

In late 2016, Senators John McCain and Lindsey Graham initiated an effort to amend JASTA.⁴⁹ They proposed a “modest” “caveat” to the law, such that

if you are suing based on a discretionary function of a government to form an alliance with somebody or to make a military decision or a political decision, the only time that government is liable is if they knowingly engage with a terrorist organization directly or indirectly, including financing.⁵⁰

According to Senator Graham, “[t]hat would send a signal to the world that we are not opening Pandora’s box.”⁵¹

Despite efforts by both the State Department and White House to work with Congress to mitigate potential negative consequences of the law,⁵² no amendment was passed during the lame-duck session. As Congress’ 2016 session neared its end, Secretary of State John Kerry said, “[w]e tried very hard to move on changing [JASTA] and we will continue to do that.”⁵³

As a candidate, President-elect Trump had expressed strong support for JASTA, reportedly describing President Obama’s veto as “one of the low points of his presidency” and saying that he would have approved the law if he were president.⁵⁴ While advocating for a JASTA amendment, Senators McCain and Graham acknowledged the possibility that the law might not be “fixed” prior to 2017 and insisted, “[w]e are not going to stop until we have this problem fixed because it is a real problem for people serving the United States in real time.”⁵⁵

INTERNATIONAL ORGANIZATIONS

U.S. Federal Court of Appeals Upholds United Nations’ Immunity in Case Related to Cholera in Haiti

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On October 9, 2013, a group of Haitian cholera victims and their survivors sued the United Nations, along with two UN officials and the United Nations Stabilization Mission in Haiti (MINUSTAH), in the U.S. District Court for the Southern District of New York.¹ The plaintiffs alleged that the United Nations had negligently and recklessly allowed peacekeepers from Nepal carrying cholera to enter Haiti in the wake of the 2010 earthquake without reasonable health screenings.² The suit further alleged that the United Nations had negligently maintained

obey the law and we will obey this law. There’s no dispute about that. But we still have concerns about it and many of our partners, some of whom are even in places like Europe, some of our closest allies, have lingering concerns about this. And so we’re going to continue to engage and discuss the law and its implementation going forward with members of Congress. But other than that, I don’t have any more specifics to offer.”)

⁴⁹ See 162 CONG. REC. S6611 (daily ed. Nov. 30, 2016).

⁵⁰ *Id.* (Statements of Sens. Graham and McCain).

⁵¹ *Id.* (Statement of Sen. Graham).

⁵² U.S. Dep’t of State, Daily Press Briefing (Dec. 1, 2016), at <http://www.state.gov/r/pa/prs/dpb/2016/12/264717.htm>; White House Press Release, Press Briefing by Press Secretary Josh Earnest (Dec. 1, 2016), at <http://www.whitehouse.gov/the-press-office/2016/12/01/press-briefing-press-secretary-josh-earnest-1212016>.

⁵³ U.S. Dep’t of State, Joint Press Availability with Saudi Arabian Foreign Minister Adel al-Jubeir (Dec. 18, 2016), at <http://www.state.gov/secretary/remarks/2016/12/265750.htm>.

⁵⁴ Mark Hensch, *Trump Slams Obama for ‘Shameful’ 9/11 Bill Veto*, THEHILL.COM (Sept. 23, 2016), at <http://thehill.com/blogs/ballot-box/presidential-races/297558-trump-rips-obama-for-shameful-9-11-veto>.

⁵⁵ See 162 CONG. REC. S6611, *supra* note 49 (Statements of Sens. Graham and McCain).

¹ Kristina Daugirdas & Julian Mortenson, *Contemporary Practice of the United States Relating*, 108 AJIL 819, 822 (2014).

