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Haiti - October 2010 Cholera case study

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MINUSTAH

- Established in 2004 in response to the deteriorating political and security situation in Haiti.
- Mandate to ensure a secure and stable environment within which the constitutional and political processes could take place.
- An earthquake hit Haiti on 12 January 2010, killing some 250,000 people, including 102 UN staff. In the wake of the earthquake, UN peacekeepers refocused their efforts to support Haiti's recovery and reconstruction.

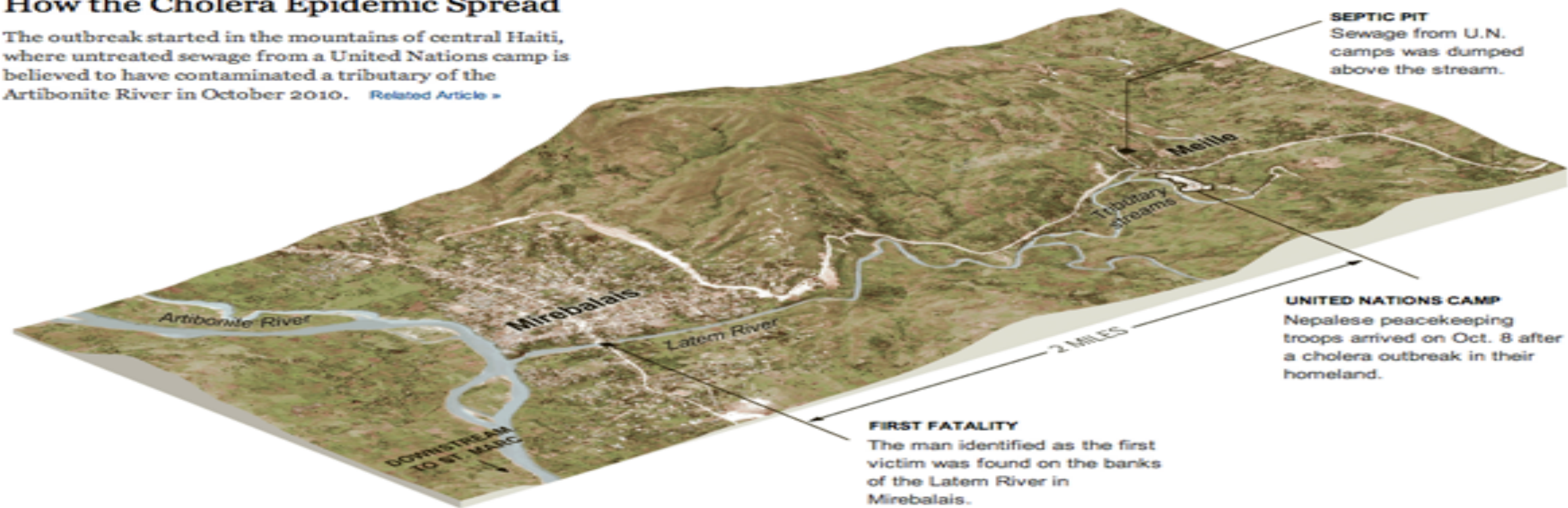
How the Cholera Epidemic Spread

The outbreak started in the mountains of central Haiti, where untreated sewage from a United Nations camp is believed to have contaminated a tributary of the Artibonite River in October 2010. [Related Article »](#)

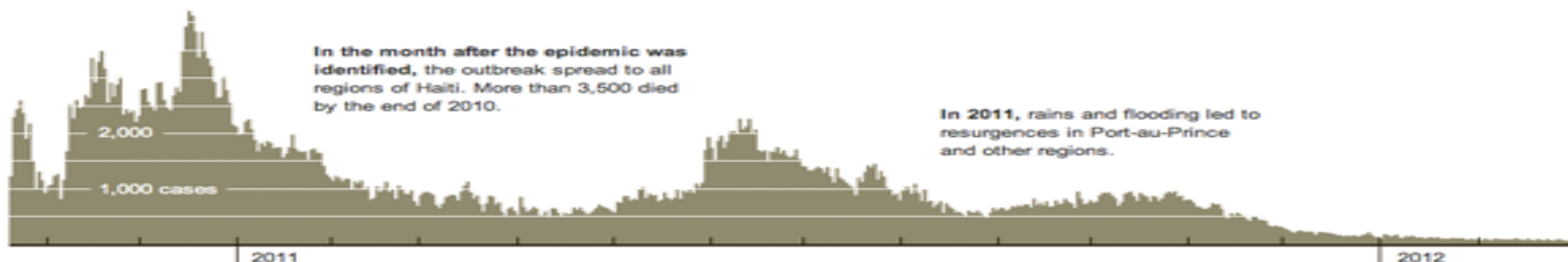
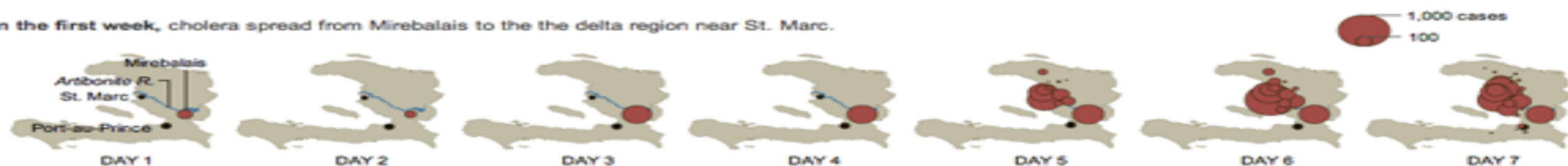


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In the first week, cholera spread from Mirebalais to the the delta region near St. Marc.



