FACULDADE DE DIREITO DE SANTA MARIA

PROJECT BRAZIL-HAITI

To the Inter-American Commission on Human Rights
Organization of American States
1889 F Street, N.W.
Washington, D.C.-20.006-United States of America

Petition to the Inter-American Commission on Human Rights concerning the violation, by the United Nations Organization, of the human right to life and humane treatment, enshrined in articles 4 and 5 of the American Convention on Human Rights and article 1 of the American Declaration of the Rights and Duties of Man.

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TABLE OF CONTENT

I. INTRODUCTION..... 03
II. PRELIMINARILY 05
A. ON THE JURISDICTION OF THE COMMISSION..... 05
B. ON THE EXHAUSTION OF DOMESTIC REMEDIES..... 08
C. ON THE STATUTE OF LIMITATIONS FOR PETITIONS..... 09
D. ON THE STANDING TO BE SUED OF THE UNITED NATIONS…… 09
III. STATEMENT OF FACTS AND CAUSE OF ACTION..... 13
IV. THE REQUEST..... 21
V. REFERENCES 25

I. INTRODUCTION

1. The ***Faculdade de Direito de Santa Maria,*** (established by Pró-Ensino Sociedade Civil Ltda., CNPJ nº 04.849.608/001-46, address Rua Duque de Caxias, 2319, Medianeira, Postal Code 97060-210; phone and fax 55-55-322-2500; e-mails eduardo@fadisma.com.br and cristine@fadisma.com.br, website www.fadisma.com.br), hereinafter "FADISMA" or "Petitioner", by its Director and Representative, Professor Eduardo de Assis Brasil Rocha (Brazilian, National ID nº 3001425663, SSP/RS), **submits to the Inter-American Commission on Human Rights** (hereinafter "Inter-American Commission" or "Commission"), **petition against the United Nations Organization** (hereinafter "UN" or "Respondent"), claiming its responsibility by acts and omissions concerning the military base of the United Nations Stabilization Mission in Haiti (hereinafter "MINUSTAH") which, under its command and responsibility, widespread from the Mirebalais UN base, in the Department of Mirebalais, in Haiti, fecal material originated from Nepalese soldiers contaminated by cholera bacteria, provoking an outbreak of the disease, sickening and killing thousands of people.

2. Since 2007 FADISMA shows brotherly and enduring interest on the affairs related to the Haitian reality, conducting the Project Brazil-Haiti (http://www.brasilhaiti.com). FADISMA submits this petition to the Commission because it witnessed the reluctance of the UN in investigate the sources of contamination, neglecting the effective treatment of the disease and the right to information of the affected people. FADISMA repudiates the ongoing denial of the UN in taking the responsibility for the sickening and death of thousands of Haitians and Dominicans contaminated by the bacteria introduced in Haiti by Nepalese soldiers under its command.

3. Therefore, FADISMA submits to the Commission this petition, demanding the Commission to declare and recognize the international responsibility of the United Nations for disregarding international duties and violating articles 4 (right to life) and 5 (right to humane treatment) of the American Convention on Human Rights (hereinafter "American Convention" or "Convention"), as well as Article 1, n. 3, of the Charter of the United Nations, which enshrines the very purpose of this organization (promoting and encouraging respect for human rights).

4. In case the Commission rejects the petition based on the disregard for international duties aforementioned, the Petitioner requests its admission for violation of Article 1º (right to life) of the American Declaration of the Rights and Duties of Man (hereinafter "Declaration" or "American Declaration"), as well as violation of one of the very purposes of the Organization, enshrined in Article 1, nº 3 (promotion and stimulus of the respect of human rights), of the Charter of United Nations.

5. It must be emphasized that the this case represents an unparalleled opportunity for the Inter-American System of Human Rights to assert, on the regional arena, the international responsibility of international organizations, acting against omission, negligence and impunity of international illicit which, due to the well known victim's lack of means and difficulty to access to justice, could perpetuate as an unpunished historic fact, with no legal consequences, attributed to "convergence of circumstances", unacceptable point of view supported by the Respondent, which would imply the general irresponsibility and absence of legal consequences.

Lastly, in this case the Commission shall once more assert the force of the American Convention on Human Rights in the American continent, treaty whose

rules the United Nations must comply with, as it shares the same purpose, as because UN shall not be *legibus solutus* in the world.

Therefore, the Commission shall provide the reparation to States and people affected by international illicit and will hold the force of the *corpus iuris* of the International Law on Human Rights in the American stage.

II. PRELIMINARILY

A. ON THE COMPETENCE OF THE COMMISSION

6. The necessity to clarify and assert the force of mandatory norms of International Law on Human Rights in the American Continent led to the its codification in many regional treaties, among them the American Convention on Human Rights.

The Convention, apart for declaring the protected rights, provided the Inter-American System with two institutions for its protection, preemptively and repressively: the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

7. The creation of institutions entrusted to protect human rights in the region represents the reassertion by the American States of the mandatory character of the international law on human rights, which could not be effective unless the institutions have the ability to, independently and impartially, consider claims of violation.

The Commission and the Court represent the intention of the American States to enforce the respect for the principle of international responsibility in case of violations of human rights in the region. It could not be different, as denying the mandatory character of the international responsibility would

signify the denial of the very force of international rules, i.e., to deny the mandatory character of the international legal order.

8. In order to enforce the compliance to the international legal order and to protect human rights in the region, the Commission – institution to which any person or nongovernmental entity shall have access to the Inter-American System of Protection of Human Rights– was allowed, in order to develop its utmost task of protecting the observance and respect of human rights (art. 41, caput, American Convention), to admit denunciations and complaints against States that belong to the organization (art.44 of the American Convention).

In the Statute of the Inter-American Commission on Human Rights, the General Assembly of the Organization of the American States approved the possibility of examining communications addressed to any member State not a Party to the Convention, leaving to the Regulations the establishment of the procedure to be followed in cases of communications in these cases (arts. 20.b and 24.1 of the Statute of the Inter-American Commission on Human Rights).

9. The Rules of Procedure of the Inter-American Commission on Human Rights, in respect to petitions addressed to the Member States that are not parties to the American Convention on Human Rights, defines

> "The Commission shall receive and examine any petition that contains a denunciation of alleged violations of the human rights set forth in the American Declaration of the Rights and Duties of Man in relation to the Member States of the Organization that are not parties to the American Convention on Human Rights.." (art. 51, Rules of Procedure).

Thus the American States wanted the international norms to be respected in the regional stage.

Therefore, **the main criterion to define the competence** of the Commission is the local where the violation occurred, despite of the adherence of the accused to a specific treaty.

So, the American territory is to be taken into account as a fundamental test for the Commission to admit petitions of violations of human rights.

10. From this follows that, beyond any doubt, the competence of the Inter-American System of Protection of Human Rights to consider, firstly by the Inter-American Commission, of this complaint addressed to the United Nations for violation of the right to life and humane treatment of American inhabitants, nationals of a Member State of OEA, mostly Haitians and Dominicans, or even non-Americans that happened to be in the local of the violation.

In other words: the concern with the regional protection of human rights built in the Inter-American System the possibility for the Inter-American Commission to admit petitions against Member States, as well as against States that are not parties to the American Convention.

If the Commission may admit even petitions against Member States of the Organization that are not parties to the American Convention, the Commission should be able to admit complaints reporting violations whose responsibility rests on a derived international entity that acts within the regional stage and to whom the Member States of the OEA also belong.

11. Clear and irrefutable are the reasons to recognize the competence of the Inter-American Commission on Human Rights to receive this petition against the United Nations: in its purpose of protecting human rights in American territory, the Commission is able to consider all complaints against any American States, parties or not to the American Convention; Member States of the OEA, needless to say, are members of the UN as well; the UN is responsible by acts and omissions mentioned in this petition, all taken place at the American

continent; thus, the Commission has fully jurisdiction to admit this petition now submitted.

Lastly, the Commission shall refer – even provoke – the Inter-American Court of Human Rights in relation to the submitted case.

12. In a nutshell, the competence of this Commission derives either from the local where the violation happened, or from the formal aspect, the composition of Universal Organization, to which the American States belong.

B. ON THE EXHAUSTION OF DOMESTIC REMEDIES

13. It is indisputable that the United Nations enjoys **immunity of jurisdiction** based on the Convention on the Privileges and Immunities of the United Nations, signed by Haiti and whose terms where reasserted in the Agreement celebrated between the UN and the Haitian government concerning the UN operations in Haiti.

The Convention on the Privileges and Immunities of the United Nations, in its Article 2, section 2, dictates

> "The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process insofar as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution"

14. Considering that it is impracticable for the UN to be sued by Haitian Courts, and that any sentence pronounced against it would be unenforceable, and **taking into account the seriousness of this case and the general lack of legal means available to the Haitians here represented indirectly**, it is fair, legitimate and imperious to disregard the exhaustion of domestic remedies as a condition to admit this petition.

C. ON THE STATUTE OF LIMITATIONS FOR PETITIONS

15. This case intends to assess and recognize the responsibility of the UN by acts performed by MINUSTAH in Haiti that occurred and are still occurring until today, with no expectations of cessation, since October 2010.

As mentioned before, Nepalese soldiers under command and responsibility of MINUSTAH dumped fecal material in the Artibonite River basin, persisting in this violation until today, introducing and disseminating the cholera bacteria, causing the contamination and death of thousands of people.

Apart from the enduring renitence of the UN in arrogate the responsibility for the fact – conduct that jeopardize the comprehension of the seriousness of the contamination and the response to the outbreak, causing death and unnecessary suffering to many people (JOHNSTON and BAHTT, 2011 – doc nº 01) -, there is information that the launching of untreated fecal material in the environment is still going on and that, due to its characteristics, there is no expectations for its cessation (AP, 2011 – doc nº 02).

Therefore, and considering the aforementioned circumstances in item B, the lodging of this petition complies with the requirements dictated by the Rules of Procedure of the Inter-American Commission, as the violation persists until today in a continuous conduct.

D. ON THE STANDING TO BE SUED OF THE UNITED NATIONS

16. The facts, supported by evidences mentioned in this petition, demonstrate the connection between the outbreak of cholera in Hispaniola Island (and in other American States) and the presence of the soldiers under command and responsibility of MINUSTAH.

Reports from observers and scientists, to be presented in the next section, conduct to the conclusion that the Nepalese soldiers lodged in Mirebalais UN base have been the '**transporters**' of the disease to the island.

The contamination of water by human fecal material originated from this base killed 6.321 Haitians and 308 Dominicans so far, according to official figures (PAHO, 2011 – doc nº 3), not to mention people from other nationalities, violating their rights to life and humane treatment.

17. Once recognized the responsibility of UN in the international arena, under whose command MINUSTAH acts, authorized by a mandate granted by the Security Council, the UN shall conduct its action not just based on the terms of its Constitutive Chart, but also under principles that protect the very international legal order from it originates. Among these principles it is undeniable the one that prescribes the duty not to harm the others and its consequence, the responsibility in case of harm.

UN shall not, therefore, avoid the responsibility that derives from harm perpetrated on other subjects protected by law. To consider otherwise would deny the binding force of the international legal order over the United Nations; it is to accept, after all, the absence of binding force of international law, degrading the very idea of an international public order.

18. It is worthy to recall that we recognize today the international juridical personality of international organizations. Organizations are, like the States, international legal entities and are subjected, therefore, to all norms in force in the international order.

The subordination to international order is a consequence of the recognition of the international juridical personality of international organizations and an essential condition for these entities to exist and act in the

international scenario sided with States. After all, the States do not create international organizations above the law, to act irresponsibly in the world.

It would be nonsense to discharge UN of the duty to respect the norms enshrined in its constitutive chart or in other documents that consecrate fundamental human rights – norms of utmost relevance – which the UN itself helped to build and works to protect. On the contrary: the organization itself must be held accountable by harmful acts to human rights due to its paramount ethical content, demanding higher condemnation when violated by an entity charged with the duty to protect them.

19. UN shall not be exempted from the responsibility for the reparation of the damages set forth in this petition under the argument that the State that sent the soldiers to MINUSTAH must be held accountable. There is no direct connection between the field actions and the State of Nepal, but with the "*blue helmets*", even though we cannot discard the possibility of a regressive action.

Before being members of a particular army, the soldiers under the command of MINUSTAH are under responsibility of the UN, and it is this organization that must be held accountable firstly for the consequences of its actions.

20. There is no doubt that, as an entity recognized by international law and enjoying international juridical personality, the UN has rights and duties in international stage and, therefore, the ability to sued in case of an international illicit – as it has done in the past, when it suited its interests, v.g., the Bernadotte case – and the standing to be sued – as in the present case – to be held responsible for an international illicit.

In the aforementioned Bernadotte Case, Mr. Ivan Kerno, Representative of the UN General-Secretary, asserted that

> "… we would like to say that, in our opinion, **the drafters of the Chart in San Francisco created an international organization**

> **that has its own international personality**, which implies some essential rights of an international character among those of protecting its employees when they are injured while working for the sake of the organization" (ICJ, 1949, p. 51 –doc. nº 4). (not outlined in the original)

21. The standing to be sued of the UN is reinforced in this case by its relation with the Haitian State. In 2004, Resolution 1542 of the Security Council created MINUSTAH and established its mandate. This document gave capacity to the UN to support the Haitian government concerning the promotion of a stable and safe condition in Haiti and to protect the political process, as well as the promotion of human rights.

In practice, the assistance to the Transitional Government mentioned in the resolution turned out to be the replacement of the Haitian State by MINUSTAH in areas intrinsically connected to its sovereignty, like "monitoring, restructuring and reforming the Haitian National Police", "the restoration and maintenance of the rule of law, public safety and public order in Haiti" and "promote and protect human rights", among others (art. 7º, Resolution of the Security Council nº 1542/2004 – UN, 2004 – doc. nº 5)

22. Powers granted to MINUSTAH were confirmed and even enlarged when the Agreement between UN and the Haitian government on the operations of UN was signed, in Port-au-Prince, in July 9th 2004 (UN-Haiti, 2004 – doc. nº 6).

By this agreement, the Mission was granted freedom to communicate and circulate; freedom of movement without delay throughout Haiti for its members; the military police of MINUSTAH received the power of arrest over the military members of MINUSTAH; the Haitian Government took the responsibility to consider actions against the members of MINUSTAH as crimes under its national law and make them punishable by appropriate penalties taking into account their grave nature, among other articles that ensure that, since Resolution 1542 on and the aforementioned Agreement, the UN was

acting as a proxy of the Haitian government in areas in which the sovereignty of the State is at stake.

Thus, the Organization surrogates in fact to the Haitian State in such an extent that it is imperative to recognize its responsibility before the American States Organization as if it were a member, as the responsibility of the UN must keep a proportionate relationship with the width of the granted powers and capacities.

III. STATEMENT OF FACTS AND CAUSE OF ACTION

23. In October 2010 an outbreak of cholera (sickness that attacks the gastro-intestinal system) was detected in Haiti.

Recalling the facts, the first case of the sickness and its symptoms, dehydration and diarrhea, resulting in hospitalization, happened in Mirebalais, region upstream the Artibonite River, in October 17, 2010.

The first case in the coastal area, in the Artibonite River Delta, was detected in October 20, the same year.

Two days later, the Haiti National Public Health Laboratory confirmed officially the first recorded case of cholera in the country for nearly a century.

Also in the same day the outbreak was widely detected in the coast. The first detections conduct to the conclusion that the sickness was spreading along the Artibonite River (UN, 2011a, p.3 – doc nº 07).

24. Among the many hypotheses on the origin of the bacteria, some of them suggested that the pathogen that causes cholera (Vibrio cholerae) arrived into Haiti from the Gulf of Mexico due to tectonic shifts resulting from the earthquake, or evolution into disease-causing strains from non-pathogenic strains naturally present in Haiti, or originated from a human host – MINUSTAH

Soldiers - who inadvertently introduced the strain into the Haitian environment by dumping untreated sewage in Haitian waters (UN, 2011a, p.3 – doc nº 07).

25. In December de 2010 the first report on the origin of cholera in Haiti rejected the earthquake or natural mutations as possible causes of the outbreak: *"the infection started from the Nepalese barracks"*; *"the origin is precisely located"* and *"the most reasonable explanation is the massive dumping of fecal material in the Artibonite River in one time",* asserted the epidemiologist Renaud Piarroux, sent by the French government on request of the Haitian Ministry of Health (fl. 2010 – doc. nº 08).

26. By this time – December 2011, less than two months after the detection of the first case – the outbreak of cholera registered more than 100.000 cases of contamination and 2376 deaths in Haiti.

In the neighbor country, Dominican Republic, where the contamination was first detected early November 2010, 41 people have been contaminated (PAHO, 2011 – doc nº 03).

27. Resisting to assuming the responsibility for the introduction of the sickness in the Caribbean country, in December 2011 the UN still considered setting a panel of experts to investigate the source of cholera in Haiti (UNNC, 2010 – doc nº 09).

In January 2011, finally, the General Secretary of the United Nations formed a panel of four experts with a mandate to "investigate and seek to determine the source of the 2010 cholera outbreak in Haiti". The report was presented to the General Secretary in May 2010 (UN, 2011a, p.3 – doc nº 07).

28. The panel carried out investigations on the epidemiological, water and sanitation, and molecular analysis. As a result, the experts reject the "natural

causes" of the epidemic, asserting that "the evidence does not support the hypotheses suggesting that the current outbreak is of a natural environmental source".

Furthermore, 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".

Notwithstanding all the evidences that supported the conclusion that the origin was the UN Nepalese troops, the panel, surprisingly and inconsistently with aforementioned assertions, refrained from impute the burden to them concluding that "the Haiti cholera outbreak was caused by the confluence of circumstances as described above, and was not the fault of, or deliberate action of, a group or individual" (UN, 2011a, p.29 – doc nº 07).

As a matter of fact, competes to the Court the assessment of the responsibility, and not to the experts, unexperienced in legal affairs. Furthermore, regardless of a deliberate action by someone or a group of people, fact to be proved, the respondent was undoubtedly and seriously negligent, due to its omission and inexcusable awareness, reason why the UN shall be blamed for an "**involuntary genocide"**.

29. Since then the UN adopted the theory of "confluence of circumstances" to exempt itself from direct accountability.

However, the report itself provided all evidence to establish the connection of causes between the source of cholera and the contamination from the fecal material originated from the MINUSTAH base in Mirebalais after the arrival of Nepalese soldiers. The experts concluded:

a. **confirm i) the human origin of the contamination** ["bacteria introduced into Haiti as a result of human activity" (UN, 2011a, p.2)]; **ii) the geographic area of the contamination in Haiti and the origin**

of the bacteria ["contamination of the Meye Tributary System of the Artibonite River with a pathogenic strain of the current South Asian type Vibrio cholerae" (UN, 2011a, p.29)]; **and iii) the coherence between the confirmed cases and the origin of the propagation of the contamination** ["The timeline suggests that the outbreak spread along the Artibonite River" (UN, 2011a, p.2), and "This timeline is consistent with the epidemiological evidence indicating that the outbreak began in Mirebalais (...) river transport was the likely transmission route for cholera to spread from the mountains of Mirebalais to the Artibonite River Delta" (UN, 2011a, p.23];

b. **denounce that the sanitation conditions at the Mirebalais MINUSTAH camp** were "not sufficient to prevent fecal contamination of the Meye Tributary System of the Artibonite River" (UN, 2011a, p.23)
c. **confirm that the molecular analysis indicated the genetic identity of the strains found in Haiti, allowing the detection of the source of the outbreak, and its similarity to the South Asian strains of Vibrio cholerae O1**. On this remark, the experts stressed: "It must be emphasized, however, that the Haitian strains have certain minor traits not found in collections from other parts of the world, which is consistent with the micro-evolution that takes place continuously within the El Tor biotype as it moves from continent to continent and even country to country." (UN, 2011a, p.28).
d. **alert to the risk of transmission of pathogenic agents by the personnel brought by UN**, and to the importance of prophylactic treatment of the UN personnel from cholera endemic areas and recommend the treatment of fecal waste in United Nations installations worldwide (UN, 2011a, p.30).

30. The fact that “such an outbreak” could not have happened “without simultaneous water and sanitation and health care system deficiencies” (UN, 2011a, p.29 – doc nº 07), as the experts concluded, does not exempt UN from its responsibility for the contamination and deaths caused by the introduction of the *Vibrio cholera* in Haiti. In contrary, this circumstance accentuates the UN responsibility in neglecting the sanitation of its own premises in a country whose infrastructure is so deficient, and whose people, even before cholera, struggled to survive. To think otherwise is to adopt the unfair and cruel position of blaming the victims for not resisting the difficulties that make their lives miserable.

31. In May 2011, seven months after the outbreak was first detected, the Pan American Health Organization estimated the number of contaminated people in 297.349, and 5.221 deaths. In the same time, there were 887 infected, and 13 Dominicans dead since the outbreak (PAHO, 2011 – doc nº 03).

32. While the Panel produced the report ordered by the General Secretary of UN, the independent expert Michel Forst denounced, in a research presented to the United Nations Human Rights Commission, as a result of a mandate granted by this same Commission, the riots and violence against voodoo priests.

According to the report, at least 45 people have been lynched with axes, stones and finally burnt by mobs that blamed them for the sickness, showing the relation between despair due to the spreading of the contamination and death, the local culture and the virulence of the epidemic (UN, 2011b, p.9 – doc nº 10).

However, the expert on Human Rights, exclusively mandated by the Human Rights Commission, never mentioned in his report the origins of the cholera, as, in his own words, this would be beyond his mandate: “My mandate does not concern MINUSTAH” (MINUSTAH, 2011, doc nº 11).

33. The position aforementioned depicts clearly that the UN Human Rights Council ignores – or seems to ignore – actions or omissions performed by UN in Haiti that violated fundamental human rights.

This position closes the way for a demand inside UN own system – unacceptable situation when the Organization itself is supposed to promote human rights and is the guardian of the paramount international charters concerning fundamental human rights.

Pushing these conclusions to the extreme, this scenario would exempt UN by its actions and omissions from duties springing from the international law, the international act promoted by the organization itself, the principles enshrined in the Charter of San Francisco and the ethical and moral international principles. This odd conclusion would consider the guardian above the law it is supposed to protect.

34. In July 2011, scientists under Renaud Piarroux leadership issued a research containing new evidences that support undoubtedly the introduction of cholera by MINUSTAH soldiers.

The scientists emphasized that an outbreak of cholera took place in Kathmandu, the capital of Nepal, in September 23rd 2010, just before the troops departed to Haiti, and that these soldiers arrived at the MINUSTAH base in Artibonite in October 9, 12 and 16, few days before the outbreak was firstly detected.

All things considered, under scrupulous methodology, **the research confirms a relation between the circumstances of the arrival of the Nepalese soldiers from a region where the cholera is endemic and the detection of the first cases in the Meye River few days later** (PIARROUX et al, 2011 – doc nº 12).

35. Notwithstanding all the evidences supporting the UN responsibility for the introduction of cholera in Haiti, the Organization resisted to assume its responsibility.

Following the publication of Professor Piarroux and his fellows' research, in July, MINUSTAH issued a press release (PIO/PR/453/2011) where, instead of apologize to the Haitian and Dominican peoples and review the objective of the Peacekeepers focusing in the epidemic, the UN insisted on the thesis of "confluence of circumstances" (UN, 2011c – doc nº 13).

36. In July 2011, the Pan American Health Organization registered **439.846 infected people by cholera, and 6.309 deaths in Haiti, and 17.206 contaminated people, and 303 deaths, in the Dominican Republic** (PAHO, 2011 – doc nº 03).

37. In August 2011, a new and deeper research based on molecular analysis reinforced the conclusions about the origin of *Vibrio cholera*.

Using the whole-genome sequence typing (WGST) which, "allied to the evolutionist theory and advanced statistical methods, represents the most powerful molecular analysis imaginable", a group of 15 scientists concluded that "**the results of the study are consistent with the identification of Nepal as an origin of the Haitian outbreak**" (HENDRIKSEN et al, 2011 – doc nº 14).

38. In August 2011 a research conducted by the experts Jake Johnston and Keane Bhatt depicted how the reiterated negligence of MINUSTAH, illustrated by the hesitation on investigate the origins of the epidemic and the omission on gathering funds and means for the treatment, caused the injure and unnecessary deaths of hundreds of thousands of people by this epidemic considered the most catastrophic one in this continent in decades.

The experts showed how the resistance of UN in assuming the responsibility contributed, and is still contributing, to the fast propagation of the disease, and to the inappropriate distribution of resources (concentrated in urban areas, instead of the countryside, more affected due to the kind of contamination). It also contributed to the failure in projecting actions in a long range to deal with the contamination (JOHNSTON e BHATT, 2011 – doc nº 01).

39. Recent news inform that the UN did not stop the irresponsible and thoughtless conduct of dropping human feces untreated in areas potentially at risk, as it happened in August 6th, few meters the Guayamouc River, taking the risk of causing more contamination and provoking hopelessness among the population (AP, 2011 – doc nº 02).

40. It must be accentuate that the outbreak originated from Nepalese soldiers made victims outside Hispaniola Island: cases have been detected among Venezuelan citizens that attended a family party in the Dominican Republic (CO, 2011 – doc nº 15) and, even in the United States, in the State of Florida and Puerto Rico, one case of contamination by cholera was detected (CNN, 2010 – doc nº 15), as well as in Venezuela, Chile and Mexico.

41. So far, all things considered, the responsibility of UN appears clear and irrefutable for the introduction of the Vibrio Cholera in the American Continent by Nepalese soldiers from the Mirebalais Base, who contaminated with fecal material the Artibonite River, exposing the population to the bacteria that caused contamination, sickening and death of tens of thousands of people specially in Haiti and Dominican Republic, but also in others American countries (United States, Mexico, Venezuela and Chile).

Also it is irrefutable the damage caused, and still being caused, by the refusal of UN in taking the responsibility for the appropriate treatment of the

disease, considering the need for resources and planning of short, medium and long range actions. Thus acting, UN committed, and is still committing violation to article 4 (right to life) and 5 (right to humane treatment) of the Human Rights American Convention [and/or art. I (right to life) of the American Declaration of the Rights and Duties of Man], and also article 1 n.3 (promoting and stimulating of the respect to human rights) of the Charter of the United Nations itself.

IV. THE REQUEST

42. Considered the aforementioned facts, the Petitioner demands the Commission to RECOGNIZE AND DECLARE THE INTERNATIONAL RESPONSIBILITY OF THE UNITED NATIONS ORGANIZATION for the contamination and sickening of tens of thousands of people infected by Vibrio Cholera in Haiti, because:

a. UN did not test the health and hygiene of the Nepalese soldiers contaminated by Vibrio Cholera who are performing their duties in Haiti under UN command and responsibility;
b. UN allowed the throwing of contaminated fecal material untreated from its base in the Department of Mirebalais in the Meille River, under its command and responsibility, a tributary of Artibonite River;
c. UN permitted, by omission and negligence, the waters to be contaminated with a bacteria unknown in that particular environment, disseminating that persists until today, putting at risk the lives and health of the people who depend on these waters, as well as thousands of other people that can be infected in the future by *vibrio cholera*;
d. UN more than once refused to scrupulously investigate the origins of cholera, denying a prompt answer to the outbreak; the UN, acting this way, increased the potentiality for losses and provoked irreparable damages to the people contaminated, their families and, due to the

proportions of the epidemic, to the whole Hispaniola Island, home of the Haitian and Dominican nations.

43. As a consequence, the Petitioner requests the Inter American Commission to DECLARE that the United Nations Organization is responsible for the following violations:

a. Violations to the right to life (article 4 of the American Convention and/or art. I of the American Declaration) of the tens of thousands of deaths and hundreds of thousands of contaminated victims;
b. Violation to the right to humane treatment (article 5 of the American Convention) due to the negative impact to physical health of the hundreds of thousands of Haitians and Dominican contaminated by cholera and due to the suffering caused by the feeling of hopelessness before the virulence of the epidemic.

44. As an consequence of the recognition of international responsibility, the Petitioner demands the Commission to RECOMMEND to the UN the following measures:

a. To recognize its responsibility for the introduction of *Vibrio Cholera* in Haiti and its consequences;
b. To apologize solemnly, publicly and officially to the Haitian and Dominican people;
c. To establish control on the health conditions of the military personnel that join its Peace Missions, demanding or promoting scrupulous health exams to avoid another epidemic of the same nature, as recommended by the independent Panel established by the General Secretary of United Nations;

d. To compensate economically Haiti, Dominican Republic, as well as United States, Mexico, Venezuela and Chile, regardless of due reparation to the contaminated people and families of the victims of cholera;
e. To create new centers for treatment and prevention of Cholera in Haiti and Dominican Republic, as well as provide better financial and logistical means for the existing ones, until the cholera is eradicated from these countries.
f. To constitute a fund of at least US$500,000,000 (five hundred million American dollars) to create a public health system in Haiti.

45. Regardless of the aforementioned requests, the Petitioner also requests the Commission TO ADOPT THE FOLLOWING MEASURES:

a. To contract, under UN expenses, independent consultants to assess the ways and amount of reparation for moral and material damages caused to the State of Haiti and State of Dominican Republic, as well as the families of the victims;
b. Referral of its conclusions and recommendations to the Human Rights Council of the United Nations;
c. Referral of its conclusions and recommendations to the Inter–American Court of Justice.

Respectfully submitted.

Santa Maria – RS - Brazil, October 17th 2011.

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V. REFERENCES

AlterPresse [AP]. 2011. *Haiti : Des matières fécales déversées par la Minustah près d'une rivière à Hinche*. AlterPresse. Available in: http://www.alterpresse.org/spip.php?article11380. Consulted in: 24.ago.2011. (doc nº 02)

CNN. 2010. *Florida woman diagnosed with cholera*. CNN. 17 novembro de 2010. Available in: http://articles.cnn.com/2010-11-17/us/florida.haiti.cholera_1_cholera-outbreak-person-to-person-transmission-haiti?_s=PM:US. Consulted in: 24.ago.2011. (doc nº 16)

CORREO DEL ORINOCO [CO]. 2011. *Aumenta a cuatro mil 334 las muertes por epidemia de cólera en Haití.* Correo del Orinoco. 10 fevereiro 2011. Available in: http://www.correodelorinoco.gob.ve/multipolaridad/aumenta-a-cuatro-mil-334-muertes-por-epidemia-colera-haiti/. Consulted in: 24.ago.2011. (doc nº 15)

France Info [FI]. 2010. *Haïti : un rapport confirme que le choléra est parti du camp de l'ONU*. Available em: http://www.france-info.com/monde-ameriques-2010-12-07-haiti-un-rapport-confirme-que-le-cholera-est-parti-du-camp-de-l-onu-501906-14-16.html. Consulted in: 7.dez.2010. (doc nº 08)

HENDRIKSEN, Rene et al. 2011. *Population genetics of Vibrio cholera from Nepal in 2010: evidence on the origin of the Haitian outbreak*. mBio. v.2, n.4, julho-agosto de 2011. Available in: http://mbio.asm.org/content/2/4/e00157-11.full.pdf+html. Consulted in: 24.ago.2011. (doc nº 14)

International Court of Justice [ICJ]. 1949. *Mémoires, Plaidoiries et Documents: Reparation des dommages subis au service des Nations Unies*. Available in: http://www.icj-cij.org/docket/files/4/11705.pdf#view=FitH&pagemode=none&search=%22bernadotte%22. Consulted in: 20.set.2011. (doc. nº 04)

JOHNSTON, Jake; BHATT, Keane. 2011. *Not doing enough: unnecessary sickness and death from cholera in Haiti*. Center for economic and policy research. Available in: http://www.cepr.net/documents/publications/not-doing-enough-2011-08.pdf. Consulted in: 24.ago.2011. (doc nº 01)

Mission des Nations Unies pour la Stabilisation en Haiti [MINUSTAH]. 2011. *Point de presse des Nations Unies du Vendredi 2 septembre*. Available in: http://minustah.org/?p=31707. Consulted in: 20.set.2011. (doc. nº 11)

Pan American Health Organization [PAHO]. 2011. *Atlas of cholera outbreak in La Hispaniola & cholera treatment facilities in Haiti 2010-2011*. Available in: http://new.paho.org/hq/images/Atlas_IHR/CholeraHispaniola/atlas.html. Consulted in: 24.set.2011. (doc nº 03)

PIARROUX, Renaud et al. 2011. *Understanding the cholera epidemic, Haiti*. Emerging infectious diseases. v.17, n.7, julho de 2011. Available in: http://www.cdc.gov/eid/content/17/7/pdfs/11-0059.pdf. Consulted in: 4.jul.2011. (doc nº 12)

United Nations – Haiti [UN-HAITI]. 2004. *Accord entre l'Organisation des Nations Unies et le Gouvernement Haïtien concernant le statut de l'opération des Nations Unies en Haïti*. Available in: http://untreaty.un.org/unts/144078_158780/6/9/13920.pdf. Consulted in: 20.set.2011. (doc. nº 06)

United Nations [UN]. 2004. *Security Council Resolution 1542 (2004)*. Available in: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/332/98/PDF/N0433298.pdf?OpenElement. Consulted in: 20.set.2011. (doc. nº 05)

United Nations News Center [UNNC]. 2010. *UN in talks to set up independent panel of experts to probe origin of cholera in Haiti*. Available in: http://www.un.org/apps/news/story.asp?NewsID=37084&Cr=haiti&Cr1. Consulted in: 20.dez.2010. (doc nº 09)

United Nations [UN]. 2011a. *Final Report of the Independent Panel of Experts on the Cholera Outbreak in Haiti*. Available in: http://www.un.org/News/dh/infocus/haiti/UN-cholera-report-final.pdf. Consulted in: 24.ago.2011. (doc nº 07)

United Nations [UN]. 2011b. *Informe del experto independiente sobre la situación de los derechos humanos en Haití, Michel Forst*. Available in: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/124/29/PDF/G1112429.pdf?OpenElement. Consulted in: 24.ago.2011. (doc nº 10)

United Nations [UN]. 2011c. *MINUSTAH, Communique de presse 453/2011*. Available in: http://minustah.org/?p=30927. Consulted in: 24.ago.2011. (doc nº 13)

DOC. Nº 1

Not Doing Enough:

Unnecessary Sickness and Death from Cholera in Haiti

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Contents

Executive Summary 1
Introduction 2
Background 2
False Confidence 5
NGOs Leaving the Field 6
Concentration of Resources in the Capital 9
The Way Forward 10
Scaling Up Treatment 10
Improving Water Treatment Systems 11
Linking Prevention to Care 13
Conclusion 13
References 15
Appendix 18

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Executive Summary

In October 2010, cholera, a waterborne disease spread by the *Vibrio cholerae* bacterium, first appeared in Haiti and rapidly spread through a vulnerable population that had not been exposed to the pathogen in over a century. This cholera outbreak—having afflicted 420,000 people, 6,000 of whom have perished as a result—is the most catastrophic epidemic the hemisphere has seen in decades. Yet ten months after its first detection, the disease has yet to be decisively halted. In fact, in recent months cholera cases have spiked dramatically. In July 2011, one person was infected with cholera almost every minute, and at least 375 died over the course of the month due to an easily preventable and curable illness.

The present health crisis did not originate as a natural byproduct of the January 2010 earthquake's devastation—the organism was virtually alien to the country. Its inadvertent introduction is the result of the negligence of the United Nations Mission in Haiti (MINUSTAH), which has maintained an international, military troop presence in Haiti since 2004. A Nepalese contingent of UN peacekeeping forces is believed to have spread the illness by contaminating the Artibonite region's water supply through a leaky sewage system and inadequate waste disposal. The specific strain of *V. cholerae* in Haiti is identical to a particularly virulent one endemic to South Asia. It infects the small intestine, provoking severe diarrhea and vomiting that, if left untreated, can fatally dehydrate a healthy adult within a matter of hours.

The health interventions launched to fight cholera have been hobbled by the initial missteps made in the wake of the epidemic. The international community underestimated the virulence of the outbreak; the UN initially denied responsibility for its introduction; and there was hesitation in investigating the circumstances surrounding its appearance. These errors led to a smaller and more delayed mobilization of funds and treatment interventions than could have been otherwise marshaled to contain the outbreak. The UN's cholera appeal, which was based on its low estimate, is still barely more than 50 percent funded. Furthermore, despite myriad warnings, many nongovernmental organizations (NGOs) withdrew from cholera treatment efforts right before this summer's rainy season and the predictable increase in the number of cholera cases that followed. To date, treatment is still unequally focused on urban centers despite the much higher fatality rates in Haiti's more rural areas. With proper treatment, fatality rates should be below one percent. However, in some rural areas, they are as high as 5.4 percent.

Cholera is both eminently preventable and treatable. Much can be done immediately to curb the disturbingly large number of Haitians falling sick, and address cholera's relative deadliness in rural and remote regions. In the short-term, the international community and NGOs should provide firm support for expanding the reach of inpatient facilities in areas hardest hit by the epidemic. Money and human resources should also be invested in the proposals of public health experts who advocate for scaling up treatment efforts through antibiotics and supplements, and integrating prevention and care through education campaigns and a vaccination strategy.

NGOs raised an astonishing $1.4 billion for Haiti relief efforts from the U.S. alone, yet many some have failed to disburse funds despite the dire situation on the ground. The international community pledged over $5 billion for Haiti, yet over a year later, less than 40 percent has been disbursed, while far less has actually made an impact on the ground. The U.S., having appropriated over $1 billion for Haiti, has only disbursed $180 million. International financial institutions (e.g. World Bank, Inter-

American Development Bank), NGOs, and donor countries should use this opportunity to redouble their efforts to address the cholera epidemic and commit to assisting the Haitian government in carrying out projects for water and sewage treatment—the same infrastructure projects which have rendered cholera essentially nonexistent in most of the world.

Introduction

Cholera is both a preventable and easily cured disease, yet in July 2011—nine months after it was first reported in Haiti—an average of 1300 people were infected each day, and 375 had died over the course of the month. At the time of this writing, a total of 420,000 have been infected and over 6000 have been killed[1] by cholera since its appearance in the country in October 2010. The bacterium, which was almost undoubtedly introduced by United Nations troops into one of Haiti's major water sources, wreaked havoc on a country whose sanitation and public health had languished due to lack of international support for necessary infrastructure projects, and was then further crippled by the 7.0-magnitude earthquake of January 2010. The rapid spread of cholera and the disparities between mortality rates in different parts of the country at present are related to: inadequate funding; a diminution of treatment capacity in the face of the foreseeable consequences of Haiti's rainy season; disproportionate focus on urban centers over rural areas despite cholera's predicted pattern of transmission; and the failure to address long-term public works projects. NGOs, organizations, donor countries and international financial institutions should use the substantial resources they have available to implement a comprehensive, integrated approach to the epidemic, as has been proposed by Dr. Paul Farmer, Jeffrey Sachs and other health and development experts. A concerted push to scale up treatment efforts, build up Haiti's water and sanitation infrastructure, and link prevention to care through education campaigns and a vaccination strategy can prevent unnecessary sickness and death from cholera in Haiti.

Background

On October 21, 2010, health workers confirmed the first case of cholera in Haiti in a century. Within three months the disease had spread to all ten departments of Haiti, afflicting nearly 200,000 and killing 3,800. Although health workers had consistently warned[2] of the dangers of waterborne diseases in the aftermath of the earthquake, in March 2010, the Centers for Disease Control (CDC) determined that an "outbreak of cholera is very unlikely at this time."[3] The CDC's prediction rested on the fact that "[m]ost current travelers to Haiti are relief workers from countries without endemic cholera, and they are likely to have access to adequate sanitation and hygiene facilities within Haiti,"

[1] Although the Haitian Ministry of Health provides the official statistics, it is likely that underreporting in rural areas means that the actual numbers are even higher. In addition, although the Ministry of Health provides both daily and cumulative figures, there are often large jumps in the cumulative numbers that are not reflected in the daily figures. For this reason, this paper uses cumulative numbers as opposed to daily figures. For daily averages, the cumulative cases have been divided by the number of days to reach an average as opposed to averaging the daily figures as reported by the Ministry of Health.

2 Center for Economic and Policy Research (2010).

3 Centers for Disease Control (2010).

while acknowledging that if cholera were introduced, "the current water, sanitation, and hygiene infrastructure in Haiti would certainly facilitate" its transmission.

However, the thousands of relief workers who poured into Haiti in the months following the January earthquake were not responsible for cholera's introduction. Due to investigations carried out by the UN[4] and the CDC[5], there is now no serious dispute that the United Nations Peacekeeping Force (MINUSTAH, as it is known by its French acronym) was the source of Haiti's cholera outbreak. This means that while the earthquake-related destruction facilitated cholera's spread in Port-au-Prince and areas of the country where people relocated after the earthquake, its appearance in the country stems from a system of maintaining international troops in Haiti that long predated the natural disaster; forces from many countries around the world have made deployments to Haiti under UN authority since MINUSTAH's arrival in 2004.

Of the Nepalese peacekeepers deployed to Haiti in October 2010, a contingent was stationed at the UN base in Mirebalais along a main tributary of the Artibonite River, the longest in Haiti and the site of the earliest cholera cases. At the beginning of the outbreak, circumstantial evidence indicated that these troops may have been the source: cholera is endemic in Nepal, most of the foreigners in Mirebalais were UN peacekeepers, and within days, hundreds had died downstream of the base. The Associated Press reported[6] on the conditions of the septic tanks and sanitation at the Mirebalais base shortly after the first cholera deaths:

> [W]hen the AP visited on Oct. 27, a tank was clearly overflowing. The back of the base smelled like a toilet had exploded. Reeking, dark liquid flowed out of a broken pipe, toward the river, from next to what the soldiers said were latrines. U.N. military police were taking samples in clear jars with sky-blue U.N. lids, clearly horrified. At the shovel-dug waste pits across the street sat yellow-brown pools of feces where ducks and pigs swam in the overflow. The path to the river ran straight downhill. The U.N. acknowledged the black fluid was overflow from the base, but said it contained kitchen and shower waste, not excrement.

In May of this year, the UN issued a report on the outbreak that, although seeking to downplay the culpability of the peacekeepers, nevertheless found that the "strains isolated in Haiti and Nepal during 2009 were a perfect match,"[7] signifying that the disease was introduced "as a result of human activity." A later study by French epidemiologist Renaud Piarroux, published in the CDC's medical journal *Emerging Infectious Diseases,*[8] reached an even clearer conclusion: "Our findings strongly suggest that contamination of the Artibonite and one of its tributaries downstream from a military camp triggered the epidemic." Both reports indicate that the likely source was a leaky sewage system at the UN base which allowed runoff to enter the river.

The international community's initial reaction was to downplay the possibility of UN culpability and underestimate the severity of the crisis. Edmond Mulet, then-head of MINUSTAH, flatly denied

4 United Nations. (2011).
5 Piarroux, et al. (2011).
6 Katz (2010).
7 United Nations, (2011).
8 Piarroux, et al. (2011).

responsibility, stating, "It's really unfair to accuse the U.N. for bringing cholera into Haiti."[9] In mid-November, the World Health Organization (WHO) estimated that the cholera epidemic would sicken 200,000 people in "the next 6 to 12 months,"[10] later revising the number up to 400,000 in a "worst-case scenario."[11] Nine months later, the number of Haitians who have fallen ill already surpassed 400,000, and continues to climb. The WHO's underestimate was detrimental for two reasons: the money mobilized for cholera response was too little and the initial reaction too slow. The UN's appeal for $164 million to fight cholera, later raised to $175 million, was based on the WHO's estimate that there would be 200,000 cases. At the same time as the WHO underestimated future cholera cases, Médecins Sans Frontières (MSF) warned that "[c]ritical shortfalls in the deployment of well-established measures to contain cholera epidemics are undermining efforts to stem the ongoing cholera outbreak in Haiti," adding that "[d]espite the huge presence of international organizations in Haiti, the cholera response has to date been inadequate in meeting the needs of the population."[12] According to the WHO, with proper treatment, cholera's "case fatality rate should remain below 1%."[13] In the early weeks of the outbreak, the fatality rate was close to 7 percent.

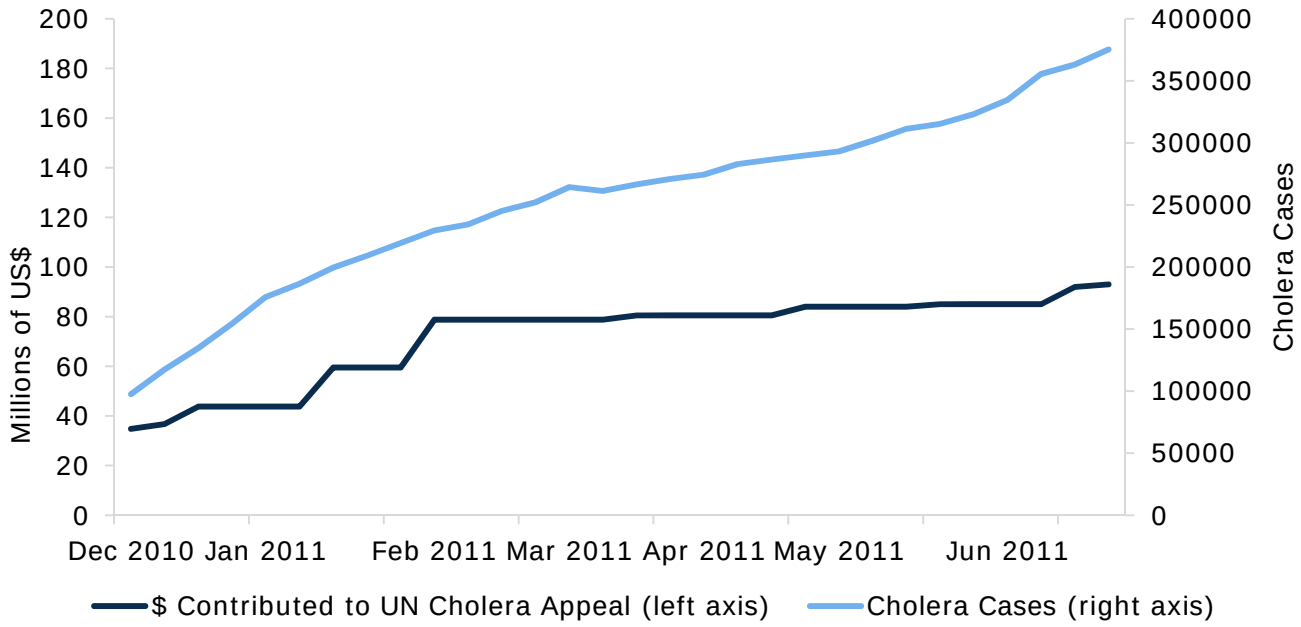
The cholera response efforts were also severely undermined by the presidential elections in November 2010, which took place at the apex of case incidence and mortality. The international community, in this case comprised mainly of the U.S., UN, France and Canada, prioritized the elections over almost all else. Although it took months for the UN to raise $30 million of its $175 million cholera appeal, the international community financed nearly the entire $30 million cost of the deeply flawed election that ended up excluding both three-quarters of the electorate, as well as over a dozen political parties, among them the country's largest party, *Fanmi Lavalas*.[14] State Department cables recently released by Wikileaks show that while acknowledging such structural defects, "the international community has too much invested in Haiti's democracy to walk away from the upcoming elections, despite its imperfections."[15] The predictable uproar and strife, a natural result of the intrinsically marred elections, "restricted distribution of critical health supplies and prevented the roll-out of health promotion campaigns,"[16] according to a UN Health Cluster bulletin published November 16, 2010. A subsequent bulletin from December 11 clearly notes that the "violence and instability in Haiti due to results of the November 28th election has had a detrimental effect on the fight against the cholera epidemic. The epidemiological data reported indicates that the disease has reached all 10 department [sic] of the island nation, and will continue to spread."[17] The election also had the unintended consequence of bringing large numbers of people together just as an epidemic was virulently spreading through the country.

9 Desvarieux (2010).
10 United Nations News Centre (2010).
11 United Nations News Centre. (2010b).
12 Médecins Sans Frontières. (2010).
13 World Health Organization (2010).
14 Johnston, Jake and Mark Weisbrot (2011).
15 Coughlin, Dan and Kim Ives (2011).
16 PAHO (2010b).
17 PAHO (2010c).

False Confidence

By January, the UN was reporting that "cholera in Haiti has been on a downward trend or has stabilized in all ten of the country's departments."[18] After reducing the mortality rate to around 2 percent in January, many health actors began to scale back their responses, and some withdrew from the cholera response entirely. However, much of the stabilization of the disease was due to the dry season—not because the epidemic had been successfully curtailed. A study in the medical journal *The Lancet,* in March 2011 noted that, a "decline in cholera prevalence in early 2011 is part of the natural course of the epidemic, and should not be interpreted as indicative of successful intervention. Substantially more cases of cholera are expected than official estimates used for resource allocation."[19] Nevertheless, cholera relief funding and preparation for the rainy season began to slow. Figure 1 shows the evolution of the funding level of the UN's cholera appeal (which has received $93 million of its $175 million request) alongside the continual increase in the number of cholera cases.

FIGURE 1
Cholera Funding vs. Cholera Cases



Sources: OCHA, MSPP

While contributions to the UN Cholera Appeal increased substantially from December through January, they largely stagnated from February onward. If spending had continued to increase as it did in the initial two months, many lives could have been saved and infections prevented and/or eliminated.

18 United Nations News Centre. (2011).
19 Andrews and Basu (2011).

NGOs Leaving the Field

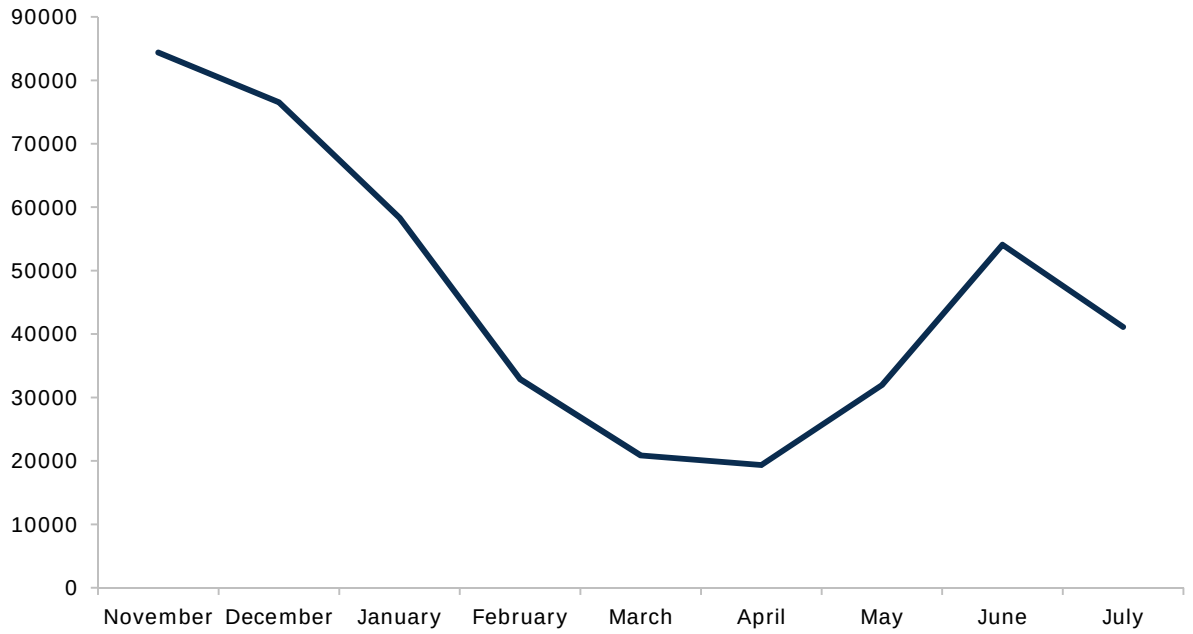
On November 11, 2010, a UN Health Cluster bulletin asserted that more than 70 organizations were responding to the cholera outbreak,[20] a number that had almost doubled by January 10 to "128 national and international organizations working in the cholera response in the 10 departments of Haiti."[21] By July 2011, that number had dwindled to just 48, leaving those that remained stretched to capacity.[22] The NGO Partners in Health/Zanmi Lasante (PIH) found its cholera treatment centers in Haiti's rural Central and Artibonite departments flooded once again. Its Mirebalais treatment center received five times more patients in June than in May. Dr. Louise Ivers, PIH's Senior Health and Policy Advisor, compared the treatment capacities during the upsurge of June 2011 to the first outbreak of cholera in 2010:

> A striking difference now as the epidemic has once again spiked is that many of these partners are no longer working in the Central or Artibonite departments. Citing lack of funds for cholera activities, they have downsized, disappeared, or retreated, handing off their activities 'to the government.' In these departments, where the health budget is miniscule, this largely means handing off activities to Zanmi Lasante. This has made the second peak of the epidemic all the more challenging and stressful on our staff and our resources.[23]

Additionally, an analysis of the Financial Tracking Service of the UN Office for Coordination of Humanitarian Affairs, a database which records all reported international humanitarian aid, shows that of the 32 funded projects for "cholera response," 15 of them expired by July 2011, when cases had predictably spiked due to the rainy season. NGOs whose projects expired include some of the world's largest relief organizations, including World Vision, Oxfam, CARE, Save the Children and Action Against Hunger.[24] **Figure 2** demonstrates the current spike in cholera cases beginning in May of this year.

20 PAHO (2010).
21 PAHO (2011).
22 PAHO (2011e).
23 Ivers (2011).
24 OCHA (2011).

FIGURE 2
Cases of Cholera in Haiti, by Month



Source: MSPP (Ministère de la Santé Publique et de la Population)

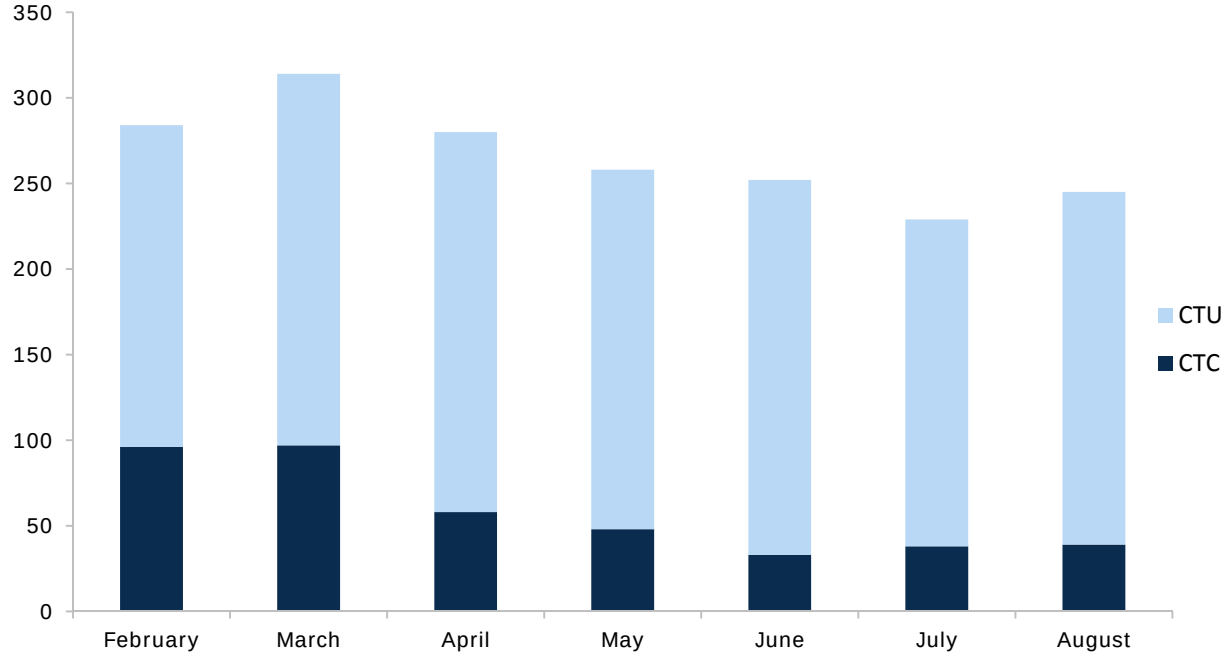
Health bulletins warned of the potentially dire effects of a withdrawal of cholera response and treatment projects. The March 25 bulletin provided a clear evaluation: "The departure has raised concerns about the capacity of local health structures and staff to cope with a possible increase in the number of cholera cases, especially in the imminent rainy season."[28] A May bulletin observed that "NGOs are mostly phasing out due to the decrease in cholera cases or due to the lack of funding."[29] The withdrawal of various health organizations led to a decrease in the number of treatment facilities throughout the country, just as the rainy season was about to begin. **Figure 3** shows the evolution in the number of Cholera Treatment Centers (CTCs) and Cholera Treatment Units (CTUs) since February.[30] Although the coverage of Oral Rehydration Points (ORPs), which treat less severe cholera cases, increased during this time period, the number of CTCs and CTUs sharply declined. A more detailed breakdown, by department, is contained in **Appendix Table 1** in the appendix.

By June, when torrential rains hit Haiti, the capacity of healthcare providers was near its low point, with 63 fewer CTCs operating throughout the country than in February. In the Artibonite, the department with the highest cholera infection rate in the country (see **Table 1**), there was only one operational CTC. Although some were eventually re-opened, the Artibonite has seen a drastic

28 PAHO (2011b).
29 PAHO (2011c).
30 The various treatment facilities can respond to different levels of case severity. ORPs are the most basic and are used to treat the least severe cases. CTUs have a greater capacity than ORPs but do not have substantial inpatient capabilities like CTCs do. For a more complete breakdown of the different treatment facilities, see: Centers for Disease Control (2011b).

increase in cases since the rains in early June. The Health Cluster reported in July that "In Gros Morne, Mapou, Marmont, Ennery and Savanne Carre [all towns in the Artibonite] the number of cases have increased between 44% and 168% from week 26 (June 26 – July 3) to week 27 (July 4 – July 10)."[31]

FIGURE 3
Evolution of Cholera Treatment Facilities



Source: Health Cluster (2011).

For the country as a whole, the number of new cases per day throughout June reached an average of 1800—triple the average number in March and April, and nearly double the number of cases in May.[33] And although the mortality rate decreased for the country as a whole, an average of eight people were dying each day in June, as compared to less than 3.5 in May. Health providers deserve praise for significantly reducing mortality rates, but if the number of cases are not reduced, unnecessary deaths will continue. Table 1 shows the current state of the cholera epidemic in each of the departments of Haiti.

31 PAHO (2011e).

33 For cholera case statistics, please see the website of Le Ministere de la Sante Publique et de la Population (MSPP). http://www.mspp.gouv.ht/site/index.php?option=com_content&view=article&id=57&Itemid=1

TABLE 1
Prevalence and Fatality Rate, by Department

Department	Cumulative Cases	Infection Rate (percent of population)	Fatality Rate (percent of cholera cases)
Artibonite	92449	5.9%	1.3%
Centre	39214	5.8%	1.3%
Grande Anse	20382	4.8%	4.4%
Nippes	4964	1.6%	3.4%
Nord	33746	3.5%	2.1%
Nord Ouest	23894	3.6%	1.4%
Nord Est	18036	5.0%	1.7%
Ouest	47254	4.0%	1.2%
Port-au-Prince	111175	4.5%	0.7%
Sud	18684	2.7%	1.4%
Sud Est	5477	1.0%	5.4%
Total	415275	4.2%	1.4%

Source: MSPP (Ministère de la Santé Publique et de la Population)

Concentration of Resources in the Capital

As can be seen in Table 1, while the overall case fatality rate is below one percent in the capital, throughout the rest of the country it ranges from 1.1 to as high as 5.3 percent. The lack of resources in rural areas remains one of the major impediments to cholera relief efforts, despite the anticipated spread of the disease to all corners of Haiti. In July, the Health Cluster noted that "the cholera epidemic is behaving as expected, having presented earlier in areas with larger populations and currently spreading to smaller rural areas throughout the country."[34]

As shown in Table 1, Sud Est is the department with the highest overall case fatality rate, at an alarming 5.4 percent. Fortunately, the Sud Est also has the lowest infection rate thus far, at just 1.0 percent of the population. However, it is also clear that the Sud Est remains extremely vulnerable to a spike in the cholera outbreak. A vulnerability analysis undertaken by the Pan-American Health Organization in April and May found that, along with the Ouest, the Sud Est was the most vulnerable department due to the lack of health facilities and the lack of access to adequate sanitation.[35] Indeed, as can been seen in Table 2 in the Appendix, there are currently zero CTCs in the Sud Est, despite the increased vulnerability and high fatality rate.

The Artibonite, despite suffering a similar number of deaths as the Ouest department (including Port-au-Prince), had only one CTC in June. Although the number of CTCs has since risen, the total number of health facilities remains just one-third of the number found in the Ouest.

As Table 1 implies, the Artibonite department has suffered massive fatalities--a cumulative number of deaths totaling 1,200 people. While the table separates Port-au-Prince--Haiti's largest urban

34 PAHO (2011e).
35 PAHO (2011d).

center--from the Ouest department to which it pertains, their combined cases of mortality (1,345) only slightly surpass those of the Artibonite. However, as already noted, only one operational CTC was recorded in the entire Artibonite department in June 2011.

The Way Forward

This paper has thus far focused on problems with the cholera response—chiefly, the initial misjudgment of its severity, the failure to disburse adequate funds, and a failure to adequately prepare for the rainy season. But it is not too late for the international community, health providers and health workers on the ground, and the Haitian government to support a more comprehensive response to the cholera epidemic. A study published in *The Lancet* in March of this year estimates that upwards of 779,000 cases of cholera and 11,000 deaths will be seen by November, but that these numbers could be drastically reduced through various measures. Not only could a sustained and serious response save lives in the short-term, but through an integrated approach that also deals with public health and water systems, the groundwork could be laid for a serious long-term reduction in mortality and disease, and improvement in public health in Haiti.

Scaling Up Treatment

As previously noted, treatment efforts have thus far proved inadequate—the weakness of the initial response and premature withdrawal of health actors have caused unnecessary sickness and death. However, improvements have been made: for example, in recent months, the number of Oral Rehydration Points (ORPs) has substantially increased, from 158 in December to over 850 by July. While the majority of cholera cases can be treated through simple rehydration at these ORPs, more severe cases require access to CTCs and CTUs. At a time of a massive and expected surge in new infections, an emphasis in expanding the reach of CTCs and CTUs, which provide inpatient capabilities, is critical. This is even more urgent when considering the unacceptably high mortality rates that affect certain departments, and the obviously inadequate capacity to treat more serious cases of cholera in such areas.

In May, 44 health and development experts issued a joint statement in *Neglected Tropical Diseases*, a journal published by the Public Library of Science. The statement outlines a "comprehensive, integrated cholera response in Haiti." They recommend three main goals: the scaling up of treatment efforts, the strengthening of the public water system and the linking of prevention to care, including the development of a vaccine strategy.[36]

Regarding the strengthening of treatment efforts, they recommend that the use of zinc supplements and antibiotics be amplified in the context of cholera response. The authors point to studies which show that zinc supplements reduce vomiting; the duration and output of diarrhea; and the length of the hospital stay. They cite a review of efficacy studies, which found that zinc treatment reduced diarrhea-related mortality by 23 percent. Increased usage of antibiotics for moderate and severe cases is also recommended, as it shortens the duration and severity of cases, while also reducing

36 Farmer, Almazor,, Bahnsen, Barry, Bazile, et al. (2011).

transmission throughout the population.[37] In *The Lancet* paper referenced earlier, researchers from Harvard and the University of California at Berkeley estimated that the "proposed extension of the use of antibiotics to all patients with severe dehydration and half of patients with moderate dehydration is expected to avert 9000 cases…and 1300 deaths."[38]

Improving Water Treatment Systems

Poor and unequal access to potable water and sanitation was the primary culprit for the rapid spread of cholera, a waterborne disease. Prior to the earthquake, only half of Port-au-Prince had access to latrines or other modes of sanitation, and one-third had no access to tap water; countrywide, 70 percent of Haitians lacked access to potable water, and just 17 percent could access adequate sanitation. Partners In Health, the NYU Law School's Center for Human Rights and Global Justice, and the Robert F. Kennedy Center for Human Rights explored the relationship between the international community, Haiti's structural deficiencies and its population's vulnerability in a 2008 report:

> In July 1998, the [Inter-American Development Bank] approved $54 million in loans for the Haitian government to implement water and sanitation improvements. One of the goals of these loans was to improve potable water and sanitation services and to establish a regulatory framework for the development of sanitation services. The original loan documents identified two communities in Haiti as recipients of the initial potable water assistance: Les Cayes and Port-de-Paix. The IDB had conducted extensive research on the water systems of both municipalities in 1997, focusing on the health impacts of the contemporaneous failures of the public water system and projecting that many of these health concerns would be ameliorated by the implementation of the IDB-funded water project.
>
> IDB officials believed that the socio-economic impact of the project in Port-de-Paix would be overwhelmingly positive, particularly because of its potential to alleviate common and dangerous water-related illnesses, such as gastro-intestinal disease. Further, the IDB anticipated a significant benefit to poverty reduction, largely because its loans would facilitate a decline of up to 90 percent in water costs for the poor. Despite the enormous potential benefits of the loans—and following approval and ratification of the loan package—the United States blocked the scheduled disbursal in 2001, effectively shutting down all prospects for the projects to proceed.[39]

In the wake of the cholera outbreak, Dr. Evan Lyon, one of the report's investigators and signatory to the *Neglected Tropical Diseases* joint statement, publicly noted that although the loans had since been disbursed, such water systems had not been meaningfully improved in the intervening decade and

37 Ibid.

38 Andrews and Basu (2011).

39 "New York University School of Law Center for Human Rights and Global Justice, Partners in Health, Robert F. Kennedy Memorial Center for Human Rights, Zanmi Lasante. (2008).

that "it's reasonable to draw a straight line from these loans being slowed down and cut off to the epidemic that emerged a week ago."[40]

In March, OCHA warned that "most of the funding to partners to support sanitation, water trucking activities and camp management will be exhausted by June 2011. As a result, it is expected that the number of humanitarian actors able to continue activities will be drastically reduced, which in turn will have serious consequences on the living conditions of camps residents."[41] The May 2011 joint statement notes:

> [S]ome have suggested charging for drinking water within informal settlements and IDP camps on the grounds that free water distribution—a service that has been available in most camps, and one of the principal reasons why they have had low incidence of cholera—is not sustainable. A cost-recovery mechanism requiring payment for access was instead recommended. But camp-dwellers have little (if any) income, most of which goes toward food and other basic needs. Anyone who has worked with Haiti's urban or rural poor would predict that this brand of "cost-recovery"—shifting the burden of payment onto the poorest people—will lead camp-dwellers to look elsewhere for water; but in post-earthquake Haiti, most other sources are not clean or cholera-free.[42]

The joint statement's authors propose increased use of filtration devices and water purification tools in order to expand access to safe drinking water. In addition, they urge NGOs to work in coordination with Haitian authorities in order to "build the capacity of municipal water systems and therefore improve Haiti's long-term water security."[43] This is an area in which little progress has been made. The Health Cluster noted in July that "the conditions that led to the spread of the epidemic are largely unchanged," and that "health infrastructure in the country has seen little to no benefit."[44] It is because of this that the statement's authors advise using the cholera response "as a wedge to bolster primary health care services and strengthen the Haitian health system."[45] This is consistent with the findings of a report from the UN Special Envoy for Haiti on aid effectiveness, which concluded that "aid is most effective at strengthening public institutions when it is channeled through them."[46]

In addition to improving the public water system, these efforts can also save lives in the short-term. *The Lancet* study estimates that over a nine-month period, "a 1% per week reduction in consumption of contaminated water would avert 105,000 cases…and 1,500 deaths."[47]

40 Democracy Now! (2010).
41 United Nations Office for the Coordination of Humanitarian Affairs (2011).
42 Farmer, Almazor,, Bahnsen, Barry, Bazile, et al. (2011).
43 Ibid.
44 PAHO (2011e).
45 Farmer, Almazor,, Bahnsen, Barry, Bazile, et al. (2011).
46 United Nations Special Envoy for Haiti (2011).
47 Andrews and Basu (2011).

Linking Prevention to Care

The authors of May's joint statement argue that "prevention should not come at the expense of acute care,"[48] but highlight the importance of increasing prevention through the use of oral vaccines. *The Lancet* study predicted "that the vaccination of 10% of the population, from March 1, will avert 63,000 cases…and 900 deaths."[49] Unfortunately, there are currently only 400,000 vaccines doses ready for shipment, which would only cover two percent of the population. Nevertheless, the authors point out that new estimates suggest that by March 2012 up to four million doses may be available, demonstrating how quickly production can be increased. Although other criticisms have arisen, including the cost-effectiveness and feasibility of implementation, the authors conclude that:

> We recognize that there is insufficient vaccine today for an immediate mass campaign, and that the current epidemic could be curbed before such a supply becomes available. Without significant investment in Haiti's weakened health system, there will continue to be insufficient human and financial resources to deliver a mass vaccination campaign. Nonetheless, we believe a rational vaccine strategy should be pursued immediately. Although the 1 million doses available would provide a complete vaccine course to only 500,000 people (about 5% of Haiti's population), targeting vulnerable populations could help to reduce transmission, decrease the likelihood of resurgence, and put gears in motion toward amassing a global stockpile—an outcome that would be beneficial for this epidemic and the next.[50]

Conclusion

Haiti's cholera outbreak has developed into a protracted, nationwide epidemic, even spreading into the neighboring Dominican Republic. From the start of the rains in May to the end of July 2011, 125,000 people have been stricken by cholera and 1,021 have died. In other words, over the course of those three months, a Haitian was afflicted by cholera every minute; every two hours, an infected person died as a result. At this critical juncture, almost ten months after cholera's first detection, major efforts should be made to reduce the total number of those sickened by the bacterium, while abating the stark disparities in the mortality rates that Haitians face throughout the country. First and foremost, a new push for cholera-specific funding—disbursed by the international community and mediated by the Haitian government's public health sector—should be initiated without delay. According to sources within the U.S. Agency for International Development (USAID), the organization has apportioned $44 million to cholera treatment since October 2010, but most of this money has already been spent, and Haiti still faces three more hazardous months of hurricane season. In July 2010, the U.S. Congress appropriated $1.14 billion "in reconstruction funds available through the end of fiscal year 2012," yet as of March, just $184.3 million had been disbursed[51], three-

48 Farmer, Almazor,, Bahnsen, Barry, Bazile, et al. (2011).
49 Andrews and Basu (2011).
50 Farmer, Almazor,, Bahnsen, Barry, Bazile , et al. (2011).
51 Accountability Office (2011).

quarters of which went to the Haiti Reconstruction Fund.[52] This leaves a significant pool of money that could be used to address the current public health emergency. In addition, NGOs raised over $1.4 billion for relief efforts in Haiti from the U.S. alone, yet much of this remains unspent. The American Red Cross, which raised nearly $500 million, has "spent and signed agreements to spend" only 60 percent of those funds as of June 2011.[53] As of the end of November 2010, Catholic Relief Services, the second-largest recipient of donations, had spent just 17 percent of the $160 million it raised for Haiti relief.[54]

The United Nations' mission in Haiti, whose gross negligence in October caused this epidemic and once again faces fresh accusations of improper disposal of its troops' waste, must shift its priorities: the $850 million annual cost of MINUSTAH's stated aim of maintaining security is more than nine times what it has raised to fight the cholera epidemic. NGOs and other health actors must take into consideration the pathogen's pattern of transmission, and sudden but predictable increases caused by long-term weather trends. In addition to reacting to new cases, NGOs should accompany Haitian endeavors in public health and public works, which would provide long-term health solutions and drastically curtail new infections. The maintenance or expansion of health infrastructure like CTCs and CTUs, the promotion of public sanitation projects and the broad implementation of vaccinations can greatly diminish the number of Haitians who unnecessarily suffer and die.

52 Only about 10 percent of the $351 million that was given to the Haiti Reconstruction Foundation has been disbursed on the ground. For more information see, http://www.cepr.net/index.php/blogs/relief-and-reconstruction-watch/inside-the-haiti-reconstruction-fund-annual-report

53 American Red Cross (2011).

54 For a complete listing of the amounts raised by NGOs and how much they've spent, see: Lieu (2011).

References

American Red Cross. 2011. "Haiti Earthquake Response: June 2011 Update." June. http://www.redcross.org/www-files/Documents/pdf/international/Haiti/HaitiEarthquake_18MonthReport.pdf

Andrews, Jason and Sanjay Basu. 2011. "Transmission Dynamics and Control of Cholera in Haiti: An Epidemic Model," *The Lancet*. March 16 (Vol. 377, Issue 9773): 1248-1255.

Center for Economic and Policy Research. 2010. "Lack of Sanitation Could Lead to Outbreak of Diseases." Haiti: Relief and Reconstruction Watch. February 24, 2010. http://www.cepr.net/index.php/relief-and-reconstruction-watch/lack-of-sanitation-could-lead-to-outbreak-of-diseases/

Center for Economic and Policy Research. 2011. "Inside the Haiti Reconstruction Fund Annual Report." Haiti Relief and Reconstruction Watch. July 26. http://www.cepr.net/index.php/blogs/relief-and-reconstruction-watch/inside-the-haiti-reconstruction-fund-annual-report

Centers for Disease Control. 2011. "Acute Watery Diarrhea and Cholera: Haiti Pre-decision Brief for Public Health Action." March 2. http://www.bt.cdc.gov/disasters/earthquakes/haiti/waterydiarrhea_pre-decision_brief.asp

Centers for Disease Control. 2011b. "Haiti Cholera Training Manual: A Full Course for Healthcare Providers." January 24. http://www.cdc.gov/haiticholera/pdf/haiticholera_trainingmanual_en.pdf

Coughlin, Dan and Kim Ives. 2011. "WikiLeaks Haiti: Cable Depicts Fraudulent Haiti Election." *The Nation*. June 8. http://www.thenation.com/article/161216/wikileaks-haiti-cable-depicts-fraudulent-haiti-election

Democracy Now! 2010. "Partners in Health Physician on Haiti: "Cholera Will Not Go Away Until Underlying Situations that Make People Vulnerable Change."' October 26. http://www.democracynow.org/2010/10/26/partners_in_health_physician_cholera_will

Desvarieux, Jessica. 2010. "At the Heart of Haiti's Cholera Riots, Anger at the U.N." *TIME*. November 22. http://www.time.com/time/world/article/0,8599,2032437,00.html#ixzz1V6sbbeZb

Farmer P, Almazor CP, Bahnsen ET, Barry D, Bazile J, et al. 2011. "Meeting Cholera's Challenge to Haiti and the World: A Joint Statement on Cholera Prevention and Care." *PLoS Neglected Tropical Disease,* May. http://www.plosntds.org/article/info%3Adoi%2F10.1371%2Fjournal.pntd.0001145#pntd.0001145-Kiple1

Government Accountability Office. 2011. "Haiti Reconstruction: U.S. Efforts Have Begun, Expanded Oversight Still to Be Implemented." May. http://www.gao.gov/products/GAO-11-415

Health Cluster. 2011. "Lists of partner activities, and lists of CTC /CTU and ORP." http://haiti.humanitarianresponse.info/Default.aspx?tabid=77&language=fr-FR

Ivers, Louise. 2011. "Haiti "overwhelmed" by second wave of cholera." Partners In Health. July 19. http://www.pih.org/news/entry/with-choleras-return-dr.-ivers-reflects-on-9-month-effort/

Johnston, Jake and Mark Weisbrot. 2011. "Haiti's Fatally Flawed Election." Center for Economic and Policy Research. January. http://www.cepr.net/index.php/publications/reports/haitis-fatally-flawed-election

Katz, Jonathan. 2010. "UN worries its troops caused cholera in Haiti." Associated Press. November 19. http://www.msnbc.msn.com/id/40280944/ns/health/t/un-worries-its-troops-caused-cholera-haiti/#.Tkk0A1sfX00

Ministère de la Santé Publique et de la Population (MSPP). Documentation. http://www.mspp.gouv.ht/site/index.php?option=com_content&view=article&id=57&Itemid=1

Lieu, Derek. 2011. "Haiti Earthquake Fund Raising, One Year Later." *Chronicle of Philanthropy*. January 7. http://philanthropy.com/article/Haiti-One-Year-Fund-Raising/125896/

Médecins Sans Frontières. 2011. "Cholera in Haiti: MSF calling on all actors to step up response." November 18. http://www.msf.org/msf/articles/2010/11/cholera-in-haiti-msf-calling-on-all-actors-to-step-up-response.cfm

New York University School of Law Center for Human Rights and Global Justice, Robert F. Kennedy Memorial Center for Human Rights, Partners in Health, Zanmi Lasante. 2008. "Woch Non Soley: The Denial of the Right to Water in Haiti." June 23. http://www.pih.org/news/entry/report-indicts-u.s.-government-and-inter-american-development-bank/

OCHA: Financial Tracking Service. 2011. "Consolidated Appeal: Haiti 2011 List of Appeal Projects (grouped by Cluster), with funding status of each as of 5-August-2011." Accessed August 5, 2011. http://fts.unocha.org/reports/daily/ocha_R32_A926___15_August_2011_%2817_21%29.pdf

Pan American Health Organization (PAHO/WHO). 2010. "Health Cluster Bulletin: Cholera Outbreak in Haiti – Thursday, November 11, 2010 - #1." November 11. http://reliefweb.int/node/374761

Pan American Health Organization (PAHO/WHO). 2010b. "Health Cluster Bulletin: Cholera Outbreak in Haiti – Tuesday, November 16, 2010 - #2." November 16. http://reliefweb.int/sites/reliefweb.int/files/resources/19C9F9A756729874492577DE00050328-Full_Report.pdf

Pan American Health Organization (PAHO/WHO). 2010c. "Health Cluster Bulletin: Cholera Outbreak in Haiti – Saturday, December 11, 2010 - #9." December 11. http://reliefweb.int/node/377850

Pan American Health Organization (PAHO/WHO). 2011. "Health Cluster Bulletin: Cholera Outbreak in Haiti – Monday, January 10, 2011 - #13." January 10.
http://reliefweb.int/node/380217
Pan American Health Organization (PAHO/WHO). 2011b. "Health Cluster Bulletin: Cholera Outbreak in Haiti – Friday, March 25, 2011 - #22." March 25. http://reliefweb.int/node/393596

Pan American Health Organization (PAHO/WHO). 2011c. "Health Cluster Bulletin: Cholera and Post-Earthquake Response in Haiti – Tuesday, May 3, 2011 - #24." May 3.
http://reliefweb.int/node/399813

Pan American Health Organization (PAHO/WHO). 2011d. "Health Cluster Bulletin: Cholera and Post-Earthquake Response in Haiti – Friday, May 27, 2011 - #25." May 27.
http://reliefweb.int/node/405245

Pan American Health Organization (PAHO/WHO). 2011e. "Health Cluster Bulletin: Cholera and Post-Earthquake Response in Haiti – Monday, July 25, 2011 - #26." July 25.
http://reliefweb.int/node/435985

Piarroux R, Barrais R, Faucher B, Haus R, Piarroux M, Gaudart J, et al. 2011. "Understanding the cholera epidemic, Haiti." *Emerging Infectious Diseases*. July.
http://www.cdc.gov/EID/content/17/7/1161.htm

United Nations. 2011. "Final Report of the Independent Panel of Experts on the Cholera Outbreak in Haiti." May 4.
http://www.un.org/News/dh/infocus/haiti/UN-cholera-report-final.pdf

United Nations News Centre. 2010. "Haiti: UN launches $164 million appeal to fight deadly cholera outbreak." November 12.
http://www.un.org/apps/news/story.asp?NewsID=36740&Cr=Haiti&Cr1=&Kw1=haiti&Kw2=cholera&Kw3=

United Nations News Centre. 2010b. "Haiti cholera outbreak needs stronger response, top UN relief official stresses." November 24.
http://www.un.org/apps/news/story.asp?NewsID=36865&Cr=haiti&Cr1=&Kw1=haiti&Kw2=cholera&Kw3=

United Nations News Centre. 2011. "UN: number of cholera deaths in Haiti shows signs of falling or stabilizing." January 24.
http://www.un.org/apps/news/story.asp?NewsID=37366&Cr=Haiti&Cr1

United Nations Office for the Coordination of Humanitarian Affairs. 2011. "Humanitarian Bulletin (10-25 March 2011)." March 25. http://reliefweb.int/node/393607

United Nations Special Envoy for Haiti. 2011. "Has Aid Changed? Channeling Assistance to Haiti Before and After the Earthquake." June.
http://www.haitispecialenvoy.org/download/Report_Center/has_aid_changed_en.pdf

World Health Organization. 2011. "Cholera Fact Sheet." June. Accessed August 8, 2011.
http://www.who.int/mediacentre/factsheets/fs107/en/

Appendix

APPENDIX TABLE 1
Evolution of Cholera Treatment Facilities, by Department

	February		March		April		May		June		July		August	
	CTC	*CTU*	*CTC*	*CTU*	*CTC*	*CTU*	*CTC*	*CTU*	*CTC*	*CTU*	*CTC*	*CTU*	*CTC*	*CTU*
Artibonite	13	12	14	15	6	12	6	13	1	11	6	11	7	16
Centre	5	13	5	13	5	12	4	10	3	12	4	12	4	12
Grande Anse	5	5	6	24	5	23	5	25	4	35	3	33	4	35
Nippes	2	6	2	6	3	10	3	10	1	11	1	10	1	9
Nord	13	20	13	20	8	22	1	22	1	23	4	23	4	23
Nord-Est	4	22	4	23	3	24	3	24	2	22	2	22	2	22
Nord-Ouest	9	4	9	4	1	14	1	14	0	14	0	12	2	11
Ouest	36	92	36	96	19	88	17	75	18	70	14	48	13	58
Sud	8	5	7	6	7	7	7	7	3	10	4	10	2	10
Sud-Est	1	9	1	10	1	10	1	10	0	11	0	10	0	10
Total	96	188	97	217	58	222	48	210	33	219	38	191	39	206
Overall Total	284		314		280		258		252		229		245	

Source: Health Cluster (2011).

DOC. Nº 2

http://www.alterpresse.org/spip.php?article11380

> Perspectives >

Haiti : Des matières fécales déversées par la Minustah près d'une rivière à Hinche

mardi 9 août 2011

Correspondance - Ronel Odatte

La population de la région du Plateau Central (est) réprouve les actes de la mission des Nations Unies pour la stabilisation en Haïti (Minustah) qui a déversé en fin de semaine dernière des matières fécales prés de la rivière Guayamouc. Les autorités locales dénoncent ces pratiques, qualifiées de « vagabondage », moins d'un an après le déclenchement dans cette région de l'épidémie de choléra qui a déjà fait plus de 5000 morts à travers le pays.

Hinche, 9 août 2011 [AlterPresse] --- Les habitants du quartier de Sully à Hinche (est) sont en colère après que plusieurs camions de la mission des Nations Unies pour la stabilisation en Haïti (Minustah) ont déversé, le 6 août 2011, des matières fécales dans des trous creusés à quelques mètres de la rivière Guayamouc.

Les riverains ont été alarmés, mais n'ont pas pu stopper l'opération, selon des témoignages recueillis sur place par AlterPresse.

Pour l'heure, c'est l'inquiétude qui règne, et personne ne veut emprunter la route menant vers cette partie du quartier de Sully, où les matières fécales dégagent une odeur nauséabonde.

Le maire de la ville, André Renard, qui s'est rendu sur les lieux en compagnie de plusieurs journalistes, n'a pas caché son indignation devant ce qu'il appelle « une atteinte à la dignité humaine ».

« Je réclame, une fois de plus, le départ du contingent népalais. Ce sont des porteurs de la bactérie Vibrio cholerae, ils viennent nous exterminer, il est temps qu'ils partent », ajoute-t-il.

André Renard exhorte la population a s'organiser en brigade de vigilance en vue d'empêcher toute action visant à utiliser leurs quartiers comme dépotoirs de matières fécales.

De son côté, le premier sénateur du Plateau Central, Franscisco Delacruz (Alternative), qualifie le déversement de matières fécales près de la rivière Guayamuc d'acte de « vagabondage ».

L'élu du centre se propose de s'entretenir avec les autorités compétentes de de l'organisation des Nations Unies (Onu) en vue de corriger cette situation.