² *Id.* at 822.

inadequate sanitation facilities.³ Finally, the petitioners alleged that the United Nations' refusal to accept responsibility for the outbreak had exacerbated the epidemic.⁴ According to the United Nations, by August 2016, nearly 800,000 people had become infected with cholera, and more than 9,000 had died of cholera.⁵

The United States submitted a statement of interest to the district court, arguing that the United Nations and all other defendants were immune from suit under the 1946 Convention on the Privileges and Immunities of the United Nations (CPIUN).⁶ Of note, the CPIUN requires the United Nations to “make provisions for appropriate modes of settlement” of certain categories of disputes.⁷ Pursuant to that provision, the plaintiffs had previously filed a petition for compensation with the secretary-general. The United Nations denied the petition on the grounds that the claims were “not receivable” under the CPIUN because “consideration of these claims would necessarily include a review of political and policy matters.”⁸

On January 9, 2015, the District Court dismissed the plaintiff's claims for lack of subject matter jurisdiction:

The Charter of the United Nations (“UN Charter”) states that the UN “shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes.” The CPIUN, which was adopted less than a year after the UN Charter, defines the UN's privileges and immunities in more detail. The CPIUN provides that “[t]he United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity.” Because the CPIUN is self-executing, this Court must enforce it despite the lack of implementing legislation from Congress.

The Second Circuit's decision in *Brzak v. United Nations* requires that Plaintiffs' suit against the UN be dismissed for lack of subject matter jurisdiction pursuant to Rule 12(h)(3). In *Brzak*, the Second Circuit unequivocally held that “[a]s the CPIUN makes clear, the United Nations enjoys absolute immunity from suit unless ‘it has expressly waived its immunity.’” Here, no party contends that the UN has expressly waived its immunity. Accordingly, under the clear holding of *Brzak*, the

³ *Id.*

⁴ *Id.* at 823.

⁵ United Nations, Fact Sheet: Response to Cholera in Haiti, Aug. 2016, at <http://www.un.org/News/dh/infocus/haiti/CholeraFactsheetAug2016.pdf>.

⁶ Daugirdas & Mortenson, *supra* note 1, at 823–26.

⁷ Convention on the Privileges and Immunities of the United Nations Art. VIII, sec. 29, Feb. 13, 1946, 1 UNTS 15 (requiring the United Nations to “make provisions for appropriate modes of settlement” of “[d]isputes arising out of contracts or other disputes of a private law character to which the United Nations is a party” and “[d]isputes involving any official of the United Nations who by reason of his official position enjoys immunity, if immunity has not been waived by the Secretary-General”).

⁸ Daugirdas & Mortenson, *supra* note 1, at 822, *citing* Letter from Patricia O'Brien, UN Under-Secretary-General for Legal Affairs to Brian Concannon, Attorney for the Haitian Cholera Victims (Feb. 21, 2013), at <http://opiniojuris.org/wp-content/uploads/LettertoMr.BrianConcannon.pdf>. The UN secretary-general later provided a more expansive analysis in a response to inquiries from four UN special rapporteurs. *See* Letter from Pedro Medrano, Assistant Secretary-General and Senior Coordinator for Cholera Response, to Leilani Farha, Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Nondiscrimination in this Context; Gustavo Gallón, Independent Expert on the Situation of Human Rights in Haiti; Dainius Pūras, Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health; and Catarina de Albuquerque, Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, paras. 84–98, (Nov. 25, 2014), at [https://spdb.ohchr.org/hrdb/28th/Haiti_ASG_25.11.14_\(3.2014\).pdf](https://spdb.ohchr.org/hrdb/28th/Haiti_ASG_25.11.14_(3.2014).pdf).

UN is immune from Plaintiffs' suit. In addition, MINUSTAH, as a subsidiary body of the UN, is also immune from suit.⁹

The District Court also ruled that the immunity of the United Nations was not contingent on the availability of an alternative means of dispute resolution.¹⁰ Finally, the court held that the United Nations officials named in the suit were also immune.¹¹

The plaintiffs appealed to the U.S. Court of Appeals for the Second Circuit.¹² While the decision from the three-judge panel was pending, 158 members of Congress signed a bipartisan letter from Michigan representative John Conyers Jr. expressing frustration with the United Nations' lack of accountability:¹³

We write to urge the State Department to immediately and unreservedly exercise its leadership to ensure that the United Nations (UN) take concrete steps to eliminate the cholera epidemic introduced to Haiti in 2010 by waste from a UN peacekeeper camp, and to comply with its legal and moral obligations to provide cholera victims with access to an effective remedy.

...

