain, you can either speak now or, if you'd like to do your rebuttal after the amici, you can do that; either way.

MS. BLAIN: That's fine; I'll reserve till that time. Thank you.

THE COURT: The first group of amici, Mr. Conze?

MR. CONZE: Yes, your Honor.

Good morning, your Honor. Kertch Conze, attorney presenting oral argument on the behalf of the Haitian Lawyers Association as well as the Haitian Women of Miami.

My argument today will be geared towards the service of process issue involving the defendants. Before I get to the legal arguments, I wanted the Court to understand that the two entities whom I'm speaking on behalf of today, the Haitian Lawyers and the Haitian Women of Miami, they have members of the community that they serve who have been directly affected by this particular outbreak and family members of Haiti who are also affected.

I wanted to pick up on the last point that the Court was asking the attorney for the U.S. Government concerning its own brief, its own letter to this Court, on July 7, 2013, referring to the issue of the connection or if there is a connection between Section 29 of the Convention and Section 2 and where the U.S. government's position is service of process cannot be properly perfected given the fact that the U.N. enjoys immunity.

And when the Court, correctly, mentions the particular paragraph from the U.S. government's letter where it says, and if I may quote -- and it's a double edged sword, if it works for them, it works the other way as well -- if anything, the drafting history reflects a bargain between the U.N. and its member states in which, in exchange for Section 2, which

establishes the U.N. absolute immunity, the U.N. in Section 29 agreed to provide for dispute resolution mechanism for third-party claims, what the U.S. Government wants you to believe is that you, the Court, should only read Section 2 in isolation; in other words, don't look at anything else regarding this particular agreement, just look at Section 2 in a vacuum.

When you are reading, either it's a text of a treaty or of a contract, we have to use logical reasoning, we have to read it in a way that actually makes sense. If the U.N. in essence, abided by Section 29 of the General Convention, we would not be here today, Judge. Section 29, the language in that particular section actually states that the U.N. has an obligation, it's mandatory -- like Court pointed out, it says "shall"; it did not say "might," it did not say "may," it did not say "should," it says "shall," just like as in Section 2 of the General Convention, it says the U.N. shall enjoy immunity. So if you were to look at the one section, just ask you to look at Section 2 but don't look at Section 29, it doesn't make sense; you have to put it in context.

And, again, another point that the Court mentioned, which is the contract principles that come into play in regard to this case, if the parties, like the government argued in its letter to the Court, if the parties bargained for certain things and in exchange for the immunity you have to give, even

though you can't connect it, in exchange for immunity in Section 2, you have to establish the mechanism over which people who have been affected can bring a cause of action and have the matters addressed.

If you breach -- if you have an obligation, it's a "shall," you breach that obligation, you cannot later on come to court and asking the Court and say, Judge, I have immunity. Well, you are the one who first breached the contract to begin with. If you breach the contract, then you go to court and say, Judge, I have immunity, it's coming to court with unclean hands.

Those are principles that this court as well as courts throughout this particular country abide by, and I don't think it is fair under the circumstances to allow the government to actually ask the Court to only look at the convention, the agreements, just referring simply to Section 2 and not applying Section 29.

Now, concerning the service of process regarding this particular case, your Honor, as you know -- I know time is of the essence, so I'm trying to maximize my time here -- over 700,000 people have been affected, over 8,000 of them died, lost their lives. There is one thing that remains absolutely constant in regard to this case: Those people who are infected, they did absolutely nothing wrong to deserve this. Some of them did not even know what cholera is until it got to

Haiti in 2010.

When those people contracted in cholera through the various quarters, they attempted to engage the United Nations through its bridge in Haiti, which is the MINUSTAH, saying, you are supposed establish from the status of force agreements, which is the SOFA cited in numerous occasions in briefs, based on SOFA, you are to establish a Standing Claims Commission to address this particular issue, we are asking you to establish this particular claims commission. They refused.

And the Court correctly pointed out that in 32 of the different agreements that the U.N. has engaged in, not even once have they established a mechanism to address those claims. It's not right.

THE COURT: Do you have a sense of why they haven't? In those other cases, I'm assuming sometimes there were settlements so they never got to the point of having to establish a claims commission, I don't know. But do you have a sense of why in this one there haven't been settlements?