Par ailleurs, des jeunes qui habitent le village Kiskeya (Hinche) demandent à lÉtat haïtien de prendre des dispositions pour débarrasser le sol national des forces étrangères. Ils menacent de créer des troubles, si leur voix n'est pas entendue.

Des membres de diverses organisations sociales, interrogés par AlterPresse, expriment leur réprobation des actes posés par la Minustah.

Pour eux, les forces onusiennes n'accordent pas d'importance à la vie des Haïtiens. Ils critiquent aussi l'attitude, apparemment insouciante, des responsables de l'État.

Jusqu'à dimanche dernier (7 août 2011), aucun responsable local de la Minustah ne s'était prononcé sur les actions reprochées à la force onusienne.

La thèse, selon laquelle les casques bleus népalais basés à Mirebalais (toujours dans le Plateau Central) ont importé en Haïti la souche de choléra, a été confirmée par des scientifiques, entre autres le Francais Renaud Piarroux.

L'argumentation - accusant la force onusienne dans la propagation du choléra en Haïti - est développée dans le numéro de juillet 2011 de la revue "Emerging infectious diseases", une publication des centres nord-américains de contrôle et de prévention des maladies (Cdc).

Les scientifiques ont présenté des "preuves solides", "suggérant fortement" l'implication d'un contingent de militaires onusiens, originaires du Népal, ayant contaminé une rivière haïtienne à cause des mesures sanitaires inappropriées sur leur base.

Mais cette thèse a été réfutée par la Minustah.

Dès octobre 2010, les riverains de la rivière de Mirebalais avaient pointé du doigt les militaires népalais dans l'introduction de l'épidémie du choléra, à partir de matières fécales jetées dans le fleuve de l'Artibonite qui traverse les départements géographiques du Centre et du Nord d'Haïti.

Il s'en était suivi plusieurs manifestations de protestations contre la force onusienne déployée en Haïti depuis juin 2011. [r^{o} apr 09/08/2011 17:00]

DOC. Nº 3

Pan American Health Organization
Regional Office of the World Health Organization

Situation Updates

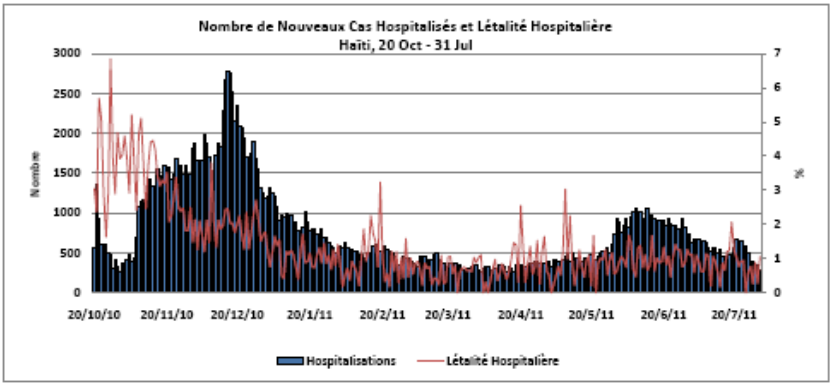
Preliminary data. Information may change as retrospective data is integrated

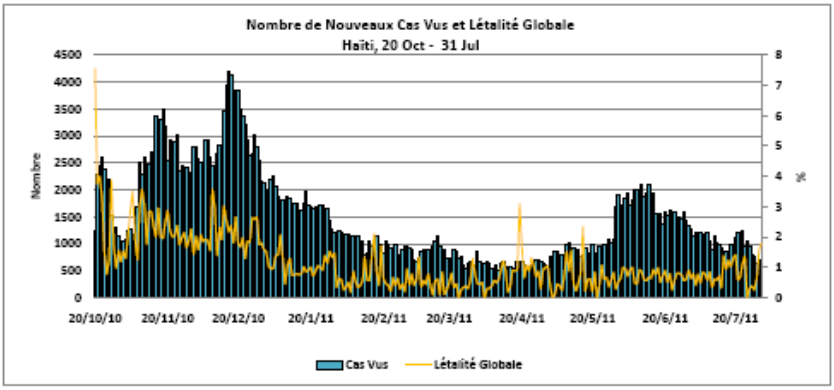
- **Update August 15, 2011**

Haiti

On August 12, the Ministry of Health of Haiti (Ministère de la Sante Publique et de la Population, MSPP) reported that as of July 31, 2011 a total of 419,511 cumulative cholera cases and 5,968 deaths due to cholera were registered. Of the total cholera cases, 222,359 patients (53.0%) have been hospitalized.

MSPP's daily reports are available at: http://www.mspp.gouv.ht/site/index.php?option=com_content&view=article&id=57&Itemid=1





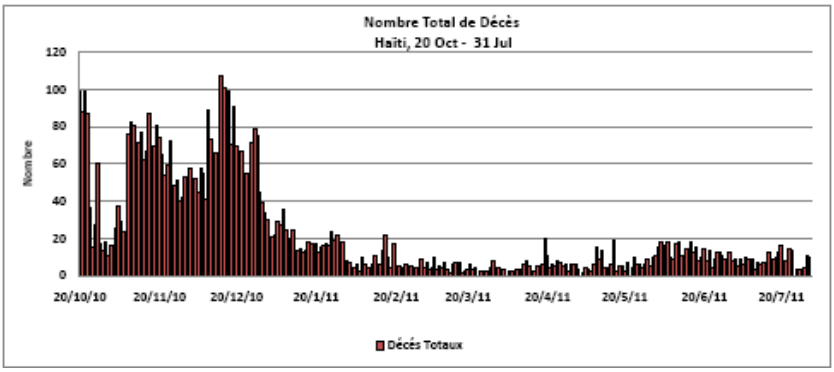
Dominican Republic

Up to EW 30 of 2011, the Ministry of Public Health reported a total of 15,190 suspected cholera cases and confirmed 92 deaths due to cholera.

- **Update July 26, 2011**

Haiti

On July 25, the Ministry of Health of Haiti (Ministère de la Sante Publique et de la Population, MSPP) reported that as of July 10, 2011 a total of 388,958 cumulative cholera cases and 5,899 deaths due to cholera were registered. Of the total cholera cases, 206,882 patients (53.2%) have been hospitalized.



Dominican Republic

Up to EW 29 of 2011, the Ministry of Public Health reported a total of 13,200 suspected cholera cases and confirmed 87 deaths due to cholera.

- **Update June 28, 2011**

Haiti

On June 27, the Ministry of Health of Haiti (Ministère de la Sante Publique et de la Population, MSPP) reported that as of June 20, 2011 a total of 363,117 cumulative cholera cases and 5,506 deaths due to cholera were registered. Of the total cholera cases, 191,508 patients (52.7%) have been hospitalized.

Dominican Republic

Up to EW 24 of 2011, the Ministry of Public Health reported that there were 1,872 cholera cases confirmed by laboratory (191 in 2010 and 1,681 in 2011), with 56 fatal cases.

- **Update June 22, 2011**

Haiti

On June 20, the Ministry of Health of Haiti (Ministère de la Sante Publique et de la Population, MSPP) reported that as of June 12, 2011 a total of 344,623 cumulative cholera cases and 5,397 deaths due to cholera were registered. Of the total cholera cases, 182,947 patients (53.1%) have been hospitalized.

Dominican Republic

Up to EW 23 of 2011, the Ministry of Public Health reported that there were 1,727 cholera cases confirmed by laboratory (191 in 2010 and 1,536 in 2011), with 46 fatal cases.

- **Update June 10, 2011**

Haiti

On June 9th, the Ministry of Health of Haiti (Ministère de la Sante Publique et de la Population, MSPP) reported that as of June 4, 2011 a total of 331,454 cumulative cholera cases and 5,386 deaths due to cholera were registered. Of the total cholera cases, 175,944 patients (53.1%) have been hospitalized.

Haiti

On June 6th, the Ministry of Health of Haiti (Ministère de la Sante Publique et de la Population, MSPP) reported that as of May 31, 2011 a total of 324,299 cumulative cholera cases and 5,342 deaths due to cholera were registered. Of the total cholera cases, 172,482 patients (53.2%) have been hospitalized.

Dominican Republic

Up to EW 21 of 2011, the Ministry of Public Health reported that there were 1,484 cholera cases confirmed by laboratory (191 in 2010 and 1,293 in 2011), with 34 fatal cases.

- **Update May 16, 2011**

Haiti

On May 16, the Ministry of Health of Haiti (Ministère de la Sante Publique et de la Population, MSPP) reported that **as of May 3, 2011** a total of 293,470 cumulative cholera cases and 4,954 deaths due to cholera were registered. Of the total cholera cases, 158,214 patients (53.9%) have been hospitalized.

Dominican Republic

Up to EW 17 of 2011, the Ministry of Public Health reported that there were 963 cholera cases confirmed by laboratory (191 in 2010 and 772 in 2011), with thirteen fatal cases.

- **Update April 25, 2011**

Haiti

On April 25, the Ministry of Health of Haiti (Ministère de la Sante Publique et de la Population, MSPP) reported that **as of April 17, 2011** a total of 285,931 cumulative cholera cases and 4,870 deaths due to cholera were registered. Of the total cholera cases, 154,041 patients (53.9%) have been hospitalized.

Dominican Republic

Up to EW 15 of 2011, the Ministry of Public Health reported that there were 910 cholera cases confirmed by laboratory (191 in 2010 and 710 in 2011), with ten fatal cases.

- **Update April 22, 2011**

Haiti

On April 22, the Ministry of Health of Haiti (Ministère de la Sante Publique et de la Population, MSPP) reported that **as of April 12, 2011** a total of 283,362 cumulative cholera cases and 4,856 deaths due to cholera were registered. Of the total cholera cases, 152,816 patients (53.9%) have been hospitalized. MSPP daily reports available. at

Dominican Republic

Up to EW 14 of 2011, the Ministry of Public Health reported that there were 872 cholera cases confirmed by laboratory (191 in 2010 and 681 in 2011), with ten fatal cases.

Haiti

On April 8, the Ministry of Health of Haiti (Ministère de la Sante Publique et de la Population, MSPP) reported that **as of April 4, 2011** a total of 274,418 cumulative cholera cases and 4,787 deaths due to cholera were registered. Of the total cholera cases, 146,686 patients (53.5%) have been hospitalized.

- **Update April 5, 2011**

Haiti

On April 5, the Ministry of Health of Haiti (Ministère de la Sante Publique et de la Population, MSPP) reported that **as of** March 28**, 2011** a total of 270,997 cumulative cholera cases and 4,766 deaths due to cholera were registered. Of the total cholera cases, 144,768 patients (53.4%) have been hospitalized.

Dominican Republic

Up to EW 12 of 2011, the Ministry of Public Health reported that there were 764 cholera cases confirmed by laboratory (191 in 2010 and 573 in 2011), with seven fatal cases.

- **Update March 28, 2011**

Haiti

On March 28, the Ministry of Health of Haiti (Ministère de la Sante Publique et de la Population, MSPP) reported that **as of** March 22**, 2011** a total of 267,244 cumulative cholera cases and 4,747 deaths due to cholera were registered. Of the total cholera cases, 142,870 patients (53.5%) have been hospitalized.

- **Update March 21, 2011**

Haiti

On March 21, the Ministry of Health of Haiti (Ministère de la Sante Publique et de la Population, MSPP) reported that **as of** March 5**, 2011** a total of 263,476 cumulative cholera cases and 4,661 deaths due to cholera were registered. Of the total cholera cases, 141,630 patients (53.8%) have been hospitalized. The in-hospital case fatality rate of this day was 0.6% while the overall case fatality rate was 1.8%.

Dominican Republic

Up to EW 10 of 2011, the Ministry of Public Health reported that there were 606 cholera cases confirmed by laboratory (191 in 2010 and 415 in 2011), with six fatal cases.

- **Update March 10, 2011**

Haiti

On March 10, the Ministry of Health of Haiti (Ministère de la Sante Publique et de la Population, MSPP) reported that **as of** March 1st**, 2011** a total of 252,640 cumulative cholera cases and 4,672 deaths due to cholera were registered. Of the total cholera cases, 136,275 patients (53.9%) have been hospitalized. The in-hospital case fatality rate was 2.1% while the overall case fatality rate was 1.8%.

- **Update March 7, 2011**

Haiti

On March 7, 2011, The Ministry of Health of Haiti (Ministère de la Sante Publique et de la Population, MSPP) reported that as of February 25, 2011 a total of 248,442 cumulative cholera cases and 4,627 deaths due to cholera were registered. Of the total cholera cases, 133,921 patients (53.9%) have been hospitalized. The in-hospital case fatality rate was 2.1% while the overall case fatality rate was 1.8%.

- **Update March 1, 2011**

Haiti

On March 1, 2011, The Ministry of Health of Haiti (Ministère de la Sante Publique et de la Population, MSPP) reported that as of February 21, 2011 a total of 245,183 cumulative cholera cases and 4,625 deaths due to cholera were registered. Of the total cholera cases, 132,293 patients (54.0%) have been hospitalized. The in-hospital case fatality rate was 2.1% while the overall case fatality rate was 1.9%.

Dominican Republic

Up to EW 7 of 2011, the Ministry of Public Health reported that there were 470 cholera cases confirmed by laboratory (191 in 2010 and 279 in 2011), with three fatal cases. There have been registered cases and hospitalizations due to cholera in 25 of the 31 provinces of the country. The provinces where cases have been detected during the last five weeks are Santiago and Distrito Nacional. The province of Duarte registered cases for the first time during EW 7.

- **Update February 25, 2011**

Haiti

On February 25, The Ministry of Health of Haiti (Ministère de la Sante Publique et de la Population, MSPP) reported that **as of February 17, 2011** a total of 241,360 cumulative cholera cases and 2,573 deaths due to cholera were registered. Of the total cholera cases, 130,545 patients (54.1%) have been hospitalized. The in-hospital case fatality rate was 2.1% while the overall case fatality rate was 1.9%.

Dominican Republic

The Ministry of Public Health of Dominican Republic reported that as of **February 12, 2011** there were 426 cholera cases confirmed by laboratory (191 in 2010 and 235 in 2011), with 3 deaths. There have been registered cases and hospitalizations due to cholera in 22 of the 31 provinces of the country. The provinces where cases have been detected during the epidemiological week 6 were Azua, Baoruco, Elías Piña, Espaillat, Independencia, La Altagracia, La Vega, Monte Cristi, Peravia, Puerto Plata, San Cristobal, Santiago, Valverde, Santo Domingo and the National District.

- **Update February 22, 2011**

Haiti

On February 22, The Ministry of Health of Haiti (Ministère de la Sante Publique et de la Population, MSPP) reported that **as of February 14, 2011** a total of 234,303 cumulative cholera cases and 2,533 deaths due to cholera were registered. Of the total cholera cases, 126,344 patients (53.9%) have been hospitalized. The in-hospital case fatality rate was 2.2% while the overall case fatality rate was 1.9%.

- **Update February 16, 2011**

Haiti

On **February 16,** The Ministry of Health of Haiti (Ministère de la Sante Publique et de la Population, MSPP) reported that the cumulative number of cholera cases and deaths due to cholera, as of **February 9, 2011**, was 231,070 and 4,549 respectively. Of the total cholera cases, 124,482 patients (53.9%) have been hospitalized. The in-hospital case fatality rate was 2.2% while the overall case fatality rate was 2.0%.

- **Update February 14, 2011**

Haiti

On **February 14,** The Ministry of Health of Haiti (Ministère de la Sante Publique et de la Population, MSPP) reported that the cumulative number of cholera cases and deaths due to cholera, as of **February 3, 2011**, was 225,668 and 4,452 respectively. Of the total cholera cases, 121,883 patients (54.0%) have been hospitalized. The in-hospital case fatality rate was 2.2% while the overall case fatality rate was 2.0%.

- **Update February 10, 2011**

On **February 10**, the Ministry of Public Health of Dominican Republic reported that up to **February 5, 2011** there were 380 cholera cases confirmed by laboratory (191 in 2010 and 189 in the first four weeks of 2011), with 3 fatal cases.

There have been registered cases and hospitalizations due to cholera in 22 of the 31 provinces of the country. The provinces where cases have been detected during the last five weeks are Azua, Elías Piña, La Altagracia, Monte Cristi, Santiago, Santo Domingo and the National District.

- **Update February 10, 2011**

Haiti

On **February 10,** The Ministry of Health of Haiti (Ministère de la Sante Publique et de la Population, MSPP) reported that the cumulative number of cholera cases and deaths due to cholera, as of **February 2, 2011**, was 220,784 and 4,334 respectively. Of the total cholera cases, 121,397 patients (55.0%) have been hospitalized. The in-hospital case fatality rate was 2.2% while the overall case fatality rate was 1.9%.

Dominican Republic

On **February 9**, the Ministry of Public Health of Dominican reported that up to EW 4 of 2011 there were 336 cholera cases confirmed by laboratory (191 in 2010 and 145 in the first four weeks of 2011), with 3 fatal cases. There have been registered cases and hospitalizations due to cholera in 21 of the 31 provinces of the country. The provinces where cases have been detected during the last two weeks are Azua, Elías Piña, La Altagracia, Monte Cristi,

Pedrenales, Santiago, Santo Domingo and Distrito Nacional. The provinces of El Siebo and La Romana registered cases for the first time during EW 4.

Update February 4, 2011

Haiti

On **February 4,** The Ministry of Health of Haiti (Ministère de la Sante Publique et de la Population, MSPP) reported that the cumulative number of cholera cases and deaths due to cholera, as of **January 30, 2011**, was 216,938 and 4,120 respectively. Of the total cholera cases, 119,894 patients (55.3%) have been hospitalized. The in-hospital case fatality rate was 2.3% while the overall case fatality rate was 1.9%.

- **Update February 2, 2011**

Haiti

On **February 2,** The Ministry of Health of Haiti (Ministère de la Sante Publique et de la Population, MSPP) reported that the cumulative number of cholera cases and deaths due to cholera, as of **January 28, 2011**, was 215,936 and 4,131 respectively. Of the total cholera cases, 117,312 patients (54.3%) have been hospitalized. The in-hospital case fatality rate was 2.3% while the overall case fatality rate was 1.9%.

- **Update January 27, 2011**

Haiti

On **January 27**, The Ministry of Health of Haiti (Ministère de la Sante Publique et de la Population, MSPP) reported that the cumulative number of cholera cases and deaths due to cholera, as of January 24, 2011, was 209,034 and 4,030 respectively. Of the total cholera cases, 117,930 patients (56.4%) have been hospitalized. The in-hospital case fatality rate was 2.3% while the overall case fatality rate was 1.9%.

- **Update January 25, 2011**

Haiti

On **January 25**, The Ministry of Health of Haiti (Ministère de la Sante Publique et de la Population, MSPP) reported that the cumulative number of cholera cases and deaths due to cholera, as of **January 17, 2011**, was 199,497 and 3,927 respectively. Of the total cholera cases, 112,656 patients (56.5%) have been hospitalized. The in-hospital case fatality rate was 2.3% while the overall case fatality rate was 2.0%.

- **Update January 24, 2011**

Dominican Republic:

On **January 24**, the Ministry of Health of Dominican Republic reported that on 20 January occurred the first death due to cholera. The victim had been temporally living in Dominican province of Altagracia (East of the country), but its permanent setting was in the province of Duarte (Centre-Nord of the country). Additional outbreak surveillance actions are on course. As of epidemiological week 2 of 2011, Dominican Republic reported a total of 244 confirmed cases. A total of 21 municipalities in 14 provinces maintained an active transmission. In the first epidemiological week they were Elías Piña, Azua, Barahona, Independencia, La Altagracia, Santiago, Valverde, Santo Domingo and the National District. In the second week Dajabon, Monte Cristi, Pedernales, San Juan and Santiago Rodriguez have been added.

- **Update January 19, 2011**

Haiti

On **January 19**, The Ministry of Health of Haiti (Ministère de la Sante Publique et de la Population, MSPP) reported that the cumulative number of cholera cases and deaths due to cholera, as of **January 16, 2011**, was 194,095 and

3,889 respectively. Of the total cholera cases, 109,015 patients (56.2%) have been hospitalized. The in-hospital case fatality rate was 2.4% while the overall case fatality rate was 2.0%.

- **Update January 18, 2011**

Haiti

On **January 17**, The Ministry of Health of Haiti (Ministère de la Sante Publique et de la Population, MSPP) reported that the cumulative number of cholera cases and deaths due to cholera, as of **January 9, 2011**, was 188,967 and 3,838 respectively. Of the total cholera cases, 105,827 patients (56.0%) have been hospitalized. The in-hospital case fatality rate was 2.4% while the overall case fatality rate was 2.0%.

Dominican Republic:

On **January 17**, the Ministry of Health of Dominican Republic reported that the official number of cumulative cases of cholera laboratory confirmed as of **January 8, 2011** was 212. Among them, 191 cases were reported during the 2010, and 21 cases were reported in the first week of 2011. Nine provinces maintained an active transmission. They were Elías Piña, Azua, Barahona, Independencia, La Altagracia, Santiago, Valverde, Santo Domingo and the National District. No deaths have been reported.

- **Update January 13, 2011**

Haiti:

On **January 13,** The Ministry of Health of Haiti (Ministère de la Sante Publique et de la Population, MSPP) reported that the cumulative number of cholera cases and deaths due to cholera, as of January 9, 2011, was 185,012 and 3,790 respectively. Of the total cholera cases, 103,532 patients (56.0%) have been hospitalized. The in-hospital case fatality rate was 2.4% while the overall case fatality rate was 2.0%.

- **Update January 12, 2011**

Dominican Republic:

On **January 11**, the Ministry of Health of Dominican Republic reported that in first week of 2011 a total of 8 new cases of cholera have been laboratory confirmed, raising the official number of cumulative cases to 160. No deaths have been reported. Cases are registered in 13 of 31 provinces (Elías Piña, San Juan, Santiago, Santo Domingo, Azua, Dajabón, Independencia, Valverde, Baoruco, La Altagracia, María Trinidad Sánchez, San Cristóbal y Monte Cristy) and the National District..

- **Update January 11, 2011**

Haiti:

On **January 11,** The Ministry of Health of Haiti (Ministère de la Sante Publique et de la Population, MSPP) reported that the cumulative number of cholera cases and deaths due to cholera, as of January 7, 2011, was 181,829 and 3,759 respectively. Of the total cholera cases, 101,545 patients (55.8%) have been hospitalized. The in-hospital case fatality rate was 2.5% while the overall case fatality rate was 2.1%.

- **Update January 10, 2011**

Haiti:

On **January 10,** The Ministry of Health of Haiti (Ministère de la Sante Publique et de la Population, MSPP) reported that the cumulative number of cholera cases and deaths due to cholera, as of January 5, 2011, was 178,440 and 3,732 respectively. Of the total cholera cases, 99,631 patients (55.8%) have been hospitalized. The in-hospital case fatality rate was 2.5% while the overall case fatality rate was 2.1%.

- **Update January 7, 2011**

Dominican Republic:

On **January 7**, the Ministry of Health of Dominican Republic reported, that the cumulative number of laboratory confirmed cholera cases as of January 1st was 154. No deaths have been reported. Cases are registered in 13 of 31 provinces (Elías Piña, San Juan, Santiago, Santo Domingo, Azua, Dajabón, Independencia, Valverde, Baoruco, La Altagracia, María Trinidad Sánchez, San Cristóbal y Monte Cristy).

- **Update January 6, 2011**

Haiti:

On January 6, The Ministry of Health of Haiti (Ministère de la Sante Publique et de la Population, MSPP) reported that the cumulative number of cholera cases and deaths due to cholera, as of January 1, 2011, was 171,304 and 3,651 respectively. Of the total cholera cases, 95,039 patients have been hospitalized. The in-hospital case fatality rate was 2.5% while the overall case fatality rate was 2.1%.

- **Update January 4, 2011**

Haiti:

On January 4, The Ministry of Health of Haiti (Ministère de la Sante Publique et de la Population, MSPP) reported that the cumulative number of cholera cases and deaths due to cholera, as of December 29, was 157,321 and 3,481 respectively. Of the total cholera cases, 87,639 patients have been hospitalized. The in-hospital case fatality rate was 2.6%, while the overall case fatality rate was 2.2%.

- **Update December 30, 2010**

Dominican Republic:

On **December 30**, the Dominican Republic reported, that the cumulative number of cholera cases as of December 28, was 131 laboratory confirmed cases of which 103 have been hospitalized. No deaths have been reported.

Haiti:

On **December 30**, The Ministry of Health of Haiti (Ministère de la Sante Publique et de la Population, MSPP) reported that the cumulative number of cholera cases and deaths due to cholera, as of December 26, was 148,787 and 3,333 respectively. Of the total cholera cases, 83,166 patients have been hospitalized. The in-hospital case fatality rate was 2.7%, while the overall case fatality rate was 2.2%.

- **Update December 29, 2010**

Dominican Republic:

On **December 29**, the Dominican Republic reported, that the cumulative number of cholera cases as of December 27, was 120 laboratory confirmed cases of which 96 have been hospitalized. No deaths have been reported. New cases (5) are from the municipalities of Comendador (1), Banica (3) and Pedro Santana (1) in the province of Elias Piña.

Haiti:

On **December 29**, The Ministry of Health of Haiti (Ministère de la Sante Publique et de la Population, MSPP) reported that the cumulative number of cholera cases and deaths due to cholera, as of December 20, was 134,678 and 2,901 respectively. Of the total cholera cases, 73,853 patients have been hospitalized. The in-hospital case fatality rate was 2.7%, while the overall case fatality rate was 2.2%.

- **Update December 28, 2010**

Dominican Republic:

On **December 28**, the Dominican Republic reported, that the cumulative number of cholera cases as of December 26, was 115 laboratory confirmed cases of which 90 have been hospitalized. No deaths have been reported.

Haiti:

On **December 28**, The Ministry of Health of Haiti (Ministère de la Sante Publique et de la Population, MSPP) reported that the cumulative number of cholera cases and deaths due to cholera, as of December 18, was 130,534 and 2,296, respectively. Of the total cholera cases, 70,865 patients have been hospitalized. The in-hospital case fatality rate was 2.7%, while the overall case fatality rate was 2.1%.

- **Update December 27, 2010**

Dominican Republic:

On **December 27**, the Dominican Republic reported, that the cumulative number of cholera cases as of December 23, was 105 laboratory confirmed cases of which 82 have been hospitalized. No deaths have been reported. New cases are from the provinces of Dajabon (2), Postrer Rio de Independencia (2), La Canela de Santiago (1), Azua (1) y Santo Domingo Este (1).

Haiti:

On **December 27**, The Ministry of Health of Haiti (Ministère de la Sante Publique et de la Population, MSPP) reported that the cumulative number of cholera cases and deaths due to cholera, as of December 18, was 128,251 and 2,707, respectively. Of the total cholera cases, 68,764 patients have been hospitalized. The in-hospital case fatality rate was 2.7%, while the overall case fatality rate was 2.1%.

- **Update December 23, 2010**

Dominican Republic:

On **December 23**, the Dominican Republic reported, that the cumulative number of cholera cases as of December 21, was 73 laboratory confirmed cases of which 55 have been hospitalized. Of the 73 confirmed cases, 69 are autochthonous and 4 imported. Also, no deaths have been reported. Cases (where information is available) are from the provinces of Santiago (19), Elias Piña (13), San Juan (12), Santo Domingo (15), Dajabon (3), Valverde (2), Independencia (2), Monte Cristi (1), San Cristobal (1) and Maria Trinidad Sanchez (1).

Haiti:

On **December 23**, The Ministry of Health of Haiti (Ministère de la Sante Publique et de la Population, MSPP) reported that the cumulative number of cholera cases and deaths due to cholera, as of December 18, was 128,251 and 2,707, respectively. Of the total cholera cases, 68,764 patients have been hospitalized. The in-hospital case fatality rate was 2.7%, while the overall case fatality rate was 2.1%.

- **Update December 22, 2010**

Dominican Republic:

On **December 22**, the Dominican Republic reported, that the cumulative number of cholera cases as of December 20, was 70 laboratory confirmed cases of which 52 have been hospitalized. Of the 70 confirmed cases, 66 are autochthonous and 4 imported. Also, no deaths have been reported. Cases (where information is available) are from

the provinces of Santiago (19), Elias Piña (10), San Juan (12), Santo Domingo (14), Dajabon (2), Valverde (2), Independencia (1), Monte Cristi (1), San Cristobal (1) and Maria Trinidad Sanchez (1).

- **Update December 21, 2010**

Dominican Republic:

On **December 21**, the Dominican Republic reported, that the cumulative number of cholera cases as of December 19, was 62 laboratory confirmed cases of which 47 have been hospitalized. Of the 62 confirmed cases, 58 are autochthonous and 4 imported. Also, no deaths have been reported. Cases (where information is available) are from the provinces of Santiago (19), Elias Piña (10), San Juan (12), Santo Domingo (10), Dajabon (2), Valverde (2), Independencia (1) Monte Cristi (1) and San Cristobal (1).

Haiti:

On **December 21,** The Ministry of Health of Haiti (Ministère de la Sante Publique et de la Population, MSPP) reported that the cumulative number of cholera cases and deaths due to cholera, as of December 17, was 121,518 and 2,591, respectively. Of the total cholera cases, 63,711 patients have been hospitalized. The in-hospital case fatality rate was 2.8%, while the overall case fatality rate was 2.1%.

- **Update December 20, 2010**

Haiti:

On **December 20** the Ministère de la Sante Publique et de la Population (MSPP) reported that the cumulative number of cholera cases and deaths due to cholera, as of December 15, is 117,580 and 2,481 respectively. 60,644 patients have been hospitalized due to cholera. The in-hospital case fatality rate for the whole country is 2.8%, while the overall fatality rate is 2.1%.

Dominican Republic:

On **December 18**, the Dominican Republic reported, that as of December 18, 59 laboratory confirmed cases of which 46 have been hospitalized. Of the 59 confirmed cases, 56 are autochthonous and 3 imported. Also, no deaths have been reported. Cases (where information is available) are from the provinces of Santiago (19), Elias Piña (10), San Juan (11), Santo Domingo (10), Dajabon (2), Valverde (2), Independencia (1) and Monte Cristi (1). Cases in Santo Domingo are related to familiar outbreak. Cases in Elias Piña and Santiago are related to a community outbreak.

- **Second Update December 17, 2010**

Haiti:

On **December 17** the Ministère de la Sante Publique et de la Population (MSPP) reported that the cumulative number of cholera cases and deaths due to cholera, as of December 14, is 114,497 and 2,535 respectively. 58,190 patients have been hospitalized due to cholera. The in-hospital case fatality rate for the whole country is 3.0%, while the overall fatality rate remains as 2.2%.

- **Update December 17, 2010**

Haiti:

On **December 17** the Ministère de la Sante Publique et de la Population (MSPP) reported that the cumulative number of cholera cases and deaths due to cholera, as of December 13, is 112,330 and 2,478 respectively. 56,435 patients have been hospitalized due to cholera. The in-hospital case fatality rate for the whole country is 3.0%, while the overall fatality rate remains as 2.2%.

- **Update December 15, 2010**

Dominican Republic:

On **December 15**, the Dominican Republic reported, that as of December 14, 38 laboratory confirmed cases of which 27 have been hospitalized. Of the 38 confirmed cases, 36 are autochthonous and 2 imported. Also, no deaths have been reported. Cases (where information is available) are from the provinces of Dajabon (1), Elias Piña (9), Santo Domingo (7), San Juan (4), Santiago (14), and Valverde (1). Cases in Santo Domingo are related to familiar outbreak. Cases in Elias Piña and Santiago are related to a community outbreak.

Haiti:

On **December 15** the Ministère de la Sante Publique et de la Population (MSPP) reported that the cumulative number of cholera cases and deaths due to cholera, as of December 12, is 109,196 and 2,405 respectively. 54,595 patients have been hospitalized due to cholera. The in-hospital case fatality rate for the whole country is 3.0%, while the overall fatality rate remains as 2.2%.

- **Update December 14, 2010**

Dominican Republic:

On **December 14**, the Dominican Republic reported, that as of December 13, 37 laboratory confirmed cases of which 22 have been hospitalized. Of the 37 confirmed cases, 35 are autochthonous and 2 imported. Also, no deaths have been reported. Cases (where information is available) are from the provinces of Dajabon (1), Elias Piña (8), Santo Domingo (7), San Juan (4), Santiago (14), and Valverde (1). Cases in Santo Domingo are related to familiar outbreak. Cases in Elias Piña and Santiago are related to a community outbreak.

Haiti:

On **December 14** the Ministère de la Sante Publique et de la Population (MSPP) reported that the cumulative number of cholera cases and deaths due to cholera, as of December 10, is 104,918 and 2,359 respectively. 52,033 patients have been hospitalized due to cholera. The in-hospital case fatality rate for the whole country is 3.1%, while the overall fatality rate remains as 2.2%.

- **Third Update December 13, 2010**

Dominican Republic:

On **December 13**, the Dominican Republic reported, that as of December 12, 32 laboratory confirmed cases of which 22 have been hospitalized. Of the 32 confirmed cases, 30 are autochthonous and 2 imported. Also, no deaths have been reported. Cases (where information is available) are from the provinces of Dajabon (1), Elias Piña (7), Santo Domingo (7), San Juan (1), Santiago (13), and Valverde (1). Cases in Santo Domingo are related to familiar outbreak. Cases in Elias Piña and Santiago are related to a community outbreak.

Haiti:

On **December 13,** the Ministère de la Sante Publique et de la Population (MSPP) reported that the cumulative number of cholera cases and deaths due to cholera, as of December 9, is 104,614 and 2,323 respectively. 50,923 patients have been hospitalized due to cholera. The in-hospital case fatality rate for the whole country is 3.1%, while the overall fatality rate is 2.2%.

- **Second Update 13 December:**

Haiti:

On **December 13**, the Ministère de la Sante Publique et de la Population (MSPP) reported that the cumulative number of cholera cases and deaths due to cholera, as of December 8, is 103,347 and 2,264 respectively. 50,130patients have been hospitalized due to cholera. The in-hospital case fatality rate for the whole country is 3.1%, while the overall fatality rate is 2.2%.

- **Update 13 December**

Haiti:

On **December 13**, the Ministère de la Sante Publique et de la Population (MSPP) reported that the cumulative number of cholera cases and deaths due to cholera, as of December 7, is 101,603 and 2,234 respectively. 49,025 patients have been hospitalized due to cholera. The in-hospital case fatality rate for the whole country is 3.1%, while the overall fatality rate is 2.2%.

- **Third update December 10, 2010**

Haiti:

On **December 10**, the Ministère de la Sante Publique et de la Population (MSPP) reported that the cumulative number of cholera cases and deaths due to cholera, as of December 6, is 97,595 and 2,193 respectively. 46,749 patients have been hospitalized due to cholera. The in-hospital case fatality rate for the whole country is 3.2%, while the overall fatality rate is 2.2%.

- **Second Update December 10, 2010**

Haiti:

On **December 10**, the Ministère de la Sante Publique et de la Population (MSPP) reported that the cumulative number of hospital visits* and deaths due to cholera, as of December 5, is 96,092 and 2,167 respectively. 45,680 patients have been hospitalized due to cholera. The in-hospital case fatality rate for the whole country is 3.2%, while the case fatality rate at health services is 1.5%. For Port-au-Prince the cumulative number of hospital visits* and deaths due to cholera is 13,952 and 191 respectively. 4,902 have been hospitalized. The in-hospital case fatality rate for Port-au-Prince is 3.8% while the case fatality rate at health services is 1.3%.

- **Update December 10, 2010**

Haiti:

On **December 10**, the Ministère de la Sante Publique et de la Population (MSPP) reported that the cumulative number of hospital visits* and deaths due to cholera, as of December 5, is 96,092 and 2,167 respectively. 45,680 patients have been hospitalized due to cholera. The in-hospital case fatality rate for the whole country is 3.2%, while the case fatality rate at health services is 1.5%. For Port-au-Prince the cumulative number of hospital visits* and deaths due to cholera is 13,952 and 191 respectively. 4,902 have been hospitalized. The in-hospital case fatality rate for Port-au-Prince is 3.8% while the case fatality rate at health services is 1.3%.

Dominican Republic:

On **December 10**, the Dominican Republic reported 28 laboratory confirmed cases of which 20 have been hospitalized. Of the 23 confirmed cases, 26 are autochthonous and 2 imported. Also, no deaths have been reported. Cases (where information is available) are from the provinces of Elias Piña (6), Santo Domingo (7), San Juan (1), Santiago (11), and Valverde (1). In Elias Piña, cases are from the municipality of Banica (6). In Santo Domingo, cases

are from the municipalities of Santo Domingo Este (6) and Santo Domingo Norte (1). In Santiago, cases are from the municipalities of Navarrete (7), Janico (1), Santiago (3), and from the locality of El Platanal (1). In Valverde, there is 1 case from the municipality of Mao.

- **Update December 9, 2010**

Dominican Republic:

On 8 December, the Dominican Republic reported 23 laboratory confirmed cases of which 16 have been hospitalized. Of the 23 confirmed cases, 21 are autochthonous and 2 imported. Also, no deaths have been reported. Cases (where information is available) are from the provinces of Elias Piña (3), Santo Domingo (7), San Juan (1), Santiago (9), and Valverde (1). In Elias Piña, cases are from the municipality of Banica (3). In Santo Domingo, cases are from the municipalities of Santo Domingo Este (6) and Santo Domingo Norte (1). In Santiago, cases are from the municipalities of Navarrete (6), Janico (1), Santiago (1), and from the locality of El Platanal (1). In Valverde, there is 1 case from the municipality of Mao.

- **Update December 7, 2010**

Haiti:

On 7 December, the Ministère de la Sante Publique et de la Population (MSPP) reported that the cumulative number of hospital visits* and deaths due to cholera, as of 4 December, is **93,222** and **2,120** respectively. 44,157 patients have been hospitalized due to cholera. The in-hospital case fatality rate for the whole country is 3.3%, while the case fatality rate at health services is 1.6%. For Port-au-Prince the cumulative number of hospital visits* and deaths due to cholera is 12,529 and 186 respectively. 4,459 have been hospitalized. The in-hospital case fatality rate for Port-au-Prince is 4.0% while the case fatality rate at health services is 1.4%.

- **Third Update December 6, 2010**

Haiti:

On 6 December, the Ministère de la Sante Publique et de la Population (MSPP) reported that the cumulative number of hospital visits* and deaths due to cholera, as of 3 December, is **91,770** and **2,071** respectively. 43,243 patients have been hospitalized due to cholera. The in-hospital case fatality rate for the whole country is 3.3%, while the case fatality rate at health services is 1.6%. For Port-au-Prince the cumulative number of hospital visits* and deaths due to cholera is 12,566 and 185 respectively. 4,452 have been hospitalized. The in-hospital case fatality rate for Port-au-Prince is 4.0% while the case fatality rate at health services is 1.4%.

- **Second Update December 6, 2010**

Dominican Republic:

On 6 December, the Dominican Republic reported 20 laboratory confirmed cases of which 13 have been hospitalized. Cases (where information is available) are from the provinces of Santo Domingo, Santiago, and Valverde. In Santo Domingo, cases are from the municipalities of Santo Domingo Este (6) and Santo Domingo Norte (1). In Santiago, cases are from the municipalities of Navarrete (6), Janico (1), San Juan (1), and Santiago (1). In Valverde cases are from the municipality of Mao (1).

- **Update December 6, 2010**

Haiti:

On 6 December, the Ministère de la Sante Publique et de la Population (MSPP) reported that the cumulative number of hospital visits* and deaths due to cholera, as of 1 December, is **88,789** and **2,013** respectively. 41,222 of

patients have been hospitalized due to cholera. The in-hospital case fatality rate for the whole country is 3.4%, while the case fatality rate at health services is 1.6%.

For Port-au-Prince the cumulative number of hospital visits* and deaths due to cholera is 12,529 and 185 respectively. 4,444 have been hospitalized. The in-hospital case fatality rate for Port-au-Prince is 4.2% while the case fatality rate at health services is 1.4%.

Dominican Republic:

On 6 December, Dominican Republic reported 16 laboratory confirmed cases of which 9 have been hospitalized. Cases are from the province of Santo Domingo and Santiago. In Santo Domingo, cases are from Santo Domingo Este (6) and Santo Domingo Norte (1) municipalities. In Santiago, cases are from Navarrete (5), Janico (1) and San Juan (1) municipalities. Of laboratory confirmed cases, three are children under 5 years old and 13 cases are 5 years old and more. 50% of laboratory confirmed cases are male.

- **Update December 3, 2020**

Dominican Republic:
On 3 December, Dominican Republic reported 15 laboratory confirmed cases of which 8 have been hospitalized. Cases are from the province of Santo Domingo and Santiago. In Santo Domingo, cases are from Santo Domingo Este (6) and Santo Domingo Norte (1) municipalities. In Santiago, cases are from Navarrete (5) and Janico (1) municipalities. Of laboratory confirmed cases, three are children under 5 years old and 12 cases are 5 years old and more.

- **Update December 2nd, 2010**

Haiti:

On December 2nd, the Ministère de la Sante Publique et de la Population (MSPP) reported that the cumulative number of hospital visits* and deaths due to cholera, as of 30 November, is **84,391** and **1,882** respectively. 39,010 of patients have been hospitalized due to cholera. The in-hospital case fatality rate for the whole country is 3.5%, while the case fatality rate at health services is 1.6%. For Port-au-Prince the cumulative number of hospital visits* and deaths due to cholera is 11,852 and 181 respectively. 4,103 have been hospitalized. The in-hospital case fatality rate for Port-au-Prince is 4.2% while the case fatality rate at health services is 1.5%. MSPP daily reports available at http://www.mspp.gouv.ht/site/downloads/

- **Second Update December 1st, 2010**

Haiti:

On December 1st, the Ministère de la Sante Publique et de la Population (MSPP) reported that the cumulative number of hospital visits* and deaths due to cholera, as of 29 November, is **80,860** and **1,817** respectively. 36,207 of patients have been hospitalized due to cholera. The in-hospital case fatality rate for the whole country is 3.5%, while the case fatality rate at health services is 1.6%. For Port-au-Prince the cumulative number of hospital visits* and deaths due to cholera is 11,631 and 179 respectively. 3,889 have been hospitalized. The in-hospital case fatality rate for Port-au-Prince is 4.4% while the case fatality rate at health services is 1.5%. MSPP daily reports available at http://www.mspp.gouv.ht/site/downloads/

- **Update December 1st, 2010**

On December 1st, the Ministère de la Sante Publique et de la Population (MSPP) reported that the cumulative number of hospital visits* and deaths due to cholera, as of 28 November, is **79,707** and **1,792** respectively. 35,537 of patients have been hospitalized due to cholera. The in-hospital case fatality rate for the whole country is 3.5%, while the case fatality rate at health services is 1.6%. For Port-au-Prince the cumulative number of hospital visits* and deaths due to cholera is 11,560 and 179 respectively. 3,870 have been hospitalized. The in-hospital case fatality rate

for Port-au-Prince is 4.4% while the case fatality rate at health services is 1.5%. MSPP daily reports available at http://www.mspp.gouv.ht/site/downloads/

- **Update November 30, 2010**

Haiti:

On 30 November, the Ministère de la Sante Publique et de la Population (MSPP) reported that the cumulative number of hospital visits* and deaths due to cholera, as of 27 November, is **77,208** and **1,751** respectively. 34,248 of patients have been hospitalized due to cholera. Currently, 1,224 remain at the hospital. The in-hospital case fatality rate for the whole country is 3.6%, while the case fatality rate at health services is 1.6%. For Port-au-Prince the cumulative number of hospital visits* and deaths due to cholera is 10,542 and 164 respectively. 3,487 have been hospitalized. The in-hospital case fatality rate for Port-au-Prince is 4.5% while the case fatality rate at health services is 1.5%.

Dominican Republic:

Dominican Republic Minister of Health reported that as of 28 November, there are 9 laboratory confirmed cases of cholera. One laboratory-confirmed case is imported; the other 8 are from Santo Domingo Este (4), Navarrete (3) and Santo Domingo Norte (1) municipality.

- **Second Update November 29, 2010**

Haiti:

On 29 November, the Ministère de la Sante Publique et de la Population (MSPP) reported that the cumulative number of hospital visits* and deaths due to cholera, as of 26 November, is **75,888** and **1,721** respectively. 33,485 of patients have been hospitalized due to cholera. Currently, 1,202 remain at the hospital. The in-hospital case fatality rate for the whole country is 3.6%, while the case fatality rate at health services is 1.6%. For Port-au-Prince the cumulative number of hospital visits* and deaths due to cholera is 10,520 and 162 respectively. 3,485 have been hospitalized. The in-hospital case fatality rate for Port-au-Prince is 4.5% while the case fatality rate at health services is 1.5%.

- **Update November 29, 2010**

Haiti:

On 29 November, the Ministère de la Sante Publique et de la Population (MSPP) reported that the cumulative number of hospital visits* and deaths due to cholera, as of 25 November, is **74,770** and **1,689** respectively. 32,525 of patients have been hospitalized due to cholera. Currently, 1,174 remain at the hospital. The in-hospital case fatality rate for the whole country is 3.6%, while the case fatality rate at health services is 1.6%. For Port-au-Prince the cumulative number of hospital visits* and deaths due to cholera is 10,508 and 162 respectively. 3,470 have been hospitalized. The in-hospital case fatality rate for Port-au-Prince is 4.5% while the case fatality rate at health services is 1.5%.

Dominican Republic:

Dominican Republic Minister of Health reported that as of 27 November, there are 6 laboratory confirmed cases of cholera. One laboratory-confirmed case is an imported case. The two new laboratory-confirmed cholera cases are a girl 3-year-old from Santiago province and a male 12 years old from Santo Domingo province. Both are in good condition.

- **Update November 26, 2010**

On 26 November, the Ministère de la Sante Publique et de la Population (MSPP) reported that the cumulative number of hospital visits* and deaths due to cholera, as of 24 November, is **72,017** and **1,648** respectively. 31,210

of patients have been hospitalized due to cholera. Currently, 1,136 remain at the hospital. The in-hospital case fatality rate for the whole country is 3.6%, while the case fatality rate at health services is 1.6%. For Port-au-Prince the cumulative number of hospital visits* and deaths due to cholera is 9,242 and 146 respectively. 3097 have been hospitalized. The in-hospital case fatality rate for Port-au-Prince is 4.3% while the case fatality rate at health services is 1.5%.

- **Update November 25, 2010**

On 25 November, the Ministère de la Sante Publique et de la Population (MSPP) reported that the cumulative number of hospital visits* and deaths due to cholera, as of 23 November, is **69,776** and **1,603** respectively. 29,871 of patients have been hospitalized due to cholera. Currently, 1,094 remain at the hospital. The in-hospital case fatality rate for the whole country is 3.7%, while the case fatality rate at health services is 2.3%. For Port-au-Prince the cumulative number of hospital visits* and deaths due to cholera is 9,140 and 146 respectively. 3097 have been hospitalized. The in-hospital case fatality rate for Port-au-Prince is 4.5% while the case fatality rate at health services is 1.5%. MSPP daily reports available at http://www.mspp.gouv.ht/site/downloads/

- **Update November 24, 2010**

Haiti:

On 24 November, the Ministère de la Sante Publique et de la Population (MSPP) reported that the cumulative number of hospital visits* and deaths due to cholera, as of 22 November, is **66,593** and **1,523** respectively. 27,933 of patients have been hospitalized due to cholera. Currently, 1,043 remain at the hospital. The in-hospital case fatality rate for the whole country is 3.7%. For Port-au-Prince the cumulative number of hospital visits* due to cholera is 8,587 of which 2,866 have been hospitalized. A total of 140 deaths due to cholera have been recorded. The in-hospital case fatality rate for Port-au-Prince is 4.7%.

Dominican Republic:

On 24 November, Dominican Republic Minister of Health reported that as of 23 November, there are 4 confirmed cases, including 1 hospitalization. One laboratory-confirmed case is an imported case; the other 3 are residents of Santo Domingo Este (2) and Santo Domingo Norte (1).

- **Update November 23, 2010**

Haiti: Today, the the Ministère de la Sante Publique et de la Population (MSPP) reported an accumulative of 60,240 hospital visits*, 25,248 hospitalizations, and 1,415 deaths due to cholera at the national level as of 20 November. Cholera cases are registered in the ten departments Haiti is divided in. In Port-au-Prince and metropolitan area (Carrefour, Cite Soleil, Delmas, Kenscoff, Petion Ville, Port-au-Prince, Tabarre and Croix des Bouquets) the total hospital visits* has increased to 5,778 with 2,140 hospitalization and 95 deaths (87 al the health services level and 8 at the community level) which represent an in-hospital case fatality rate of 4.1%. With respect to the number of deaths at the national level, of the 1,415 deaths recorded by the MSPP, 67% occurred at the health services level and 33% at the community level. The in-hospital case fatality rate at the national level is 2.3%.

- **Second Update November 22, 2010.**

Haiti: On 22 November, the Ministère de la Sante Publique et de la Population (MSPP) reported that the cumulative number of hospital visits* and deaths due to cholera, as of 19 November, is **56,901** and **1,344** respectively. 21,665 patients have been hospitalized due to cholera. Currently, 890 remain at the hospital. Cholera cases are spreading across 8 out of 10 Haitian departments, and these are Artibonite, Centre, Nord, Nord Ouest, Nord Est, Ouest, Sud and Sud Est. Additionally, a cluster of cases is currently under investigation in the department Grande Anse and Nippes. The in-hospital case fatality rate for the whole country is 3.8% and the mortality rate 16.0 per 100,000 inhabitants.

For Port-au-Prince the cumulative number of hospital visits* due to cholera is 4,813 of which 1,618 (34%) have been hospitalized. A total of 77 deaths due to cholera have been recorded. The in-hospital case fatality rate for Port-au-Prince is 4.3%. MSPP daily reports available at http://www.mspp.gouv.ht/site/downloads/

- **Update November 22, 2010.**

Haiti: On 22 November, the Ministère de la Sante Publique et de la Population (MSPP) reported that the cumulative number of hospital visits* and deaths due to cholera, as of 18 November, is **55,189** and **1,275** respectively. 21,66 patients have been hospitalized. Currently, 847 remain at the hospital. Cholera cases are registered in 8 of 10 Haiti departments, and these are Artibonite, Centre, Nord, Nord Ouest, Nord Est, Ouest, Sud and Sud Est. Additionally, a cluster of cases is currently under investigation in the department Grande Anse and Nippes. The in-hospital case fatality rate for the whole country is 3.8% and the mortality rate 15.2 per 100,000 inhabitants. For Port-au-Prince the cumulative number of hospital visits* is 4,724, of which 1,545 (33%) have been hospitalized. A total of 67 deaths due to cholera have been recorded. The in-hospital case fatality rate for Port-au-Prince is 3.9%.

- **Update November 21, 2010.**

Haiti

On 21 November, the Ministère de la Sante Publique et de la Population (MSPP) reported that the cumulative number of hospital visits* and deaths due to cholera, as of 17 November, is **52,715** and **1,250** respectively. 20,867 patients have been hospitalized. Currently, 809 remain hospitalized. Cholera cases are registered in 8 of 10 Haiti departments, and these are Artibonite, Centre, Nord, Nord Ouest, Nord Est, Ouest, Sud and Sud Est. Additionally, a cluster of cases is currently under investigation in the department Grande Anse and Nippes.

The in-hospital case fatality rate for the whole country is 3.9% and the mortality rate 14.9 per 100,000 inhabitants. For Port-au-Prince the cumulative number of hospital visits* is 4,608, of which 1,457 have been hospitalized. A total of 64 deaths due to cholera have been recorded. The in-hospital case fatality rate for Port-au-Prince is 3.9%.

Dominican Republic

On 19 November, the Minister of Health of Dominican Republic reported three laboratory-confirmed cases of cholera in a three-month-old girl, her 53-year-old grandmother, and in a 32-year-old male (imported case from Haiti). National laboratory in the Dominican Republic isolated *V. cholerae* O1 Ogawa from specimens obtained from patients. This is the confirmation of the first's two autochthones cases of cholera in Dominican Republic. The government of Dominican Republic is currently implementing prevention and containment measures in areas such as surveillance, education and health prevention, as well in strengthening water and sanitation services.

- **Update November 19, 2010.**

On 19 November, the Ministère de la Sante Publique et de la Population (MSPP) published updated information as of 16 November. For the first time, data on hospital visits* were included in the MSPP report: currently, 49,418 is the cumulative number for hospital visits; 19,646 have been hospitalized. Currently, 774 patients remain hospitalized. On the other hand, the cumulative number of deaths due to cholera is 1,186 (774 at the hospital level and 412 at the community level), which brings the in-hospital case fatality rate to 3.9% and the mortality rate to 14.16 per 100,000 inhabitants. Alternatively, the daily number of hospital visits* for 16 November is 2,076, while the daily hospital admissions due to cholera is 1,004, and the number of deaths is 73 (42 at the hospital level and 31 at the community level, with a daily in-hospital case fatality rate of 4.2% - 16 Nov). 48% of outpatients were hospitalized on 16 November.

For Port-au-Prince, the cumulative number of hospital admissions and deaths due to cholera is 1,291 and 61, respectively (54 at the health services level and 7 at the community level).

On 16 November, the department of Sud Est registered cases for the first time. Including Sud Est, the total number of departments registering cases is 8 and these are Artibonite, Central, Ouest, Nord Ouest, Nord Est, Sud and Nord.

Also, Carrefour, Cite Soleil, Delmas, Kenscoff, Petion Ville, Port-au-Prince and Tabarre remain the neighborhoods registering cases in Port-au-Prince.

- **Update November 17, 2010.**

On 17 November, the Ministère de la Sante Publique et de la Population (MSPP) reported that the cumulative number of hospital admissions and deaths due to cholera as of 15 November is 18,382 and 1110, respectively. Alternatively, the number of daily hospital admissions due to cholera registered for 15 November is 964, and the number of deaths is 45 (38 at the hospital level and 7 at the community level with a daily in-hospital case fatality rate of 3.9% - 15 Nov).

For Port-au-Prince, the cumulative number of hospital admissions and deaths due to cholera is 953 and 46, respectively (40 at the health services level and 6 at the community level). Artibonite, Central, Ouest, Nord Ouest, Sud, Nord, and Nord Est, are the departments where cases have been recorded. Also, Carrefour, Cite Soleil, Delmas, Kenscoff, Petion Ville, Port-au-Prince and Tabarre remain the neighborhoods registering cases in Port-au-Prince.

- **Update November 16, 2010.**

On 16 November, the Ministère de la Sante Publique et de la Population (MSPP) reported that the cumulative number of hospital admissions and deaths due to cholera as of 14 November is 17,418 and 1,065, respectively. Alternatively, the number of daily hospital admissions due to cholera registered for 14 November is 963, and the number of deaths is 55 (53 at the hospital level and 2 at the community level with a daily in-hospital case fatality rate of 5.5% - 14 Nov). For Port-au-Prince, the cumulative number of hospital admissions and deaths due to cholera is 934 and 43, respectively (37 at the health services level and 6 at the community level).

- **Second Update November 15, 2010.**

On 15 November, the Ministère de la Sante Publique et de la Population (MSPP) reported that the cumulative number of hospital admissions and deaths due to cholera as of 13 November is 16,111 and 992, respectively. Alternatively, the number of daily hospital admissions due to cholera registered for 13 November is 1,219, and the number of deaths is 66 (52 at the health service level and 14 at the community level with a daily in-hospital case fatality rate of 4.3 0% - 13 Nov). For Port-au-Prince, the cumulative number of hospital admissions and deaths due to cholera is 875 and 38, respectively (32 at the health services level and 6 at the community level); 87 new hospitalization and 4 deaths.

On 13 November, the department of Nord Est, registered cases for the first time. Including Nord Est, the total number of departments registering cases is 7, including Artibonite, Central, Ouest, Nord Ouest, Nord Est, Sud and Nord. Also, Carrefour, Cite Soleil, Delmas, Kenscoff, Petion Ville, Port-au-Prince and Tabarre remain the neighborhoods registering cases Port-au-Prince. MSPP daily reports available at http://www.mspp.gouv.ht/site/downloads/

- **Update November 15, 2010.**

On 15 November, the Ministère de la Sante Publique et de la Population (MSPP) reported that the cumulative number of hospital admissions and deaths due to cholera as of 12 November is 14,642 and 917, respectively. Alternatively, the number of daily hospital admissions due to cholera registered for 12 November is 1,049, and the number of deaths is 46 (31 at the hospital level and 15 at the community level with a daily in-hospital case fatality rate of 3.0% - 12 Nov). For Port-au-Prince, the cumulative number of hospital admissions and deaths due to cholera is 607 and 27, respectively (21 at the hospital level and 6 at the community level). Artibonite, Central, Ouest, Nord Ouest, Sud and Nord are the departments where cases have been recorded. Also, Carrefour, Cite Soleil, Delmas, Kenscoff, Petion Ville, Port-au-Prince and Tabarre remain the neighborhoods registering cases Port-au-Prince.

- **Update November 13, 2010.**

On 13 November, the Ministère de la Sante Publique et de la Population (MSPP) reported that the cumulative number of hospital admissions and deaths due to cholera as of 11 November is 13,293 and 846, respectively. Alternatively, the number of daily hospital admissions due to cholera registered for 11 November is 893, and the

number of deaths is 40 (19 at the hospital level and 21 at the community level with a daily in-hospital case fatality rate of 2.1% - 11 Nov).

For Port-au-Prince, the cumulative number of hospital admissions and deaths due to cholera is 447 and 13, respectively (7 at the hospital level and 6 at the community level). Artibonite, Central, Ouest, Nord Ouest, Sud and Nord are the departments where cases have been recorded. Port-au-Prince's neighborhoods registering cases are Carrefour, Cite Soleil, Delmas, Kenscoff, Petion Ville, Port-au-Prince and Tabarre. More information available at http://new.paho.org/hq/index.php?option=com_content&task=view&id=4404&Itemid=3487

- **Update November 12, 2010.**

On 12 November, the Ministère de la Sante Publique et de la Population (MSPP) reported that the cumulative number of hospital admissions and deaths due to cholera as of 10 November is 12,303 and 796, respectively. Alternatively, the number of daily hospital admissions due to cholera registered for 10 November is 982, and the number of deaths is 66 (42 at the hospital level and 24 at the community level with a daily in-hospital case fatality rate of 4.3% - 9 Nov). For Port-au-Prince, the cumulative number of hospital admissions and deaths due to cholera is 443 and 13, respectively (7 at the hospital level and 6 at the community level). Artibonite, Central, Ouest, Nord Ouest, Sud and Nord are the departments where cases have been recorded.

- **Update November 11, 2010.**

On 11 November, The Ministère de la Sante Publique et de la Population (MSPP) reported that the cumulative number of hospital admissions and deaths due to cholera as of 9 November is 11,125 and 724, respectively. The number of daily hospital admissions due to cholera registered for 9 November is 919, and the number of deaths is 77 (49 at the hospital level and 28 at the community level with a daily in-hospital case fatality rate of 5.3% - 9 Nov). Also on 9 November, the department of Sud registered hospital admissions due to cholera for the first time. For Port-au-Prince, the cumulative number of hospital admissions and deaths due to cholera is 278 and 10, respectively (6 at the hospital level and 4 at the community level).

- **Update November 10, 2010.**

The Ministère de la Sante Publique et de la Population (MSPP) reported that the number of daily hospitalized cases and deaths for 8 November is 786 and 59, respectively. These new data increase the total number of cases and deaths to 9,971 and 643, respectively.

- **Update November 9, 2010.**

On 8 November the Ministère de la Sante Publique et de la Population de Haiti reported 73 hospitalized cases due to cholera in Port-au-Prince in the localities of Carrefour, Cite Soleil, Delmas, Kenscoff, Petion Ville, Port-au-Prince, and Tabarre. Also, MSPP reported that the daily hospitalized cases and deaths due to cholera for 7 November in the whole country are 607 and 26 respectively. These new data increase the total number of cases and deaths to 9,123 and 583, respectively.

- **Update November 8, 2010.**

From the time when the first cholera cases were confirmed in Haiti to epidemiological week (EW) 44, a total of 8,138 hospital admissions and 544 deaths due to cholera have been recorded. Artibonite, Central, Ouest, Nord Ouest and Nord, remain the only departments where cases have been recorded. The department of Artibonite registers the highest case incidence rate with 49 cases for every 10,000 inhabitants, followed by Nord with 11 cases for every 10,000 inhabitants, and Central with 10 cases for every 10,000 inhabitants. Some conglomerates of suspected cases in Port-au-Prince and its surroundings are currently under investigation.

As of EW 44, and at the national level, a total of 544 deaths have been recorded, 57% of which have occurred at the health services level, and 43% at the community level. The daily case fatality rates observed in health services at the national level have ranged from 2.2% to 6.0% (3.8% average). Alternatively, in the department of Artibonite, this

rate has ranged from 1.2% to 6.8% (3.5% average). The impact of efforts undertaken to improve case management and access to health services on recorded case fatality rates is being analyzed.

Of 5,074 hospitalized cases, where information by age group is available, 11% corresponds to children under 5 years of age, while 89% corresponds to people 5 years of age and older.

Tropical Storm Tomas has added a new challenge to the response activities in Haiti. Currently, the impact of floods on patients' care, as well as the development of the cholera outbreak in various localities of the department of Artibonite is being assessed.

- **Update November 6, 2010.**

As of 5 November 2010 the Ministry of Public Health and Population of Haiti reported a total of 7,743 hospitalized cholera cases, including 522 deaths (296 in health services, and 226 in communities), at the national level. At national level, the daily hospital case-fatality rate has varied in a range from 2.72 to 6.0% (average of 3.8 %); meanwhile in the department of Artibonite has varied in a range from 1.3 to 6.8% (average of 3.5%).

- **Update November 5, 2010.**

The Ministry of Public Health and Population of Haiti has recorded that the daily number of hospitalized cholera cases and deaths for 4 November is 404 and 32, respectively. Also, the number of deaths in health services was 11, while the number of deaths at the community level was 21. This new data increase the total number of cases and deaths to 7,359 and 501, respectively. The departments which currently register cases are still Artibonite, Central, Nord-Est, Nord, and Ouest.

- **Update November 3, 2010.**

In the Epidemiological Week (EW) 42 were confirmed the first cases of cholera in the department of Artibonite, in Haiti, a department of approximately 1,300 000 inhabitants of which 15% makes up displaced population. *V. cholerae* O: 1 serotype Ogawa was identified in samples from hospitalized patients by the National Laboratory of Public Health of the Ministry of Public Health and Population of Haiti and the Center for Disease Control and Prevention. For the EW 43 (October 24-30), four more departments (Plant, Nord-Ouest, Nord and Ouest) registered cases. As of 3 November 2010 the Ministry of Public Health and Population of Haiti reported a total of 6,742 hospitalized cholera cases, including 442 deaths (249 in health services, and 193 in communities), at the national level. The departments which are currently registering cases are Artibonite, Central, Nord-Est, Nord, and Ouest. Complete information on the coming Tropical Storm Tomas, preparedness of Port-au-Prince, and a description of the cholera response operations is available at http://new.paho.org/hq/index.php?option=com_content&task=view&id=4404&Itemid=3487

* Hospital visits: outpatients + inpatient

DOC. Nº 4

COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

1949

RÉPARATION DES DOMMAGES SUBIS AU SERVICE DES NATIONS UNIES

AVIS CONSULTATIF DU 11 AVRIL 1949.

ANNÉE 1949

SÉANCE PUBLIQUE TENUE LE 7 MARS 1949, A 11 HEURES

Présents : MM. BASDEVANT, *Président ;* GUERRERO, *Vice-Président ;* ALVAREZ, FABELA, HACKWORTH, WINIARSKI, ZORIČIĆ, DE VISSCHER, sir ARNOLD MCNAIR, M. KLAESTAD, BADAWI PACHA, MM. KRYLOV, READ, HSU MO, AZEVEDO, *Juges ;* M. HAMBRO, *Greffier.*

Présents également :

M. Ivan KERNO, Secrétaire général adjoint, représentant du Secrétaire général des Nations Unies.

M. A. FELLER, Directeur principal du Département juridique, comme conseil.

Les représentants des Gouvernements suivants :

France : M. Charles CHAUMONT, professeur de droit international public à la Faculté de droit, Nancy ; jurisconsulte au ministère des Affaires étrangères.

Royaume-Uni : Mr. G. G. FITZMAURICE, conseiller juridique adjoint du Gouvernement du Royaume-Uni.

Belgique : S. Exc. M. Georges KAECKENBEECK, D. C. L., envoyé extraordinaire et ministre plénipotentiaire.

Le PRÉSIDENT, ouvrant l'audience, prononce les paroles suivantes :

En ouvrant cette audience, je tiens à rendre hommage à celui qui, pendant les trois années qui viennent de s'écouler, a occupé le fauteuil présidentiel, M. le Président Guerrero. Lorsque la Cour appela à diriger ses travaux celui qui, jusqu'à la veille et pendant une durée exceptionnelle imposée par les terribles événements qui ont bouleversé le monde, avait présidé la Cour permanente de Justice internationale, la Cour internationale de Justice s'assurait l'appui d'une expérience hors de pair. L'événement n'a pas déçu son attente. Pendant sa présidence, coïncidant avec une période d'organisation, le Président Guerrero a apporté à la Cour, avec son entier dévouement et sa grande bienveillance, le témoignage direct des méthodes et pratiques de la Cour permanente. Rien n'a mieux contribué au maintien de la continuité entre ces deux juridictions.

Trois ans se sont écoulés. Les dispositions de notre Statut ont appelé l'Assemblée générale des Nations Unies et le Conseil de Sécurité à procéder à des élections pour cinq sièges. Nos collègues sortants ont reçu la confiance des Nations Unies et ils ont été réélus. Ayant apprécié leur science et l'indépendance de leur jugement, nous nous félicitons de les conserver parmi nous et de voir confirmer par leur choix la continuité de la Cour.

YEAR 1949.

PUBLIC SITTING HELD ON MARCH 7th, 1949, AT 11 A.M.

Present: President BASDEVANT; *Vice-President* GUERRERO; *Judges* ALVAREZ, FABELA, HACKWORTH, WINIARSKI, ZORIČIĆ, DE VISSCHER, Sir ARNOLD MCNAIR, KLAESTAD, BADAWI PASHA, KRYLOV, READ, HSU MO, AZEVEDO; *Registrar* HAMBRO.

Also present:

M. Ivan KERNO, Assistant Secretary-General, representing the Secretary-General of the United Nations.

Mr. A. FELLER, Principal Director of the Legal Department, as Counsel.

The representatives of the following Governments:

France: M. Charles CHAUMONT, Professor of Public International Law at the Faculty of Law, Nancy, Legal Adviser to the Ministry for Foreign Affairs.

United Kingdom: Mr. G. G. FITZMAURICE, Second Legal Adviser to the Foreign Office.

Belgium: H.E. M. Georges KAECKENBEECK, D.C.L., Envoy Extraordinary and Minister Plenipotentiary.

The PRESIDENT opened the meeting with the following words:

In opening this meeting, I should like to pay a tribute to President Guerrero, who for the past three years has occupied the presidential chair. In calling upon someone to guide its labours, who on the eve of the terrible events which convulsed the world, and for their whole, exceptionally long duration, had presided over the Permanent Court of International Justice, the International Court of Justice was ensuring to itself the support of an unrivalled experience. In the event, expectations have not been disappointed. During the term of his presidency, coinciding as it did with a period of organization, President Guerrero has brought to the service of the Court a whole-hearted devotion and a large measure of good-will, together with first-hand evidence of the methods and practice of the Permanent Court. Nothing has better contributed to maintaining continuity between the two tribunals.

Three years have gone by. By the terms of our Statute, the United Nations Assembly and the Security Council have gone about elections to five seats. Our retiring colleagues inspired the confidence of the United Nations and were re-elected. We appreciated their skill and their independent judgment, and therefore we congratulate ourselves on keeping them in our midst and thus confirming the Court's continuity.

Trois ans s'étant écoulés, la Cour a dû de nouveau élire un Président. Celui qu'elle a choisi est conscient de l'honneur que, par la confiance qu'ils lui ont manifestée, ses collègues lui ont fait. En face d'une tâche d'une inestimable grandeur, il trouve, pour l'entreprendre, un encouragement précieux dans la pensée qu'il pourra faire appel aux conseils éclairés de celui qu'il a le plaisir et l'honneur de voir siéger auprès de lui comme Vice-Président. Il sait que l'appui qu'il escompte ainsi ne lui manquera pas.

Dans le discours qu'il prononçait le 16 janvier 1925, le Président Max Huber énonçait que la Cour, en raison de sa fonction judiciaire, doit s'élever au-dessus de la mêlée où s'affrontent les intérêts et les passions des hommes, des partis, des classes, des nations et des races. Ceux qui parlent devant elle, ayant la responsabilité de la cause qu'ils défendent, cherchent à la convaincre et ils s'efforcent de parler un langage qu'elle est préparée à comprendre. Ainsi, malgré toutes les divergences, malgré toutes les contradictions du temps présent, ce à quoi l'on s'attache devant cette Cour et dans son sein, c'est ce qui reste commun entre les hommes, ce qui, dans la vie sociale, prend la forme des règles du droit et entraîne le sentiment que le respect est dû à celles-ci.

Ainsi la Cour, par la vertu même de son institution, retient et cultive des données communes à l'humanité tout entière. On lui demande de contribuer à la paix en réglant les différends qui lui sont soumis. Peut-être y contribuera-t-elle plus encore en faisant à ce propos sentir aux hommes ce qui, malgré tout, les unit.

Le Président indique que la Cour se réunit aujourd'hui pour entendre les exposés oraux qui seront présentés dans l'affaire relative à la réparation des dommages subis au service des Nations Unies.

Il prie le Greffier de donner lecture de la Résolution datée du 3 décembre 1948, par laquelle l'Assemblée générale des Nations Unies a décidé de demander à la Cour un avis consultatif à ce sujet.

Le GREFFIER ayant donné lecture de cette Résolution, le PRÉSIDENT rappelle que la requête pour avis a fait l'objet des notifications d'usage. Elle a été, conformément à l'article 66 du Statut, communiquée à tous les gouvernements des Membres des Nations Unies, jugés susceptibles, par la Cour, de fournir des renseignements sur la question. Le délai de la procédure écrite a été fixé par une ordonnance datée du 11 décembre 1948. La Cour a reçu, par ordre de dates, des observations écrites des Gouvernements de l'Inde, de la Chine, de la France, des États-Unis d'Amérique et du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord.

En outre, la Cour a décidé de tenir, à partir du 7 mars 1949 — c'est-à-dire de ce jour —, des audiences au cours desquelles seraient entendus des exposés oraux. La France, le Royaume-Uni et la Belgique ont fait savoir qu'un exposé oral serait présenté en leur nom. Les représentants désignés dans cette affaire ont été : pour la France, M. Charles Chaumont, professeur à la Faculté de droit de Nancy, jurisconsulte au ministère des Affaires étrangères ; pour le Royaume-Uni, M. G. G. Fitzmaurice, deuxième conseiller juridique du *Foreign Office* ; pour la Belgique, S. Exc. M. Georges Kaeckenbeeck, envoyé extraordinaire et ministre plénipotentiaire de S. M. le Roi des Belges, chef du Service des Conférences de la Paix et de l'Organisation inter-

Three years having passed, it fell to the Court once more to elect a President. The one they have chosen is conscious of the honour done to him by his colleagues in thus manifesting their confidence in him. In face of a task of inestimable magnitude, he draws invaluable encouragement from the thought that he can call upon the enlightened counsel of one whom he has the pleasure and the honour of seeing beside him as Vice-President. He knows that the support on which he thus relies will not be found wanting.

In a speech on January 16th, 1925, President Max Huber stated that on account of its judicial function the Court should rise above the clash of men's interests and men's passions—above those of party, of class, of nation and of race. Those who speak before the Court know that they hold responsibility for the cause they are defending, and therefore, in their endeavour to convince the tribunal, use every effort to speak a language it will understand. Thus, in spite of all the divergences, the contradictions of the present age, that to which we cling before this Court and within its counsels is something which remains common to all men, something which in the life of society takes the form of the rule of law and induces the sentiment of the respect due to it.

Thus, through its very being the Court retains and cultivates ideas common to the whole of humanity. It is asked of the Court that it should contribute to peace by deciding the disputes submitted to it. Perhaps it will make a yet greater contribution by inculcating a knowledge of that which, after all, unites mankind.

The President stated that the Court was met that day in order to hear the oral statements presented in the case concerning reparation for injuries suffered in the service of the United Nations.

He requested the Registrar to read aloud the Resolution dated December 3rd, 1948, by which the General Assembly of the United Nations decided to ask of the Court an advisory opinion on this subject.

The REGISTRAR having read aloud the Resolution, the PRESIDENT recalled that the request for an opinion had been notified as was customary. In conformity with Article 66 of the Statute, it had been communicated to all the governments of those Members of the United Nations which the Court deemed likely to furnish information on the question. The time-limit for the written procedure had been fixed by an Order dated December 11th, 1948. In order of date, the Court had received written observations from the Governments of India, China, France, the U.S.A. and the United Kingdom of Great Britain and Northern Ireland.

Furthermore, the Court had decided to hold sittings as from March 7th, 1949, i.e., on that very day, in the course of which oral statements would be heard. France, the United Kingdom and Belgium had intimated that they would each present an oral statement. The representatives appointed for this purpose were the following: for France, M. Charles Chaumont, Professor of Public International Law at the Faculty of Law, Nancy, Legal Adviser to the Ministry for Foreign Affairs; for the United Kingdom, Mr. G. G. Fitzmaurice, Second Legal Adviser to the Foreign Office; for Belgium: H.E. M. Georges Kaeckenbeeck, D.C.L., Envoy Extraordinary and Minister Plenipotentiary of H.M. the King of the Belgians, Head of the Division

nationale au ministère des Affaires étrangères, membre de la Cour permanente d'Arbitrage.

Le Secrétaire général des Nations Unies s'est fait représenter par M. Ivan Kerno, Secrétaire général adjoint chargé du Département juridique, qui est accompagné de M. A. Feller, directeur principal de ce Département, en qualité de conseil.

Le Président constate la présence devant la Cour des représentants des États susmentionnés ainsi que de celui du Secrétaire général des Nations Unies. Il annonce qu'il donnera en premier lieu la parole à M. Ivan Kerno, représentant du Secrétaire général des Nations Unies, et ensuite, conformément à l'arrangement intervenu à cet égard, aux représentants de la Belgique, de la France et du Royaume-Uni.

M. Ivan KERNO prononce l'exposé reproduit en annexe [1].

(L'audience, interrompue à 13 heures, est reprise à 16 heures.)

Le PRÉSIDENT donne la parole à M. KERNO, qui reprend et termine son exposé (annexe [2]).

Le PRÉSIDENT constate que la Cour vient d'entendre un exposé très complet, très détaillé, de ce qui a trait à l'élaboration de la question posée à la Cour et, d'autre part, de la connaissance qu'a chacune des Parties de la demande d'avis. Ces indications sont très précieuses, mais, pour éviter des discours qui seraient, en partie, superflus, le Président voudrait inviter les orateurs qui vont prendre la parole à ne revenir sur ces indications d'ordre historique ou sur cette interprétation du sens même de la demande d'avis que dans la mesure où cela leur paraîtrait indispensable afin de marquer l'orientation à suivre, à leur avis, pour donner réponse aux questions posées à la Cour.

Il donne la parole à M. Feller, directeur principal du Département juridique du Secrétariat des Nations Unies.

M. FELLER présente l'exposé reproduit en annexe [3], dont la suite, interrompue par la clôture de l'audience, est renvoyée par le Président au mardi 8 mars, à 10 heures 30.

L'audience est levée à 18 h. 35.

Le Président de la Cour,
(*Signé*) BASDEVANT.

Le Greffier de la Cour,
(*Signé*) E. HAMBRO.

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[1] Voir pp. 50 *et sqq.*
[2] » » 63 » » .
[3] » » 70 » » .

for Peace Conferences and International Organization at the Ministry for Foreign Affairs, member of the Permanent Court of Arbitration.

The Secretary-General of the United Nations had appointed as his representative M. Ivan Kerno, Assistant Secretary-General, in charge of the Legal Department, accompanied by Mr. A. Feller, Principal Director of that Department, as Counsel.

The President noted the presence before the Court of the representatives of the above-mentioned States, as also the presence of the representative of the Secretary-General of the United Nations. He announced that he would first call upon M. Ivan Kerno, representative of the Secretary-General of the United Nations, to speak, and then, as agreed, upon the representatives of Belgium, France and the United Kingdom.

M. IVAN KERNO made the statement as annexed [1].

(The Court adjourned from 1 p.m. to 4 p.m.)

The PRESIDENT called upon M. KERNO, who continued and completed his statement as annexed [2].

The PRESIDENT stated that the Court had listened to an extremely complete and detailed statement of the background of the question before it, as also of the cognizance of the opinion possessed by each of the Parties. This information was most valuable, but in order to avoid any discourse not strictly necessary, the President would suggest that speakers should not go over this historical ground or interpret the actual sense of the request for an opinion, except where absolutely necessary in order to indicate the direction they considered their answers should follow.

He called upon Mr. Feller, Principal Director of the Legal Department of the Secretariat of the United Nations, to speak.

Mr. FELLER made the statement as annexed [3], to be concluded, by order of the President, at the next sitting of the Court, to be held on Tuesday, March 8th, at 10.30 a.m.

The Court rose at 6.35 p.m.

(*Signed*) BASDEVANT,
President.

(*Signed*) E. HAMBRO,
Registrar.

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[1] See pp. 50 *et sqq.*
[2] ,, ,, 63 ,, ,,.
[3] ,, ,, 70 ,, ,,.

SÉANCE PUBLIQUE TENUE LE 8 MARS 1949, A 10 HEURES

Présents : [Voir séance du 7 mars.]

Le PRÉSIDENT, ouvrant l'audience, donne la parole à M. Feller.

M. FELLER reprend son exposé, qu'il termine (annexe [1]).

(L'audience est interrompue de midi 30 à 15 h. 30.)

Le PRÉSIDENT donne successivement la parole à M. Georges KAECKENBEECK et à M. le professeur Charles CHAUMONT, qui présentent les exposés reproduits en annexe [2].

Le PRÉSIDENT annonce que la Cour entendra le 9 mars, à 10 h. 30, le représentant du Royaume-Uni.

L'audience est levée à 18 h. 50.

[*Signatures.*]

SÉANCE PUBLIQUE TENUE LE 9 MARS 1949, A 10 H. 30

Présents : [Voir séance du 7 mars.]

Le PRÉSIDENT, ouvrant l'audience, donne la parole au représentant du Royaume-Uni.

M. FITZMAURICE présente les observations reproduites en annexe [3].

(L'audience, interrompue à 12 h. 40, est reprise à 15 h. 30.)

M. FITZMAURICE reprend et poursuit son exposé, qu'il termine [4].

Le PRÉSIDENT constate que la Cour a entendu les exposés qui lui avaient été annoncés.

Il remercie, au nom de la Cour, le Secrétaire général des Nations Unies et les trois Gouvernements qui se sont fait représenter d'avoir bien voulu participer aux débats oraux en cette affaire.

Les questions très importantes soumises à la Cour par la présente demande d'avis consultatif ont un caractère nouveau et particulièrement grave pour la vie même de l'Organisation des Nations Unies. Elles ont été traitées avec beaucoup de science et une grande vigueur d'esprit. La Cour tirera grand profit de ce qu'elle a entendu. C'est pourquoi, en son nom, après avoir remercié le Secrétaire général et les Gouvernements, le Président remercie les représentants qui se sont fait entendre.

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[1] Voir pp. 80 *et sqq.*
[2] » » 94 *et sqq.* et 102 *et sqq.*
[3] » » 110 *et sqq.*
[4] » » 122 » » .

PUBLIC SITTING HELD ON MARCH 8th, 1949, AT 10 A.M.

Present: [See sitting of March 7th.]

The PRESIDENT declared the sitting open and asked Mr. Feller to address the Court.

Mr. FELLER continued and concluded his speech. (See annex [1].)

(The Court adjourned from 12.30 p.m. till 3.30 p.m.)

The PRESIDENT called on M. Georges KAECKENBEECK and Professor Charles CHAUMONT, in succession, to address the Court. They made the statements reproduced in the annex [2].

The PRESIDENT announced that the Court would hear the United Kingdom representative at 10.30 a.m. on March 9th.

The Court rose at 6.50 p.m.

[*Signatures.*]

PUBLIC SITTING HELD ON MARCH 9th, 1949, AT 10.30 A.M.

Present: [See sitting of March 7th.]

The PRESIDENT declared the sitting open and called on the representative of the United Kingdom to address the Court.

Mr. FITZMAURICE made the statement which is reproduced in the annex [3].

(The Court adjourned from 12.40 p.m. to 3.30 p.m.)

Mr. FITZMAURICE continued and concluded his statement. (Annex [4].)

The PRESIDENT observed that the Court had now heard the statements of which notice had been given to it.

On behalf of the Court, he thanked the Secretary-General of the United Nations and the three Governments who had sent representatives for having been so good as to take part in the oral discussion of the case.

The very important questions referred to the Court in the present request for an advisory opinion were of a new character and were of particularly grave importance for the very existence of the United Nations Organization. They had been examined with remarkable talent and with great intellectual force. The Court would be greatly helped from the arguments that it had heard. Therefore, having thanked the Secretary-General and the Governments, he now desired, in the name of the Court, to thank the representatives who had addressed it.

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[1] See pp. 80 *et sqq.*
[2] ,, ,, 94 *et sqq.* and 102 *et sqq.*
[3] ,, ,, 110 *et sqq.*
[4] ,, ,, 122 ,, ,,.

Il prononce la clôture de la procédure orale dans l'affaire.

L'audience est levée à 17 heures 10.

[*Signatures.*]

SÉANCE PUBLIQUE TENUE LE 11 AVRIL 1949, A 10 H. 30

Présents : les membres de la Cour mentionnés au procès-verbal de la séance du 7 mars ; les représentants des Gouvernements suivants : *Belgique :* S. Exc. M. Georges KAECKENBEECK, ministre plénipotentiaire ; *France :* S. Exc. M. J. RIVIÈRE, ambassadeur de France à La Haye ; *Royaume-Uni :* M. B. E. F. GAGE, conseiller de l'ambassade du Royaume-Uni à La Haye.

Le PRÉSIDENT, ouvrant l'audience, annonce que la Cour se réunit aujourd'hui pour prononcer l'avis qui lui a été demandé par l'Assemblée générale des Nations Unies, au sujet des dommages subis au service des Nations Unies. Il prie le Greffier de donner lecture de cette Résolution.

Le GREFFIER ayant procédé à cette lecture, le PRÉSIDENT rappelle que, conformément à l'article 67 du Statut, le Secrétaire général des Nations Unies et les représentants des États qui ont pris part aux débats oraux dans la présente affaire, savoir : la Belgique, la France et le Royaume-Uni, ont été dûment prévenus.

Il indique qu'il va maintenant donner lecture de l'avis de la Cour, dans le texte français, qui est également un texte original, mais c'est le texte anglais qui fait foi [1].

Après la lecture de l'avis, le Président prie le Greffier de donner lecture du dispositif de l'avis dans le texte anglais.

Le GREFFIER ayant lu ce dispositif, le PRÉSIDENT signale que M. Winiarski, juge, déclare qu'à son regret il n'est pas à même de se rallier à la réponse donnée par la Cour à la question I *b*). D'une manière générale, il partage les vues exprimées dans l'opinion dissidente du juge Hackworth. MM. Alvarez et Azevedo, juges, tout en souscrivant à l'avis de la Cour, se prévalent du droit que leur confère l'article 57 du Statut et joignent audit avis les exposés de leur opinion individuelle. M. Hackworth, Badawi Pacha et M. Krylov, juges, déclarant ne pas pouvoir se rallier à l'avis de la Cour et se prévalant du droit que leur confère l'article 57 du Statut, joignent audit avis les exposés de leur opinion dissidente.

Il signale en outre que MM. les juges Alvarez, Azevedo, Hackworth, Badawi Pacha et M. Krylov l'ont informé qu'ils ne désiraient pas donner lecture de leurs opinions individuelles ou dissidentes, jointes en annexes au présent avis.

Le PRÉSIDENT prononce la clôture de l'audience.

L'audience est levée à 11 heures 15.