While the deaths, illness, and evidence of malfeasance mounted, UN Assistant Secretary-General Pedro Medrano Rojas, who met with Congress as the UN's point person for responding to the epidemic, left office in June 2015 and was not replaced. The UN continues to refuse to even discuss providing compensation for the losses incurred by those killed and sickened by the cholera it brought to Haiti, and there is no notable progress in its proclaimed efforts to provide the water and sanitation infrastructure necessary to control the cholera epidemic.

...

While we do not wish to take a position in the litigation, we are deeply concerned that the State Department's failure to take more leadership in the diplomatic realm might be perceived by our constituents and the world as a limited commitment to an accountable and credible UN.¹⁴

In response to this letter, a State Department spokesperson praised Representative Conyers's leadership and emphasized the United States' commitment to assisting Haiti in combating the cholera outbreak, highlighting the \$95 million the United States had already spent for treatment and prevention.¹⁵

Additionally, before the Second Circuit ruled, a report criticizing the United Nations' response to the cholera outbreak by the United Nations special rapporteur on extreme poverty and human rights, Philip Alston, was leaked to the press. An excerpt follows:¹⁶

⁹ *Georges v. United Nations*, 84 F.Supp.3d 246, 248–49 (S.D.N.Y. 2015) (internal citations omitted).

¹⁰ *Id.* at 249–50.

¹¹ *Id.* at 250.

¹² *Georges v. United Nations*, 834 F.3d 88 (2d Cir. 2016).

¹³ Rick Gladstone, *Lawmakers Urge John Kerry to Press U.N. for Haiti Cholera Response*, N.Y. TIMES (June 29, 2016), at <http://www.nytimes.com/2016/06/30/world/americas/haiti-cholera-john-kerry-congress.html>.

¹⁴ Office of Congressman John Conyers, Jr. Press Release, Reps. John Conyers and Mia Love Lead Bipartisan Group of More Than 150 Members of Congress in Calling for UN to Take Responsibility for Haiti Cholera Epidemic (June 29, 2016), at https://conyers.house.gov/sites/conyers.house.gov/files/06_29_16%20Kerry%20Haiti%20Cholera%20Letter%20Final.pdf.

¹⁵ U.S. Dep't of State Press Release, Daily Press Briefing (Aug. 3, 2016), at <http://www.state.gov/r/pa/prs/dpb/2016/08/260813.htm>.

¹⁶ Jonathan M. Katz, *U.N. Admits Role in Cholera Epidemic in Haiti*, N.Y. TIMES (Aug. 17, 2016), at <http://www.nytimes.com/2016/08/18/world/americas/united-nations-haiti-cholera.html>.

The scientific evidence now points overwhelmingly to the responsibility of the peacekeeping mission as the source of the outbreak. 9,145 persons have so far died and almost 780,000 have been infected. To date, the United Nations has denied responsibility for the outbreak, rejected all claims for compensation, refused to establish any procedure to resolve the resulting disputes, and has relied on a claim of absolute immunity in defending litigation brought by victims. This policy of abdicating responsibility relies on a claim of scientific uncertainty that is no longer sustainable and an unpublished legal opinion that the resulting claims are not “of a private law nature” and are thus not receivable. Based on what is known of the legal analysis, it is deeply flawed.

The UN’s policy is morally unconscionable, legally indefensible, and politically self-defeating. It is also entirely unnecessary. In practice, it jeopardizes the UN’s immunity by encouraging arguments calling for it to be reconsidered by national courts; it upholds a double standard according to which the UN insists that Member States respect human rights, while rejecting any such responsibility for itself; it leaves the UN vulnerable to eventual claims for damages and compensation in this and subsequent cases which are highly unlikely to be settled on terms that are manageable from the UN’s perspective; it provides highly combustible fuel for those who claim that UN peace-keeping operations trample on the rights of those being protected; and it undermines both the UN’s credibility and the integrity of the Office of the Secretary-General.¹⁷

Shortly after the report was sent to UN Secretary-General Ban Ki-moon, a deputy spokesperson for the secretary-general indicated that the United Nations planned to change its approach to the cholera outbreak in Haiti while maintaining its immunity from the lawsuit filed in New York.¹⁸ According to an email written by the spokesperson, “over the past year, the U.N. has become convinced that it needs to do much more regarding its own involvement in the initial outbreak and the suffering of those affected by cholera.”¹⁹ The spokesperson also indicated that a “new response will be presented publicly within the next two months, once it has been fully elaborated, agreed with the Haitian authorities and discussed with member states.”²⁰

