

## UN High Level Report Seeks Expanded UN Mandate: Promoting Sustainable Development to Prevent Collective Threats

### a) *Achieving Sustainable Development*

The UN Secretary General Kofi Annan previously appointed prominent persons from different countries to a High Level Panel on Threats, Challenges and Change to address global collective security issues. During December 2004, the Panel released a report entitled, "A More Secure World - Our Shared Responsibility", accessible at: (<http://www.un.org/secureworld>).

The general conclusion of this report is that there are many inter-linked threats to collective global security that must be addressed together. **Achieving ‘sustainable development’ as defined by the EU, has a large role to play in preventing (via the precautionary principle) these collective threats from materializing in the first place or from causing serious harm. In fact, ‘prevention’<sup>1</sup> may, perhaps, be the central-most concept reflecting the new and expanded role the EU envisions for the UN during the 21<sup>st</sup> century.**

A review of paragraphs 52-59 of this document makes plain that achieving sustainable development is certainly one of THE most important conditions for ensuring global collective security. It is notable that this is THE FIRST of all the sections in the report identifying and discussing collective global threats.<sup>2</sup>

The definition of sustainable development that the UN is working with is premised on the ‘low’ or ‘slow’ growth model articulated by the EU Commission. It does NOT prioritize economic growth - rather it focuses on social, health and environmental issues. This is made clear by the structure of the following highlighted passage in par. 59 within the section entitled "Poverty, Infectious Disease and Environmental Degradation – ‘Meeting the Challenges of Prevention”:

**“All States must recommit themselves to the goals of eradicating poverty, achieving sustained economic growth and promoting sustainable development (underlined emphasis added).”**

Apparently the UN believes that economic growth and sustainable development are two entirely separate and distinct concepts. Therefore, whenever the UN or the EU speaks of sustainable development they are NOT also speaking about economic growth.

b) **Expanding the Security Council Mandate to Include Social, Economic and Environmental Threats to International Peace and Security**

According to the report, nations should cooperate to address a broad array of threats posed to their collective ‘international security.’ **This requires a redefinition of the phrase ‘threats to international security’ and a renewed ‘call to action’ by the UN Security Council to act to prevent and/or to mitigate harm posed by those threats.** This would seem to suggest a broader role for the Security Council, and thus, an implied expanded mandate.

‘Threats to international security’ are, henceforth, to be defined as follows:

**“Any event or process that leads to large-scale death or lessening of life chances and undermines States as the basic unit of the international system is a threat to international security.**

So defined, there are six clusters of threats with which the world must be concerned now and in the decades ahead:

- Economic and social threats, including poverty, infectious disease and environmental degradation...” (emphasis added).

Included within this FIRST category of interconnected threats are those claimed to be exacerbated by **climate change**.

**“Disease and poverty, in turn, are connected to environmental degradation; climate change exacerbates the occurrence of such infectious diseases as malaria and dengue fever.”**  
(emphasis added) (par. 22, at p. 15).

According to the report,

“In order to address problems of climate change modern economies need to reduce their dependence on hydrocarbons and should undertake a special effort to devise climate-friendly development strategies...

**We urge Member States to reflect on the gap between the promise of the Kyoto Protocol and its performance, re-engage on the problem of global warming and begin new negotiations to produce a new long-term strategy for reducing global warming beyond the period covered by the Protocol.”** (pars. 71 and 72, at p. 30) (emphasis in original)

The report provides the following example of possible Security Council action or involvement in the case of a health-related threat such as **HIV/AIDS**:

“The Security Council, working closely with UNAIDS, should host a second special session on HIV/AIDS as a **‘threat to international peace and security’**, to explore the future effects of HIV/AIDS on States and societies, generate research on the problem and identify critical steps towards a long-term strategy for diminishing the threat.” (par. 67 at p. 29).

Arguably, by identifying the HIV/AIDS pandemic as a future ‘threat to international peace and security’, and describing the urgent need of UN members to ensure the provision of HIV/AIDS treatment to developing countries (at below industry cost) to prevent<sup>3</sup> the realization of that threat, the UN has established the outlines of a future debate over whether the WTO TRIPS Agreement should be amended permanently to reflect the primacy of national health over international trade concerns.