MR. CONZE: If I may respond quickly, your Honor: I believe from the past, and as the attorney for the government mentioned, there has been many different cases that came before the Court in the U.S. where the U.S. Government has tried to impose the U.N. immunity, and it has worked on those occasions. So if you have a mechanism that works, why change it when it? It doesn't make sense.

So if they can go to any country, they don't have to establish a mechanism to address whatever dispute that the victims or the party may have, if you never have to do it, why start right now? It does not make sense. But in this particular case, we have over 700,000 people infected, over 8,000 died. We're talking about cholera. Cholera only killed close to 5,000. We have over 8,000 people who lost their lives.

Now, in regard to the service of process concerning the U.N., despite the efforts made by the victims in Haiti to try to get the U.N. to establish the Standing Claims Commission, they refused. Request was made from the lawyers to ask that a mediation be had. They refused. Requests were also made to ask that the U.N. have a meeting with OLA, which is the Office of Legal Affairs. They refused. So they shut down every avenue as it relates to Haiti. When you have exhausted all extrajudicial recourses, you have nothing less but to come to the court.

There is one point that I think is very important in regard to this case, Judge. You don't only have Haitian nationals coming before you saying, Judge, this is what happened to us, we tried to address this, and all our efforts have been unsuccessful, we have no other options but to come to you. We have victims from Florida, we have U.S. permanent residents who have been victimized through this, we have U.S.

citizens who have been victimized through this. So when you have shut down all avenues of redress, the only thing that we have left is the Court.

In regard to the service of process, I'm sure the Court is aware of the number of times that the plaintiffs have attempted and I believe, in my humble view, that they have effectively served the defendant, October 10 they tried to do personal service. I don't know if you been to the U.N. compound -- it's a U.N. building, I don't want to call it a compound, but it's impossible to get in there. The process server cannot get in on October 11th. October 10th, they couldn't get in there, October 11th could not get in there, but they were given a fax number. November 27, they tried to get in and could not get in there. They finally faxed over the documents on December 11th, 2013. Plaintiffs' attorney called and confirmed that the U.N. actually received the documents that were faxed and, again, on December 30th, 2013, the U.N. was served through certified mail.

Now, service of process by a defendant, as far as I'm concerned, Judge, has been deemed, under the circumstances as far as personal service, to be impracticable. And when you have service that becomes impracticable, there are cases right in this jurisdiction that talk about this issue. An alternative method of service is acceptable under such circumstances.

I know that we cited the Noble versus Crazetees.com case, in which the Court held that -- similar facts as in this case -- "Plaintiff failed to serve the U.N. through the ordinary methods set forth in the Federal Rules of Civil Procedure. Plaintiffs served the U.N. through mail and fax," which were the exact same methods that they told the process server in regard to this case that he had to use, which we did.

Aside from this, due process -- and I'm quoting the Philip Morris versus Veles case, which I believe is quite important -- I'm sure the Court is aware of that case as well -- held that due process requires that service must be reasonably calculated under all circumstances to apprise the interested parties of the pending of the action and afford them an opportunity to be heard and to raise any objections.

I have absolutely no doubt that the U.N., those particular means that were used, they received -- they are aware of this case, they received the lawsuit and they just using their immunity shield to say, Judge, we have not been effectively served.

Now, if this case were to involve, let's say, Jane Doe -- I know Jane Doe does not have immunities with the member states -- if we were to try to serve Jane Doe with all those efforts and we come before the Court and say, Judge, we used all those efforts and they are still saying that they have not been served, we will ask you to allow us to use alternative

method of service -- either through certified mail, email or fax to serve them -- because, in essence, that person will be dodging or avoiding service. And in the case of the U.N., it is no different; they are simply avoiding service.

What are we asking the Court to do? Simple: One, to either determine that the U.N. has been effectively served by the methods that were used or, if the Court is not satisfied with that, since it has been deemed that the service of process under those circumstances has been impracticable, to use alternative mode of service such as fax, email or certified mail to have the U.N. served.

Lastly, your Honor, to conclude, because I know I'm running out of my time, it is patently unfair for the U.N. to violate its own agreement and refusing to establish the Standing Claims Commission, refusing to meet with the victims' attorneys, refusing to mediate the matter, and continue to avoid service. We trust that the Court will preclude the avoidance of service by the defendant to continue and deem that the U.N. has been served effectively.

THE COURT: OK. Thank you, Mr. Conze.

MR. CONZE: Thank you.

THE COURT: We will now hear from Mr. Ahmad.