The following day, the Second Circuit upheld the district court’s ruling.²¹ The Second Circuit rejected the plaintiffs’ argument that the United Nations’ immunity was contingent on its provision of an alternative dispute settlement mechanism:

Here, application of two particular “principles which govern the interpretation of contracts” demonstrates why plaintiffs’ first argument is unavailing. The first such principle is *expressio unius est exclusio alterius*—“express mention of one thing excludes all others”—which is also known as the negative-implication canon. This principle has guided federal courts’ interpretations of treaties for over a century.

As noted above, Section 2 of the CPIUN provides that the UN “shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity.” Especially when coupled with the compulsory “shall”—which “is universally understood to

¹⁷ Philip Alston’s *Draft Report on the U.N. and the Haiti Cholera Outbreak*, N.Y. TIMES (Aug. 19, 2016), at <http://www.nytimes.com/interactive/2016/08/19/magazine/document-Alston-Haiti-Cholera-Report.html>. For the final published version of the report, see Philip Alston (Special Rapporteur on Extreme Poverty and Human Rights), Rep. of the Special Rapporteur on Extreme Poverty and Human Rights in Accordance with Human Rights Council Res. 26/3, UN Doc. A/71/40823 (Aug. 26, 2016).

¹⁸ Katz, *supra* note 16.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Georges*, 834 F.3d 88; see also Jonathan M. Katz, *U.S. Court Upholds United Nations’ Immunity in Cholera Suit*, N.Y. TIMES (Aug. 18, 2016), at <http://www.nytimes.com/2016/08/19/world/americas/united-nations-cholera-haiti.html>.

indicate an imperative or mandate”—Section 2’s “express mention of” the UN’s express waiver as a circumstance in which the UN “shall [not] enjoy immunity” negatively implies that “all other[]” circumstances, including the UN’s failure to fulfill its Section 29 obligation, are “exclude[d].” It necessarily follows that the UN’s fulfillment of its Section 29 obligation is not a condition precedent to its Section 2 immunity.

This conclusion is buttressed by the second principle of contract interpretation relevant to our analysis—that “conditions precedent to most contractual obligations . . . are not favored and must be expressed in plain, unambiguous language.” To manifest their intent to create a condition precedent, “[p]arties often use language such as ‘if,’ ‘on condition that,’ ‘provided that,’ ‘in the event that,’ and ‘subject to.’” No such language links Sections 2 and 29 in the CPIUN. Of course, “specific talismanic words are not required.” But “there is [also] no . . . [other] language [in the CPIUN] which, even straining, we could read as imposing” the UN’s fulfillment of its Section 29 obligation as a condition precedent to its Section 2 immunity.²²

The court then dismissed the material breach argument in light of its conclusion that the plaintiffs lacked standing to make that claim:

Plaintiffs next argue that “[t]he District Court’s finding of immunity was erroneous . . . because Section 29 is a material term to the CPIUN as a whole.” According to plaintiffs, the UN’s material breach of its Section 29 obligation means that it “is no longer entitled to the performance of duties owed to it under” the CPIUN, including its Section 2 immunity. We need not reach the merits of this argument, however, because plaintiffs lack standing to raise it.

As we have recently reiterated, “absent protest or objection by the offended sovereign, [an individual] has no standing to raise the violation of international law as an issue.” The plaintiffs have not identified any sovereign that has objected to the UN’s alleged material breach. To the contrary, the United States has asked us to affirm the District Court’s judgment, and no other country has expressed an interest in this litigation.²³

Finally, the Court found that the plaintiffs’ arguments for right of access “[failed] to convince”:²⁴