[*Signatures.*]

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[1] Voir *Publications de la Cour, Recueil des Arrêts, Avis consultatifs et Ordonnances. Avis consultatif du 11 avril 1949.*

He announced the closure of the oral procedure in this case.

The Court rose at 5.10 p.m.

[*Signatures.*]

PUBLIC SITTING HELD ON APRIL 11th, 1949, AT 10.30 A.M.

Present: the members of Court mentioned in the minutes of the sitting of March 7th; the representatives of the following Governments: *Belgium:* H.E. M. Georges KAECKENBEECK, Minister Plenipotentiary; *France:* H.E. M. J. RIVIÈRE, Ambassador of France at The Hague; *United Kingdom:* Mr. B. E. F. GAGE, Counsellor of the United Kingdom Embassy at The Hague.

The PRESIDENT, opening the meeting, said that the Court had met on that day to deliver the Opinion which the Assembly of the United Nations had asked it to give, on the subject of injuries suffered in the service of the United Nations. He asked the Registrar to read the Resolution.

The REGISTRAR having read the Resolution, the PRESIDENT observed that, in conformity with Article 67 of the Statute, notice had been duly given to the Secretary-General of the United Nations and to the representatives of the States which had taken part in the oral discussions in the present case, viz.: Belgium, France and the United Kingdom.

He added that he would now read the Opinion in the French text, which was also an original text, though the English was the authentic text [1].

After the Opinion had been read, the President asked the Registrar to read the operative clause of the Opinion in English.

The REGISTRAR having read the operative clause, the PRESIDENT said that Judge Winiarski had informed him that he regretted that he was unable to agree with the answer given by the Court to Question I (*b*). Speaking generally, he shared the view expressed in Judge Hackworth's dissenting opinion. Judges Alvarez and Azevedo, though subscribing to the Court's Opinion, had availed themselves of their right under Article 57 of the Statute and had attached statements of their individual opinions to the Court's Opinion. Judges Hackworth, Badawi Pasha and Krylov had declared that they were unable to agree with the Court's Opinion and, availing themselves of their right under Article 57 of the Statute, had attached their dissenting opinion to the Court's Opinion.

The President added that Judges Alvarez, Azevedo, Hackworth, Badawi Pasha and Krylov had informed him that they did not wish to read the individual or dissenting opinions which they had attached to the present Opinion.

The PRESIDENT declared that the sitting was closed.

The Court rose at 11.15 a.m.

[*Signatures.*]

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[1] See *Publications of the Court, Reports of Judgments, Advisory Opinions and Orders. Advisory Opinion of April 11th, 1949.*

ANNEXES AUX PROCÈS-VERBAUX
ANNEXES TO THE MINUTES.

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1. — EXPOSÉ DU Dr IVAN KERNO

(REPRÉSENTANT DU SECRÉTAIRE GÉNÉRAL DES NATIONS UNIES)
AUX SÉANCES PUBLIQUES DU 7 MARS 1949, MATIN ET APRÈS-MIDI.

[*Séance publique du 7 mars 1949, matin.*]

Monsieur le Président, Messieurs les Membres de la Cour, il y a moins d'un an que la Cour a, pour la première fois, consacré une audience à une demande d'avis consultatif. J'ai eu le plaisir de venir à cette audience en qualité de représentant du Secrétaire général. Au moment de me présenter à nouveau devant vous, permettez-moi de vous faire part, une fois de plus, de l'émotion profonde et sincère que je ressens en prenant la parole devant le plus haut tribunal international du monde. C'est un grand honneur personnel que de pouvoir participer aux débats de cette Cour.

L'œuvre que vous avez accomplie durant l'année qui vient de s'écouler, au cours de laquelle la Cour a presque achevé sa première grande affaire contentieuse et formulé son premier avis consultatif, a été une source de grande satisfaction. On ne saurait exagérer l'importance que présente le recours à votre haute juridiction pour régler les différends et pour recueillir des avis consultatifs sur toutes les questions de droit, si l'on veut que se développe un ordre juridique international efficace et bien ordonné.

L'année passée la Cour m'a autorisé à lui présenter un exposé oral conformément à l'article 66 de son Statut, à la suite de la demande d'avis consultatif qui lui avait été adressée par l'Assemblée générale, sur l'interprétation de l'article 4 de la Charte relatif à l'admission de nouveaux Membres dans l'Organisation des Nations Unies. Cette année encore, je suis ici devant vous, à titre de représentant du Secrétaire général, et si la Cour me le permet, je présenterai un exposé oral ayant trait à la demande d'avis consultatif de l'Assemblée générale sur la question de la réparation des dommages subis au service des Nations Unies.

Toutefois, sur un point au moins ma position actuelle diffère profondément de celle que j'avais adoptée l'année dernière.

Dans la déclaration qu'il avait faite à l'époque, le Secrétaire général s'est contenté de présenter la question telle qu'elle a évolué devant des organes des Nations Unies, sous l'angle des seuls faits historiques, sans offrir lui-même une analyse ou une discussion juridique du problème posé. Le Secrétaire général, l'année dernière, n'a désiré exprimer aucune opinion en faveur de telle ou telle interprétation de l'article 4 de la Charte, et il n'a pas estimé être en mesure de le faire. L'exposé présenté alors avait pour seul objet de donner à la Cour un tableau sommaire et objectif de l'évolution de la question devant les différents organes des Nations Unies, et j'ai été extrêmement heureux de l'accueil si favorable que vous avez réservé alors à mes modestes efforts.

Cependant, dans les débats actuels il me faudra nécessairement me présenter dans un double rôle. Comme dans le débat de l'année dernière, le Secrétaire général estime qu'il lui appartient, en sa qualité de plus haut fonctionnaire de l'Organisation des Nations Unies, de présenter à cette Cour un résumé objectif des débats de l'Assemblée générale elle-même et de sa Sixième Commission, résumé qui précisera les circonstances dans lesquelles l'Assemblée générale a été amenée à demander un avis consultatif relatif à l'affaire actuelle. Cet exposé historique aura ainsi pour objet d'élucider la question et d'en préciser le but et les motifs.

Mais le Secrétaire général participe aussi, j'allais presque dire qu'il est partie, à la procédure actuelle, qui présente pour lui un intérêt essentiel. C'est pourquoi il a jugé opportun de définir nettement son attitude à l'égard des questions juridiques que pose le problème considéré, et avec votre permission, Monsieur le Président, dans la troisième partie de notre exposé, nous allons vous présenter notre point de vue. Nous allons vous dire que, dans notre opinion, à San-Francisco les auteurs de la Charte ont créé une organisation internationale qui possède une personnalité internationale propre, personnalité internationale impliquant certains droits essentiels de caractère international, et parmi ces droits essentiels, notamment celui de protéger les fonctionnaires de l'Organisation quand ils subissent un dommage dans l'exercice de leurs fonctions au nom de l'Organisation.

Nous allons donc vous demander de vouloir bien répondre affirmativement aux deux éléments de la première question. En ce qui concerne la deuxième question, nous demanderons également à cette Cour d'éclaircir certains points et d'aider ainsi les pourparlers que le Secrétaire général devra engager à l'avenir dans des cas concrets avec l'État dont la victime aura été le ressortissant.

La question actuelle, Monsieur le Président, a été à l'origine inscrite à l'ordre du jour de l'Assemblée générale sur l'initiative du Secrétaire général lui-même.

Déjà, dans le mémorandum qu'il a présenté pour expliquer les motifs pour lesquels on a demandé l'inscription de cette question à l'ordre du jour de l'Assemblée, le Secrétaire général a constaté, et je viens de le mentionner il y a quelques instants, que dans son opinion l'Organisation des Nations Unies a la qualité requise pour intenter une action internationale en réparation des dommages subis par un agent de l'Organisation dans l'exercice de ses fonctions, dans des conditions qui engagent la responsabilité d'un État. Le Secrétaire général est, de plus, fermement convaincu que cette capacité est indispensable si l'on veut que l'Organisation puisse atteindre ses buts et exercer efficacement ses fonctions. Un avis de la Cour reconnaissant cette capacité serait, pour l'Organisation des Nations Unies, d'une haute valeur dans tous les cas où elle sera appelée à protéger ses agents dans l'exercice de leurs fonctions.

Dans la partie de l'exposé que je présenterai moi-même, je retracerai d'abord l'historique de l'affaire et je procéderai ensuite à une analyse des questions formulées par l'Assemblée générale. Dans le développement historique, première partie de mon exposé, je m'attacherai à présenter un aperçu aussi objectif que possible des débats de la Sixième Commission de manière à donner à la Cour une idée précise de l'origine et de l'évolution des questions sur lesquelles on lui demande de donner aujourd'hui son avis. Je n'entrerai cependant pas dans le détail de ces

discussions et je ne procéderai pas à des citations des textes précis des déclarations faites par les différents délégués. Car, en somme, il ne s'agit que de onze séances de la Sixième Commission, et les membres de la Cour trouveront facilement dans les procès-verbaux de ces séances tel ou tel passage qui pourrait les intéresser plus particulièrement. Mon aperçu se bornera donc à mettre en lumière aussi clairement et aussi objectivement que possible tout d'abord les différents projets de résolutions et amendements qui ont été introduits par différentes délégations au cours des discussions de la Commission juridique, et ensuite je parlerai des décisions mêmes de la Sixième Commission et de l'Assemblée.

Le texte de ces deux questions a été établi de propos délibéré et avec le plus grand soin, après mûre réflexion. C'est pourquoi je crois qu'il sera peut-être utile de donner, dans la deuxième partie de mon exposé, une analyse détaillée de ce texte, parce que chaque mot a sa signification. C'est, comme je viens de le mentionner, après des discussions prolongées en séances publiques et en marge des séances, entre différentes délégations et les représentants du Secrétaire général, que le libellé de cette question a été établi. La Cour me permettra donc de lui présenter, dans la deuxième partie de mon exposé, quelques commentaires sur le sens des questions posées.

Enfin, une troisième partie de notre exposé sera présentée par M. A. H. Feller, qui m'a accompagné à titre de conseiller et qui précisera la position du Secrétaire général à l'égard des problèmes juridiques qui se posent.

PREMIÈRE PARTIE : EXPOSÉ HISTORIQUE

Monsieur le Président, je commence donc la première partie, la partie historique de mon exposé.

Ce fut, vous le savez, au cours de la session de Paris, exactement à la 169me Séance plénière, que l'Assemblée générale a décidé de poser à la Cour les deux questions dont il s'agit et dont le texte exact vient d'être lu au début de cette séance par M. le Greffier de la Cour.

La proposition préconisant que l'Assemblée générale demande à la Cour un avis consultatif, a été présentée à l'origine par le représentant de la Belgique au sein de la Sixième Commission. Le texte de la Résolution de l'Assemblée, qui incorpore en définitive les questions que je viens de mentionner, est un texte de synthèse, élaboré par de nombreux représentants, et notamment par les représentants de la Belgique, de la Colombie, de la France, de la Grèce, de l'Iran, du Royaume-Uni, de la Syrie, de l'Uruguay et du Venezuela.

A. Exposé relatif a des cas particuliers et aux mesures prises par le Secrétaire général.

Avant de commenter les débats de la Sixième Commission, peut-être sera-t-il utile de donner à la Cour un exposé bref des cas particuliers et des mesures prises par le Secrétaire général qui ont motivé l'introduction de cette question devant l'Assemblée générale.

Cette question des réparations pour dommages subis par des agents des Nations Unies s'est posée à la suite de la série d'incidents tragiques qui ont eu lieu en Palestine, du mois de mai au mois de septembre de l'année dernière. Ces événements déplorables, dont le principal a été, le 17 septembre 1948, le meurtre du comte Bernadotte, médiateur des

Nations Unies pour la Palestine, et celui de son adjoint, le colonel Sérot, ont profondément ému le monde entier. Ils contribuent à montrer l'urgence des questions dont la Cour est aujourd'hui saisie et l'importance qu'elles revêtent du point de vue pratique.

Dans son discours à la séance d'ouverture de la Troisième Session de l'Assemblée générale, le Secrétaire général, parlant de la mort du comte Bernadotte et du colonel Sérot, a dit :

> « La mort de ces deux hommes d'honneur exige qu'il soit fait justice des responsables. Elle soulève à nouveau, et de façon plus urgente que jamais encore, la question des dispositions à prendre par les Nations Unies pour assurer à l'avenir à leurs représentants, dans toute la mesure humainement possible, une protection maximum dans l'accomplissement de leurs devoirs dans les zones dangereuses. »

La question des réparations pour dommages subis au service des Nations Unies a été inscrite, comme je l'ai déjà mentionné, à l'ordre du jour de la Troisième Session de l'Assemblée générale, à la demande du Secrétaire général. A la 142me Séance de l'Assemblée, tenue le 24 septembre 1948, cette question a été renvoyée à la Sixième Commission, c'est-à-dire la Commission juridique, sur la recommandation du Bureau de l'Assemblée. Toutes ces décisions préliminaires de procédure, je tiens à le mentionner, ont été prises à l'unanimité.

Dans le mémorandum qu'il a présenté à l'Assemblée générale, le Secrétaire général a retracé l'historique des cas particuliers. Ces cas ont été exposés très brièvement pour servir de base à la présentation de certaines questions de droit, de politique à suivre et de procédure qui, de l'avis du Secrétaire général, devaient être précisées par l'Assemblée générale. Le Secrétaire général a présumé que l'Assemblée générale ne serait pas « désireuse de jouer elle-même le rôle de commission d'enquête ou de tribunal judiciaire, ayant en ces matières à établir les faits ou à déterminer les responsabilités dans des cas particuliers ». Il a estimé que ces questions, « en ce qui concerne les cas particuliers, devraient être réglées d'autre façon, soit par le moyen de négociations directes entre l'organe compétent des Nations Unies et l'État ou l'autorité intéressés, soit par un tribunal d'arbitrage ».

Les questions qui ont été posées à la Cour n'entraînent pas la détermination de la responsabilité de tel ou tel État dans tel ou tel cas particulier. Je ne désire aucunement faire naître de la confusion en examinant, dans le détail, les divers cas qui se sont produits. Néanmoins, il sera, je crois, utile à la Cour que je rappelle en quelques mots la série des événements, tels que le Secrétaire général les a exposés devant l'Assemblée, dans son mémorandum du 7 octobre 1948.

> « La série d'incidents a commencé par l'assassinat de M. Thomas Wasson, consul général des États-Unis à Jérusalem, membre de la mission de trêve des Nations Unies, tué par un tireur isolé, le 23 mai 1948, alors qu'il regagnait son domicile après une séance de la Commission. Il est mort le lendemain matin.
>
> Le 6 juillet 1948, le commandant René de Labarrière et le commandant de Canchy, deux officiers français, observateurs des Nations Unies, sont tombés victimes d'une explosion devant une barricade juive dans la région de Nazareth. Le commandant de

Labarrière a été tué et le commandant de Canchy blessé. Des soldats juifs qui se trouvaient sur les lieux ont déclaré que les observateurs avaient été atteints par l'explosion de mines. Selon le commandant de Canchy, les explosions peuvent avoir été le fait de grenades plutôt que de mines et, à son avis, son compagnon et lui-même semblent avoir été victimes d'une attaque délibérée de la part de soldats juifs.

Le 13 juillet 1948, un convoi qui faisait mouvement sous les auspices des Nations Unies, a servi de cible à un tir de mousqueterie au voisinage du mont Scopus. L'une des jeeps du convoi était conduite par Ole Helge Bakke, membre du Secrétariat des Nations Unies, servant en Palestine comme garde des Nations Unies. Bakke a été tué sur le coup par une balle de fusil. Le général de brigade Lash, de la Légion arabe, a fait connaître au médiateur que la conclusion à laquelle avaient abouti les travaux d'une commission d'enquête, était que Bakke avait été tué par un soldat arabe, surexcité par le feu ennemi.

Le 28 août 1948, deux observateurs français, le lieutenant-colonel Joseph Queru et le capitaine Pierre Jeannel ont atterri sur l'aérodrome de Gaza, dans un secteur occupé par l'armée égyptienne. Alors qu'ils quittaient leur appareil, les deux observateurs ont été attaqués par des irréguliers d'Arabie saoudite à qui l'armée égyptienne avait confié la garde de l'aérodrome et ont été tués et dépouillés.

Le 17 septembre 1948, le comte Folke Bernadotte, médiateur des Nations Unies en Palestine, et le colonel Sérot, officier français, observateur des Nations Unies, ont été tués à coups de feu alors qu'ils traversaient en voiture un quartier de Jérusalem tenu par les Juifs. L'attentat a été commis par plusieurs hommes revêtus d'uniformes du type de ceux de l'armée israélienne. Les assaillants n'ont pas été appréhendés, mais les conditions de l'attentat ont amené des représentants des Nations Unies et des Gouvernements Membres à présumer qu'ils appartenaient au groupe Stern, bande d'irréguliers juifs qui opère à cette époque à Jérusalem.

En plus de ces cas de morts et de blessures, de nombreux autres cas de coups de feu tirés contre les fonctionnaires des Nations Unies se sont produits en Palestine. Le dernier est survenu le 22 septembre 1948, alors qu'un convoi placé sous les auspices des Nations Unies et accompagné d'observateurs des Nations Unies, a essuyé le feu de trois hommes vêtus d'uniformes arabes, et identifiés par le chef d'état-major du médiateur comme dépendant des forces arabes de Transjordanie. Aucun des fonctionnaires des Nations Unies n'a été touché, mais quatre autres personnes qui se trouvaient dans le convoi ont été tuées. »

Le Secrétaire général a également rendu compte, dans son mémorandum, des mesures qu'il a prises à la suite de ces incidents. Voici, en quelques mots, en quoi ont consisté ces mesures : premièrement, entretiens avec les autorités détenant le pouvoir dans les territoires où les agents des Nations Unies avaient été tués au sujet de la protection des intérêts de l'Organisation et, deuxièmement, paiement d'indemnités aux ayants

droit, et paiement des frais médicaux, des frais d'hospitalisation, des frais d'obsèques et des autres frais du même ordre.

Enfin, dans son mémorandum, le Secrétaire général a soumis, à l'examen de l'Assemblée générale, les trois questions suivantes :

1) De l'avis de l'Assemblée générale, un État peut-il être tenu responsable envers les Nations Unies de la mort d'un de leurs agents ou des dommages qu'il a subis ?

2) Quelle devrait être la ligne de conduite à adopter en ce qui concerne les réparations ou l'évaluation des dommages-intérêts qui peuvent être réclamés ?

3) Quelle devrait être la procédure à suivre pour la présentation des demandes de réparation et pour leur règlement ?

En ce qui concerne la première question, le Secrétaire général a déclaré qu'il était convaincu que l'Organisation des Nations Unies, ayant capacité de conclure avec les États des accords internationaux, a également capacité en droit international pour présenter une demande en réparation à un État, que cet État soit, ou non, Membre des Nations Unies.

En ce qui concerne la ligne de conduite générale à adopter en matière de réparations, le mémorandum énumérait quatre formes de réparations possibles, que j'indique brièvement : le prompt et juste châtiment des coupables, ainsi que des mesures propres à assurer, à l'avenir, la protection des agents des Nations Unies contre tous dommages, le remboursement des dépenses engagées directement par l'Organisation des Nations Unies, le paiement d'indemnités à la personne objet du dommage ou à sa famille, et enfin la possibilité de demander des dommages-intérêts exemplaires.

Quant à la troisième question, le Secrétaire général a émis l'avis qu'en sa qualité de plus haut fonctionnaire de l'Organisation en vertu de l'article 97 de la Charte, il devrait être le représentant qualifié pour intenter les actions en réparation.

B. Débats de l'Assemblée générale et de la Sixième Commission.

Les questions posées par le mémorandum du Secrétaire général ont fait l'objet d'un examen approfondi au cours des onze séances que la Sixième Commission de l'Assemblée générale a tenues du 20 au 27 novembre 1948.

Les débats de la Commission ont commencé par des explications préliminaires des représentants du Secrétaire général concernant le mémorandum qu'il avait soumis à l'Assemblée. Une discussion générale s'est ensuite engagée que les membres de la Cour pourront étudier dans la documentation que nous avons soumise. Comme je l'ai déjà indiqué au début de mon exposé, je n'entrerai pas dans le détail de ces débats. Je vais examiner tout d'abord les différents projets de résolutions présentés et ensuite les décisions successivement prises par la Sixième Commission.

1. *Projets de résolutions examinés :*

En ce qui concerne les *projets de résolutions,* on peut les réunir en trois groupes différents. En effet, trois principaux modes d'action ont été préconisés et soumis à l'examen de la Sixième Commission.

a) *Propositions tendant à ce que l'Assemblée générale confère immédiatement certains pouvoirs au Secrétaire général.*

Le premier groupe des projets de résolutions dont je parlerai a trait à des propositions qui tendaient à ce que l'Assemblée générale confère immédiatement certains pouvoirs au Secrétaire général. Ainsi notamment, le projet de résolution présenté par la délégation de l'Égypte proposait d'autoriser le Secrétaire général à présenter toute demande pertinente au gouvernement *de jure* ou *de facto* responsable, en vue d'obtenir la réparation due à la victime ou à ses ayants droit (Document A/C. 6/279).

Le représentant de la France a proposé (Document A/C. 6/282) que la demande soit présentée « en consultation avec l'État dont la victime est un ressortissant ». Un des amendements (Document A/C. 6/284) que l'Union des Républiques socialistes soviétiques a présentés, et que la délégation de l'Égypte a accepté, prévoyait que le Secrétaire général devait exercer le recours devant les tribunaux nationaux compétents. Un autre amendement présenté par l'Union des Républiques socialistes soviétiques aurait obligé le Secrétaire général à obtenir le consentement de l'État dont l'agent victime du dommage est un ressortissant, avant de pouvoir intenter une action en réparation.

Un projet de résolution proposé par la délégation de l'Uruguay était d'un caractère un peu différent. Aux termes de ce projet de résolution, l'Assemblée générale aurait approuvé les mesures déjà prises par le Secrétaire général et l'aurait autorisé à accorder une réparation complète aux agents des Nations Unies ayant subi des dommages. La « réparation complète » serait à déterminer « d'accord avec les règles techniques les mieux éprouvées, appliquées en la matière dans les pays les plus avancés et en tenant compte des conditions et sacrifices spéciaux qu'implique le service des Nations Unies ». Cette proposition de l'Uruguay n'offrait cependant aucune réponse précise aux questions posées par le Secrétaire général au sujet de la réparation due par l'État responsable (Document A/C. 6/281, et Rev. 1 et 2).

b) *Propositions tendant à ce que l'Assemblée générale renvoie la question à la Commission du droit international.*

La deuxième procédure proposée par la Sixième Commission pour résoudre le problème consistait à renvoyer la question à la Commission du droit international en lui demandant de rédiger un projet de convention internationale.

Cette suggestion a été présentée par quelques représentants qui estimaient qu'aux termes des principes du droit international en vigueur, l'Organisation des Nations Unies n'avait pas capacité pour exercer un recours sur le plan international. Selon eux, pour conférer ce droit à l'Organisation des Nations Unies, il fallait rédiger une convention. Cette proposition a été incorporée dans un projet de résolution présenté par la délégation de la Syrie, qui recommandait que la question fût renvoyée à la Commission du droit international (Document A/C. 6/276). Le représentant de la France a présenté un amendement à ce projet de résolution, demandant que la Commission du droit international entreprît son étude en se conformant à l'avis consultatif qui aura été donné par la Cour internationale de Justice (Document A/C. 6/278).

c) *Propositions tendant à ce que l'Assemblée générale demande à la Cour internationale de Justice un avis consultatif.*

La troisième procédure proposée par le groupe de représentants le plus nombreux consistait à s'adresser à la Cour internationale de Justice pour lui présenter les questions juridiques que soulève le problème des déclarations et lui demander un avis consultatif. A la 112me Séance de la Sixième Commission un avant-projet d'une question à soumettre à la Cour a été présenté par le représentant de la Belgique. Sous sa forme initiale, ce texte était ainsi rédigé (Document A/C. 6/SR. 112, p. 13) :

> « Au cas où, dans l'exercice de ses fonctions, un agent des Nations Unies subit un dommage dans des conditions qui engagent la responsabilité de l'État, l'Organisation des Nations Unies est-elle habilitée à exercer un droit de protection, concurremment ou non avec l'État dont la victime est ressortissant et à négocier avec le gouvernement *de jure* ou *de facto* responsable, en vue d'obtenir la réparation due à la victime ou à ses ayants droit ? »

Des amendements ont été proposés à ce texte par les délégations de la France (Document A/C. 6/277), du Royaume-Uni (Document A/C. 6/280 et 283), ensuite de la France et de l'Iran conjointement (Document A/C. 6/285), du Venezuela (Document A/C. 6/292) et de la Grèce (Document A/C. 6/293).

Vu le nombre considérable de ces amendements, le représentant de la Colombie a introduit une proposition tendant à former un sous-comité chargé d'élaborer un texte de synthèse (Document A/C. 6/286). Cette proposition colombienne n'a pas été adoptée de manière formelle, mais, après des échanges de vues approfondis, en séances publiques et en marge des séances, un texte commun qui tenait compte des diverses propositions successives a été rédigé et soumis à la Commission par les représentants de la Belgique, de la Colombie, de la France, de la Grèce, de l'Iran, du Royaume-Uni, de la Syrie, de l'Uruguay et du Venezuela (Document A/C. 6/294).

Le nouveau texte contenait donc les vues communes des délégations qui, ou bien avaient présenté des amendements au projet de résolution initial de la Belgique, ou bien avaient pris une part importante à la discussion de la question. Il est même à noter que l'on trouve parmi ses auteurs des représentants qui avaient préconisé, à l'origine, des modes d'action tout à fait différents (la Syrie et l'Uruguay).

Le nouveau projet conjoint de résolution apportait plusieurs modifications et adjonctions au texte de la proposition initiale de la Belgique. J'en mentionnerai brièvement les plus importantes. La formule « qualité pour exercer un droit de protection » a été modifiée comme suit : « qualité pour présenter une réclamation internationale ». Après les mots « the United Nations », on a ajouté, dans le texte anglais, les mots « as an Organization », pour faire clairement entendre que la question a trait à la capacité juridique des Nations Unies en tant qu'organisation et non à celle de ses Membres en tant qu'États particuliers. Le texte français comportait déjà, dans sa forme primitive, l'expression « l'Organisation des Nations Unies » et ne nécessitait, par conséquent, aucune altération. Mais on a fortement insisté sur le fait que les deux textes avaient la même signification, c'est-à-dire que la formule française

« l'Organisation des Nations Unies » était la reproduction exacte des mots anglais « the United Nations as an Organization ».

On a, d'autre part, ajouté au passage relatif aux réparations dues pour dommages causés à la victime, une mention concernant celles dues pour dommages causés aux Nations Unies. Le représentant des États-Unis a enfin proposé de supprimer, dans cette partie de la question, la mention relative aux réparations pour dommages causés à la victime, mais cette proposition n'a pas été acceptée.

Une deuxième question a été rédigée pour faire suite à la question initiale de la délégation belge. Dans cette deuxième question on demandait à la Cour, au cas où elle répondrait affirmativement au sujet de la capacité de l'Organisation des Nations Unies de présenter une demande en réparation pour dommages causés à la victime ou à ses ayants droit, de donner son avis consultatif sur la manière de concilier l'action de l'Organisation avec les droits que pourrait posséder l'État dont la victime est ressortissant.

On a également ajouté au texte de la résolution un préambule composé de deux considérants. C'étaient les délégations de la France et de l'Iran qui avaient proposé, lors de la préparation du nouveau texte, que le considérant qui figurait dans le projet de résolution de l'Égypte fût incorporé dans la proposition belge afin qu'il n'y ait aucun doute sur la capacité de l'Organisation des Nations Unies d'intenter une action en réparation. Le nouveau texte leur a donné une entière satisfaction et reproduit le considérant égyptien avec quelques changements de pure forme.

On a enfin inséré dans le projet de résolution un paragraphe final par lequel on charge le Secrétaire général de préparer, à la lumière de l'avis consultatif que formulera la Cour, des propositions qui seront soumises à l'Assemblée générale lors de sa Quatrième Session en septembre 1949.

2. *Décisions de la Sixième Commission :*

J'en viens maintenant aux *décisions de la Sixième Commission.*

a) *Question préliminaire.*

La Cour vient de voir par mon exposé qu'on a exprimé des opinions si diverses à la Sixième Commission et on a soumis tant de propositions différentes, que la Commission a décidé, à sa 118me Séance, de mettre aux voix une question préliminaire de principe. En vue de mettre un peu d'ordre dans les débats, on a proposé que la Commission se prononçât tout d'abord sur la question de savoir si elle considérait que l'Assemblée pouvait prendre une décision *immédiate* sur les problèmes juridiques mis en jeu. Par 27 voix contre 6 et 7 abstentions, la Commission a décidé qu'elle ne pouvait pas se prononcer *immédiatement* sur le problème juridique de la capacité de l'Organisation des Nations Unies de présenter contre un État une demande en réparation de dommages subis par ses agents dans l'exercice de leurs fonctions.

Ce vote a mis en lumière le fait qu'une grande majorité des membres de la Commission désiraient consulter la Cour avant de prendre une décision quant au fond. En même temps, il est apparu très clairement, d'après la forme même sous laquelle la question a été successivement posée, que la Commission n'avait aucunement l'intention, par ce vote, de mettre en doute la capacité de l'Organisation des Nations Unies de présenter une demande en réparation. En effet, le président de la Sixième

Commission avait proposé tout d'abord que la Commission se prononçât sur ce problème de la capacité lui-même, mais la Commission s'est refusée à suivre cette suggestion, de nombreux représentants s'étant expressément élevés contre la mise aux voix de la question préliminaire sous cette forme. Certains membres de la Commission ont tenu même à préciser qu'ils seraient parfaitement disposés à voter affirmativement, au cours de l'Assemblée, sur la question de la capacité internationale de l'Organisation des Nations Unies, mais qu'ils préféreraient quand même entendre auparavant l'opinion autorisée de la Cour internationale de Justice.

b) *Projet de résolution présenté par la délégation de l'Égypte.*

La Commission s'est ensuite prononcée sur le projet de résolution de l'Égypte, incorporant les amendements soumis par la délégation de l'Union des Républiques socialistes soviétiques que la délégation égyptienne avait acceptés. La Commission n'était pas au moment du vote en possession du texte écrit de la version définitive de la résolution, mais l'alinéa pertinent du dispositif de cette proposition dans sa dernière version écrite, vous le trouverez dans le document A/C. 6/284. Cet alinéa est le suivant :

> « L'Assemblée générale autorise le Secrétaire général, au cas où un agent des Nations Unies subit, dans l'exercice de sa mission, un dommage corporel dans des conditions engageant la responsabilité d'un État, d'après les principes reconnus du droit des gens, à présenter, sous réserve de l'accord de l'État dont la victime est le ressortissant, toute demande pertinente au gouvernement *de jure* ou *de facto* responsable, en exerçant un recours devant les tribunaux nationaux compétents, en vue d'obtenir le remboursement des frais encourus par l'Organisation des Nations Unies en raison des versements effectués à l'agent de l'Organisation ayant subi un dommage corporel ou à ses ayants droit. »

Cependant, immédiatement avant le vote, le représentant de l'U. R. S. S. a fait remarquer que le texte anglais du document que je viens de citer (Document A/C. 6/284) ne représentait pas fidèlement l'original russe, introduit en langue russe. Il a demandé, par conséquent, et la Commission l'a admis par un vote à la majorité après une assez longue discussion, que la fin de la proposition soit modifiée dans le texte anglais, de la manière suivante :

Au lieu de « .... to make any pertinent application to the responsible *de jure* or *de facto* government by taking action in the responsible national courts.... »,

lire « .... to make any pertinent demand to the responsible *de jure* or *de facto* government and also to file suit in the appropriate national courts.... ».

Ce projet de résolution égyptien avec les amendements soviétiques a été repoussé par 26 voix contre 9 et 7 abstentions (Document A/C. 6/SR. 120, p. 5). On remarquera que le résultat de ce scrutin a été presque exactement le même que celui du scrutin sur la question préliminaire de principe. En fait, la première décision de la Commission, la décision de principe, laissait prévoir le rejet de la proposition égyptienne, la Commission ayant estimé, pour différentes raisons, qu'elle préférait

ne pas se prononcer immédiatement sur le fond de la question. Ce vote négatif s'explique ainsi en grande partie par la décision préliminaire de principe. Mais il y avait une autre raison qui avait aussi son importance dans l'opinion de certaines délégations. Le projet de résolution égyptien leur paraissait trop étroit et trop rigide. La proposition égyptienne, telle qu'elle avait été amendée, apportait en effet des restrictions sérieuses à l'autorisation qu'aurait reçue le Secrétaire général. Sa compétence aurait été 1) soumise à l'assentiment de l'État dont la victime est le ressortissant, 2) limitée à une demande de remboursement des frais encourus par l'Organisation elle-même. En outre, jusqu'à l'acceptation de la dernière modification soviétique immédiatement avant le vote, le Secrétaire général n'aurait été autorisé à intervenir qu'auprès des tribunaux nationaux de l'État responsable.

Ainsi que je viens de le mentionner et que le représentant du Secrétaire général l'a fait remarquer au sein de la Commission immédiatement après le vote, le rejet de la proposition égyptienne ne constitue en aucune façon une décision négative sur la question de savoir si l'Organisation des Nations Unies a ou n'a pas le droit de présenter, sur le plan international, une demande en réparation. La très grande majorité de la Commission et notamment les représentants du Royaume-Uni, de la Belgique, du Brésil, de la Grèce, de l'Australie, des Pays-Bas, du Luxembourg, de la Colombie, des États-Unis, du Canada, de l'Uruguay et de la Suède, se sont d'ailleurs déclarés expressément d'accord avec le point de vue du représentant du Secrétaire général.

c) *Projets de résolutions présentés par les délégations de la Syrie et de l'Uruguay.*

Il y avait ensuite le projet de résolution de la Syrie et de l'Uruguay.

Comme il apparaissait clairement après ces deux premiers votes que je viens de mentionner que l'opinion générale de la Commission était favorable à une consultation de la Cour internationale de Justice, aucune décision n'a été prise au sujet des projets de résolutions syrien et uruguayen. A la 124me Séance de la Sixième Commission, le représentant de la Syrie a retiré sa proposition, tout en réservant pour son Gouvernement le droit de présenter toutes observations qu'il jugerait nécessaires plus tard. Le représentant de l'Uruguay n'a pas non plus insisté pour que le projet de résolution qu'il avait présenté fût mis aux voix. Ces deux représentants ont d'ailleurs activement participé par la suite à l'élaboration d'un texte combiné de synthèse de la proposition de la Belgique (Document A/C. 6/294).

d) *Projet de résolution présenté par la délégation de la Belgique.*

J'en viens maintenant au projet de résolution belge.

Après le rejet de la proposition égyptienne et après que les autres propositions eurent été retirées, il ne restait que la proposition tendant à renvoyer la question à la Cour pour avis consultatif sur les questions juridiques mises en jeu. Plusieurs arguments ont été mis en avant, tant pour que contre la proposition, mais l'opinion générale était nettement en faveur d'une consultation de la Cour internationale. On peut *grosso modo* grouper en deux catégories les représentants qui préconisaient le recours à la Cour: premièrement, ceux qui avaient exprimé la conviction que l'Organisation des Nations Unies a bien le droit de présenter une réclamation sur le plan international, mais qui pensaient qu'un avis

autorisé de la Cour renforcerait la position de l'Organisation quant à l'exercice de ce droit (par exemple : États-Unis, Pays-Bas, Chili, Iran, Brésil, Venezuela, Colombie et Afghanistan), et deuxièmement, ceux qui avaient exprimé quelques doutes soit au sujet de la capacité de l'Organisation des Nations Unies de présenter une telle demande, soit au sujet de l'exercice de certains aspects de cette capacité et qui, en conséquence, désiraient un avis autorisé de la Cour afin de dissiper ces doutes (Royaume-Uni, Australie, Turquie, Équateur).

Le représentant de la Belgique, qui avait le premier présenté la proposition suggérant de consulter la Cour, a expliqué que sa délégation avait agi du fait de deux considérations principales. Tout d'abord, le désir d'éviter une longue discussion sur des questions de doctrine, questions sur lesquelles il pourrait s'avérer difficile d'arriver à un accord rapide à la Sixième Commission, et ensuite l'espoir d'établir une base solide pour la protection des agents des Nations Unies, sur le plan international (Document A/C. 6/SR. 115, p. 3). D'autres représentants ont souligné qu'un avis de la Cour donnerait un grand poids à toute action que l'Organisation des Nations Unies pourrait être amenée à prendre. Certains représentants ont aussi estimé que, vu la stipulation du paragraphe premier de l'article 96 de la Charte des Nations Unies, l'Assemblée générale serait bien inspirée de demander, à titre de ligne de conduite générale, un avis à la Cour toutes les fois qu'elle se trouverait devant des problèmes juridiques importants et compliqués qu'il ne serait pas opportun de trancher sans être soutenu par l'avis d'un corps de juristes particulièrement qualifiés.

D'autre part, les représentants qui préféraient employer d'autres méthodes pour examiner la question, ont émis certains doutes et soulevé certaines objections au sujet de la demande d'avis consultatif adressée à la Cour. Ces représentants peuvent être classés eux aussi en deux grands groupes : premièrement certains d'entre eux étaient absolument convaincus que l'Organisation des Nations Unies avait la capacité requise pour présenter une réclamation internationale et, pour cette raison, ils soutenaient qu'il était inutile de demander l'avis de la Cour (France, U. R. S. S., Égypte). Quelques-uns de ces représentants craignaient même que le fait de demander un avis puisse être interprété comme jetant des doutes sur cette capacité. D'autres délégués pensaient qu'il n'existe aucun droit en vertu des principes du droit international actuel, qui autoriserait une organisation internationale à présenter une réclamation, et que l'élaboration d'une convention était la meilleure méthode pour permettre d'établir ce droit (Syrie, Grèce, Suède, Pérou). Un membre de la Commission a estimé que la question était tout à fait simple et pouvait facilement être réglée directement et immédiatement par l'Assemblée générale (voir la déclaration du représentant de l'U. R. S. S., Document A/C. 6/SR. 114, p. 2). D'autre part, un autre membre de la Commission a soutenu qu'en l'absence d'un précédent reconnu, une réponse affirmative pourrait donner naissance à une série de questions subsidiaires qu'il serait difficile de résoudre (Grèce, Document A/C. 6/SR. 112, pp. 17-19).

Je voudrais enfin attirer l'attention sur deux autres points importants. Contrairement à ce qui s'était passé au cours du débat sur l'admission de nouveaux Membres qui a eu lieu à la Deuxième Session de l'Assemblée générale, on n'a, au cours des présentes discussions de la Sixième Commission, jamais mis en doute la compétence de cette Cour de donner

un avis consultatif sur cette question. D'un autre côté, quels que soient les divers arguments qu'on a fait valoir en ce qui concerne l'opportunité de demander un avis consultatif, la Commission a été unanime à reconnaître que les Nations Unies devaient être habilitées à présenter des réclamations sur le plan international.

Après avoir ainsi discuté la question pendant une semaine, la Sixième Commission a pris sa décision définitive à sa 124me Séance, le 26 novembre 1948. A cette séance, le texte final contenant la demande d'avis consultatif a été mis aux voix et a été adopté par 34 voix contre 5 et une abstention.

3. *Décision de l'Assemblée générale.*

Nous venons maintenant à la décision de l'Assemblée générale elle-même.

Le rapport contenant le texte du projet de résolution élaboré par la Sixième Commission a été présenté à l'Assemblée plénière par le rapporteur de la Sixième Commission, à la 169me Séance plénière, le 3 décembre 1948. Après une brève discussion, un vote à main levée est intervenu et la résolution a été adoptée à l'unanimité par 53 voix sans aucune abstention. Puis-je faire ressortir une fois de plus qu'en dépit des opinions différentes exprimées lors des discussions à la Sixième Commission, les questions actuellement soumises à la Cour ont été adoptées par un vote unanime de l'Assemblée générale ?

J'approche maintenant de la conclusion de la première partie de ma déclaration, dans laquelle j'ai passé en revue les débats de l'Assemblée générale et de la Sixième Commission. Je n'ai pas eu l'intention, dans cet exposé, de suggérer que les diverses opinions exprimées devraient nécessairement être prises en considération par la Cour lors de l'étude des questions particulières au sujet desquelles l'Assemblée générale a demandé un avis consultatif. J'ai plutôt eu l'intention de fournir à la Cour un bref résumé des propositions et des décisions qui constituent l'historique des questions particulières que la Cour va étudier et qui situent ces questions dans leur vraie perspective.

Je me suis permis, Monsieur le Président, de faire ces dernières remarques, car je connais bien la doctrine constante de cette Cour — et aussi de la Cour permanente — concernant l'importance plus ou moins grande qu'il convient d'attacher aux travaux préparatoires et concernant le rôle que doit jouer la méthode historique d'interprétation. J'ai eu l'honneur de participer personnellement à plusieurs de ces débats et j'ai été heureux de trouver à ce sujet un passage significatif, tout à fait récemment, dans l'avis de cette Cour concernant l'admission des nouveaux Membres. Quoi qu'il en soit, je suis sûr que dans tous les cas, la Cour voudra être en possession de tous les éléments et de toutes les considérations qui ont décidé l'Assemblée à demander le présent avis. C'est dans ce but que la première partie de mon exposé a été consacrée à l'historique des débats et des décisions de Paris.

Avant de passer à la deuxième partie, je dois cependant mentionner encore un point que je crois important.

L'exposé historique de cette question ne serait, en effet, pas complet sans un examen attentif de l'ensemble du texte — en anglais je dirais *the context* — dont les questions posées à la Cour forment une partie. Ce texte complet, on le trouve dans la Résolution de l'Assemblée du

3 décembre. Il contient, il ne faut pas l'oublier, un préambule ainsi conçu :

« L'Assemblée générale, considérant que la série d'incidents tragiques affectant ces derniers temps des agents des Nations Unies dans l'exercice de leurs fonctions soulève, d'une façon plus urgente que jamais, la question des dispositions à prendre par les Nations Unies pour assurer à l'avenir à leurs agents une protection maximum et la réparation des dommages subis, considérant comme hautement souhaitable que le Secrétaire général puisse, sans conteste, agir de la manière la plus efficace en vue d'obtenir toute réparation due.... »

Ce préambule est suivi d'un dispositif qui comporte, en premier lieu, la décision de soumettre deux questions à la Cour pour avis consultatif et de plus, en second lieu, des instructions pour le Secrétaire général afin que, à la lumière de l'avis de la Cour, il prépare des propositions pour la prochaine session ordinaire de l'Assemblée.

Si l'on considère cette Résolution dans son ensemble, les éléments suivants s'en détachent distinctement. L'Assemblée avait la préoccupation de prendre des dispositions pour que les Nations Unies puissent, à l'avenir, s'assurer que les dommages subis entraîneront réparation; elle désirait que cette question fût réglée d'extrême urgence et elle estimait qu'il était hautement désirable que le Secrétaire général fût à même d'agir sans conteste avec une efficacité certaine afin d'obtenir toute réparation due; c'est pour cette raison qu'elle a décidé de soumettre cette question à la Cour.

Ainsi, il est clair que la demande d'avis consultatif est une étape importante dans le déroulement de l'action que l'Assemblée envisage pour assurer aux agents des Nations Unies la protection la plus complète. Certes, il y a eu quelques divergences de vues sur des questions de doctrines ou de théories juridiques parmi les représentants siégeant à la Sixième Commission, mais dans son désir fondamental d'assurer cette protection efficace et d'obtenir réparation, l'Assemblée s'exprime en des termes qui ne laissent aucun doute. L'avis de la Cour, s'il est affirmatif, fournira une base juridique solide pour que ce désir fondamental de l'Assemblée puisse se réaliser « sans conteste » et « de la manière la plus efficace ».

[*Public sitting of March 7th*, 1949, *afternoon*.]

SECOND PART: ANALYSIS OF THE QUESTIONS PRESENTED.

Having completed this morning the historical part of our statement, I should now like to discuss the meaning of the specific questions before the Court. It is our purpose here to analyse for the assistance of the Court the two questions presented to it by the General Assembly, for the purpose of determining their scope and limits.

At this time, although the text of these two questions has been read this morning by the Registrar of the Court, I think it may be useful to repeat them again in order that this text should be quite fresh in our memory :

"I. In the event of an agent of the United Nations in the performance of his duties suffering injury in circumstances involving the responsibility of a State, has the United Nations, as an

Organization, the capacity to bring an international claim against the responsible *de jure* or *de facto* government with a view to obtaining the reparation due in respect of the damage caused (*a*) to the United Nations, (*b*) to the victim or to persons entitled through him ?

II. In the event of an affirmative reply on point I (*b*), how is action by the United Nations to be reconciled with such rights as may be possessed by the State of which the victim is a national ?"

Two general remarks may be in order before embarking on a detailed analysis of these questions. In the first place, it is obvious from the face of the questions that they are "legal" questions and are therefore drawn up fully in accordance with the provisions of Article 65, paragraph 1, of the Statute of the Court. In this respect may I mention that the Assembly itself has classified in its Resolution these two questions as legal questions.

There is in the report of Committee 6 to the full Assembly, which constitutes a part of the documentation submitted to the Court, an error in the English text. The English text says only "the following two questions"; the French text says: "les deux questions juridiques suivantes". But the rapporteur of Committee 6 in the full meeting of the Assembly corrected this error and stated that, the French text being correct, the English text consequently should read : "the following two legal questions". If you will look at the official copies which the Secretary-General has transmitted to the Court, you will find not only in the French but also in the English text the correct phrase "the two following legal questions".

The second preliminary remark is as follows : it is to be noted that the questions asked are abstract and general questions. They have no reference to the specific incidents which were referred to by the Secretary-General in his report to the Assembly, and which were described in the first part of our statement, nor to any specific claims which the United Nations may present to individual States.

After these two preliminary remarks I believe that it may be helpful to the Court to analyse the significant phrases and elements of the questions presented.

The first phrase which needs consideration in the first of the questions is "*an agent of the United Nations*". These words are intended to comprise all persons acting on behalf of the United Nations or any of its organs. These persons include officials and employees of the Secretariat, observers detailed by Member Governments for service under orders of the United Nations, Members of the United Nations Commissions or Committees, or persons who are themselves organs of the United Nations. While there is no explanation of the meaning of this phrase "an agent" in the records of the Committee discussions, it is noteworthy that the incidents which impelled the Secretary-General to bring this matter before the General Assembly involved persons having different relationships to the United Nations. Thus Count Bernadotte was himself an organ—a subsidiary organ—of the United Nations (the United Nations Mediator for Palestine), appointed by the General Assembly ; several of the persons involved in other incidents were observers who were detailed by national governments for service with the Mediator and with the Truce Commission, which was a subsidiary body, not of

the Assembly, but of the Security Council. One of the persons involved was a member of the General Secretariat of the United Nations. The word "agent" was used by the Secretary-General in his memorandum to the Assembly for this deliberate purpose of comprising these various types of individuals. It is important to note that the common element with respect to all of these individuals was that they were acting on behalf of the United Nations and not on behalf of any individual Member. In fact, all of the persons here referred to received some compensation from the United Nations for their activities, either salary or *per diem ;* all of them acted under orders of an organ of the United Nations, either the General Assembly, the Security Council, or one of its subordinate body, or the Secretary-General. Even if no compensation were paid, however, all persons who are clearly acting on behalf of the Organization should be considered as comprised within the category of agents. So, for instance, we may imagine that the Security Council decides to set up a small sub-committee in order to enquire into some matters, and this sub-committee is composed of three, four or five members of the Security Council. If these persons are physically injured while performing their duties, even if they do not receive any compensation, any salary, or any *per diem* from the United Nations, they are to be comprised in this category of agents because they are acting officially on behalf of the Organization of the United Nations.

The phrase *"in the performance of his duties"* is intended to restrict the question so as to comprise only injuries suffered while the individual is performing duties on behalf of the United Nations. The question therefore does not cover any situation in which the individual suffers injury while engaged on private affairs or while performing duties which are not part of his responsibility to the United Nations. The significance of this restriction resides in the fact that the Court is not called upon to consider whether the United Nations possesses a right vis-à-vis a State for injuries suffered to its agents generally, in the same sense that a State possesses a right of protection for its nationals generally. The injured individual must not only be an agent of the United Nations ; it must also be shown that the injury was suffered "in the performance of his duties".

The phrase *"suffering injury in circumstances involving the responsibility of a State"* has the effect of providing a premise which is of considerable importance having regard to the task of the Court in this matter. The Court does not need to deal with the question as to whether any particular State has responsibility in any of the circumstances here involved. The question for the Court implies as a premise that a State does have responsibility because of the circumstances in which the injury was suffered. There is thus no need for the Court to concern itself with such questions as denial of justice, exhaustion of local remedies, and various other questions of the same character which were discussed in the Sixth Committee. The question, in effect, is, assuming that a State is responsible for the injury, does the United Nations have the capacity to bring an international claim ?

It should be noted that the Sixth Committee deliberately drafted the question so that this premise should be made clear. In the memorandum presented originally by the Secretary-General, the question was asked in a somewhat different fashion, thus : "whether, in the view of the General Assembly, a State may have a responsibility as against the

United Nations for injury to, or death of, an agent of the United Nations". The deliberation with which the Committee adopted a different formulation of the question was brought out by the remark of the delegate of Venezuela who thought that the first question in the Secretary-General's memorandum was so worded as to emphasize the factor of the State's responsibility, while, in his opinion, the emphasis should be laid on the question as to whether the United Nations was entitled to claim reparation. The question of the responsibility of the State on whose territory the injury was incurred was also interesting, but it was of secondary importance, as it would in any case be settled when the claim was under discussion. In that respect, he preferred the wording of the question submitted by the representative of Belgium, because it started from the premise that the responsibility of the State concerned had already been established (Document A/C. 6/SR. 114, p. 4).

The phrase *"the United Nations, as an Organization"* is intended to make it quite clear that the question asked of the Court involves the capacity of the United Nations as such, and not the capacity of any individual Member acting through the Organization. I touched on this question of the terminology of the English and French versions in the first part of my statement, but may I say here in parenthesis that this terminology was discussed very much at San Francisco when the Conference had to decide what should be the official title of the new international organization? There were several delegates, and I remember that I personally was among them as the representative of my State of origin, to propose that the name should not be simply the "United Nations", but the "Organization of the United Nations", even in the English text, precisely in order that there should be no possibility of confusion between the United Nations as an Organization and the United Nations who are the Members of the Organization. But then the Conference decided on the title of the "United Nations" chiefly after the intervention of the American delegate who asked that the title should be simply "The United Nations". The Conference decided to do so, chiefly to honour the memory of President Roosevelt who was one of the initiators of the Charter, and who, during the war, first employed the title of "United Nations". Therefore the name was "The United Nations"; but you will see, if you read the Charter, that in the French text the words "l'Organisation des Nations Unies" are employed more often than in the English text. Nevertheless, according to the Charter itself, the English words "United Nations" define the Organization as such. In our case, however, in order to be quite clear, as I explained, the words "as an Organization" were added after the words "United Nations" in the English text.

May I add that in our view the Court does not have to deal with the question which was raised in the memorandum of the Secretary-General as to who may present such a claim in the name and on behalf of the United Nations? While this question was discussed in the Sixth Committee, it is clear that it is a question internal to the United Nations Organization and need not concern the Court in this proceeding.

The phrase *"the capacity to bring an international claim"* is, in effect, the heart of the question asked of the Court. While the question of the capacity of the United Nations to act as a legal person in the national courts of Member States will be referred to hereafter in our argument, that question is not an issue before the Court. It will be recalled that

a proposal that the United Nations should proceed through national courts was not adopted by the Sixth Committee or the General Assembly. The General Assembly was concerned here with receiving the advice of the Court as to the capacity of the United Nations to act on the international rather than national plane. We interpret the word *"bring"* to mean to present the claim, to press for its settlement, and to accept settlement through international machinery. In the first analysis this machinery would be direct negotiation with the government of the State concerned, and further proceedings might involve such arbitral and judicial procedures as might be open to the Parties or on which they might agree. The Court is thus asked to consider whether the United Nations is empowered under the rules of international law to claim against a State through international machinery reparation for an injury for which the State is responsible under rules of international law. In short, we have here the direct issue of the international personality of the United Nations.

The phrase *"against the responsible* de jure *or* de facto *government"* makes it clear that the Court is not required to concern itself with whether or not responsibility exists in the respondent government. As has already been pointed out, this is the premise on which the question has been asked of the Court. Nor need the Court concern itself with the distinction which may exist between a *de jure* or *de facto* government.

There was much discussion before the Sixth Committee with regard to the kind of reparation which might be claimed by the United Nations. That question is not now before the Court. However, some consideration needs to be given to the phrase *"with a view to obtaining the reparation due in respect of the damage caused"*. It would appear from the wording of this phrase that the General Assembly had mainly in view the question of pecuniary reparation, since it refers to the "damage caused". This is also borne out by the fact that most of the discussion in the Sixth Committee revolved around the question of pecuniary injuries and the amount of compensation which should be paid. The Secretary-General is of the opinion, however, that the question may be properly interpreted so as to comprehend reparation in forms other than money, designed to insure against repetition of the injury, such as, for example, the improvement of the system of protection of United Nations agents and other steps which might be taken by their governments to prevent the recurrence of the events, including appropriate punishment of the offenders. It is not necessary for the Court to enter into a discussion of the particular type of reparation which might be due to the United Nations, but we do wish to point out that it is not necessary for the Court so to restrict its opinion that it would cover only pecuniary reparation.

The first question asked by the General Assembly ends with the phrase *"caused* (a) *to the United Nations,* (b) *to the victim or to persons entitled through him"*. The division of this phrase into two separate parts was made by the General Assembly with very great deliberation, and the Sixth Committee attached very great importance to this division. The Court will note from the record of the debate that, while many members were certain that the United Nations had the capacity to claim for damages caused to itself, some delegations were doubtful as to whether the United Nations had capacity to claim for the damages

caused to the agent. The Committee, therefore, put both aspects to this Court for its advice.

The damage *"to the United Nations"* would, in our view, include at least the direct cost to the United Nations by reason of the injury as, for example, payment made to the victim or to the person entitled through him, cost for hospitalization or funeral expenses paid by the United Nations, premiums on insurance policies taken out by the United Nations for the benefit of the injured agent. This cost might also include necessary expenditures incurred in replacing a valuable agent, such as the expense of training someone to take his place. Damage to the United Nations might also comprise the loss of security by other personnel in the area, leading to the necessity of demanding that the responsible State take measures to prevent recurrence of the injury. It was also suggested in the Sixth Committee that damage to the United Nations might consist of the loss of service of valuable agents. However, it is not necessary, in our view, for this Court to concern itself with the precise element of reparation which the United Nations might demand. That question, it would seem to us, would properly be dealt with in the negotiations between the United Nations and the responsible State in each case. It is, however, necessary for the Court to distinguish clearly between the damage to the United Nations and the damage to the victim, or to persons entitled through him, because of the division of these two elements made in the question asked of the Court.

The damage *"to the victim, or to persons entitled through him"*, will obviously comprise such elements as loss of property, loss of life or corporeal injury. It might also, under certain circumstances, include the damage caused by suffering and perhaps even loss of reputation or dignity. However, it should be emphasized again that we do not believe it necessary for the Court in this proceeding to enter into the propriety of the claim for any particular element of damage caused to the individual.

As has been said before, one of the chief reasons for the separation of the two elements at the end of the first question asked of the Court was the belief of some of the delegates on the Sixth Committee that the capacity of the United Nations to bring an international claim was more doubtful when the claim was brought on behalf of the victim or the persons entitled through him than when the claim was brought for damage caused to the United Nations. During the discussion, much reference was made to the conflict between the right of the United Nations to present a claim and the right of the State of which the victim was a national. It was the possibility of such a conflict which led the Assembly to ask the second question. The reference in the second question to *"action by the United Nations"* obviously means the bringing by the United Nations of an international claim for reparation in respect of the damage caused to the victim, or the persons entitled through him.

The phrase *"to be reconciled with such rights which may be possessed by the State of which the victim is a national"* raises a number of points which require consideration. This phrase would seem to include two elements: on the one hand the legal relationship between the claim of the United Nations and the claim of the State, and on the other hand the practical measures which can be taken to reconcile both claims.

It is not necessary for the Court, in our view, to consider which may be the right possessed by the State of which the victim is a national.

It is assumed in the question asked of the Court that the State may have such right, and the question is only how action by the United Nations may be reconciled with these rights. There is, however, one special situation as was pointed out in the Sixth Committee. This is the question which arises as to the right of the United Nations in the event that the victim is a national of the respondent State, that is to say, the State alleged to be responsible for the injury. It would appear to us that the Court may properly concern itself with this hypothetical point, if it so desires, since, if the victim were a national of a respondent State, the question of reconciliation of action by the United Nations with the rights of that State would imply an answer to the question as to whether the United Nations may present a claim at all under such circumstances.

Mr. President, before concluding this portion—the second portion—of our statement, I should like to dwell for a moment on the great importance of the questions put before the Court. In the first place, the issue here involves the international personality of the United Nations. For many years scholars have discussed the personality of international organizations. Now a precise question on this major issue has been presented to the highest international judicial body. Your answer to the question may involve the most important consequences for the development of international organization. In the second place, the issue is a serious one for the ability of the United Nations to protect its agents and thus to increase its effectiveness for carrying out the tasks entrusted to it by the Charter. In this respect it may be noted that Article 2, paragraph 5, of the Charter has provided as one of the fundamental principles of the Organization that all Members shall give to the United Nations every assistance in any action it takes in accordance with the Charter, and, furthermore, the Organization within the purview of Article 2, paragraph 6, is to ensure that States which are not members shall act in accordance with the principles of the Charter so far as may be necessary for the maintenance of international peace and security. Lastly, there are involved here principles of the highest importance for the future development of international law. You will be concerned here with an enquiry as to whether and how the rules of international law can be adapted to meet a new situation arising out of the growth of new instrumentalities for the conduct of international affairs.

It is not too much to say that your opinion will be a historic marker in the development of the system of law of which you are the highest exponent.

2.—STATEMENT BY Mr. FELLER

(COUNSEL FOR THE SECRETARY-GENERAL OF THE UNITED NATIONS)

AT THE PUBLIC SITTINGS OF MARCH 7th AND 8th, 1949.

[*Public sitting of March 7th, 1949, afternoon.*]

THIRD PART: STATEMENT OF LAW.

A. FIRST QUESTION.

May it please the Court: in his opening statement Dr. Kerno pointed out that the Secretary-General conceives it to be his duty in this case, not only to present the Court with information regarding the questions before it, but also to take a definite position on these questions. The Secretary-General therefore respectfully submits to the Court that the first question asked by the General Assembly should be answered in the affirmative. I might summarize our argument for this position very briefly as follows:

First: that the United Nations possesses international juridical personality conferred upon it by the States which created it; that incidental to such personality the United Nations possesses the procedural capacity to present an international claim; and that as a consequence of its personality the United Nations possesses certain substantive rights under international law.

Second: that among these substantive rights possessed by the United Nations is the right of protection of its agents from unlawful injury while engaged in its service.

Third: that by virtue of the foregoing the United Nations may bring an international claim against the responsible *de jure* or *de facto* government with a view to obtaining the reparation due in respect of damage caused either to the United Nations, or to the victim or to persons entitled through him.

1. *The United Nations possesses an international juridical personality.*

We contend that the States, which are both the subjects and creators of international law, intended to and did in fact create in the United Nations a personality of international law.

It will be recalled that when the Charter of the United Nations was under discussion at the San Francisco Conference, the question arose as to whether the Charter should contain a specific provision regarding the international personality of the Organization. The Legal Committee of the Conference believed that such a provision would be superfluous, and the report of Committee IV/2, approved by Commission 4, states that the international personality of the Organization was, in effect, "to be determined implicitly from the provisions of the Charter as a whole". We submit that the provisions of the Charter as a whole make it clear beyond doubt that the Organization of the United Nations possesses an international juridical personality.

This conclusion results from the general aims and purposes of the Organization, from the express powers which the Charter confers on the Organization to act in the international field and from specific provisions of the Charter relating to the capacity, privileges and immunities of the Organization.

The provisions of the Charter taken together indicate unequivocally that the Organization called the United Nations was set up by its Members as an entity. The Charter is of course in part a series of undertakings by the Members to conduct themselves in accordance with certain standards, but numerous provisions of the Charter specifically confer on the Organization of the United Nations as such, or on one of its organs, specific power and authority. These provisions, which are so numerous that it is hardly possible to cite them without making a catalogue of most of the articles in the Charter, show that the Members desired to create a collective entity which would act on their behalf, and not merely a meeting place or forum in which the individual Members could have the opportunity of stating what action each of them would take separately. The very excellent analysis of this point at page 23 of the United Kingdom's written statement (Distr. 49/48) makes unnecessary further demonstration of this intention to create an entity. As that statement well puts it, the language of the Charter "is difficult to reconcile with any other view but that the framers of the Charter regarded the Organization as possessing an international capacity of its own, separate and distinct from that of its individual Members or of the plurality of its Members".

In addition this entity, the United Nations, was endowed with specific capacity to exercise functions and undertake rights and obligations on a parity with similar functions, rights and obligations exercised or possessed by States which are recognized personalities under international law. The most striking example is Article 43, which empowers the Security Council to enter into agreements with Member States or groups of Members regarding the armed forces, assistance and facilities to be made available to the Security Council for the purpose of maintaining international peace and security. It is hardly necessary to say that such agreements are agreements which would be binding under international law, in the same way as are treaties between States, and it is of interest to note that Article 43 concludes by providing that these agreements "shall be subject to ratification by the signatory States in accordance with their constitutional processes".

The United Nations has authority to enter into other international agreements. Thus, by virtue of Article 105, it is a party to the Convention on Privileges and Immunities of the United Nations, which binds the United Nations as an Organization, on the one part, and each of its Members individually, on the other part. The United Nations has entered into international agreements with individual States. For example, the agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, and the Interim Arrangement on the Privileges and Immunities of the United Nations which was concluded with Switzerland. As the Court knows, under Article 63 of the Charter, the United Nations enters into agreements with the Specialized Agencies.

In addition to its express capacity to enter into international agreements, the Charter confers on the United Nations as an Organization

other express functions which imply the possession of international personality. The Security Council is authorized to make certain decisions with regard to international peace and security, and these decisions are, by Article 25, binding upon the Members of the United Nations. Under Article 42 the Security Council may itself take action by armed force to maintain or restore international peace or security.

Moreover, Article 81 provides that the Organization itself may be designated as the administering authority of a trust territory.

As the Court is aware, the only express reference to the legal capacity of the United Nations in the Charter is Article 104, which provides that: "The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes." It was suggested in the Sixth Committee that the intent of this Article was to give the United Nations legal capacity only under the municipal laws of its Members, and this because of its reference to "in the territory of each of its Members". It is of course clear that the Article confers at least this capacity on the United Nations, but we submit it is equally clear that the Article does not mean that the United Nations has only such domestic legal capacity and not capacity under international law. In our view this Article can properly be interpreted to require recognition by the Members in each of their territories both of capacity under internal law and of capacity under international law. This derives from the language which provides that the legal capacity shall be such as "may be necessary for the exercise of its functions and the fulfilment of its purposes". Certain of these functions, for example, the capacity to sue in a private law contract, or to possess land, require a legal capacity under municipal law. On the other hand, the express functions of the United Nations to enter into international agreements and to administer territory require legal capacity under international law. The recognition of international capacity may thus be said to be properly, and even necessarily, comprehended within the obligation imposed by this Article. However, we wish to make it clear that we do not rest our case on this interpretation alone since, in our view, even if Article 104 were not in the Charter, the United Nations would possess international juridical personality by virtue of the provisions of the Charter taken as a whole.

There are still other indicia of international juridical personality present both in the Charter and in the practice of States. Under Article 105 the United Nations enjoys in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes, and certain privileges and immunities are also conferred on representatives of the Members of the United Nations and on officials of the Organization.

The Convention on the Privileges and Immunities of the United Nations, which I referred to earlier, provides in its first section that "The United Nations shall possess juridical personality", and then goes on to specify the privileges and immunities of the Organization. Under this same Convention the United Nations may issue *laissez-passer* to its officials which are to be recognized and accepted as valid travel documents by its Members.

The Headquarters Agreement between the United Nations and the United States has some significant provisions in this connexion. Under

Section 8 of this Agreement the United Nations is given "power to make regulations, operative within the headquarters district, which may supersede the laws and regulations of the United States, for the purpose of establishing therein conditions in all respects necessary for the full execution of its functions. No Federal, State or local law or regulation of the United States which is inconsistent with a regulation of the United Nations authorized by this Section shall, to the extent of such inconsistency, be applicable within the headquarters district." The Agreement also provides that the headquarters district shall be inviolable and that no official of the United States shall enter the district to perform any official duties therein except with the consent of and under conditions agreed to by the Secretary-General (Section 9). The principle of inviolability of the premises is also recognized in the Arrangement between the United Nations and Switzerland regarding the Ariana Site, and in the Arrangement between the United Nations and France regarding the Palais de Chaillot in 1948. These are rights which would hardly be granted to a mere private corporation, but only to a legal personality under international law.

Under the regulations regarding the registration of treaties by virtue of Article 102 of the Charter adopted by the General Assembly, agreements entered into by the United Nations with States and other international organizations are treated as international agreements and made subject to filing and recording. Numerous Member States maintain permanent missions at the seat of the Organization, and this practice, so closely akin to the traditional right of legation exercised by States, has been approved by resolution of the General Assembly. Under the Agreement between the United Nations and the United States, certain of the members of these missions are entitled to the same privileges and immunities as the United States accords to diplomatic envoys accredited to it. It may be remembered in passing that the United Nations has a flag and an emblem recognized by Member States, and is considering the establishment of its own postal service.

It is instructive to note the differences in this regard between the Charter of the United Nations and the Covenant of the League of Nations. The Charter, as has been said, refers over and over again to the United Nations as an entity. The Covenant, on the other hand, makes only rare references to the League as such; the centre of gravity, so to speak, is in the Members and not in the League. For example, nowhere in the Covenant is the League called "an organization", nor is there any provision similar to that of Article 104 (although the League did, of course, enjoy inviolability of its premises). Contrast also Article 10 of the Covenant, in which the Members of the League undertake to protect all Members against aggression, and the Council is only authorized to "advise upon the means by which this obligation shall be fulfilled"; contrast this with Chapter VII of the Charter in which the Security Council is empowered to determine the existence of any threat to the peace, breach of the peace, or act of aggression, and may itself decide what measures shall be taken. Nevertheless, as the Court will recall, the majority opinion among writers was that the League of Nations did possess international legal personality. (For example, such writers as Oppenheim, P. E. Corbett, Schücking and Wehberg, Rougier, Fauchille.)

From the sum of all the provisions of the Charter and the other texts we have cited there emerges a collective entity; endowed with the

capacity to enter into international agreements; with the authority to administer territory, including the rights and obligations which would arise therefrom; with the extraordinary power in certain circumstances to make decisions binding upon States; with authority to enforce certain of its decisions by the use of armed force against States; and with express recognition of legal capacity in the territory of Member States and of the privileges and immunities necessary for the fulfilment of its purposes. These functions and rights do not make of the United Nations a super-State, nor indeed even a State, but they are certainly indicia of an international juridical personality. To deny the existence of such a personality in the United Nations would entail a conclusion that only States may under any conceivable circumstances possess international personality. Only a very small minority of reputable writers of international law would support so extreme a statement.

To hold this would be tantamount to holding that the States which are both the subjects and creators of international law do not possess the power, by their own free will and agreement, to create a new international personality. There is no rule of international law which imposes such a restriction on the freedom of the States. In the Charter of the United Nations and in the practice of intercourse amongst them, they have in fact created such an international personality in the United Nations.

This international personality is recognized not only by the Member States but by the non-member States as well, and we would say it is now founded upon a general rule of international law. The Charter had been adhered to by the overwhelming number of States of the world and there are grounds for saying that it is not to be considered as a *lex specialis* for the Members alone but as having been made law by and for the entire international community. There is, however, no necessity here for determining whether a non-member State is bound by any specific provision of the Charter; it is enough to say that the entire international community has recognized the capacity of the Organization which the Charter created. This recognition appears in the fact that every known State in the world which possesses control over its foreign relations, with the exception of Spain (which is specifically debarred from membership) and several of the diminutive States such as Monaco and Andorra, and Switzerland, has applied for membership. It should also be noted that Switzerland, although a non-member State which has not applied for membership, has expressly recognized in its agreement with the United Nations "the international personality and legal capacity of the United Nations".

(a) *The United Nations has the procedural capacity to bring an international claim.*

As we have just shown, the international personality of the United Nations is firmly established in international law, not only by the Charter provisions as a whole, but also by State practice on the part of those Member and non-member States. I should now like to demonstrate that this personality carries with it the capacity necessary for the fulfilment of its purposes and the exercise of its functions from a procedural standpoint. The Organization clearly has the right to negotiate with States and has in fact exercised this right continuously since its origin. It has communicated with States on a basis of equality,

and has protested to States the violation of its rights. In this connexion it is significant that it was the United Nations, and not the States of which the officials were nationals, which protested the injuries suffered by United Nations agents in Palestine. The right of the United Nations to enter into agreements either with a large group of States or with a particular State has already been pointed out. These rights of communication, negotiation and agreement have been exercised not only in relations with Member States but also in relations with non-member States.

The Organization has the capacity to participate in arbitral proceedings with a State when the question of its rights or obligations is concerned. Provision for such arbitration will be found in treaties and agreements in force, as for instance Section 21 of the Headquarters Agreement between the United Nations and the United States, and Section 27 of the Interim Arrangement between the United Nations and Switzerland.

Although by Article 34 of the Statute of the International Court of Justice the United Nations may not be a party in a case before this Court, its organs, under Article 96 of the Charter of the United Nations, may request advisory opinions, and its representatives may appear before the Court as is evidenced by the fact we are here to-day. Advisory procedure may be made to yield the same results as a judgment in a contentious proceeding by an agreement in advance to accept the advisory opinion as binding. Members of the Court will recognize that an agreement of this kind is incorporated into Section 30 of the Convention on the Privileges and Immunities of the United Nations. Section 30 is as follows:

> "All differences arising out of the interpretation or application of the present Convention shall be referred to the International Court of Justice unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between the United Nations on the one hand and a Member on the other, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court. The opinion given by the Court shall be accepted as decisive by the parties."

It should therefore be clear that the United Nations has, and in some instances is exercising, the same procedural rights by which a State brings an international claim against another State. These rights of negotiation, diplomatic interposition, agreement, arbitration and, in a modified form, judicial settlement, are open to the United Nations under positive international law as it exists to-day. The fact that for the exercise of the right to arbitrate or to submit a case for judicial settlement a special agreement or *compromis* between the United Nations and the defendant State might be necessary, in no way derogates from the legal capacity possessed by the United Nations in positive law.

In the absence of an obligation under the optional clause of Article 36, or of an obligation in some other treaty or convention in force, such a special agreement or *compromis* is necessary for the exercise of this right by a sovereign State. On the other hand, the right to negotiation and diplomatic interposition which the United Nations is, and has been, exercising, may be exercised immediately.

(b) *The United Nations possesses substantive rights under international law.*

The essence of legal personality is the capacity to enjoy legal rights and assume legal obligations. It follows that since the United Nations is a personality of international law, it has the capacity to enjoy international legal rights. The international legal personality which we call a State enjoys certain rights under general or customary international law, in common with other States, such as sovereignty, equality, etc., and other rights which it acquires by virtue of treaties with other States. The international legal personality called the United Nations similarly enjoys rights deriving both from general international law and conventional international law. These rights of the United Nations are not necessarily the same as those of States, although they may in certain circumstances be the same or similar.

The legal rights which a State enjoys by virtue of customary law are those which are necessary and proper for the exercise of the functions of a State. Obviously, there are certain of these rights, as, for example, sovereignty, which are not necessary and proper for the exercise of the functions of the international personality called the United Nations. On the other hand, there are certain other rights which States possess which must also be possessed by the United Nations if it is to exercise the functions conferred on it. A few examples will suffice.

When the United Nations enters into an international agreement with a State, it is entitled to the right that the contracting State will fulfil the obligations of the agreement in accordance with the rule *pacta sunt servanda*, which is indeed the fundamental principle of international law.

If the United Nations were to become the administering authority of a trust territory, it would seem obvious that its acts in the exercise of this function would be entitled to the same recognition under the rules of international law as would those of a State which acted as an administering authority of a trust territory.

Let us take another case. A striking instance would be the case where the Security Council found it necessary to employ an international armed force under Chapter VII. It would be most extraordinary to say that this force could not rely on the protection of the general rules of warfare established by international law.

Conventions and agreements relating to the United Nations have expressly recognized that rules of general international law may govern certain aspects of the Organization's activities. For instance, in the Arrangement on Privileges and Immunities of the United Nations and Switzerland, the recognition of the personality and legal capacity of the United Nations which I have already cited is followed by the provision that the Organization "according to the rules of international law" may not be sued before the Swiss courts without its express consent. Section 19 of the Convention on the Privileges and Immunities of the United Nations accords to the Secretary-General and Assistant Secretaries-General the privileges and immunities accorded to diplomatic envoys "in accordance with international law".

In essence, our position at this point is that the United Nations, in addition to its rights under the Charter or express international agreement, possesses those substantive rights of general international law which are necessary and proper for the exercise of its functions. We

are aware that this position may have an appearance of novelty and perhaps boldness, but it is novel only because the problem of the practical implications of the personality of an international organization arises here for the first time. We submit that this view is wholly in accordance with the needs of the modern international community, and with the progressive development of the international legal order.

2. *The right of the United Nations for the protection of its agents.*

It is not necessary in this proceeding to explore the whole catalogue of the substantive rights which the United Nations may enjoy under international law. The essential point in our contention before the Court now is that the United Nations unquestionably has the right to insist, under international law, vis-à-vis a State, whether that State be a Member or a non-member, that its agents be given the protection necessary for the performance of the functions of the Organization. It is elementary that States possess a right to receive protection for their diplomatic and consular officials by the territorial sovereign. Freedom from interference with this right to protection either through acts of violence by State officials, through failure to provide protection from illegal acts of individuals, or through other delicts of a like or similar nature is indispensable to enable officials to carry out their functions.

A right to special protection for those persons occupying official positions is universally recognized in international law. An inviolability of the person has been said to be the first right of diplomatic representatives.

> [Sir Cecil Hurst, *Les Immunités diplomatiques*, Recueil des Cours de l'Académie de Droit international (1926, II), Vol. 12, pp. 124-125; Article 17, of the Harvard Research Draft Convention on Diplomatic Privileges and Immunities, and comment thereto, pp. 90-97; Hackworth, *Digest of International Law*, Vol. IV, pp. 507-510; Hyde, *International Law* (2nd Rev. Ed., 1945), Vol. 2, p. 1249; Anzilotti, *La Responsabilité internationale des États à raison des Dommages soufferts par des Étrangers*, 13, Revue générale de Droit international public (1906), p. 15; De Visscher, *La Responsabilité des États*, 2, Bibliotheca Visseriana (1924), p. 102; Whiteman, *Damages in International Law*, Vol. 1, p. 366; and cases cited by the above authorities.]

It is the only right recognized by general international law for consuls and minor officials of foreign governments who are not accorded diplomatic privileges and immunities proper.

> [Article 15 of the Harvard Research Draft Convention on Legal Position and Functions of Consuls, and comment thereon; Hackworth, *Digest of International Law*, Vol. IV, pp. 708-716; Hall's *International Law* (Pearce Higgins' 8th Ed.), 372, 375; Borchard, *The Diplomatic Protection of Citizens Abroad* (1915), pp. 216, 223; Hyde, *International Law* (1945), Vol. 2, p. 1327; Bustamante, *Derecho Internacional Público* (1938), Toma I, p. 388.]

The Vice-President of this Court, M. Guerrero, as rapporteur of the Sub-Committee of the League of Nations Committee of Experts for the Progressive Codification of International Law, stated in his report:

"It was obviously not the intention of the international community that the representative character of an individual should render him immune from ordinary misadventure.

Nevertheless, States have undertaken to exercise greater vigilance over these persons than they do over private individuals. They are also bound to take special steps to forestall any assault against the persons of foreign representatives and to display particular energy in pursuing the criminals and ensuring the proper course of justice." (League of Nations, C.196. M.70. 1927. V, p. 96.)

The same opinion was expressed in the comment to Article 17 of the Harvard Research Draft on Diplomatic Privileges and Immunities, and in the comment to Article 10 of the Harvard Research Draft on Responsibility of States.

The reasons which underlie the right of a State to require protection for its officials, apply with equal force in the case of the United Nations. The Member States have established an international organization, endowed as we have seen with international personality and authorized to carry out functions of high significance to international peace and security. These functions must be carried out by agents who, as experience shows, and sometimes tragically shows, must often exercise their duties in troubled areas in various parts of the globe. The necessity for the United Nations to exercise its functions through such agents implies as a co-relative a duty on the territorial sovereign to furnish them with protection appropriate to the circumstances, to enable these functions to be properly exercised.

The existence of such a duty of protection for the representatives of an international body on a parity with the duty to protect a national representative was strikingly illustrated in the opinion given by the Committee of Jurists appointed by the Council of the League of Nations in connexion with the *Tellini case* (which will be discussed in detail hereafter). It will be recalled that General Tellini was assassinated in Greece while serving on a border commission appointed by the Conference of Ambassadors. In answer to the question "in what circumstances and to what extent is the responsibility of a State involved by the commission of a political crime in its territory", the Committee answered in part : "The recognized public character of a foreigner and the circumstances in which he is present in its territory entail upon the State a corresponding duty of special vigilance on his behalf" (L. of N. O.J., 1924, p. 524).

In the Convention on Privileges and Immunities the officials of the United Nations are expressly accorded immunity from legal process for acts performed in their official capacity, and are granted other privileges and immunities closely analogous to diplomatic privileges and immunities. Since the right to protection against illegal acts is so firmly established in international law, it was not necessary expressly to mention it in the Convention on Privileges and Immunities, which was primarily designed to furnish immunity from legal acts of government. It is a necessary right of the Organization which is derived directly from principles of international law, and is also assured by Article 105 of the Charter. As was pointed out by the Preparatory Commission : "Under Article 105 of the Charter, the obligation of all

Members to accord to the United Nations, its officials and the representatives of its Members all privileges and immunities necessary for the accomplishment of its purposes, operates from the coming into force of the Charter, and is therefore applicable even before the General Assembly has made the recommendations or proposed the Conventions referred to in paragraph 3 of Article 105." (Report of the Preparatory Commission of the United Nations, PC/20, 23 December, 1945, p. 6.)

The Report of Committee IV/2 at San Francisco, after indicating that the terms "privileges" and "immunities" indicate in a general way all that could be considered necessary to the realization of the purposes of the Organization, and the free functioning of its organs and to the independent exercise of the functions and duties of its officials, continues :

> "It would moreover have been impossible to establish a list valid for all the Member States and taking account of the special situation in which some of them might find themselves by reason of the activities of the Organization or of its organs on their territory. But if there is one certain principle it is that no Member State may hinder in any way the working of the Organization or take any measures the effect of which might be to increase its burdens, financial or other."

The illegal interference with the officials of the United Nations either by agents of a State, or by private individuals with the complicity of the State, or because of failure of the State to afford protection, hinders in the worst imaginable way the working of the Organization and prevents the independent exercise of the functions and duties of its officials. The duty to provide protection is clearly included within the obligations imposed on Member States by Article 105, and also by paragraph 6 of Article 2, which requires that "all Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter".

It is not within the scope of the present question to discuss particular injuries that have occurred. But it may be pointed out that responsibility of a State toward the United Nations might also arise from violation of an express or an implied agreement at the time that a mission is sent to a particular area. A violation of a truce agreement, or a violation of an agreement for the movement of a particular convoy might also under certain circumstances result in responsibility.

The duty which the State has to protect United Nations agents is, of course, a duty owed to the Organization. Where special protection is accorded to an individual because of his official status, it is accorded to him not as an individual but as a representative of a State or as a representative of an international organization. The privileges and immunities which are enumerated in the Convention on Privileges and Immunities of the United Nations are "granted to officials in the interest of the United Nations and not for the personal benefit of the individuals themselves" (Article V, Section 20). This may also be said to be the correct rule for other privileges granted to officials by general international law and by Article 105 of the Charter.

The duty to afford protection to United Nations agents in the course of their duties rests not only on the provisions of the Charter or on special arrangements with individual States, but is, as we have already

indicated, a rule of general international law. It is, therefore, binding alike on Member and non-member States.

[*Public sitting of March 8th, 1949, morning.*]

3. *The United Nations may bring an international claim for reparation due in respect of damages caused to the United Nations as an Organization for the violation of its international rights.*

May it please the Court.

At the previous sitting we demonstrated that the United Nations possesses international juridical personality and that it has procedural capacity to bring an international claim ; also that it possesses certain rights under international law, including the right to insist on the protection of its agents. It follows, we submit, that the United Nations may bring an international claim for reparation due in respect of damages caused to it as an Organization for the violation of its international right of protection of its agents.

The Permanent Court of International Justice in the *Chorzów case* pointed out that violation of an international right entails a duty to make reparation for the damage suffered thereby. The Court, as you will remember, said that "it is a principle of international law that the breach of agreement involves an obligation to make reparation in an adequate form. Reparation therefore is an indispensable complement of a failure to apply a convention, and there is no necessity for this to be stated in the convention itself."(Judgment No. 8, Ser. A., No. 9, p. 21.)

This principle that the breach of an agreement involves an obligation to make reparation is not only well established in customary international law, but is also, of course, a general principle of law recognized in the legal systems of all civilized nations. Elaborate citation is obviously unnecessary, and I need only refer to Article 1382 of the French Civil Code, which provides : "Tout fait quelconque de l'homme, qui cause à autrui un dommage, oblige celui par la faute duquel il est arrivé, à le réparer."

The only objection which has been made to the application of this principle to the instant situation is that there is no case on record in which an international organization brought such a claim. This objection was most succinctly stated by M. Spiropoulos, representative of Greece on the Sixth Committee, who stated : "In his opinion, by virtue of the existing principles in force, if an alien suffered injury, only the State of which he was a national had the right to take action on his behalf, and that right directly derived from the fact of his nationality. It was an established principle of international law that an injury to an alien constituted an injury to this State of which he was a national.

"To establish whether the United Nations has the same right, it was necessary to find out if there was any rule of law providing for such a right for the United Nations. In the memorandum of the Secretary-General, it was stated that to the best knowledge of the Secretariat, no situation exactly similar to the present cases had ever arisen. There was, therefore, no custom or usage which might be used as a basis for

deciding that the United Nations had that right." (Document A/C. 6/SR. 112, p. 16.)

While there was considerable disagreement with this view in the Sixth Committee, it is important both for this case and for the general development of international law that this objection be dealt with.

International law has often been stated to be a primitive and incomplete system. Nevertheless, its entire development has shown that it is a legal order, capable of growth and of adaptation to the changing needs of the States and of the international community. I have the highest respect for the scholarship and intellectual capacities of M. Spiropoulos, but it must be pointed out that the principle which he put forth would condemn international law to a static existence, composed of rules which the swift march of events would soon render obsolete, and which could only be changed by the conclusion of new international agreements. Such a principle would reduce the judicial process of international tribunals, such as this Court, to a mere mechanical listing of precedents and conventional stipulations. The history of international tribunals clearly refutes any such static and mechanistic conception.

A noteworthy instance is the case of the *Eastern Extension, Australasia and China Telegraph Company, Limited*, which was decided in 1923 by the British-American Arbitral Tribunal under the Convention of 18th August, 1910. Discussing the contention that there was no rule of international law on the question of the right of the belligerent to cut neutral submarine cables, the Tribunal said that, even assuming that there was no specific rule of international law governing the case of cutting of cables by belligerents, it could not be said that there was no principle of international law applicable. The Tribunal then said: "International law, as well as domestic law, may not contain, and generally does not contain, express rules decisive of particular cases; but the function of jurisprudence is to resolve the conflict of opposing rights and interests by applying, in default of any specific provision of law, the corollaries of general principles, and so to find—exactly as in the mathematical sciences—the solution of the problem. This is the method of jurisprudence. It is the method by which law has been gradually evolved in every country resulting in the definition and settlement of legal relations as well between States as between private individuals." (Nielsen's Report, pp. 73-81.)