MR. AHMAD: Good morning, your Honor.

My name is Muneer Ahmad. I'm a clinical professor and an attorney at the Jerome N. Frank Legal Services Organization

in Yale Law School. I'm appearing here today on behalf of the amici curiae International Law Scholars and Practitioners. I want to thank you for the opportunity to be heard today.

Your Honor, if a U.N. vehicle accidentally rear-ends a car in Port au Prince, the U.N. provides for a claims process for the owner of the car with the now dented bumper to receive compensation. Yet in the present case, where the U.N. negligently introduced into Haiti a pathogen that has killed more than 8,500 people and sickened more than 700,000, the U.N. has provided no access to remedies and no compensation of any kind. The result is not merely shameful or unjust, although it's both of those things, rather, the U.N.'s indifference to the harm caused to its Haitian victims is inconsistent with international law, inconsistent with human rights obligations of the United Nations, inconsistent with the U.N.'s own understanding of its obligations, and inconsistent with the U.N.'s institutional practice.

This case is without precedent for two reasons: The catastrophic scope of injury caused by the United Nations and the failure of the U.N. to provide any forum whatsoever in which victims of the cholera epidemic may bring their claims.

First, the failure to provide access to a remedy is inconsistent with longstanding U.N. practice. Since its inception, the U.N. has created and provided dispute resolution mechanisms for third-party claims of tortious conduct. Your

Honor asked about the status of forces agreements and why it is that despite 32 of those agreements in existence, a standing commission has never been established.

I would draw the Court's attention to paragraph 54 of the status of forces agreement, which expresses that a Standing Claims Commission is essentially a provision of last resort. Paragraph 54 said, "Third-party claims of property loss or damage and for personal injury, illness or death arising from or directly attributed to NSF, except for those arising from operational necessity, which cannot be settled through the internal procedures of the United Nations, shall be settled by the United Nations in the manner provided in paragraph 55," which establishes a mechanism for commissions.

THE COURT: So in those 32 other countries, you're saying it's actually been resolved short of having to establish a commission?

MR. AHMAD: That's right, your Honor. My understanding is that it's been the longstanding practice of the United Nations to make internal mechanisms, which the SOFA itself contemplates, as a first recourse. Only if such internal mechanisms fail or are otherwise not available does the SOFA here, and the other 31 SOFAs, do they provide recourse to a Standing Claims Commission.

That I think is part of the explanation of why it is that a Standing Claims Commission hasn't been used. But more

to the point for my purposes here, it demonstrates that it has been the longstanding practice of the United Nations to provide dispute resolution mechanisms. Not only dispute resolution mechanisms, but in many cases fairly robust dispute resolution mechanics.

In the Burzak case that your Honor cited, decided by the Second Circuit, which was discussed earlier in the argument, the plaintiff in that case not only had access to a trial-level complaint resolution mechanism, there was an appellate level mechanism that she had access to as well. So the complaint that was considered by the district court in the Southern District and then by the Second Circuit was whether that a challenge to the adequacy of that robust system constituted a waiver of immunity under Section 2. That's clearly very different, both in terms of the nature of remedy available as well as the issue presented in this case here.

THE COURT: Let me ask you about the legal issue. I understand the argument that this is a different situation because there is no procedure established, but I'm just wondering legally -- I don't know if I should ask you this or the plaintiffs' counsel, but legally, does that make a difference? Because the Section 29 language is, the U.N. shall make provisions for appropriate modes of settlement. So if it has to be appropriate, wouldn't you have the same argument that you have failed to comply with Rule 29, every time you can

argue it's not appropriate? So, legally, is it any different to not have anything?

MR. AHMAD: Your Honor, I do think there is a difference there. I think that what happened in this case, as the plaintiffs' counsel laid out, is that the United Nations, when it finally gave a response to the claims that were filed by the plaintiffs, it gave the response that these claims weren't receivable. Essentially, it gave a jurisdictional determination. That's quite different from a merits determination.

I do think that the language of Section 29 means that there has to be a consideration of the claims. I should add that it is the view of amici that the position taken by the United Nations is that these claims are, quote, not receivable because they would necessarily include a review of the political and policy matters. That is not a credible position to take. That is a position of amici.