As we stated in *Brzak v. United Nations*, in which we rejected a virtually indistinguishable challenge to an application of Section 2 of the CPIUN, plaintiffs’ argument does little more “than question why immunities in general should exist.” But “legislatively and judicially crafted immunities of one sort or another have existed since well before the framing of the Constitution, have been extended and modified over time, and are firmly embedded in American law.” Plaintiffs’ argument, if correct, would seem to defeat not only the UN’s immunity, but also “judicial immunity, prosecutorial immunity, and legislative immunity.” Plaintiffs do not persuasively differentiate the quotidian and constitutionally permissible application of these doctrines from application of Section 2 of the CPIUN here.²⁵

On August 19, 2016, the Office of the United Nations Secretary-General issued a statement in response to the Second Circuit’s ruling:

The Secretary-General deeply regrets the terrible suffering the people of Haiti have endured as a result of the cholera epidemic. The United Nations has a moral responsibility to the victims of the cholera epidemic and for supporting Haiti in overcoming the epidemic and building sound water, sanitation and health systems.

...

²² *Georges*, 834 F.3d at 93–94 (internal citations omitted).

²³ *Id.* at 97 (internal citations omitted).

²⁴ *Id.* at 98.

²⁵ *Id.* (internal citations omitted).

The Secretary-General is actively working to develop a package that would provide material assistance and support to those Haitians most directly affected by cholera. These efforts must include, as a central focus, the victims of the disease and their families. The United Nations also intends to intensify its support to reduce, and ultimately end, the transmission of cholera, improve access to care and treatment and address the longer-term issues of water, sanitation and health systems in Haiti.²⁶

In the months following the Second Circuit decision, the United Nations has provided some further information about its planned compensation plan.²⁷ The plan has two tracks: the first track aims to combat the cholera epidemic itself (by, for example, addressing the water infrastructure still needing repair from the 2010 earthquake);²⁸ “the second track aims to develop a framework proposal to Member States for material assistance to those Haitians most affected by cholera after the 2010 outbreak.”²⁹

Apart from its filings in the lawsuit against the United States, the Obama administration had been largely silent about the United Nations’ response to cholera in Haiti.³⁰ Nevertheless, in a statement before a committee of the UN General Assembly, Alston suggested that the United States had played an influential role in shaping the United Nations’ legal position:

[I]t seems relevant to note that the United States of America, which has a strong interest in this issue both as a close neighbor of Haiti and as the principal contributor to the UN’s peacekeeping budget, has itself never publicly stated its legal position on this issue, despite many requests that it do so. There is reason to believe that the position adopted by [the UN Office of Legal Affairs] in 2013 was consistent with views strongly pressed at the time by the United States. The reasoning behind the US position seems to be that the UN must follow American legal practice which generally takes the view that legal responsibility should never be accepted when it can possibly be avoided, because one never knows the consequences for subsequent litigation.³¹

At a press conference two days later, State Department Spokesperson John Kirby was asked about the United States’ role in shaping the United Nations’ legal position:

QUESTION: . . . [E]arlier this week, there was a UN expert speaking up at the UN in New York about Haiti and the cholera epidemic. And in his comments, he . . . hinted . . . that the reason the UN took the position that it took when people tried to get some accountability for the introduction of

²⁶ Secretary-General Press Statement, Statement Attributable to the Spokesman for the Secretary General on Haiti (Aug. 19, 2016), at <https://www.un.org/sg/en/content/sg/statement/2016-08-19/statement-attributable-spokesman-secretary-general-haiti>.

²⁷ *UN Deputy Chief Briefs Member States on New UN Approaches to Cholera Outbreak in Haiti*, UN NEWS CENTRE (Oct. 14, 2016), at <http://www.un.org/apps/news/story.asp?NewsID=55307#.WBQdLHiCwUV>.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Samantha Power, the U.S. Ambassador to the United Nations, has not publicly commented on the United Nations’ role in the cholera crisis in Haiti. In March 2014, she posted a comment on Twitter: “More needed to combat cholera: Countries need to expand support for #Haiti’s efforts to treat those with cholera & improve sanitation.” See Samantha Power (@AmbassadorPower), TWITTER (Mar. 24, 2014), at <https://twitter.com/AmbassadorPower/status/448238784916643840>.

³¹ Statement by Professor Philip Alston, Special Rapporteur on Extreme Poverty and Human Rights, UN Responsibility for the Introduction of Cholera into Haiti, 71st Sess. of the General Assembly, Third Committee, Item 68 (b&c) (Oct. 25, 2016), at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20794&LangID=E>.

cholera into Haiti was at the behest of the United States. Can you address that? Is that correct? Did you pressure or push the UN into not responding?