In answer to the question: "In what manner do international tribunals proceed when confronted with novel situations in the course of their judicial activity?", Professor Lauterpacht has listed these ways (*The Function of Law in the International Community*, p. 111):

"(*a*) They may proceed either by analogy with specific rules of international law or by recourse to general principles of international law.

(*b*) They may apply general principles of law, notably of private law.

(*c*) They may bridge the gap by an even more conspicuous recourse to creative judicial activity, aiming at solving the controversy by shaping a legal rule through the process of judicial reconciliation of conflicting legal claims entitled to protection by law.

(*d*) They may accomplish the same task by a consideration of the larger needs of the international community."

There is present here the most ample and proper opportunity for the application of these principles.

First : There is the rule of international law that a State is entitled to bring an international claim for unlawful injury to one of its officials or nationals. We shall discuss this rule at length later. At this point it is sufficient to state that the general principles underlying this rule apply equally to the case of a claim by the United Nations.

Second : This case arises out of a new situation presented by the growth of international organization, in which the needs of the international community require that a step forward be taken for the protection of the agents of the community.

Third : The legal consequences deriving from the provisions of the Charter, the juridical personality of the United Nations, and its rights under international law, lead irresistibly to the conclusion that it has the right to bring such a claim.

It is, of course, true that there has been no case precisely identical with the situation envisaged by the present question ; but it needs to be pointed out that the view that an international organization has the right to demand reparation for an injury to its agents is by no means a novel one. Reference has already been made to the *Tellini case*, involving the assassination of the Italian representative on a border commission appointed by the Conference of Ambassadors.

The arrogant methods adopted by the Mussolini Government towards Greece in this case, and the disproportionate indemnity exacted, can hardly commend themselves to the Members of the United Nations. It is, however, significant that the Italian Government stated that the assassination involved the violation not only of its right, but also of the right of the Conference of Ambassadors. The Conference itself demanded that reparation should be paid to the Italian Government and also that apologies should be made to the three Allied Powers whose delegates were on the Delimitation Commission. Such apologies were duly made.

It is of interest that Professor Clyde Eagleton, shortly after the event, wrote : "The assumption by the Conference of Ambassadors of jurisdiction when General Tellini was murdered, would seem to be an assertion of the responsibility of a State to an organ of the international community." (*The Responsibility of the State for the Protection of Foreign Officials*, 19 Amer. Journal of Int. Law, p. 314.) This was said in 1925. The Court will also note the precedents relating to Upper Silesia and the Commission of the Danube, whose citation we owe to the French Government in its written statement to this Court.

As we have said before, the question before the Court does not involve a determination of the reparation due in the actual instances where injury has occurred. It may be useful, however, to indicate briefly some of the ways in which the United Nations as an Organization may be damaged by an injury to its agent, and to point out methods of reparation that are sanctioned by international law in respect to such injury.

In the first place, injury to an agent of the United Nations may result in direct financial loss to the Organization itself. The Secretary-General in his memorandum submitted to the General Assembly stated in respect to claims of this nature :

> "The next item which it would appear that the United Nations is clearly entitled to claim, is reparation for the direct costs incurred by the United Nations, such as medical services, funeral expenses,

and payments to the injured official or his family." (Document A/674, p. 5.)

While, in most cases, States have demanded reparation based on damage suffered by an injured national, it would seem obvious that the first element of reparations would be the damage, if any, suffered by the State itself; and there are certain cases in which a direct loss to the State has been involved. One example is the *Imbrie case*, where Persia paid to the United States the cost of transporting the body of a United States consul who had been killed in the former country, this payment being in addition to a sum paid for the benefit of his widow. (I. Whiteman, *Damages in International Law*, p. 138.) Another example is the *Henry R. Myers case*, where the United States claimed for injury to the property of the United States Government in a Consulate in El Salvador. (I. Whiteman, p. 80.) I also call to your attention the *case of the H.M.S. "Scarab"*, where the United States paid to the United Kingdom a sum of money for injuries suffered by a British warship in collision with a United States warship. (I. Whiteman, p. 81.)

These cases, we submit, support a claim by the United Nations for a direct financial loss suffered by the Organization itself. This view was supported in the Sixth Committee by representatives of the United States, Egypt, Czechoslovakia, Iran, Australia, Netherlands, Union of Soviet Socialist Republics, and Uruguay. As an example, the representative of the United States stated:

> "Once it had been established that damage had been caused, that such damage had been incurred by the United Nations, and, finally, that it had been caused by a State in violation of international law, the United Nations would have a case for demanding reparation from the State responsible. It would be illogical to say that the United Nations could be a party to a treaty and at the same time to deny that it could present claims for reparation for injuries it had incurred." (Document A/C. 6/SR. 113, p. 6.)

The representative of Australia, after he had pointed out "that the discussion had shown there was unanimous agreement with regard to the obligation of the United Nations to pay a fair indemnity to victims of injury or to their families", said:

> "No one questioned the United Nations' right—at least its moral right—to have such payments reimbursed." (Document A/C. 6/SR. 113, p. 2.)

The representative of the Union of Soviet Socialist Republics stated:

> "The question had been raised as to whether the United Nations was entitled to demand payment of damages incurred by the Organization itself. The answer to the question was undoubtedly in the affirmative. If property of the United Nations was damaged, it was naturally entitled to file a suit for damages." (Document A/C. 6/SR. 115, p. 12.)

Secondly: injury to an agent of the United Nations may result in material injury to the Organization by interfering with the exercise of its functions and the fulfilment of its purposes. Injury of this kind

would include the loss of irreplaceable personnel and the increased difficulties which government provoked attacks or lack of reasonable protection against illegal acts of private individuals would place in the way of the proper exercise of the duties of the United Nations' agents.

The Secretary-General in his memorandum to the General Assembly put it this way :

> "It is clear that the United Nations should be entitled to claim as the first item of reparations, prompt and adequate punishment of the offenders and the taking of such measures as will protect agents of the United Nations against future injuries." (Document A/674, p. 5 ; see also statement by Mr. Feller, A/C. 6/SR. 113, p. 4.)

It would appear to be obvious that the very basis of the rule regarding reparations for injuries would justify a claim that the respondent State take appropriate steps to prevent repetition.

I might say parenthetically that in the memorandum of the Secretary-General to the Sixth Committee, reference was also made to the question of exemplary or punitive damages, and in that memorandum attention was called to the case of the *I'm Alone*, in which the Court will remember that the Commissioners appointed by Canada and the United States recommended that "the United States ought formally to acknowledge the illegality of its act, and to apologize to His Majesty's Canadian Government therefor ; and, further, that as a material amend in respect of the wrong the United States should pay the sum of 25,000 dollars to His Majesty's Canadian Government". (U.S. Dept. of State Arbitration Series, No. 2 (1-7), 1931-1935.)

Now the Secretary-General made no recommendation with regard to the inclusion of such an item in a claim for reparation, and it would appear to be the general view of the representatives who discussed this aspect of the question in the Sixth Committee that such damages should not be asked for. For these reasons we do not believe it necessary to take the time of the Court for a discussion of this point of exemplary or punitive damages.

In summary, it may be said that for the reasons which we have advanced we believe that the Court should state affirmatively that the United Nations may bring a claim for reparations against a responsible *de jure* or *de facto* government for damages suffered by the Organization itself.

4. *The United Nations may bring a claim for reparation with respect to damages suffered by its agents or persons entitled through them.*

We now come to the aspect of the question before the Court which received much attention in the Sixth Committee : may the United Nations bring a claim for reparations with respect to damages suffered by its agents or persons entitled through them ? That is point (*b*) of the first question asked by the General Assembly. It is our contention that this question should be answered in the affirmative.

Where a claim is brought by a State for injury to one of its nationals against another State, the most usual and the most important measure of reparation is the damage suffered by the individual. The Permanent Court of International Justice, in the *Chorzów Factory case* put it in

this fashion—and I beg the indulgence of the Court if I read this, since we consider it of considerable importance:

> "It is a principle of international law that the reparation of a wrong may consist in an indemnity corresponding to the damage which the nationals of the injured State have suffered as a result of the act which is contrary to international law. This is even the most usual form of reparation.... The reparation due by one State to another does not however change its character by reason of the fact that it takes the form of an indemnity for the calculation of which the damage suffered by a private person is taken as a measure. The rules of law governing the reparation are the rules of international law in force between the two States concerned, and not the law governing relations between the State which has committed a wrongful act and the individual who has suffered damage. Rights or interests of an individual the violation of which rights causes damage are always in a different plane to rights belonging to a State, which rights may also be infringed by the same act. The damage suffered by an individual is never therefore identical in kind with that which will be suffered by a State; it can only afford a convenient scale for the calculation of the reparation due to the State." (Series A., No. 17, pp. 27-28.)

In another case, that of the *Mavrommatis Palestine Concessions*, the Permanent Court again gave authoritative expression to the principle by which a State brings a claim for an injury to its nationals. The Court there stated:

> "It is an elementary principle of international law that a State is entitled to protect its subjects, when injured by acts contrary to international law committed by another State, from whom they have been unable to obtain satisfaction through the ordinary channels. By taking up the case of one of its subjects and by resorting to diplomatic action or international judicial proceedings on his behalf, a State is in reality asserting its own rights—its rights to ensure, in the persons of its subjects, respect for the rules of international law." (Series A., No. 2, p. 12.)

We need not linger too long in considering the fundamental basis of this right of protection. In another place (in a book on *The Mexican Claims Commission*), I pointed out that the principle "springs from a primitive feeling of clannishness, the necessity of protecting a member of the clan and of avenging him when he is injured". The classic statement by Vattel, which is well known to this Court, is perhaps an expression of this idea. (See Vattel, *The Law of Nations*, text of 1758, 3rd ed., 1916, p. 136.)

The development of the law of protection of nationals over the past century has led modern writers to re-state its fundamental postulate in the terms of "the interest in maintaining a reasonable freedom of international intercourse". As one recent writer, Mr. Frederick Dunn, in his book *The Protection of Nationals* (at p. 1), has put it, this branch of international law "is ultimately concerned with the possibility of maintaining a unified economic and social order for the conduct of international trade and intercourse among independent political units of diverse

cultures and stages of civilization, different legal and economic systems, and varying degrees of physical power and prestige".

However we look at the fundamental postulate of the rule, it is clear that international law has found it essential to give a right to the States to demand reparation for unlawful injuries to their nationals.

In the usual case of an international claim, the nexus between the claimant State and the injured individual is nationality. In the question before this Court all the elements of the usual international claim are present except that the nexus of nationality has been replaced by the nexus of official status and official duties. If the needs of the international community require the rule that a State may demand reparation for its injured national, they equally demand, in the present international order, that the United Nations may demand reparation for its injured agent.

Although an agent of the United Nations cannot conceivably be described as a national of the Organization, his position in relation to the Organization is such that the United Nations has the primary responsibility to see that he receives reasonable protection in the course of his duties. The relation of all agents to the United Nations is of course not exactly the same, and as Dr. Kerno stated yesterday, the term "Agent" has been used to cover several different relationships. Probably the strongest and clearest nexus exists in the case of officials of the Organization, or of those agents such as Count Bernadotte, who are themselves organs of the Organization. Those agents who are members of the staff of the Secretariat occupy a position as international officials responsible only to the Organization, under Article 100 of the Charter, and this primary responsibility to the United Nations is recognized by each Member of the United Nations.

While the relationship is closest between officials and the Organization, we believe that all agents of the United Nations stand in a sufficiently close relationship to the Organization to place on it a responsibility for their welfare and protection in the course of their duties, and to permit a claim by the United Nations for injuries suffered by them in case of a violation of international obligations.

In this respect our views differ somewhat from those of the United Kingdom, which, in its written statement to the Court, if I understand it correctly, would limit the right of the United Nations to make a claim to staff members and to persons employed in their personal capacity and/or as representing the Organization, and who are in no sense delegates or representatives of their own countries as such. While this formula would cover nearly all of the cases which have hitherto occurred, we believe it to be rather too restrictive. We suggest that the test should be whether the individual involved represents the United Nations as an Organization and has suffered injury in the service of the United Nations, and that in such event the United Nations has a right to demand protection even though he may also be representing his government in an organ of the United Nations. The Organization accomplishes its task through a variety of agencies. I might cite an example which is particularly striking. At one stage the task of mediating the conflict in Palestine was entrusted to a single individual—Count Bernadotte; since then it has been given to a commission composed of the representatives of three governments. None the less the task is substantially the same.

We have shown that in order to enable its agents to perform their tasks and carry out the functions of the Organization, it is indispensable

that the United Nations have a legal right to protect them and to redress injuries suffered by them in the performance of their functions.

The United Nations' agents who have gone to an area as representatives of the Organization cannot be expected to look to their governments for the necessary protection. Governments may be reluctant to engage in international controversy because of injuries to their citizens in such circumstances. Even when there is no organization with primary responsibility for their protection, States have often declined to press a claim for an injury to their nationals. Professor Jessup has recently written :

> "Instances in which the Department of State [of the United States] has declined to press diplomatic representation on behalf of importunate claimants are frequent and have often been due, not to the demerits of the claims, but to some overriding policy of fostering friendly relations. The Foreign Offices of small States may hesitate to antagonize a powerful neighbour by pressing against it the claim of one of its nationals." (*A Modern Law of Nations*, 1948, p. 98.)

In most instances governments may well prefer to let the United Nations handle the case. This has already been shown to be true in respect of the injuries suffered by the United Nations' agents in Palestine. Moreover, the officials of the United Nations in the performance of their duties may even be exposed to the displeasure of their own governments. It therefore does not seem appropriate that they should have to rely solely on their own governments for protection against injuries done to them in violation of international law. In their capacity as agents of the United Nations they ought to be protected principally by the international organization which they serve.

Not only should an agent be able to look to the Organization for protection for his own sake, but such protection is also necessary if the individual is to carry out the functions which have been assigned to him by the Organization. The necessity of furnishing such protection has been recognized, and the United Nations itself sent guards with the United Nations' Mission to Palestine. The United Nations has also made representations to the territorial sovereigns in order to request special protection in certain instances. If, notwithstanding these efforts to secure protection, an agent is injured in circumstances involving the responsibility of a State, it logically follows that the Organization has the right to claim reparation for an injury which has occurred from the violation of the obligations of the State.

The right of the United Nations to make this claim need not rest solely on the analogy of nationality. In a claim arising from an injury to a private individual, nationality is the only nexus between the private individual and his government, but if the individual is abroad not as a private citizen but as an official of his government, there is another link upon which the right to protection may be based. Although in most instances both nationality and agency co-exist, and the latter is often submerged in the former, a careful analysis of cases involving reclamation for injuries suffered by persons in the service of governments reveals that a principle distinct from that of nationality is involved in the latter instance, the principle of special protection of an official representative.

Professor Jessup has emphasized this distinction as follows :

> "Various situations in the history of international claims reveal that in addition to the rights of its nationals a State has, in its relations with other States, certain rights which appertain to it in its collective or corporate capacity. The typical cases are those in which injury is done to an official of the State, particularly a consular or diplomatic official. The recognition accorded to their special status in traditional international law is extended because of their representative character and not because of their status as individuals, although a supplementary claim may lie for the injury to the individual as such." (*A Modern Law of Nations*, 1948, pp. 118-119.)

This point is further illustrated by cases in which a State has made a claim on behalf of persons who are not its nationals but who stand in some other relation to it, for example, alien seamen, inhabitants of mandated territories, and other protégés, and cases of consuls who have a nationality different from that of the State which they represent.

These are all cases in which the nexus is not nationality, but some other basis on which the protection of the State may be invoked. So here, although the nexus of nationality may be missing, the basis for invoking the protection of the United Nations is present.

If an official of the United Nations is arrested in violation of the rights of the Organization, the United Nations will make representations to the government to secure his release. If necessary, as I have said, it will address a request for protection. As already pointed out, the proper functioning of missions of the United Nations requires that the Organization will assume primary responsibility for insisting upon the protection of its agents. The responsibility cannot be left solely to the government of a State of which the agent is a national.

That government, in many cases, has no control over the individual in question so far as his services to the United Nations are concerned. It may not even know into what territory he has been sent, or the conditions of peril to which he has been exposed. The government of the territory in which the agent functions will look to the United Nations itself to see that the agent comports himself properly, and the agent, in turn, will expect the United Nations to make the arrangements for his proper treatment with the territorial government. Under these circumstances, the right of protection of the national government may in most instances wither away to a mere juridical fiction, and the agent be left without protection unless the United Nations has the right to insist on it.

We have relied here on two significant analogies : one, the analogy of the right of protection which a State exercises over its nationals, and the other the special right of protection which a State may claim for its officials in foreign countries. In connexion with the analogy of protection of nationals, we wish to make it clear that we are not pressing it to the extent that the United Nations would, in all circumstances, stand in the same relationship to its agents as a State does to its national. The question before the Court limits the issue to reparations for the injuries incurred "in the service of the United Nations". It is therefore unnecessary for us to argue whether the United Nations might present a claim for injuries incurred while the agent was not engaged in his official

duties. It can be said here that the Secretary-General has never considered that such a claim might be made.

We are also well aware of the important part played by the rules of denial of justice and of exhaustion of local remedies in the subject of claims by States for injuries to their nationals. As Dr. Kerno has pointed out, these issues do not come into consideration here, because the question submitted by the Assembly assumes, as a premise, that the State is responsible. In the discussion of any individual claim which the United Nations might present, there would be room for consideration as to whether these rules of denial of justice and exhaustion of local remedies are applicable.

It should be emphasized that we consider the analogy of special protection of officials far more important to this case than the analogy of protection of nationals. The latter analogy served mainly to illuminate the reasons for our contention and to show the procedure by which the right of special protection of United Nations' agents may be vindicated. In this sense, however, it has considerable importance, because it shows the well-established rule that although the injury committed against the individual national is under international law an injury to the State, the measure of reparations to be recovered by the State is the damage to the individual.

This is what the Permanent Court of International Justice referred to as "the most usual form of reparation" and "a convenient scale for the calculation of the reparation due to the State".

Here lies the answer to the doubt expressed in the written statement of the United States to this Court (p. 22). With your permission I propose to spend a few moments analyzing this point of the United States' statement. It is said that : "The basis of an international claim is, in theory, an injury or loss suffered by the State of which the claimant is a national." That is quite true, and at the same time the basis of the claim here is an injury or loss suffered by the United Nations of which the injured individual is an agent.

The statement then goes on to say that : "For that reason it would be appropriate for the government of the State of which the claimant is a national to present the claim to the government of the State causing the injury or loss." But, for an exactly analogous reason, namely the injury or loss suffered by the United Nations, it would be appropriate for the United Nations to present the claim to the government of the responsible State.

Finally, the United States' statement concludes that nevertheless if the victim or the persons entitled through him are stateless, and have no government to make claims on their behalf, "no reason is perceived why the United Nations should not have capacity to intervene to support the claim of the stateless individual".

I suggest, with all due respect, that this conclusion demonstrates the fallacy of the view taken on this point in the United States' statement. Either the United Nations has the capacity to present a claim for injury to its agent, or it does not. If it has not the capacity, how can it receive that capacity by the mere fortuitous circumstance that the injured agent happens to be stateless ? The only relevance of the fact of statelessness would be that no claim by a State of nationality would need to be reconciled with the claim of the United Nations.

This fallacy arises, I imagine, from the notion that our contention involves a sort of substitution of the United Nations for the State of nationality as *parens patriæ* of the agent. That, however, is definitely not our view. We emphasize again that where the right of a State has been violated, the reason for the assessment of reparations based on the damage to the injured individual is, in the words of the Permanent Court, because it affords "a convenient scale for the calculation of the reparation due to the State".

So here, we submit that where the right of the United Nations to require protection of its agents has been violated, that the same "convenient scale for the calculation of the reparation" should be used. The application here of the usual rule would enable the full reparation for the wrong to be assessed and settled in one proceeding, without placing on the State of nationality the burden of going forward with a separate claim, and inconveniencing the respondent State with a second proceeding in which the facts would have to be proved all over again. The only factual reason for departing from the usual rule would be the possibility of conflict between the United Nations and the State of nationality. This point we shall consider later in connexion with the second question asked by the General Assembly.

I now come to our final submission on the first question before the Court. The United Nations has an international juridical personality, possessing, under international law, the right to insist on the protection of its agents in the course of their duties, together with the procedural capacity to vindicate this right on the international plane. Established rules of international law, the interests of the international community, and the strongest practical necessities lead, we respectfully submit, to an affirmative answer to the first question asked by the General Assembly.

B. SECOND QUESTION.

Reconciliation of action by the United Nations with rights possessed by the State of which the victim is a national.

I come now to the second question upon which the General Assembly has asked the advice of the Court. This question presents both procedural and doctrinal aspects.

In most instances, as has already been pointed out, it is believed that the State of which the victim is a national will prefer that the United Nations should bring a claim. For example, the representative of Sweden on the Sixth Committee said that "the impression made in my country by the death in the service of the United Nations of one of its foremost citizens was still very strong. In the face of that crime, and others of its kind, Sweden thought it entirely natural that measures should be taken by the United Nations against the authorities who exercised power in the territory in which the crime was committed. Sweden did not, for the moment at least, intend to take direct action. That attitude should not be interpreted to mean that Sweden considered there was no doubt as to the legal competence of the United Nations to take such action." (Document A/C. 6/SR. 115, p. 10.)

It is the intention of the Secretary-General, as a matter of policy, and subject to any further instructions by the General Assembly, to approach the States of which the victims are nationals with a

view toward reaching an agreement as to the method of bringing the claim and the allocation of reparations. I stated on behalf of the Secretary-General at the 112th Meeting of the Sixth Committee : "It is obvious that two parallel claims should not be made, one by the United Nations and the other by the State of which the victim was a national. However, in order to obviate that, the United Nations might consult with the State concerned and come to some agreement with regard to the allocation of reparations." (Document A/C. 6/SR. 112, p. 10.)

It may be of assistance to the Court if I review very briefly the precedents in the matter of conflicting claims.

Conflicting rights of different States to assert claims for the same injury have arisen in cases of dual nationality. Where the individual injured has the nationality of both the claimant and the defendant States, the principle is well established that no international claim may be made on behalf of a private individual. This is the well-known rule of the *Canevaro case*. (Scott, Hague Court Reports, 1916, p. 284.)

[See also U.S. (Tellech claim) *v.* Austria and Hungary, Tripartite Claims Comm., Dec. and Ops., 1929, p. 71 ; Great Britain (Alexander claim) *v.* U.S., Hale's Report 1874, p. 15 ; Italy (Miliani claim) *v.* Venezuela, Ralston and Doyle, Venezuelan Arbitrations of 1903, p. 754 ; Great Britain (Oldenbourg claim) *v.* Mexico, Dec. and Ops. of Comm., 1931, p. 97 ; and Hackworth, *Digest*, pp. 352-377.]

Where the individual injured has the nationality of a claimant State and of a third State, the conflicting rights have been settled in several different ways. The most satisfactory method of such settlement would appear to be by agreement between the two States of which the individual is a national. In some cases tribunals which have had to pass on the question of dual nationality have sought to resolve the question of conflicting rights by "examining in which of the two countries existed the elements in law and in fact essential in view of creating an effective link of nationality and not simply a theoretical one". Case of Baron de Born *v.* Serb-Croat-Slovene State, 6 T.A.M. 1927, 499 (see Ralston, *Supplement to the Law and Procedure of International Tribunals*, p. 81).

The most usual solution seems to have been, however, for the tribunal before which the claim was first asserted to permit recovery. In the Salem claim involving the United States and Egypt, in which I believe Judge Badawi Pasha was a member of the tribunal, it was declared in effect that a dispute as to citizenship may not be taken advantage of by a third Power not a party to the difference. The tribunal stated that "in a case of dual nationality a third Power is not entitled to contest the claim of one of the two Powers whose national is interested in the case by referring to the nationality of the other Power". (U.S. Dept. of State Arbitration Series No. 4 (6), p. 42.)

Nielsen has summarized the situation as follows :

> "The status with respect to a third country of a person having a dual nationality presents an interesting question. While neither of the two countries whose laws conflict can claim the allegiance of such a person to the exclusion of the other, the principle governing a case of that kind is not applicable to the case of a person who may have a dual allegiance, but who is not a national of a respondent government against which a claim is presented. And it would seem therefore that with respect to the acts of a third State each

of the two nations may exercise the right of protection through diplomatic channels or judicial methods." (Nielsen, *International Law applied to Reclamations*, p. 14.)

The same position was taken in the replies of South Africa, Australia and Great Britain to the questionnaire on the Responsibility of States for damage caused in their territory to the person or property of foreigners by the Committee of Experts of the League of Nations.

These principles which have been followed in the case of dual nationality where private individuals have been injured, are not entirely relevant where the victim is not in the position of a private citizen but in the position of an official. As an official, either of a foreign government or of the United Nations, he is entitled to special protection which he cannot claim as a national of his own State. The primary nexus in these instances is that of service and not of nationality. Under these circumstances, the right to make the claim in the first instance would appear to rest with the State or with the organization of which he is an agent. This applies with particular strength to officials of the United Nations who have primary responsibility to the Organization, and who are in a position of independence so far as States are concerned. The right of the State to make a claim would not be lost, but it appears that it would remain dormant unless the United Nations decided not to press the claim itself.

Our analysis, therefore, leads to the conclusion that, except where the injured agent is a national of the respondent State, the claim of the United Nations would have priority over the claim of the State of which the official is a national. We do not, however, take a definite stand in favour of this conclusion, since as a matter of policy the Secretary-General would undertake to work out the relative rights of the United Nations and State by agreement with the State.

There remains to be considered the situation in which the injured United Nations agent is a national of the respondent State. This problem was raised in the Sixth Committee by the representatives of Egypt and the United States.

The Court will recall from the Record that the representative of Egypt wondered what would be the position if the United Nations presented a claim against the Government of Egypt in order to ensure that an Egyptian national injured in the service of the United Nations received proper damages. The Egyptian Government, he said, might conceivably reply that the person in question was one of its own nationals and that the decision rested entirely with it. (Document A/C. 6/SR. 112, p. 9.)

The representative of the United States said:

"The cases in which the victim had dual nationality had given rise to some difficulty, but the question had been settled at the time of the Canevaro case, and it was now an accepted principle of international law that no State could present a claim on behalf of one of its nationals who was, at the time, a national of the respondent State. In such cases the claimant State could not claim damages on behalf of the victim but it could claim damages if it had itself sustained any injury." (Document A/C. 6/SR. 112, p. 11.)

At the time of these discussions I, as representing the Secretary-General, stated that "the point raised by the representative of Egypt

concerning the possibility that the victim might be a national of the State from which the United Nations wished to claim reparations, was very complex and would require some study before any satisfactory answer could be given". (Document A/C. 6/SR. 112, p. 10.) The question has now received a well-reasoned response in the written statement of the United Kingdom. That statement points out that the obligation of Members to afford assistance and protection to United Nations missions operating in their territory relates equally to any member of the mission who is one of their own nationals, and is not in any way diminished or cancelled by reason of the fact of such nationality. The United Kingdom statement then goes on to say:

> "The duty is one owed to the Organization as such, independently of any consideration as to the nationality of the individual members of the mission, or in other cases of the nationality of the particular servant employed. If so, however, then clearly the State concerned cannot, or ought not to be permitted to plead the nationality of the injured party as a defence to any international claim which may be brought on his behalf by the Organization." (Pp. 41-42.)

We fully agree with this answer and urge that for these reasons the doctrine of the *Canevaro case* has no application here. At the same time, we desire to make it clear that the Secretary-General would consider the presentation of a claim against the State of the victim's nationality as a matter of delicacy and would most carefully weigh all relevant considerations before proceeding further.

CONCLUSION.

Mr. President, yesterday you invited us not only to give reasons for our points of view but also to suggest to the Court the appropriate answers to the questions asked by the General Assembly. With all due deference we suggest that the following answers should be given.

To the first question our answer would be this: In the event of an agent of the United Nations in the performance of his duties suffering injury in circumstances involving the responsibility of the State, the United Nations as an Organization has capacity to bring an international claim against the responsible *de jure* or *de facto* government with a view to obtaining reparation due in respect of damage caused either to the United Nations, or to the victim or persons entitled through him, or to both.

To the second question our answer would be this: While in legal theory the United Nations may proceed to bring a claim with a view to obtaining the reparation due in respect of the damage caused to the victim or persons entitled through him, irrespective of such rights as may be possessed by the State of which the victim is a national, it is to be presumed that the United Nations would proceed in so far as possible in agreement with the State concerned.

Mr. President, may I thank the Court for the attention with which you have followed our argument.

3. — EXPOSÉ DE M. KAECKENBEECK

(REPRÉSENTANT DU GOUVERNEMENT BELGE)

A LA SÉANCE PUBLIQUE DU 8 MARS 1949, APRÈS-MIDI.

Monsieur le Président, Messieurs de la Cour, mon premier désir et mon premier devoir, en me présentant devant vous, est de m'acquitter d'une agréable mission : celle de transmettre à la Cour les hommages respectueux du Gouvernement belge, que j'ai l'honneur de représenter.

Je crois ensuite utile de préciser que le Gouvernement belge, n'ayant en l'occurrence aucun intérêt particulier à défendre, n'intervient ici que comme ami de la Cour, soucieux de contribuer au développement du droit et de l'organisation internationale.

Ma mission est double. Elle consiste tout d'abord à expliquer brièvement pour quels motifs la délégation belge à l'Assemblée générale des Nations Unies a proposé de demander un avis consultatif sur la question qui vous est soumise. J'esquisserai ensuite le point de vue de mon Gouvernement en ce qui concerne la capacité juridique internationale de l'Organisation des Nations Unies.

I. En proposant à l'Assemblée générale des Nations Unies de demander un avis consultatif sur la question qui vous est soumise, la délégation belge était mue avant tout par le souci d'assurer à l'action éventuelle des Nations Unies une base juridique qui soit incontestée, élaborée dans le calme et la sérénité et exprimée avec la précision et les nuances désirables.

Nous pensions, en effet, que les aspects doctrinaux et les points d'interprétation impliqués pourraient être traités par la Cour d'une manière plus homogène, plus fouillée et plus précise qu'ils ne pourraient l'être par les représentants de cinquante-huit États réunis en Assemblée. Car nous souhaitons, dans cette matière, où peuvent intervenir beaucoup de considérations diverses, qu'un choix judicieux soit fait parmi les arguments possibles et qu'une terminologie et une méthode soient indiquées avec autorité sans autres préoccupations que celles d'assurer une bonne justice et de se conformer à une saine logique juridique.

Au sujet de la solution qu'il conviendrait de donner au problème soulevé par le Secrétaire général à la suite d'incidents tragiques qu'il est pénible de rappeler, l'Assemblée entretenait moins de doutes qu'au sujet des interprétations et des constructions juridiques susceptibles de l'étayer. Il est remarquable, en effet, qu'aucune voix dissidente ne se soit élevée, même en commission, contre la description du but poursuivi telle qu'elle est contenue dans les deux considérants qui introduisent le libellé de la question posée à la Cour. Je les cite :

> « Considérant que la série d'incidents tragiques arrivés ces derniers temps aux agents des Nations Unies dans l'exercice de leurs fonctions soulève, et d'une façon plus urgente que jamais, la question des dispositions à prendre par les Nations Unies pour assurer à l'avenir à leurs agents une protection maximum et la réparation des dommages subis ;

Considérant comme hautement souhaitable que le Secrétaire général puisse, sans conteste, agir de la manière la plus efficace en vue d'obtenir toute réparation due. »

Le désir unanime, exprimé dans les deux considérants que je viens de lire, de doter l'Organisation des Nations Unies de moyens efficaces pour assurer la protection de ses agents et obtenir toute réparation due, nous tenions à ce qu'il puisse se réaliser à l'abri de contestations, d'équivoques juridiques, de procédures douteuses. Et c'est pourquoi nous avons proposé que la question juridique fût avant tout soumise à la Cour.

L'objet est donc de préciser l'étendue de la capacité juridique internationale de l'Organisation des Nations Unies et la nature des procédures que la Charte et le droit international mettent à sa disposition pour la poursuite des buts précités.

Plus l'avis de la Cour sera constructif, mieux il répondra aux vœux de ceux qui l'ont demandé.

II. La question soumise à la Cour implique l'hypothèse qu'un agent des Nations Unies a subi, dans l'exercice de ses fonctions, un dommage dans des conditions de nature à engager la responsabilité d'un État. La Cour n'est pas priée de déterminer les conditions dans lesquelles la responsabilité d'un État peut être engagée. L'Assemblée des Nations Unies est manifestement partie de l'idée que cette question doit, dans chaque cas, être résolue conformément aux principes du droit international.

L'hypothèse ci-dessus étant précisée, la question posée à la Cour vise essentiellement la capacité juridique de l'Organisation des Nations Unies comme telle pour présenter une « réclamation internationale » (*an international claim*) en vue d'obtenir réparation d'un dommage.

La Charte ne contient pas de dispositions stipulant spécialement cette capacité. Ne contient-elle rien qui s'oppose à la reconnaissance de cette capacité ? Cela soulève immédiatement un point d'interprétation de l'article 104 de la Charte. Cet article stipule que « l'Organisation jouit, sur le territoire de chacun de ses Membres, de la capacité juridique qui lui est nécessaire pour exercer ses fonctions et atteindre ses buts ».

Les mots « sur le territoire de chacun de ses Membres » ont-ils, dans cet article, un sens restrictif dont l'effet serait, somme toute, d'exclure toute capacité juridique internationale et, en particulier, de limiter aux procédures et instances nationales tout droit de recours de l'Organisation des Nations Unies ?

Une telle interprétation doit, à notre avis, être rejetée. Elle n'est commandée par aucune considération décisive de langue ou de logique. Elle se trouve, d'autre part, en contradiction avec les nécessités fonctionnelles auxquelles se réfère précisément la disposition.

Le rapport du Sous-Comité IV, 2. A, de San-Francisco, sur le statut juridique de l'Organisation (Doc. 803) confirme d'ailleurs que le texte de l'article 104 ne procède pas d'une telle intention restrictive. « Cette disposition est », dit-il, « conçue en termes très généraux. Elle *se borne* à rappeler l'obligation incombant à tout État Membre de faire en sorte que, sur son territoire, l'Organisation jouisse d'un statut juridique lui permettant d'exercer ses attributions. » Et le rapport ajoute un peu plus loin : « Quant à la question de la personnalité juridique internationale, le Sous-Comité a jugé *superflu* d'en faire l'objet d'un texte. Elle

sera, en effet, *implicitement* réglée par l'ensemble des dispositions de la Charte. »

Voici la raison d'être de ces deux dernières phrases : A San-Francisco, la délégation belge s'était souvenue de ce que la qualité de sujet de droit international avait été autrefois contestée à la Société des Nations. Il en était résulté des difficultés pratiques qui s'étaient manifestées surtout dans la vie administrative de la Société. Toutefois, dans la suite, la tendance dominante de la doctrine et de la jurisprudence fut d'en admettre l'existence. C'est cette dernière évolution que la délégation belge à San-Francisco eût voulu consacrer en mettant fin à toute possibilité de controverse. A cet effet, elle proposa d'insérer dans la Charte une disposition reconnaissant expressément que « l'Organisation possède la personnalité internationale avec les droits qui en découlent ». (U. N. C. I. O., vol. 3, p. 243.)

Les questions soulevées par cette proposition furent discutées en comité (Doc. 554). Elles laissent clairement apparaître la crainte d'accréditer la notion d'un super-État, en raison sans doute d'une tendance à confondre les notions de personnalité juridique internationale et d'État. Une telle confusion est pourtant erronée. Il est vrai que les États ont une personnalité juridique internationale. Mais il n'en résulte nullement que toute personnalité juridique internationale soit un État. A notre avis, l'Organisation des Nations Unies n'a nullement la nature d'un État ni d'un super-État, mais elle possède la personnalité juridique internationale.

Quoi qu'il en soit, ces questions furent renvoyées pour étude et compte rendu au Sous-Comité IV, 2. A, et c'est ce Sous-Comité qui, dans le rapport que j'ai cité plus haut (Doc. 803), jugea superflue l'insertion d'un texte concernant la personnalité juridique internationale de l'Organisation, puisque celle-ci est implicitement réglée par l'ensemble des dispositions de la Charte. Il en résulte que le texte de l'article 104 n'était pas rédigé en vue d'éliminer la personnalité juridique internationale de l'Organisation et, partant, sa capacité juridique internationale, et que le rejet de la proposition belge ne constitue pas non plus un argument en faveur de l'interprétation restrictive de l'article 104.

Il en résulte, d'autre part, que c'est d'implications des dispositions de la Charte que doit se dégager la personnalité internationale de l'O. N. U.

En premier lieu, il n'y a aucun doute que l'Organisation des Nations Unies a été conçue comme une entité distincte (voir U. N. C. I. O., Doc. 933). Le langage de la Charte en témoigne constamment. Prenez comme exemple l'article 2 : « L'*Organisation* des Nations Unies *et* ses Membres, dans la poursuite des buts énoncés à l'article 1, *doivent agir* conformément aux principes suivants : » (ce qui implique bien qu'à côté de l'action et des obligations des États Membres, il y a l'action et les obligations de l'Organisation comme telle). Sans entreprendre l'énumération des principes énoncés, qu'il me soit permis de relever que, tandis que plusieurs d'entre eux commencent par les mots : « Les Membres de l'Organisation.... », le numéro 6 dit : « L'*Organisation* fait en sorte que les États qui ne sont pas membres des Nations Unies agissent conformément à ces principes dans la mesure nécessaire au maintien de la paix et de la sécurité internationales », ce qui indique clairement à nouveau que l'Organisation comme telle, distincte de ses

Membres, peut avoir certaines obligations d'agir et cela, dans le cas présent, sur le plan international.

Et lorsque le n° 5 stipule que : « Les Membres de l'Organisation donnent *à celle-ci* pleine assistance dans toute action entreprise *par elle*, conformément aux dispositions de la Charte.... », il prouve encore qu'à côté des obligations des Membres vis-à-vis des autres Membres, il y a des obligations des Membres vis-à-vis de l'Organisation elle-même, et, partant, des droits de l'Organisation vis-à-vis de ses Membres.

Lorsque l'article 57 parle de relier les Institutions spécialisées à l'Organisation, lorsque l'article 58 stipule que l'Organisation fait des recommandations et l'article 59 que l'Organisation provoque des négociations, que l'article 75 prévoit que l'Organisation établira, *sous son autorité*, un régime international de tutelle, et que les articles 83 et 85 parlent des « fonctions de l'Organisation », on se rend compte que l'Organisation constitue bien une entité à la fois sujet et objet d'obligations internationales, et donc sujet de droits, et même détentrice d'autorité internationale.

Ajoutons que l'Organisation agit par le truchement d'organes qui prennent leurs résolutions à la majorité simple ou qualifiée des voix, et que, dans certains cas, les décisions d'un organe ne comprenant que quelques Membres sont obligatoires pour tous les Membres (article 25).

Il n'y a donc pas de difficulté à montrer que l'existence de la personnalité juridique internationale de l'O. N. U. est bien impliquée dans une série de dispositions de la Charte, comme le fait prévoir la dernière phrase du rapport du Sous-Comité IV, 2. A.

La meilleure confirmation s'en trouve dans la pratique. L'Organisation, comme telle, conclut des conventions internationales avec ses Membres et avec des États non-membres. Cela serait-il possible si elle n'avait pas de personnalité juridique internationale, c'est-à-dire si elle n'était pas sujet de droits sur le plan international ? Sans parler de l'article 43 de la Charte, qui reste inappliqué, l'Organisation a fait avec les États-Unis d'Amérique une convention dénommée *Headquarters Agreement ;* elle a fait avec la Suisse, qui n'est pas membre des Nations Unies, un accord sur le siège à Genève ; elle a fait avec les États Membres une convention relative aux privilèges et immunités des Nations Unies.

L'accord avec la Suisse revêt un intérêt spécial du fait que les rapports de ce pays avec l'Organisation des Nations Unies ne résultent pas des stipulations de la Charte mais uniquement du droit international. Or, la section I de l'article 1 de cet accord est, de tous, le texte le plus révélateur, parce que le plus précis, sur le point qui nous occupe. Je le cite :

> « Le Conseil fédéral suisse *reconnaît la personnalité internationale* et la capacité juridique de l'Organisation des Nations Unies.... »

La Convention sur les privilèges et immunités qui, dans son article 1, stipule, sans qualification, que « l'Organisation des Nations Unies possède la personnalité juridique » et ajoute : « Elle a la capacité *a*) de contracter, *b*) d'acquérir et de vendre des biens mobiliers et immobiliers, *c*) d'ester en justice », cette convention, dis-je, est conçue comme une convention entre l'Organisation, d'une part, et chacun des Membres des Nations Unies, d'autre part. Cela ressort du mécanisme prévu pour sa conclusion : approbation par une résolution de l'Assemblée générale et adhésion de chacun des Membres et, plus clairement encore, de la section 35 de l'article final qui stipule que :

« La présente Convention restera en vigueur *entre l'Organisation* des Nations Unies *et tout Membre* qui aura déposé son instrument d'adhésion », etc.

De plus, la section 36 prévoit que « le Secrétaire général pourra conclure, avec un ou plusieurs Membres, des accords additionnels.... » lesquels doivent, dans chaque cas, être soumis à l'approbation de l'Assemblée générale.

L'économie de cette dernière disposition rappelle celle de la Résolution de l'Assemblée du 13 février 1946, autorisant le Secrétaire général à négocier avec les États-Unis les arrangements rendus nécessaires par l'établissement du siège permanent de l'Organisation des Nations Unies aux États-Unis d'Amérique.

L'alinéa 4 de cette Résolution s'exprimait comme suit :

« Tout accord conclu à la suite de ces négociations .... avec les autorités compétentes des États-Unis, sera subordonné à l'approbation de l'Assemblée générale avant d'être *signé au nom des Nations Unies.* »

Et, en fait, le préambule de la Convention qui est en vigueur énonce que :

« L'Organisation des Nations Unies et les États-Unis d'Amérique,
Désireux de conclure un accord....
Ont désigné à cet effet comme leurs représentants :
L'Organisation des Nations Unies : Trygve LIE, Secrétaire général, et
Les États-Unis d'Amérique : George C. MARSHALL, Secrétaire d'État,
Qui sont convenus de ce qui suit : .... »

Messieurs, l'ensemble des faits rappelés ne laisse pas, à mon avis, de doute sur la personnalité juridique internationale de l'Organisation des Nations Unies. Ni le langage de l'article 104, ni le rejet de la proposition belge à San-Francisco n'ont exclu cette personnalité, ni amoindri la capacité juridique internationale des Nations Unies.

Si l'Organisation peut conclure des conventions internationales, posséder des droits et des obligations d'ordre international, elle a un intérêt incontestable à posséder les moyens de faire déterminer ces droits et obligations et de les défendre. Et si des dommages lui sont indûment causés, prétendra-t-on qu'il n'est nécessaire ni à son fonctionnement, ni à la réalisation de ses buts, qu'elle possède le moyen d'obtenir réparation ?

Une fois que la personnalité internationale est hors de doute, le reste suit facilement. L'étendue de la capacité juridique internationale de l'Organisation résulte des dispositions de la Charte, soit expressément, soit implicitement, en vertu du principe, applicable ici, que fonction implique capacité — principe d'ailleurs reconnu par les articles 104 et 105 et se trouvant à la base même des deux dernières phrases du rapport du Sous-Comité IV, 2. A, de San-Francisco.

Si tel est le cas, la question de savoir si l'Organisation des Nations Unies possède, dans l'hypothèse prévue par la demande d'avis, la capacité de présenter une « réclamation internationale », c'est-à-dire une réclamation comme un État en présente normalement à un autre en vue d'obtenir réparation d'un dommage, revient à celle de savoir si cette capacité lui est nécessaire pour exercer ses fonctions et atteindre ses buts. Or, sur ce point, il me semble que l'Assemblée générale a déjà

exprimé un avis unanime dans les deux considérants que j'ai cités et qui précèdent le libellé de sa demande d'avis consultatif.

D'ailleurs, ne serait-il pas étrange de donner à l'Organisation des droits et un patrimoine, tout en lui déniant la possibilité d'obtenir réparation d'un dommage injustement infligé ?

Pour obtenir satisfaction, la procédure à adopter semble devoir être sensiblement la même que celle généralement suivie entre États. Elle peut notamment donner lieu soit à une transaction, soit à une décision arbitrale. Et, à cet égard, la personnalité juridique internationale étant hors de doute, on ne voit vraiment pas pourquoi un tribunal arbitral ne pourrait pas résoudre un différend entre l'Organisation et un État, tout comme il le ferait entre deux États ou même entre un État et un particulier. Le droit de l'Organisation d'ester en justice, stipulé sans qualification à l'article 1 de la Convention sur les privilèges et immunités, ne fait ici point de doute. Toutefois, en ce qui concerne la Cour internationale de Justice, la situation est particulière.

La Cour, on le sait, est un organe des Nations Unies. Le Statut de la Cour forme partie intégrante de la Charte des Nations Unies. Conformément à l'article 96, l'Organisation peut, par son Assemblée générale ou par son Conseil de Sécurité, demander à la Cour un avis consultatif sur toute question juridique. C'est de cette manière, expressément prévue par la Charte, que l'Organisation peut faire usage de son plus haut organe judiciaire.

Est-ce la seule manière ?

Il est pour le moins douteux que l'Organisation puisse, à l'instar des États Membres, ester devant la Cour comme partie à un litige et faire la déclaration prévue à l'article 36, alinéa 2, du Statut. C'est, en tout cas, un point sur lequel la Cour devra se prononcer : l'article 34, alinéa 1, du Statut de la Cour a-t-il pour effet d'empêcher l'Organisation des Nations Unies de se présenter devant la Cour parce qu'elle n'est pas un État ? Ou bien, cet article exclut-il simplement les individus et les organisations de caractère non étatique sans viser pour cela l'Organisation des Nations Unies, qui est une entité composée d'États ? Sur cette question de savoir si l'Organisation des Nations Unies peut ou ne peut pas se présenter devant la Cour en matière contentieuse, alors qu'elle peut indubitablement le faire en matière consultative, il n'entre pas dans ma mission de prendre parti.

Je me bornerai à rappeler les moyens auxquels les Nations Unies ont, jusqu'à présent, convenu de recourir. Je cite tout d'abord la section 21 de l'article 8 de l'Accord entre l'Organisation des Nations Unies et les États-Unis d'Amérique, relatif au siège des Nations Unies :

> « *a*) Tout différend entre l'Organisation des Nations Unies et les États-Unis au sujet de l'interprétation ou de l'application du présent Accord ou de tout accord additionnel sera, s'il n'est pas réglé par voie de négociations ou par tout autre mode de règlement agréé par les Parties, soumis aux fins de décision définitive à un tribunal composé de trois arbitres, dont l'un sera désigné par le Secrétaire général, l'autre par le Secrétaire d'État des États-Unis, et le troisième choisi par les deux autres, ou, à défaut d'accord entre eux sur ce choix, par le Président de la Cour internationale de Justice.
>
> *b*) Le Secrétaire général ou les États-Unis pourront prier l'Assemblée générale de demander à la Cour internationale de Justice un

avis consultatif sur toute question juridique qui viendrait à être soulevée au cours de ladite procédure. En attendant l'avis de la Cour, les deux Parties se conformeront à une décision intérimaire du tribunal arbitral. Par la suite, celui-ci rendra une décision définitive en tenant compte de l'avis de la Cour. »

La Convention sur les privilèges et immunités prévoit, à la section 30 de son article 8, une méthode de règlement quelque peu différente. Je cite:

« Toute contestation portant sur l'application ou l'interprétation de la présente Convention sera portée devant la Cour internationale de Justice à moins que, dans un cas donné, les Parties ne conviennent d'avoir recours à un autre mode de règlement. Si un différend surgit entre l'Organisation des Nations Unies, d'une part, et un Membre, d'autre part, un avis consultatif sur tout point de droit soulevé sera demandé en conformité de l'article 96 de la Charte et de l'article 65 du Statut de la Cour. L'avis de la Cour sera accepté par les Parties comme décisif. »

L'accord provisoire entre le Conseil fédéral suisse et le Secrétaire général de l'Organisation des Nations Unies stipule ce qui suit à sa section 27:

« Toute contestation entre l'Organisation des Nations Unies et le Conseil fédéral suisse, portant sur l'interprétation ou l'application du présent Accord provisoire ou de tout accord additionnel et qui n'aura pas été réglée par voie de négociation, sera soumise à la décision d'un collège de trois arbitres; le premier sera nommé par le Conseil fédéral suisse, le second par le Secrétaire général de l'Organisation des Nations Unies et un surarbitre par le Président de la Cour internationale de Justice; à moins que, dans un cas donné, les Parties ne conviennent d'avoir recours à un autre mode de règlement. »

Dans chacun de ces cas, il semble bien que l'on soit parti de l'idée que l'Organisation des Nations Unies ne pouvait pas se présenter devant la Cour comme partie à un litige et ne pouvait faire usage devant la Cour que de la procédure consultative. On a donc cherché à tourner la difficulté, dans le cas de la Convention générale, en rendant conventionnellement l'avis de la Cour décisif entre les Parties et, dans le cas de la Convention du siège en insérant la procédure consultative de la Cour dans une procédure arbitrale. Dans l'accord avec la Suisse, on s'est contenté du recours à un collège de trois arbitres.

Passons maintenant au point I *b*), c'est-à-dire à la question de savoir si, toujours dans l'hypothèse prévue, la qualité de l'Organisation pour présenter une réclamation internationale s'étend au cas où la réclamation vise à obtenir la réparation des dommages causés, non à l'Organisation même, mais à l'agent victime ou à ses ayants droit.

Nous ne voyons pas d'objection à admettre cette extension. Les agents des Nations Unies doivent pouvoir compter sur l'aide et la protection de l'Organisation. Dans une large mesure, ils doivent, dans l'exercice de leurs fonctions internationales, faire abstraction de leurs sympathies nationales et des intérêts particuliers du pays de leur allégeance. Comme le stipule l'article 100 de la Charte, ils doivent s'abstenir de tout acte incompatible avec leur situation de fonctionnaires internationaux et ne seront responsables qu'envers l'Organisation. D'autre

part, chaque Membre de l'Organisation doit respecter le caractère international de leurs fonctions. Le lien qui unit les fonctionnaires et agents de l'Organisation à cette Organisation dépasse donc considérablement les liens qui unissent normalement employeurs et employés. Il existe ou il doit exister une sorte d'allégeance à l'égard de l'Organisation, et, pour celui qui la doit, un affaiblissement de certains aspects au moins des liens nationaux en résulte. Ces considérations portent à croire que l'extension peut se justifier juridiquement, tandis qu'en fait l'Assemblée générale a montré par les considérants de sa demande d'avis qu'elle jugeait l'extension désirable.

Bien entendu, admettre la qualité de l'Organisation pour présenter, dans un cas où un agent des Nations Unies a subi, dans l'exercice de ses fonctions, un dommage dans les conditions de nature à engager la responsabilité d'un État, une réclamation internationale en vue d'obtenir la réparation du dommage causé à la victime ou à ses ayants droit ne préjudicie pas la faculté d'un État, reconnue en droit international, d'agir de la sorte en faveur d'un ressortissant. Il y a toutefois lieu de remarquer qu'il s'agit, dans le chef de l'État, d'un droit et non d'une obligation, que l'État décide discrétionnairement s'il veut agir ou non en faveur d'un ressortissant et que, dans un cas où les liens d'allégeance ont été affaiblis par suite de la création d'un lien spécial en faveur de l'Organisation des Nations Unies, il est parfaitement concevable que l'État préfère ne pas intervenir. De plus, il importe de tenir compte du nombre croissant d'apatrides, de personnes déplacées, d'exilés, de cas de nationalité douteuse après les bouleversements de la dernière guerre. N'est-il pas à craindre que, dans de pareils cas, la protection nationale s'avère illusoire ?

En toute occurrence, il y a lieu de croire que, dans la très grande majorité des cas, l'Organisation et l'État n'auraient aucune difficulté à se mettre d'accord pour éviter une double intervention, et, dans les cas exceptionnels où cet accord n'existerait pas, il me semble que l'instance saisie de la question pourrait, sans difficulté, décider à laquelle des deux réclamations il y a lieu de faire droit sur la base d'une comparaison de l'importance des liens respectifs et conformément aux principes en usage en cas de réclamations relatives à des personnes ayant deux nationalités.

Pour me résumer, il y a lieu, à mon avis, de répondre affirmativement aux questions I *a*) et I *b*).

L'Organisation des Nations Unies possède la personnalité juridique internationale, ce qui d'ailleurs ne lui confère pas le caractère d'un super-État.

L'Organisation des Nations Unies peut ester devant un tribunal arbitral. Il semble, toutefois, qu'en ce qui concerne la Cour internationale de Justice, seule la procédure consultative soit accessible à l'Organisation. Je ne formule toutefois pas de conclusion sur ce point au nom de mon Gouvernement.

En ce qui concerne la question 2, à défaut d'accord entre l'Organisation et l'État dont la victime est ressortissant, on pourrait, semble-t-il, s'inspirer *mutatis mutandis* des principes en usage dans les cas où deux États se prévalent de la nationalité d'un individu aux fins d'une réclamation.

Je remercie la Cour de son attention.

4. — EXPOSÉ DE M. CHAUMONT

(REPRÉSENTANT DU GOUVERNEMENT FRANÇAIS)

A LA SÉANCE PUBLIQUE DU 8 MARS 1949, APRÈS-MIDI.

Monsieur le Président, Messieurs les Juges, le Gouvernement français, que j'ai l'honneur de représenter devant la Cour, a voulu marquer, en formulant quelques observations au sujet de la demande d'avis dont elle est saisie, tout à la fois sa préoccupation constante de voir développer et affirmer des règles de droit dans la vie internationale et l'importance qu'il attache à l'intervention de la plus haute juridiction existant dans le monde.

Sans doute, la France a-t-elle été intéressée directement, comme quelques autres nations, dans les douloureux événements qui sont à l'origine de l'affaire dont la Cour doit connaître. Et si elle ne demande rien ici pour elle-même, tout au moins son représentant se doit-il de saluer respectueusement la mémoire de ceux qui ont servi l'Organisation des Nations Unies et son idéal jusqu'au suprême sacrifice. Ce n'est pas le lieu d'insister sur la reconnaissance qui leur est due ; mais n'est-ce pas leur être fidèles que d'assurer plus fermement, pour l'avenir, l'institution pour laquelle ils ont donné leur vie ?

La demande d'avis présentée par l'Assemblée des Nations Unies à la Cour comporte deux questions qu'il importe d'examiner successivement. La seconde apparaît en effet comme subsidiaire, la Cour n'ayant à en délibérer que dans l'hypothèse où sa réponse à la première serait affirmative.

Voici les observations du Gouvernement français sur l'une et l'autre questions.

I. J'estime inutile de relire la première question posée à la Cour. La qualité de l'Organisation des Nations Unies pour présenter dans certaines circonstances une « réclamation internationale » contre un État, tel est le problème en discussion.

Cette formule « la réclamation internationale » est à la fois précise et souple. Elle est précise en ce qu'elle désigne, sans doute possible, une procédure se plaçant sur le plan du droit international. Elle écarte du problème soumis à la Cour toute procédure qui s'inscrirait dans le cadre du droit interne et mettrait en jeu la responsabilité de l'État suivant ce droit interne. Une telle manière de procéder est concevable. Ce n'est pas celle qui est ici employée.

Par contre, aucune forme particulière ne s'attache à la notion de réclamation internationale. C'est une demande susceptible d'être présentée suivant des procédures diverses. En général, elle émane d'un État, traditionnel sujet de droits dans l'ordre international. L'Assemblée désire savoir si elle pourrait émaner aussi de l'Organisation des Nations Unies. Le problème de la « qualité » de l'Organisation des Nations Unies, c'est le problème de sa capacité pour agir dans certaines circonstances, ou pour parler plus exactement, de l'étendue de sa compétence.

L'hypothèse même dans laquelle la compétence de l'Organisation des Nations Unies est en discussion a été nettement précisée par l'Assemblée

au lendemain des douloureux événements auxquels il a été fait plus haut allusion : un agent des Nations Unies a subi, dans l'exercice de ses fonctions, un dommage, dans des conditions de nature à engager la responsabilité d'un État, et c'est à l'égard du gouvernement de celui-ci que la réclamation doit être présentée.

Il s'agit d'examiner si, dans cette situation, la demande de réparation peut être formée sur le plan international par l'Organisation internationale.

Il est bien connu, et la jurisprudence de la Cour permanente de Justice internationale l'a souvent rappelé, que la responsabilité internationale implique la violation d'une règle du droit des gens et que seul le sujet du droit des gens intéressé peut former une réclamation internationale. C'est là le sens du mot « qualité » employé dans la demande d'avis.

Deux questions dès lors doivent être examinées, qui sont toutes deux impliquées dans cette notion de qualité.

Première question : Des règles spéciales obligent-elles les États à l'égard des agents des Nations Unies dans l'exercice de leurs fonctions ?

Deuxième question : L'Organisation peut-elle en réclamer elle-même le respect ?

a) Et d'abord, *des règles spéciales obligent-elles les États à l'égard des agents des Nations Unies dans l'exercice de leurs fonctions ?*

D'après les règles traditionnelles, un dommage subi par un individu qui a son origine dans une violation du droit des gens, permet à l'État national de présenter une réclamation contre l'État coupable. Ce faisant, l'État national exerce la protection diplomatique au profit de son ressortissant, à l'égard duquel il possède une compétence personnelle.

L'État, en prenant fait et cause pour l'un des siens, suivant la formule donnée par la Cour permanente de Justice internationale dans l'affaire Mavrommatis, « fait valoir son droit propre, le droit qu'il a de faire respecter dans la personne de ses ressortissants, le droit international ».

Les règles de droit international qu'un État doit respecter à l'égard des étrangers ont été définies par les conventions et par la coutume internationales.

Les procédés par lesquels l'État national peut faire valoir son droit sont les procédés généraux du droit des gens : réclamation diplomatique, demande d'arbitrage, recours à la juridiction internationale.

Mais il est certain que la responsabilité internationale d'un État n'apparaît pas seulement dans le cas où il a violé les règles touchant la condition des étrangers. La responsabilité internationale de l'État apparaît chaque fois qu'une règle quelconque de droit international est méconnue à l'encontre d'un autre gouvernement. Notamment, la responsabilité internationale apparaît lorsque l'État méconnaît son obligation de respecter un service public étranger. C'est ainsi, par exemple, qu'elle est engagée si la protection prescrite par le droit international au profit des services diplomatiques et consulaires n'est pas assurée. La personne d'un agent diplomatique doit faire l'objet d'une vigilance spéciale de la part des autorités de l'État qui le reçoit. Si cette vigilance fait défaut, s'il en résulte un dommage, l'État dont le service diplomatique est en cause peut former une réclamation internationale. Et il en est ainsi même si la victime de l'acte dommageable n'est pas son national, ce qui peut arriver pratiquement s'agissant d'un consul. Ainsi le dommage subi par un individu peut, à raison de ses fonctions,

provoquer une réclamation internationale d'un État qui n'est pas son État national. La situation visée par la demande d'avis n'est pas sans analogie avec cette hypothèse.

De quoi s'agit-il en effet ? D'un agent des Nations Uniès, dans l'exercice de ses fonctions, c'est-à-dire d'un individu se trouvant sur le territoire d'un État étranger dans des conditions qui sont très différentes des conditions dans lesquelles un particulier peut s'y trouver.

Les conditions matérielles, d'abord, sont très spéciales. L'agent des Nations Unies agit pour le compte de l'Organisation internationale. Or, celle-ci n'intervient le plus souvent que dans les cas de crise, lorsque se rencontrent une situation politique particulièrement difficile, des troubles graves. Loin de s'éloigner des lieux de danger, l'agent des Nations Unies doit y être présent. Il peut, par son attitude et par sa mission, exciter la haine de certains éléments de la population. Il se trouve donc exposé à des dangers spéciaux que ne connaissent pas les simples particuliers, qu'ils se doivent d'éviter, car s'ils subissaient un dommage, pour les avoir encourus, la responsabilité de l'État de séjour n'existerait probablement pas.

Mais surtout la situation juridique de l'agent des Nations Unies est aussi très spéciale. Il agit pour le compte de l'Organisation internationale. Il est sous la dépendance de celle-ci. Il en reçoit des ordres et, suivant l'article 100 de la Charte, il n'est responsable qu'envers elle et ne peut obéir à des directives de son propre gouvernement. Ses fonctions ont un caractère exclusivement international.

Il est donc lié à l'Organisation par un lien particulier, celui de la fonction, celui de la participation au service public.

Par ailleurs, il est tenu dans l'accomplissement de son devoir de n'accepter aucune instruction du gouvernement de son État d'origine, et celui-ci est tenu de ne pas l'influencer dans sa tâche.

Comment imaginer dès lors que ce soit l'État national qui puisse connaître et discuter de l'activité de son ressortissant en présentant une réclamation internationale ?

Il faut donc constater que la situation existant ici est profondément différente, sous tous ses aspects, de la situation d'un individu, simple particulier, se trouvant en territoire étranger.

Quelles peuvent être alors les obligations de l'État où s'exerce l'activité d'un agent des Nations Unies ?

Les termes de la demande d'avis impliquent la conviction de l'Assemblée qu'il a des obligations spéciales.

C'est ce qu'exprimait déjà un comité de juristes dans un avis dont le Conseil de la Société des Nations prit acte le 13 mars 1924 au sujet du meurtre du général Tellini, président de la Commission de délimitation de la frontière gréco-albanaise nommée par la Conférence des Ambassadeurs : « Le caractère public reconnu que revêt l'étranger, les circonstances dans lesquelles il se trouve sur le territoire de l'État entraînent pour celui-ci un devoir de vigilance spécial à son égard. »

Examinons tout d'abord la situation des États Membres des Nations Unies.

Les Membres de l'Organisation, qui doivent lui donner « pleine assistance » dans toute action entreprise par elle, sont tenus de respecter le service public international, comme ils doivent respecter le service public d'un État étranger, et ceci comporte des obligations particulières de protection en vue d'assurer la continuité du service. La nécessité de

protéger et faciliter le fonctionnement des Nations Unies est à la base des règles sur les immunités et la convention spéciale en fixe certains éléments importants dans le but d'assurer l'indépendance de leurs services. Mais il est évident qu'elle n'épuise pas la matière et que l'obligation de protéger la personne existe comme pour les diplomates étrangers.

En second lieu, et en ce qui concerne les États non membres, le problème peut apparaître, à première vue, comme plus délicat, quoique l'article 2, paragraphe 6, de la Charte déclare que l'Organisation fait en sorte « que les États qui ne sont pas membres des Nations Unies agissent conformément à ces principes », c'est-à-dire à ceux qui dominent l'action de l'Organisation.

Mais il faut remarquer que, sauf dans l'hypothèse où les agents internationaux feraient partie d'une force internationale de coercition à l'encontre d'un État non membre, ces agents se trouvent sur le territoire de cet État avec le consentement de son gouvernement, que celui-ci soit *de jure* ou *de facto*. En provoquant ou en acceptant sa présence, l'autorité quelle qu'elle soit qui exerce le pouvoir effectif là où l'agent international remplit sa mission, s'oblige à assurer le respect de sa fonction.

Dans ces conditions, qui peut agir sur le plan international si ces obligations sont méconnues ? C'est là la deuxième question fondamentale qu'il nous faut examiner maintenant.

b) *L'Organisation des Nations Unies peut-elle former elle-même une réclamation internationale ?*

En général, ce sont les États qui réclament lorsque, le droit international étant violé, leurs ressortissants subissent des dommages. Mais nous venons de voir que des règles spéciales existent pour protéger les agents internationaux. Qui pourra mettre en œuvre ces règles spéciales ?

Il convient de relever que, dans la pratique internationale, lorsque plusieurs États ont assumé une tâche en commun, désigné des agents d'exécution, la protection de ceux-ci a généralement été assurée par les États agissant de concert et non par les divers États nationaux agissant isolément. Cette action spontanée, qu'aucun texte n'a organisée, a été acceptée et par les États nationaux et par les États auxquels elle s'adressait.

Lorsque le Concert européen a procédé à des actes de police, les autorités qui agissaient pour son compte n'ont jamais hésité à prendre les mesures nécessaires pour protéger les agents internationaux. En général, ces autorités internationales ont agi seules, sans que l'État national prétendît exercer sa protection.

Ainsi, lors des affaires de Crète, à une époque où, suivant la formule de Gabriel Hanotaux parlant au Parlement français, le Concert européen était « le seul tribunal et la seule autorité devant laquelle tout le monde pouvait et devait s'incliner », les amiraux des Puissances qui avaient la charge d'assurer la protection de l'île et la responsabilité de l'ordre au nom du Concert européen ont créé, par une ordonnance du 31 août 1897, une commission militaire internationale pour juger les « offenses de toute nature commises au préjudice des officiers et des soldats internationaux ».

Quelques années plus tard, en 1905, les insurgés attaquant les troupes internationales, les consuls des Puissances devaient, par une proclamation

commune des 17/30 juillet 1905, rétablir cette commission internationale de justice militaire. Par conséquent, ce n'était pas chaque gouvernement qui assurait la sécurité de ses propres contingents, mais une action concertée était entreprise au profit des troupes expressément qualifiées « troupes internationales ».

Lorsque des incidents se sont produits, notamment un incident entre poste français et poste turc à La Canée, auquel fait allusion une dépêche de Gabriel Hanotaux du 18 avril 1898, ils ont été examinés en commun par les représentants des Puissances qui ont décidé en commun des mesures à prendre. Par conséquent, l'action de l'État national était remplacée par l'action collective des États qui avaient pris en charge la question de la Crète.

Parmi les exemples cités par le Gouvernement français dans ses observations écrites, l'exemple le plus frappant d'une action gouvernementale pour la protection d'un agent international est incontestablement l'action entreprise, par la Conférence des Ambassadeurs en 1923, après l'assassinat des membres italiens de la Commission de délimitation des frontières gréco-albanaises. La Conférence des Ambassadeurs n'a pas hésité à présenter elle-même la réclamation contre le Gouvernement grec. Sans doute, parallèlement le Gouvernement italien prétendait-il aussi faire valoir son droit à la protection diplomatique. Mais il convient de souligner que le Gouvernement grec n'a soulevé aucune objection juridique contre l'action de la Conférence et qu'il en a reconnu la validité en des termes particulièrement nets.

Le Gouvernement italien avait lui-même fait la distinction entre les réparations qu'il demandait pour le dommage causé à l'État italien et les sanctions à prendre par la Conférence des Ambassadeurs pour le fait que la délégation italienne assassinée faisait partie d'une commission qui était mandataire de la Conférence.

Enfin, les débats au Conseil de la Société des Nations, saisi par le Gouvernement grec de la question de l'occupation de Corfou par le Gouvernement italien, font ressortir que les États Membres du Conseil considèrent que la Conférence des Ambassadeurs était atteinte par le meurtre des officiers italiens. Ainsi, non seulement les États intéressés au différend, mais les agents des Puissances membres de la Conférence des Ambassadeurs et le Conseil de la Société des Nations ont accepté sans hésiter la compétence de l'Organisation internationale pour assurer la protection de ses agents.

Voilà donc un certain nombre de précédents. Je pense que ces précédents nous permettent d'affirmer que si, en l'absence de tout texte sur le droit pour un organe collectif d'agir par voie de réclamation internationale, on a admis sans discussion la possibilité pour lui de protéger ses agents, si à aucun moment on ne relève d'opposition des États tiers, soit de l'État dont la victime a la nationalité, soit de l'État auquel la réclamation est présentée, à plus forte raison doit-on reconnaître à l'Organisation des Nations Unies la même compétence.

En effet, en ce qui touche l'Organisation des Nations Unies, il n'est pas douteux qu'on a voulu lui attribuer une personnalité juridique au sens propre du mot. Sans doute, la Charte se contente-t-elle de parler, dans l'article 104, de « la capacité juridique dont l'Organisation jouit sur le territoire de chacun de ses Membres pour exercer ses fonctions et atteindre ses buts ».

Mais l'article 105 donne à l'Organisation, comme telle, des privilèges et immunités qui ne se concevraient pas si on ne lui reconnaissait pas une personnalité juridique distincte. Il faut constater que, dans la pratique, les États n'ont pas hésité à tirer de cette notion de personnalité juridique de l'Organisation toutes ses conséquences sans se restreindre à des effets de pur droit interne.

La Convention sur les immunités et privilèges des agents des Nations Unies en est la preuve. Cette Convention est passée entre l'Organisation et les États Membres. Elle prévoit dans sa section 30 le mode de règlement des différends qui peuvent surgir entre l'Organisation et un État Membre. Ainsi, l'Assemblée des Nations Unies qui a établi le texte, comme les États signataires, considèrent-ils que la personnalité de l'Organisation produit ses effets, non seulement à l'intérieur des États, sur le plan du droit interne, mais sur le plan international. Dans ces conditions (et sans insister davantage sur ces citations de textes qui ont déjà été développées par les orateurs précédents), il n'apparaît pas contestable que l'Organisation puisse présenter une réclamation internationale à un État responsable d'un dommage causé à l'un de ses agents. Au surplus, telle a été la procédure suivie lors des événements récents qui sont à l'origine de la demande d'avis à la Cour. Le Gouvernement égyptien notamment, dans sa réponse au Médiateur au sujet de la mort d'observateurs français en Palestine, n'a pas contesté la compétence d'un représentant des Nations Unies pour présenter une réclamation et s'est contenté de contester au fond l'existence de sa responsabilité.

Les procédés par lesquels l'Organisation des Nations Unies peut présenter cette réclamation internationale sont ceux du droit international. A notre avis, aucun argument contraire ne pourrait être tiré du fait que l'article 34 du Statut de la Cour internationale de Justice réserve l'accès de la Cour aux États.

Si la juridiction de la Cour constitue un progrès considérable dans la mise en jeu de la responsabilité internationale, il ne faut pas oublier que c'est un procédé relativement récent, que c'est encore un procédé exceptionnel. Le droit de présenter des réclamations, qui a été reconnu par exemple à la Commission européenne du Danube, n'impliquait pas pour elle, pas plus que pour l'Organisation des Nations Unies, sur la base de l'article 34, accès à la Cour.

Par conséquent, la réclamation internationale est possible et l'article 34 doit être interprété restrictivement.

Au surplus, si une difficulté juridique surgit à propos d'une réclamation de cet ordre, l'Organisation a toujours la faculté de demander à la Cour un avis consultatif susceptible de l'éclairer pleinement sur les problèmes de droit.

Les observations précédentes couvrent ainsi les deux objets possibles de réclamation prévus dans la demande d'avis : les dommages causés aux Nations Unies et les dommages causés aux victimes ou à leurs ayants droit.

En ce qui concerne les dommages causés aux Nations Unies, aucune discussion n'est possible. Quant au point de savoir si une réclamation internationale peut tendre directement à la réparation d'un dommage à la victime ou à ses ayants droit, en principe, l'individu n'apparaît pas directement dans les réclamations internationales. La Cour permanente de Justice internationale s'est longuement expliquée sur ce point dans son Arrêt n° 13, et elle a indiqué nettement que le dommage subi par

l'individu ne peut que fournir une mesure convenable de la réparation due à l'État. Ces mêmes principes doivent, à notre avis, s'appliquer à la réclamation formulée par les Nations Unies pour assurer la protection du service public international.

Telle paraît être la base d'une réponse affirmative à la première question posée à la Cour.

II. Par la deuxième question, on demande à la Cour comment l'action de l'Organisation doit se concilier avec les droits que l'État, dont la victime est ressortissant, pourrait posséder.

Il résulte des précédents développements que les dommages subis par un agent des Nations Unies du fait d'un État peuvent poser un double problème de responsabilité. D'une part, l'agent peut être considéré en sa qualité d'étranger et les règles sur le traitement des étrangers et la protection due aux étrangers ont pu être violées. D'autre part, l'agent peut être considéré sous l'aspect de sa fonction internationale et les règles sur le respect du service public international ont pu être méconnues.

Dans le premier cas, l'État national est compétent pour agir par l'exercice de la protection diplomatique, et il peut seul le faire. Dans le second, c'est l'Organisation internationale qui peut seule protéger le service public international.

Ainsi, un même dommage peut provoquer des réclamations émanant de deux autorités distinctes ; deux compétences internationales sont donc susceptibles de jouer touchant le même fait. Cette situation n'est pas sans précédent, et on peut rappeler que la Cour permanente d'Arbitrage, dans l'affaire des déserteurs de Casablanca, s'est trouvée également en présence d'un concours de compétences touchant les mêmes individus, les déserteurs allemands de la Légion étrangère.

La Cour permanente d'Arbitrage a indiqué qu'il n'y avait pas de règles de droit permettant d'établir d'une façon absolue et pour toutes les circonstances laquelle de ces compétences devait l'emporter sur l'autre.

Il semble que dans la question soumise à la Cour le problème puisse être envisagé de la même manière : il n'y a pas de règle de droit qui détermine *a priori* que la compétence de l'État national doit l'emporter sur la compétence de l'Organisation internationale ou réciproquement.

Dans ces conditions, la conciliation entre ces droits ne peut se faire que par un accord amiable entre l'État national et l'Organisation internationale. Il faut cependant relever que pratiquement la responsabilité existera plus souvent à l'égard de l'Organisation internationale qu'à l'égard de l'État national, car la règle de protection d'un agent public international est incontestablement plus stricte que la règle de protection due à un simple étranger, et les exigences de la primauté du service international ne doivent pas être perdues de vue.

C'est ce qui a été indiqué par le Comité de juristes consulté en 1924 à propos de l'affaire que j'ai déjà citée du meurtre du général Tellini. Dans cet avis, « le caractère public reconnu à l'agent étranger, les circonstances dans lesquelles il se trouve sur le territoire de l'État entraînent pour celui-ci un devoir de vigilance spécial à son égard ».

Par ailleurs, il est évident que le concours de compétence ne doit pas entraîner un cumul d'indemnités au profit des victimes.

Sous réserve de ces observations, qui montrent que le problème doit surtout se régler sur le plan pratique et que la tâche d'un tel règlement

incombera au Secrétaire général des Nations Unies et à l'Assemblée générale, aucune règle précise de droit n'existe actuellement sur la conciliation des droits de l'État national et des Nations Unies.

III. Monsieur le Président, Messieurs les Juges, je résumerai en quelques propositions les observations que j'ai présentées dans cet exposé au nom du Gouvernement français. Elles sont les suivantes :

Sur la première question : l'Organisation des Nations Unies a qualité pour présenter une réclamation internationale contre l'État considéré comme responsable selon le droit international. Cette qualité lui permet de poursuivre sa réclamation par les procédures en usage dans la société internationale. Cette réclamation porte sur la réparation des dommages causés à la fonction internationale, soit directement, soit en la personne des agents des Nations Unies.

Sur la deuxième question : en l'absence d'une règle positive de droit international, l'action des Nations Unies se concilie avec les droits de l'État national de la victime, par le fait que ceux-ci n'ont pas la même cause juridique et ne peuvent nuire à l'autonomie de l'intervention des Nations Unies.

Monsieur le Président, Messieurs les Juges, permettez-moi en terminant de remercier la Cour de l'attention bienveillante avec laquelle elle a suivi mon exposé.

5.—STATEMENT BY Mr. FITZMAURICE

(REPRESENTATIVE OF THE UNITED KINGDOM GOVERNMENT)

AT THE PUBLIC SITTINGS OF MARCH 9th, 1949.

[*Public sitting of March 9th, 1949, morning.*]

Mr. President and Members of the Court, before I embark on the legal part of my statement, I should like to make three preliminary observations.

The first is to express my personal sense of privilege at having the honour to appear before so eminent a tribunal—an honour of which I can assure the Court I am very vividly sensible.

Secondly, I wish to stress the importance which the Government of the United Kingdom attaches to the question now before the Court. This question may, at first sight, appear to be a relatively minor one, that is to say, as compared with a number of the other questions which have engaged the attention of the Court and of its illustrious predecessor the Permanent Court of International Justice. But this is not really so, for in addition to the moral and personal problems raised by it, the question also involves two legal or quasi-legal issues of the highest importance. The first of these is that of the international legal status of the United Nations Organization, because, as I shall suggest to the Court in the course of my argument, it is scarcely possible to answer the questions put to the Court without reaching some preliminary conclusion on the subject of the international legal status and personality of the Organization.

The second important issue which I have in mind as being involved in the present case, is that of the independence of the United Nations Organization, by which I mean the necessity for the Organization and its officials, in carrying out the work of the Organization, to be independent of all considerations or influences based on or arising from nationality. This issue is crucial to the whole conception of the United Nations, and any question which involves or may affect it accordingly merits the most careful consideration.

My final preliminary observation is this. It is quite true, as previous speakers have said, that in referring this matter to the Court the Assembly hoped that the Court might be able to give what I will term a favourable answer to the questions put to the Court. At the same time it was, of course, appreciated that the issues are legal ones on which the Court may take quite another view. Even if this should be the case, it will still be helpful to the Assembly to have the Court's opinion since the Assembly will then be able to consider what special steps can be taken to endow the Organization with the requisite personality and capacities, if the Court should consider that the Organization does not at present possess them.

I now turn to my legal argument, and here I find myself in this difficulty, that a great deal of what there is to be said has already

been said very effectively by previous speakers. On the other hand, my approach to the subject is a little different, for reasons which I shall explain to the Court. As the Court knows, the Government of the United Kingdom has already, in the form of its written statement, given a full and systematic expression of its views on the subject-matter of the present request for an advisory opinion, believing that the somewhat novel nature of the problem called for the presentation of a relatively comprehensive written statement previous to the oral proceedings. It would be as unnecessary as it would be wearisome to the Court merely to recapitulate in detail the argumentation already contained in this written statement, and what I propose to do is to offer a number of additional observations, in the nature more of a commentary than of a systematic treatment of the subject. I will ask that this commentary be regarded as additional to and not in any way as replacing the United Kingdom's written statement.

Mr. President and Members of the Court, it is in one sense regrettable that the Court has not had before it someone to argue that the United Nations does *not* possess the capacities which we are discussing. I cannot supply that particular deficiency, but perhaps I can do the next best thing. It often happens that when a problem is difficult or novel, as I think the present one is, the best method of approach to it is the negative rather than the positive one. In order to ascertain what a thing is, it is sometimes very useful to begin by enquiring what it is not, and in order to decide what exactly is covered or involved by a certain question, it may be well to determine first what is not involved by that question. The United Kingdom Government attaches importance to this method of approach in the present case, because the comparative novelty of the problem, and the difficulty of foreseeing in advance all of its possible implications, makes it particularly desirable that the correct conclusions should not only be reached, but that they should be reached on the right grounds. It is natural, in a good cause, to advocate certain ideas, but it is less easy to foresee where those same ideas may lead if applied in a wider field. In its written statement, the United Kingdom Government indicated what it regarded as the correct conclusions on the present questions, and also the grounds on which it considered that these conclusions should be reached. In the present oral statement it will be at least in part my object to discuss what are the grounds on which, in the submission of the United Kingdom Government, these same conclusions ought preferably *not* to be reached.

When the present problem was being discussed in the General Assembly of the United Nations, there was a very general tendency, natural in view of the novelty of the question, to misunderstand, or at any rate not in all respects to appreciate its exact nature—a tendency from which, I hasten to add, the delegation of the United Kingdom was no freer than any other—and it is indeed only after a good deal of reflection that it has proved possible to arrive at what seems a just appreciation of these issues. There was, for instance, in the General Assembly, a disposition to conclude that if the United Nations Organization could be shown to be a juristic entity or to have legal personality of some kind, it must automatically follow that it had capacity to make an *international* claim, a conclusion which I think everyone would now agree does not follow at all. Similarly, the fact that a State can sometimes make an international claim in

respect of injuries to persons who are not its nationals, for instance, if they are in its service, was thought, and I think is still thought by some, to point *of itself* to the conclusion that the United Nations Organization could equally make international claims on behalf of its servants in respect not only of the loss caused to itself, but also in respect of the damage done to the servant. This, equally, is a conclusion which, as I hope to show, either does not follow from these particular premises, or else, in so far as it may be correct, can nevertheless only properly be arrived at after a number of other questions have first been satisfactorily answered.

Further—and this is very important for the purposes of the present enquiry—the very term "international claim" contained in the first of the two questions addressed to the Court, has seemed to be liable to misinterpretation. It has apparently sometimes been thought that any claim against a government, other than a claim on the part of one of its own nationals or corporate national entities, must be an international claim, whether the claimant be a foreign *government*, or merely a foreign individual or corporation. Now, if claims by individuals or corporations against a foreign government can be called "international claims", they can be so only in a purely popular or descriptive sense, as being claims the parties to which belong to different countries. In the submission of the United Kingdom Government they are, however, not international claims at all in the technical sense of the term, as it is to be understood (as a term of art) under and for the purposes of international law. The United Kingdom Government considers that, for an international claim to exist, there are two essential elements, *both* of which *must* be present, namely, first, that the claim must be made under international law and not merely under the domestic law of one of the parties ; and secondly, that the claim must be brought by, and must be made against, parties both of whom are international persons. It will be seen that, on this basis, it would be quite possible even for a claim brought by one State against another not to be an international claim, if it was a claim brought under the domestic law of the defendant State and not under international law. This might occur in the type of case in which, for instance, one government leases premises in another country, which belong to the government of that country, the lease being an ordinary lease made under the local law. Any dispute concerning the interpretation or execution of that lease would equally fall to be decided according to the local law, so far as the purely legal issues were concerned, and might well be the subject of proceedings in the local courts, given the necessary voluntary submission to the jurisdiction of those courts. To all this international law would have nothing to say. Before an *international* claim can exist, there must be, to adopt a phrase employed by Hatchek (*Outline of International Law*, p. 274) :

> "a transgression against international law, and not merely against a national legal régime".

Even clearer is the necessity for the second of the two main elements of an international claim, as already defined, namely that it should be brought by and against entities both or all of which are international and not merely domestic persons—which have international personality and are subject to international law. In the opinion of the United Kingdom Government, a claim brought by, for instance, an ordinary

private company or corporation against a foreign government is not, as such, and cannot be, an international claim at all, in the technical sense. It may *become* one, if the claim of the company or corporation is taken up and espoused by the government of the country of which the company is a national, but in that event the claim will lie between the two governments, both of whom are international persons.

In support of the view that an international claim is essentially both a claim under international law, and one which lies between two or more international persons, I will cite a passage from the judgment of the Permanent Court of International Justice in the *Mavrommatis case* (Series A., No. 2). The Court said, at page 12 of its judgment :

> "It is true that the dispute was at first between a private person and a State—i.e. between M. Mavrommatis and Great Britain. Subsequently the Greek Government took up the case. The dispute then entered upon a new phase; *it entered the domain of international law* and became a dispute *between two States.*"

In other words, it was only when it became a dispute between two States, i.e. two international persons, that it entered the domain of international law, that is to say it became an international claim. The judgment of the Permanent Court in the *Chorzów Factory case* (Series A./B., No. 17) will also be found to support this view. At page 28 of the report it is stated that

> "The rules of law governing the reparation are the rules of international law in force between the two States concerned, and not the law governing relations between the State which has committed a wrongful act and the individual who has suffered damage."

If the views I have been expressing are correct, they will serve to show why, in the opinion of the United Kingdom Government, an affirmative conclusion on the first of the two questions put to the Court, namely as to the capacity of the United Nations Organization to bring an international claim, could not correctly be arrived at merely by demonstrating that the Organization is a juristic entity or that it has legal personality of some kind. Similarly, it is not enough to show that, from a procedural point of view, the Organization is able to have dealings, to enter into negotiations, with States and governments ; for that, after all, is something which ordinary private persons and entities can equally do. They often deal or negotiate with foreign governments, but that does not make them international persons, and their dealings and negotiations are on the domestic and not on the international plane. It is therefore necessary to go further than all this, and to show that the Organization has a particular kind of legal personality, namely international legal personality.