When one looks at the language of the SOFA act just quoted from, it's quite clear that the claims that the plaintiffs bring are paradigmatically the kind of claims that are contemplated. The language from paragraph 54 of the SOFA authorizes claims that are, quote, third-party claims for property loss or damage and for personal injury, illness or death. That's exactly what the claims here asked for. And so it's the position of amici that this was a kind of artful dodge

by the United Nations rather than a meaningful consideration of the claims that were presented before them as Section 29 requires.

Your Honor, the failure to provide access for a remedy is also inconsistent with the U.N.'s own understanding of its legal obligations. Indeed, the fact that the United Nations has consistently provided some form of remedy since its inception is very much consistent with the U.N.'s self-understanding of its legal obligations. There is no dispute that the U.N. has legal personality and that, as a matter of that legal personality, it may bear both rights and obligations.

In a report from 1996, which was referenced by plaintiffs' counsel, the Secretary-General of the United Nations acknowledged that by virtue of this legal personality, the U.N. bears responsibility for activities of its peacekeepers. The Secretary-General further noted that, just as a responsibility entails, quote, liability and compensation for damages caused in violation of international obligations, so too does damage caused in violation of international obligation by the U.N. imply and require the same liability compensation for damages of its forces.

Lastly, the Secretary-General has acknowledged that the provision of exactly the kinds of dispute resolution procedures that we have been talking about is intended to

fulfill this legal obligation. So the U.N.'s own understanding of its legal obligations and its own understanding of why it is that it provides this mechanism is linked, and mechanisms are provided to meet that legal obligation.

Your Honor, the provision of such alternative mechanisms is not merely a policy choice, as I've just suggested, it is a legal requirement and it is required by the General Convention, which is an implementation of the immunity provision of the U.N. Charter. The charter contemplates a functional approach to immunity. And I note that this an issue that is in dispute between the parties, but the language of Article 105 of the charter says, "The U.N. shall enjoy in the territory of each of its members such privileges and immunities as are necessary for the fulfillment of its purposes." "Such privileges and immunities," not all, not in every case.

Now, the U.N. Charter then delegated to the General Assembly the authority to determine which privileges and immunities were necessary for the fulfillment of the purposes of the United Nations, and that's what produced the General Convention.

I think it's notable, your Honor, that Section 29 of the General Convention is the only convention that does something other than grant privileges and immunities to the United Nations. Every other section is establishing what the immunities are for the United Nations, for the viability of the

United Nations buildings and facilities, and it's only Section 29 that is providing an obligation on the part of the United Nations.

That, I think, supports the plaintiffs' argument that Section 29 is intrinsic to the scope of U.N. immunity. It simply cannot be read separately from it. It's the only provision in the agreement that does not define the scope of the U.N.'s immunity in terms of what its protections are. That is exactly the bargain that the government's letter speaks to. This was the tradeoff.

I think it's important, your Honor, to relate the General Convention back to the charter, because it is only an implementation of the charter's language that the General Convention exists.

Your Honor, very briefly, I'll just mention that conditioning immunity on provision of an alternative forum is consistent with recent decisions from European courts. I know that this issue will be addressed by the European Scholar amici, but I would just draw the Court's attention in particular the Waite and Kennedy decision, which the European Court of Human Rights decided in 1999. And, your Honor, there the court used the principle of proportionality, saying, immunity must be proportional to the goals of immunity. That, I believe, your Honor, the use of the proportionality principle, is consistent with the language of the U.N. Charter

that authorizes only such privileges and immunities as are necessary for the fulfillment of the U.N.'s purposes.

Your Honor, I've mentioned previously that the questions presented by plaintiffs' claims are truly, unquestionably of a private-law character. I would also just mention that they do not result from operational necessity. I don't know that that's an argument that the government has pressed, but the Secretary-General has guidelines for determining what constitutes operational necessity, which were set out in 1996. And I don't think there is a plausible argument available that the damage done here resulted from operational necessity consistent with the regulation -- the proposed guidelines from the U.N. Secretary-General.

I conclude, your Honor, with just an observation that the Haitian people are all too familiar with courts expressing sympathy for their plight but ultimately closing the courtroom doors to them. In Sale versus Haitian Centers Council, the Supreme Court concluded its opinion denying relief by quoting the approval from Judge Edwards, quote: "Although the human crisis is compelling, there is no solution to be found in a judicial remedy."

That need not be the case here. Access to a remedy will not bring back the lives of 8,500 people but it will, as Justice Blackmun suggested, open our ears to their suffering.