MR KIRBY: No, we did not. We have been very clear that we do not take a position on the validity of the underlying claims in this particular case. We do not take a position.

QUESTION: But you did take a position in favor of the United Nations, correct?

MR KIRBY: What we've said is we support efforts by the special rapporteur to give greater prominence to the plight of those living in extreme poverty. We have said before that we welcomed the secretary-general's acceptance of the UN's moral responsibility for the cholera outbreak and his recent statement expressing regret for the loss of life. We've also said that we recognize more must be done and we support the UN's ongoing efforts to design an assistance package to assist those most affected by cholera including in the wake of Hurricane Matthew. So we look forward to receiving the secretary-general's proposal for the provision of a package of assistance and support to Haitians most affected by the cholera. . . .

QUESTION: . . . I think Matt's fundamental question was: Did the U.S. Government at any time discourage the UN from taking responsibility, right? Was that fundamentally your question? . . .

MR KIRBY: I'm not aware that we discouraged them from taking responsibility. I said . . . we welcomed that— . . .

MR KIRBY: —the secretary-general said it was a moral responsibility.³² But with respect to the actual claims, we did not take a position on the validity of the underlying claims in this case.

QUESTION: . . . [C]ouldn't you discourage them from taking responsibility even if you don't take a position on the underlying claims? Look, you could say, "Look, I don't know who did this, but it's going to be bad if you take responsibility, so don't do that."

MR KIRBY: Well, I mean, could we have? I don't know. I suppose we could have. I'm not aware that we did. What I can tell you is we did not take a position on the underlying claims and we did welcome the secretary-general's actions and his comments on this matter going forward.³³

On December 1, Secretary-General Ban Ki-moon spoke about the United Nations' new approach to cholera in Haiti:

The United Nations deeply regrets the loss of life and suffering caused by the cholera outbreak in Haiti. On behalf of the United Nations, I want to say very clearly: we apologise to the Haitian people. We simply did not do enough with regard to the cholera outbreak and its spread in Haiti.

³² [Editors' note: In July 2014, the secretary-general stated his belief that "the international community, including the United Nations, has a moral responsibility to help the Haitian people stem the further spread of the cholera epidemic." He did not address the legal implications of this statement. Daugirdas & Mortenson, *supra* note 1, at 826.]

³³ U.S. Dep't of State Press Release, Daily Press Briefing (Oct. 27, 2016), at <http://www.state.gov/t/pa/prs/dpb/2016/10/263730.htm#HAITI>.

We are profoundly sorry for our role.

...

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

Track One consists of a substantially intensified effort to respond to, and reduce, the incidence of cholera in Haiti. Haitians clearly have told us that eliminating cholera must be priority number one. We would like to see improvements in people's access to care and treatment when sick, while also addressing the longer-term issues of water, sanitation and health systems.

Work on Track One is [well] under way. . . .

...

. . . [O]ur new approach includes a second track—Track 2—that focuses specifically on those Haitians most directly affected by cholera, their families and communities. . . . Track Two is a concrete expression of the regret of our Organization for the suffering so many Haitians have endured. On that basis, we propose to take a community approach that would provide a package of material assistance and support to those most severely impacted by cholera. The support would be based on priorities established in consultation with communities, victims and their families.

...

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

...

Some have urged that the package also include an individual component, such as the payment of money to the families of those who died of cholera. This approach would require identification of the deceased individuals and their family members. It would also require the certainty of sufficient funding to provide a meaningful fixed amount per cholera death.

We need to do further on-the-ground consultations, while acknowledging the difficulties involved. Additional evaluation is needed on whether and how the limitations of information on deaths from cholera, including the identities of the victims, can be addressed and on the challenges and costs associated with that effort.³⁴

Ban emphasized the need for adequate funding, and encouraged member states to contribute voluntary funds to the newly established United Nations Haiti Cholera Response Multi-Partner Trust Fund.³⁵

Ambassador Isobel Coleman, the U.S. Representative to the United Nations for UN Management and Reform, delivered informal remarks in response. An excerpt follows:

As the Secretary-General has movingly noted, cholera has had a devastating effect on the Haitian people since it was introduced in Haiti in 2010. Families have lost loved ones, caregivers, and breadwinners. No community has been untouched. There is a clear humanitarian imperative to respond to the epidemic in a robust and sustained manner.