Suspected Cholera Cases Haiti

NEW SUSPECTED (Feb 2018)

SINCE OCT 2010

CHOLERA CASES:	NEW DEATH:	CUMULATIVE CASES	CUMULATIVE DEATHS
248	1	818.000	9.756
-81%	-92%		

FUNDING

Through the revised 2017-2018 Humanitarian Response Plan (HRP) the cholera sector requested for \$21.7M to respond to cholera cases projected for this year and to also reach the medium-term objective of less than 11,000 cases in 2018.

Human Development Index for 2015

Haiti ranks 163rd out of 188 countries

World Bank: more than 6 million (59 %) of the population of 10.4 million Haitians live under the national poverty line of \$2.42 per day, and over 2.5 million (24 %) live under the national extreme poverty line of \$1.23 per day.

Panel of independent experts in January 2011

“the evidence overwhelmingly supports the conclusion that the source of the Haiti cholera outbreak was due to contamination of the Mèyé Tributary of the Artibonite River with a pathogenic strain of current South Asian type *Vibrio cholerae* as a result of human activity”

“ dumping of faeces alone “could not have been the source of such an outbreak without simultaneous water and sanitation and health care system deficiencies ... coupled with conducive environmental and epidemiological conditions”

Panel of independent experts in January 2011

“outbreak was caused by the confluence of circumstances ... and was not the fault of, or deliberate action of, a group or individual”.

follow-up 2013

“the preponderance of the evidence and the weight of the circumstantial evidence does lead to the conclusion that personnel associated with the Mirebalais MINUSTAH facility were the most likely source of introduction of cholera into Haiti”

“ we do not feel that this was a deliberate introduction of cholera into Haiti”; rather, it was “an accidental and unfortunate confluence of events”.

Petition and response UN Legal Counsel

November 2011, a petition was lodged with MINUSTAH on behalf of some 5,000 cholera victims claiming (a) a fair and impartial hearing; (b) monetary compensation; (c) preventive action by the UN; and (d) a public acknowledgement of UN responsibility and a public apology.

UN Legal Counsel deemed the claims “not receivable pursuant to Section 29 of the 1946 Convention on the Privileges and Immunities of the United Nations”, recalling the independent panel’s “confluence of circumstances” and no fault findings”

“ claims could not to be of a “private law character” because their consideration “would necessarily include a review of political and policy matters”.

Claimants and response Legal Counsel

- Claimants challenged the non-receivability finding and requested either mediation or a meeting to discuss the matter.
- Legal Counsel (July 2013) “as these claims are not receivable, I do not consider it necessary to meet and further discuss this matter.”

Report of the Special Rapporteur on extreme poverty and human rights (A/71/367, 26 August 2016)

- legal position of the United Nations has involved denial of legal responsibility for the outbreak, rejection of all claims for compensation, a refusal to establish the procedure required to resolve such private law matters,
- unjustified suggestions that the Organization's absolute immunity from suit would be jeopardized by adopting a different approach.
- existing approach is morally unconscionable, legally indefensible and politically self-defeating. It is also entirely unnecessary.

Report of the Special Rapporteur on extreme poverty and human rights (A/71/367, 26 August 2016)

- it upholds a double standard according to which the United Nations insists that Member States respect human rights, while rejecting any such responsibility for itself;
- it leaves the United Nations vulnerable to eventual claims for damages and compensation in this and subsequent cases, which are most unlikely to be settled on terms that are manageable from the perspective of the Organization;
- it undermines both the overall credibility of the Organization and the integrity of the Office of the Secretary-General.

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- the experts' conclusion that the MINUSTAH base was the source makes it very difficult to then conclude that no individual or group was at fault.
- the experts provide no analysis whatsoever to support their no fault assertion.
- fails to mention, the central issue of negligence which lies at the heart of the legal issue of fault in this case.
- flaws clearly invalidate the no fault finding on which the UN has consistently sought to rely so heavily in order to avoid responsibility.

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Legal arguments supporting the claim of non-receivability are wholly unconvincing in legal terms.

- Claims appear to have all of the characteristics of a private law tort claim. The victims accuse the United Nations of negligence for failure to adequately screen its peacekeeping forces for cholera, failure to provide for adequate sanitation facilities and waste management at Mirebalais camp, failure to undertake adequate water quality testing and a failure to take immediate corrective action after cholera was introduced.

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- These are classic third-party claims for damages for personal injury, illness and death, and they arise directly from action or inaction by, or attributable to, MINUSTAH. This would include a failure to exercise non-negligent supervision of the actions of private contractors.
- the duties owed by the United Nations are directly analogous to those owed by a company or private property owner to ensure adequate waste management and to take adequate precautions to prevent spreading diseases.

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- The contention that receipt of the claims would “necessarily involve a review of political and policy matters” is self-serving and unjustified.
- The claims are far from being “political” in the sense defined by the Secretary-General in 1995 as those targeting actions or decisions of political organs[..]
- In terms of policies, it is true that waste management and other such internal policies might need to be reviewed, but if that prospect is enough to trigger non-receivability, it would become effectively impossible ever to claim damages from the UN.

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- Haiti case is clearly distinguishable from the Rwanda and Srebrenica claims, both of which alleged a failure by peacekeepers to fulfil the essence of their mandate and raised issues of operational judgment as opposed to a failure to avoid spreading a highly infectious and lethal disease

UN New approach (19 august 2016)

Track 1

intensifying the Organization's 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.

Track 2

in developing a package of material assistance and support for those Haitians most directly affected by cholera. These efforts must include, as a central focus, the victims of the disease and their families.