Thank you.

THE COURT: Thank you, Mr. Ahmad. We will now hear from Ms. Iyer. Am I saying that right?

MS. IYER: That is, yes.

My name is Monica Iyer. I am here from Milan, Italy, and I am representing a group of European law scholars and practitioners from nine different European countries, who submitted an amicus brief in this case, knowing that the rulings of European courts can help to provide persuasive guidance on the interpretation of treaty obligations and feeling that especially since, as plaintiffs mentioned, this is a case which presents unique questions in U.S. courts, the extensive European jurisprudence on the immunity of international organizations may be useful to this court.

There are really two key points that emerge from the European jurisprudence. The first is that access to a remedy is a fundamental right that the courts have consistently sought to protect. The second is, the European courts have increasingly considered the availability and the adequacy of an alternative remedy when deciding whether to uphold the immunity of international organizations.

THE COURT: Is there any European court that's actually gotten to this issue, that's actually held that the U.N.'s express immunity is conditioned on its fulfilling the requirements of Section 29 or something close to that?

MS. IYER: There are European courts that have dealt

with the immunity of U.N. specialized agencies and of U.N. peacekeeping forces, which are governed by treaties that use, in the case of the specialized agencies, identical language to the General Convention. The U.N. per se has not been the defendant in cases that may have to do with where the U.N. is headquartered versus where the specialized agencies are headquartered, so it's sort of logical.

So to this first point, the access to a remedy is a fundamental right that the European courts have sought to protect. Domestic laws around Europe and around the world, as well as international and regional treaties and conventions as well as the U.S. Constitution, protect access to a court, access to justice, access to a remedy. That's really because this right is necessary for the protection of all of the other rights that are enumerated in such documents.

And this is the import of the Kadi line of cases which is before the European Court of Justice. That those dealt with the implementation of Security Council resolutions by states, and they held that where the U.N.'s resolutions are implemented and the U.N. has not provided a remedy for violations of rights resulting from that implementation, national courts must provide a remedy because the right of access to a remedy is too important to be abrogated.

And the government, in discussing this case, emphasizes the fact that these cases didn't directly concern

the U.N.'s immunity, but that fact doesn't diminish this fundamental principle.

A second key point that emerges from the European courts is that they've increasingly considered both the availability and the adequacy of an alternative remedy when deciding whether to uphold the immunities of international organizations. And where there is absolutely no alternative means made available, they have denied immunity.

So a number of European courts have considered the availability of reasonable alternative means of achieving remedy. And in considering whether immunity can be granted, this principle was applied both by the European Court of Human Rights and in a number of cases in domestic courts in Europe, including Italy, France, Belgium, the Netherlands and Cyprus.

As the government points out and as you just asked, not all of these cases have directly involved the U.N. but they have often dealt with immunity agreements that are similar or even identical to the terminology to the General Convention, including involving specialized agencies of the U.N., and the important principles of the cases and particularly the fundamental importance of the access to a remedy are still applicable.

So in cases where the courts found that a reasonable alternative means of settling a dispute did exist, that finding was an important factor in upholding the immunity of an

international organization, and that was true in the European Court of Human Rights case Waite and Kennedy which Mr. Ahmad referenced and which has been relied on heavily by domestic courts in Europe and also in the Stavrinou case before the Supreme Court of Cyprus, which relied on the availability of an alternative dispute resolution mechanism when determining whether to uphold the U.N.'s immunity under a peacekeeping agreement.

Conversely, where the courts have found that alternative means is not available, or even in some cases where one exists but is not reasonable or adequate, international organizations have been found to be subject to the jurisdiction of the domestic courts.

Both very early and quite recent examples of this out of Italy:

The Maida case in 1955, when the U.N. was quite new, the Italian Court of Taxation ruled that the means of alternative dispute resolution provided in Italy's agreement with the International Refugee Organization, which was a U.N. specialized agency, failed to respect due process rights, and that the IRO was therefore not immune from the jurisdiction of Italian courts.

Similarly, in the Drago case, just recently, in 2007, the Italian courts denied immunity where an alternative procedure provided by an international organization, the

International Plant Genetic Resources Institute, was founded to be inadequate.