³⁴ UN Secretary-General, Secretary-General's Remarks to the General Assembly on a New Approach to Address Cholera in Haiti (Dec. 1, 2016), at <https://www.un.org/sg/en/content/sg/statement/2016-12-01/secretary-generals-remarks-general-assembly-new-approach-address>; see also UN Secretary-General, A New Approach to Cholera in Haiti, U.N. Doc. A/71/620 (Nov. 25, 2016).

³⁵ *Id.*

...

There is also a clear ethical duty to respond to the cholera epidemic in Haiti. Not a single one of these cases should have occurred. For this reason, the United States welcomes the Secretary-General's acceptance of the UN's moral responsibility for the cholera outbreak and his statement last month in Haiti expressing regret for the resulting loss of life. While the UN and the international community have made strides in containing and preventing the further spread of the disease, the U.S. recognizes that more must be done and supports the UN's ongoing efforts to design an assistance package for those most affected by cholera.

...

We welcome the Secretary-General's apology today and the proposed new approach as meaningful symbols of atonement to the Haitian people, and important steps in restoring the credibility of the United Nations. And we look forward to working with the Secretary-General and his successor to ensure that this initiative has a positive and lasting impact for those most affected.³⁶

USE OF FORCE AND ARMS CONTROL

U.S.-Russian Agreements on Syria Break Down as the Syrian Conflict Continues doi:10.1017/ajil.2016.5

Starting in February 2016, the United States and Russia reached a series of agreements aimed at establishing a cessation of hostilities in the Syrian civil war and facilitating a political settlement of the underlying conflict. Although the agreements showed initial promise, various breakdowns led the United States to suspend bilateral communications with Russia regarding maintenance of the agreements by October 2016.

The United States and Russia have each used armed force during the civil war, mostly by conducting air strikes. Since September 2014, the United States has directed air strikes against Syrian positions of the Islamic State of Iraq and the Levant (ISIL).¹ Russia's air strikes began one year later at the request of Syria's president, Bashar al Assad.² Russia justified its air strikes as targeting terrorist groups and "actively promot[ing] the political process" of settling the conflict.³ While Russia's assistance has facilitated the Assad regime's expansion of territorial control, opposition groups continue to occupy large portions of the country.⁴

In October 2015, the United States and Russia convened meetings among a group of nations to discuss a potential ceasefire and political resolution to the Syrian

³⁶ United Nations, Ambassador Isobel Coleman, U.S. Representative to the UN for UN Management and Reform, U.S. Mission to the United Nations, Remarks at an Informal Briefing by the Secretary-General on the United Nations' New Approach to Cholera in Haiti (Dec. 1, 2016), at <https://usun.state.gov/remarks/7582>.

¹ Kristina Daugirdas & Julian Davis Mortenson, *Contemporary Practice of the United States*, 109 AJIL 199, 203 (2015).

² See Ministry of Defence of the Russ. Fed'n Press Release, Russian Aviation Performed High-Accuracy Strikes Against International Terror Organization ISIS (Sept. 30, 2016), at http://eng.mil.ru/en/news_page/country/more.htm?id=12059172@egNews; see also Ministry of Foreign Aff. of the Russ. Fed'n Press Release, Foreign Minister Sergey Lavrov's Remarks and Answers to Media Questions Following a Meeting with US Secretary of State John Kerry, New York, September 30, 2015 (Oct. 1, 2015), at http://www.mid.ru/en/web/guest/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/1819477 [hereinafter Sergey Lavrov's Remarks].

³ See Sergey Lavrov's Remarks, *supra* note 2.

⁴ Office of the Director of National Intelligence, *Worldwide Threat Assessment of the US Intelligence Community* 17–18, 22–23 (Feb. 9, 2016), at https://www.dni.gov/files/documents/SASC_Unclassified_2016_ATA_SFR_FINAL.pdf.