It is for these reasons that the United Kingdom Government considers the question of the international personality of the United Nations to be of fundamental, indeed of crucial importance in connexion with the questions upon which the Court is asked to advise. Unless international personality of some kind exists, it is difficult to see *any* basis upon which it can be held that the Organization has the capacity to make an international claim in the proper and strict sense of that term. If, on the other hand, such international personality does exist, then, although it does not follow that the capacity of the Organization to bring an inter-

national claim is in all respects the same, or as extensive, as that of a State, nevertheless the indispensable foundation is there, on the basis of which it can be held there is capacity of some sort, and on which the question can be examined as to what exactly that capacity consists of.

Holding these views, the United Kingdom Government devoted an appreciable part of its written statement to attempting to establish the international personality of the United Nations Organization. I do not propose to recapitulate these arguments on the present occasion, but I will briefly summarize them. First, it was suggested that, although sovereign States may be the natural and normal possessors of international personality, they are not necessarily the only ones, and that international practice has established, and international authority has recognized, the existence of other entities which have such personality. In paragraph 7 of the United Kingdom's written statement a number of possible examples of such entities was given and discussed. Consequently, it was submitted that there is no necessary identity between international persons and States, and therefore no *a priori* reason why international organizations, such as the United Nations Organization, should not be regarded as being international persons. Secondly, it was suggested that any entity which, as such, can be shown to have international rights and obligations must be an international person, since only international persons can have international rights and obligations ; and it was suggested, further, that the United Nations Organization can duly be shown, under the Charter and other related international instruments, to have international rights and obligations. Another, and perhaps more picturesque method of expressing these ideas, would be to say that once it has been established that there is no inherent reason why entities other than States should not be invested with international personality, there is equally no reason why such an international person should not be set up or created by the use of the appropriate means. This is the view apparently suggested in a recent work on international law by Georg Schwarzenberger, in which (Volume I, p. 35), after referring to States as members of the legal system constituted by international law, he goes on to say :

> "As the full members of this legal system are entitled to enlarge their circle by the admission of new full members, they are equally competent to create, by the exercise and modification of their recognition, *new types and different classes of international persons* .... [whose] personality and status entirely depend on the attitude taken towards them by the existing subjects of international law."

In brief, so far as the United Nations is concerned, there would, on this view, be nothing to prevent the creation of a new international person by means of the Charter, recognized as such by the parties to the Charter, but of a type and class different from that of a State ; and it would then become a matter of determining whether, on its language and true interpretation, the Charter did do this or not.

I may perhaps also draw the attention of the Court (although the argument is of a minor character) to an interesting suggestion in Hatchek's *Outline of International Law* as to the historical reasons why the Papacy, even during the period when it was not territorially a State, was recognized as having international personality ; and these reasons, though on constitutional rather than historical grounds, could

apply, *mutatis mutandis*, to the case of international organizations such as the United Nations. Writing before the date of the Lateran Treaty, the author of this work says (p. 56) :

> "Since .... international law does not allow any one State to control the Pope in his character as head of the Catholic Church, he has to be put in a position of international independence, that is, even though he is not the head of a State .... he has to be made an independent subject of international law."

By parity of reasoning it might be argued that since no one State can control an organization such as the United Nations, it must be deemed to have its own separate international personality.

At this point I feel it necessary to digress a little from the main course of my statement, in order to make clear something which was not fully brought out in the written statement of the United Kingdom but which is necessary for the purposes of my argument, namely that, just as claims made by private persons or juristic entities cannot, as such, be international claims, so also, in the opinion of the United Kingdom Government, is it incorrect to regard indivuals, or private companies, corporations or other such associations, as being subjects of international law or as having any direct international rights or obligations. They may indeed be objects of international law—for instance international law prescribes certain rules for the treatment of foreigners by all countries—while international treaties may even prescribe certain rules for the treatment by countries of their own nationals, such as treaties about minorities or human rights. Again, private individuals and entities may, *by reason of* a rule of international law, or of a treaty provision, become the recipients of *benefits* or be subjected to certain *liabilities ;* but in all those cases this occurs indirectly and at second remove, through the medium or agency of a State or government or other international person which is a party to the treaty or a subject of the rule of international law concerned, and through whom alone the benefit or liability can be made available or be enforced. Thus, to cite again the rules of international law as to the treatment of foreigners, the foreigner may get the *benefit* of this treatment, but the international law right to *claim it* belongs solely to his government. It is a right under international law for the government to claim certain treatment for its nationals, and the corresponding international duty is one owed to the foreigner's government, not directly to the foreigner himself. It can only be owed directly to the foreigner himself if the international law rule in question is also made, or becomes, part of the local law of the country concerned ; but then, as between the local government and the foreigner, it is a duty owed under domestic and not under international law. As was stated by the Permanent Court of International Justice in the *Chorzów Factory case* (Series A./B., No. 17, p. 28), "Rights or interests of an individual .... are always in a different plane from rights or interests belonging to a State." These principles also find expression in the Advisory Opinion of the Permanent Court in the case of the *Danzig Railway Officials* (Series B., No. 15), when the Court said (p. 17) :

> "It may be readily admitted that, according to a well established principle of international law .... an international agreement

cannot, as such, create direct rights and obligations for private individuals."

Similarly, in the opinion of the United Kingdom Government, the general rules of international law do not create direct rights and obligations for individuals.

Mr. President and Members of the Court, this theme is one which it would take time to develop fully, and as it is only incidental to my main purpose I will not go into it further here. Nevertheless I felt obliged to mention the point because it forms an essential part of my argument : seeing that, on the one hand it seems impossible to deny that entities which, as entities, are genuinely and directly possessed of international rights and obligations, are international persons, while on the other hand it seems equally impossible to admit, in any significant sense or in any ordinary acceptation of the term, the international personality of individuals or of private entities or associations.

I now revert to the main course of my argument. As I said earlier, the United Kingdom Government has endeavoured in its written statement to give positive reasons for the view that the United Nations, as an Organization, is possessed of international rights and duties and of international personality. These reasons are founded mainly on the language and effect of the Charter, and on the intentions to be inferred or presumed from the Charter. In this connexion, I should like to stress the importance which the Government of the United Kingdom attaches to the principle that the constitutive instrument setting up an organization, and containing its constitution, must be the primary source of any conclusions as to the status, capacities and powers of the organization concerned. It would, in the opinion of the United Kingdom Government, be as dangerous as it would be unsound to ascribe to international organizations, a status, capacities or powers not provided for or to be inferred from their constitutive instruments, except in so far as may result from clearly applicable, universal, and recognized principles of general law. In this connexion, I should like to refer to two arguments which have been suggested in regard to the status and capacities of the United Nations, which the Government of the United Kingdom considers should be viewed with some reserve.

First, there is a suggestion in one of the written statements furnished to the Court that the correct principle to be adopted in this matter is the following, namely, that the United Nations Organization should *ipso facto* be regarded as entitled to perform any juristic act not actually contrary to the principles and purposes of the Charter. If this is intended to suggest that, it having once been decided that the Organization is properly to be regarded as possessing a given form of legal personality, it should *then* be deemed automatically to possess all such powers and capacities as would normally be possessed by legal personalities of the same class, so long as these would not be contrary to the Charter, then the United Kingdom Government would find itself broadly in agreement with such a view. On the other hand, the preliminary question whether the Organization possesses legal personality at all, and if so of what kind, cannot, in the opinion of the United Kingdom Government, be answered in the affirmative merely on the ground that the possession of such personality would not be actually inconsistent with any provision of the Charter. Such personality must either be specifically pro-

vided for in the constitutive instrument, or be a necessary or legitimate inference from its provisions and from the powers and duties of the Organization as therein set out. In brief, it is not the case that international organizations can do anything which their constitutive instruments do not actually forbid them to do. That would be a most dangerous doctrine, the limits of which could not be foreseen. On the contrary, the correct position is that, *prima facie*, international organizations only have such capacities and powers as their constitutive instrument gives them, or must be presumed to have intended them to have if they are to carry out their functions and fulfil their purposes as set out in the instrument concerned ; together with such powers and capacities as would, under general and universally recognized principles of law, be ascribable to any entity of the class or category created by that instrument.

Next, when it comes to determining which articles of the Charter can most appropriately be cited in support of the view that the Organization has international legal personality, the Government of the United Kingdom fully shares the views which have been expressed by M. Kaeckenbeeck, on behalf of the Government of Belgium, as regards Article 104 of the Charter, which is sometimes cited as establishing or supporting the international legal personality of the Organization. It is difficult in this connexion not to contrast Article 104 of the Charter with such a provision as Article 89 of the Havana Charter of the International Trading Organization. Article 89 of the Havana Charter is specifically entitled "International Legal Status of the Organization" and, in addition, it does not contain the limiting words "in the territory of each of its Members", which appear in Article 104 of the Charter, but, on the contrary, it provides quite generally that the International Trading Organization "shall have legal personality and shall enjoy such legal capacity as may be necessary for the exercise of its functions". The contrast is the more marked in that the next article of the Havana Charter, Article 90, is specifically headed "Status of the Organization in the Territory of Members" and proceeds to deal with *that* particular matter on very much the same lines as Articles 104 and 105 of the United Nations Charter.

Thus, there is ground for thinking that Article 104 of the Charter and, consequentially, Article I, Section 1, of the General Convention on the Privileges and Immunities of the United Nations, made under and for the purposes of Article 104 of the Charter (see the Preamble to the Convention), do not specifically cover or deal with the international personality of the Organization. On the other hand, as was suggested in the United Kingdom written statement, too much importance should not be attached to the fact that later instruments, drafted in the light of greater experience, have dealt specifically with something not covered, or anyhow not dealt with in terms by the Charter, and it would certainly be a curious result if the International Trading Organization, for instance, possessed an international status denied to the United Nations. Therefore, the fact that Article 104 of the Charter does not deal with international legal status as such, should not be held to rule out the possession of international personality by the Organization if such personality appears to be established by, or to result from, the other provisions of the Charter. This view was most vividly illustrated by M. Kaeckenbeeck on behalf of Belgium in his citations from the minutes of the San

Francisco Conference. The same view is also endorsed by an interesting and illuminating commentary on Article 104 of the Charter made in the report of the Chairman of the United States delegation to the San Francisco Conference. It appears in Department of State Publication No. 349, Conference Series 71. This passage reads as follows:

> "This article, i.e. 104, does not deal with what is called the 'international personality' of the Organization. The Committee which discussed this matter was anxious to avoid any implication that the United Nations will be in any sense 'a super-State'. So far as the power to enter into agreements with States is concerned, the answer is given by Article 43 which provides that the Security Council is to be a party to the agreements concerning the availability of armed forces. International practice, while limited, supports the idea of such a body being a party to agreements. No other issue of 'international personality' requires mention in the Charter. Practice will bring about the evolution of appropriate rules so far as necessary."

If the view suggested by this citation is correct, it seems to follow that Article 104 is neutral on the question of the international personality of the Organization. It does not establish this personality, but neither need it be regarded by any process of negative implication as ruling it out. It would, therefore, be proper and legitimate to infer such personality from any other provisions of the Charter which lent themselves to such an inference. In paragraphs 9-11 of its written statement, the Government of the United Kingdom has referred in detail to those articles of the Charter which it relies on as establishing the international personality of the Organization. These provisions constantly refer to the Organization as an entity separate and distinct from the various Member States or even the sum of the Member States, and appear to endow the Organization with a separate personality of its own. These articles also provide in terms for duties owed by the Member States not *inter se* or to each other, but specifically to the Organization as such; and in this connexion I would ask the Court to pay particular attention to such provisions as Article 2, paragraph 5, of the Charter, and to Article 56. Other provisions of the Charter invest the Organization with rights and duties which are essentially international in character. Thus, we have an Organization which (*a*) has a personality separate and distinct from that of its Members or the sum of its Members, and (*b*) has international rights and duties. The sum of all these things is international personality, since, according to the premises adopted for the purposes of the present argument, only international persons can have international rights and obligations, while any entity which does have direct international rights and obligations must be an international person.

May I be permitted, however, to urge some caution as to attaching too much significance to the mere *ability* of the United Nations Organization to enter into agreements with States and governments. After all, private persons and entities can, and often do, the same thing, and with foreign governments. What is really significant is not the mere fact that the Organization enters and can enter into such agreements, but that the agreements themselves, in their form and nature, are essentially international in character.

Article 105 of the Charter is also significant, as I think Professor Chaumont pointed out on behalf of France. It provides that "*The Organization* shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes" and that the representatives of the Members of the United Nations and officials of the Organization are similarly to enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization. The last paragraph of Article 105 says that the General Assembly may make recommendations or propose conventions for the purpose of giving detailed effect to these provisions, and this is accordingly done by the General United Nations Convention on Privileges and Immunities, which provides for extensive immunities and privileges for the Organization, its officials, and representatives of the Members of the United Nations. Now while it may not follow that, because an entity is an international person, it and its servants, etc., must necessarily be invested with privileges and immunities of a diplomatic or quasi-diplomatic character, the converse does seem to hold good, that the possession of international personality is an essential pre-condition of the enjoyment of such privileges or immunities. Even if it is not possible to put it quite as definitely as that, it can safely be said that the enjoyment of these privileges and immunities, which are by Article 105 given directly to the Organization as such, points to, and is evidence of, the possession of international personality on the part of the Organization, and that it would be difficult to reconcile the enjoyment of these privileges and immunities with a position according to which the entity enjoying them was not possessed of any international legal status or personality at all.

Mr. President, and Members of the Court, that concludes my observations on the question of international legal status and personality of the Organization. For the purposes of the remainder of my argument I shall assume the existence of this personality, without which, in the submission of the United Kingdom Government, the Organization cannot have any legal capacity to make an international claim at all, whatever it may be able to do in the domestic spheres of its respective Member States.

The next question, which we now come to, is how far the capacity of the Organization to make a claim extends, and what does its capacity in this respect include. Since the Organization, whatever international personality it may have, is not a State (a point which the United Kingdom Government wishes to stress) it cannot automatically or *ipso facto* possess the same capacities in regard to making international claims as States do. The Organization may indeed possess certain analogous capacities, but, if so, they must derive and be deduced from its own particular kind of international personality, as capacities inherent in, or as reasonably necessary attributes of, such personality, and cannot consist of mere automatic extensions to the Organization of the capacities possessed by States. For this reason, the Government of the United Kingdom feels that the apparent similarities between the position of the Organization and that of a State—such as that the Organization has a flag, may run a postal service, has missions accredited to it, etc.—may be misleading, and that it is better, in the present connexion, to

rely on considerations of principle rather than on factual comparisons of this kind.

Now, relying thus on principle, there would seem to be little difficulty in regarding the Organization, given that it is an international person, as being necessarily possessed of the capacity to make the kind of international claim contemplated by point (*a*) in the first of the two questions addressed to the Court, namely a claim for reparation due in respect of damage caused to the Organization itself, because it would seem to be a necessary and self-evident legal attribute of any juristic entity to have the capacity to make claims in respect of damage done directly to itself; and if the juristic entity concerned has international legal status as an international person, such capacity would necessarily relate to making an international claim under international law in respect of such damage.

This category of damage to the Organization would appear to be capable, for present purposes, of subdivision into two main classes. The first of these would consist of the fundamental loss to the Organization itself, resulting from the injury to or death of its servant, independently of any question of compensation for that servant himself or his dependents. For instance, he may be irreplaceable, with resulting material or moral injury to the work of the Organization. Or the Organization will have lost the time and expenditure involved in his training, or in other ways connected with the post he filled or the function he performed. Or perhaps he can only be replaced at additional cost, and so on.

In the other class would come the cost of compensating the injured party or his dependents out of United Nations funds. The Government of the United Kingdom considers that, where such compensation is contractually due as a matter of legal obligation, as part of the injured party's terms or conditions of employment, it can properly be classed as a loss caused to the Organization itself in consequence of the injury, and that it can properly be claimed by the Organization under that head, to the extent to which the payments in question are reasonable payments by way of compensation having regard to all the relevant circumstances such as the status of the employee, the work he was doing, the nature of the injury, etc.

It will thus be seen, if this view is accepted, that if the Organization invariably entered into contractual obligations to compensate its employees or their dependents in case of death or injury suffered in the course of duty, the question put to the Court in point (*b*) of the first main question addressed to it would never, in practice, arise. However, it cannot be assumed that such contractual obligations will necessarily be entered into in every case, or that the present general policy of the Organization to include terms of this kind in its contracts with its employees will always be maintained in the future. It is, therefore, necessary to consider whether the international personality of the Organization gives it the capacity not merely to claim as reparation due to itself the reimbursement of compensation which it has been obliged to pay by contract to the injured party or his dependents, but also, in case of need, to claim this compensation directly on behalf of those concerned. In other words, can the Organization make a claim not merely in respect of the loss caused to itself, but also on behalf of the injured servant and in respect of the damage caused to him?

The United Kingdom Government considers that the question which has just been asked should be answered in the affirmative, but it also considers that it is important to be clear as to the grounds on which such an affirmative answer should be given. I hope, therefore, that the Court will bear with me if I devote a little time to considering the position of States when making claims on behalf of individuals, as this has a distinct bearing on the question under discussion. The truth is that there is here a definite difficulty which ought not to be minimized or brushed aside, arising from the fact that, where States are concerned, the relationship of nationality between the claimant State and the injured individual is the normal basis on which claims made directly on behalf of such individuals, and in respect of the loss or damage caused to them, are usually put forward. It is quite true that States may be entitled, where for instance the injured party was in their service, to make claims even where the person concerned is not their national (for instance where States employ foreigners in their government, diplomatic or consular services, as they sometimes do); but in that case the State is claiming on its own behalf, not on behalf of the individual, and it claims in respect of the damage done to itself through the loss of its servant and not in respect of the damage done to him. Now, Mr. President and Members of the Court, it is, of course, also true that *all* claims made by a State in respect of injuries to individuals, even where the individual is their national and the claim is made on his behalf, are, in the formal sense, claims made on behalf of the State, because, according to the accepted theory of this matter, where an individual is injured in circumstances involving the responsibility of the State by whom or in whose territory the injury was committed, his own State is held to have sustained an international wrong in the person of its national, and is, on that basis, entitled to make a claim. (See the *Mavrommatis case*, Series A., No. 2, p. 17.) It is, however, none the less clear that in this type of case (i.e. that of an injury to an individual not in the service of his State) although the international wrong is to the State, the actual injury or damage to the State is indirect or, as it were, figurative. That this is so is recognized by the fact that, in such case, the measure of damages is not so much the loss or damage caused to the State itself, which might often be negligible, but that caused to the victim or his dependents, which is likely usually to be considerable. (See the *Chorzów Factory case*, Series A./B., No. 17, p. 27.)

Moreover, these damages, if and when they are recovered by the government to whom they are formally due, are in practice always paid over to the individual or his dependents by that government, and are not simply pocketed or retained by the government.

Now (and here I come to the point to which the foregoing remarks are intended to lead) although in the formal sense it is, accordingly, always the State which, on the international plane, is the party wronged, there are nevertheless several possible bases on which the State may be entitled to make its claim in respect of a breach of international law. The victim may have been in its service though not one of its nationals, or he may have been one of its nationals—or both factors may be present. In each case, however (and leaving aside, for the moment, the special cases which may arise out of breaches of treaties), there must be a legal *nexus* or connexion between the State and the individual concerned—either the relationship of master and servant, or that of nationality, or

both—and in each case the basis of damages is different. In particular, where the sole connexion is that of master and servant, the State can only claim in respect of the direct damage to itself resulting from the loss of or injury to its servant ; any claim on behalf of the servant himself —that is, in respect of the loss or damage suffered by him or his dependents—must, according to traditional practice and doctrine, be made by his national State ; though if the State employing him were under a contractual liability to compensate him or his dependents, it could include the compensation thus paid under the head of loss caused to itself, but formally it would still remain a claim for loss to the State itself and not, as such, a claim on behalf of the individual. The matter may be clearer if considered from the standpoint of the *defendant* State. Where the sole basis of a claim between States is that the injured individual was in the service of the claimant State, the defendant State could properly refuse to pay, in consequence of a claim made by that claimant State, any damages in respect of the injury done to the individual personally, and could require the damages to be limited to the service loss caused to the claimant State itself, since no other relationship would exist between the claimant State and the individual giving legal cause for any other claim. In brief, the defendant State could refuse to entertain any claim in respect of the damage to the individual himself, unless that claim were put forward by the individual's national State. (These remarks are intended to apply to claims in respect of breaches of the general rules of international law. Breaches of treaty may give rise to special considerations to which I shall refer later.)

[*Public sitting of March 9th, 1949, afternoon.*]

Mr. President and Members of the Court, when the Court rose this morning I was arguing that when a State makes a claim against another State on behalf of an individual, it can, apart from certain special treaty cases, only do so if that individual is its national, and that if the individual is merely its servant or employee, the State can only claim on behalf of itself and not on behalf of the individual. The relevance of this in the case of international claims made by the United Nations Organization will, I believe, be at once apparent. It has been suggested—it certainly was suggested in the discussions in the General Assembly—that *because* States can sometimes make claims in cases where damage has been done to persons not their nationals (in particular if the injured person was in their service) *therefore* the criterion of nationality is irrelevant, and the United Nations can make direct claims on behalf of its servants in respect of the damage caused to them as individuals. That is the argument ; but if what I have said earlier is correct, it will be seen at once that this reasoning is incorrect. It is, of course, quite true, as we have seen, that States can make claims on behalf of persons not their nationals but who are in their service. But in that case, as I hope I have shown, the claim should properly be limited to the loss or injury caused to the State itself. It should not include a claim in respect of the damage done to the individual or his dependents. Consequently, on the analogy of State practice, the simple relationship of master and servant between the United Nations Organization and its employees would not, of itself, do more than

enable the Organization to make a claim in respect of the loss caused to itself by the injury to its servant ; and this relationship would not, *per se*, enable the Organization to make a claim on behalf of the injured party or his dependents. Where a State is legally entitled to make a claim on behalf of the victim himself and in respect of the damage caused to him, it is because of the existence of a special relationship between them, namely, nationality, and it would seem, on the same reasoning, that if the United Nations Organization is to be able to make a similar claim, it must equally be because of the existence of some special relationship of an analogous character between it and its servants, over and above the ordinary relationship of master and servant, because, as we have seen, the mere relationship of master and servant would not of itself enable the Organization to do more than claim in respect of its own losses.

Moreover (and this is perhaps the crucial point), except in the case of stateless servants of the Organization, there is, and continues to be, an entity which, whether it chooses to do so or not, *can* make a claim on behalf of persons injured in the course of their service with the United Nations, namely, their own national State. Here, Mr. President and Members of the Court, I think we reach the heart of the difficulty. We have to find a basis, other than the mere relationship of master and servant *per se*, which will enable us to conclude that the Organization has the capacity to make a direct claim on behalf of the individual concerned, not only despite the absence of any nationality link between him and the Organization, but even in spite of the presence of that very link between him and another international entity, his own national State, which is perfectly entitled to make the claim, and whose right to do so continues to exist and to be valid.

In its written statement the United Kingdom Government has suggested that the requisite basis may be found in Article 100 of the Charter which creates a special relationship of *international allegiance* between the Organization and its servants. This, it is suggested, does forge between the Organization and its servants a link going beyond the ordinary relationship of master and servant, and which may provide the necessary basis for claims made by the Organization on behalf of the servants themselves in respect of the damage done to them.

If we follow the argument out, I think we shall see how this comes about. This special allegiance partially displaces the normal allegiance owed by individuals to their national State, and, in all matters affecting the United Nations, replaces it by an allegiance due exclusively to the Organization. Thus, where the servant concerned suffers injury in the course of doing the work of the Organization, in respect of which his allegiance is owed solely to the Organization, and even, if necessary, as against his own national State, it seems not only an appropriate, but even a necessary consequence of this position, that the Organization should be regarded as having the capacity to make a claim in respect of the loss or damage caused to him or his dependents.

Indeed, one might go further and say that the effect of Article 100 of the Charter is that the Members of the United Nations can be regarded as having implicitly recognized that such capacity must exist if the Organization is to be in a position adequately to carry out its functions. The point may be illustrated by considering the case of a United Nations servant who is required in the course of his work to do something which

his own national State disapproves of or considers to be contrary to its own interests. If he suffers injury in the course of doing this, it is then very possible that his national State will refuse to make any claim on his behalf, or will, at any rate, not feel called upon to do so. Consequently, unless the Organization itself be regarded as having the capacity to make claims on behalf of these persons, and in respect of the loss or damage caused to them, there will exist a lack of adequate protection, a position which may be prejudicial to the good functioning of the Organization, because if United Nations servants feel that they cannot look to the Organization for protection if they suffer injury in carrying out their duties, and that they must look, if at all, to their own national State for protection, their allegiance is liable, to that extent, to be divided, and the work of the Organization to suffer in consequence. This is precisely the situation which it was the intention of Article 100 of the Charter to guard against, and the Members of the United Nations must be considered as having recognized this fact. To put the matter in another way, the capacity of the Organization to make a direct claim on behalf of its servants in respect of injuries suffered by them in the course of performing their duties, is really the necessary complement to or, as it were, the opposite facet of the exclusive allegiance owed by them to the Organization; for you cannot ask a man to be faithful solely to an international organization in doing his work and even as against his own national State, and yet expect him to remain solely dependent on that State for protection in case he suffers injury in the course of doing this same work—especially when, as Professor Chaumont pointed out, he may be placed in especial danger by the very nature of this work. Such a position would be obviously contrary to the principle enshrined in the Charter, and clearly inherent in the very conception of the United Nations, that the Organization and its servants should function independently of all considerations of nationality: because, if they *ought* to do so, then they must also be *enabled* to do so, that is to say the Organization must have such capacities as are necessary to bring this about, or, if you prefer it, must not lack capacities in the absence of which this independence may be prejudiced.

There is a further ground, Mr. President and Members of the Court, on the basis of which it can be held that the United Nations Organization has a right to make a direct claim on behalf of its servants, despite the absence of the usual relationship of nationality between the claiming entity and the injured individual. It is recognized that States can make claims, irrespective of the nationality of the person concerned, where they possess a direct treaty right to do so (as might be the case, for instance, under a treaty containing clauses for the protection of minorities) or in any other case where the claim arises out of the breach of a treaty to which the claimant State is a party. Thus we have the principle that where an international person has an international duty owed to it, by reason of a treaty, it is entitled to make an international claim in respect of any breach of that duty. If therefore Members of the United Nations owe a duty to the Organization, as an international person, in respect of its servants, the Organization, as an international person, is entitled to make a claim in respect of any breaches of that duty. (See the *Chorzów Factory case*, Series A./B., No. 17, p. 21.) Now it is clear from Article 105 of the Charter, which was cited earlier, and from the General Convention on the Privileges and Immunities of

the United Nations, made under it, that the Member States of the Organization are under an obligation to extend in their territories to servants of the Organization all such privileges and immunities as are necessary for the performance of their functions. Further, in the case of those Members which have ratified the Privileges and Immunities Convention, there is an obligation to extend to servants of the Organization a number of particular and specified privileges, immunities and protections. It seems a necessary complement or implied consequence of this, that the Member State concerned will not itself be guilty of inflicting injury on a United Nations servant, or of permitting the existence of conditions in its territory (so far as it can by all due diligence prevent them) which might result in such injury being inflicted. These obligations, expressed or implied, which arise directly or indirectly out of the Charter, are essentially obligations towards the Organization as a whole. They are not duties owed directly to the national State of the victim; or, if they are owed to it, they are owed to it not in its individual capacity, but in its capacity as a Member of the Organization, and they are not any more especially owed to the national State than to any other Member of the Organization. It seems to follow, therefore, that the Organization, as the international person to whom these obligations are owed, is entitled to make a claim in respect of the breach of them, and in respect not only of the loss caused to itself, but also in respect of the loss or damage caused to the victim or his dependents. Furthermore, it would seem not only that the Organization is entitled to do this, but also that, in so far as the claim is based on a failure by a Member State to extend to servants of the Organization the protection due under the Charter or any related instrument, the Organization is the only, or at any rate the appropriate and proper party to make the claim.

Mr. President and Members of the Court, this brings me to the last part of my argument, and to the second of the two main questions addressed to the Court, namely how the claim of the Organization is to be reconciled with any claim which the national State of the victim may be entitled to put forward. But before I discuss this, I ought perhaps to say a word on one case in which it has been suggested that the right of the Organization to make a claim on behalf of its servant is manifest—namely where he is stateless. On this subject I entirely agree with the opinion which has been expressed here by Mr. Feller, representing the Secretariat, and I should not mention the matter again if it were not for the fact that in its written statement the United Kingdom Government suggested a view which it now desires to modify. It is quite true that, where the United Nations employee concerned is stateless, a claim by the Organization may be *facilitated* by reason of the fact that there is no possibility of a clash with any national State also entitled to claim. But statelessness does not, of itself, create any special link between the Organization and its officials, and it is unnecessary to have recourse to any argument founded on statelessness, since stateless officials of the Organization are in exactly the same position as any other of its officials, in that they are equally United Nations servants who, under Article 100 of the Charter, owe a special allegiance to the Organization. Indeed, although the position of the Organization in making a claim on behalf of a stateless employee may seem clearer on account of the absence of any possible competing claim, it is, in fact, I believe, weaker, not stronger, because the very statelessness of the

individual precludes the possibility of a conflict of allegiance, such as we have seen might arise if servants of the Organization were obliged to look to their national States rather than to the Organization for protection in respect of injuries caused to them in the course of their work. Consequently, the reasons for holding that the Organization must have the necessary capacity to claim are, if anything, somewhat less strong in the case of stateless individuals than in the case of United Nations servants who have a nationality. The Government of the United Kingdom desires on further reflection to modify in the foregoing sense the suggestion made in the footnote numbered 10 to paragraph 18 of its written statement to the effect that the case is stronger where the employee is stateless.

I now come to the last section of my statement and to the final question before the Court, namely that of reconciling the claim of the United Nations with that of the national State, and on this question I can permit myself to be relatively brief, partly because Mr. Feller has already dealt with it very fully and I agree with most of what he said, and partly because, although the question is put to the Court as if it were a new one, it is in fact, in the submission of the United Kingdom Government, not a new one—or at any rate it presents no new problem of principle. As was pointed out in the written statement of the United Kingdom, the existence of dual, even of multiple, nationality, has always made it possible for more than one State to be entitled to put forward a claim in respect of one and the same injury to one and the same individual. Whatever rules and principles are properly applicable to reconciling such claims would, speaking generally, and with two important exceptions which I shall discuss presently, be equally applicable to the case of reconciling the claim of the United Nations with that of the national State of the victim. In its written statement, the United Kingdom has suggested what some of these rules and principles are, and their main object, of course, while not denying the right of both claimants to make a claim, is to avoid the payment of double damages by the defendant State. If the Court considers that the two sets of claims are reconcilable on some such general basis as has been suggested in the United Kingdom's written statement, the details of the application on this basis as between Members of the Organization, and for the purpose of claims of this character, could be left to be worked out, if the Court so desires, by the Organization itself, for adoption by Member States, as is indeed implied by the final paragraph of the General Assembly's Resolution of December 3rd last, which instructs the Secretary-General to prepare proposals in the light of the Court's advisory opinion, when given, and to submit these proposals to the Assembly at its next regular session. The Court will, however, remember that the problem of reconciling conflicting claims only arises in regard to point (*b*) in the first of the questions put to the Court, and if that point is answered in the affirmative. It has nothing whatever to do with point (*a*). In other words, there is no question of conflict between the right of the Organization to claim in respect of the damage done to itself by reason of the injury to its servant, and the right of the national State of that servant to claim on behalf of the servant—just as there is no conflict in the case of a claim by two States where the injured person is a national of one of them but in the service of the other,

because the basis of the two claims is different. Conflict can only arise where both international entities concerned are claiming on the same basis ; that is, for present purposes, not in respect of the direct damage suffered by themselves as entities, but on behalf of the individual and in respect of the damage done to him. Consequently, the fact that the victim is in the service of the United Nations will not, of itself, avoid the possibility of conflict with the right of his national State, if the Organization is seeking to claim on the victim's behalf as well as on its own.

I have referred to two important exceptions to the general principle suggested, that, whatever rules apply for reconciling a duality of national claims, should be regarded as broadly applicable to reconciling dual claims by the Organization and by the national State of the victim. Where two States both have a claim against a third State in respect of an individual who is a national of each of the claimant States, both claims have, generally speaking, equal status and priority, although, as was suggested in the written statement of the United Kingdom, when it comes to damages it may well be found that one of the two claimant States is entitled to recover all, or the major part, of the amounts due. It is much less certain that the same equality of status exists, or ought to exist, between the claim of the United Nations and the claim of the national State. The claim of the national State cannot, of course, be ousted or overridden ; but there are grounds for thinking that it should defer to that of the United Nations, which should be given priority or preference. In the first place, assuming, as we must, that the United Nations Organization is an international person, that it has capacity to make a claim on behalf of its servants and in respect of the damage done to them as well as the damage done to itself, and further that the claim arises (as it will) out of injuries done to the individual in the course of performing his functions as a United Nations servant, in respect of which he owes an exclusive duty to the Organization, it would seem that the Organization is the natural and proper party to make the claim and that it should be regarded as the one primarily entitled to do so. Secondly, the Court will remember that, in so far as the basis of the claim is the failure of the defendant State to afford to the victim the protection due under, or in consequence of the Charter or any related instrument, it may well be that the Organization is the *only* party entitled to claim on that particular basis, as it is certainly the natural party to do so. Thirdly, as several speakers have pointed out, there are grounds for thinking that the majority of national States, at any rate those who are Members of the Organization, would, in the case of injuries inflicted on United Nations servants in the course of performing their duties, very much prefer that the Organization should make the claim, if it is entitled to do so—in short the feeling would be that, in cases of this kind, the wrong done was primarily a wrong to the Organization as a whole, and as such, and only secondarily a wrong to the victim's national State. By this, Mr. President and Members of the Court, I have in mind that, in those cases, it is not only the national State of the victim which is wronged ; it is in a sense *all* the Members of the United Nations, and therefore it is very appropriate that, acting on behalf of all those Members, the Organization should make the claim rather than one particular Member of the United Nations which, although it may have suffered a separate wrong because the individual is

its national, is also a participant in the general United Nations system, and suffers, in *that* respect, no greater wrong than any other Member of that system. Now, even if the Court were to consider that it was not possible to regard these principles as amounting yet to established legal rules, it is to be hoped and, I think, expected, that the practice of States will establish in due course a rule in favour of the priority of the claim of the United Nations in this type of case. The claim of the national State would not, of course, be ousted or destroyed. Thus, if the Organization failed to make any claim in respect of the loss or damage done to the victim, the case being one in which he did not receive any compensation from the Organization itself—or if in such a case the Organization made a claim but was not successful in recovering any damages, the national State would be free to take any action that seemed to it to be useful and appropriate.

The other exception to the general applicability in these cases of the principles governing duality of claims, relates to the very important subject of injuries inflicted on a United Nations servant by his own national State, or in circumstances entailing the responsibility of that State. This is one of the most important aspects, if not in a sense the most important, of the questions put to the Court, since it affords a test, in the most crucial form, of the principles enshrined in the Charter and inherent in the whole conception of the Organization, of the independence of the United Nations and its servants from all considerations of nationality.

Where an individual is a national of two States and suffers injuries at the hands of one of them, it is the accepted rule, save in exceptional cases, for instance where there exists a special treaty right, that the other national State cannot make a claim in respect of the injury to the individual, though if, for instance, the individual was in its service, that State can claim for any direct injury to itself. It is unnecessary for me to tell the Court that the principle involved is that, subject to the treaty exception just referred to, you cannot make an international claim against a State on behalf of one of its own nationals, such an issue being for settlement between the government of that State and its own national, on the basis of the law and constitution of the State concerned. This position is assisted by the doctrine of what is called "master nationality", in those cases where the individual was actually present at the time of the injury in the territory of the responsible State, when his local nationality for the time being prevails over all others.

It is clear that if a similar rule were held to operate by analogy, as regards claims by the United Nations where the injury to its servants had been inflicted by their own national State, or in circumstances entailing the responsibility of that State, an important breach would be made in the principle of the independence of the Organization and its servants from all considerations of nationality; for this case is not only liable, but in a sense very likely to arise—the possibility and probability of it doing so being inherent in the character and work of the Organization. Suppose, for instance, that the United Nations decides to send a commission of enquiry, or it may be a boundary commission, or a commission to establish a truce or to observe and report on certain facts and conditions: it may be essential for the proper functioning of that commission that one or more of its members should have first-hand knowledge of local conditions, and this may well entail the necessity

of having a national of the country as a member of the commission. Nothing could be more important, or more necessary for the proper carrying out of the work of the Organization, than that, in such a case, the Organization should be possessed of rights on behalf of the individual concerned, even as against his own government. In this connexion, Mr. President and Members of the Court, I had been going to cite a passage from the concluding paragraph of the United Kingdom's written statement, but as Mr. Feller did me the honour to cite this passage in his own speech, I will not cite it again but I will only ask the Court to be kind enough to pay particular attention to the observations contained in it.

There is a further argument leading to the same conclusion. It is admitted that where a treaty right exists, parties to the treaty are entitled to intervene in case of a breach of the treaty, and even, in appropriate cases, to make a claim, although the individual concerned is not only not one of their own nationals, but is actually a national of the State which has committed the breach of treaty. Treaties containing minority clauses or provisions safeguarding the human rights of the population of a country, are outstanding examples of this class of treaty. If the treaty is broken, the other parties to it have the right to protest, possibly to intervene, possibly to claim, although the injured party may not be their national, and may even be a national of the State which has broken the treaty, because the claim is founded, *in law*, not on considerations relating to the individual, but on the breach of the treaty. According to this principle, therefore, a claim by the United Nations would be legally valid if it was based on a breach of the obligation of Member States, arising under or in consequence of the Charter or related instruments, to afford due protection to United Nations servants engaged on United Nations work or missions (an obligation which comports no exception on account of the local nationality of the United Nations servant concerned) ; by which I mean, Mr. President and Members of the Court, that the obligations contained in Article 105 of the Charter and in the General Convention on Privileges and Immunities, and the implied obligations which result from those written obligations, are quite general and there is no exception written into or implied from them concerning the case where the individual servant happens to be a national of the State which commits the injury. Such a claim, therefore, on the part of the Organization would be good, irrespective of any consideration of nationality, since it would be by way of enforcement of a treaty right owned by the Organization as such, or at any rate in respect of a breach of an obligation due to it by treaty, and covering the nationals of the defendant State if they are United Nations servants.

Mr. President and Members of the Court, I have now finished my arguments and I must state my conclusion, first thanking the Court for the attention given me in the presentation of a case which, however clearly I have tried to put it, is necessarily full of difficulties. I should perhaps add that, in all this, I have purposely avoided going into the question of the position of the United Nations Organization vis-à-vis non-member States. The whole case for the international personality and capacity of the Organization is so closely bound up with the Charter and its related instruments that it is obviously applicable primarily to Members of the Organization. Certain of the arguments making up this case would, however, be equally applicable to any non-member

State who could be held, in one way or another, to have recognized the international personality of the United Nations and its capacities under the Charter. Others of these arguments, in particular those founded on the obligations of Member States towards the Organization under the Charter or its related instruments, would not, as such, be applicable to non-member States, because they are not parties to the Charter, and therefore cannot have any direct obligations to the Organization under it.

I conclude then, as follows, that for the reasons which have been given in my oral statement here, and for those contained in the United Kingdom's written statement (except in so far as they are modified by the present oral statement), the Government of the United Kingdom considers that the first of the two questions put to the Court should, as a matter of law, be answered in the affirmative as regards both its point (*a*) and its point (*b*); and that the answer to the second question is that the claims of the United Nations and of the national State of the victim should be reconciled on broadly the same basis as is applicable to claims by States both or all of whose nationalities the injured party possesses, with the two exceptions already noticed in favour, first, of the priority of a claim of the United Nations over that of the victims of a national State, and secondly, of the right of the Organization to claim even when its servant is a national of the State responsible for the injury.

I thank the Court.

DOC. Nº 5

United Nations S/RES/1542 (2004)

Security Council

Distr.: General
30 April 2004

Resolution 1542 (2004)

Adopted by the Security Council at its 4961st meeting, on 30 April 2004

The Security Council,

Recalling resolution 1529 (2004) of 29 February 2004,

Welcoming the report of the Secretary-General on 16 April 2004 (S/2004/300) and supporting its recommendations,

Affirming its strong commitment to the sovereignty, independence, territorial integrity and unity of Haiti,

Deploring all violations of human rights, particularly against the civilian population, and urging the Transitional Government of Haiti ("Transitional Government") to take all necessary measures to put an end to impunity and to ensure that the continued promotion and protection of human rights and the establishment of a State based on the rule of law and an independent judiciary are among its highest priorities,

Reaffirming also its resolutions 1325 (2000) on women, peace and security, 1379 (2001), 1460 (2003) and 1539 (2004) on children in armed conflicts, as well as resolutions 1265 (1999) and 1296 (2000) on the protection of civilians in armed conflicts,

Welcoming and encouraging efforts by the United Nations to sensitize peacekeeping personnel in the prevention and control of HIV/AIDS and other communicable diseases in all its peacekeeping operations,

Commending the rapid and professional deployment of the Multinational Interim Force (MIF) and the stabilization efforts it has undertaken,

Taking note of the Political Agreement reached by some key parties on 4 April 2004 and *urging* all parties to work without delay towards a broad political consensus on the nature and duration of the political transition,

Reiterating its call upon the international community to continue to assist and support the economic, social and institutional development of Haiti over the long term, and welcoming the intention of the Organization of American States (OAS), the Caribbean Community (CARICOM), and of the international donor community, as well as international financial institutions, to participate in those efforts,

Noting the existence of challenges to the political, social and economic stability of Haiti and determining that the situation in Haiti continues to constitute a threat to international peace and security in the region,

1. *Decides* to establish the United Nations Stabilization Mission in Haiti (MINUSTAH), the stabilization force called for in resolution 1529 (2004), for an initial period of six months, with the intention to renew for further periods; and requests that authority be transferred from the MIF to MINUSTAH on 1 June 2004;

2. *Authorizes* remaining elements of the MIF to continue carrying out its mandate under UNSCR 1529 (2004) within the means available for a transition period not exceeding 30 days from 1 June 2004, as required and requested by MINUSTAH;

3. *Requests* the Secretary-General to appoint a Special Representative in Haiti who will have overall authority on the ground for the coordination and conduct of all the activities of the United Nations agencies, funds and programmes in Haiti;

4. *Decides* that MINUSTAH will consist of a civilian and a military component in accordance with the Secretary-General's report on Haiti (S/2004/300): a civilian component will include a maximum of 1,622 Civilian Police, including advisers and formed units and a military component to include up to 6,700 troops of all ranks; and *requests further* that the military component report directly to the Special Representative through the force commander;

5. *Supports* the establishment of a Core Group chaired by the Special Representative and comprising also his/her Deputies, the Force Commander, representatives of OAS and CARICOM, other regional and subregional organizations, international financial institutions and other major stakeholders, in order to facilitate the implementation of MINUSTAH's mandate, promote interaction with the Haitian authorities as partners, and to enhance the effectiveness of the international community's response in Haiti, as outlined in the Secretary-General's report (S/2004/300);

6. *Requests* that in carrying out its mandate, MINUSTAH cooperate and coordinate with the OAS and CARICOM;

7. *Acting* under Chapter VII of the Charter of the United Nations with regard to Section I below, *decides* that MINUSTAH shall have the following mandate:

I. Secure and Stable Environment:

(a) in support of the Transitional Government, to ensure a secure and stable environment within which the constitutional and political process in Haiti can take place;

(b) to assist the Transitional Government in monitoring, restructuring and reforming the Haitian National Police, consistent with democratic policing standards, including through the vetting and certification of its personnel, advising on its reorganization and training, including gender training, as well as monitoring/mentoring members of the Haitian National Police;

(c) to assist the Transitional Government, particularly the Haitian National Police, with comprehensive and sustainable Disarmament, Demobilization and

Reintegration (DDR) programmes for all armed groups, including women and children associated with such groups, as well as weapons control and public security measures;

(d) to assist with the restoration and maintenance of the rule of law, public safety and public order in Haiti through the provision inter alia of operational support to the Haitian National Police and the Haitian Coast Guard, as well as with their institutional strengthening, including the re-establishment of the corrections system;

(e) to protect United Nations personnel, facilities, installations and equipment and to ensure the security and freedom of movement of its personnel, taking into account the primary responsibility of the Transitional Government in that regard;

(f) to protect civilians under imminent threat of physical violence, within its capabilities and areas of deployment, without prejudice to the responsibilities of the Transitional Government and of police authorities;

II. Political Process:

(a) to support the constitutional and political process under way in Haiti, including through good offices, and foster principles and democratic governance and institutional development;

(b) to assist the Transitional Government in its efforts to bring about a process of national dialogue and reconciliation;

(c) to assist the Transitional Government in its efforts to organize, monitor, and carry out free and fair municipal, parliamentary and presidential elections at the earliest possible date, in particular through the provision of technical, logistical, and administrative assistance and continued security, with appropriate support to an electoral process with voter participation that is representative of the national demographics, including women;

(d) to assist the Transitional Government in extending State authority throughout Haiti and support good governance at local levels;

III. Human Rights:

(a) to support the Transitional Government as well as Haitian human rights institutions and groups in their efforts to promote and protect human rights, particularly of women and children, in order to ensure individual accountability for human rights abuses and redress for victims;

(b) to monitor and report on the human rights situation, in cooperation with the Office of the United Nations High Commissioner for Human Rights, including on the situation of returned refugees and displaced persons;

8. *Decides* that MINUSTAH in collaboration with other partners shall provide advice and assistance within its capacity to the Transitional Government:

(a) in the investigation of human rights violations and violations of international humanitarian law, in collaboration with the Office of the High Commissioner for Human Rights, to put an end to impunity;

(b) in the development of a strategy for reform and institutional strengthening of the judiciary;

9. *Decides further* that MINUSTAH shall coordinate and cooperate with the Transitional Government as well as with their international partners, in order to facilitate the provision and coordination of humanitarian assistance, and access of humanitarian workers to Haitian people in need, with a particular focus on the most vulnerable segments of society, particularly women and children;

10. *Authorizes* the Secretary-General to take all necessary steps to facilitate and support the early deployment of MINUSTAH in advance of the United Nations assumption of responsibilities from the Multinational Interim Force;

11. *Requests* the Haitian authorities to conclude a status-of-force agreement with the Secretary-General within 30 days of adoption of this resolution, and notes that pending the conclusion of such an agreement the model status-of-force agreement dated 9 October 1990 (A/45/594) shall apply provisionally;

12. *Demands* strict respect for the persons and premises of the United Nations and associated personnel, the OAS, CARICOM and other international and humanitarian organizations, and diplomatic missions in Haiti, and that no acts of intimidation or violence be directed against personnel engaged in humanitarian, development or peacekeeping work; *demands further* that all parties in Haiti provide safe and unimpeded access to humanitarian agencies to allow them to carry out their work;

13. *Emphasizes* the need for Member States, United Nations organs, bodies and agencies and other international organizations, in particular OAS and CARICOM, other regional and subregional organizations, international financial institutions and non-governmental organizations to continue to contribute to the promotion of the social and economic development of Haiti, in particular for the long-term, in order to achieve and sustain stability and combat poverty;

14. *Urges* all the above-mentioned stakeholders, in particular the United Nations organs, bodies, and agencies to assist the Transitional Government of Haiti in the design of a long-term development strategy to this effect;

15. *Calls on* the Member States to provide substantial international aid to meet the humanitarian needs in Haiti and to permit the reconstruction of the country, utilizing relevant coordination mechanisms, and *further calls* upon States, in particular those in the region, to provide appropriate support for the actions undertaken by the United Nations organs, bodies and agencies;

16. *Requests* the Secretary-General to provide an interim report to the Council on the implementation of this mandate, and to provide an additional report prior to the expiration of the mandate, containing recommendations to the Council on whether to extend, restructure or reshape the mission to ensure the mission and its mandate remain relevant to changes in Haiti's political, security and economic development situation;

17. *Decides* to remain seized of the matter.

DOC. Nº 6

[FRENCH TEXT — TEXTE FRANÇAIS]

ACCORD ENTRE L'ORGANISATION DES NATIONS UNIES ET LE GOUVERNEMENT HAÏTIEN CONCERNANT LE STATUT DE L'OPÉRATION DES NATIONS UNIES EN HAÏTI

I. DÉFINITIONS

1. Les définitions ci-après s'appliquent aux fins du présent Accord:

a) Le terme "MINUSTAH" désigne la Mission des Nations Unies pour la stabilisation en Haïti, établie conformément à la résolution 1542 (2004) du Conseil de sécurité en date du 30 avril 2004 et dont le mandat est défini dans la résolution susmentionnée sur la base des recommandations formulées par le Secrétaire général dans son rapport du 16 avril 2004 (S/2004/300).

Comprenant:

i) Le "Représentant spécial" désigné par le Secrétaire général de l'Organisation des Nations Unies avec l'assentiment du Conseil de sécurité. Si ce n'est au paragraphe 26 ci-après, toute mention du Représentant spécial dans le présent Accord englobera tous membres de la MINUSTAH auxquels le Représentant spécial aura pu déléguer des attributions ou pouvoirs précis;

ii) Une "composante civile" comprenant des fonctionnaires de l'Organisation des Nations Unies et le personnel affecté par le Secrétaire général au service du Représentant spécial ou fourni par les Etats participants pour faire partie de la MINUSTAH;

iii) Une "composante militaire" comprenant du personnel militaire et civil fourni à la MINUSTAH par les Etats participants à la demande du Secrétaire général;

b) L'expression "membres de la MINUSTAH" désigne le Représentant spécial du Secrétaire général et tout membre des composantes civiles et militaires;

c) Le terme "Gouvernement" désigne le Gouvernement Haïtien;

d) Le terme "territoire" désigne le territoire d'Haïti;

e) L'expression "État participant" désigne l'un quelconque des États qui fournissent du personnel, des services, des équipements, des approvisionnements, des fournitures, des matériels et autres biens aux composantes susmentionnées de la MINUSTAH;

f) Le terme "Convention" désigne la Convention sur les privilèges et immunités des Nations Unies adoptée par l'Assemblée générale des Nations Unies le 13 février 1946 à laquelle la République d'Haïti est partie;

g) Le terme "contractants" désigne les personnes, autres que les membres de la MINUSTAH, y compris les personnes physiques et morales et leurs employés et sous-traitants que l'Organisation des Nations Unies engage pour prêter des services ou fournir des équipements, approvisionnements, fournitures, matériels et autres biens à l'appui des activités de la MINUSTAH. Ces contractants ne sont pas considérés comme des tiers bénéficiaires aux termes du présent Accord;

h) Le terme "véhicules" désigne les véhicules civils et militaires utilisés par l'Organisation des Nations Unies et exploités par les membres de la MINUSTAH et les contractants dans le cadre des activités de la MINUSTAH;

i) Le terme "navires" désigne les navires civils et militaires utilisés par l'Organisation des Nations Unies et exploités par les membres de la MINUSTAH, les Etats participants et les contractants dans le cadre des activités de la MINUSTAH;

j) Le terme "aéronefs' désigne les aéronefs civils et militaires utilisés, par l'Organisation des Nations Unies et exploités par les membres de la MINUSTAH, les Etats participants et les contractants dans le cadre des activités de la MINUSTAH.

II. Application du présent Accord

2. Sauf stipulation expresse contraire, les dispositions du présent Accord et toute obligation contractée par le Gouvernement ou tous privilèges, immunités, facilités ou concessions accordés à la MINUSTAH ou à l'un quelconque de ses membres ou aux contractants s'appliquent sur l'ensemble du territoire d'Haïti.

III. Application de la Convention

3. La MINUSTAH, ses biens, fonds et avoirs ainsi que ses membres, y compris le Représentant spécial, jouissent des privilèges et immunités spécifiés dans le présent Accord et dans la Convention.

4. L'article II de la Convention, qui s'applique à la MINUSTAH, s'applique également aux biens, fonds et avoirs des Etats participants utilisés dans le cadre de ladite opération.

IV. Statut de la MINUSTAH

5. La MINUSTAH et ses membres s'abstiennent de tous actes ou activités incompatibles avec le caractère impartial et international de leurs fonctions ou contraires à l'esprit du présent accord. Ils respectent tous les lois et les règlements du pays. Le Représentant spécial prend toutes les dispositions voulues pour assurer le respect de ces obligations.

6. Sans préjudice au mandat de la MINUSTAH et à son statut international

a) L'Organisation des Nations Unies s'assure que la MINUSTAH s'acquitte de sa mission en Haïti dans le plein respect des principes et règles des conventions internationales relatives à la conduite du personnel militaire. Ces conventions internationales comprennent les quatre Conventions de Genève du 12 août 1949 et leurs Protocoles additionnels du 8juin 1977 et la Convention internationale de l'UNESCO pour la protection des biens culturels en cas de conflit armé, en date du 14 mai 1954;

b) Le Gouvernement s'engage à traiter en tout temps le personnel militaire de la MINUSTAH dans le plein respect des principes et règles énoncés dans les conventions internationales applicables au traitement du personnel militaire. Ces conventions internationales comprennent les quatre Conventions de Genève du 12 août 1949 et leurs Protocoles additionnels du 8 juin 1977.

LA MINUSTAH s'assure que les membres de son personnel militaire ont parfaitement connaissance des principes et règles énoncés dans les conventions internationales susvisés.

7. Le Gouvernement s'engage à respecter le statut exclusivement international de la MINUSTAH.

Drapeau des Nations Unies et marques d'identification distinctive des Nations Unies

8. Le Gouvernement reconnaît à la MINUSTAH le droit d'arborer en Haïti le drapeau des Nations Unies à son siège, dans ses camps ou autres installations, ainsi que sur ses véhicules, navires, ou conformément à toute autre décision du Représentant spécial. Tous autres drapeaux ou fanions ne peuvent être arborés qu'à titre exceptionnel. Dans ce cas, la MINUSTAH examine avec bienveillance les observations ou demandes du Gouvernement.

9. Les véhicules, navires et aéronefs de la MINUSTAH portent une marque d'identification distinctive des Nations Unies, dont il est donné notification au Gouvernement.

Communications

10. En matière de communications, la MINUSTAH bénéficie des facilités prévues à l'article III de la Convention et, en coordination avec le Gouvernement, en fait usage dans la mesure nécessaire à l'accomplissement de sa tâche. Les questions qui pourraient se poser en matière de communications et qui ne seraient pas expressément réglées dans le présent Accord sont traitées conformément aux dispositions pertinentes de la Convention.

11. Sous réserve des dispositions du paragraphe 10:

a) Là MINUSTAH a le droit d'installer et d'exploiter des stations de radio des Nations Unies pour diffuser des informations sur son mandat. Elle est également habilitée à installer et à exploiter des stations émettrices ou réceptrices de radio et des systèmes de communication par satellites afin de relier les points voulus sur le territoire tant entre eux qu'avec les bureaux des Nations Unies dans d'autres pays, et d'échanger des données par téléphone, en phonie, par télécopie et par d'autres moyens électroniques avec le réseau mondial de télécommunications des Nations Unies. Les stations de radio et les services de télécommunications des Nations Unies sont exploités conformément à la Convention internationale des télécommunications et au Règlement des radiocommunications, et les fréquences utilisées pour l'exploitation des stations sont attribuées par le Gouvernement sans retard.

b) La MINUSTAH bénéficie, sur le territoire, du droit de communiquer librement par radio (transmissions par satellites, radiotéléphones mobiles et postes portatifs incluses), téléphone, courrier électronique, télécopie ou tout autre moyen, et de mettre en place les installations nécessaires pour assurer les communications considérées à l'intérieur de ses locaux et entre eux, y compris la pose de câbles et de lignes terrestres et l'installation d'émetteurs, de récepteurs et de répéteurs fixes et mobiles. Les fréquences radio utilisées sont fixées en coopération avec le Gouvernement et sont attribuées sans retard. Il est entendu que l'interconnexion avec les réseaux locaux de téléphone, télécopie et autres moyens électroniques de transmission des données ne peut être établie qu'après consultation avec le Gouvernement et conformément aux dispositions prises avec lui, et que les tarifs d'utilisation desdits réseaux seront les plus favorables possibles.

c) La MINUSTAH peut prendre les dispositions nécessaires par ses propres moyens pour traiter et transporter les courriers personnels adressés ou provenant de ses membres. Le Gouvernement, qui doit être informé de la nature de ces dispositions, n'entrave ni ne

censure les courriers de la MINUSTAH ou de ses membres. Au cas où les dispositions postales prises pour les courriers personnels des membres de la MINUSTAH s'étendraient à des virements de fonds ou à l'expédition de paquets et colis, les conditions régissant ces opérations seront fixées en accord avec le Gouvernement.

Déplacements et transports

12. La MINUSTAH et ses membres, ainsi que ses contractants, jouissent, avec les véhicules, y compris les véhicules des contractants utilisés exclusivement pour la prestation de services à la MINUSTAH, les navires, les aéronefs et les matériels, de la liberté de mouvement sans retard dans tout le territoire. En ce qui concerne les mouvements importants de personnel, matériel, véhicules ou aéronefs qui transiteraient par les aéroports ou emprunteraient les voies ferrées ou les routes utilisées pour la circulation générale sur le territoire, cette liberté sera coordonnée avec le Gouvernement. Celui-ci s'engage à fournir à la MINUSTAH, lorsqu'il y aura lieu, les cartes et autres éléments d'information, concernant notamment les dangers et obstacles, qui pourront être utiles pour faciliter ses mouvements.

13. Les véhicules de la MINUSTAH ne sont pas assujettis à la réglementation haïtienne en matière d'immatriculation et de certification, mais doivent être couverts par l'assurance responsabilité civile.

14. La MINUSTAH et ses membres, ainsi que ses contractants, et avec leurs véhicules, y compris ceux qui sont utilisés uniquement pour la prestation de services à la MINUSTAH, les navires et aéronefs, peuvent utiliser les routes, les ponts, les canaux et autres voies navigables, les installations portuaires, les aérodromes et l'espace aérien sans s'acquitter de charges, droits de péage, droits d'atterrissage, frais de garage ou de survol, ni de frais et charges portuaires, y compris les droits de quai et de pilotage. Toutefois, la MINUSTAH ne réclamera pas l'exemption des droits qui correspondent en fait à la rémunération de services rendus, étant entendu que ces droits pour services rendus seront calculés aux taux les plus favorables.

Privilèges et immunités de la MINUSTAH

15. Là MINUSTAH en tant qu'organe subsidiaire de l'Organisation des Nations Unies bénéficie du statut, des privilèges et des immunités des Nations Unies prévus dans la Convention. La disposition de l'article II de la Convention qui s'applique à la MINUSTAH s'applique aussi aux biens, fonds et avoirs des Etats participants dans le cadre des contingents nationaux en service à la MINUSTAH comme prévu au paragraphe 4 du présent Accord. Le Gouvernement reconnaît en particulier à la MINUSTAH le droit:

a) D'importer, en franchise et sans restriction aucune, le matériel et les approvisionnements, les fournitures, les carburants et autres biens destinés à son usage exclusif et officiel ou à la revente dans les économats prévus ci-après;

b) De créer, d'entretenir et de gérer, à son siège, dans ses camps et dans ses postes, des économats destinés à ses membres mais non au personnel recruté localement. Ces économats peuvent offrir des produits de consommation et autres articles précisés d'avance. Le Représentant spécial prend toutes mesures nécessaires pour empêcher l'utilisation abusive de ces économats, ainsi que la vente ou la revente des produits en question à des personnes

autres que des membres de la MINUSTAH, et examine avec bienveillance les observations ou demandes du Gouvernement relatives au gérance des économats;

c) De dédouaner, en franchise et sans restriction aucune, le matériel et les approvisionnements, fournitures, carburants et autres biens destinés à son usage exclusif et officiel ou à la revente dans les économats prévus ci-dessus;

d) De réexporter ou de céder de toute autre manière le matériel encore utilisable, et tous les approvisionnements, fournitures, carburants et autres biens non consommés ainsi importés ou dédouanés et non transférés ou autrement cédés, à des modalités etconditions préalablement convenues, aux autorités locales compétentes de l'Etat d'Haïti ou à une entité désignée par celles-ci.

La MINUSTAH et le Gouvernement conviendront d'une procédure mutuellement satisfaisante, notamment en matière d'écritures, pour que les opérations d'importation, de dédouanement, de transfert ou d'exportation s'accomplissent dans les meilleurs délais.

V. Facilités Accordées à la MINUSTAH et ses Contractants

Locaux requis pour les activités opérationnelles et administratives de la MINUSTAH

16. Le Gouvernement fournira à la MINUSTAH, à titre gracieux et en accord avec le Représentant spécial, les emplacements pour son siège, ses camps et autres locaux nécessaires pour la conduite de ses activités opérationnelles et administratives. Sans préjudice, tous ces locaux seront inviolables et soumis à l'autorité et au contrôle exclusif de l'Organisation des Nations Unies. Le Gouvernement garantira le libre accès à ces locaux.

17. Le Gouvernement s'engage à aider de son mieux la MINUSTAH à obtenir ou à lui fournir, s'il y a lieu, l'eau, l'électricité et les autres facilités nécessaires, gratuitement ou, si cela n'est pas possible, aux tarifs les plus favorables, et, en cas d'interruption ou de menaces d'interruption du service, à faire en sorte, dans toute la mesure possible, que les besoins de la MINUSTAH se voient assigner le même rang de priorité que ceux des services gouvernementaux essentiels. Lorsque l'eau, l'électricité et les autres facilités nécessaires ne sont pas fournis gratuitement, la MINUSTAH s'acquittera des montants dus à ce titre suivant des modalités à déterminer en accord avec les autorités compétentes. LA MINUSTAH sera responsable de l'entretien des facilités ainsi fournies.

18. LA MINUSTAH a le droit, le cas échéant, de produire dans ses locaux, ainsi que de transporter et de distribuer, l'électricité qui lui est nécessaire.

19. L'Organisation des Nations Unies est seule habilitée à autoriser des responsables gouvernementaux ou toute autre personne non membre de la MINUSTAH à pénétrer dans ces locaux.

Approvisionnements, fournitures et services et arrangements sanitaires

20. Le Gouvernement consent à accorder, dans les plus brefs délais possible, toutes les autorisations et licences et tous les permis nécessaires à l'importation et à l'exportation d'équipements, d'approvisionnements, de fournitures, de matériels et autres biens utilisés exclusivement pour l'usage de la MINUSTAH, même lorsque l'importation ou l'exportation est effectué par des contractants, libre et en franchise de tous droits, frais ou taxes, y compris la taxe sur la valeur ajoutée, s'il s'agit d'achats.

21. Le Gouvernement s'engage à aider, dans la mesure du possible, la MINUSTAH à se procurer sur place les équipements, approvisionnements, fournitures, carburants, matériels et autres biens et services nécessaires pour assurer sa subsistance et conduire ses opérations. En ce qui concerne les équipements, approvisionnements, fournitures, matériels et autres biens acquis sur place par la MINUSTAH ou ses contractants, à titre officiel et pour son usage exclusif, le Gouvernement prendra les dispositions administratives requises pour rembourser les droits ou taxes incorporés au prix ou en vue de leur exonération. Le Gouvernement exonérera de taxe à la vente tous les achats effectués sur place, à titre officiel, par la MINUSTAH et ses contractants. Sur la base des observations faites et des informations fournies par le Gouvernement à cet égard, la MINUSTAH évitera que les achats effectués sur place aient un effet préjudiciable sur l'économie locale.

22. Afin de permettre aux contractants, autres que les ressortissants haïtiens résident en Haïti, de fournir adéquatement les services destinés à appuyer la MINUSTAH, le Gouvernement accepte de leur accorder des facilités de sorte qu'ils puissent entrer en Haïti en sortir et qu'ils puissent être rapatriés en période de crise. A cette fin, le Gouvernement délivrera promptement, gratuitement et sans restrictions aux contractants tous les visas, permis ou autorisations nécessaires. Les contractants, autres que les ressortissants haïtiens résidant en Haïti, seront exonérés d'impôt sur les services fournis à la MINUSTAH, y compris l'impôt sur les sociétés, l'impôt sur le revenu, les taxes sur la sécurité sociale et autres impôts similaires découlant directement de la prestation de ces services.

23. La MINUSTAH et le Gouvernement collaboreront au fonctionnement des services sanitaires et coopéreront dans toute la mesure possible en matière de santé, en particulier pour ce qui a trait à la lutte contre les maladies transmissibles, conformément aux dispositions des conventions internationales.

Recrutement de personnel local

24. La MINUSTAH peut recruter le personnel local dont elle a besoin. Si le Représentant spécial en fait la demande, le Gouvernement s'engage à faciliter le recrutement par la MINUSTAH de personnels locaux qualifiés et à en accélérer la procédure.

Monnaie

25. Le Gouvernement s'engage à mettre à la disposition de la MINUSTAH, contre remboursement en une devise mutuellement acceptable, les sommes en monnaie locale qui lui seront nécessaires, notamment pour payer les traitements de ses membres, le taux de change le plus favorable à la MINUSTAH étant retenu à cet effet.

VI. Statut des Membres de la Minustah

Privilèges et immunités

26. Le Représentant spécial, le commandant de la composante militaire de la MINUSTAH et les collaborateurs de haut rang du Représentant spécial dont il peut être convenu avec le Gouvernement jouissent du statut spécifié aux sections 19 et 27 de la Convention, dans la mesure où les privilèges et immunités visés sont ceux que le droit international reconnaît aux envoyés diplomatiques.

27. Les fonctionnaires des Nations Unies qui sont affectés à la composante civile de la MINUSTAH, de même que les Volontaires des Nations Unies qui y sont intégrés, demeurent des fonctionnaires des Nations Unies et peuvent se prévaloir des privilèges et immunités énoncés aux articles V et VII de la Convention.

28. Le personnel de la police civile et le personnel civil autre que les fonctionnaires des Nations Unies dont les noms sont communiqués à cette fin au Gouvernement par le Représentant spécial sont considérés comme des experts en mission au sens de l'article VI de la Convention.

29. Le personnel militaire des contingents nationaux affecté à la composante militaire de la MINUSTAH jouit des privilèges et immunités expressément prévus dans le présent Accord.

30. Sauf disposition contraire du présent Accord, les membres de la MINUSTAH recrutés localement jouissent des immunités concernant les actes accomplis en leur qualité officielle, de l'exonération d'impôt et de l'exemption de toute obligation relative au service national prévues aux alinéas a), b) et c) de la section 18 de la Convention.

31. Les traitements et émoluments que l'Organisation des Nations Unies ou un État participant versent aux membres de la MINUSTAH et les revenus que ceux-ci reçoivent de sources situées à l'extérieur d'Haïti ne sont pas assujettis à l'impôt. Les membres de la MINUSTAH sont également exonérés de tout autre impôt direct, à l'exception des taxes municipales qui frappent les services, ainsi que de tous droits et frais d'enregistrement.

32. Les membres de la MINUSTAH ont le droit d'importer en franchise leurs effets personnels, lors de leur arrivée en et de leur départ d'Haïti. Les lois et règlements relatifs aux douanes et au change sont applicables aux biens personnels qui ne leur sont pas nécessaires, du fait de leur présence en Haïti au service de la MINUSTAH. S'il en est averti à l'avance et par écrit, le Gouvernement accorde des facilités spéciales en vue de l'accomplissement rapide des formalités d'entrée et de sortie pour tous les membres de la MINUSTAH, y compris la composante militaire. Nonobstant le règlement des changes susmentionné, les membres de la MINUSTAH pourront, à leur départ d'Haïti, emporter les sommes dont le Représentant spécial aura certifié qu'elles ont été versées par l'Organisation des Nations Unies ou par un Etat participant à titre de traitements et d'émoluments et constituent un reliquat raisonnable de ces fonds. Des arrangements spéciaux seront conclus en vue de mettre en oeuvre les présentes dispositions dans l'intérêt du Gouvernement et des membres de la MINUSTAH.

33. Le Représentant spécial coopère avec le Gouvernement et prête toute l'assistance en son pouvoir pour assurer le respect des législations et réglementations douanières et fiscales d'Haïti par les membres de la MINUSTAH, conformément aux dispositions du présent Accord.

Entrée, séjour et départ

34. Le Représentant spécial et les membres de la MINUSTAH, chaque fois qu'il le leur demande, ont le droit d'entrer en Haïti, d'y séjourner et d'en repartir.

35. Le Gouvernement s'engage à faciliter l'entrée en Haïti du Représentant spécial et des membres de la MINUSTAH ainsi que leur sortie, et est tenu au courant de ces mouvements. A cette fin, le Représentant spécial et les membres de la MINUSTAH sont dispensés

des formalités de passeport et de visa, ainsi que de l'inspection et des restrictions prévues par les services d'immigration, et du paiement de tous droits ou taxes à l'entrée ou à la sortie du territoire. Ils ne sont pas davantage assujettis aux dispositions régissant le séjour des étrangers en Haïti, notamment aux dispositions relatives à l'enregistrement, mais n'acquièrent pour autant aucun droit de résider ou d'être domiciliés en permanence en Haïti.

36. À l'entrée ou à la sortie du territoire, seuls les titres ci-après sont exigés des membres de la MINUSTAH a) ordre de mission individuel ou, collectif délivré par le Représentant spécial ou par les autorités compétentes de tel ou tel Etat participant, ou sous l'autorité de l'un ou des autres; b) carte d'identité personnelle délivrée conformément au paragraphe 37 du présent Accord, si ce n'est à la première entrée, pour laquelle le laissez-passer des Nations Unies, le passeport national ou la carte d'identité personnelle délivrée par l'Organisation des Nations Unies ou par les autorités compétentes d'un Etat participant peut tenir lieu de la carte d'identité susmentionnée.

Identification

37. Le Représentant spécial délivre à chacun des membres de la MINUSTAH, avant ou dès que possible après sa première entrée sur le territoire, de même qu'à chacun des membres du personnel recruté localement et des contractants, une carte d'identité numérotée indiquant son nom et comportant une photographie du porteur. Sous réserve des dispositions du paragraphe 36 du présent Accord, ladite carte d'identité est le seul document qu'un membre de la MINUSTAH peut être tenu de produire.

38. Les membres de la MINUSTAH, de même que ceux du personnel recruté localement, et les contractants sont tenus de présenter, mais non de remettre, leur carte d'identité de la MINUSTAH à tout agent habilité du Gouvernement qui en fait la demande.

Uniformes et armes

39. Dans l'exercice de leurs fonctions officielles, les membres militaires des Nations Unies et le personnel de la police civile de la MINUSTAH, portent l'uniforme de leur pays d'origine, assorti de l'équipement réglementaire de l'ONU. Les agents du Service de sécurité de l'ONU et les fonctionnaires du Service mobile peuvent porter l'uniforme des Nations Unies. En d'autres circonstances, le Représentant spécial peut autoriser les membres susmentionnés de la MINUSTAH à porter des tenues civiles. Les membres militaires et le personnel de la police civile de la MINUSTAH, de même que les agents du Service de sécurité de l'ONU désignés par le Représentant spécial peuvent détenir et porter des armes dans l'exercice de leurs fonctions, conformément au règlement qui leur est applicable. Ceux qui portent des armes dans l'exercice de leurs fonctions autre que ceux en service de protection garde rapproché devront porter l'uniforme dans l'exercice de leurs fonctions.

Permis et autorisations

40. Le Gouvernement convient de reconnaître, sans qu'il doive être acquitté de taxe ou de redevance à ce titre, la validité d'un permis ou d'une autorisation délivrés par le Représentant spécial à l'un quelconque des membres de la MINUSTAH (membres du personnel recruté localement compris), et habilitant l'intéressé à utiliser les moyens de transport de la MINUSTAH ou à exercer une profession ou un métier quels qu'ils soient dans le cadre du fonctionnement de la MINUSTAH, étant entendu qu'aucun permis de conduire un

véhicule ne sera délivré à quiconque n'est pas déjà en possession du permis voulu, en cours de validité.

41. Le Gouvernement convient de reconnaître comme valides et, le cas échéant, à valider gratuitement et sans restrictions, les licences et certificats délivrés par les autorités compétentes d'autres Etats en ce qui concerne les aéronefs et navires, y compris ceux utilisés par des contractants exclusivement pour le compte de la MINUSTAH. Sans préjudice de la disposition précédente, le Gouvernement consent en outre à accorder promptement, gratuitement et sans restrictions, les autorisations, licences et certificats requis pour l'acquisition, l'utilisation, l'exploitation et l'entretien d'aéronefs et de navires.

42. Sans préjudice des dispositions du paragraphe 39, le Gouvernement convient en outre de reconnaître, sans qu'il doive être acquitté de taxe ou de redevance à ce titre, la validité d'un permis ou d'une autorisation délivrés par le Représentant spécial à l'un quelconque des membres de la MINUSTAH, et habilitant l'intéressé à porter ou à utiliser des armes à feu ou des munitions dans le cadre du fonctionnement de la MINUSTAH.

Police militaire, arrestation et remise des personnes arrêtées et assistance mutuelle

43. Le Représentant spécial prend toutes les mesures appropriées pour assurer le maintien de l'ordre et de la discipline parmi les membres de la MINUSTAH ainsi que parmi le personnel recruté localement. A cette fin, des personnels désignés par lui assurent la police dans les locaux de la MINUSTAH et dans les zones où ses membres sont déployés. De tels personnels ne peuvent être mis en place ailleurs qu'en vertu d'arrangements conclus avec le Gouvernement et en liaison avec lui dans la mesure où cela est nécessaire pour maintenir l'ordre et la discipline parmi les membres de la MINUSTAH.

44. La police militaire de la MINUSTAH a le droit de mettre en état d'arrestation les membres militaires de la MINUSTAH. Les membres militaires arrêtés en dehors de la zone où est déployé leur contingent sont conduits auprès du commandant de celui-ci afin qu'il prenne les mesures disciplinaires qui s'imposent. Les personnels visés au paragraphe 43 ci-dessus peuvent également mettre en état d'arrestation toute autre personne dans les locaux de la MINUSTAH. Ils la remettent sans retard à l'autorité compétente du Gouvernement la plus proche, pour que les mesures voulues soient prises en ce qui concerne l'infraction commise ou les troubles causés dans lesdits locaux.

45. Sous réserve des dispositions des paragraphes 26 et 28, les autorités du Gouvernement peuvent mettre en état d'arrestation tout membre de la MINUSTAH:

a) À la demande du Représentant spécial; ou

b) Lorsque l'intéressé est appréhendé au moment où il commet ou tente de commettre une infraction. L'intéressé est remis sans retard, en même temps que toutes armes ou tous autres objets saisis, au représentant compétent de la MINUSTAH le plus proche, après quoi les dispositions du paragraphe 51 s'appliqueront mutatis mutandis

46. Lorsqu'une personne est mise en état d'arrestation en vertu du paragraphe 44 ou de l'alinéa b) du paragraphe 45, la MINUSTAH ou le Gouvernement, selon le cas, peuvent procéder à un interrogatoire préliminaire mais ne doivent pas retarder la remise de l'intéressé. Après celle-ci, l'intéressé peut, sur demande, être mis à la disposition de l'autorité qui a procédé à l'arrestation, pour subir de nouveaux interrogatoires.

47. LA MINUSTAH et le Gouvernement se prêtent mutuellement assistance pour la conduite de toutes enquêtes nécessaires concernant les infractions contre les intérêts de l'une ou de l'autre, ou des deux, pour la production des témoins et pour la recherche et la production des preuves, y compris la saisie, et, s'il y a lieu, la remise de pièces et objets se rapportant à l'infraction. La remise des pièces et objets saisis peut toutefois être subordonnée à leur restitution dans les conditions déterminées par l'autorité qui procède à cette remise. Chacune des deux autorités notifie à l'autre la décision intervenue dans toute affaire dont l'issue peut intéresser cette autre autorité, ou qui a donné lieu à la remise de personnes arrêtées, conformément aux dispositions des paragraphes 44 à 46.

Sécurité

48. Le Gouvernement veillera à ce que les dispositions de la Convention sur la sécurité du personnel des Nations Unies et du personnel associé soient appliquées concernant la MINUSTAH, ses biens, ses avoirs et ses membres. Plus particulièrement :

i) Le Gouvernement prendra toutes mesures appropriées pour assurer la sécurité des membres de la MINUSTAH. Il prendra notamment toutes les dispositions voulues pour protéger les membres de la MINUSTAH, leur matériel et leurs locaux contre toute attaque ou action qui les empêcherait d'accomplir leur mission, et ce, sans préjudice du fait que ces locaux sont inviolables et soumis au contrôle et à l'autorité exclusifs des Nations Unies.

ii) Lorsque des membres de la MINUSTAH sont capturés ou arrêtés dans l'exercice de leurs fonctions, et que leur identité est établie, ils ne seront soumis à aucun interrogatoire, mais seront immédiatement libérés et remis aux Nations Unies ou à d'autres autorités compétentes. Jusqu'à leur libération, ces fonctionnaires seront traités conformément aux normes universellement reconnues des droits de l'homme, ainsi qu'aux principes et à l'esprit des Conventions de Genève de 1949.

iii) Le Gouvernement intègre les infractions pénales de droit interne passibles de peines proportionnelles à leur gravité, les actes ci-après:

a) Le meurtre, l'enlèvement ou toute autre atteinte à la personne ou à la liberté de tout membre de la MINUSTAH;

b) Une attaque violente contre les locaux officiels, le domicile privé ou les moyens de transport de tout membre de la MINUSTAH de nature à mettre en danger sa vie ou sa liberté;

c) La menace de commettre une telle attaque dans le but de contraindre une personne physique ou morale à accomplir un acte quelconque ou à s'en abstenir;

d) La tentative de commettre une telle attaque;

e) Tout acte constituant une participation, ou une complicité à une telle attaque, ou à une tentative d'une telle attaque, ainsi que tout acte constituant l'organisation ou l'ordonnance d'une telle attaque.

iv) Le Gouvernement établira sa compétence à poursuivre les infractions visées ci dessus à l'alinéa iii) du paragraphe 48:

a) lorsque le crime est commis sur son territoire;

b) lorsque l'auteur présumé est un ressortissant du pays

c) lorsque l'auteur présumé, autre qu'un membre de la MINUSTAH, est présent sur son territoire, à moins qu'il n'ait été extradé vers l'Etat sur le territoire duquel l'infraction a été commise, vers l'Etat dont il est ressortissant, vers l'Etat où il réside habituellement, s'il est apatride, ou vers l'Etat dont la victime est ressortissante.

v) Le Gouvernement veillera à ce que soient poursuivies sans exception et sans délai les personnes accusées d'actes visés ci-dessus, à l'alinéa iii) du paragraphe 48 et présentes sur son territoire (à moins que le Gouvernement ne les extrade), ainsi que les personnes relevant de sa compétence pénale qui sont accusées d'autres actes touchant la MINUSTAH ou ses membres, dès lors que ces mêmes actes, commis contre des forces du Gouvernement ou contre la population civile, auraient donné lieu à des poursuites pénales.

49. À la demande du Représentant spécial, le Gouvernement assure la sécurité voulue pour la protection de la MINUSTAH, de ses biens et de ses membres pendant l'exercice de leurs fonctions.

Juridiction

50. Tous les membres de la MINUSTAH, y compris le personnel recruté localement, jouissent de l'immunité de juridiction à raison de tous les actes accomplis dans l'exercice de leurs fonctions officielles (y compris leurs paroles et écrits). Cette immunité continuera d'avoir effet même lorsqu'ils ne seront plus membres de la MINUSTAH ou employés par elle et après que les autres dispositions du présent Accord auront expiré.

51. S'il estime qu'un membre de la MINUSTAH a commis une infraction pénale, le Gouvernement en informe le Représentant spécial dans les meilleurs délais et lui présente tous éléments de preuve en sa possession sous réserve des dispositions du paragraphe 26

a) Si l'accusé est membre de la composante civile ou membre civil de la composante militaire, le Représentant spécial procède à tout complément d'enquête nécessaire et le Gouvernement et lui-même décident d'un commun accord si des poursuites pénales doivent être intentées contre l'intéressé. Faute d'un tel accord, la question sera réglée comme prévu au paragraphe 57 du présent Accord;

b) Les membres militaires de la composante militaire de la MINUSTAH sont soumis à la juridiction exclusive de l'Etat participant dont ils sont ressortissants pour toute infraction pénale qu'ils pourraient commettre en Haïti.

52. Si une action civile est intentée contre un membre de la MINUSTAH devant un tribunal d'Haïti, notification en est faite immédiatement au Représentant spécial, qui fait savoir au tribunal si l'affaire a trait ou non aux fonctions officielles de l'intéressé

a) Si le Représentant spécial certifie que l'affaire a trait aux fonctions officielles de l'intéressé, il est mis fin à l'instance et les dispositions du paragraphe 55 du présent Accord trouvent application;

b) Si le Représentant spécial certifie que l'affaire n'a pas trait aux fonctions officielles de l'intéressé, l'instance suit son cours. Si le Représentant spécial certifie qu'un membre de la MINUSTAH n'est pas en mesure, par suite soit de ses fonctions officielles, soit d'une absence régulière, de défendre ses intérêts, le tribunal, sur la demande de l'intéressé, suspend la procédure jusqu'à la fin de l'indisponibilité, niais pour une période n'excédant pas quatre-vingt-dix jours. Les biens d'un membre de la MINUSTAH ne peuvent être saisis en exécu-

tion d'une décision de justice si le Représentant spécial certifie qu'ils sont nécessaires à l'intéressé pour l'exercice de ses fonctions officielles. La liberté individuelle d'un membre de la MINUSTAH ne peut faire l'objet d'aucune restriction à l'occasion d'une cause civile, que ce soit pour exécuter une décision de justice, pour obliger à faire une révélation sous la foi du serment ou pour toute autre raison.

Décès de membres

53. Le Représentant spécial a le droit de prendre les dispositions voulues en ce qui concerne la dépouille d'un membre de la MINUSTAH décédé en Haïti ainsi qu'en ce qui concerne les effets de celui-ci se trouvant en territoire haïtien conformément aux pratiques de l'Organisation des Nations Unies en la matière.

VII. Limitations de la responsabilité de l'Organisation des Nations Unies

54. Les demandes d'indemnisation présentées au titre de la responsabilité civile en cas de pertes ou dommages matériels ou de préjudice corporel, maladie ou décès liés à la MINUSTAH ou directement imputables à celle-ci (à l'exception des pertes, dommages ou préjudices imputables à des impératifs opérationnels) qui ne pourront être réglées conformément aux procédures internes de l'Organisation des Nations Unies le seront par celle-ci conformément aux dispositions de l'article 55 du présent Accord, à condition que les demandes soient présentées dans un délai de six mois à compter du moment où la perte, le dommage ou le préjudice corporel s'est produit ou, si le demandeur n'avait pas et ne pouvait raisonnablement avoir connaissance de la perte ou du préjudice, à compter du moment où il les a constatés, mais en aucun cas après l'expiration d'un délai d'un an à compter de la fin du mandat de la MINUSTAH. Une fois sa responsabilité établie, conformément aux dispositions du présent Accord, l'Organisation des Nations Unies versera une indemnisation, sous réserve des limitations financières approuvées par l'Assemblée générale dans sa résolution 52/247 du 26 juin 1998.

VIII. Règlement des Différends

55. Sauf disposition contraire du paragraphe 57, une commission permanente des réclamations créée à cet effet statue sur tout différend ou toute réclamation relevant du droit privé, qui ne se rapporte pas à des dommages imputables aux impératifs opérationnels de la MINUSTAH, auquel la MINUSTAH ou l'un de ses membres est partie et à l'égard duquel les tribunaux d'Haïti n'ont pas compétence en raison d'une disposition du présent Accord. Le Secrétaire général de l'Organisation des Nations Unies et le Gouvernement nomment chacun un membre de la commission; le président est désigné d'un commun accord par le Secrétaire général et le Gouvernement. Faute pour les deux parties de s'entendre sur la nomination du président dans un délai de trente jours à compter de la nomination du premier membre de la commission, le Président de la Cour internationale de Justice peut, à la demande de l'une des parties, nommer le président. Toute vacance à la commission est pourvue selon la méthode prévue pour la nomination initiale, le délai de trente jours prescrit ci-dessus commençant à courir à la date de vacance de la présidence. La commission définit ses propres procédures, étant entendu que deux membres, quels qu'ils soient, constituent le quorum dans tous les cas (sauf pendant les trente jours qui suivent la survenance d'une

vacance) et que toutes les décisions nécessitent l'approbation de deux quelconque des membres. Les sentences de la commission ne sont pas susceptibles d'appel. Les sentences de la commission sont notifiées aux parties et, si elles sont rendues contre un membre de la MINUSTAH, le Représentant spécial ou le Secrétaire général de l'Organisation des Nations Unies n'épargne aucun effort pour en assurer l'exécution.