Another important example is the UNESCO v. Boulois case in France. The French court ruled that UNESCO could not be granted immunity, both because the organization was in violation of its agreement to provide an arbitrator for disputes and because a grant of immunity in the case would abrogate the plaintiff's fundamental right to access to a remedy. I believe that this case is actually particularly instructive in this instance because, as has been noted by the plaintiffs today, the case at hand involves these two same violations -- a failure to live up to an agreement to provide a means of dispute resolution and a failure to protect the fundamental right of access to a remedy.

The main lesson to be gathered from examining the European jurisprudence is that where those violations exist, the courts have declined to uphold immunity of international organizations.

THE COURT: Thank you, Ms. Iyer.

I'll now give counsel for the government, Ms. Blain, a couple minutes for rebuttal.

MS. BLAIN: Thank you, your Honor. Briefly, your Honor, a few points:

Number one, the Bisson case, addressed by plaintiffs counsel in this court: Judge Crotty in 2008 didn't address

simply waiver and whether a waiver was the only condition of immunity. In fact, Judge Crotty evaluated whether there was a connection between Section 2 and Section 29. And he found that even if the plaintiffs were not an employee of the U.N., and therefore she did not have access to any sort of dispute resolution mechanism, the U.N. would, quote, still be immune from suit by her.

In so holding, he also found that Section 29 is not a quid pro quo for the immunities conferred by the rest of the United Nations Convention. He then rejected the plaintiff's argument that holding this way would render Section 29 meaningless. Instead, he found that Section 2 and Section 29 simply were not linked.

So, again, whether you can construe this analysis as one of waiver or one of condition precedent, the analysis is the same.

Second, plaintiffs bring up in, several amici bring up, a couple foreign cases I'd like to address very briefly, the UNESCO case and the Maida case.

UNESCO is a case in France, and the Maida case is a case in Italy, and both of those cases involved U.N. specialized agencies. However, at that time, neither France nor Italy were signatories to the Convention on Specialized Agencies. So the immunities of those U.N. agencies were not analyzed under that convention, which has similar language to

the U.N. Convention. So the persuasive value is extraordinarily limited and in fact absent, we argue.

Thirdly, plaintiffs have not brought up or -- rather, the papers did bring up a constitutional argument -- and I believe the Haitian scholars made this point as well -- that failure to provide, that this Court's failure to provide, an adequate remedy for plaintiffs' arguments in this particular case would result in a denial of their constitutional right of access to the courts, has in fact already been addressed and rejected by the Second Circuit.

In the Bisson case, one of the plaintiffs was a United States citizen, and she did argue that failure to provide her with an adequate mechanism to address her claims would result in a violation of her substantive due process rights of access to the court. And the court gave short shrift to that argument and held, quote, "The short and conclusive answer that legislatively and judicially crafted immunities of one sort or another have existed since well before the framing of the Constitution, have been extended and modified over time and are firmly embedded in American law." And that is again the immunity regime confronted by the Court today.

Number four, even if the Court -- going back to the rules of statutory or contract construction -- even if the Court were to evaluate Section 2 with Section 29, the plain language of the treaty reveals that there is, as I have said

repeatedly, no link between the two.

But, furthermore, in interpreting treaties, as this Court well knows and as this Court held in the Devi versus Silva case, courts owe great deference to the Executive Branch's interpretation of treaties as well as the sister signatory countries to those treaties. In this case, both the United States and the United Nations urged the Court to one interpretation of the treaty, which again is required great deference.

Number five, and finally, this case and the repercussions stemming from the Court's ruling today is not narrowly limited. It would create and open up a huge set of claims to the United Nations. Private parties around the world would be able to sue the United Nations for violations of -- perceived violations and breaches of the treaty. The United States has personnel stationed all over the world, operating under these conventions, and that would be a great disservice to the immunities which are expressly provided and contemplated by the parties to this treaty.

So it's important to keep in mind that Section 2 of the U.N. implements Section 105 of the U.N. Charter. And the U.N. Charter preceded in time the convention and, again, indicated the countries around the world's obligations and insistence and decision that the U.N. needs to have immunity in order to complete its mission around the world.

So any ruling that would impugn or eviscerate that immunity is antithetical to the critical mission of the U.N. to be able to carry out its mission around the world and as contemplated by the countries to the convention and the charter and the SOFA.

Thank you, your Honor.

THE COURT: Thank you, Ms. Blain.

OK, I'm going to reserve decision on this issue. I want to thank the parties for their excellent submissions and presentations today. Thank you. We are adjourned.

MS. BLAIN: Thank you, your Honor.

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