56. Tout différend relatif aux conditions d'emploi et de travail du personnel recruté localement sera réglé suivant les procédures administratives que fixera le Représentant spécial.

57. Tout différend portant sur l'interprétation ou l'application du présent Accord entre la MINUSTAH et le Gouvernement sera soumis à un tribunal composé de trois arbitres, à moins que les parties n'en décident autrement. Les dispositions relatives à la constitution de la commission des réclamations ainsi qu'à ses procédures s'appliquent, mutatis mutandis à la constitution et aux procédures du tribunal. Les décisions du tribunal ne sont pas susceptibles d'appel et ont force obligatoire pour les deux parties.

58. Toute contestation entre l'Organisation des Nations Unies et le Gouvernement portant sur l'interprétation ou l'application des présentes dispositions et soulevant une question de principe concernant la Convention sera soumise à la procédure prévue à la section 30 de la Convention.

IX. Avenants

59. Le Représentant spécial et le Gouvernement peuvent conclure des avenants au présent Accord.

X. Liaison

60. Le Représentant spécial ou le commandant de la Force et le Gouvernement prennent des mesures propres à assurer entre eux une liaison étroite à tous les niveaux voulus.

XI. Dispositions Diverses

61. Le Gouvernement sera responsable en dernier ressort de l'octroi et de la mise en oeuvre par les autorités locales compétentes des privilèges, immunités et droits conférés par le présent Accord à la MINUSTAH, ainsi que des facilités que l'Haïti s'engage à lui fournir à ce titre.

62. Le présent Accord entrera en vigueur à la date de sa signature par le Secrétaire général de l'Organisation des Nations Unies ou en son nom et par le Gouvernement.

63. Le présent Accord restera en vigueur jusqu'au départ du dernier élément de la MINUSTAH, à l'exception:

a) Des dispositions des paragraphes 50, 57 et 58, qui resteront en vigueur.

b) Des dispositions des paragraphes 54 et 55, qui resteront en vigueur jusqu'à ce qu'il ait été statué sur toutes les réclamations faites conformément aux dispositions du paragraphe 54.

EN FOI DE QUOI, les soussignés, plénipotentiaire à ce dûment autorisé du Gouvernement et représentant officiel de l'Organisation des Nations Unies, ont au nom des parties signé le présent Accord.

Fait à Port au Prince, le 09 Juillet 2004

Pour l'Organisation des Nations Unies

Adama Guindo
Responsable de la MINUSTAH

Pour le Gouvernement d'Haïti

Gerard Latortue
Premier Ministre

DOC. Nº 7

Final Report of the

Independent Panel of Experts on the

Cholera Outbreak in Haiti

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Executive Summary

Ten months after the devastating earthquake of January 12, 2010, cholera appeared in Haiti for the first time in nearly a century. The outbreak subsequently claimed over 4,500 lives, sickened almost 300,000 people, and continues to cause infections and deaths in Haiti. The source of the cholera has been controversial, with hypotheses that the pathogen that causes cholera (*Vibrio cholerae) arrived* into Haiti from the Gulf of Mexico due to tectonic shifts resulting from the earthquake, *evolved* into disease-causing strains from non-pathogenic strains naturally present in Haiti, or originated from a human host who inadvertently *introduced* the strain into the Haitian environment. A specific form of the third hypothesis, that soldiers deployed from a cholera-endemic country to the Mirebalais MINUSTAH camp were the source of the cholera, is a commonly held belief in Haiti.

In order to determine the source of the outbreak definitively, the Secretary-General of the United Nations formed an Independent Panel of four international experts (the "Independent Panel"), with a mandate to "investigate and seek to determine the source of the 2010 cholera outbreak in Haiti". To fulfill this mandate, concurrent epidemiological, water and sanitation, and molecular analysis investigations were carried out.

On October 22nd, 2010, the first cholera case in Haiti in nearly a century was confirmed at the Haiti National Public Health Laboratory. A review of hospital admission records along the Artibonite River from the mountains of Mirebalais to St. Marc on the coast clearly showed that a normal background rate of non-fatal diarrheal disease in adults and children was abruptly interrupted by the onset of a cholera outbreak. The first hospitalized cholera case in Mirebalais, in the upstream region of the Artibonite River, was on the evening of October 17th, 2010. The first hospitalized cholera cases on the coast, in the Artibonite River Delta in St. Marc and Deschapelle, were on October 20th, 2010. The outbreak was widely established in the coastal areas by October 22nd, 2010. The timeline suggests that the outbreak spread along the Artibonite River.

After establishing that the cases began in the upper reaches of the Artibonite River, potential sources of contamination that could have initiated the outbreak were investigated. MINUSTAH contracts with an outside contractor to handle human fecal waste. The sanitation conditions at the Mirebalais MINUSTAH camp were not sufficient to prevent fecal contamination of the Meye Tributary System of the Artibonite River. Water in the Meye Tributary System reaches the Artibonite River junction in less than 8 hours, and flows downstream in another 1-2 days to a dam and canal system widely used for irrigation throughout the Artibonite River Delta.

Several independent researchers studying genetic material from the bacteria responsible for the outbreak of cholera in Haiti graciously provided their results to us. They used a variety of molecular analysis techniques to examine multiple samples of the bacteria. Their results uniformly indicate that: 1) the outbreak strains in Haiti are genetically identical, indicating a single source for the Haiti outbreak; and, 2) the bacteria is very similar, but not identical, to the South Asian strains of cholera currently circulating in Asia, confirming that the Haitian cholera bacteria did not originate from the native environs of Haiti.

The hydrological data, combined with the epidemiological timeline, and supported by the molecular analysis information verifies that contaminated river water was the likely route of spread of *Vibrio cholerae* from the mountains of Mirebalais to the coastal areas around the Artibonite River Delta.

These research findings indicate that the 2010 Haiti cholera outbreak was caused by bacteria *introduced* into Haiti as a result of human activity; more specifically by the contamination of the Meye Tributary System of the Artibonite River with a pathogenic strain of the current South Asian type *Vibrio cholerae.*

This contamination initiated an explosive cholera outbreak downstream in the Artibonite River Delta, and eventually throughout Haiti. This explosive spread was due to several factors, including the widespread use of river water for washing, bathing, drinking, and recreation; regular exposure of agricultural workers to irrigation water from the Artibonite River; the salinity gradient in the Artibonite River Delta, which provided optimal environmental conditions for rapid proliferation of *Vibrio cholerae;* the lack of immunity of the Haitian population to cholera; the poor water and sanitation conditions in Haiti; the migration of infected individuals to home communities and treatment centers; the fact that the South Asian type *Vibrio cholerae* strain that caused the outbreak causes a more severe diarrhea due to the larger production of the more potent classical type of cholera toxin; and, the conditions in which cholera patients were initially treated in medical facilities did not prevent the spread of the disease to other patients or to the health workers.

The introduction of this cholera strain as a result of environmental contamination with feces could not have been the source of such an outbreak without simultaneous water and sanitation and health care system deficiencies. These deficiencies, coupled with conducive environmental and epidemiological conditions, allowed the spread of the *Vibrio cholerae* organism in the environment, from which a large number of people became infected.

The Independent Panel concludes that the Haiti cholera outbreak was caused by the confluence of circumstances as described above, and was not the fault of, or deliberate action of, a group or individual. The following recommendations to the United Nations, to the Government of Haiti, and to the international community are intended to help in preventing the future introduction and spread of cholera:

1) The Haiti cholera outbreak highlights the risk of transmitting cholera during mobilization of population for emergency response. To prevent introduction of cholera into non-endemic countries, 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.
2) United Nations missions commonly operate in emergencies with concurrent cholera epidemics. 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.
3) To prevent introduction of contamination into the local environment, United Nations installations worldwide should treat fecal waste using on-site systems that inactivate pathogens before disposal. These

systems should be operated and maintained by trained, qualified United Nations staff or by local providers with adequate United Nations oversight.

4) To improve case management and decrease the cholera case fatality rate, United Nations agencies should take stewardship in:
   a) Training health workers, especially at the treatment center level;
   b) Scaling-up the availability and use of oral rehydration salts at the household and community level in order to prevent deaths before arrival at treatment centers; 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.

5) To prevent the spread of cholera, the United Nations and the Government of Haiti should prioritize investment in piped, treated drinking water supplies and improved sanitation throughout Haiti. Until such time as water supply and sanitation infrastructure is established:
   a) Programs to treat water at the household or community level with chlorine or other effective systems, handwashing with soap, and safe disposal of fecal waste should be developed and/or expanded; and,
   b) Safe drinking water supplies should continue to be delivered and fecal waste should be collected and safely disposed of in areas of high population density, such as the spontaneous settlement camps.

6) The international community should investigate the potential for using vaccines reactively after the onset of an outbreak to reduce cholera caseload and spread of the disease.

7) Recent advances in molecular microbial techniques contributed significantly to the investigative capabilities of this report. 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.

Table of Contents

1 Introduction 8

2 Methodology of Investigation 10

2.1 Investigations by the Independent Panel 10

3 Epidemiological Investigation 12

3.1 Introduction 12

3.2 Health Status of MINUSTAH Personnel in the Artibonite Region 12

3.3 Initial Cholera Cases in the Artibonite Region 13

3.4 Summary 18

4 Water and Sanitation Investigation 19

4.1 Introduction 19

4.2 Hydrology of the Artibonite River 19

4.3 The MINUSTAH Camp near Mirebalais 21

4.4 Water Use Practices 23

4.5 Summary 23

5 Molecular Analysis Investigation 24

5.1 Introduction 24

5.2 Bacteriological characteristics 25

5.3 Molecular genetics to study the Haitian *Vibrio cholerae* strains' origin 25

5.4 Recent Preliminary Data from Nepal Strains 27

5.5 Summary 28

6 Conclusions 29

7 Recommendations 30

References 31

Annex A: Supplemental Epidemiological Data 32

List of Figures

Figure 1: Places Visited in the Artibonite River Region (Not to scale, source: Google Maps) 11
Figure 2: MINUSTAH Contingents in Centre and Artibonite Departments 13
Figure 3: Patients seen for Diarrhea at the Mirebalais Hospital, October 8th-21st, 2010 14
Figure 4: Patients seen for Diarrhea at the Albert Schweitzer Hospital, October 8th-21st, 2010 15
Figure 5: Patients seen for Diarrhea at the St. Nicolas Hospital in St. Marc, October 8th-20st, 2010 16
Figure 6: Cases by Age at the St. Nicolas Hospital in St. Marc on October 20th, 2010 17
Figure 7: Cases in Health Facilities in the Artibonite River Delta, October 20th-22nd, 2010 17
Figure 8: Artibonite River (at Peligre Dam, and between Mirebalais and Canneau) 19
Figure 9: Human Activity in the Meye Tributary, Saturday Morning, February 19th, 2011 20
Figure 10: Canal through Camp, Pipes over Canal, Canal Flowing into Meye Tributary 21
Figure 11: The Black Water Disposal Pit 22
Figure 12: Meye Tributary near Black Water Disposal Pit 22
Figure 13: *Vibrio cholerae* Classification 24
Figure 14: Cholera Pandemics 24

Abbreviations

CDC	U.S. Centers for Disease Control and Prevention
CFR	Case Fatality Rate
CT	Cholera Toxin
EDH	Électricité d'Haïti
FCR	Free Chlorine Residual
MINUSTAH	The United Nations Stabilization Mission in Haiti
MLVA	Multiple Locus Variable Number Tandem Repeat Analysis
ODVA	Organization for the Development of the Artibonite Valley
ORS	Oral Rehydration Salts
PCR	Polymerase Chain Reaction
PFGE	Pulse Field Gel Electrophoresis
UN	United Nations

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1 Introduction

Ten months after the devastating earthquake of January 12th, 2010, cholera appeared in Haiti for the first time in nearly a century. The first cases were confirmed on October 22nd, 2010. As of April 17th, 2011, 285,931 cases of cholera had been reported, with 154,041 (54.0%) patients hospitalized, and 4,870 (1.7%) deaths.

Cholera is a severe, acute, dehydrating diarrhea that can kill children and adults in less than 12 hours. Cholera is the result of infection with a pathogenic strain of the bacterium *Vibrio cholerae*, which is capable of producing a potent toxin known as cholera toxin (CT). Depending on the severity of the infection, cholera may be treated with oral rehydration salt (ORS) solutions, intravenous fluids, and/or antibiotics. The case fatality rate (CFR) in a well-managed cholera outbreak should be less than 1%. In this outbreak, the CFR stands at 1.7%. *Vibrio cholerae* infection displays a clinical spectrum that ranges from asymptomatic infection to severe cholera known as *cholera gravis*. The number of asymptomatic cases that play a role in the transmission of cholera varies according to age and the endemic nature of the disease. In countries such as Bangladesh, asymptomatic cases may represent roughly half of all cases (Nelson et al., 2009).

Although cholera has been a localized phenomenon in South Asia for centuries, the pathogen has repeatedly demonstrated the ability to spread both regionally and internationally. The seventh worldwide pandemic of cholera began in 1961 and is ongoing. The control of the disease requires a combination of interventions that range from water supply and sanitation improvements at the community level to the use of currently available oral cholera vaccines at the individual level.

Cholera had not been documented in Haiti in almost 100 years, and the source of the 2010 outbreak is a topic of debate. Three credible hypotheses have been proposed. The first hypothesis holds that an environmental strain of *Vibrio cholerae* that normally inhabits the Gulf of Mexico travelled to Haiti naturally via ocean currents as a consequence of the January 12th, 2010 earthquake and caused the present cholera epidemic. The second hypothesis holds that a local, non-toxigenic *Vibrio cholerae* strain endemic to the Haitian environment naturally mutated into a virulent pathogenic strain, which quickly spread throughout the human population of Haiti. The third hypothesis holds that the source of the outbreak was an infected human who carried a pathogenic strain of *Vibrio cholerae* into Haiti from a cholera endemic region outside the country.

The United Nations Stabilization Mission in Haiti (MINUSTAH) was created in April 2004 by the United Nations Security Council. After the January 12th, 2010 earthquake, the United Nations (UN) Security Council passed additional resolutions increasing the number of MINUSTAH forces in order to support recovery, reconstruction, and stability efforts. A specific form of the third hypothesis for the source of the cholera outbreak, that soldiers at the Mirebalais MINUSTAH camp were the direct source for the cholera outbreak, is a commonly held belief in Haiti. Testimony cited to support this belief includes the following: 1) the Mirebalais MINUSTAH camp is located near the area where the first cholera cases were identified; 2) a new group of soldiers had recently arrived at the time of the first cases; and, 3) witnesses reported sanitation practices at the camp that allowed soldiers' feces to enter the environment.

Until the publication of this report, a definitive determination of the source of the 2010 cholera outbreak in Haiti has been lacking. Two previous investigations that commented on the source of the outbreak came to opposing conclusions: Sack (personal communication) concluded that the outbreak was caused by a local event; whereas Piarroux (2010) concluded that the outbreak was caused by cholera being imported to Haiti by an infected MINUSTAH soldier. Neither report presents sufficient evidence to support its conclusions with reasonable certainty.

In order to definitively determine the source of the outbreak, the Secretary-General of the United Nations convened the Independent Panel of Experts on the Cholera Outbreak in Haiti (the "Independent Panel"), with the mandate to "investigate and seek to determine the source of the 2010 cholera outbreak in Haiti", and to present the findings of this investigation in a written report submitted to the UN Secretary-General and to the Government of Haiti.

This document is the written report requested by the Secretary-General. In it, the methods, results, conclusions, and recommendations from the investigation are presented.

2 Methodology of Investigation

To complete the mandate to "investigate and seek to determine the source of the 2010 cholera outbreak in Haiti", the Independent Panel completed six activities:

1) Having an initial coordination meeting in Delhi and subsequent conference calls between Independent Panel members;
2) Collecting and collating information and reports;
3) Communicating and/or meeting with experts outside Haiti;
4) Visiting Haiti from February 13th to February 20th, 2011, including a field visit to the Artibonite region;
5) Developing and compiling this report to summarize and analyze the information obtained; and,
6) Visiting United Nations Headquarters in New York City twice, first to advance the writing of this report and second, to present this report to the Secretary General.

2.1 Investigations by the Independent Panel

To determine the source of the 2010 Haiti cholera outbreak, the Independent Panel undertook three concurrent investigations throughout the five activities: 1) epidemiological; 2) water and sanitation; and, 3) molecular analysis. The methodologies for these investigations are briefly described in the following paragraphs. A map of locations visited in the Artibonite River region is shown in Figure 1.

Epidemiological information was obtained from organizations investigating the outbreak and from records of diarrheal illnesses among MINUSTAH personnel, as well as during visits to hospitals along the Artibonite River in order to determine the exact onset dates of the cholera outbreak throughout the watershed. These findings are presented in Section 3: Epidemiological Investigation.

Visits were made to various locations in the Artibonite watershed and discussions were held with local experts to understand the hydrology of the Artibonite River and its tributaries, the water and sanitation situation in the Mirebalais MINUSTAH camp, and water use practices of the population along the river. These findings are presented in Section 4: Water and Sanitation Investigation.

Published and unpublished information was obtained from groups currently working on the evolution of *Vibrio cholerae* in Haiti and worldwide. Information on the basic microbiology and data from advanced molecular typing techniques was used to compare the Haitian strains against other known worldwide strains of *Vibrio cholerae*. These findings are presented in Section 5: Molecular Analysis Investigation.

The report culminates with conclusions and recommendations in Sections 6 and 7. An Annex with supplementary epidemiological data is appended to this document. Source references were provided to the Secretary General in a confidential addendum.

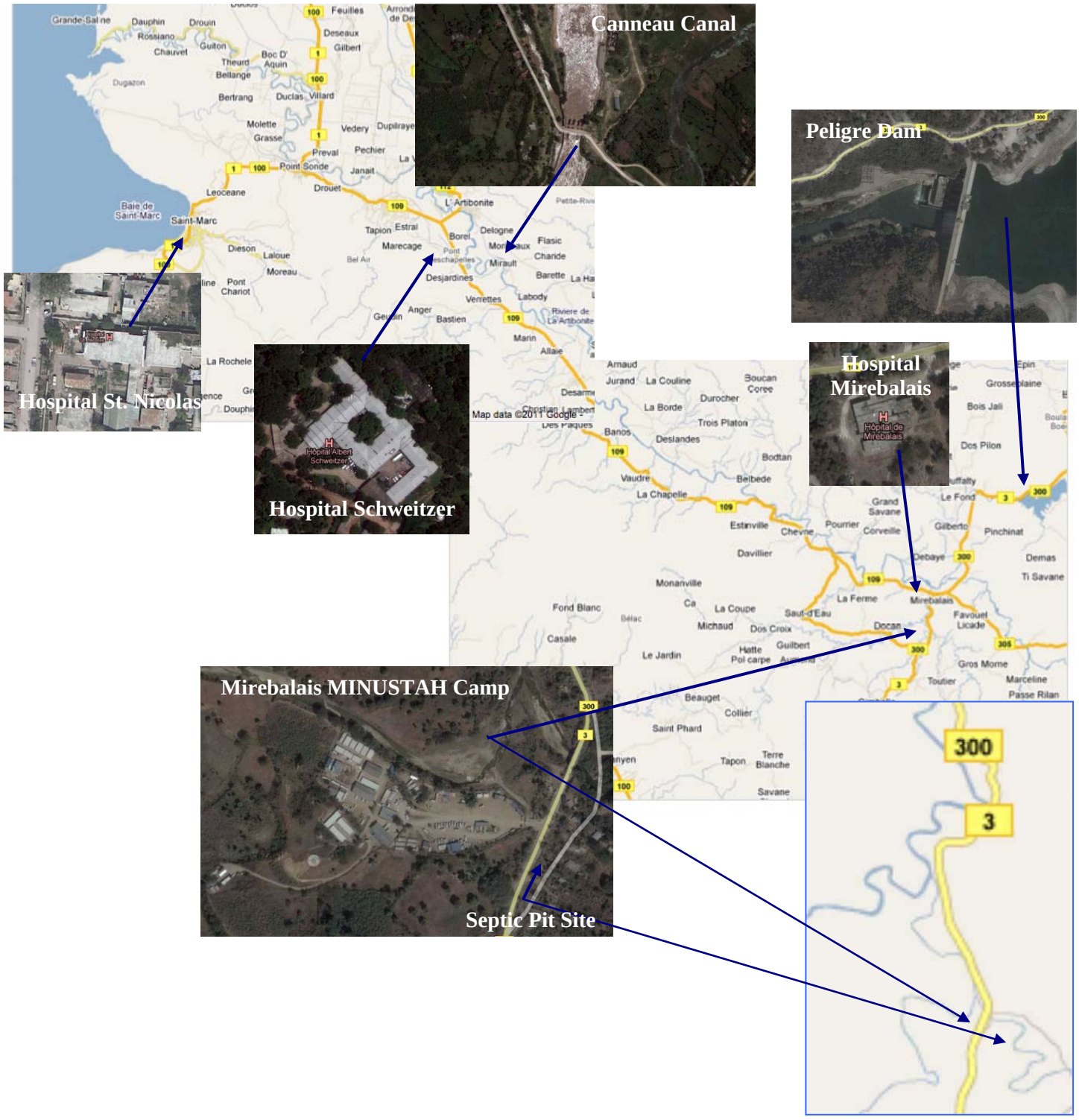

Figure 1: Places Visited in the Artibonite River Region (Not to scale, source: Google Maps)

(note: Terre Rouge MINUSTAH facility not depicted)

3 Epidemiological Investigation

3.1 Introduction

The goal of the epidemiological investigation was to determine where and when the first cases of cholera in Haiti occurred. All reports indicated that the first cholera cases occurred in Centre and Artibonite Departments along the Artibonite River. For this epidemiological part of the investigation, the Independent Panel began by interviewing individuals who might have had knowledge about the early cholera cases in this region. Verbal reports from those interviewed varied significantly with regard to both the perceived start date of the cholera outbreak, as well as other important issues relating to the disease: 1) mentioning initial cholera cases as early as Oct 12th; 2010; 2) reporting an outbreak of typhoid fever, which had prompted an official government warning in early October in Gonaives in the Artibonite River Delta, as misclassified cases as cholera; and, 3) declining to comment about the origin of the outbreak and restricting themselves to endorsing the official start date established by the Haitian Government. None of the individuals interviewed provided data to support these comments. The lack of physical evidence to confirm this anecdotal data led the Independent Panel to search for clinical information in the form of medical records of MINUSTAH personnel and admission records at Centre and Artibonite Department regional hospitals. The Panel conducted site visits to hospitals along the Artibonite River, beginning in the upstream mountains near Mirebalais in the Centre Department, and ending at St. Marc on the coast in the Artibonite Department (Figure 1).

3.2 Health Status of MINUSTAH Personnel in the Artibonite Region

Currently, MINUSTAH uniformed personnel in Haiti originate from 22 countries, and are deployed in contingents based on their country-of-origin to specific geographical areas in Haiti. Some areas, such as Port-au-Prince, have MINUSTAH contingents originating from a number of different countries. In the Centre and Artibonite Departments, there are permanently deployed contingents from Nepal, Argentina, and Peru. Contingents from Bangladesh were deployed in these same Departments on a short-term basis. Contingents from Nepal are stationed in three camps (Hinche, Mirebalais, and Terre Rouge) in the Centre Department (Figure 2). Contingents from Argentina are stationed in the Artibonite Department near the coast and in the Artibonite River Delta. In addition, a small police contingency (60 officers) from Bangladesh was stationed in Hinche and Mirabalais between September and October 2010. Lastly, Peruvian troops that patrol the Haiti/Dominican Republic border sometimes traveled to the Mirabalais MINUSTAH camp to eat and take provisions before returning to their camps and patrol duties.

MINUSTAH contingents are deployed in six month rotations. The replacement Nepal contingent arrived in Centre Department between October 8th and 24th, 2010 after three months of training in Kathmandu, Nepal. A medical examination was completed before they departed Kathmandu. This examination only included microbiological testing of stools when clinically indicated. Once the training and medical examination were completed, soldiers were given a 10-day free period to visit their families, wherever they happened to be

located in Nepal, before traveling to Haiti. Within one day of arrival in Haiti, soldiers were transported to their posts at the Mirebalais, Hinche, or Terre Rouge camps.

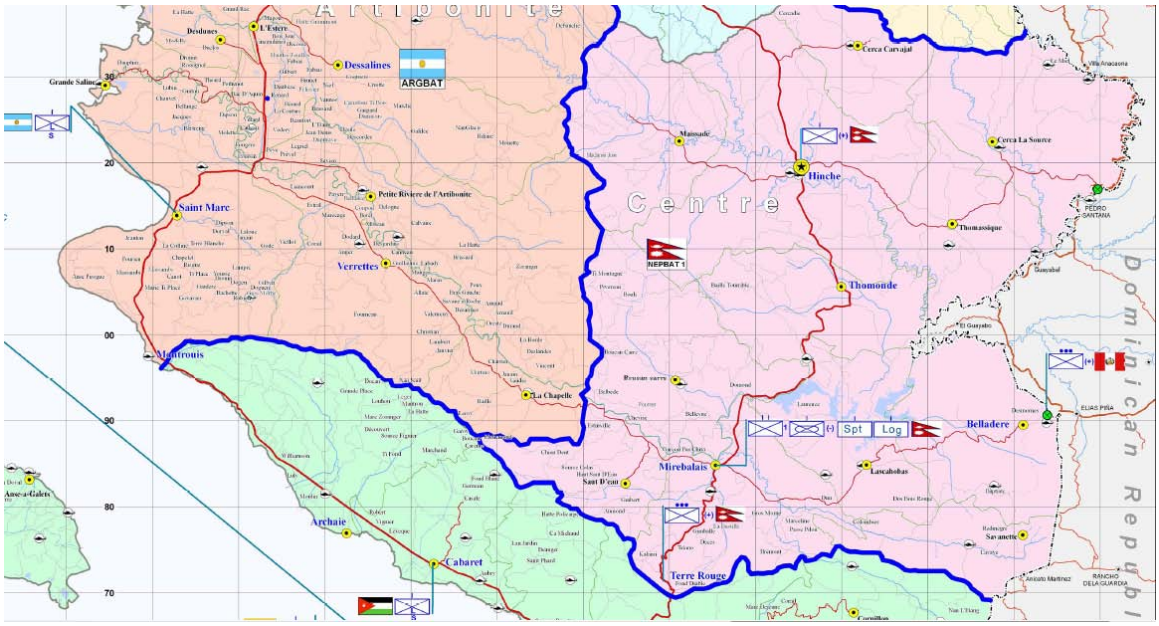

Figure 2: MINUSTAH Contingents in Centre and Artibonite Departments

The medical records of MINUSTAH personnel stationed in Haiti for the time period between September and October 2010 were obtained and reviewed. A review of national level data and dispensary clinic data at the Mirebalais camp showed that no cases of severe diarrhea and dehydration occurred among MINUSTAH personnel during this period. The review of these records indicated that no clinical cases of cholera occurred among MINUSTAH personnel before or during the start of the cholera outbreak in Haiti.

3.3 Initial Cholera Cases in the Artibonite Region

There did not appear to be any national or regional systematic reporting system for diarrheal disease in Haiti before the cholera outbreak. A sentinel surveillance system was implemented by the Ministry of Public Health and Population after the earthquake in January 2010, with the assistance of the U.S. Centers for Disease Control and Prevention (CDC). However, background information on nationwide diarrheal disease incidence was not able to be obtained from this database.

Three hospitals serving patients at the beginning of the epidemic along the Artibonite River region were visited: 1) the Mirabalais Hospital in Mirabalais; 2) the Albert Schweitzer Hospital in Deschapelle; and, 3) the St. Nicholas Hospital in St. Marc (Figure 1). In each hospital, a detailed review of medical records from October 2010 was carried out to identify cases that required hospitalization due to diarrhea and dehydration in order to establish an outbreak onset date. Since detailed medical records did not exist, which would have allowed an epidemiological definition of a cholera case to be created, hospitalizations due to severe diarrhea were used as a proxy for cholera cases. Particularly focus was given to adults in this analysis, as severe

diarrhea in adults is rare, and the transition between background baseline cases and outbreak onset is clearer in this group.

3.3.1 Mirabalais Government Hospital in Mirebalais

At Mirebalais Hospital, a team of physicians who were working at the hospital in October 2010 when the outbreak began provided access to the hospital's admission records and provided anecdotal information to the Independent Panel from during that period. Between September 1st and October 17th, 2010, sporadic diarrhea cases without death were seen at a consistent baseline rate in both adults and children. Data from October 8th to October 21st are presented in Figure 3. The first severe diarrhea case that required hospitalization and the first death from dehydration in patients older than 20 years of age occurred during the night of October 17th, 2010 and early morning of October 18th, 2010, respectively. No recorded information on the origin of these cases was identified, but staff mentioned that the first cholera cases came from an area named Meye, located 150 meters downstream from the Mirabalais MINUSTAH camp. As can be seen, the cases increased significantly on October 21st, 2010.

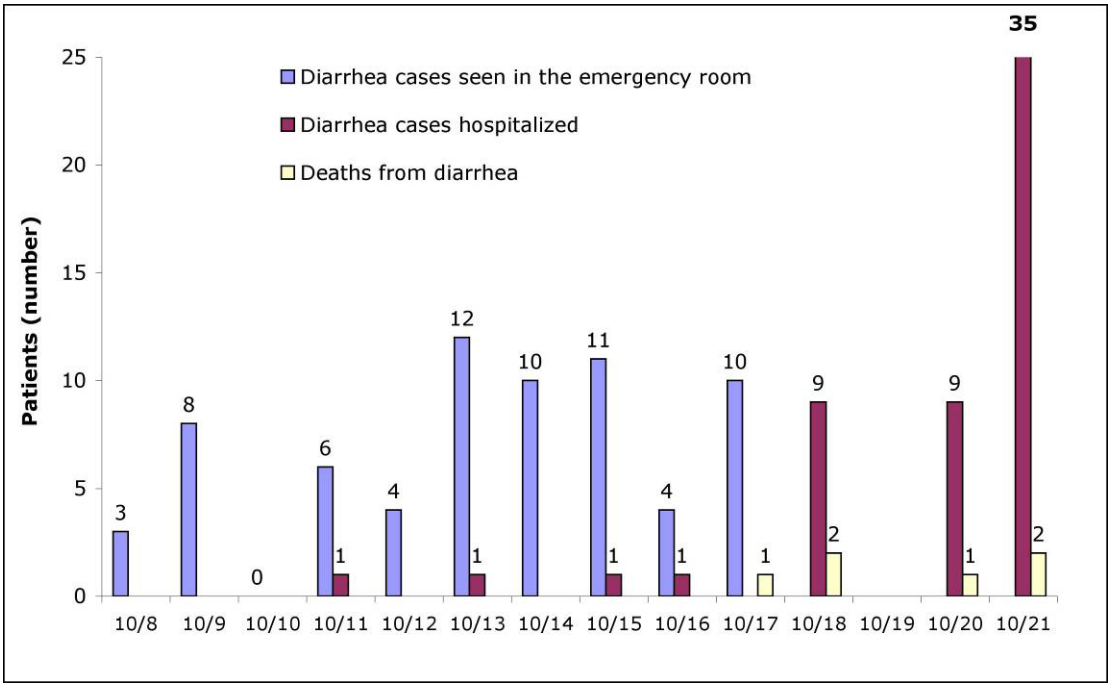

Figure 3: Patients seen for Diarrhea at the Mirebalais Hospital, October 8th-21st, 2010

3.3.2 Mirabalais Market

The Mirebalais Market was visited to determine if fish or shellfish products, which can be a vehicle for the transmission of cholera, are regularly consumed by the population. No fish or shellfish products from the coast were found in the market by the Independent Panel. Market women confirmed that these products are not sold in the market nor consumed by the local population. The only fish sold in the market were river fish sold by a small number of women in one area of the market and stored at ambient temperature in woven baskets. The

price of fish was five times that of chicken meat when calculated on a cost by weight basis. It was clear that the population in Mirebalais was not exposed to *Vibrio cholerae* from possibly contaminated seafood.

3.3.3 Albert Schweitzer Hospital in Deschapelle

Opened in 1956, Albert Schweitzer is a private, non-profit facility that serves as the regional referral hospital for over 300,000 people in the Artibonite Valley. The hospital is located approximately two-thirds of the distance from Mirebalais to St. Marc. As the hospital is not located near a major population center, this facility saw fewer cholera cases than other hospitals in the Artibonite River Delta. The hospital's admission records where any patient required to be kept under observation was registered were reviewed. The first cases of severe diarrhea requiring observation and hospitalization were seen on October 20th, 2010, when 24 cases in adults and children compatible with cholera were seen (Figure 4). After October 20th, 2010, the number of cases increased to the point where exact record keeping became difficult.

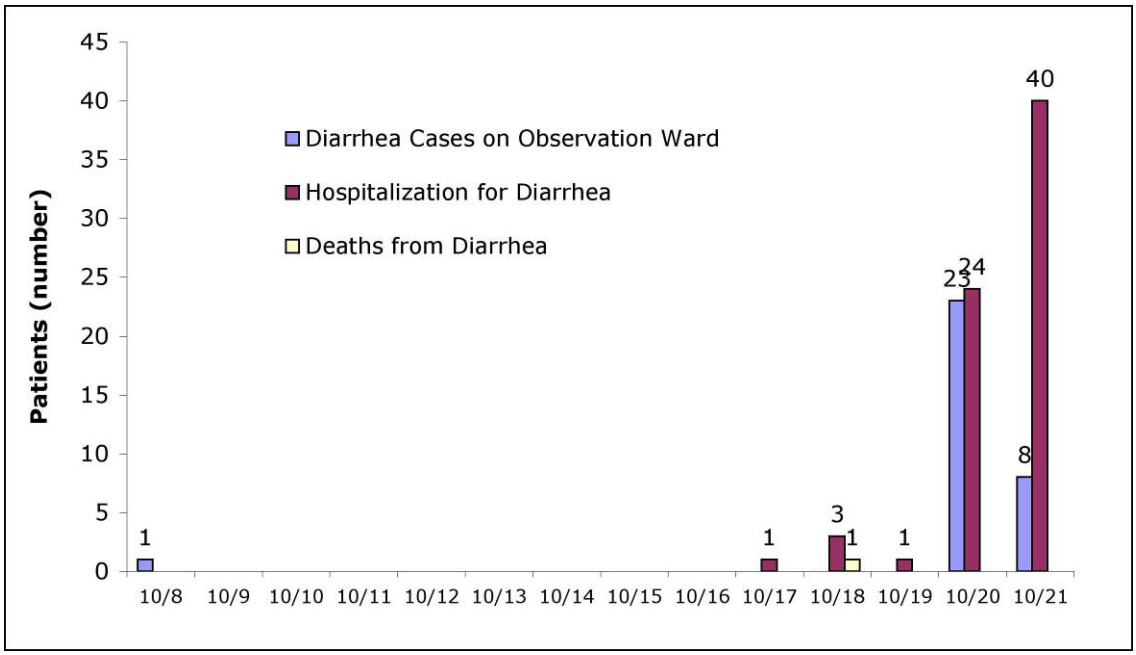

Figure 4: Patients seen for Diarrhea at the Albert Schweitzer Hospital, October 8th-21st, 2010

Discussions were held with the Hospital Administrator and the physician in charge of outpatient and emergency room services. They believed that the first case of cholera seen at the hospital was in a migratory agricultural worker in the Artibonite River Delta rice fields. The individual became sick at his home in the mountains, was transported to the hospital on October 18th, 2010, and arrived to the hospital already deceased.

Hospital medical staff provided a retrospectively compiled short list of 32 potential cholera cases hospitalized between October 17th and October 21st, 2010. Upon review of the available medical records for these cases, it was not possible to retrospectively diagnose any cholera case occurring before October 20th, 2010. The patient who was dead on arrival could also not be confirmed as a cholera case using the available medical records.

3.3.4 St. Nicolas Government Hospital in St. Marc

At the government operated St. Nicolas Hospital in St. Marc, located in the Artibonite River Delta, full access was given to the Medical Records Office, which housed records for children and adults seen in the emergency room, as well as records from several outpatient clinics. A review of the records dating between September and October 2010 clearly showed that the number and severity of diarrhea cases, mostly in children, had a consistent low profile. This low background rate of diarrhea was abruptly interrupted by an explosive outbreak of cholera cases with dehydration and death on October 20th, 2010 (Figure 5). On this date, medical staff recorded 404 hospitalizations (one every 3.6 minutes) and 44 deaths on individual pieces of paper, which record keepers had filed.

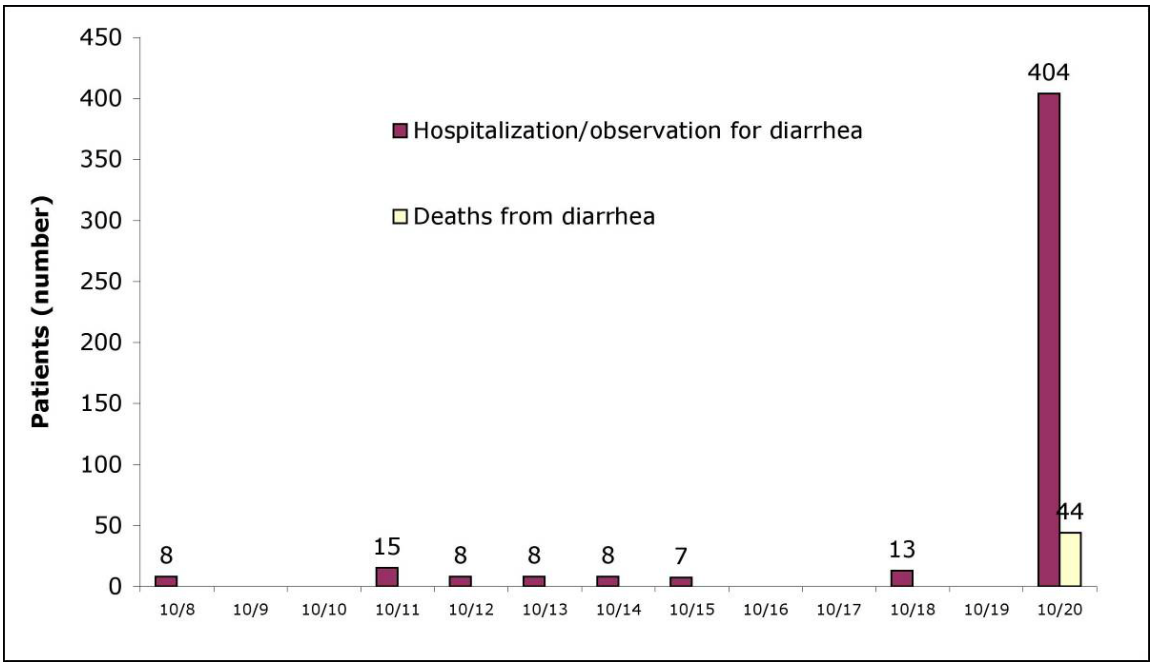

Figure 5: Patients seen for Diarrhea at the St. Nicolas Hospital in St. Marc, October 8th-20st, 2010

These 404 cases came from 50 identified communities throughout the Artibonite River Delta region (see Annex A). An average of eight patients per community came to the hospital on the first day, with a minimum of 1 and a maximum of 87 per community. Only 9 (2.2%) of the 404 patients originated from St. Marc, which indicates how widespread the outbreak was throughout the Delta on this first day. The St. Nicolas hospital received cholera patients from numerous locations because it is easily accessible to communities located throughout the Artibonite River Delta.

The majority (88.6%) of the 404 cases seen on the first day of the cholera epidemic in the St. Nicolas Hospital in St. Marc were 5 years of age and above, with the 20-24 year age group being seen most frequently (14.6%) (Figure 6). Hospital staff attributed this age distribution to the increased risk of cholera transmission in agricultural workers exposed to Artibonite River irrigation water in the rice paddies and fields. Generally, adults are the most commonly affected group in a cholera naïve area because they are ambulatory as compared with infants and children.

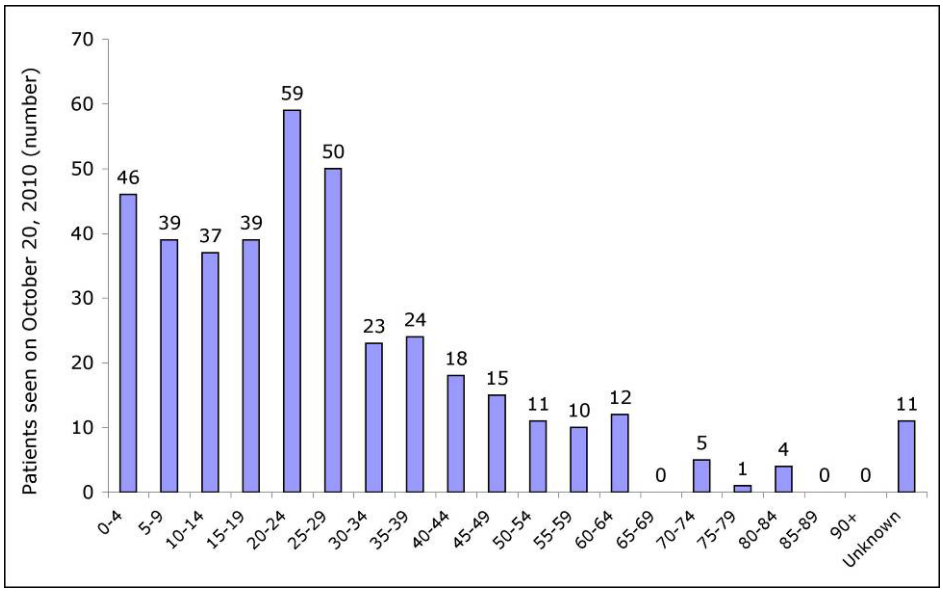

Figure 6: Cases by Age at the St. Nicolas Hospital in St. Marc on October 20th, 2010

3.3.5 Cases in the Artibonite River Delta

Data on the number of cholera cases in health facilities in the Artibonite River Delta between October 20th and 22nd, 2010 was obtained and graphed by the Independent Panel. This data (Figure 7) confirms the widespread nature of the outbreak in the Artibonite River Delta region by October 22nd, 2010.

Figure 7: Cases in Health Facilities in the Artibonite River Delta, October 20th-22nd, 2010

(to scale, large red circle in St. Marc in 780 cases, yellow boxes are road numbers, source: Google Maps)

3.3.6 Case Management

It is important to mention that cholera cots were not seen in any of the three hospitals visited. Cholera cots are designed to minimize fecal contamination in cholera wards and to measure fluid loss easily. All three cholera units visited were equipped with regular or small portable beds only. Cholera patients thus defecated in the bed itself, or were asked to walk to the toilet. Asking cholera patients to walk puts them at risk of orthostatic hypotension, a decrease in blood pressure that can be fatal in cholera patients. Hospital staff reported walking on feces in cholera units. In addition, neither hand washing facilities with running water nor hand cleansing products for patients or relatives in these units were evident. Thus, intra-hospital transmission could have been a source of cholera for families, visitors, other patients, and health staff.

3.4 Summary

Based on the epidemiological information available, the cholera epidemic began in the upstream region of the Artibonite River served by the Mirabalais Hospital on October 17th, 2010. This region has little to no consumption of fish or shellfish products, which are known to be associated with outbreaks of cholera worldwide. Therefore, the most likely cause of the outbreak was the consumption of contaminated water from the river. An explosive cholera outbreak began on October 20th, 2010 in the Artibonite River Delta, indicating that cholera had spread throughout the Artibonite River Delta within two to three days of the first cases being seen in the upstream region.

4 Water and Sanitation Investigation

4.1 Introduction

The Independent Panel visited various locations along the Artibonite River and spoke with local experts to understand the hydrology of the Artibonite River and its tributaries; the water and sanitation situation in the Mirebalais MINUSTAH camp; and, water use practices of the population along the river (Figure 1).

4.2 Hydrology of the Artibonite River

The Artibonite River is the largest river in Haiti, flowing from the mountains of the Dominican Republic to the coast near the town of Grande Saline (Figure 1). The river is controlled at two points: 1) the Peligre Hydroelectric Dam, which is located approximately 10 kilometers upstream from Mirebalais and is operated by Électricité d'Haïti (EDH) to provide electricity to the Port-au-Prince region; and, 2) at the Canneau Canal Site, near the town of Deschapelle downstream from Mirebalais, where the river splits into a series of canals, from which water is used by small farmers to irrigate their fields in the Artibonite Valley.

Discussions were held with staff from the Peligre Dam, the Canneau Canal Dam, and the Organization for the Development of the Artibonite Valley (ODVA) office in St. Marc to learn more about the river system, water quality and quantity monitoring, and river flows (Figure 8).

At the Peligre Dam, EDH engineering staff reported the presence of two meteorological stations upstream from the Dam on the border with the Dominican Republic. A rain gauge at the Peligre Dam broke 11 years ago, and no monitoring of environmental or river conditions is currently performed. EDH staff reported that it takes 1.5 to 2 days for water released from the dam to reach the Canneau Canal Site in both the dry and the wet seasons. The dry season was reported to be from January to August, and the wet season from August to November.

At the Canneau Canal Site, operations and maintenance staff reported that: 1) no water quality or flow readings are routinely collected, although there is both a depth gauge and a non-functioning electronic depth gauge installed on the bank of the Artibonite River; and, 2) that water flows from the Peligre Dam to Canneau in two days. They know this because operators at the Peligre Dam call the Canneau staff on mobile phones when water is released, and water arrives two days after the call.

Figure 8: Artibonite River (at Peligre Dam, and between Mirebalais and Canneau)

At the ODVA office, engineering staff reported that in the dry season the Artibonite River has a flow rate of about 50 m^3/sec, with 40 m^3/sec diverted to the left bank canal system, and 10 m^3/sec diverted to the right bank canal system. In the wet season, this flow rate increases. The staff mentioned that it takes about one day for water to flow from the Peligre Dam to the Canneau Canal Site. This is known because during a time when the motors broke at Peligre Dam, it took one day for water to arrive at Canneau. The staff also estimated it takes one day for water to flow from Canneau through the canal system to the sea in the Artibonite River Delta.

Although there is a lack of verifiable technical information, and there are minor inconsistencies in verbal information obtained from operators, the evidence collected from staff operating and maintaining the Artibonite River control systems indicates that water flows from the Peligre Dam to the Canneau Canal Site in 1-2 days, and to the coast in another day. Given the economic importance of the water flow to farmers in the Artibonite Valley, this anecdotal information is considered to be accurate and valid.

4.2.1 The Meye Tributary System

Two branches of the Meye Tributary of the Artibonite River flow northwards from the mountains that are located to the southwest and southeast of Mirebalais (Figure 1). The branches join together to form the Meye Tributary just north of the Mirebalais MINUSTAH camp, and are joined by another tributary just south of Mirebalais before flowing into the Artibonite River at Mirebalais itself. There is significant human activity along this tributary, with women washing, people bathing, people collecting water for drinking, and children playing (Figure 9). During the month of October 2010, it was reported that the Mirebalais City water supply system was not operating for a few weeks, and recipients relied on alternate water sources until repairs were completed. Information concerning the exact dates on which the Mirebalais water system was non-operational, and thus any relation to the onset of cholera cases, was not available.

Figure 9: Human Activity in the Meye Tributary, Saturday Morning, February 19th, 2011

4.3 The MINUSTAH Camp near Mirebalais

The water source for the Mirebalais MINUSTAH camp is a borehole with a depth of 265 feet (80 meters) that is treated on-site using a high-quality process chain including filtration, reverse osmosis, and chlorination. The system was most recently refurbished on October 26, 2010. Locally-available commercial bleach is used to make a stock chlorine solution for the chlorination step, and treated water is tested for free chlorine residual (FCR) using a Hach ColorWheel (Chestertown, MD, USA) test kit. FCR results are recorded in a logbook. Some errors were noted in the FCR testing procedures as follows: 1) all results were recorded as 0.5 or 1.0 mg/L, which while this is an acceptable FCR range, is odd, as the test kit is capable of an accuracy up to the 0.1 mg/L range; and, 2) the testing tube was stored with the last sample still in the tube, which can stain the tube and affect the reading. At the water treatment facility, two water quality testing results (from laboratories in 2009 and 2010) were made available. They showed positive results for microbiological indicators (total coliform, fecal (or thermotolerant) coliform, and *E. coli)* in the water and zero total chlorine, indicating that previously there had been some potential problems with the water treatment processes. Currently, treated water is transported using a MINUSTAH water truck to other MINUSTAH locations.

There is one main area at the Mirebalais MINUSTAH camp that houses toilet and showering facilities for the contingent. Kitchen water waste is also disposed of in this area. Gray water waste (cooking water, wash water, shower water) flows into on-site soak pits and is allowed to drain into the soil. Black water waste (containing human feces) flows into six 2,500-Liter fiberglass tanks. There are additional soak pits and one concrete tank for black water storage at a separate containment area near the medical facilities. The construction of the water pipes in the main toilet/showering area is haphazard, with significant potential for cross-contamination through leakage from broken pipes and poor pipe connections, especially from pipes that run over an open drainage ditch that runs throughout the camp and flows directly into the Meye Tributary System (Figure 10). It was evident from inspection, as well as reported by local Haitians, that recent (post October 2010) construction work in this area had been undertaken. During the hurricane in 2008, this entire area flooded.

Figure 10: Canal through Camp, Pipes over Canal, Canal Flowing into Meye Tributary

The black water tanks in the main area and medical area of the camp are emptied on demand by a contracting company approved by MINUSTAH headquarters in Port-au-Prince. MINUSTAH staff reported that the contractor empties the tanks twice per week when called. The contracting company dispatches a truck from Port-au-Prince to collect the waste using a pump. The waste is then transported across the street and up a residential dirt road to a location at the top of the hill, where it is deposited in an open septic pit (Figure 11). Black water waste for the two other MINUSTAH facilities – Hinche and Terre Rouge – is also trucked to and deposited in this pit. There is no fence around the site, and children were observed playing and animals roaming in the area around the pit. The southeast branch of Meye Tributary System is located a short walk down the hill from the pit, on the banks of which is located the solid waste disposal site for the MINUSTAH camp. Local residents reported trucks delivering waste to this disposal site and commented that the area is susceptible to flooding and overflow into the Tributary during rainfall.

Figure 11: The Black Water Disposal Pit

The southeast branch of the Meye Tributary System is a small brook that lies downstream from the black water disposal pit, 5 kilometers south of Mirebalais (Figure 12). The velocity of the tributary was measured with results showing a water flow rate between 0.18 and 0.58 meters/second in the calm and rapid waters, respectively. Calculations indicate that it would take 2-8 hours for water to flow from near the septic disposal pit to the junction with the Artibonite River. As the tributary flows towards the Artibonite River, it widens and becomes larger, until the area where the two rivers meet in Mirebalais.

Figure 12: Meye Tributary near Black Water Disposal Pit

4.4 Water Use Practices

There is significant human activity – including washing, bathing, drinking, and recreation – along the Meye Tributary System and Artibonite River. Additionally, in the Delta region, Artibonite River water is extensively used for irrigation and agricultural purposes through the canal system.

4.5 Summary

The sanitation conditions at the Mirebalais MINUSTAH camp were not sufficient to prevent contamination of the Meye Tributary System with human fecal waste. It is clear that: 1) there was potential for feces to enter into and flow from the drainage canal running through the camp directly into the southwestern branch of the Meye Tributary System; and, 2) there was potential for waste from the open septic disposal pit to contaminate the southeastern branch of the Meye Tributary System either by overflow during rainfall or contamination via animal transport. MINUSTAH contracts with an outside contractor to handle human fecal waste. Additionally, although residents report contractor trucks dumping feces into the septic pit, it has been suggested there might have been an unauthorized feces dumping directly into the Meye Tributary System (Piarroux, 2010). This proposition could not be independently confirmed. Although, at the time of the Independent Panel's visit, the battalion stationed at the Mirebalais MINUSTAH facility had made substantial improvements in the sanitary conditions compared with those commented upon during personal interviews and discussions in previous reports, conditions were not optimal and additional work was needed to ensure prevention of environmental contamination.

Given the velocities of the water in the Meye Tributary System, and the flow of water reported by operators along the Artibonite River, contamination in the Meye could have reached Canneau within one to two days, and would have been fully distributed in the canal system in the Artibonite River Delta within a maximum of two to three days. This timeline is consistent with the epidemiological evidence indicating that the outbreak began in Mirebalais and within two to three days cases were being seen throughout the Artibonite River Delta. This timeline verifies that river transport was the likely transmission route for cholera to spread from the mountains of Mirebalais to the Artibonite River Delta. It is unknown how the closure of the Mirebalais municipal water supply system, which would have increased the dependence of the population on river water, impacted the initial spread of cholera. Although water quality information on salinity in the Artibonite River Delta region was not available, it can be assumed that the delta waters are brackish, which is conducive to the rapid proliferation of *Vibrio cholerae*, as discussed in the following section.

Some mention has been made of severe weather events, including a 24 hour flooding event in the Artibonite Valley in July 2010 and Hurricane Thomas in November 2010, and the potential role they might have played in spreading cholera in Haiti. Based on the dates, these events are not related to the source of the cholera outbreak in Haiti, although they highlight the need for adequate waste treatment that prevents environmental contamination during heavy rainfall..

5 Molecular Analysis Investigation

5.1 Introduction

The bacterium *Vibrio cholerae* is classified into more than 200 serogroups based on differences in the outer cell surface of the pathogen. Among these, only two serogroups (O1 and O139) produce a powerful toxin, known as cholera toxin (CT). Toxin-producing *Vibrio cholerae* from these two serogroups have the ability to cause severe acute watery diarrhea (cholera) when ingested by humans in sufficient numbers. *Vibrio cholerae* belonging to the other serogroups are associated with sporadic diarrhea and are mostly found as innocuous residents in aquatic environments. The O1 serogroup is further sub-classified into two biotypes, Classical and El Tor; and each biotype into two serotypes, Ogawa and Inaba. The present classification of *Vibrio cholerae* is shown in Figure 13.

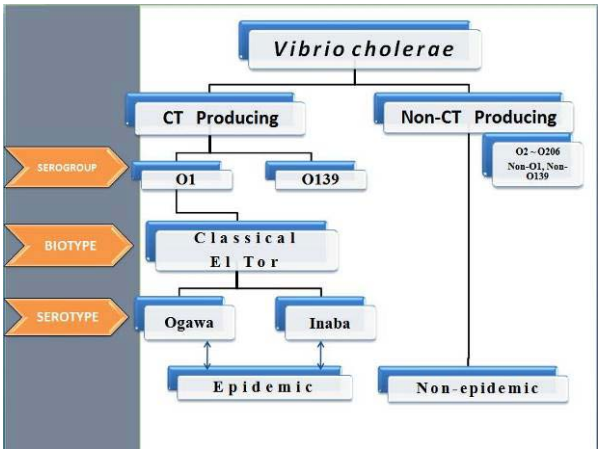

Figure 13: *Vibrio cholerae* Classification

Outbreaks of cholera have occurred in large waves, known as pandemics, which sweep across continents. Seven such pandemics have occurred since 1817. The first six pandemics originated in the Gangetic Delta of the Bay of Bengal in India and Bangladesh. The seventh pandemic, caused by the El Tor biotype, started in 1961 in Sulawesi, Indonesia, and is ongoing (Figure 14). The Classical biotype is believed to be extinct since it has not been isolated since 1992. Over the past fifty years, several variants have emerged from the initial El Tor biotype first isolated in 1961. A hybrid variant of the El Tor biotype first described in Bangladesh (Nair *et al*., 2002; Ansaruzzaman *et al*., 2004) is the most recent of these changes. These hybrid variants are El Tor strains capable of producing classical toxin after acquiring DNA sequences of the classical cholera toxin B subunit (Nair *et al*., 2006). It has also been shown that these hybrid variants produce a more severe diarrhea than the usual El Tor types due to the production of larger amounts of cholera toxin, which reacts specifically with antibodies against the classical cholera toxin only and not against the El Tor type (Ghosh-Banerjee *et al*., 2010, Siddique *et al.*, 2010). One variety of the hybrid variant of the El Tor biotype has spread during the past two decades into much of south Asia and parts of the African continent, particularly sub-Saharan East Africa (Safa *et al*., 2010).

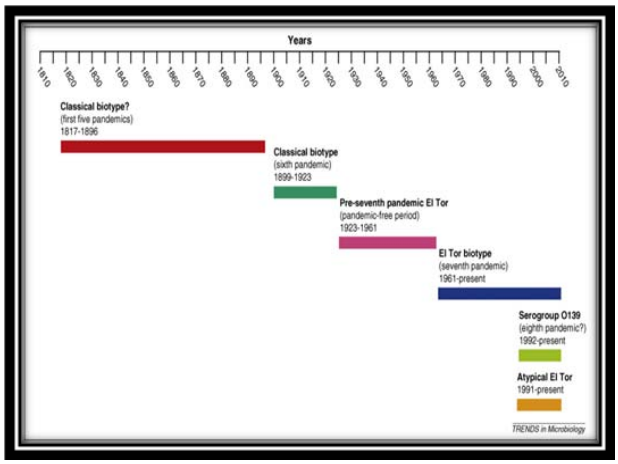

Figure 14: Cholera Pandemics

In the next sections, the bacteriological and molecular genetics of this bacteria are summarized.

5.2 Bacteriological characteristics

The Centers for Disease Control and Prevention (CDC) in Atlanta, Georgia and a research group from Harvard University in Cambridge, Massachusetts have investigated the bacteriological characteristics of *Vibrio cholerae* strains isolated independently from cholera cases in Haiti. Both groups have found that the Haitian isolates were toxigenic *Vibrio cholerae* O1 belonging to serotype Ogawa and biotype El Tor (CDC, 2010; Chin et al., 2011). Using a genetic technique known as polymerase chain reaction (PCR), the Haitian outbreak isolates were shown to have two specific genes (*ompW* and *rpoB*) that are used to confirm the identity of *Vibrio cholerae* globally. Furthermore, the strains have the following traits: 1) presence of VSP-1 gene cluster, which is a marker for the seventh pandemic strains; 2) typical El Tor *tcpA*, which is a marker for the El Tor biotype; and, 3) a *ctxB* gene of classical type further subclassified as *ctxB* subtype 6 (Kumar *et al*., 2009; Choi *et a*l., 2010). All of these characteristics indicate that the Haitian strains of *Vibrio cholerae* belong to the hybrid variant.

Overall, this basic bacteriological information indicates the Haitian isolates were similar to the *Vibrio cholerae* strains currently circulating in South Asia and parts of Africa, and not to strains isolated in the Gulf of Mexico, those found in other parts of Latin America, the prototype El Tor biotype strain, or to strains isolated in Australia (CDC, unpublished data; Chin et al., 2011). Most importantly, the 2010 Haitian strain was not of a new type but is a close relative of existing strains circulating at present in other parts of the world.

The antimicrobial resistance profile of the *Vibrio cholerae* strains isolated in Haiti showed resistance to the antibiotics sulfisoxazole, trimethoprim-sulfamethoxazole, furazolidone, streptomycin, and nalidixic acid, and reduced susceptibility to ciprofloxacin (Chin et al., 2011; CDC, 2010). The strains were susceptible to azithromycin and tetracycline, which also predicts susceptibility to doxycycline.

5.3 Molecular genetics to study the Haitian *Vibrio cholerae* strains' origin

To understand the evolutionary origin of *Vibrio cholerae* isolated in Haiti, the Independent Panel examined the results of published and unpublished studies using high throughput primary DNA sequencing techniques. Several research groups in different parts of the world assisted us by providing published and unpublished molecular evolutionary data. The DNA sequence data of the entire genetic material of the Haitian strains were compared with DNA sequences of entire genetic material derived from a global collection of other standard *Vibrio cholerae* strains.

The following information on molecular evolutionary studies was available at the time of writing this report:

- The CDC group compared the entire genetic material (genome sequence) of 15 strains of *Vibrio cholerae*, including draft sequences of 3 Haitian strains (Peter Gerner-Smidt, CDC, personal communication). The analysis showed that the Haitian strains tightly clustered with recent isolates

from South Asia (India, Pakistan, Sri Lanka) and a recent isolate from Cameroon, which seems to have originated from the same ancestor as the Haiti strain but which has diverged away from it significantly. This CDC data showed that the Haitian strains were different to *Vibrio cholerae* from the United States Gulf coast and the 1991 cholera outbreak strains that were isolated in Peru. In addition, CDC concluded that all the Haiti strains were identical, which would indicate a common source.

- The Harvard Cholera Group used the most recently developed method (third-generation single-molecule real-time DNA sequencing) to compare the entire genome sequences of the Haitian strain with two strains from Bangladesh and one isolated in South America (Chin *et al*., 2011). This group also compared their primary DNA sequence data with previously obtained sequences from 23 different strains of *Vibrio cholerae* available online in the public domain. A nearly identical relationship was shown between the Haitian isolates and the variant seventh pandemic El Tor O1 strains that are predominant in South Asia. No relationship was observed between the South American isolates (indicating that this strain is not related to the early-1990's cholera epidemic in South America) or with the African strains isolated between 1970 and 1998.

- Strains from Haiti were used in an as yet unpublished study by the Wellcome Trust Sanger Institute in Cambridge, Great Britain (Mutreja *et al*., manuscript submitted for publication) to understand the lineage of strains of *Vibrio cholerae* O1 responsible for the seventh pandemic. Whole genome sequences of 154 *Vibrio cholerae* isolates (including three independently obtained from Haiti) were examined. With the exception of one isolate from a water sample in Australia, all other strains in the Sanger collection had been isolated from clinical cases of cholera. The results of this study indicated that the Haitian strains were all identical and most closely related to strains of *Vibrio cholerae* from the Indian subcontinent and distinct from strains of *Vibrio cholerae* isolated in Africa, Bahrain, Germany, Indonesia, Vietnam, Malaysia, and South America.

- The Emerging Pathogens Institute at Gainesville, Florida analyzed *Vibrio cholerae* O1 isolated from 16 patients with severe diarrhea within the first three weeks of the outbreak onset who were treated at a hospital in St. Marc. The samples were analyzed using a molecular typing method known as Multiple-Locus Variable number tandem repeat Analysis (MLVA). This method utilizes the naturally occurring variation in the number of tandem repeated DNA sequences found in many different loci in the genome of a variety of microorganisms. The molecular typing profiles are used to study transmission routes, to assess sources of infection, and also to assess the impact of human intervention, such as vaccination and use of antibiotics on the composition of bacterial populations. The genetic diversity of a total of 187 individual isolates of *Vibrio cholerae* O1 picked from the 16 stool samples showed minimal diversity, consistent with a single point source for the 2010 Haiti epidemic (Ali *et al*., 2011).

- Scientists at the International Vaccine Institute in Seoul, Korea (Dr. Dong Wook Kim, personal communication) also found that the MLVA type of 40 Haitian isolates was similar to strains from the Indian subcontinent. A separate study by the group at CDC (Peter Gerner-Smidt, CDC, personal communication) using Pulse Field Gel Electrophoresis (PFGE), another discriminatory molecular typing technique propagated by the PulseNet International network, found that the closest match of the PFGE type of the *Vibrio cholerae* strains isolated in Haiti was with the PFGE type found in strains

from South Asia, including countries such as Pakistan, Sri Lanka, and India from where PFGE patterns of recent strains of *Vibrio cholerae* O1 were available in the CDC database for comparison.

- More significantly, the nucleotide sequence of the *ctxB* (the gene for the B subunit of cholera toxin) of the Haitian strains was found to have three coding mutations as opposed to only two seen in typical classical strains of *Vibrio cholerae* O1 or in the original hybrid variants first described (Nair et al., 2006). This genetic polymorphism of the *ctxB* gene was observed earlier in Kolkata and Orissa in India, and in the West African countries of Nigeria and Cameroon (Choi *et al*., 2010; Kumar *et al*., 2009; Quilici *et al*., 2010). However, the core genome of the Haitian strains resembled more closely the one found in the South Asian strains and to a lesser extent the one found in the African strains, which once again points to a South Asian origin of the Haitian strains.

5.4 Recent Preliminary Data from Nepal Strains

Genetic typing data on the Nepal strains of *Vibrio cholerae* O1 isolated between 2007 and 2010 was recently made available to the Independent Panel from the International Vaccine Institute in Korea (Dong Wook Kim, personal communication). The Nepal collection included 9 *Vibrio cholerae* O1strains (5 Ogawa and 4 Inaba) isolated in 2007, 5 Ogawa strains each from 2008 and 2009, and 2 Ogawa strains isolated in 2010. The Nepal strains were compared with 7 Ogawa strains isolated in 2010 in Haiti and with other south Asian strains. The whole genome sequences of the Nepal strains are still in the process of being completed. In the interim, MLVA, a simpler genetic typing method uses repeated sequences of DNA throughout the chromosome of the bacteria (knows as tandem repeats) to detect minor differences between strains, has been used to characterize and compare these strains with isolates found at the same time in other parts of the world. This analysis allows the comparison of genetic differences between strains that would seem similar by more basic methods.

The results of the MLVA studies of the strains isolated during the cholera outbreak in Haiti indicate that they are all very closely related (highly clonal), indicating a possible single source of contamination, which corroborates previous findings. In contrast, the *Vibrio cholerae* O1 strains isolated between 2007 and 2010 in Nepal showed small variations in their MLVA profiles from year to year. The strains circulating in Nepal seemed to be influenced intermittently by strains coming in from neighboring countries of the Ganges Delta. Included among these different Nepal strains, some of the MLVA types isolated in 2009 belonged to the Asian type of strain.

The results also showed that the Nepal strains isolated between 2007 and 2010 contained the same three mutations found in the genes coding for the B subunit of the cholera toxin as the ones found in the strains isolated since 2010 in Haiti and in South Asian and West African countries since the late 1990s. A careful analysis of the MLVA results and the ctxB gene indicated that the strains isolated in Haiti and Nepal during 2009 were a perfect match. The strains isolated in Haiti are also perfect matches by MLVA and ctxB gene mutations with South Asian strains isolated between or since the late 1990’s.

5.5 Summary

The available molecular data from whole genome sequence and comparisons of smaller specific parts of the genomes of the *Vibrio cholerae* strains responsible for the outbreak of cholera in Haiti show a remarkable consistency. They all indicate that the Haitian strains are: 1) clonal (genetically identical) indicating a point-source for the outbreak; and, 2) very similar but not identical to the South Asian strains of *Vibrio cholerae* O1. It must be emphasized, however, that the Haitian strains have certain minor traits not found in collections from other parts of the world, which is consistent with the micro-evolution that takes place continuously within the El Tor biotype as it moves from continent to continent and even country to country.

The analysis of available data refutes the argument that the Haitian strains arose indigenously from the Haitian environment. The Haitian strains did not originate from the native environs of Haiti but as a result of human activity in an area that promoted the dissemination of the organism. The presence of riverine settings that merge into an estuarine environment, which is an optimal setting for rapid growth of *Vibrio cholerae* O1, is likely to have contributed to the rapid spread of the pathogen. This has happened before in many parts of the world.

The precise country from where the Haiti isolate of *Vibrio cholerae* O1 arrived is debatable. Preliminary genetic analysis using MLVA profiles and cholera toxin B subunit mutations indicate that the strains isolated during the cholera outbreak in Haiti and those circulating in South Asia, including Nepal, at the same time in 2009-2010 are similar.

Overall, the combined results from the epidemiological, water and sanitation, and molecular analyses allowed the Independent Panel to develop conclusions and recommendations, which are presented in the next sections.

6 Conclusions

The Independent Panel of Experts on the Cholera Outbreak in Haiti presents the following conclusions based on the epidemiological, water and sanitation, and molecular analysis investigations that were conducted.

The evidence does not support the hypotheses suggesting that the current outbreak is of a natural environmental source. In particular, the outbreak is not due to the Gulf of Mexico strain of *Vibrio cholerae*, nor is it due to a pathogenic mutation of a strain indigenously originating from the Haitian environment. Instead, **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.**

This contamination initiated an explosive cholera outbreak downstream in the Artibonite River Delta, and eventually, throughout Haiti. The explosive spread was due to several factors:

1) Tens of thousands of Haitians use the Meye Tributary System and Artibonite River waters for washing, bathing, drinking, and recreation, and were thus exposed to cholera;
2) Thousands of Haitian agriculture workers are regularly exposed to the Artibonite River water, particularly in the rice paddy fields;
3) The canal system and delta of the Artibonite River provided optimal environmental conditions for rapid proliferation of *Vibrio cholerae;*
4) The Haitian population lacked immunity to cholera;
5) Many areas of Haiti suffer from poor water and sanitation conditions;
6) Infected individuals fled to their home communities from the initial outbreak locations, and in the process dispersed the disease;
7) Infected individuals rapidly concentrated where treatment was available;
8) The South Asian type *Vibrio cholerae* strain that caused the outbreak causes a more severe diarrhea due to an increase in the production of a classical type of cholera toxin and has the propensity of protracting outbreaks of cholera; and,
9) The conditions in which cholera patients were initially treated in medical facilities did not help in the prevention of the spread of the disease to other patients or to the health workers.

The introduction of this cholera strain as a result of environmental contamination with feces could not have been the source of such an outbreak without simultaneous water and sanitation and health care system deficiencies. These deficiencies, coupled with conducive environmental and epidemiological conditions, allowed the spread of the *Vibrio cholerae* organism in the environment, from which a large number of people became infected. **The Independent Panel concludes that the Haiti cholera outbreak was caused by the confluence of circumstances as described above, and was not the fault of, or deliberate action of, a group or individual.**

The source of cholera in Haiti is no longer relevant to controlling the outbreak. What are needed at this time are measures to prevent the disease from becoming endemic.

7 Recommendations

Based on the findings as presented in this report, the Independent Panel of Experts on the Cholera Outbreak in Haiti makes the following recommendations to the United Nations, the Government of Haiti, and the international community:

1) The Haiti cholera outbreak highlights the risk of transmitting cholera during mobilization of population for emergency response. To prevent introduction of cholera into non-endemic countries, 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.

2) United Nations missions commonly operate in emergencies with concurrent cholera epidemics. 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.

3) To prevent introduction of contamination into the local environment, United Nations installations worldwide should treat fecal waste using on-site systems that inactivate pathogens before disposal. These systems should be operated and maintained by trained, qualified United Nations staff or by local providers with adequate United Nations oversight.

4) To improve case management and decrease the cholera case fatality rate, United Nations agencies should take stewardship in:
   a) Training health workers, especially at the treatment center level;
   b) Scaling-up the availability and use of oral rehydration salts at the household and community level in order to prevent deaths before arrival at treatment centers; 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.

5) To prevent the spread of cholera, the United Nations and the Government of Haiti should prioritize investment in piped, treated drinking water supplies and improved sanitation throughout Haiti. Until such time as water supply and sanitation infrastructure is established:
   a) Programs to treat water at the household or community level with chlorine or other effective systems, handwashing with soap, and safe disposal of fecal waste should be developed and/or expanded; and,
   b) Safe drinking water supplies should continue to be delivered and fecal waste should be collected and safely disposed of in areas of high population density, such as the spontaneous settlement camps.

6) The international community should investigate the potential for using vaccines reactively after the onset of an outbreak to reduce cholera caseload and spread of the disease.

7) Recent advances in molecular microbial techniques contributed significantly to the investigative capabilities of this report. 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.

References

Ali A, Chen Y, Johnson J, Redden E, Mayette Y, Rashid M, Sine O, Morris J Jr. 2011. *Recent clonal origin of cholera in Haiti.* Emerg Infect Dis 17:699-701.

Ansaruzzaman M, Bhuiyan N, Nair G, Sack D, Lucas M, Deen J, Ampuero J, Chaignat C. 2004. *Mozambique Cholera vaccine Demonstration Project Coordination Group. Cholera in Mozambique, variant of Vibrio cholerae.* Emerg Infect Dis. 10(11):2057-9.

Centers for Disease Control and Prevention (CDC). 2010. *Update: outbreak of cholera – Haiti, 2010*. Mor Mortal Wkly Rep. 59(48):1586-1590.

Chin C, Sorenson J, Harris J, Robins W, Charles R, Jean-Charles R, Bullard J, Webster D, Kasarskis A, Peluso P, Paxinos E, Yamaichi Y, Calderwood S, Mekalanos J, Schadt E, Waldor M. 2911. *The origin of the Haitian cholera outbreak strain*. N Engl J Med. 364(1):33-42.

Choi S, Lee J, Jeon Y, Lee H, Kim E, Ansaruzzaman M, Bhuiyan N, Endtz H, Niyogi S, Sarkar B, Nair G, Nguyen B, Hien N, Czerkinsky C, Clemens J, Chun J, Kim D. 2010. *Multilocus variable-number tandem repeat analysis of Vibrio cholerae O1 El Tor strains harbouring classical toxin B.* J Med Microbiol. 59(Pt 7):763-9.

Ghosh-Banerjee J, Senoh M, Takahashi T, Hamabata T, Barman S, Koley H, Mukhopadhyay A, Ramamurthy T, Chatterjee S, Asakura M, Yamasaki S, Nair G, Takeda Y. 2010. *Cholera toxin production by the El Tor variant of Vibrio cholerae O1 compared to prototype El Tor and classical biotypes.* J Clin Microbiol. 48(11):4283-6.

Kumar P, Jain M, Goel A, Bhadauria S, Sharma S, Kamboj D, Singh L, Ramamurthy T, Nair G. 2009. *A large cholera outbreak due to a new cholera toxin variant of the Vibrio cholerae O1 El Tor biotype in Orissa, Eastern India.* J Med Microbiol. 58 (Pt 2):234-8.

Nair G, Faruque S, Bhuiyan N, Kamruzzaman M, Siddique A, Sack D. 2002. *New variants of Vibrio cholerae O1 biotype El Tor with attributes of the classical biotype from hospitalized patients with acute diarrhea in Bangladesh.* J Clin Microbiol. 40(9):3296-9.

Nair G, Qadri F, Holmgren J, Svennerholm A, Safa A, Bhuiyan N, Shafi Ahmed Q, Faruque S, Takeda Y, Sack D. 2006. *Cholera due to altered El Tor strains of Vibrio cholerae O1 in Bangladesh.* J. Clin. Microbiol. 44:4211-4213.

Nelson E, Harris J, Morris J, Calderwood S, Camilli A. 2009. *Cholera transmission: the host pathogen and bacteriophage dynamic*. Nature Rev Microbiol. 7:693-702.

Piarroux R. 2010. *Mission report on the cholera epidemic in Haiti.* Université de la Méditerranée in Marseille.

Quilici M, Massenet D, Gake B, Bwalki B, Olson D. 2010 *Vibrio cholerae O1 variant with reduced susceptibility to ciprofloxacin, Western Africa.* Emerg Infect Dis. 16(11):1804-5.

Safa A, Nair G, Kong R. 2010. *Evolution of new variants of Vibrio cholerae O1*. Trends Microbiol. 18(1):46-54.

Siddique A, Nair G, Alam M, Sack D, Huq A, Nizam A, Longini I Jr, Qadri F, Faruque S, Colwell R, Ahmed S, Iqbal A, Bhuiyan N, Sack R. 2010. *El Tor cholera with severe disease: a new threat to Asia and beyond.* Epidemiol Infect. 138(3):347-52.

Annex A: Supplemental Epidemiological Data

In the table below, the home communities of the 404 patients that were hospitalized at St. Nicolas Government Hospital in St. Marc that arrived on October 20th, 2010 with cholera are detailed.

Community	Cases	Percent of total	Community	Cases	Percent of total
Acul Baster	9	2.2	Poteneau	2	0.5
Balaguerre	3	0.7	Potno	3	0.7
Belanger	2	0.5	Preval	1	0.2
Bertrand	3	0.7	Pt Tambour	1	0.2
Block Hauss	1	0.2	R Brillant SM	1	0.2
Bocozel	6	1.5	Rosignol	5	1.2
Boudette GP	50	12.4	Saint Marc	9	2.2
Chevreau	9	2.2	Sanoi	7	1.7
Colmini	1	0.2	Savarie	1	0.2
Danache	48	11.9	Theard	1	0.2
Daquin	8	2	Ti Bera	12	3
Desdunes	3	0.7	Timonette	1	0.2
Dipson/Dupson	5	1.2	Verettes	2	0.5
Dobeye	1	0.2	Villard	87	21.5
Dorbeil	2	0.5	Unknown	7	1.7
Drouin	1	0.2			
Dubuisson	10	2.5			
Duclas	4	1	**Total**	**404 cases**	**100%**
Gerve	1	0.2			
Gilbert	3	0.7			
Giton	1	0.2			
Grand Moulin	4	1			
Grand Saline	2	0.5			
Haute Feuille	1	0.2			
Jacko	1	0.2			
K F Peye	2	0.5			
Lapati	1	0.2			
Lascirie SM	2	0.5			
Lubin	7	1.7			
Moreau	2	0.5			
Parent	2	0.5			
Petit Bera	3	0.7			
Pinsson	8	2			
Pisto	27	6.7			
Poirier	26	6.4			
Pont Sonde	4	1			

DOC. Nº 08

http://www.france-info.com/monde-ameriques-2010-12-07-haiti-un-rapport-confirme-que-le-cholera-est-parti-du-camp-de-l-onu-501906-14-16.html

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2.000 Haïtiens sont morts du choléra depuis le début de l'épidémie.
© REUTERS/Keith Bedford

Haïti : un rapport confirme que le choléra est parti du camp de l'ONU

FRANCE INFO - 7 DÉCEMBRE 2010

C'est confirmé : le foyer infectieux de l'épidémie de choléra en Haïti est parti du camp des Casques bleus népalais de la Mission de l'ONU dans le centre du pays. C'est le résultat d'un rapport d'expert remis aujourd'hui au Quai d'Orsay.

Il n'y a plus aucun doute. ***"Le foyer infectieux est parti du camp des Népalais"*** situé à Mirebalais près du fleuve de l'Artibonite. *"Le point de départ est localisé très précisément"*, a dit cette source en se basant sur les conclusions du rapport du professeur français Renaud Piarroux, épidémiologiste envoyé en mission en Haïti par la France à la demande du ministère haïtien de la Santé.

"L'explication la plus logique, c'est l'introduction massive de matière fécale dans le fleuve de l'Artibonite en une seule fois", a poursuivi cette source. ***"Le seul élément manquant c'est l'établissement formel à partir d'analyses et de prélèvements de la présence du vibrion chez les Népalais"***, a-t-il poursuivi.

L'épidémie de choléra a fait plus de **2.000 morts en Haïti** depuis son apparition et plus de **90.000 cas ont été enregistrés**, selon un nouveau bilan communiqué lundi par le ministère haïtien de la Santé.

Caroline Caldier, avec agences

DOC. Nº 09

UN in talks to set up independent panel of experts to probe origin of cholera in Haiti

Alain Le Roy, Under-Secretary-General for Peacekeeping Operations

15 December 2010 –

The United Nations is exploring the establishment of an international scientific panel to look into the source of the cholera epidemic in Haiti.

"We are calling for an international panel and we are in discussions with WHO [the UN World Health Organization] to find the best experts to be in a panel, completely independent… [and] have the best investigation on the source of the outbreak," the Under-Secretary-General for Peacekeeping Operations (DPKO), Alain Le Roy, told a **press conference** at UN Headquarters.

The Department later added that the Secretary-General is in discussions with interested stakeholders, including WHO, and that the panel will be completely independent and will have full access to all UN premises and personnel. The specific terms of reference will be established in the coming days and the SG may have more to say on this on Friday.

Haiti's cholera epidemic, which broke out in October, has already killed more than 2,000 people, according to figures from Haiti's Ministry of Health, with over 44,000 others hospitalized, even as the country struggles to recover from the January quake, which killed 200,000 people and displaced some 1.3 million others – most of whom are still living in crowded and unsanitary tent camps.

There have been widespread media reports claiming that UN peacekeepers from Nepal, serving with the UN stabilization mission in Haiti, are the likely source of the epidemic, with infected water having spread from their base into a nearby tributary of the Artibonite River.

Mr. Le Roy said experts who have studied the epidemic have so far come up with different theories on the origin of the infection. "There is no consensus among scientists on this issue," he noted.

The peacekeeping chief added that none of the Nepalese peacekeepers had tested positive for cholera or shown any symptoms of the disease, and that repeated analyses of water from their camp have not detected the strain of the disease blamed for the epidemic.

On the controversy surrounding the provisional results of the general elections in Haiti, Mr. Le Roy reiterated the need for all candidates to file any complaints through legal means and to help avoid further violence. Candidates had until 4:00 p.m. local time on Wednesday to lodge complaints with Haiti's Provisional Electoral Council, which has proposed setting up a special verification committee to adjudicate the complaints.

The Caribbean nation, which has been dealing with the aftermath of January's devastating earthquake and the cholera outbreak, went to the polls on 28 November to elect the president, senators and members of parliaments in constituencies where elections were due. Incidents of violence have been reported amid allegations of ballot rigging by some candidates.

Protesters have accused the ruling government coalition of rigging the results. Provisional tallies put former first lady Mirlande Manigat and the candidate of the outgoing President Rene Préval's party, Jude Celestin, in first and second place, thus qualifying for January's run-off.

Popular musician Michel Martelly was less than one percentage point behind in third place, but thus excluded from the run-off, and his supporters have been involved in the burning o timber barricades, boulders and flaming tires.

The UN's stabilization mission, known as **MINUSTAH**, with nearly 12,000 military and police personnel currently on the ground, has been in Haiti since mid-2004 after then president Jean-Bertrand Aristide went into exile amid violent unrest.

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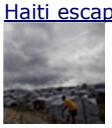

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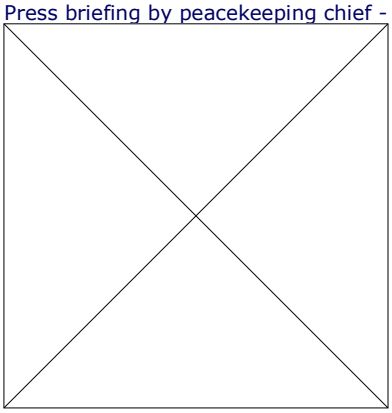

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DOC. Nº 10

Naciones Unidas A/HRC/17/42

Asamblea General

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Consejo de Derechos Humanos
17º período de sesiones
Tema 10 de la agenda
Asistencia técnica y fomento de la capacidad

Informe del Experto independiente sobre la situación de los derechos humanos en Haití, Michel Forst

Resumen

De conformidad con el mandato conferido por la Comisión de Derechos Humanos en su resolución 1995/70 y con la declaración PRST/15/1 de la Presidencia del Consejo de Derechos Humanos, el Experto independiente sobre la situación de los derechos humanos en Haití presenta este informe al Consejo en su 17º período de sesiones.

El Experto independiente se refiere en primer lugar a la situación de los derechos humanos en Haití y a las amenazas que se ciernen sobre estos derechos en el contexto de una crisis humanitaria persistente. Se refiere en particular a la situación de la mujer, a menudo víctima de la violencia de género, de los niños separados de su familia, de los huérfanos, de los *restavek* y de las personas con discapacidad y a la cuestión de los retornos forzosos. Describe luego los efectos del cólera en la justicia popular y los linchamientos de que son víctima ciertos sacerdotes que practican el vudú.

El Experto independiente pasa revista luego al funcionamiento de las instituciones judiciales y la policía y, en particular, examina la necesidad de restablecer el proceso de certificación de los agentes de policía *(vetting)*. Describe la situación en el sector penitenciario y los peligros para las personas privadas de la libertad, la detención preventiva prolongada y la situación sanitaria en los establecimientos penitenciarios. El Experto independiente recuerda el lugar que cabe asignar a la Oficina de Protección del Ciudadano y la importante función que ella deberá desempeñar en el futuro.

El Experto independiente recuerda además que es necesario incorporar en la reconstrucción del país una perspectiva de derechos humanos.

Por último, en el presente informe las recomendaciones del Experto independiente están divididas en tres secciones. La primera se refiere a los atentados contra los derechos de las personas vulnerables y en ella se formulan recomendaciones relativas a las mujeres, los niños, las personas enfermas o con discapacidad y las personas desplazadas. En la segunda sección, el Experto independiente formula varias recomendaciones que se refieren al funcionamiento de instituciones del Estado tales como el poder judicial, la policía, el sistema penitenciario y la Oficina de Protección del Ciudadano. En la tercera sección, recomienda tener en cuenta los derechos al reconstruir Haití.

Índice

		Párrafos	*Página*
I.	Introducción	1–13	3
II.	Los atentados contra los derechos en la crisis humanitaria	14–39	5
	A. Los desplazados dentro del país	16–21	5
	B. La mujer y la violencia de género	22–29	6
	C. Los niños	30–33	7
	D. Personas con discapacidad	34–36	8
	E. Los regresos forzados	37–38	9
	F. El cólera y los linchamientos	39	9
III.	Los derechos civiles y políticos	40–66	10
	A. Justicia	41–47	10
	B. El sistema penitenciario y la detención preventiva prolongada	48–56	11
	C. La policía	57–63	13
	D. La Oficina de Protección del Ciudadano	64–66	14
IV.	La reconstrucción de Haití	67–71	15
V.	El caso de Jean-Claude Duvalier	72–76	16
VI.	Recomendaciones al Gobierno de Haití y a la comunidad internacional	77–88	17

I. Introducción

1. De conformidad con el mandato conferido por la Comisión de Derechos Humanos en su resolución 1995/70 y con la declaración PRST/15/1 de la Presidencia del Consejo de Derechos Humanos, en la que el Consejo invitó al nuevo Experto independiente a que llevara a cabo próximamente una misión en Haití y le presentara un informe anual, el Experto independiente presenta este informe al Consejo en su 17º período de sesiones.

2. El informe abarca el período comprendido entre marzo de 2010 y marzo de 2011 y contiene una serie de recomendaciones dirigidas al Gobierno de Haití y a la comunidad internacional.

3. El Experto independiente efectuó tres misiones en Haití en ese período[1], en el curso de las cuales se desplazó fuera de la capital, en particular a Jacmel, Léogane, les Cayes y Cap-Haïtien. El Experto independiente querría expresar su gratitud a los numerosos haitianos con quienes se entrevistó en sus misiones, así como en París, Nueva York, Bruselas, Montreal y Ginebra. En cada una de esas ocasiones ha podido contar con el espíritu abierto, la conciencia histórica y el compromiso de quienes viven y trabajan en Haití y con el apego a su país manifestado por los representantes de la diáspora haitiana en el extranjero.

4. El Experto independiente querría dar las gracias a las autoridades de Haití, que permitieron que las misiones tuviesen lugar en las mejores condiciones posibles. Agradece al Presidente René Préval y al Primer Ministro, Jean-Max Bellerive, con quienes se reunió en varias ocasiones, la franqueza y la calidad de sus observaciones. Igualmente, querría dar las gracias a los miembros del Gobierno y del Parlamento por la franqueza con que hablaron de la situación y de las perspectivas de la evolución del país.

5. El Experto independiente se ha reunido también regularmente *in situ* con Edmond Mulet, Representante Especial del Secretario General y Jefe de la Misión de Estabilización de las Naciones Unidas en Haití (MINUSTAH), y sus adjuntos, Nigel Fischer y Kevin Kennedy. Querría también dar las gracias a todos los miembros de su equipo, que le prestaron un efectivo apoyo en materia de logística, seguridad y relaciones públicas. Las conversaciones telefónicas que mantuvo regularmente, entre sus misiones, con el Representante Especial y con varios miembros de la MINUSTAH le mantuvieron informado de los acontecimientos políticos, económicos y de seguridad en Haití.

6. El Experto independiente da las gracias también a los responsables de los principales organismos de las Naciones Unidas, de la Organización de los Estados Americanos, de la Comunidad del Caribe (CARICOM) y de la Unión de Naciones Suramericanas (UNASUR) con los cuales se reunió, así como a los miembros del cuerpo diplomático presentes en Puerto Príncipe, con quienes pudo en varias ocasiones intercambiar opiniones sobre la función y las modalidades de acción de la comunidad internacional en Haití.

7. El Experto independiente desea por último expresar una vez más todo su reconocimiento a los funcionarios de las Naciones Unidas que le han prestado su apoyo y han compartido con él la información y experiencia que tenían y cuyo profesionalismo, determinación y valor encomia. Los miembros de la Sección de Derechos Humanos y de la Sección de Justicia de la MINUSTAH le han prestado un apoyo incesante, tanto en Puerto Príncipe como en sus desplazamientos y le han comunicado su evaluación de la situación y la marcha de las reformas en curso. El Experto independiente desea recordar que esas dos

[1] Del 22 de abril al 3 de mayo de 2010, del 3 al 12 de septiembre de 2010 y del 20 al 27 de febrero de 2011.

secciones constituyen asociados inapreciables en el ejercicio de la misión que le encomendó el Consejo.

8. Por último, el Experto independiente viajó también a Bruselas, donde se reunió con representantes de la Comisión Europea y del Parlamento Europeo, el Representante de la Alta Comisionada de las Naciones Unidas para los Derechos Humanos y varios embajadores a fin de examinar la cuestión del lugar que cabe a los derechos en la crisis humanitaria y en la reconstrucción de Haití.

9. Transcurrido un año desde el terremoto que el 12 de enero de 2010 destruyó Puerto Príncipe, Jacmel y otras ciudades de Haití, las consecuencias para los derechos de los haitianos se hacen sentir con crueldad en todo el país. Por más que sea inexacto y contraproducente afirmar, como muchos han hecho con ocasión del primer aniversario de la catástrofe, que se ha hecho poco o que la labor de reconstrucción no ha avanzado, el Experto independiente expresa su preocupación por la situación de los desplazados dentro del país, por los actos de violencia contra mujeres y niños y por la escasa consideración que se tiene respecto de las personas con discapacidad.

10. Esa es también una de las razones por las cuales el informe que se presenta este año al Consejo de Derechos Humanos no puede dejar de explayarse sobre las consecuencias de la crisis humanitaria en el ejercicio de los derechos y sobre el lugar que cabría asignar a la cuestión de los derechos al planificar la reconstrucción de Haití.

11. En el curso de sus distintas misiones a Haití y a Nueva York, Bruselas y Ginebra, el Experto independiente pudo reunirse con representantes de organizaciones no gubernamentales (ONG) internacionales y nacionales, organizaciones campesinas y organizaciones de mujeres, intercambiar información con ellos y enterarse de sus observaciones y sus buenas prácticas. Las organizaciones de la sociedad civil representan una riqueza y un capital formidables. Por más que algunas veces se haya podido legítimamente criticar algunos de sus actos, constituyeron durante la crisis, y siguen haciéndolo, un potencial extraordinario de creatividad, inventiva y capacidad para actuar sobre el terreno.

12. En cuanto a las ONG haitianas, el Experto independiente observa consternado el clima de recelo que impera entre varias de ellas y la Sección de Derechos Humanos de la MINUSTAH en Puerto Príncipe con la que, según dicen, hay cierta desconexión. El Experto independiente se pregunta a qué obedece esa situación y recomienda que se preste la mayor atención a la necesidad de restablecer los lazos de trabajo y cooperación con la sociedad civil, que garantizan una repercusión más amplia de la actividad de protección que realiza la MINUSTAH.

13. Entre las razones indicadas respecto de ese clima de recelo se ha dicho que probablemente obedezca en parte al hecho de que la Sección de Derechos Humanos de la MINUSTAH está integrada a la misión y naturalmente sus locales se encuentran en el cuartel general de la MINUSTAH, cuyo componente militar es a veces objeto de críticas. Habida cuenta de que el Jefe de la Sección de Derechos Humanos de la MINUSTAH es también representante en Haití de la Alta Comisionada para los Derechos Humanos, el Experto independiente se pregunta si no sería posible privilegiar esta segunda función y considerar si una representación de la Oficina de la Alta Comisionada para los Derechos Humanos no podría reemplazar a la Sección de Derechos Humanos de la MINUSTAH. El Experto independiente, si bien comprende la lógica del planteamiento integrado de las misiones de las Naciones Unidas, sugiere que no se descarte esta hipótesis sin haber sopesado sus ventajas.

II. Los atentados contra los derechos en la crisis humanitaria

14. En el curso de sus distintas misiones, el Experto independiente se ha reunido en el grupo temático dedicado a la protección, tanto en Puerto Príncipe como en provincia, con representantes de las principales ONG en el ámbito de la acción humanitaria. Discutió con algunos de ellos en Haití, y también en París, Nueva York y Bruselas, la cuestión del lugar que cabe a los derechos humanos en la acción humanitaria. El significado profundo de la acción humanitaria, que apunta a la seguridad del ser humano[2] y conjuga la asistencia y protección en el marco del respeto de los principios humanitarios, tiene que ser constantemente recordado y defendido por las propias entidades. El Experto independiente ha podido constatar hasta qué punto la cuestión del enfoque de derechos humanos no ha sido integrado aún por todas las entidades, particularmente las humanitarias; por lo tanto, es preciso afirmar y consolidar el lugar que cabe a los derechos humanos en las distintas etapas de la acción humanitaria.

15. Ahora bien, en cada situación de crisis los atentados contra los derechos siguen muy presentes y las amenazas son muy reales o se amplifican, especialmente para quienes tienen necesidades especiales como los desplazados dentro del país, las mujeres, los niños, las personas de edad y las personas con discapacidad. Por lo tanto, las distintas etapas de la emergencia, la rehabilitación y el desarrollo deben promover y aplicar un enfoque de derechos humanos, que debe reconocer que cada persona que es víctima de una crisis que da lugar a la acción humanitaria es titular de derechos, cuyo respeto el Estado debe garantizar, y no solamente beneficiario de la asistencia humanitaria. El Experto independiente recomienda que se organicen actividades concretas de instrucción acerca del enfoque de derechos humanos, especialmente a las entidades humanitarias.

A. Los desplazados dentro del país

16. El Experto independiente visitó varios campamentos en el curso de sus distintas misiones y, a veces, efectuó varias visitas a los mismos campamentos, formales e informales, de manera de ver su evolución en el tiempo y tener una visión barométrica de la situación en ellos. Según cifras proporcionadas por la Organización Internacional para las Migraciones (OIM), el número de desplazados en el país habría pasado de 1.300.000 a 825.000 entre enero de 2010 y enero de 2011. Sin embargo, varios especialistas impugnan esas cifras y ponen en duda el método empleado para contar a las personas desplazadas, señalando que algunos habían sido deducidos varias veces y otros no habían sido contados nunca. Cualquiera que sea el número real, no deja de ser cierto que en un gran número de campamentos informales las condiciones de vida no son dignas.

17. En los campamentos formales instalados por la comunidad internacional, la población parece resuelta a instalarse durante largo tiempo, a juzgar por las carpas y los cobertizos rodeados de plantas, arbustos o árboles. Casi todos los entrevistados afirmaron que preferían quedarse en el campamento en lugar de volver a donde vivían antes. Cada día se instalan en los alrededores de los campamentos nuevas familias que tratan de aprovechar los servicios existentes en ellos o simplemente de recibir agua o están animados de la esperanza de poder un día obtener una carpa más grande o un albergue provisorio. Ha

[2] A diferencia del concepto tradicional de seguridad que se refiere exclusivamente a la protección del territorio del Estado, el concepto de "seguridad del ser humano" apunta a la protección de las personas. En sentido estricto, se define como el derecho a vivir sin temor. Se trata por lo tanto, en primer lugar, de proteger al individuo de amenazas tales como los conflictos armados, la arbitrariedad, los desplazamientos forzosos y la violencia política y delictual. En un sentido más amplio, incluye el derecho a vivir libre de necesidades. Este planteamiento apunta en particular a proteger al individuo de la pobreza, el hambre, la enfermedad y los desastres ambientales.

sorprendido al Experto independiente la transformación gradual de los campamentos formales en lugares informales y en asentamientos de precaristas, en algunos casos con una sobrepoblación que excede del alcance de los servicios inicialmente previstos para un número reducido de habitantes. Por más que la concepción de los campamentos haya obedecido al carácter urgente de la situación, el hecho es que han contribuido hoy a una nueva organización social que, con el tiempo, puede crear más problemas que los que resuelve.

18. En varios campamentos, los *"camp managers"* cambian con mucha frecuencia y algunas organizaciones internacionales se van retirando progresivamente, con lo cual la población y los comités de los campamentos se quedan sin un interlocutor permanente. Los comités, al no obtener respuesta a las reinvindicaciones de los habitantes de los campamentos, pierden credibilidad y ello contribuye a que surjan rivalidades y enfrentamientos.

19. Algunos alcaldes, presionados por la población, tratan de hallar solución a la ocupación de terrenos municipales pagando una suma de dinero a las familias que aceptan dejarlos. Sin embargo, los lugares abandonados son inmediatamente ocupados por otras familias, lo que crea un engranaje del que es difícil salir.

20. Es mucho lo que se espera de la reconstrucción y corren rumores sobre la asignación gratuita de terrenos o albergues. Hay quienes se aprovechan de la situación y venden en los campamentos terrenos de los que no son propietarios. Esos terrenos son revendidos luego con títulos falsos de propiedad, lo que alimenta una especulación inmobiliaria que no tiene base alguna. Como resultado, muchas familias son poseedoras de un título falso de propiedad sobre un mismo terreno que pertenece a la comuna o a particulares.

21. El Experto independiente querría señalar a la atención del Gobierno de Haití y de la comunidad internacional cuán inquietante es el hecho de que no se vean estrategias en favor de las personas desplazadas para salir de la crisis. La gran variedad de rumores que corren demuestran hasta qué punto la población de los campamentos no tiene información acerca de lo que ha de ocurrir a mediano y a largo plazo.

B. La mujer y la violencia de género

22. Desde el comienzo de la crisis humanitaria, la cuestión de la violencia contra las mujeres y las niñas ha suscitado toda la atención de la comunidad internacional. En numerosos informes de las Naciones Unidas y de organizaciones nacionales e internacionales de derechos humanos se documentan el fenómeno de la violencia doméstica o intrafamiliar, los actos de las pandillas que operan en los campamentos y su periferia y la impunidad de hecho que impera respecto de los autores de actos de violencia contra la mujer.

23. Esas mismas organizaciones han multiplicado las recomendaciones formuladas al Gobierno de Haití y a las organizaciones internacionales en el país. El Experto independiente, en sus informes precedentes, ha dado numerosos ejemplos y formulado numerosas recomendaciones y no ha dejado de exhortar a que se preste mayor atención a los problemas existentes y así se ha hecho.

24. Se han puesto en práctica un gran número de sus recomendaciones y se han formulado programas específicos que permiten prevenir el fenómeno o ponerle coto. La Policía Nacional de Haití y la policía de las Naciones Unidas han incrementado las patrullas a los efectos de la seguridad en los campamentos formales e informales de personas desplazadas. No cabe duda de que a veces esas patrullas son demasiado rutinarias o predecibles para que realmente tengan un carácter disuasivo. En todo caso se han tomado

medidas, por más que sería útil dar muestras de mayor creatividad para desalojar a las pandillas de los proyectos. Muchas veces se ha señalado que el alumbrado en los campamentos y, particularmente, en las instalaciones sanitarias, sería un medio de incrementar la seguridad en ellos. El Experto independiente ha podido constatar en sus visitas a los campamentos que esas medidas, a pesar de su eficacia, no se aplicaban sistemáticamente. En varios de los campamentos que pudo visitar, especialmente en los informales, no hay alumbrado nocturno o, cuando lo hay, no funciona o es muy débil.

25. Mayor preocupación suscita, a pesar de que es una dificultad con que se tropieza en todo el mundo, la magnitud de la violencia contra la mujer, su evolución en el tiempo y la forma en que se documentan los hechos. Para combatir un fenómeno hay que conocerlo y no es posible apreciar la eficiencia y la efectividad de las medidas que se toman si no se puede medir la evolución en el tiempo. En este momento nadie puede precisar la magnitud del fenómeno. El Experto independiente tiene la sensación de que muchos hablan de él sin tener elementos objetivos que permitan comprenderlo.

26. Algunas ONG nacionales que trabajan en la materia tratan de documentar realmente el fenómeno a partir de las denuncias presentadas y confirmadas por una investigación[3] y tratan también de acompañar a las víctimas en los hospitales y tribunales. Otras organizaciones, a pesar del apoyo con que cuentan de la comunidad internacional, hacen una labor menos seria que, lamentablemente, contribuye a propagar cifras no confirmadas por investigaciones serias o historias alarmistas basadas en hechos que no están demostrados.

27. El Experto independiente recomienda que se haga un estudio serio y digno de crédito que permita finalmente documentar realmente la cuestión, corroborar las cifras dispares que circulan, dar una visión del fenómeno que permita comprender su evolución y, luego, formular verdaderas estrategias y medir su eficacia.

28. Uno de los principales problemas planteados por las organizaciones con que me reuní se refiere al tratamiento de las denuncias por la policía y la justicia. Varias organizaciones mencionan también que hay comisarías de policía que no registrarían las denuncias de las mujeres. Igualmente, a menudo las denuncias no fructifican porque los órganos judiciales no hacen una investigación ni les dan una tramitación adecuada. La impunidad parece ser la norma, cosa que no puede más que desalentar a las víctimas de presentar denuncias y animar a los autores a reincidir.

29. El Experto independiente recuerda, por último, que las "Directrices aplicables a las intervenciones contra la violencia de género en situaciones humanitarias2"[4], preparadas por las Naciones Unidas y las demás organizaciones internacionales han tenido difusión y se ha impartido formación en ellas al personal de la Policía Nacional de Haití, de la MINUSTAH y de organismos internacionales. Habría que dar mayor difusión a esas directrices porque contienen un gran número de recomendaciones concretas que son aplicables a la situación en Haití.

C. Los niños

30. Muchas veces se ha señalado a la atención del Experto independiente la situación de los niños víctimas de la trata en Haití o en el extranjero. En sus reuniones con funcionarios del UNICEF ha podido constatar la excelente labor de documentación, identificación, reunificación familiar, alojamiento y prestación de cuidados o protección que lleva a cabo o apoya esa organización. Uno de los problemas que subsiste es el gran número de lugares

[3] Se trata, entre otras, de Droits et Démocratie, Kay Fanm, SOFA y CONAP.

[4] http://www.womenwarpeace.org/search/node/gbv%20guidelines.

ilegales o no declarados que acogen niños, que a veces dejan allí sus propias familias con la intención loable de que los cuiden mejor. Sin embargo, no se ha hecho verificación alguna de la legalidad de esos lugares, de las condiciones de acogida y alojamiento de niños o del peligro de que tengan fines comerciales o de trata. El Experto independiente recomienda que se tomen disposiciones para ejercer un control efectivo sobre las estructuras ilegales de acogida de niños y se tomen medidas para cerrar las que no cumplan las disposiciones legales sobre la materia.

31. Con respecto a la adopción, el Experto independiente recuerda que se trata de una institución que debe estar cuidadosamente investida de todas las garantías necesarias y que no debe considerarse un gesto humanitario. Le complace observar la clara postura que ha manifestado en varias ocasiones el Gobierno de Haití y el hecho de que éste haya anunciado su intención de firmar el Convenio de La Haya relativo a la Protección del Niño y a la Cooperación en materia de Adopción Internacional e insta al Parlamento a incluir en su programa de trabajo la ley de ratificación de ese Convenio.

32. Hay ONG haitianas y dominicanas[5] dignas de crédito que constatan también la trata de adultos y niños hacia la República Dominicana. El Experto independiente se propone investigar esta cuestión en una próxima misión. Hay narraciones, testimonios y fotos que lo atestiguan, pero habría que documentar seriamente la magnitud del fenómeno.

33. Subsiste el peligro de secuestro, adopción ilegal o violencia sexual contra los niños. Sigue habiendo un cierto número de menores no acompañados en los campamentos o niños acogidos por otras familias en condiciones que favorecen la práctica de los *"restavek"*, que ya existía antes de la crisis humanitaria y que ha sido ampliamente documentada por expertos y organizaciones especializadas. El Experto independiente recomienda que se cumplan las recomendaciones que hizo en sus informes precedentes en el contexto de la lucha contra el fenómeno de los *"restavek"* y las recomendaciones que figuran en el informe[6] de la Relatora Especial sobre formas contemporáneas de esclavitud.

D. Personas con discapacidad

34. A partir del terremoto del 12 de enero de 2010, el Experto independiente se dedicó a estudiar la situación de las personas con discapacidad. En sus distintas misiones visitó campamentos accesibles a esas personas y se reunió con varios representantes de ONG[7] que trabajan respecto de la cuestión en Haití y con el Secretario de Estado para las personas con discapacidad.

35. Con motivo del terremoto fue necesario practicar operaciones y amputaciones de resultas de las cuales más de 4.000 personas discapacitadas por haber sufrido heridas graves, fueron operadas de urgencia y dotadas luego de prótesis. Transcurrido más de un año a partir del terremoto, las ONG especializadas estiman que habría que operar o volver a examinar a cerca de un centenar de personas para ponerles prótesis definitivas. Por otra parte, más de 100 personas con lesiones medulares que se encuentran actualmente en el país o a punto de regresar a él necesitarán cuidados concretos y constantes. Esas personas, aisladas y muchas veces marginadas, necesitarían ayuda y cuidados de readaptación y, en su caso, ser remitidas a instituciones médicas que puedan evaluar qué medios técnicos y material de primera necesidad requieren, así como asegurar la distribución correspondiente. A pesar de la notable labor que han llevado a cabo ciertas asociaciones humanitarias

[5] Groupe d'Appui aux Rapatriés et Réfugiés et Solidarite Fwontalye; en la República Dominicana, Solidaridad Fronteriza y el Servicio Jesuita a Refugiados Inmigrantes (SJRM).

[6] A/HRC/12/21/Add.1.

[7] Especialmente Handicap International en Puerto Príncipe y The Harvard Humanitarian Initiative en Fond Parisien.

especializadas, un cierto número de personas corren el riesgo de perder la vida si no reciben los cuidados que necesitan.

36. En el contexto de la reconstrucción, habrá que tomar medidas para cerciorarse de que los edificios, especialmente los públicos, estén diseñados de manera de ser accesibles a las personas con discapacidad. El Experto independiente, en las conversaciones que tuvo con donantes de fondos, ha tenido a veces la sensación de que esta cuestión no era prioritaria para ellos, en circunstancias de que la reconstrucción de Puerto Príncipe significa una oportunidad singular de demostrar que la discriminación de que eran víctimas las personas con discapacidad ya no es aceptable.

E. Los regresos forzados

37. A pesar de que, antes del terremoto, la mayoría de los países habían anunciado que suspendían los regresos forzados, las organizaciones internacionales han documentado cierto número de casos de expulsión o regreso forzado de haitianos y haitianas procedentes de diversos países de la región y la prensa ha recogido estas afirmaciones. La Oficina del Alto Comisionado para los Derechos Humanos y la Oficina del Alto Comisionado de las Naciones Unidas para los Refugiados hicieron conjuntamente un llamamiento de urgencia a los países para que suspendieran los regresos forzosos a Haití en razón de la crisis humanitaria que persistía. Según el Alto Comisionado para los Refugiados, la deportación y el regreso forzados de haitianos y la práctica de interceptación en el mar siguen suscitando preocupación en las circunstancias actuales[8].

38. El Experto independiente reitera las recomendaciones formuladas en su informe de 2010[9], en las que se pide a todos los Estados a que hagan gala de flexibilidad y generosidad con respecto a los haitianos que han ido a buscar refugio en otros países. Recomienda a los Estados cerciorarse de que el regreso, cuando deba tener lugar, se haga en condiciones que respeten las obligaciones legales en la materia y no constituyan una carga adicional para el país.

F. El cólera y los linchamientos

39. Según el Ministerio de Comunicación y Cultura, tras el comienzo de la epidemia del cólera por lo menos 45 personas habían sido linchadas en Haití por grupos que los acusaban de practicar la brujería para propagar la enfermedad. Estos asesinatos básicamente tuvieron lugar en el departamento de Grande-Anse, al sudoeste del país. En otras regiones del país, varias personas habrían también perdido la vida en las mismas circunstancias. Las víctimas, en su mayor parte sacerdotes que practican el vudú, la religión popular del país, son golpeados con machetes y piedras antes de quemarlos en la calle. No se conoce el número exacto de víctimas, pero el fenómeno tiene lugar en un contexto más amplio de justicia popular que denota una verdadera falta de confianza en las autoridades judiciales. El Experto independiente es consciente de que siempre resulta difícil encontrar a los autores porque se trata de turbas anónimas y, en la mayoría de los casos, no se revelan los nombres de los autores. En todo caso, los más altos cargos del Estado tendrían que investigar los hechos y, así, recordar claramente que en un estado de derecho nadie puede hacerse justicia por su propia mano.

[8] Comité Ejecutivo del Programa del Alto Comisionado: informe actualizado sobre las operaciones de la Oficina en América, 22 de febrero de 2011.

[9] A/HRC/14/44/Add.1, párrs. 41 y 42.

III. Los derechos civiles y políticos

40. En el curso de sus misiones en Haití el Experto independiente reanudó su labor en el campo de los derechos civiles y políticos y, en particular, en cuestiones relativas a la reforma del poder judicial, la certificación[10] de la policía y la cuestión de las penitenciarías. El Experto independiente indicaba en sus informes precedentes que, antes del terremoto del 12 de enero de 2010, las cosas iban en la dirección correcta. Habida cuenta de que en la actualidad hay elecciones presidenciales en el país[11], no deja de ser útil recordar un cierto número de principios y formular algunas recomendaciones que mantienen su vigencia en el marco de la asistencia técnica a las autoridades de Haití.

A. Justicia

41. El personal penitenciario fue duramente golpeado por el terremoto del 12 de enero de 2010 y el Palacio de Justicia, los Ministerios de Justicia y Seguridad Pública y el palacio legislativo han quedado destruidos. La comunidad internacional aportó rápidamente un considerable apoyo al sistema judicial de Haití, permitiendo así que las instituciones funcionaran. Al principio lo hicieron en condiciones precarias pero éstas, posteriormente, han mejorado notablemente. Cabe mencionar como ejemplo que el Tribunal de Primera Instancia de Puerto Príncipe está ahora instalado en los edificios donde se encontraba la Agencia de los Estados Unidos para el Desarrollo Internacional, que alojan también a la Corte de Casación, la Corte de Apelaciones, la sala de recursos de urgencia, las oficinas de los jueces de instrucción y la Fiscalía.

42. En el marco de su proyecto de estado de derecho, que apunta a consolidar la capacidad del sector de la justicia y la seguridad pública, el Programa de las Naciones Unidas para el Desarrollo entregó al Ministerio de Justicia y Seguridad Pública una instalación semiprovisional de 250 m^2, con 30 puestos de trabajo, que permite a ese ministerio funcionar en mejores condiciones.

El Presidente de la Corte de Casación

43. Dejando de lado los edificios, el Experto independiente recuerda que las tres leyes aprobadas en 2007 sobre la reforma de la justicia siguen constituyendo la base de la reconstrucción del sistema judicial en Haití. Sin embargo, la reforma sigue en el aire porque el Presidente de la Corte de Casación aún no es designado. En el curso de su misión más reciente, en febrero de 2011, el Experto independiente instó a los dos candidatos a la Presidencia de la República a asignar a ese nombramiento un lugar primordial en su programa de reforma del Estado. En efecto, las instituciones judiciales necesitan más que nunca, en razón de las grandes expectativas que hay en la materia, contar con la firme voluntad del nuevo Presidente del país de mantener separados los dos poderes, el ejecutivo y el judicial, y dar así una clara señal acerca del sentido de la reforma que ha de iniciarse.

44. En efecto, además de las atribuciones propias de su función, el Presidente de la Corte de Casación es la clave de la reforma de la justicia. Él preside el Consejo Superior del

[10] La certificación *(vetting)* de los policías es uno de los aspectos del apoyo que presta la MINUSTAH a la profesionalización de la Policía Nacional. Ese proceso tiene por objeto verificar la capacidad del aspirante a formar parte de la institución. También afecta a los policías en funciones. Se hacen indagaciones entre las familias y los allegados, así como investigaciones acerca de los antecedentes judiciales, incluido los penales, para cerciorarse de que el policía o el aspirante sea apto, moral y jurídicamente, para formar parte de la institución.

[11] A la fecha de redacción del presente informe (marzo de 2011) no había tenido lugar aún la segunda vuelta electoral.

Poder Judicial y puede, por consiguiente, iniciar el programa de certificación y contratación de los magistrados. También es él quien desempeña la Presidencia del Consejo de Administración de la Escuela Nacional de la Magistratura.

El Consejo Superior del Poder Judicial

45. El Experto independiente deplora tener que indicar una vez más que el Consejo Superior del Poder Judicial sigue sin funcionar por no tener presidente. En 2010 se designó un cierto número de magistrados mientras que otros, poco escrupulosos, fueron destituidos por el Ministro de Justicia. Ahora bien, todo ello se hacía en condiciones que no eran conformes a las leyes de 2007. El Experto independiente recomienda una vez más que se restablezca el Consejo Superior del Poder Judicial y que, principalmente en el marco de los recursos financieros y la reconstrucción, le sean asignados recursos humanos competentes y medios financieros que le permitan funcionar con toda independencia y proceder sin más dilación a la contratación de magistrados respetando las normas vigentes.

46. La Escuela de la Magistratura abrió en julio de 2010 el primer concurso de contratación para la formación inicial de magistrados, con el resuelto apoyo de la comunidad internacional. El concurso obedece al propósito de formar durante 16 meses a 20 nuevos magistrados en distintas técnicas judiciales, la preparación y celebración de audiencias o diligencias judiciales y el análisis y la síntesis de situaciones o expedientes. Se formará también a los magistrados en aptitudes administrativas, especialmente en materia de organización de tribunales y gestión del personal. Se enseñarán también aptitudes para escuchar, de conciliación, de autoridad y de humildad, que necesitan para el ejercicio de sus funciones. Otros 20 magistrados recibirán formación en la Escuela Nacional de la Magistratura en Bordeaux (Francia), lo que permitirá aumentar con el tiempo la capacidad de la judicatura haitiana.

47. Se ha establecido un sistema nacional de asistencia judicial que apunta, por una parte, a reducir la detención provisional y la población carcelaria y, por la otra, a hacer efectivo el derecho a un proceso justo. Por el momento el sistema funciona con nueve oficinas de asistencia judicial que ofrecen gratuitamente los servicios de un abogado a los indigentes. La oficina de Puerto Príncipe fue establecida por el Colegio de Abogados y las otras ocho funcionan con el apoyo de la comunidad internacional. Se ha señalado a la atención del Experto independiente el hecho de que no se renovará la financiación de estos programas, que la población tanto necesita, por lo cual recomienda que los donantes de fondos renueven la financiación en espera de que, gracias a la reconstrucción del sistema judicial, se encuentre una solución permanente para asegurar su mantenimiento.

B. El sistema penitenciario y la detención preventiva prolongada

48. Al igual que en todas y cada una de sus misiones, el Experto independiente visitó cárceles y establecimientos de privación de la libertad. Según la administración penitenciaria[12] hay 5.752 personas privadas de la libertad, de las cuales 1.860 son convictos y 3.892 se encuentran en detención preventiva, lo que indica que más del 70% de la población carcelaria se encuentra en detención preventiva. La superficie total de los establecimientos de detención es de 3.455 m^2, lo que en teoría da 0,6 m^2 por persona.

49. Sin embargo, la situación varía mucho según la jurisdicción, tanto en cuanto a la superficie disponible para las personas privadas de su libertad como a la proporción de personas en detención preventiva. En su más reciente misión, el Experto independiente visitó la cárcel de Cap-Haïtien, en la que hay un 55% de detenidos convictos y un 45% en

[12] Cifras al 3 de marzo de 2011.

detención preventiva. En la prisión de Jacmel, las cifras respectivas son del 58% y del 42%, mientras que en la cárcel para mujeres de Pétionville más del 90% de las reclusas están en detención preventiva y solo el 10% ha sido condenada. El Experto independiente se pregunta a qué razones obedecen esas diferencias entre la proporción de la detención preventiva entre un establecimiento y otro. Se han dado varias explicaciones, entre ellas el tipo de delito, la cantidad de expedientes en los juzgados penales o las instituciones penitenciarias y la forma en que funcionan las distintas jurisdicciones. El Experto independiente recomienda que se haga un estudio en las distintas jurisdicciones del país a fin de comprender el fenómeno y afinar estrategias de apoyo al sector penitenciario.

50. En los tres establecimientos visitados, la superficie por detenido es mucho mayor que en la Penitenciaría Nacional. Además, la calidad de los lugares de privación de la libertad difiere considerablemente entre ellos, lo que indica cuán distintas son las condiciones de detención y el tratamiento de los detenidos según el lugar en que lo estén. La Penitenciaría Nacional está en proceso de rehabilitación y se observan progresos visibles en la refacción del recinto. Lo mismo ocurre con la cárcel de mujeres de Pétionville o la cárcel de Cap-Haïtien, que parecen relativamente bien mantenidas. En cambio, la cárcel de Jacmel deja mucho que desear, especialmente en el plano sanitario; los detenidos usan mangueras de riego para ducharse y los inodoros están taponados.

51. En todos los establecimientos penitenciarios que visitó, el Experto independiente fue testigo de los problemas de salud vinculados con la epidemia de cólera y con el abastecimiento de alimentos, actualmente centralizado en la Dirección de Penitenciarías. Las dificultades con que se tropieza para el abastecimiento o el transporte de productos para preparar las comidas a veces hacen aleatoria su distribución, situación muy difícil para el personal penitenciario y para los detenidos. A veces la cantidad de alimentos se reduce considerablemente y los detenidos tienen hambre. A veces sufren enfermedades relacionadas directamente con la calidad de la alimentación distribuida, o su cantidad. El Experto independiente recuerda que la cárcel es un lugar de privación de la libertad pero en el que es esencial mantener todos los demás derechos. No es aceptable que, además de la duración excesiva de la detención preventiva, las personas privadas de la libertad sufran hacinamiento y falta de alimentación.

52. El Experto independiente visitó también la nueva cárcel de la Croix des Bouquets, cuya concepción se acerca más a la imagen que debería proyectar el sistema penitenciario de Haití. Las obras se han demorado, en razón de la necesidad de reforzar el edificio para hacerlo resistente a los sismos, pero con el tiempo debería servir para reducir el hacinamiento en la Penitenciaría Nacional. En todo caso, el Experto independiente deplora que en esta nueva cárcel se encuentren personas que cumplen una pena y otras en detención preventiva, en circunstancias de que había recomendado la separación física de las dos categorías. En un momento en que se procede a reconstruir el país, habría sido deseable reconsiderar el sistema correccional con una estrategia de construcción o reconstrucción de presidios para convictos y establecimientos de detención preventiva.

53. En el curso de sus entrevistas con los decanos de los tribunales de Puerto Príncipe y Jacmel, el Experto independiente pudo referirse al funcionamiento cotidiano de los tribunales y a volver a formular algunas de las recomendaciones que había hecho en su informe de 2009. La Constitución y el Código de Procedimiento Penal de Haití establecen procedimientos sencillos y rápidos para conocer de las infracciones en los juzgados de policía local o penales. Sin embargo, en los dos tipos de tribunales ha habido experiencias que parecen ir en la decisión correcta y merecerían ser mejor conocidas, especialmente para poder luchar contra la arbitrariedad de la detención preventiva en circunstancias de que existen otros mecanismos, pero se aplican poco.

54. Lamentablemente, el único recurso, que sigue aplicándose poco en el país, es el de hábeas corpus. Este procedimiento, consagrado en la Constitución, está destinado a

proteger la libertad individual y permite recurrir para que el decano del tribunal de primera instancia se pronuncie sobre la legalidad de la aprehensión o detención de una persona. El magistrado, en su caso, puede decretar la liberación inmediata en caso de incumplimiento del artículo 26 de la Constitución.

55. El Experto independiente recomienda que se aclaren y simplifiquen algunos procedimientos penales, en especial en lo que respecta a las penas sustitutivas de la prisión, la suspensión de la pena, la custodia y el hábeas corpus, así como la duración de la prisión preventiva en función de la infracción o, finalmente, la comisión rogatoria o la delegación de competencia judicial a la policía judicial.

56. Asimismo, y con el fin de resolver ciertos procedimientos pendientes, el Ministerio de Justicia y Seguridad Pública podría, mediante circulares, imponer al ministerio público disposiciones que permitieran hacer comparecer dentro de las 48 horas ante un juez de instrucción a quien hubiese sido detenido por un crimen o delito cuando la detención hubiese sido necesaria. El Ministerio de Justicia y Seguridad Pública podría velar asimismo por la aplicación del "sistema de comparecencia inmediata", con el consentimiento del decano del tribunal de primera instancia. Podría asimismo dar curso a todos los procedimientos pendientes en el ministerio público en un plazo de un mes haciendo que se encargase de ellos un juez de instrucción o mediante la citación directa o el sobreseimiento o, por último, dirimir mediante una citación directa todos los expedientes pendientes en el ministerio público en que haya habido una detención y respecto de los cuales no sea obligatorio ni necesario que se tramiten ante un juez de instrucción.

C. La policía

57. En sus informes anteriores, el Experto independiente se ha referido en varias ocasiones al proceso de certificación de la Policía Nacional de Haití. En intervenciones escritas y orales recordó más de una vez que correspondía al Gobierno adoptar la decisión definitiva y, en el marco del respeto de la legislación nacional del país, iniciar las gestiones tendientes a excluir de las filas de la Policía Nacional a los funcionarios que no respeten los criterios y normas aplicables en la materia.

58. Desde el comienzo del proceso en 2006 hasta el 12 de enero de 2010, se habían constituido 7.177 expedientes, de los cuales 3.584 incluían una recomendación formulada a la Inspección General para su transmisión al Consejo Superior de la Policía Nacional. Sin embargo, cabe señalar que, lamentablemente, al 12 de enero ningún funcionario policial había sido certificado ni recibido una nueva tarjeta de identificación. El proceso se atrasó con motivo del terremoto y los 3.593 expedientes que habían sido objeto de una instrucción "se perdieron". Los expedientes, de los cuales afortunadamente se habían hecho copias, fueron encontrados entre las ruinas de la Inspección General de la Policía Nacional de Haití.

59. El Experto independiente sigue recibiendo informaciones o denuncias en el sentido de que hay policías, a veces de un rango elevado, cuyo tren de vida sería poco compatible con sus ingresos o que realizarían actividades incompatibles con su función. Ello plantea dudas sobre la seriedad de la labor de certificación y la confianza que puede tener la población en la labor de la MINUSTAH para apoyar al Gobierno de Haití en su lucha contra la corrupción.

60. El Experto independiente es consciente de la dificultad de la tarea, especialmente en el contexto actual, y de las consecuencias que las medidas que habría que adoptar podrían tener en el plano de la seguridad. Sin embargo, insta al Gobierno de Haití a poner en práctica, con el discernimiento y rigor necesarios, las recomendaciones que apuntan a certificar a los agentes y a separar de la policía a los elementos indeseables. Recomienda

además que el Consejo Superior de la Policía Nacional se reúna para preparar las decisiones que habrá que tomar a este respecto.

61. En efecto, ha llegado el momento de reiniciar el proceso, tanto más cuanto que en la resolución 1944 (2010)[13] del Consejo de Seguridad se recuerda la necesidad de cumplir las etapas previstas en el plan nacional de reforma de la policía nacional. Según información recogida de diversas fuentes haitianas e internacionales, la certificación tropieza con dificultades políticas, operativas y financieras que no son aceptables y ponen en peligro el éxito de un proceso, que, sin embargo, es fundamental para el restablecimiento del estado de derecho en Haití. El Experto independiente recomienda que el Representante Especial del Secretario General y las autoridades de Haití hagan conjuntamente una declaración clara y resuelta sobre la marcha del proceso y que se asignen medios humanos y financieros que permitan superar los obstáculos administrativos y financieros que impiden que el programa se lleve a cabo.

62. En sus informes anteriores de 2009 y 2010 el Experto independiente había señalado al Consejo de Derechos Humanos las dudas que le cabían en cuanto a la posibilidad que realmente tiene la Oficina del Alto Comisionado para los Derechos Humanos de desempeñar su función de garantizar un riguroso proceso de certificación, incluso con respecto a las decisiones que ha de tomar el Consejo Superior de la Policía Haitiana para separar a los elementos que no cumplan los requisitos de una policía democrática.

63. Según los términos de la decisión del Secretario General relativa a la división de tareas entre las instituciones y órganos de las Naciones Unidas, es el Alto Comisionado quien encabeza el proceso de justicia de transición y de certificación. Por ello, debería corresponder a su Oficina la función de coordinar y acompañar el proceso, así como de hacer un seguimiento de él, preparando el material necesario y publicando los instrumentos que hagan posible un procedimiento de certificación fundado en los derechos humanos. Sin embargo, la Oficina del Alto Comisionado no conduce por sí misma el proceso sino que desempeña más bien un papel de apoyo a quienes lo dirigen. Este apoyo consiste en enunciar las garantías para que el proceso sea equitativo respecto de los funcionarios policiales y a fin de separar de la policía a los autores de violaciones de los derechos humanos, sin dejar de respetar sus propios derechos. El Experto independiente recomienda que se reafirme la función que cabe a la Oficina del Alto Comisionado en el proceso y que se tomen disposiciones para que sea respetada.

D. La Oficina de Protección del Ciudadano

64. El artículo 207 de la Constitución de 1987 instituye una Oficina de Protección del Ciudadano con el fin de proteger a todas las personas contra toda forma de abuso de la administración pública. El Protector del Ciudadano, escogido por consenso por el Presidente de la República, el Presidente del Senado y el Presidente de la Cámara de Diputados, tiene un mandato de siete años que no se puede renovar. Desde su nombramiento, la Sra. Florence Elie ha demostrado gran energía y visión estratégica, lo cual demuestra si cuán bien eligió el Presidente Préval. En su calidad de Protectora del Ciudadano, ha copresidido también con gran habilidad la Comisión Internacional de Investigación de los acontecimientos ocurridos en la cárcel civil de Cayes el 19 de enero de 2010. El Experto independiente había recomendado que se instituyera un proceso que demostrara la decisión de las autoridades de Haití de luchar contra la impunidad.

[13] "*Solicita* a la MINUSTAH que siga apoyando la selección, orientación y capacitación del personal de policía y penitenciario y el fortalecimiento de la capacidad institucional y operacional de los servicios penitenciarios."

65. Tras sufrir también las consecuencias del terremoto del 12 de enero de 2010, que dejó inhabitables sus locales, la Sra. Elie entabló relaciones de confianza con las autoridades de Haití y la comunidad internacional que le permitieron, a pesar de las dificultades, extender su acción no solo en Puerto Príncipe sino también en otras ciudades del país. Ella misma redactó y revisó luego con el apoyo de la Oficina del Alto Comisionado para los Derechos Humanos el proyecto de ley que apunta a fijar los límites y las modalidades de acción de su institución para ajustarlas a los Principios de París que rigen las instituciones nacionales de derechos humanos. El Experto independiente discutió con las autoridades del país la necesidad de que se sometiera a votación cuanto antes la Ley sobre la Oficina de Protección del Ciudadano y se asignara a ésta el presupuesto necesario para su funcionamiento.

66. El Experto independiente recuerda que en la actualidad esta institución es sufragada por varios asociados financieros y asociados institucionales[14]. Recuerda asimismo que la titular del cargo preparó un plan plurianual de desarrollo en el que tuvo gran participación el Experto independiente, que recomienda que la Oficina asuma la dirección de una "mesa de concertación" que congregue a los asociados institucionales y financieros, nacionales e internacionales, de manera de compartir la información con todos, planificar las actividades y la financiación necesarias con toda la transparencia del caso y garantizar que la Oficina tenga en todo momento plena autoridad. Recomienda además que el programa de apoyo, con inclusión de la reconstrucción de sus locales, sea presentado a la Comisión Provisional para la Reconstrucción de Haití, lo cual demostraría que la Oficina tiene una alta prioridad en la reconstrucción a los efectos del restablecimiento del estado de derecho.

IV. La reconstrucción de Haití

67. Desde hace muchos meses y en cada una de sus misiones el Experto independiente ha venido señalando a la atención del Gobierno, la comunidad internacional y los miembros de la Comisión Provisional para la Reconstrucción de Haití la inquietud que suscitan en la sociedad civil, tanto en Haití como en la diáspora, la reconstrucción del país y el proceso de funcionamiento de la institución encargada de dirigirlo. El Experto independiente recomienda que los donantes de fondos y los miembros de la Comisión recuerden la declaración que hizo el Primer Ministro en la conferencia de donantes que tuvo lugar en febrero de 2010 acerca de "una sociedad equitativa, justa y solidaria en que el estado de derecho, la libertad de asociación y de expresión estén bien establecidos, un país en que todas las necesidades básicas de la población sean satisfechas y administradas por un Estado unitario, fuerte, garante del interés general, muy desconcentrado y descentralizado". Muchos haitianos tienen la sensación de que lo que ha hecho la Comisión no está a la altura de las necesidades. Son muchos los que no se sienten representados y son muchos los que no comprenden cuál es el sentido de los distintos proyectos presentados, de difícil legibilidad y coherencia.

68. El Experto independiente observa complacido el apoyo manifestado por el Primer Ministro y varios miembros de la Comisión a la idea de reconsiderar la labor de ésta y reflexionar acerca de un nuevo enfoque de derechos humanos en el marco de la reconstrucción, que serviría de nueva base para la estrategia y el plan de acción de manera que la población comprenda que la finalidad misma de la reconstrucción apunta a garantizar los derechos de que durante tanto tiempo se han visto privados. No se trata de un enfoque conceptual sino de un cambio de filosofía que tenga en cuenta en primer lugar las necesidades y aspiraciones de los haitianos de restablecer un entorno sostenible, en el

[14] La Oficina del Alto Comisionado para los Derechos Humanos, el PNUD y la Organización Internacional de la Francofonía.

marco de un desarrollo más descentralizado y orientado a proteger a la población de los riesgos naturales, y velar por una reconstrucción equitativa, procurando en particular la igualdad entre las regiones más ricas y las menos prósperas con la finalidad de establecer una sociedad más justa.

69. El enfoque de derechos humanos permite también prestar especial atención a las personas más vulnerables, las mujeres, los niños y las personas con discapacidad, y procurar que las organizaciones de la sociedad civil, en particular las de mujeres, de campesinos y de personas vulnerables participen sistemáticamente en la reconstrucción, asegurarse de que los planes y presupuestos de reconstrucción incluyan análisis por sexo y objetivos especiales en materia de igualdad entre los géneros y velar por que los programas de reconstrucción de gran densidad de mano de obra no se concentren en los sectores económicos tradicionalmente ocupados por hombres.

70. El Experto independiente recomienda que la Comisión Provisional para la Reconstrucción de Haití sea dotada de recursos humanos capacitados en las técnicas del enfoque de derechos humanos de manera de ayudar al cuadro de funcionarios permanentes en la preparación de los expedientes, en la presentación de éstos a la Comisión y en las distintas etapas de ejecución de los proyectos. Recuerda en particular la propuesta que formuló la Alta Comisionada para los Derechos Humanos ante el Consejo de Derechos Humanos en el período de sesiones de junio de 2010 de aplicar, en el contexto de los llamados a concurso que haga la Comisión, el marco conceptual preparado por el Representante Especial del Secretario General[15] para la cuestión de los derechos humanos y las empresas transnacionales y otras empresas.

71. Además, es indispensable hacer participar más a la sociedad civil en el seguimiento de la reconstrucción. El Experto independiente reconoce que se ha tratado de asociar a la labor de la Comisión a distintas entidades de la sociedad civil, entre ellas las ONG, las mujeres y los sindicatos. Pero es igualmente importante que haya un control ciudadano sobre la aplicación de los planes en el contexto de la reconstrucción y, particularmente, con respecto al enfoque de derechos humanos. Estas técnicas no son necesariamente conocidas de todos. Tal como se establecieron talleres de capacitación en las técnicas de seguimiento de la política pública para la Sección de Derechos Humanos de la MINUSTAH, se podrían organizar para esta fuerza, con participación de expertos haitianos o internacionales, talleres de capacitación en el seguimiento del enfoque de derechos humanos.

V. El caso de Jean-Claude Duvalier

72. El regreso del ex Presidente Jean-Claude Duvalier ha sorprendido a numerosos observadores y ha reabierto dolorosas heridas en muchos haitianos, tanto dentro del país como en la diáspora. Bajo su dictadura, decenas de miles de opositores fueron exiliados, millares de haitianos y haitianas fueron detenidos, torturados o ejecutados o simplemente desaparecieron. Testigos y observadores internacionales han calificado al gobierno de una de las peores dictaduras de la región. El Experto independiente ha recibido un gran número de testimonios y documentos y, en el curso de su misión más reciente, se reunió con víctimas y familiares de víctimas. Muchos han interpuesto acciones judiciales contra Jean-Claude Duvalier.

73. El Presidente Préval ha aceptado el ofrecimiento de la Alta Comisionada para los Derechos Humanos de poner a disposición de la justicia en Haití la experiencia de su Oficina para ayudar a las autoridades judiciales en su labor de investigación y constatación de los hechos. El Experto independiente se reunió con el Presidente Préval y el Ministro de

[15] A/HRC/14/27.

Justicia y Seguridad Pública para proponer su asistencia. Recabó y obtuvo el apoyo de varios titulares de mandatos de procedimientos especiales[16] que, llegado el caso aportarían sus conocimientos de derecho y su experiencia en situaciones similares en otros países.

74. A la época de redactarse el presente informe, expertos internacionales trabajan en estrecha colaboración con las autoridades del país para examinar las distintas opciones. El Experto independiente, en su entrevista con el Presidente Préval, recomendó que se considerara atentamente la vía judicial, que se estudiaran todas las posibilidades que ofrecía el Código Penal del país y no se descartaran de un golpe las posibilidades que existían, especialmente con respecto a las desapariciones forzosas. Sin embargo, según el Presidente, hay que tener en cuenta también las disposiciones pertinentes que existen en derecho internacional, en particular la jurisprudencia de la Corte Interamericana de Derechos Humanos de la que es parte Haití.

75. El Experto independiente querría recordar que la sustanciación de un proceso equitativo constituiría un acontecimiento importante que demostraría a la población del país que la justicia funciona en Haití y que, en lo sucesivo, no se tolerará la impunidad para los crímenes más graves.

76. El Experto independiente recomienda además a las autoridades de Haití que vayan más allá de las vías judiciales posibles y hagan una labor de memoria inspirándose en las que tuvieron lugar en los países de África o América Latina en que se establecieron comisiones para la verdad y comisiones de constatación de los hechos. El Experto independiente recomienda también que se piense en educar a los jóvenes sobre los crímenes del pasado y se reflexione sobre los efectos de esa labor en el futuro del país.

VI. Recomendaciones al Gobierno de Haití y a la comunidad internacional

Atentados contra los derechos de las personas vulnerables

77. **Con respecto a la violencia contra la mujer, el Experto independiente recomienda que se tomen las medidas siguientes:**

a) Hacer un estudio acerca de la falta de datos fiables con respecto a la violencia contra la mujer, que permitiría realmente documentar el problema, evaluar su magnitud, entender su evolución y verificar las cifras dispares que circulan;

b) Seguir difundiendo las "Directrices aplicables a las intervenciones contra la violencia por razón de género en situaciones humanitarias", preparadas por las Naciones Unidas e impartir formación al respecto.

78. **Con respecto a la situación de los niños, el Experto independiente recomienda las siguientes medidas:**

a) Ejercer un control eficaz sobre las estructuras de acogida ilegales y tomar medidas para cerrar las que no cumplan las disposiciones legales;

b) Establecer un marco para el proceso de adopción de manera que tenga lugar con todas las garantías y que la adopción no sea considerada un gesto humanitario;

[16] El Relator Especial sobre la tortura y otros tratos o penas crueles, inhumanos o degradantes, el Relator Especial sobre las ejecuciones extrajudiciales, el Grupo de Trabajo sobre las Desapariciones Forzosas o Involuntarias y el Grupo de Trabajo sobre la Detención Arbitraria.

c) Ratificar el Convenio de La Haya sobre la Protección del Niño y la Cooperación en materia de Adopción Internacional e incluir en el programa de trabajo del Parlamento la ley necesaria para incorporarlo en el derecho interno;

d) Combatir los secuestros, las adopciones ilegales y la violencia sexual contra los niños;

e) Combatir el fenómeno de los *"restavek"*, teniendo en cuenta sus recomendaciones y las que figuran en el informe de la Relatora Especial sobre las formas contemporáneas de esclavitud.

79. **Con respecto a las personas enfermas y con discapacidad, el Experto independiente recomienda tomar las medidas siguientes:**

a) Organizar un sistema específico de atención para las personas con lesiones medulares que se encuentran en el país o quieren regresar a él;

b) Cerciorarse de que los edificios, en particular los públicos, sean accesibles a las personas con discapacidad;

c) Luchar contra el fenómeno del linchamiento de las personas con cólera y acusadas de brujería iniciando investigaciones y sometiendo a los responsables a la acción de la justicia.

80. **Con respecto a la situación de los desplazados dentro del país y los haitianos que son objeto de regreso forzado, el Experto independiente recomienda las medidas siguientes:**

a) Formular una estrategia adecuada para combatir la proliferación de campamentos informales;

b) Combatir la transformación de los campamentos formales en lugares informales y asentamientos superpoblados de precaristas para los cuales no alcanzan los servicios;

c) Poner fin a la venta de terrenos en los campamentos por quienes no son sus propietarios;

d) Difundir y establecer una estrategia basada en los derechos en materia de evicción;

e) Formular estrategias eficaces para sacar de la crisis a las personas desplazadas;

f) Generalizar el alumbrado nocturno en los campamentos, en particular en los baños;

g) Cerciorarse de que el regreso forzado de haitianos, si debe tener lugar, lo haga en condiciones que respeten las obligaciones legales en la materia y no constituyan una carga adicional para el país.

Funcionamiento de las instituciones del Estado

81. **Con respecto a la reforma del sistema judicial y la lucha contra la impunidad, el Experto independiente recomienda que se tomen las medidas siguientes:**

a) Poner en práctica la reforma de la justicia con arreglo a las tres leyes de 2007 a fin de que haya una separación clara y efectiva entre el poder ejecutivo y el judicial;

b) Asignar un lugar prioritario a la designación del Presidente de la Corte de Casación en el programa de reforma del Estado;

c) Establecer el Consejo Superior del Poder Judicial y dotarlo de recursos humanos y medios financieros que le permitan funcionar con absoluta independencia y proceder a la contratación de magistrados;

d) Iniciar el programa de certificación y contratación de magistrados;

e) Renovar el financiamiento del Sistema Nacional de Asistencia Judicial, en espera de una solución permanente.

82. **Con respecto al sistema penitenciario, la situación de las cárceles y las condiciones de detención, el Experto independiente recomienda que se tomen las medidas siguientes:**

a) Realizar un estudio para poder entender por qué las condiciones de detención varían tanto en las distintas jurisdicciones del país, de manera de afinar las estrategias de apoyo al sector penitenciario;

b) Proseguir y profundizar las medidas tomadas para resolver los problemas de la sobrepoblación penitenciaria y la vetustez de los establecimientos;

c) Garantizar a los detenidos comidas de buena calidad y en cantidad suficiente;

d) Separar físicamente a quienes cumplen una pena y quienes están en detención preventiva, con instituciones distintas para las dos categorías;

e) Aclarar y simplificar ciertos procedimientos penales, especialmente en lo que concierne a las penas sustitutivas de la prisión;

f) Establecer un procedimiento por el cual el ministerio público pueda hacer comparecer ante un juez de instrucción en un plazo de 48 horas, cuando la detención sea necesaria, a todos los detenidos por crimen o delito;

g) Establecer el sistema de comparecencia inmediata, con el consentimiento del decano del tribunal de primera instancia;

h) Establecer un procedimiento que permita evacuar todos los procedimientos pendientes en el ministerio público en el plazo de un mes mediante el nombramiento de un juez de instrucción, la citación directa o el sobreseimiento;

i) Hacer comparecer mediante citación directa a los detenidos cuyo caso esté pendiente en el ministerio público y respecto de los cuales no sea obligatorio ni necesario que sean sometidos a un juez de instrucción;

j) Terminar con la impunidad y someter a la justicia lo ocurrido en la cárcel civil de Cayes el 19 de enero de 2010.

83. **Con respecto al personal de policía, el Experto independiente recomienda que se tomen las medidas siguientes:**

a) Formular una declaración firme y clara que dimane del Representante Especial del Secretario General y de las autoridades de Haití acerca de la realización del proceso de certificación *(vetting)*;

b) Restablecer el proceso de certificación iniciado antes del desastre natural cumpliendo las etapas previstas en el plan nacional de reforma de la policía nacional;

c) Garantizar la seriedad de la certificación teniendo en cuenta las recomendaciones precedentes del Experto independiente;

d) Convocar al Consejo Superior de la Policía Nacional para preparar las decisiones relativas a la certificación de los agentes;

e) Asignar medios humanos y financieros que permitan superar los obstáculos administrativos y financieros que impiden llevar a cabo el programa de certificación;

f) Reafirmar la función que cabe a la Oficina del Alto Comisionado para los Derechos Humanos en el proceso de certificación y tomar disposiciones para que sea respetada.

84. **Con respecto a la Oficina de Protección del Ciudadano, el Experto independiente recomienda las medidas siguientes:**

a) Someter a votación lo antes posible la ley sobre esta Oficina y asignarle el presupuesto necesario para su buen funcionamiento;

b) Organizar una mesa de concertación dirigida por la Oficina que reúna a sus asociados institucionales y financieros nacionales e internacionales;

c) Presentar a la Comisión Provisional para la Reconstrucción de Haití el programa de apoyo a la Oficina que incluya la reconstrucción de sus locales a fin de demostrar que cabe a ésta una alta prioridad en la reconstrucción a los efectos de restablecer el estado de derecho.

Reconstrucción

85. **Con respecto a la Comisión Provisional para la Reconstrucción de Haití, el Experto independiente recomienda que se tomen las medidas siguientes:**

a) Recordar a los donantes de fondos y a los miembros de la Comisión la declaración que hizo el Primer Ministro en el curso de la conferencia de donantes que tuvo lugar en febrero de 2010;

b) Reconsiderar la labor de la Comisión propiciando un enfoque de derechos humanos en el marco de la reconstrucción de manera que la población comprenda que la finalidad misma de ella consiste en garantizar los derechos de los que han estado privados durante tanto tiempo;

c) Dotar a la Comisión de recursos humanos que hayan recibido formación en las técnicas del enfoque de derechos humanos de manera de ayudar a los funcionarios permanentes en la preparación de los expedientes, su presentación a la Comisión y las distintas etapas de ejecución de los proyectos.

86. **Con respecto a la participación de la sociedad civil en la reconstrucción, el Experto independiente recomienda las medidas siguientes:**

a) Proponer actividades de formación específicas sobre el enfoque de derechos humanos, especialmente a las entidades humanitarias;

b) Organizar talleres de formación en el seguimiento del enfoque de derechos humanos en el marco de la reconstrucción, con ayuda de la MINUSTAH y la participación de expertos haitianos o internacionales;

c) Hacer efectivo un control por los ciudadanos sobre la aplicación de los planes de reconstrucción y, más en particular, sobre el enfoque de derechos humanos;

d) Asociar sistemáticamente a la reconstrucción del país a la sociedad civil, especialmente a las organizaciones de ésta que trabajan en la cuestión de las personas vulnerables (la mujer, el niño, las personas con discapacidad);

e) Asegurarse de que los programas de reconstrucción de gran densidad de mano de obra no se concentren únicamente en los sectores económicos tradicionalmente ocupados por hombres.

87. **Con respecto al caso de Jean-Claude Duvalier, el Experto independiente recomienda que se tomen las medidas siguientes:**

a) Examinar todas las vías judiciales abiertas que permitan organizar un proceso justo;

b) Proceder a una labor de memoria inspirándose en los países de África o América Latina en que se han establecido comisiones de la verdad o comisiones para la constatación de los hechos;

c) Informar a los más jóvenes, a través de programas educativos, acerca de los crímenes del pasado;

d) Reflexionar sobre los efectos de esos crímenes en el porvenir del país.

88. **Con respecto a las relaciones con la sociedad civil, el Experto independiente recomienda las medidas siguientes:**

a) Restablecer los vínculos de trabajo y de cooperación entre las organizaciones de derechos humanos haitianas y la Sección de Derechos Humanos de la MINUSTAH en Puerto Príncipe;

b) Estudiar la hipótesis y las ventajas comparativas de sustituir la Sección de Derechos Humanos de la MINUSTAH por una representación de la Oficina del Alto Comisionado para los Derechos Humanos.

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A la mémoire des disparus

Point de presse des Nations Unies du Vendredi 2 septembre

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Avec pour invité spécial :

Michel Forst, Expert indépendant des Nations Unies sur la situation des droits de l'homme en Haïti

Animé par :

Vincenzo Pugliese, Porte-parole adjoint de la MINUSTAH

René Kentsa, Porte-parole adjoint de la Police des Nations Unies

Eliana Nabaa, Chef du Bureau de la Communication et de l'Information publique de la MINUSTAH

Intervention du porte-parole adjoint de la minustah

Bonjour à tous et bienvenue à ce point de presse hebdomadaire des Nations Unies.

Aujourd'hui nous avons comme invité l'Expert indépendant des Nations Unies sur la situation des droits de l'homme en Haïti, qui est en visite dans le pays depuis le 29 août jusqu'à demain. Monsieur Michel Forst est venu faire le suivi des recommandations établies dans son dernier rapport au Conseil des droits de l'homme et évaluera, entre autres, l'évolution de la situation des femmes, des enfants, des personnes handicapées et des déplacés internes, depuis sa dernière mission en avril 2011.

Une fois que M. Forst aura fait son intervention, il répondra par la suite à vos questions. Nous continuerons après avec les activités de la Mission, suivies comme d'habitude d'une séance questions-réponses.

Intervention de michel forst, expert indépendant des nations unies sur la situation des droits de l'homme en Haïti

Je termine demain ma 9° mission en Haïti depuis que j'ai été nommé à la fonction d'Expert indépendant des Nations unies sur la situation des droits de l'homme en Haïti en septembre 2008 et je me rends ensuite à New York et à Washington pour des consultations sur Haïti. Et comme à chacune des missions, j'ai souhaité rencontrer la presse pour partager avec vous mes premières impressions, mes observations, mais aussi mes attentes dans certains domaines.

Comme vous le savez, je ne suis pas un membre du personnel de la MINUSTAH, je ne suis pas payé pour cette fonction, mon mandat s'exerce en toute indépendance, et je rapporte au Conseil des Droits de l'Homme des Nations Unies, ce qui me donne une entière liberté de ton et d'expression vis-à-vis de tous.

Comme je l'avais annoncé dans le communiqué qui a précédé mon arrivée en Haïti, l'objectif principal de cette mission était d'examiner la mise en œuvre de certaines des recommandations

que j'avais formulées dans le dernier rapport que j'ai présenté en juin dernier devant les Nations unies, ce rapport est disponible sur le site du Haut Commissariat des Nations unies pour les droits de l'Homme. Mes préoccupations portaient d'abord sur la réforme de l'état de droit, ensuite sur la lutte contre l'impunité et enfin sur la crise humanitaire et notamment la question des camps et des expulsions forcées.

C'est essentiellement sur ces 3 points que je souhaite partager avec vous quelques observations.

Je ne vous cache pas que j'étais curieux, en arrivant à Port-au-Prince, de découvrir le contexte politique lié à l'élection du Président Michel Martelly, et après avoir lu dans la presse et entendu à la radio un certain nombre de promesses ou d'annonces dans des domaines qui m'intéressent au premier chef, je pense notamment à tout ce que j'avais entendu dans le domaine de l'état de droit.

Et je ne vous cache pas non plus que j'ai été assez impressionné, lors des rencontres que j'ai eues avec les présidents des deux assemblées, les conseillers du président et le Président Michel Martelly lui-même lors de l'entretien que nous avons eu hier.

Assez impressionné, oui, parce que j'ai vu et entendu des annonces qui répondaient exactement aux recommandations que j'avais formulées dans mes rapports, recommandations qui rejoignaient beaucoup des observations et recommandations qui figuraient également dans les documents des organisations internationales et des organisations nationales des droits humains.

Dans le domaine de l'état de droit

Je pense d'abord à l'annonce hier du choix fait par le sénat des 18 candidats à la Cour de Cassation et de la très prochaine nomination par le Président des 6 membres de la Cour et surtout de son Président qui représente, vous le savez, l'élément tant attendu qui permet de rendre effectif le Conseil Supérieur du Pouvoir Judiciaire et le Conseil d'Administration de l'Ecole de la Magistrature. Il ne m'appartient pas de me prononcer sur les noms qui ont été retenus par le Sénat, mais pour ce qui concerne les 6 membres de la Cour de Cassation, il me paraît évident qu'ils devront répondre aux exigences d'éthique et de déontologie attendus pour les juges suprêmes dans le pays. J'ai cru comprendre dans les entretiens que j'ai eus que les membres du CSPJ feront l'objet d'un processus de vetting destiné à vérifier qu'ils correspondent à ces exigences. Avec d'autres, je serai attentif à ce point, dès lors qu'ils seront notamment conduits à se prononcer sur les nominations et la carrière des magistrats du pays.

L'annonce d'une rentrée judiciaire le 3 octobre prochain avec ces nominations attendues me semble porter le germe de la réalisation de la réforme de la justice voulue par les 3 lois votées en 2007.

Je n'ai pas le temps de m'étendre plus longuement sur ce sujet, mais je souhaitais vous dire que je vois dans cette annonce les prémisses de la réalisation tant attendue de la nécessaire séparation du pouvoir exécutif et du pouvoir judiciaire qui devrait, à terme, permettre de redonner aux Haïtiens confiance dans l'effectivité de leur justice tellement décriée. Cette funeste confusion, fruit de la corruption, a été la source de tellement de frustrations et de tant d'atteintes aux droits de l'homme.

Je ne veux pas être taxé de naïveté – le chemin est pavé d'embûches et de pièges et je crois qu'il est maintenant nécessaire d'attendre que ces décisions annoncées soient suivies d'effet, et croyez-moi, je serai un observateur attentif. Mais dans le même temps je souhaite aussi partager avec vous la conviction que j'ai senti la détermination et la volonté politique du Président Martelly de concrétiser ces annonces prochainement dans le domaine de l'état de droit, l'une des priorités annoncées pour son mandat.

Mais l'état de droit c'est également la réforme de la police et j'avais par le passé salué le fait que, avec le soutien fort de la MINUSTAH et de la communauté internationale, un plan de réforme de la PNH était engagé. Ce plan s'accompagne, vous le savez, d'un processus de vetting mené conjointement par les UNPOL et la MINUSTAH et qui doit aboutir à ce que les éléments de la police qui ne répondent pas aux exigences d'une police démocratique soient écartés des rangs de l'institution policière. Je ne vous cache pas mon inquiétude de voir que les milliers de dossiers qui ont été examinés et qui devaient faire l'objet d'une décision du Président du Conseil Supérieur de la Police Nationale restent actuellement en souffrance alors que des policiers, parfois de rang élevé, devraient sans plus tarder être écartés des rangs de la PNH. Il s'agit là d'une mesure de salubrité et je m'inquiète de ce que des ex-policiers au passé sujet à caution puissent dans le même temps réintégrer la police nationale haïtienne. Cette inaction dans le domaine de la mise en œuvre des recommandations du vetting et la confirmation de ces réintégrations donneraient le signal que les deux piliers de l'état de droit, la justice et la police, ne se réforment pas au même rythme. Je fais confiance au futur gouvernement pour que ces craintes soient rapidement et complètement dissipées.

L'état de droit c'est également le traitement décent des personnes privées de liberté parce qu'elles purgent leur peine ou qu'elles sont en attente de passer devant le juge. Et vous savez que lors de chacune de mes visites je ne manque jamais de me rendre dans une prison ou un commissariat. Hélas, pour constater que, malgré les efforts faits et l'importante assistance de la communauté internationale, la prison en Haïti est souvent un lieu dans lesquels les personnes enfermées sont l'objet de traitement cruels ou dégradant. Je suis très inquiet pour la situation des prisons, et notamment pour des questions sanitaires, alors que l'épidémie de choléra n'est pas encore terminée et pour des raisons purement bureaucratiques, les latrines de certaines prisons ne sont plus vidées. De même, je suis profondément troublé par le fait que l'approvisionnement en nourriture pour les détenus n'est quasiment plus assuré, les stocks de nourriture sont épuisés et, là aussi pour d'obscures raisons les décisions ne sont pas prises d'alimenter les cuisines des prisons d'un stock de denrées alimentaires. Il y a là quelque chose de profondément choquant, sans compter le risque d'explosion de violence que cette inaction de l'état porte en germe dès lors que les prévenus et les détenus ne seraient plus nourris.

Instaurer l'Etat de droit c'est enfin aussi garantir un fonctionnement des institutions et des services publics qui, au-delà de la sécurité des personnes et des biens, doivent veiller à assurer à tous les citoyens l'exercice de l'ensemble des droits civils et politiques, comme les droits économiques, sociaux et culturels tels qu'énoncés par les deux Pactes. Cette approche holistique devrait guider les choix du gouvernement dans les réformes à conduire, de telle sorte que progressivement l'accès à l'éducation pour tous, l'accès à un système de santé, l'accès à

l'eau potable et aux services d'assainissement, un logement salubre et décent, un accès aux revenus du travail et à la formation soient garantis pour tous.

La crise humanitaire

J'aimerais aussi rappeler que la crise humanitaire n'est pas terminée, alors que la fermeture des clusters, ces indispensables instances de coordination de l'aide humanitaire est annoncée pour la fin de l'année. On ne passe pas aussi aisément d'une crise humanitaire de cette ampleur à une phase de développement et je suis confiant dans la sagacité de la communauté internationale et des Nations unies pour faire en sorte que la période charnière entre les deux phases de l'humanitaire et du développement fasse l'objet de réflexions pertinentes et de la nécessaire souplesse que l'on attend en la matière.

J'ai, comme à chacune de mes missions depuis janvier 2010, visité quelques camps et parlé avec des familles qui y vivent et décrivent leur quotidien et leurs attentes, j'ai regardé également la question des expulsions forcées. J'avais demandé en son temps qu'un moratoire sur les expulsions soit déclaré tant que des solutions durables ne sont pas apportées et je regrette de constater que ces expulsions s'accélèrent et s'intensifient et je souhaiterais que la police reçoive des instructions claires de ne pas appuyer ou faciliter de quelque manière ces expulsions, en dehors des procédures légales. Des solutions existent et ont été identifiées pour traiter la question des camps installés dans le domaine public, d'autres solutions sont à inventer pour répondre aux légitimes souhaits des propriétaires privés de récupérer leurs terrains, je pense notamment à la réflexion à mener sur la pertinence d'un fonds d'indemnisation en la matière.

Un mot enfin pour terminer sur la question de l'impunité

Vous savez l'importance que j'accorde, avec beaucoup d'autres, à la lutte contre l'impunité et c'est la raison pour laquelle j'ai choisi d'aborder dans mes rencontres deux dossiers pour moi emblématiques de la lutte contre l'impunité.

J'ai pu constater que le retour de l'ancien Président Jean-Claude Duvalier a ravivé des blessures douloureuses chez beaucoup d'Haïtiens, dans le pays comme dans la diaspora. J'ai reçu un grand nombre de témoignages et de documents. J'ai rencontré, au cours de ma mission, des victimes et des familles de victimes. Plusieurs ont porté plainte contre Jean-Claude Duvalier. Depuis que mon rapport a été déposé, la Commission Interaméricaine des Droits de l'Homme a adopté une importante déclaration concernant le devoir de l'état haïtien d'enquêter sur les graves violations des droits humains commises sous le régime de Jean-Claude Duvalier et priant instamment la communauté internationale d'accorder toute l'aide possible à Haïti en cette occasion historique pour le système judiciaire haïtien. Je souhaite ici rappeler que la tenue d'un procès équitable serait un évènement important qui montrerait à la population du pays que la justice fonctionne en Haïti et que dorénavant l'impunité ne sera plus tolérée pour les crimes les plus graves. Je reste, avec mes collègues de procédures spéciales, à la disposition des autorités d'Haïti pour les appuyer dans la lutte contre l'impunité.

Le deuxième dossier emblématique de la lutte contre l'impunité est celui du massacre de la prison des Cayes, le 19 janvier 2010. Vous savez qu'une commission internationale a enquêté

sur cette question et qu'une recommandation a été adressée à l'état Haïtien demandant que les responsables soient traduits en justice.

Sur ces deux dossiers, j'ai reçu avec une grande satisfaction une assurance au plus haut niveau que la justice suivrait son cours et que la séparation des pouvoirs interdirait toute interférence de l'exécutif dans le traitement judiciaire des procédures engagées. Et je me réjouirai alors de constater que la réforme engagée dans le domaine de la justice s'accompagne d'une forte détermination à lutter contre l'impunité.

Dans quelques semaines, le 13 octobre prochain, Haïti se soumettra à Genève devant le Conseil des Droits de l'Homme des Nations unies à la nouvelle procédure d'examen périodique universel. C'est un dispositif par lequel tous les pays acceptent de présenter leur action en matière de droits humains et se voient en retour proposer par les états des recommandations pour améliorer la situation des droits humains dans leur pays. En raison du programme ambitieux annoncé par le Président Martelly dans le domaine de la réforme de l'état de droit, je lui ai suggéré que ce soit lui qui conduise la délégation haïtienne et qu'il vienne annoncer lui-même devant la communauté des états les orientations nouvelles que va prendre le pays sous sa direction, pour que l'état de droit, la sécurité humaine, la justice sociale et la lutte contre l'impunité règnent dans le pays.

Questions-Réponses

The Office of the UN High Commissioner for Human rights as well as the High Commissioner for Refugees issued an emergency appeal to suspend forced deportation of Haitians [from the US] because of an ongoing humanitarian crisis, and also said that this crisis remains a source of concern under the present circumstances. Can the humanitarian crisis that still exists here in Haiti be seen as a risk to the health, life or liberty of the people who arrive in Haiti?

Michel Forst: Effectivement l'appel conjoint du Haut Commissaire des droits de l'homme de suspendre le retour forcé des haïtiens à l'étranger à rejoint le propre appel que j'avais moi-même formulé et répéter à plusieurs reprises ; je ne l'ai pas mentionné aujourd'hui, dans la conférence de presse. J'ai signalé que je me rendais à New-York et à Washington pour des consultations et la question du retour forcé des haïtiens vivant aux Etats-Unis sera abordé lors de cette rencontre. J'ai eu des discussions du même niveau avec le gouvernement français. Comme je l'ai mentionné, la crise humanitaire n'étant pas terminé, il me semble que la meilleure aide que la communauté internationale pourrait apporter à Haïti serait de suspendre les retours forcés tant que les conditions ne permettent pas d'assurer un traitement décent pour les Haïtiens qui sont renvoyés en Haïti.

Au cours de votre exposé vous avez manifesté votre satisfaction par rapport aux différentes plaintes déposées contre l'ancien Président Jean Claude Duvalier. Qu'en est-il exactement des faits reprochés aux soldats onusiens tels : le choléra, le viol pour ne citer que cela ?

Michel Forst: C'est une question qui est abordée à chaque conférence de presse, ma réponse va reste la même. Mon mandat ne porte pas sur la MINUSTAH. Sur les questions relatives au comportement des Nations Unies, je laisse le soin au porte–parole de la MINUSTAH de

répondre. Par le passé, des réponses ont déjà été apportées sur la matière. Sur le choléra il n'y a rien à ajouter. Sur d'autres dossiers concernant les opérations de maintient de la paix, que ce soit en Haïti ou dans d'autres pays, je crois que je partage le sentiment de ceux qui disent que l'immunité diplomatique n'est pas la même chose que l'impunité. Je crois que des règles claires sont énoncées en la matière pour le personnel des Missions de maintient de la paix, je crois qu'elles seront rappelées toute à l'heure par le porte-parole de la MINUSTAH. Ma simple demande est une demande qui rejoint celle de beaucoup, c'est de faire en sorte que si un traitement judicaire du dossier est donné dans le pays concerné, alors la moindre des choses est d'apporter des réponses aux questions posées. De mon point de vue, je crois que les réponses en la matière ne sont pas toujours suffisantes, parfois des réponses ne sont pas apportées à des questions posées. La répétition des questions et l'absence de réponses de la part des Nations Unies est parfois pour moi une source de frustration et une source d'inquiétudes.

J'ai moi-même rencontré ici et dans d'autres pays des personnes qui se plaignent de ce silence ou de l'absence de véritable réponse des Nations Unies. Je souhaite la transparence la plus totale et que des réponses soient apportées aux questions posées par les familles ou les personnes qui ont des allégations d'avoir été victimes de traitement non conforme à l'éthique internationale.

Mr Forst, selon vos constats, est-ce que la situation risque de s'empirer ou de s'améliorer sous le mandat de Mr Martelly ?

Michel Forst: Comme on dit en français, on a d'un coté la présomption d'innocence, mais aussi on a la présomption de bonne foi. Je prends les annonces qui ont été faites et je les ai entendues avec beaucoup de satisfaction. J'ai dit à quel point je sentais qu'elles rejoignaient beaucoup des recommandations qui figuraient dans mes rapports. Je sais à partir des entretiens que j'ai eus avec les plus hauts responsables qu'il ne s'agit pas uniquement d'effet d'annonce, mais que ces annonces seront suivies de décision effective, notamment dans le domaine de la reforme de la justice. Il s'agit pour le moment d'une première étape ; peut-être que le plus compliqué reste encore à faire, mais à chaque moment son évaluation, et pour le moment, je suis très satisfait de l'annonce que j'ai reçue des autorités haïtiennes que dans le domaine de l'Etat de droit, qui était parmi les promesses du Président Michel Martelly, les réponses sont à la hauteur de mes attentes.

Intervention du porte-parole adjoint de la minustah

Je donnerai maintenant lecture d'un communiqué de presse de la Mission, daté d'aujourd'hui.

La MINUSTAH se félicite du lancement du processus visant la mise en place du Conseil Supérieur du Pouvoir Judiciaire (CSPJ)

Port-au-Prince, le 02 septembre 2011 – La Mission des Nations Unies pour la Stabilisation en Haïti (MINUSTAH) se réjouit de la sélection par le Sénat de la République de 18 candidats pour les six postes de juges à la Cour de cassation.

Cette sélection permettra au Président Michel Joseph Martelly de nommer les six juges à la Cour de Cassation ainsi que le Président de cette Cour.

La décision du Sénat de la République est un premier pas important vers l'accord de bonne gouvernance qui doit présider les relations entre le Président de la République et le Parlement dans l'intérêt supérieur du peuple haïtien.
Cette nomination permettra de mettre sur pied le 3 octobre 2011 le Conseil Supérieur du Pouvoir Judiciaire, comme l'a déclaré le Président Martelly.
La MINUSTAH rappelle l'importance de l'établissement d'un Pouvoir judiciaire indépendant pour le renforcement de l'État de droit en Haïti et la consolidation des acquis démocratiques.
Ce Conseil représentera la clé de voute d'un Pouvoir judiciaire indépendant.
La MINUSTAH réitère sa détermination à accompagner les autorités haïtiennes dans le renforcement de l'État de Droit et mettra à la disposition du gouvernement, à sa demande, toutes les expertises techniques dont elle dispose. (Fin du communiqué)
Je donne maintenant la parole au porte-parole de la Police des Nations Unies, René Kentsa, qui fera le point sur la situation sécuritaire depuis la semaine dernière.

Intervention du porte-parole adjoint de la police des nations unies

Au début de cette semaine, une importante réunion a regroupé le Directeur Général de la Police Nationale et les chefs des composantes militaires et policières de la mission onusienne.
Au cours de cette rencontre entre le Commissaire de la Police des Nations Unies, Marc Tardif ; le Commandant de la Force, le général Luiz Ramos ; et le Directeur général de la PNH, Mario Andresol, il a été question de revoir le dispositif sécuritaire sur le terrain afin d'optimiser les stratégies mises en place pour endiguer le phénomène de la criminalité.
En ce moment précis, nous appuyons la PNH dans le cadre des opérations par le renforcement de la visibilité, notamment au niveau des points de contrôle, des patrouilles pédestres et motorisées.
Parlant du renforcement, un effectif supplémentaire de 06 pelotons a été déployé pour la seule région métropolitaine. Concernant les points de contrôle, la ville de Port-au-Prince connaît un accroissement à hauteur d'une dizaine.
Un accent par rapport à cette visibilité est mis sur des sites réputés criminogènes en vue de prévenir la commission de tout acte délictuel et de rechercher efficacement les malfaiteurs.
Grace à ce dispositif sécuritaire sur le terrain, plusieurs opérations ont été menées ces derniers temps en appui à la PNH, notamment à Port-au-Prince dans la zone du Champ de Mars. Celle-ci a permis la découverte de 6,5kg de cocaïne.
Dans la même optique, une opération similaire a eu lieu à Arcahaie (Levèque/Cabaret) où quatre individus ont été interpellés dont deux étaient en possession de deux pistolets automatiques garnis chacun de quatre cartouches.
Le succès de ces opérations dépend non seulement de la Police, mais surtout aussi du rôle important que les populations doivent jouer pour renseigner la Police et augmenter ainsi son efficacité.
Vous savez autant que moi que les malfaiteurs ne vivent pas dans des nuages. Ils sont parmi nous et nous côtoient en longueur de journée.

C'est pour cette raison que le Commissaire de la Police des Nations Unies m'a instruit de faire un rappel en direction de la population pour qu'elle collabore toujours et davantage avec la Police afin de d'optimiser son rendement.

En effet, il suffit de signaler discrètement toute présence suspecte autour de vous en appelant gratuitement le Centre des opérations de la Police des Nations Unies au 113, ou celui de la Police Nationale au 114.

Ce geste citoyen améliore la sécurité de nous tous.

Intervention du porte-parole adjoint de la minustah

Pour terminer, je passe la parole à la Chef de la Communication et de l'Information publique, Eliana Nabaa, qui entend faire une mise au point sur le dossier de Port-Salut.

Intervention de la Chef du bureau de la Communication et de l'Information publique de la MINUSTAH

J'ai tenu à m'adresser à vous aujourd'hui pour vous assurer qu'au plus haut niveau de la Mission, que ce soit les membres de la composante militaire, civile ou policière, ainsi que nos collègues à New York, nous sommes tous très concernés par ces allégations et avons entrepris des actions immédiates conformément à nos obligations.

La MINUSTAH a effectivement été saisie de ces allégations. La MINUSTAH a aussitôt diligenté une enquête interne, afin que la lumière soit faite sur ce qui pourrait être une violation grave de son code de conduite, d'éthique, et de ses règlements internes.

Parallèlement, la MINUSTAH, à travers le Département de Support aux Missions de Maintien de la paix, a également aussitôt informé la Mission Permanente de l'Uruguay à New-York de ces allégations, afin que les autorités uruguayennes déterminent le plus rapidement les mesures à prendre.

C'est pourquoi nous nous félicitons de l'engagement ferme du ministre uruguayen de la défense à ce sujet. Compte tenu de l'impact que de telles allégations peuvent avoir sur l'image de la Mission, il est nécessaire d'agir avec la plus grande célérité et le plus grand sérieux.

Toute allégation de mauvaise conduite est prise avec le plus grand sérieux et fait l'objet d'une enquête très sérieuse, afin que, si ces allégations sont confirmées, les auteurs de ces actes soient traduits devant la justice et les sanctions appropriées soient prises.

La MINUSTAH n'acceptera rien de moins que ce standard de tolérance ZERO et ne tolère aucun comportement abusif contre n'importe quel Haïtien de la part d'un de ses membres.

MINUSTAH vle raple li pap janm tolere anyen ki pa mache ak prensip misyon an. Se zewo tolerans pou nenpòt anplwaye k ap fè abi kont nenpòt sitwayen ayisyen.

<u>Questions-Réponses</u>

Vous avez parlé d'allégations, mais le juge de paix, Paul Tarte, a confirmé que le jeune garçon a été effectivement viole ?

Eliana Nabaa : Je crois que l'enquête est en cours et je n'ai pas entendu le juge dire que l'enquête est terminée. Cependant, à notre niveau, l'enquête préliminaire est terminée, mais il y a aussi une enquête qui est diligentée par le gouvernement uruguayen. A ce stade là, tant que l'enquêté est en cours, on ne révèle pas d'informations qui peuvent être nuisibles à la supposée victime et qui constituent des éléments dans le dossier de l'enquête.

Madame, on a fait état d'une vidéo qui circulait. Est-ce que vous êtes au courant, l'aviez-vous vue ?

Eliana Nabaa : Oui, on est au courant de l'existence d'une vidéo. C'est une pièce qui est apportée au dossier.

Dans le cas où ces quatre soldats sont reconnus coupables, qu'est-ce qui va être fait ?

Eliana Nabaa : Il y a des accords entre les Nations Unies et le pays où des Missions sont déployées qui prévoient qu'en cas de délit pénal ou criminel, les militaires sont soumis à la juridiction de leur pays d'origine. Les Nations Unies de leur coté, quand des membres de son personnel sont rapatriés pour être jugés selon les lois de leur pays, que ce soient criminelles ou militaires, font le suivi du dossier pour s'assurer que effectivement ils comparaissent devant la justice, jugés et condamnés

Eliana Nabaa: Y a-t-il d'autres questions ? Plus de questions, je vous remercie.

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Understanding the Cholera Epidemic, Haiti

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After onset of the cholera epidemic in Haiti in mid-October 2010, a team of researchers from France and Haiti implemented field investigations and built a database of daily cases to facilitate identification of communes most affected. Several models were used to identify spatio-temporal clusters, assess relative risk associated with the epidemic's spread, and investigate causes of its rapid expansion in Artibonite Department. Spatio-temporal analyses highlighted 5 significant clusters ($p<0.001$): 1 near Mirebalais (October 16–19) next to a United Nations camp with deficient sanitation, 1 along the Artibonite River (October 20–28), and 3 caused by the centrifugal epidemic spread during November. The regression model indicated that cholera more severely affected communes in the coastal plain (risk ratio = 4.91) along the Artibonite River downstream of Mirebalais (risk ratio = 4.60). Our findings strongly suggest that contamination of the Artibonite and 1 of its tributaries downstream from a military camp triggered the epidemic.

On October 21, 2010, the Haitian Ministry of Public Health and Population (MSPP) reported a cholera epidemic caused by *Vibrio cholerae* O1, serotype Ogawa, biotype El Tor (*1*). This epidemic was surprising as no cholera outbreak had been reported in Haiti for more than a century (*1*,*2*). Numerous media rapidly related the epidemic to the deadly earthquake that Haiti had experienced 9 months earlier. However, simultaneously, a rumor held recently incoming Nepalese soldiers responsible for importing cholera, along with accusations of illegal dumping of waste tank contents (*3*). A cholera outbreak was indeed reported in Nepal's capital city of

Kathmandu on September 23, 2010, shortly before troops left for Haiti (*4*,*5*). Two hypotheses then emerged to explain cholera in Haiti.

Some researchers posited the transmission of an environmental strain to humans (*6*). Reasoning by analogy with cholera epidemiology in South Asia, they hypothesized that weather conditions, i.e., the La Niña phenomenon, might have promoted the growth of *V. cholerae* in its environmental reservoir (*6*). The second hypothesis suggested importation of the disease from a cholera-endemic country. The sequencing of 2 isolates of *V. cholerae* supported this second hypothesis by establishing an exogenous origin, probably from southern Asia or eastern Africa (*7*). Responding to a request from Haitian authorities to the French Embassy for the support of epidemiologists, we conducted a joint French–Haitian investigation during November 7–November 27, 2010, to clarify the source of the epidemic and its unusual dynamic.

Methods

Morbidity and Mortality Survey

As soon as the epidemic was recognized, a nationwide monitoring program was implemented to register all ambulatory patients, hospital admissions, and deaths (*1*). Each day, all government and nongovernmental health facilities in Haiti reported cases to the Direction of Health in each department, which colligated data before sending them to MSPP. For this study, the departments were asked to provide more precise data corresponding to the 140 Haitian communes from October 16 through November 30. Probable cholera cases were defined as profuse, acute watery diarrhea in persons. In each department, bacteriologic confirmation was obtained only for the first cases. Children <5 years of age were included because age was not always reported. Community deaths were additionally reported by local authorities. Comparison with epidemiologic surveys performed by other actors (Doctors without Borders, medical brigades from Cuba) enabled confirmation of the consistency of the database. Cholera incidence was calculated by using population numbers from Haitian authorities and mapped together with environmental settings by using ArcGIS (ESRI, Redlands, CA, USA). Maps of gridded population density (*8*), communes, rivers, roads, altitude, internally displaced persons (IDP) camps, and health facilities were obtained from Haitian authorities and the United Nations Stabilization Mission in Haiti (MINUSTAH) website (http://minustah.org).

Field Surveys

The first team of epidemiologists from Haiti went to Mirebalais during October 19–24. Then, from November 7–27, epidemiology teams from France and Haiti visited the most affected areas, namely Mirebalais, St-Marc, Gonaïves, Cap Haïtien, St-Michel-de-l'Attalaye, Petite-Rivière-de-l'Artibonite, Ennery, Plaisance, and Port-au-Prince. These visits included interviews with health actors and civilian authorities and investigation of environmental risks among inhabitants and patients from cholera treatment centers.

Statistics

To investigate for space–time case clustering, we analyzed the daily case numbers in each Haitian commune from October 16 through November 30 using SaTScan software (Kulldorf, Cambridge, UK). To detect clusters, this software systematically moves a circular scanning window of increasing diameter over the studied region and compares observed case numbers inside the window to the numbers that would be expected under the null hypothesis (random distribution of cases). The maximum allowed cluster size corresponded to 50% of the Haitian population. The statistical significance for each cluster was obtained through Monte Carlo hypothesis testing, i.e., results of the likelihood function were compared with 999 random replications of the dataset generated under the null hypothesis (*9*,*10*).

On the basis of these results, we further analyzed risk factors for spread in Ouest, Centre, and Artibonite Departments during October 20–28 using a regression model with adjustment on spatial variability. The initial focus, Mirebalais, was precluded to better estimate the relationship between the epidemic spread and the distance to the epidemic source. Because data on cholera cases were non-normally distributed and thus violated basic assumptions for linear regression, we used a generalized additive model (GAM) (*11*–*13*). Furthermore, because of the over-dispersion of the data (variance was greater than mean), we used a quasi-Poisson model (variance = c × mean, where c is an estimated constant) (*14*). The use of a Poisson model would not have been relevant because the main assumption for Poisson models is that variance equals mean. The GAM was allowed to model the count of cases in each commune, analyzing 1 continuous variable (distance to Mirebalais) and 3 binary variables (location downstream of Meille River, presence of camps of IDP, and commune partially or totally located in coastal plain). The models were adjusted on the population and the spatial distribution of communes.

Conditions of use were checked by using classical graphic means. The goodness-of-fit was also assessed by the percentage of explained deviance.

In the communes bordering the Artibonite River, namely Mirebalais, St-Marc, Dessalines, Petite-Rivière-de-l'Artibonite, Grande Saline, Verrettes, Desdunes, and L'Estère, during October 16–31, we searched for synchronizations between communal epidemiologic curves by calculating and testing Spearman correlation coefficients. Statistical analyses were performed by using R 2.10.1 software (www.r-project.org/foundation), particularly with the *mgcv* package (GAM modeling) (*11*). We compared p values to the probability threshold $\alpha = 0.05$.

Results

Initiation

On October 18, the Cuban medical brigades reported an increase of acute watery diarrhea (61 cases treated in Mirebalais during the preceding week) to MSPP. On October 18, the situation worsened, with 28 new admissions and 2 deaths. MSPP immediately sent a Haitian investigation team, which found that the epidemic began October 14. The first hospitalized patients were members of a family living in Meille (also spelled Méyè), a small village 2 km south of Mirebalais (Figure 1). On October 19, the investigators identified 10 other cases in the 16 houses near the index family's house. Five of the 6 samples collected in Meille from these outpatients, who became sick during October 14–19, yielded *V. cholerae* O1, serotype Ogawa, biotype El Tor. Environmental and water source samples proved negative.

Meille village hosted a MINUSTAH camp, which was set up just above a stream flowing into the Artibonite River. Newly incoming Nepalese soldiers arrived there on October 9, 12, and 16. The Haitian epidemiologists observed sanitary deficiencies, including a pipe discharging sewage from the camp into the river. Villagers used water from this stream for cooking and drinking.

On October 21, the epidemic was also investigated in several wards of Mirebalais. Inhabitants of Mirebalais drew water from the rivers because the water supply network was being repaired. Notably, prisoners drank water from the same river, downstream from Meille. No other cause was found for the 34 cases and 4 deaths reported in the prison.

On October 31, it was observed that sanitary deficiencies in the camp had been corrected. At the same time, daily incidence of cholera tended to decrease. Afterwards, incidence rose again to reach a second peak on November 10 (Figure 2).

Spatio-temporal Modeling

By using SaTScan (Kulldorf), several spatiotemporal clusters were identified (Figure 3): Mirebalais, October 16–19 ($p<10^{-3}$), and in the Artibonite delta, October 20–28 ($p<10^{-3}$). Overlapping staggered clusters occurred in the North-West (November 11–29, $p<10^{-3}$); Port-au-Prince area (November 14–30, $p<10^{-3}$); and North (November 21–30, $p<10^{-3}$).

Epidemic in Lower Artibonite

The start of the cholera epidemic was explosive in Lower Artibonite (communes of Grande Saline, Saint Marc, Desdune, Petite-Rivière-de-l'Artibonite, Dessaline, and Verrettes). It peaked within 2 days and then decreased drastically until October 31 (Figure 2). On October 19, the departmental Direction of Health received a first alert from Bocozel (commune of St-Marc) where 3 children had died from acute watery diarrhea at school. The same day, clusters of patients with severe acute diarrhea and vomiting were admitted to a hospital in Dessalines, and deaths caused by severe diarrhea and vomiting were concomitantly reported in the community. During the next 24 hours, new alerts were registered from $\geq$10 health centers and hospitals located in each commune covering the lower course of the Artibonite River, from Desarmes (a locality 30 km from the sea) to the seashore (Figure 1). On October 21 at noon, <48 hours after the first alert, 3,020 cholera cases (including 1,766 hospitalizations) and 129 deaths were reported. No cholera cases had been reported in the Lower Artibonite area before October 19. In contrast, almost no cholera cases were recorded in the communes of Saut d'Eau (no case), Boucan Carre (no case), and La Chapelle (2 cases) on October 20 and 21. Only a few hamlets of these 3 communes located between Mirebalais and the Artibonite delta are crossed by the Artibonite River, so population density on its banks is low (Figure 1). Similarly, only 1 case, imported from Lower Artibonite, was reported in Gonaïve on October 20. Gonaïve is built in a floodplain adjacent to the Artibonite delta but watered by a different river running from the north.

The quasi-Poisson GAM model provided a fair goodness-of-fit with deviance explained of 89.4%. Adjusted for population and spatial location, location downstream of the Meille River

and commune location in coastal plain were significant risk factors (risk ratio [RR] = 4.91 and 4.60, respectively) but the closeness to Mirebalais was not (Table 1).

A strong correlation was found between the epidemic curves of the communes of the delta but not with that of Mirebalais (Table 2). The correlation was maximum (0.934) between St-Marc and Grande Saline, the 2 seashore communes bordering the main branch of the Artibonite River.

Spread Out of Artibonite Basin

On October 22, cholera cases were notified in 14 additional communes, most of them in the mountainous regions bordering the Artibonite plain and in Port-au-Prince. We visited several of these communes (Gonaïve, Ennery, Plaisance, Saint-Michel-de-l'Attalaye, and Port-au-Prince) and investigated the circumstances of the onset of cholera outbreaks. In each case, cholera started after the arrival of patients who fled from the ravaging epidemic in the Artibonite delta. There, numerous persons from bordering communes worked in rice fields, salt marshes, or road construction. The deadly epidemic provoked a panic that made them flee back home. Soon after, their communes of origin were experiencing outbreaks. In contrast, the southern half of Haiti remained relatively free of cholera after 6 weeks of epidemics (Figure 3). Spatio-temporal analysis identified slightly staggered clusters occurring from November 11, in North-West, Port-au-Prince, and North Departments, which are roughly equidistant from Artibonite delta. In the North, the largest epidemics occurred in the main cities located in floodplains, especially Cap Haitien and Gonaïve, but numerous deaths were recorded in the mountainous areas between Artibonite plain and northern coast. On November 20, almost 1 month after the first cases had been notified in Saint-Michel-de-l'Attalaye (139,000 inhabitants), we observed several small ongoing cholera outbreaks, striking 1 hamlet after another, leading to 941 cases (including 366 hospitalizations). Forty-one patients died in the hospital, and 110 died in the community. After 1 month, the death rate reached 1.08% in Saint-Michel-de-l'Attalaye.

In Port-au-Prince, the epidemic had 2 phases. For 15 days after the first patients arrived from Artibonite, the epidemic remained moderate with 76 daily cases on average from October 22 through November 5, causing only 77 hospitalizations. Then, the epidemic exploded in Cite-Soleil, a slum located in a floodplain close to the sea. However, after 6 weeks of epidemic, IDP camps were still relatively free of cholera. Despite the earthquake-related damages and the

presence of many IDP camps, cholera struck less severely in Port-au-Prince, as demonstrated by incidence rate (5.1% until November 30, compared with 26.7% in Artibonite, 18.6% in Centre, 14.0% in North-West, and 8.9% in North), and cholera-related mortality (0.8 deaths/10,000 persons in Port-au-Prince, compared with 5.6/10,000 in Artibonite, 2/10,000 in Centre, 3.2/10,000 in North, and 2.8/10,000 in North-West). Living in the Port-au-Prince metropolitan area was associated with lower incidence ($p<10^{-7}$, RR = 0.51 [95% confidence interval 0.50–0.52]) and lower mortality ($p<10^{-7}$, RR = 0.32 [95% confidence interval 0.28–0.37]) than overall Haiti, even when considering unaffected departments.

Discussion

Determining the origin and the means of spread of the cholera epidemic in Haiti was necessary to direct the cholera response, including lasting control of an indigenous bacterium and the fight for elimination of an accidentally imported disease, even if we acknowledge that the latter might secondarily become endemic. Putting an end to the controversy over the cholera origin could ease prevention and treatment by decreasing the distrust associated with the widespread suspicions of a cover-up of a deliberate importation of cholera (*15*,*16*). Demonstrating an imported origin would additionally compel international organizations to reappraise their procedures. Furthermore, it could help to contain disproportionate fear toward rice culture in the future, a phenomenon responsible for important crop losses this year (*17*). Notably, recent publications supporting an imported origin (*7*) did not worsen social unrest, contrary to what some dreaded (*18*–*20*).

Our epidemiologic study provides several additional arguments confirming an importation of cholera in Haiti. There was an exact correlation in time and places between the arrival of a Nepalese battalion from an area experiencing a cholera outbreak and the appearance of the first cases in Meille a few days after. The remoteness of Meille in central Haiti and the absence of report of other incomers make it unlikely that a cholera strain might have been brought there another way. DNA fingerprinting of *V. cholerae* isolates in Haiti (*1*) and genotyping (*7*,*21*) corroborate our findings because the fingerprinting and genotyping suggest an introduction from a distant source in a single event (*22*).

At the beginning, importation of the strain might have involved asymptomatic carriage by departing soldiers whose stools were not tested for the presence of *V. cholerae*, as the Nepalese army's chief medical officer told the British Broadcasting Corporation (*23*). The risk of transmission associated with asymptomatic carriage has been known for decades (*24*), but asymptomatic patients typically shed bacteria in their stool at $\approx 10^3$ *V. cholerae* bacteria per gram of stool (*25*) and, by definition, present no diarrhea. This small level of shedding would be unlikely to cause interhuman contamination of persons outside the military camp having few contacts, if any, with MINUSTAH peacekeepers. By contrast, considering the presence of pipes pouring sewage from the MINUSTAH camp to the stream, the rapid dissemination of the disease in Meille and downstream, and the probable contamination of prisoners by the stream water, we believe that Meille River acted as the vector of cholera during the first days of the epidemic by carrying sufficient concentrations of the bacterium to induce cholera in persons who drank it. To our knowledge, only infectious doses $>10^4$ bacteria were shown to produce mild patent infection in healthy volunteers, and higher doses are required to provoke severe infections (*26*,*27*). Reaching such doses in the Meille River is hardly compatible with the amount of bacteria excreted by asymptomatic carriers, whereas if 1 or several arriving soldiers were incubating the disease, they would have subsequently excreted diarrheal stools containing 10^{10}–10^{12} bacteria per liter (*25*). We therefore believe that symptomatic cases occurred inside the MINUSTAH camp. The negativity of the repeated water samples disfavors the hypothesis of an environmental growth of the bacterium in the Meille stream even if the lack of use of molecular approaches precludes detection of low-level bacterial contamination. Alternatively, a contamination related to sewage discharge could have resulted in transient presence of the bacterium in the water, which could be easily missed by punctual samplings.

Our field investigations, as well as statistical analyses, showed that the contamination occurred simultaneously in the 7 communes of the lower course of the Artibonite River, an area covering 1,500 km^2, >25 km from Meille. The abrupt upward epidemic curve in the communes bordering Artibonite dramatically contrasts with the progressive epidemic curve in the other communes of Haiti (Figure 2, panel B). In the latter, it took 19 days before the daily number of cases exceeded 1,000 (Figure 2, panel C). Suspected cholera was diagnosed in 7,232 patients during these 19 days. If the transmission in the communes bordering Artibonite had been similar to that of other communes, a comparable number of cases would have occurred in the days

preceding the alert on October 20. So many cholera cases would not have remained unnoticed, all the more so as several health facilities of these communes were participating in the MPSS epidemiologic watch. The regression model indicates that the spread of cholera during the peak that occurred from October 20–28 was strongly linked to the Artibonite River and not to the proximity to Mirebalais, as would be expected for road-dependent propagation. This result, as well as the simultaneity of the outbreak onset in 7 communes of Lower Artibonite on October 19, is in accordance with contamination of the Artibonite River in a way that could infect thousands, and kill hundreds, of persons within a few days.

This hypothesis is also sustained by another early investigation during October 21–23 that showed that most affected persons worked or resided in rice fields alongside a stretch of the Artibonite River and that 67% drank untreated water from the river or canals (*1*). Cholera incubation varies from a few hours to 6 days (*26*), and the epidemic curve strongly suggests a rapid decrease of the contamination level in the river because the number of new cases and deaths dropped dramatically after only 2 days. A lasting phenomenon would have induced a continuing increase of incidence and a later peak. However, even for a few hours, contamination of a river such as the Artibonite requires a large amount of bacteria. For instance, to reach concentrations of 10^5 *V. cholerae* bacteria per liter during only 3 hours in the Artibonite River, which usually flows >100 m^3/s in October (*28*), >10^{14} bacteria are required. This level corresponds to the amount of bacteria in 1 m^3 of rice-water stools harboring 10^{11} *V. cholerae* bacteria per liter. Notably, the fact that the peak in Mirebalais occurred later, on October 26, when daily incidence was dropping dramatically in Lower Artibonite also indicates that a specific mechanism was responsible for the onset of cholera in Lower Artibonite distinct from continuous spread from the primary focus.

Besides the particular circumstance that provoked the Artibonite's outbreak, other factors may have played a role in the severity of the epidemic in Haiti: the absence of immunity among the population, the higher infectivity of epidemic strains shed in human rice-water stools than of environmental strains, and the role of hypervirulent variant strains in provoking epidemics (*24*,*29*,*30*). Intriguingly, the recent sequencing of isolates from Haiti exhibited several structural variations that are hallmarks of the particularly virulent variant strains that have emerged in southern Asia (*7*).

Whatever its cause, this violent outbreak in Lower Artibonite provoked the flight of persons and resulted in a wave of epidemics that spread centrifugally and overwhelmed the nascent sanitarian response. This wave explains the difference between the delayed and progressive starting of epidemics in the south and the immediate impact of cholera in the north. Furthermore, after 6 weeks of epidemics, the IDP camps were still relatively free of cholera. Because the January earthquake led to population displacement, formation of camps, and overcrowding, numerous field actors considered that it was a favorable circumstance for a cholera epidemic. However, in most IDP camps, access to food, safe water, and sanitation was better than in neighboring wards (*2*,*31*). This low risk for epidemics after geophysical disaster was already reported in a study summarizing the epidemiologic consequences of >600 disasters (*32*).

Overall, this report highlights the importance of an accurate field investigation, especially when an epidemic strikes a previously unscathed area or evolves with unusual speed, to ensure an adequate targeting of the response by providing a feedback to the main field actors. Obviously, we have to be cautious with the interpretation that could be made from our results. Although they are compatible with the reports of several journalists who linked the epidemic with the dumping of a septic tank (*3*), the exact event that provoked the massive contamination of Lower Artibonite cannot be definitively deduced from an epidemiologic study. Rather, identifying the source and the responsibilities falls within the scope and competence of legal authorities. Nonetheless, this epidemic reminds us how critical the management of water and sewage is to prevent cholera spread. To avoid actual contamination or suspicion happening again, it will be important to rigorously ensure that the sewage of military camps is handled properly. Above all else, aid organizations should indeed avoid adding epidemic risk factors to those already existing and respect the fundamental principle of all assistance, which is initially not to harm—primum non nocere.

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Dr Piarroux is a specialist in infectious diseases and parasitology at Université de la Méditerranée. He began studying cholera in various African countries in 1994, when he first experienced a cholera outbreak in a refugee camp in Goma, Democratic Republic of the Congo.

References

1. Centers for Disease Control and Prevention. Update: cholera outbreak—Haiti, 2010. MMWR Morb Mortal Wkly Rep. 2010;59:1473–9. Medline

2. Walton DA, Ivers LC. Responding to cholera in post-earthquake Haiti. N Engl J Med. 2011;364:3–5. Medline doi:10.1056/NEJMp1012997

3. Tasker F, Robles F. Source of cholera outbreak may never be known, Miami Herald, November 20, 2010 [cited 2010 Dec 19]. http://www.miamiherald.com/2010/11/20/1934870/source-of-haitis-cholera-outbreak.html#ixzz1EKEo8pqB

4. Maharjan L. Cholera outbreak looms over capital. The Himalayan Times. September 23, 2010 [cited 2010 Dec 19]. http://www.thehimalayantimes.com/fullNews.php?headline=Cholera+outbreak+looms+over+capital&NewsID=258974

5. Enserink M. Epidemiology. Despite sensitivities, scientists seek to solve Haiti's cholera riddle. Science. 2011;331:388–9. Medline doi:10.1126/science.331.6016.388

6. Parker AA. Cholera in Haiti—the climate connection. 2010 [cited 2010 Dec 19]. http://www.circleofblue.org/waternews/2010/world/hold-cholera-in-haiti-the-climate-connection

7. Chin CS, Sorenson J, Harris JB, Robins WP, Charles RC, Jean-Charles RR, et al. The origin of the Haitian cholera outbreak strain. N Engl J Med. 2011;364:33–42. Medline doi:10.1056/NEJMoa1012928

8. Center for International Earth Science Information Network. Columbia University; and Centro Internacional de Agricultura Tropical. Gridded population of the world, version 3 (GPWv3): population density grids [Haiti]. Palisades, NY: Socioeconomic Data and Applications Center (SEDAC), Columbia University; 2005 [cited 2010 Dec 19]. http://sedac.ciesin.columbia.edu/gpw

9. Heffernan R, Mostashari F, Das D, Karpati A, Kulldorff M, Weiss D. Syndromic surveillance in public health practice, New York City. Emerg Infect Dis. 2004;10:858–64. Medline

10. Elias J, Harmsen D, Claus H, Hellenbrand W, Frosch M, Vogel U. Spatiotemporal analysis of invasive meningococcal disease, Germany. Emerg Infect Dis. 2006;12:1689–5. Medline

11. Wood S. Fast stable direct fitting and smoothness selection for generalized additive models. Journal of the Royal Statistical Society: Series B (Statistical Methodology). 2008;70:495–518. doi:10.1111/j.1467-9868.2007.00646.x

12. Honório NA, Nogueira RM, Codeço CT, Carvalho MS, Cruz OG, Magalhães Mde A, et al. Spatial evaluation and modeling of dengue seroprevalence and vector density in Rio de Janeiro, Brazil. PLoS Negl Trop Dis. 2009;3:e545. Medline

13. Vieira VM, Webster TF, Weinberg JM, Aschengrau A. Spatial-temporal analysis of breast cancer in upper Cape Cod, Massachusetts. Int J Health Geogr. 2008;7:46. Medline doi:10.1186/1476-072X-7-46

14. Ver Hoef JM, Boveng PL. Quasi-Poisson vs negative binomial regression: how should we model overdispersed count data? Ecology. 2007;88:2766–72. Medline doi:10.1890/07-0043.1

15. Haitian Red Cross and International Federation of Red Cross Psychosocial Support Program. Cholera outbreak: note on community beliefs, feelings and perceptions, December 2010 [cited 2010 Dec 27]. http://haiti.humanitarianresponse.info/LinkClick.aspx?link=HRC+PSP+-+Cholera+beliefs+and+perceptions.pdf&tabid=77&mid=860&language=en-US

16. International Organization for Migration Psychosocial Team. List of perceptions of camp living persons, with appropriate answers [in French] [cited 2010 Dec 27]. http://haiti.humanitarianresponse.info/LinkClick.aspx?link=Perceptions+et+reponses+psychosociales.pdf&tabid=77&mid=1090

17. Food and Agriculture Organization of the United Nation. Cholera fall-out likely to cause crop losses in Haiti, December 30, 2010 [cited 2011 Apr 30]. http://www.fao.org/news/story/en/item/49044/icode

18. As cholera returns to Haiti, blame is unhelpful. Lancet Infect Dis. 2010;10:813. Medline

19. Ivers LC, Farmer P, Almazor CP, Léandre F. Five complementary interventions to slow cholera: Haiti. Lancet. 2010;376:2048–51. Medline doi:10.1016/S0140-6736(10)62243-X

20. Faucher B, Piarroux R. The Haitian cholera epidemic: is searching for its origin only a matter of scientific curiosity? Clin Microbiol Infect. 2011;17:479–80. Medline doi:10.1111/j.1469-0691.2011.03476.x

21. Ali A, Chen Y, Johnson JA, Redden E, Mayette Y, Rashid MH, et al. Recent clonal origin of cholera in Haiti. Emerg Infect Dis. 2011;17:699–701. Medline doi:10.3201/eid1704.101973

22. Butler D. Cholera tightens grip on Haiti. Nature. 2010;468:483–4. Medline doi:10.1038/468483a

23. British Broadcasting Corporation. Haiti cholera outbreak: Nepal troops not tested [cited 2010 Dec 20]. http://www.bbc.co.uk/news/world-south-asia-11949181

24. Benčić Z, Sinha R. Cholera carriers and circulation of cholera vibrios in the community. Int J Epidemiol. 1972;1:13–4. Medline doi:10.1093/ije/1.1.13

25. Nelson EJ, Harris JB, Morris JG Jr, Calderwood SB, Camilli A. Cholera transmission: the host, pathogen and bacteriophage dynamic. Nat Rev Microbiol. 2009;7:693–702. Medline doi:10.1038/nrmicro2204

26. Cash RA, Music SI, Libonati JP, Snyder MJ, Wenzel RP, Hornick RB. Response of man to infection with *Vibrio cholerae*. I. Clinical, serologic, and bacteriologic responses to a known inoculum. J Infect Dis. 1974;129:45–52. Medline doi:10.1093/infdis/129.1.45

27. Sack DA, Sack RB, Nair GB, Siddique AK. Cholera. Lancet. 2004;363:223–33. Medline doi:10.1016/S0140-6736(03)15328-7

28. Prepetit C. Inventaire des ressources minières de la République d'Haiti. Fascicule IV: département de l'Artibonite. Port-au-Prince: Bureau des mines et de l'énergie; 1992.

29. Hartley DM, Morris JG Jr, Smith DL. Hyperinfectivity: a critical element in the ability of *V. cholerae* to cause epidemics? PLoS Med. 2006;3(1): e7 [cited 2010 Dec 20]. http://www.plosmedicine.org/article/info%3Adoi%2F10.1371%2Fjournal.pmed.0030007

30. Butler SM, Nelson EJ, Chowdhury N, Faruque SM, Calderwood SB, Camilli A. Cholera stool bacteria repress chemotaxis to increase infectivity. Mol Microbiol. 2006;60:417–26. Medline doi:10.1111/j.1365-2958.2006.05096.x

31. Water, Sanitation and hygiene—cluster situation report. November 26, 2010 [cited 2010 Dec 20]. http://haiti.humanitarianresponse.info/LinkClick.aspx?fileticket=YPCDyAYl3mI%3D&tabid=83&mid=52324

32. Floret N, Viel JF, Mauny F, Hoen B, Piarroux R. Negligible risk for epidemics after geophysical disasters. Emerg Infect Dis. 2006;12:543–8. Medline

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Table 1. Adjusted risk ratio of cholera in each commune estimated by the generalized additive model, adjusted for population and spatial variability, Haiti, 2010*

Covariate	RR (95% CI)	p value
Location downstream of Meille River	4.91 (1.47–16.47)	0.012
Distance to Mirebalais, km	0.99 (0.94–1.04)	0.594
Presence of IDP camp	0.10 (0.01–1.12)	0.063
Commune located in coastal plain	4.60 (2.28–9.30)	0.0001

*RR, adjusted risk ratio; CI, confidence interval; IDP, internally displaced persons.

Table 2. Spearman rank correlation between the number of cases in the 8 communes of the Artibonite delta and corresponding p values, Haiti, October 16–31, 2010

	Spearman correlation (p value)						
Commune	L'Estère	Des Dunes	Verrettes	Grande Saline	Petite Rivière de l'Artibonite	Des Salines	St Marc
Mirebalais	0.231(0.389)	0.527 (0.036)	0.276 (0.301)	0.480 (0.0.059)	0.563 (0.023)	0.361 (0.169)	0.459 (0.074)
St Marc	0.678 (0.004)	0.782 (<0.001)	0.652 (0.006)	0.934 (<0.001)	0.704 (0.002)	0.887 (<0.001)	
Des Salines	0.872 (<0.001)	0.713 (0.002)	0.465 (0.069)	0.818(<0.0001)	0.606 (0.013)		
Petite Rivière de l'Artibonite	0.672 (0.004)	0.675 (0.004)	0.586 (0.017)	0.648 (0.007)			
Grande Saline	0.600 (0.014)	0.848 (<0.001)	0.783 (<0.001)				
Verrettes	0.380 (0.147)	0.600 (0.014)					
Des Dunes	0.537 (0.032)						

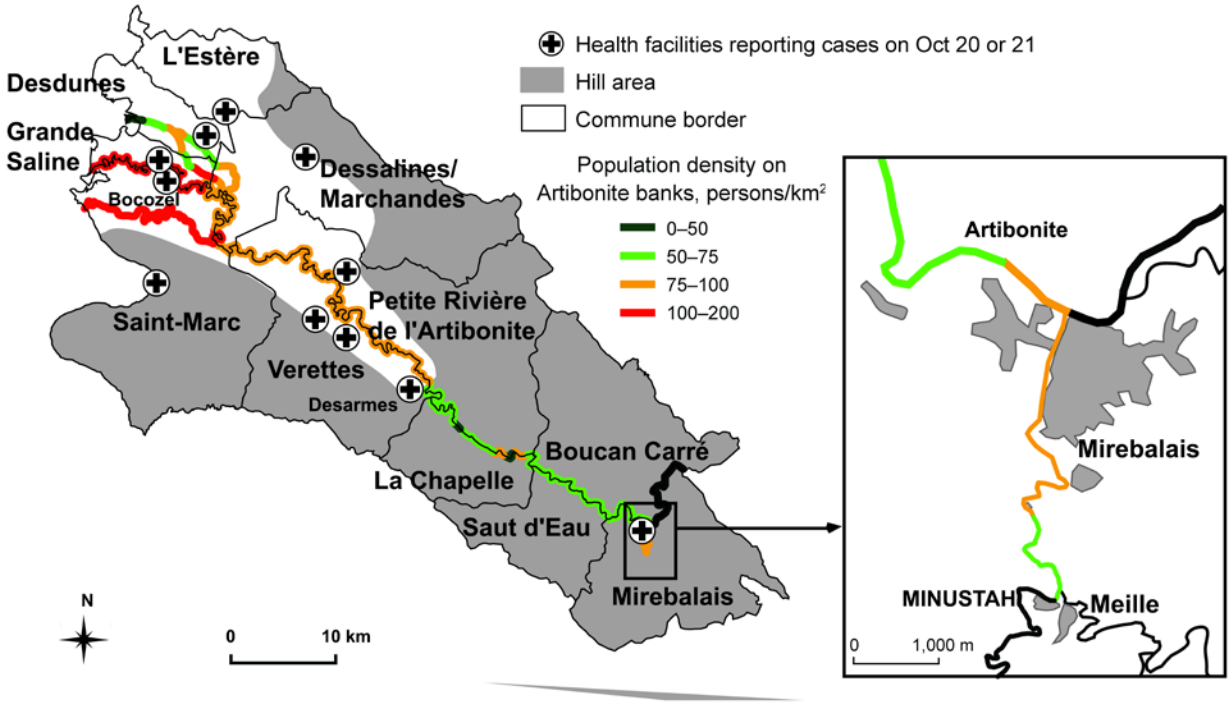

Figure 1. Location of health centers reporting cholera cases in communes along the Artibonite River on October 20, 2010, Haiti. MINUSTAH, United Nations Stabilization Mission in Haiti.

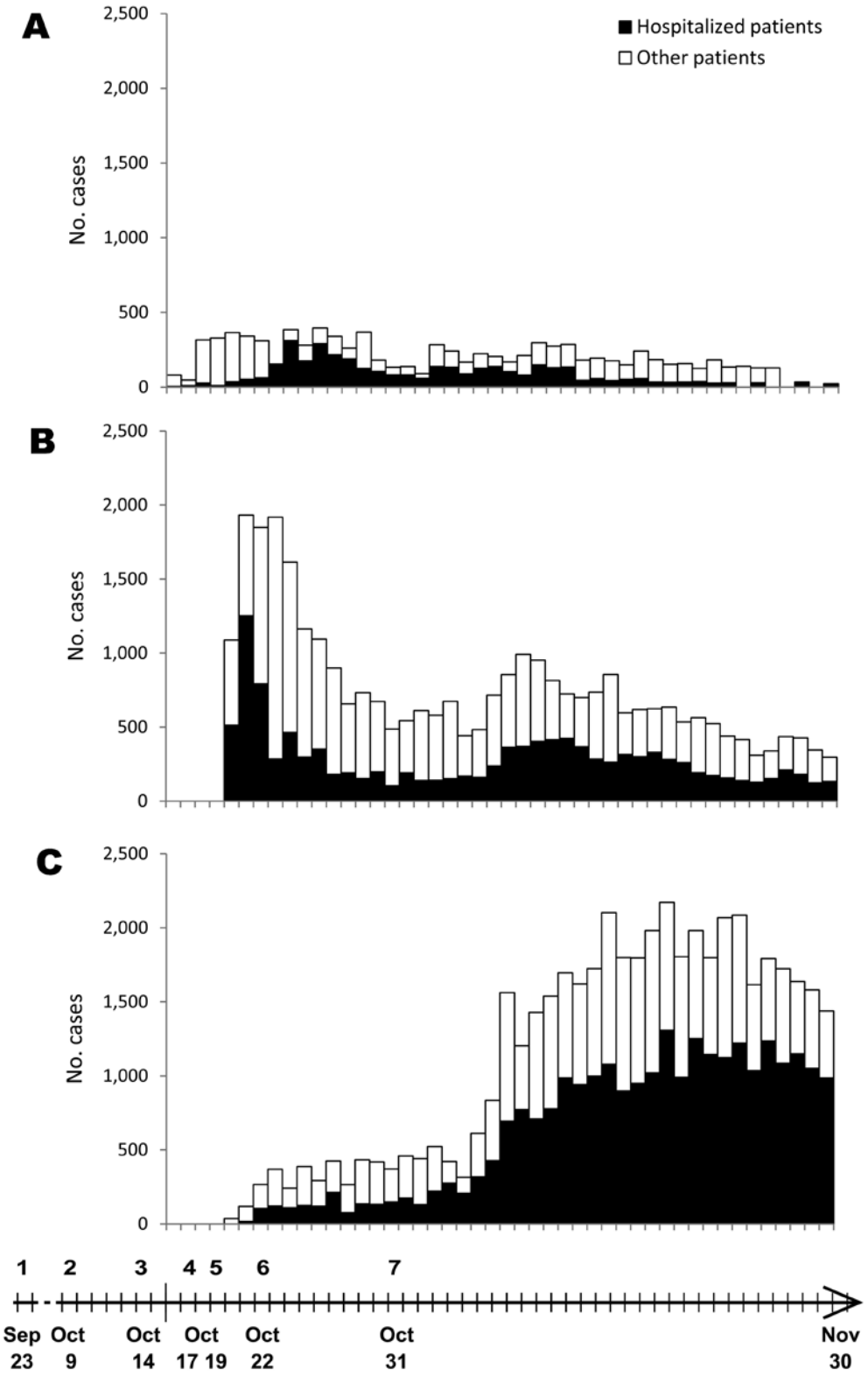

Figure 2. Cholera cases by date of onset of the epidemics and major related events, Haiti. A) Cases in Mirebalais, commune hosting the first cases of cholera; (B) cases in seven communes simultaneously

struck on October 20 (Saint-Marc, Dessalines, Desdunes, Grande Saline, Lestere, Petite-Rivière-de-l'Artibonite, Verrettes); (C) cases in other communes. Timeline at bottom indicates 1) cholera outbreak in Kathmandu, Nepal; 2) first arrival of newly incoming Nepalese soldiers in Meille; 3) first cases in Meille; 4) first death registered in Mirebalais hospital (patient from Meille); 5) initiation of epidemic investigations and spread into the Artibonite delta; 6) iologic confirmation of cholera cases in Meille; 7) United Nations camp sanitary dysfunction no longer observed.

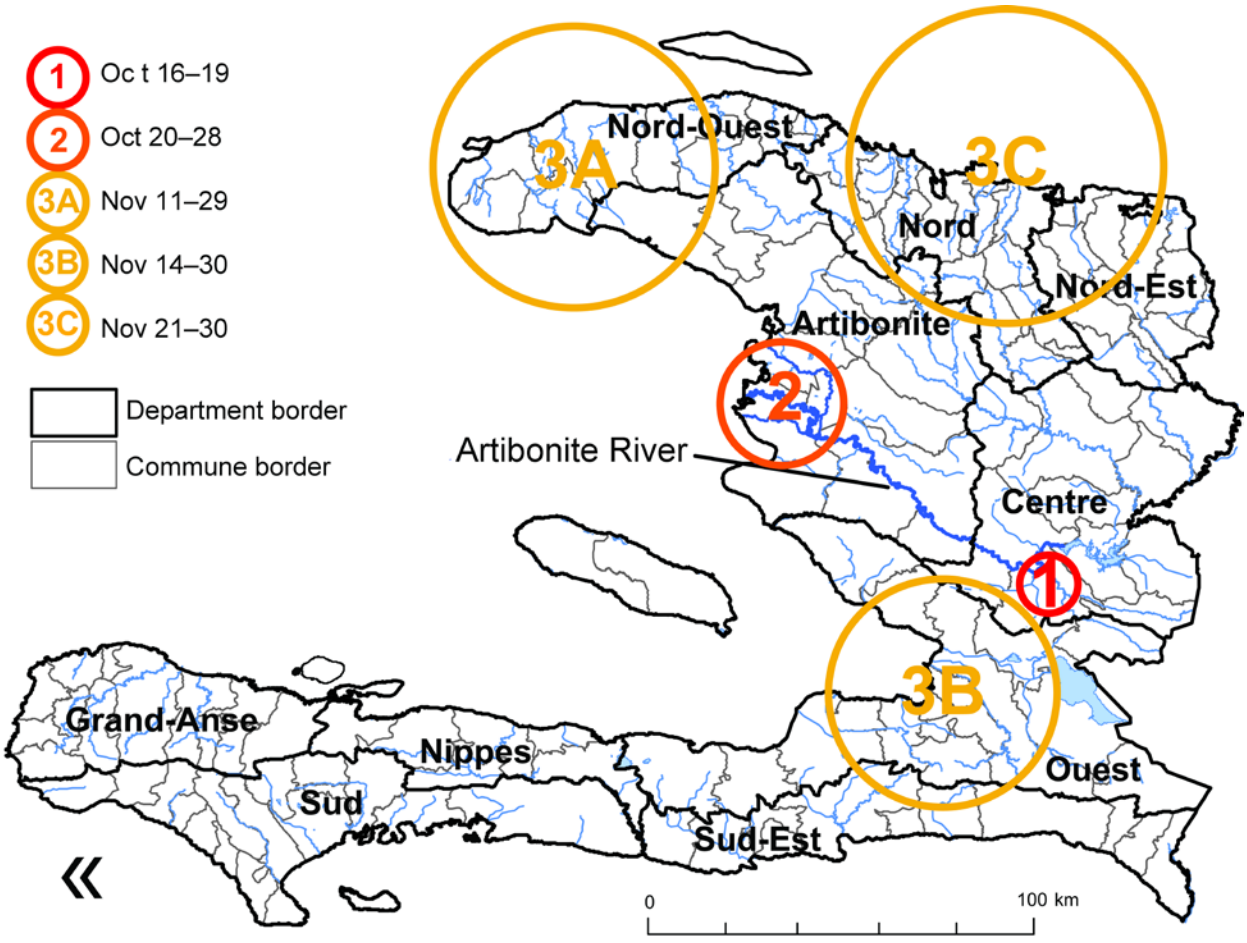

Figure 3. Spatio-temporal clusters of cholera cases, Haiti (results of SaTScan [Kulldorf, Cambridge, UK] analysis). The first cluster covered 1 commune, Mirebalais, October 16–19; the second cluster covered a few communes in or near the Artibonite delta during October 20–28; the next 3 clusters appeared in the North-West Department (A) during November 11–29, in the West Department (B) during November 14–30, and in the North and North-East Departments (C) during November 21–30. Other departments were affected later.

DOC. Nº 13

http://minustah.org/?p=30927

Communiqué de Presse #453

1 juillet 2011 | Publié dans la catégorie : Communiqués de presse, Quoi de neuf ?

Port-au-Prince, le 1er Juillet 2011 – La MINUSTAH a pris note de la publication, dans l'édition de juillet de la revue « Emerging Infectious Disease» des Centres de contrôle et de prévention des maladies (Cdc) (Etats-Unis), d'un article présentant l'étude sur les origines de l'épidémie de choléra en Haïti qui avait été menée sous la conduite de l'épidémiologiste Renaud Piarroux (France). Les principales conclusions de cette étude avaient déjà été rendues publiques en décembre 2010.

La MINUSTAH réitère son intérêt soutenu à toute nouvelle étude relative à l'origine de la propagation de l'épidémie du choléra en Haïti, tout comme elle s'était montrée vivement concernée par cette étude, ainsi que par les nombreuses autres qui ont suivi, chacune présentant différents scenarios possibles.

La dernière en date, conduite par un panel d'experts indépendants, avait conclu que l'éruption de l'épidémie de choléra en *Haïti a été causée par une conjonction de multiples circonstances épidémiologiques, environnementales et sanitaires, qui ne sont la faute ou l'action d'aucun groupe ou individu.*

La priorité pour les Nations Unies et la MINUSTAH est et restera la lutte contre l'épidémie, le soutien aux autorités haïtiennes dans la réponse à cette dernière, et l'appui au renforcement des structures sanitaires du pays, y compris le mécanisme de surveillance et de réponse. Dans ce cadre, les Nations Unies et la MINUSTAH ont déjà pris un important train de mesures pour adresser les questions soulevées depuis l'éruption de l'épidémie de choléra. L'une d'entre elles consiste en l'installation – en cours – de 28 centrales mobiles autonomes de traitement des déchets dans les bases principales de la MINUSTAH sur l'ensemble du territoire haïtien. Cette mesure vise à renforcer le contrôle de toute la chaine de gestion des déchets, laquelle implique d'autres acteurs que la MINUSTAH.

ARCHIVES

Laisser une réponse

DOC. Nº 14

Population Genetics of *Vibrio cholerae* from Nepal in 2010: Evidence on the Origin of the Haitian Outbreak

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RESEARCH ARTICLE

Population Genetics of *Vibrio cholerae* from Nepal in 2010: Evidence on the Origin of the Haitian Outbreak

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ABSTRACT **Cholera continues to be an important cause of human infections, and outbreaks are often observed after natural disasters, such as the one following the 2010 earthquake in Haiti. Once the cholera outbreak was confirmed, rumors spread that the disease was brought to Haiti by a battalion of Nepalese soldiers serving as United Nations peacekeepers. This possible connection has never been confirmed. We used whole-genome sequence typing (WGST), pulsed-field gel electrophoresis (PFGE), and antimicrobial susceptibility testing to characterize 24 recent *Vibrio cholerae* isolates from Nepal and evaluate the suggested epidemiological link with the Haitian outbreak. The isolates were obtained from 30 July to 1 November 2010 from five different districts in Nepal. We compared the 24 genomes to 10 previously sequenced *V. cholerae* isolates, including 3 from the Haitian outbreak (began July 2010). Antimicrobial susceptibility and PFGE patterns were consistent with an epidemiological link between the isolates from Nepal and Haiti. WGST showed that all 24 *V. cholerae* isolates from Nepal belonged to a single monophyletic group that also contained isolates from Bangladesh and Haiti. The Nepalese isolates were divided into four closely related clusters. One cluster contained three Nepalese isolates and three Haitian isolates that were almost identical, with only 1- or 2-bp differences. Results in this study are consistent with Nepal as the origin of the Haitian outbreak. This highlights how rapidly infectious diseases might be transmitted globally through international travel and how public health officials need advanced molecular tools along with standard epidemiological analyses to quickly determine the sources of outbreaks.**

IMPORTANCE **Cholera is one of the ancient classical diseases and particularly prone to cause major outbreaks following major natural disasters, such as earthquakes and hurricanes, where the normal separation between sewage and drinking water is destroyed. This was the case following the 2010 earthquake in Haiti. Rumors spread that the disease was brought to Haiti by a battalion of Nepalese soldiers serving as United Nations peacekeepers. This possible connection has never been confirmed. Sequencing the genomes of bacteria can give detailed information on whether isolates from different sites share a common origin. We used this technology to sequence isolates of *Vibrio cholerae* from Nepal, identify single-nucleotide polymorphisms (SNPs), and compare these high-resolution genotypes to the complete genome sequences of isolates from the Haiti outbreak. We provide support for the hypothesis that the isolates were brought to Haiti from Nepal.**

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Cholera is caused by the Gram-negative bacterium *Vibrio cholerae*, and the disease is usually transmitted through contaminated water (1). *V. cholerae* is normally present in coastal and brackish waters worldwide and has been found in countries where the disease is not found in humans. The bacterium can also be transmitted globally in the intestines of asymptomatic carriers. Thus, it is difficult to determine the origin of outbreaks associated with disaster situations where the normal water supply and hygiene measures are disrupted.

More than 200 serogroups of *V. cholerae* have been identified, but isolates belonging to serogroup O1 of the "classical" or El Tor biotype have been the most important human pathogen in the last century. Seven different cholera pandemics are believed to have occurred since 1817. The causative agents of the first five pandemics were not cultured, but the sixth pandemic (1899 to 1923) was caused by the classical biotype. El Tor strains were associated with sporadic cases during the sixth pandemic (2), but in 1961, this biotype was responsible for the seventh pandemic. El Tor and a number of variants have been implicated in numerous outbreaks worldwide and have become prevalent in some countries with limited access to clean water.

On 12 January 2010, a 7.0 M_W earthquake hit Haiti. By 24 January, at least 52 aftershocks had been reported, and an estimated 316,000 people had died, 300,000 were injured and more than one million were homeless. This disaster destroyed the already fragile infrastructure and required international assistance in the form of

food, water, and aid workers. On 21 October 2010, the Haitian public health authorities confirmed a cholera outbreak. By 7 July 2011, 386,429 cases, including 5,885 deaths have been reported (3). The outbreak has also spread to the neighboring Dominican Republic and to Florida and the United States (4) where sporadic cases have been observed. In the early days of the outbreak, rumors spread that the disease was brought to Haiti by a battalion of Nepalese soldiers serving as United Nations peacekeepers (2, 5–8). Though not proven definitively, the putative link to United Nations peacekeepers from Nepal gained global media attention and sparked riots in Haiti that disrupted relief efforts.

Conventional and molecular characterization of bacterial isolates is useful in determining the relationship between strains and can assist in identifying the sources. Traditionally, *V. cholerae* strains are classified into serogroups based on their outer membrane O antigen and further subdivided into biotypes based on biochemical testing; however, most outbreaks during the seventh pandemic have been caused by the same serogroup and biotype, El Tor, limiting the utility of these analyses for outbreak investigations. Molecular typing using pulsed-field gel electrophoresis (PFGE) is commonly used to characterize strains but does not always provide sufficient discriminatory power. Single-nucleotide polymorphisms (SNPs) and insertions/deletions have been used to further resolve global transmission of El Tor (9, 10). Whole-genome sequence typing (WGST) is a powerful tool providing an almost complete picture of genetic polymorphisms for evolutionary and epidemiological investigations (11–14).

A PFGE-based study by the U.S. Centers for Disease Control and Prevention indicated that the Haitian outbreak strain was related to contemporary strains circulating in South Asia and elsewhere (4). Another study using whole-genome sequencing has similarly shown that the Haitian outbreak strain is more closely related to recent strains from Bangladesh and Mozambique than to a strain from Peru (15); however, the Peruvian strain used in that study was more than 20 years old, which weakens their conclusions. So far, none of the published studies has included recent Nepalese *V. cholerae* isolates to evaluate their relatedness to the Haitian outbreak strain.

Cholera occurs in sporadic cases and outbreaks in Nepal each year. In 2010, a 1,400-case outbreak occurred in midwestern Nepal (http://www.irinnews.org/Report.aspx?ReportID=90231). The outbreak started around 28 July and was controlled by 13 or 14 August, just prior to the time the Nepalese soldiers left for Haiti. On the request by the public health authorities in Nepal and in our function as a World Health Organization Collaborating Centre, we conducted the current study to determine the genetic diversity of the most contemporary *V. cholerae* strains from Nepal. We then compared these data to the publicly available whole-genome sequences of isolates from the recent outbreak in Haiti, as well as those of other available strains.

RESULTS

All Nepalese isolates were susceptible to tetracycline but resistant to trimethoprim, sulfamethoxazole, and nalidixic acid and showed decreased susceptibility to ciprofloxacin. This susceptibility profile is consistent with that of isolates causing the Haitian outbreak (4). PFGE showed that the Nepalese isolates belonged to four clusters of indistinguishable patterns, including 2, 4, 4, and 14 isolates. One cluster containing four Nepalese isolates (isolates 12, 14, 25, and 26) was identical to a minor variant of the main pulsotype from Haiti, whereas another cluster of four Nepalese isolates (isolates 6, 15, 18, and 19) was indistinguishable from the most common pulsotype observed in Haiti, as determined by the U.S. Centers for Disease Control and Prevention. While the PFGE results show the great similarity of the Haitian to Nepalese isolates, the fine-scale affinities are discordant with WGST, perhaps due to convergent evolution by pulsotype of isolate 12.

WGST and phylogenetic analysis showed that all 24 *V. cholerae* isolates from Nepal belong to a single well-supported monophyletic group that also contains isolates from Bangladesh and Haiti (Fig. 1). A single maximum parsimony tree was reconstructed using 752 SNPs from 34 whole-genome sequences. There were 184 parsimony-informative SNPs, of which 6 were homoplastic, resulting in a CI of 0.97 (excluding uninformative characters). The Nepalese isolates are subdivided into four closely related clusters, all within group V as defined by Lam et al. (16). One of the four Nepalese genotypic groups (Nepal-1), containing 17 out of the 24 isolates, is genetically distinct and highly homogeneous. There are 34 or 35 synapomorphic SNPs supporting its unique identity. (A synapomorphic SNP is a genome position that has mutated such that the new nucleotide is shared with all descendants.) The second group contains three Nepalese clusters along with a basal Bangladesh isolate (CIRS101 2002) and three Haitian isolates in a derived position. The three Nepalese isolates, isolates 14, 25, and 26 in cluster Nepal-4, and the three Haitian isolates, isolates 1786, 1792, and 1798, are extremely close and form their own monophyletic subclade supported by 7 synapomorphic SNPs, with no homoplasy. The lack of homoplasy is strong evidence of clonality in this population. Only a single synapomorphic SNP separates the Haitian isolates from isolates in cluster Nepal-4, although there are two autapomorphic SNPs within this cluster. (An autapomorphic SNP is a genome position that has mutated but is found only in a single descendant.)

Direct comparison between the three Haiti outbreak strains (strains 1786, 1792, and 1798) and the three most closely related strains from cluster Nepal-4 (strains 14, 25, and 26) showed that the 1- or 2-bp differences are nonsynonymous and give rise to amino acid differences (Table 1). The basal position of CIRS101 suggests a possible source for some of the Nepalese strains (clusters Nepal 2-3-4); its phylogenetic position among the clades argues for more than one infective focus for the Nepalese outbreak. The SNPs defining the Nepal-2,3,4 and Haitian cluster (branches A through K) appear to be under diversifying selection, as the nonsynonymous SNP (nSNP)/synonymous SNP (sSNP) ratio is 6.33, while the ratio for the entire data set is 1.08 (see Table S1 in the supplemental material). Of the six SNPs displaying homoplasy in Fig. 1, five were nSNPs for a ratio of 5.0 for this subset. Selective pressure (differentials, purifying, directional, etc.) in *V. cholerae* populations and in this outbreak deserves greater investigation.

DISCUSSION

Phylogenetic patterns indicate a close relationship between Haitian and Nepalese epidemic *V. cholerae* strains. Even with whole-genome sequencing, less than 100 SNPs were identified among these geographically disparate isolates; however, the few molecular characters that were available generated a robust and highly consistent phylogenetic topology with distinct subclade structure. The apparently identical Haitian genomes confirm the earlier findings that the Haitian outbreak originated from a single source (17). More importantly, one group that was well supported and had low diversity contained both

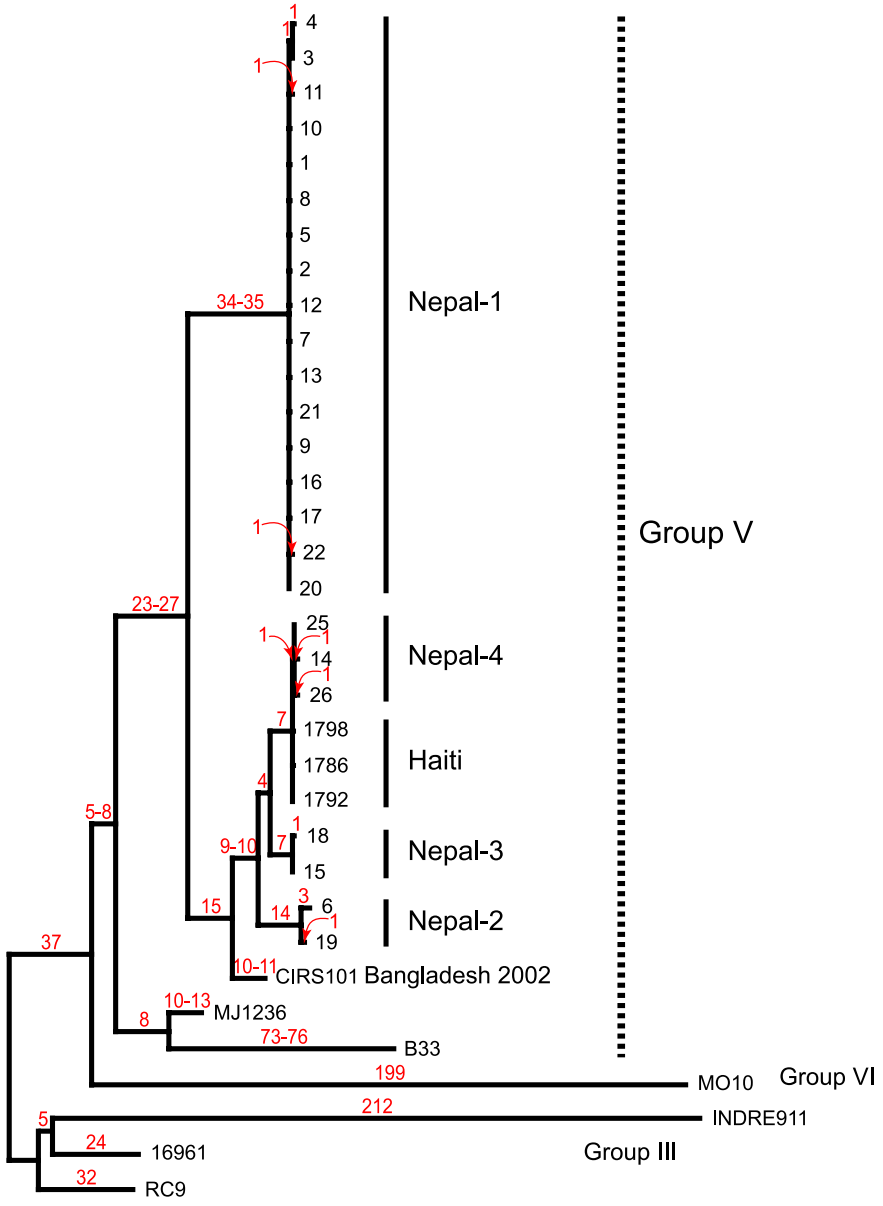

FIG 1 Genetic relationships among *V. cholerae* isolates from Nepal and Haiti. A single maximum parsimony tree was reconstructed using 752 SNPs from 34 whole-genome sequences. There were 184 parsimony-informative SNPs, of which 6 were homoplastic, resulting in a CI of 0.97 (excluding uninformative characters). The branch lengths are labeled in red, and for branches affected by homoplasy, minimum and maximum branch lengths are designated. Members of SNP genotypic group V (16) are indicated. SNP differences among the three most closely related Nepali groups and the Haitian group are shown and characterized in Table S1 in the supplemental material.

TABLE 1 Different point mutations observed among the three sequenced isolates from the Haiti outbreak and the three most closely related isolates from Nepal[a]

		Nucleotide or amino acid in:						
			Haitian isolate			Nepalese isolate		
Chromosome	Position	Reference strain	1786	1792	1798	14	25	26
I	2787016	C	C	C	C	T	T	T
		Gly	Gly	Gly	Gly	Arg	Arg	Arg
I	1090536	T	T	T	T	T	T	G
		Ile	Ile	Ile	Ile	Ile	Ile	Ser
II	962762	C	C	C	C	T	C	C
		Ala	Ala	Ala	Ala	Ala	Ala	Ala

[a] The reference strain is *Vibrio cholerae* O1 biovar El Tor strain N16961 (Bangladesh 1971). The NCBI reference sequences or accession numbers are NC_002505 for chromosome I and NC_002506 for chromosome II.

Nepalese and Haitian isolates. In addition, the next two basal subclades were also Nepalese and more closely related to the Haitian outbreak strain than the Bangladeshi CIRS101 strain. Only a single SNP separates the Haitian and Nepalese isolates, providing strong evidence that the source of the Haitian epidemic was from this clonal group. This molecular phylogeny reinforces the previous epidemiological investigation (2) that pointed towards United Nations peacekeepers from Nepal as the source of the Haitian cholera epidemic. Given the implications of the epidemiological findings, it is imperative to use empirical laboratory data to support such findings. By using WGST to compare the entire genomes of available *V. cholerae* sequences, including the 24 added Nepalese strains, definitive basal/derived relationships have been established between and among these strains.

This study also showed that multiple clonal subclades were involved in the 2010 Nepalese outbreak, thus indicating that *V. cholerae* is prevalent in Nepal. Therefore, there is a general need for improved water hygiene and investment to reduce the occurrence of *V. cholerae* in Nepal.

Complete genomic analysis of pathogen populations is now a reality and is dramatically changing our approach to molecular epidemiology. With the cost and speed of new generation DNA sequencers improving exponentially, previously intractable problems can be resolved rapidly with modest expense. Outbreak pathogens will, almost by definition, have very little molecular diversity and may require comprehensive genomic analysis to differentiate and categorize isolates. In combination with evolutionary theory and advanced statistical methods, WGST represents the most powerful molecular approach imaginable and is setting a new standard for infectious disease epidemiology. While other descriptive and association-based epidemiological analyses (e.g., case control studies, geospatial analyses), along with limited-resolution molecular tools (e.g., PFGE), may leave room for interpretation on genetic linkage, WGST, as an empirical molecular epidemiological tool, does not (11, 13).

Infectious disease tracking requires global-scale information and cooperation. The current study was reliant upon genome analyses performed previously from other international studies. Future investigations will require high-quality genome databases that include representative isolates and metadata from geographically distributed samples, representing both historical and contemporary epidemics. Such databases will provide the contextual framework necessary to make definitive conclusions regarding infective sources and action plans for controlling epidemics. While we have precisely defined the Nepal-4 *V. cholerae* clade and the Haitian membership in it, its geographic distribution needs continued work. It is possible that this genetic group will be discovered in countries other than Nepal and Haiti. Attribution of outbreak sources based upon WGST alone requires comprehensive geographic strain collections. The current conclusion that Nepal is the source of the Haitian cholera outbreak can be reached only if both classical epidemiology and highly suggestive WGST are used together. Globally representative WGST databases will be available in the near future and increase our power to identify outbreak sources. It is now the charge of the world's national health agencies and disease researchers to populate these databases with both sequences and rich metadata. Further, it must also be their mission to develop robust genomics and bioinformatics capabilities to rapidly generate and receive genomics-based data that can be turned into actionable public health knowledge.

Natural disasters such as the 2010 Haitian earthquake disrupt water and sanitation systems, adding to the vulnerability of affected populations. The United Nations, regional governments, and nongovernmental organizations respond rapidly to such disasters to bring aid and reduce suffering. The putative link between the Haitian and Nepalese cholera outbreaks underscores the speed at which infectious diseases can be transported globally and forces us to reconsider relief deployment strategies. In the current study, we used advanced molecular techniques to retrospectively characterize isolates from a devastating outbreak; in the future, we hope that rapid molecular diagnostics can be integrated into rapid screening programs for relief workers so their efforts will neither be delayed by ineffective diagnostics nor tainted by infectious diseases.

MATERIALS AND METHODS

Isolates. A total of 45 *V. cholerae* isolates were identified at the National Public Health Laboratory (NPHL), Kathmandu, Nepal, from Nepalese patients with diarrhea in 2010. Of these, 24 were available for analysis. The isolates were obtained from 30 July to 1 November 2010 and originated from five different districts in Nepal (Fig. 2; Table 2). All isolates with the exception of one from Kathmandu, Nepal, were obtained during the rainy season (June to August). Fifteen isolates, including the first laboratory confirmed case, were from a large outbreak in the municipality of Nepalgunj in Nepal that occurred in late July to mid-August. All isolates were identified as *V. cholerae* and serotyped at the NPHL. The isolates were shipped to the Technical University of Denmark (DTU) in February 2011.

Antimicrobial susceptibility testing. Antimicrobial susceptibility of the 24 *V. cholerae* isolates was determined utilizing MIC testing. The following antimicrobials were used: ampicillin, amoxicillin plus clavulanic acid, apramycin (veterinary approved aminoglycoside), cefotaxime, ceftiofur, chloramphenicol, ciprofloxacin, colistin, florfenicol, gentamicin, nalidixic acid, neomycin, spectinomycin, streptomycin, sulfamethoxazole, tetracycline, and trimethoprim. Clinical and Laboratory Standards Institute guidelines and clinical breakpoints were utilized for the interpretation of the MIC values (18–20). Exceptions were made for interpretation of neomycin, where epidemiological cutoff values according to the EUCAST system were used (http://www.eucast.org/mic_distributions/). Due to the absence of interpretation guidelines, exceptions were made for the interpretation of apramycin and streptomycin which were interpreted according to research results from DTU. Quality control using *Escherichia coli* ATCC 25922 was conducted according to Clinical and Laboratory Standards Institute (CLSI) recommendations.

PFGE. All of the *V. cholerae* isolates were analyzed for genetic relatedness by pulsed-field gel electrophoresis (PFGE) using the SfiI and NotI enzymes (Fermentas, Sankt Leon-Rot, Germany) according to the CDC PulseNet protocol (http://www.pulsenetinternational.org/protocols/Pages/default.aspx) (21). Electrophoresis was performed with a contour-clamped homogeneous electric field (CHEF) DR III System (Bio-Rad Laboratories, Hercules, CA) using 1% SeaKem gold agarose in 0.5× Tris-borate-EDTA. A two-block program was used consisting of block I with a pulse time of 2.0 to 10.0 s for 13 h and block II with a pulse time of 20.0 to 25.0 s for 6 h; the gels in both blocks were subjected to 6 V/cm on a 120° angle in 14°C TBE (Tris-borate-EDTA) buffer. A bundle file containing 14 pulsotypes of which 11 originated from the Haitian outbreak, including strain 201EL-1786, two from an early 1990s Latin American outbreak, and one from the U.S. Gulf Coast were sent to DTU by the United States CDC for comparison with the 24 isolates related to the Nepalese outbreak. The composite data set using both enzymes was evaluated by using Bionumerics software version 4.6 (Applied Maths, Sint-Martens-Latem, Belgium) where the average similarity of the experiments was used as settings for similarity, the enzymes were weighted equally, and unweighted-pair group method using average linkages (UPGMA) was used to generate a dendrogram.

Sequencing. The DNA samples were prepared for multiplexed, paired-end sequencing on the Illumina GAIIx genome analyzer (Illumina,

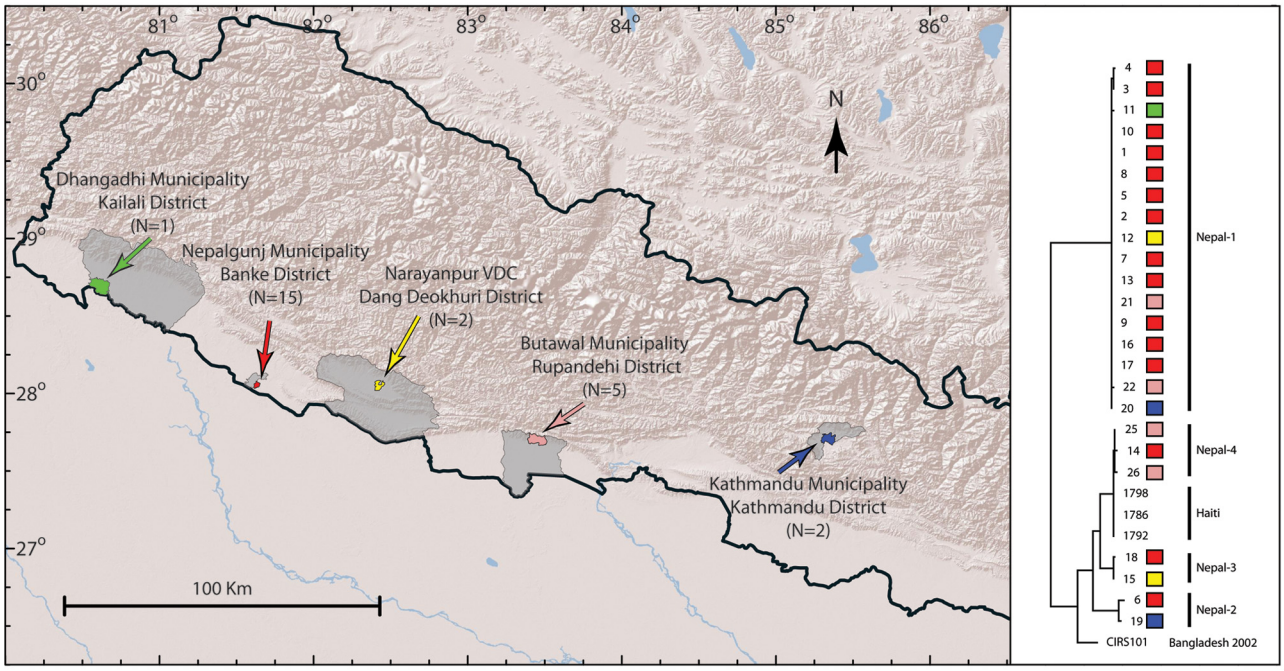

FIG 2 Locations of the five districts in Nepal where the *V. cholerae* O1 Ogawa strains were isolated.

Inc., San Diego, CA). For each isolate, 1 to 5 μg of double-stranded DNA (dsDNA) in 200 μl was sheared in a 96-well plate with SonicMan (catalog no. SCM1000-3; Matrical BioScience, Spokane, WA) to a size range of 200 to 1,000 bp with the majority of material at ca. 600 bp using the following parameters: prechill at 0°C for 75 s, 20 cycles, sonication for 10 s, 100% power, lid chill at 0°C for 75 s, plate chill at 0°C for 10 s, and postchill at 0°C for 75 s. The sheared DNA was purified using the QIAquick PCR purification kit (catalog no. 28106; Qiagen, Valencia, CA). The enzymatic processing (end repair, phosphorylation, A-tailing, and adaptor ligation) of the DNA was done following the guidelines in the Illumina protocol (22). The enzymes for processing were obtained from New England Biolabs (catalog no. E6000L; New England Biolabs, Ipswich, MA), and the oligonucleotides and adaptors were obtained from Illumina (catalog no. PE-400-1001). After ligation of the adaptors, the DNA was run on a 2% agarose gel for 2 h, after which a gel slice containing 500- to 600-bp fragments of each DNA sample was isolated and purified using the QIAquick

TABLE 2 Geographical, demographic, and clinical features of the laboratory-confirmed *V. cholerae* O1 Ogawa cases from Nepal during 2010

Strain	Case ID	Location in Nepal	Collection date (day-mo-yr)	Gender[a]	Age (yr)
1	31-OB NPHL	Banke district, Nepalgunj municipality	30-7-2010	M	
2	32-OB NPHL	Banke district, Nepalgunj municipality	30-7-2010	M	
10	44-OB NPHL	Banke district, Nepalgunj municipality, ward 12	1/8/2010	F	
4	36-OB NPHL	Banke district, Nepalgunj municipality, ward 4	1/8/2010	M	
6	38-OB NPHL	Banke district, Nepalgunj municipality, ward 4	1/8/2010	F	
9	41-OB NPHL	Banke district, Nepalgunj municipality, ward 4	1/8/2010	F	
3	35-OB NPHL	Banke district, Nepalgunj municipality, ward 5	1/8/2010	M	
5	37-OB NPHL	Banke district, Nepalgunj municipality, ward 5	1/8/2010	F	
8	40-OB NPHL	Banke district, Nepalgunj municipality, ward 5	1/8/2010	M	
14	49-OB NPHL	Banke district, Nepalgunj municipality, ward 5	1/8/2010	M	
7	39-OB NPHL	Banke district, Nepalgunj municipality, ward 6	1/8/2010	F	
13	47-OB NPHL	Banke district, Nepalgunj municipality, ward 8	1/8/2010	F	
12	46-OB NPHL	Dang Deokhuri district, Narayanpur VDC, ward 7	1/8/2010	M	
11	45-OB NPHL	Kailali district, Dhangadhi	1/8/2010	F	
16	59-OB NPHL	Banke district, Nepalgunj municipality, ward 6	8/8/2010	F	
15	56-OB NPHL	Dang Deokhuri district, Narayanpur VDC, ward 5	8/8/2010	F	
19	508	Kathmandu district, Kathmandu city	15-8-2010	F	48
21	LZH-11	Rupandehi district, Butawal municipality	30-8-2010	M	8
22	LZH-21	Rupandehi district, Butawal municipality	30-8-2010	F	17
26	LZH-23	Rupandehi district, Butawal municipality	30-8-2010	F	21
25	LZH-24	Rupandehi district, Butawal municipality	30-8-2010	M	
17	65-OB NPHL	Banke district, Nepalgunj municipality	31-8-2010	M	
18	66-OB NPHL	Banke district, Nepalgunj municipality	31-8-2010	M	
20	526	Kathmandu district, Kathmandu city	1/11/2010	M	33

[a] M, male; F, female.

gel extraction kit (catalog no. 28706; Qiagen, Valencia, CA). Individual libraries were quantified with quantitative PCR (qPCR) on the ABI 7900HT (catalog no. 4329001; Life Technologies Corporation, Carlsbad, CA) in triplicate at two dilutions, 1:1,000 and 1:2,000, using the Kapa library quantification kit (catalog no. KK4832 or KK4835; Kapa Biosystems, Woburn, MA). Based on the individual library concentrations, equimolar pools of no more than 12 indexed *V. cholerae* libraries were prepared at a concentration of at least 1 nM using 10 mM Tris-HCl (pH 8.0) plus 0.05% Tween 20 as the diluent. To ensure accurate loading onto the flow cell, the same quantification method was used to quantify the final pools. The pooled, paired-end libraries were sequenced on the Illumina GAIIx to a read length of at least 76 base pairs. The average genome coverage for these 24 isolates was greater than 100× with a minimum of 75×. Over 97.6 of the genomes were at 10× cover or better. The Illumina genome sequencing data were deposited in the Short Read Archive at the National Center for Biotechnology Information (NCBI) under the accession no. SRA039806.1. The three Haitian genome sequences generated by the CDC were obtained from NCBI under the following accession numbers: strain 1786, SRX031665 (Illumina) and SRX031636 (454); strain 1792, SRX032204 (Illumina) and SRX032203 (454); and strain 1798, SRX032202 (Illumina) and SRX032201 (454).

Alignment. Illumina WGS data sets were aligned against chromosomes I and II of the *Vibrio cholerae* O1 biovar El Tor strain N16961 (NC002505 and NC002506) using the short-read alignment component of the BWA alignment tool (23). 454 data for the publicly available Haitian genomes was aligned with BWA-SW (23). Where appropriate, isolates that were sequenced by both 454 and Illumina platforms were merged with Picard tools after the alignments were completed (http://picard.sourceforge.net). Reads containing insertions or deletions and those mapping to multiple locations in the reference were removed from the final alignments.

Identification of single-nucleotide polymorphism. Each alignment was analyzed for SNPs using SolSNP (http://sourceforge.net/projects/solsnp/). SNPs were excluded if they did not meet a minimum coverage of 10× and if the variant was present in less than 90% of the base calls for that position. In parallel, publicly available genomes were aligned against both chromosomes of N16961 using MUMmer 3.22 (24). SNPs were extracted from the alignments using a custom script. Subsequently, regions found to be duplicated in the N16961 reference genome were identified using MUMmer version 3.22. SNPs residing within these repetitive regions were then removed. Loci that lacked reference sequence coverage data for one or more isolates were removed from the final analysis. This left us with a matrix of orthologous SNP loci shared across all genomes.

Phylogenetic analysis. Phylogenetic reconstruction was performed using parsimony criteria and a heuristic search in PAUP 4.0 (25); 1,000 generations were run for bootstrap analysis. Reference genome mapping and read depth statistics were determined using the Genome Analysis Toolkit (26) and Lasergene's SeqMan NGEN version 2.2 software (Lasergene, Madison, WI).

ACKNOWLEDGMENTS

We thank Christina AabySvendsen for technical assistance determining MICs and performing PFGE and Peter Gerner-Smidt for sharing the PFGE bundle file of the Haitian strains.

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SUPPLEMENTAL MATERIAL

Supplemental material for this article may be found at http://mbio.asm.org/lookup/suppl/doi:10.1128/mBio.00157-11/-/DCSupplemental.

Text S1, DOCX file, 0.01 MB.
Figure S1, DOC file, 0.1 MB.
Figure S2, PDF file, 0.1 MB.
Table S1, XLSX file, 0.1 MB.

REFERENCES

1. **Pollitzer R.** 1959. Cholera. World Health Organization, Geneva, Switzerland.
2. **Piarroux R, et al.** 2011. Understanding the cholera epidemic, Haiti. Emerg. Infect. Dis. **17**:1161–1168.
3. **Pan American Health Organization.** Monday, July 25, 2011, Cholera and post-earth-quake response in Haiti. Health Cluster Bulletin 26. http://new.paho.org/blogs/haiti/?p=2043.
4. **Centers for Disease Control and Prevention.** 2010. Update on cholera—Haiti, Dominican Republic, and Florida. MMWR Morb. Mortal. Wkly. Rep. **59**:1637–1641.
5. **Butler D.** 2010. Cholera tightens grip on Haiti. Nature **468**:2.
6. **Cyranoski D.** 2011. Cholera vaccine plan splits experts. Nature **469**:2.
7. **Enserink M.** 2011. Epidemiology. Despite sensitivities, scientists seek to solve Haiti's cholera riddle. Science **331**:388–389.
8. **Enserink M.** 2010. Infectious diseases. Haiti's outbreak is latest in cholera's new global assault. Science **330**:738–739.
9. **Chun J, et al.** 2009. Comparative genomics reveals mechanism for short-term and long-term clonal transitions in pandemic *Vibrio cholerae*. Proc. Natl. Acad. Sci. U. S. A. **106**:15442–15447.
10. **Grim CJ, et al.** 2010. Genome sequence of hybrid *Vibrio cholerae* O1 MJ-1236, B-33, and CIRS101 and comparative genomics with *V. cholerae*. J. Bacteriol. **192**:3524–3533.
11. **Engelthaler DM, et al.** 2011. Next-generation sequencing of *Coccidioides immitis* isolated during cluster investigation. Emerg. Infect. Dis. **17**:227–232.
12. **Gardy JL, et al.** 2011. Whole-genome sequencing and social-network analysis of a tuberculosis outbreak. N. Engl. J. Med. **364**:730–739.
13. **Harris SR, et al.** 2010. Evolution of MRSA during hospital transmission and intercontinental spread. Science **327**:469–474.
14. **Rasko DA, et al.** 2011. *Bacillus anthracis* comparative genome analysis in support of the Amerithrax investigation. Proc. Natl. Acad. Sci. U. S. A. **108**:5027–5032.
15. **Chin CS, et al.** 2011. The origin of the Haitian cholera outbreak strain. N. Engl. J. Med. **364**:33–42.
16. **Lam C, Octavia S, Reeves P, Wang L, Lan R.** 2010. Evolution of seventh cholera pandemic and origin of 1991 epidemic, Latin America. Emerg. Infect. Dis. **16**:1130–1132.
17. **Ali A, et al.** 2011. Recent clonal origin of cholera in Haiti. Emerg. Infect. Dis. **17**:699–701.
18. **Clinical and Laboratory Standards Institute.** 2006. M7-A7. Methods for dilution antimicrobial susceptibility tests for bacteria that grow aerobically. Clinical and Laboratory Standards Institute, Wayne, PA.
19. **Clinical and Laboratory Standards Institute.** 2008. M31-A3. Performance standards for antimicrobial disk and dilution susceptibility tests for bacteria isolated from animals. Clinical and Laboratory Standards Institute, Wayne, PA.
20. **Clinical and Laboratory Standards Institute.** 2010. M100-S20. Performance standards for antimicrobial susceptibility testing. Clinical and Laboratory Standards Institute, Wayne, PA.
21. **Cooper KL, et al.** 2006. Development and validation of a PulseNet standardized pulsed-field gel electrophoresis protocol for subtyping of *Vibrio cholerae*. Foodborne Pathog. Dis. **3**:51–58.
22. **Illumina, Inc.** 2008. Preparing samples for multiplexed paired-end sequencing. Illumina, Inc., San Diego, CA Part 1005361 Rev. B.
23. **Li H, Durbin R.** 2009. Fast and accurate short read alignment with Burrows-Wheeler transform. Bioinformatics **25**:1754–1760.
24. **Kurtz S, et al.** 2004. Versatile and open software for comparing large genomes. Genome Biol. **5**:R12.
25. **Swofford DL.** 2003. PAUP*. Phylogenetic Analysis Using Parsimony (*and Other Methods), version 4. Sinauer Associates, Sunderland, MA.
26. **McKenna A, et al.** 2010. The Genome Analysis Toolkit: a MapReduce framework for analyzing next-generation DNA sequencing data. Genome Res. **20**:1297–1303.

DOC. Nº 15

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Aumenta a cuatro mil 334 las muertes por epidemia de cólera en Haití

Publicado el 10 febrero, 2011 en Avances,Haití,Multipolaridad,Mundo,República Dominicana

A 4 mil 334 aumento la cifra de muertos por la epidemia de cólera que azota a Haití desde de octubre pasado, cuando se detectó el brote de la enfermedad en la nación caribeña.

El último balance emitido por el Ministerio de Salud Pública y Población de Haití, reseña que unas 220 mil 784 personas han sido contagiadas por cólera. Las autoridades haitianas revelaron que al menos 121 mil 397 de los afectados han requerido atención hospitalaria, mientras que otros 118 mil 694 ya se han recuperado.

La región de Artibonite continúa siendo la zona más afectada del país caribeño, al contabilizarse en la localidad unos 863 decesos.

La enfermedad se encuentra extendida por los 10 departamentos en que se divide Haití y trascendió las fronteras hasta llegar al territorio de República Dominicana, donde se han registrado 325 casos y tres fallecidos, un adulto y dos menores, todos de nacionalidad haitiana.

En Venezuela, unas **250 personas han recibido tratamiento por cólera, de las cuales 28 han sido hospitalizada,** sin presentar riesgo de muerte, según informó el pasado 5 de febrero la ministra del Poder Popular para la Salud, Eugenia Sader.

Los aferctados asistieron el pasado 22 de enero a una reunión familiar en República Dominica, país donde fueron contagiados tras ingerir comida contaminada. En Venezuela no existe todavía ningún caso autóctono.

Fuente/Telesur
T/CO

URL del artículo: **http://www.correodelorinoco.gob.ve/multipolaridad/aumenta-a-cuatro-mil-334-muertes-por-epidemia-colera-haiti/**

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DOC. Nº 16

http://articles.cnn.com/2010-11-17/us/florida.haiti.cholera_1_cholera-outbreak-person-to-person-transmission-haiti?_s=PM:US

November 17, 2010|By the CNN Wire Staff

A Haitian Ministry of Health worker hands out an informational pamphlet about cholera in Port-au-Prince.

A woman who recently returned to Florida from Haiti has been diagnosed with cholera, the Florida Department of Health announced Wednesday.

An outbreak of the disease in Haiti has killed more than 1,100 people there, health officials said.

"We have laboratory confirmation that it is the type of cholera spreading in Haiti," said Florida Department of Health spokesman Rob Hayes. "This is not a major public health concern, but we're on top of it," he added.

The woman, whose name is being withheld for privacy reasons, has been released from the hospital where she was being treated and is doing well, Hayes said.

"We are working with our health care partners to ensure appropriate care of this individual and prevent the spread of this disease within the community," Florida Surgeon General Ana M. Viamonte Ros said in a written statement.

Florida authorities will "continue to monitor the state for any future cases," she added.

Haiti's cholera outbreak has now spread across the border to the Dominican Republic, where health officials issued a maximum health alert.

The number of U.S. travelers heading to and from Haiti has increased since an earthquake devastated the impoverished nation in January, according to the Florida Department of Health statement.

"This case is not unexpected and we're likely to see more imported cases of cholera in people who travel back from Haiti to the United States," said Tom Skinner, spokesman for the Centers for Disease Control and Prevention in Atlanta, Georgia. "Our medical system, as well as our water and sanitation programs, are such that we are not going to see cholera spreading in the United States the way it is in Haiti."

Florida's Department of Health also noted that the superior U.S. infrastructure minimizes the risk for fecal contamination of food and water, limiting the potential spread of the disease.

Person-to-person transmission is rare, it added.

In the past five years, 44 cases of cholera have been reported in the United States, according to statistics from the Centers for Disease Control and Prevention. That figure does not include the latest case in Florida. Many of those cases were labeled as "imported," meaning that the victim contracted the disease outside of the country and entered the United States already ill.

Other victims had a history of traveling to or eating contaminated seafood from the Gulf Coast region, where brackish water and estuaries are common reservoirs for algal blooms that can produce the disease, according to the World Health Organization.

Symptoms of cholera, an acute, bacterial illness caused by drinking tainted water or eating contaminated food, can be mild or even nonexistent. But sometimes they can be severe: leg cramps, profuse watery diarrhea and vomiting, which can cause rapid loss of body fluids and lead to dehydration, shock and death.