For example, the TRIPS Agreement calls for due compensation to be paid to holders of intellectual property (IP) in the event IP protections (e.g., drug patents) must be temporarily suspended in the face national health emergencies, extreme urgencies and/or market exploitation/distortions. However, these flexibilities were clarified and expanded upon by the Doha Declaration on the TRIPS Agreement on Public Health, which identified HIV/AIDS, tuberculosis and malaria as part of a broader category of ‘other [not-as-yet defined] health epidemics’. This political declaration was agreed to by WTO members at the outset of the Doha Round of Trade Negotiation during November 2001. Paragraph 6 of that Decision was subsequently clarified by the WTO TRIPS Council Decision “Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement on Public Health” (WT/L/540) (Aug. 30/Sept. 1, 2003). The EU Commission and the WHO have interpreted this Decision expansively, and seek to establish its interpretation as a permanent amendment to the TRIPS Agreement.

Since the Security Council is the only organ of the United Nations that can actually create international law, it would appear that by more broadly defining the nature of threats to ‘international peace and security’, **the Panel is indirectly calling for a broadening of the Security Council's mandate.** This is made clearer in Paragraph 248, which states:

"Thus, the challenge for any reform is to increase both the effectiveness and the credibility of the *Security Council* and, most importantly, *to enhance its capacity and willingness to act in the*

**face of threats...It also requires a firm consensus on the nature of today's threats, on the obligations of broadened collective security, on the necessity of prevention, most importantly, to enhance its capacity and willingness *to act* in the face of threats..."** (emphasis added).

(The selection of the term 'prevention' is probably strategic, insofar as it is intended to apply as much to pre-emptive military use of force as it is to precautionary principle-based environmental treaties and regulations).

A broadening of the Security Council's mandate and scope of review could result in an unseemly expansion of its law-making capabilities and its political influence with developing and least developed country governments. This possibility should be carefully studied in light of other Security Council reforms being promoted (e.g., the addition of new members and tiered voting rights), which could potentially affect the balance of power within the Security Council.

It should also be considered in light of the work performed by other UN offices such as the UN's International Law Commission, which serves the General Assembly and Economic and Social Commission, and the UN Office of Legal Affairs, which provides legal advice to the Secretary-General and acts on his behalf in legal matters. The International Law Commission codifies customary and general principles of international law and incorporates new rules of international law into multilateral treaties. The UN Office of Legal Affairs, Treaty Section analyze, publish and draft portions of U.N. treaties, and the Codification Division assists the International Law Commission in its research and drafting tasks.

Paragraph 260 of the report adds to this proposal the need to expand the role of civil society in Security Council work. It provides that "**We welcome greater civil society engagement in the work of the Security Council** (emphasis added)". Opening up this Pandora's Box will present a monumental challenge for the U.S. government, as well as, for U.S. multinationals.

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<sup>1</sup> Meeting the challenge of today's threats means getting serious about *prevention*; the consequences of allowing latent threats to become manifest, or of allowing existing threats to spread, are simply too severe" (emphasis added). See "A More Secure World - Our Shared Responsibility", Report of the High-level Panel on Threats, Challenges and Change", Executive Summary at p. 2, at: (<http://www.un.org/secureworld/brochure.pdf> ).

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<sup>2</sup> “A Broader Conception of Security (Synopsis to Part two) The six clusters of threats, identified in the report, as elements that can feed into each other to produce deadly cycles of civil violence are; • Economic and social threats, including poverty, infectious diseases and environmental degradation; • Inter-state conflict; • Internal conflict, including civil war, genocide, and other large-scale atrocities; • Nuclear, radiological, chemical and biological weapons; • Terrorism; • Transnational Organised Crime.” *Id.*

<sup>3</sup> “Biological security must be at the forefront of prevention. International response to HIV/AIDS was shockingly late and shamefully ill-resourced. It is urgent that we halt and roll back this pandemic. But we will have to do more. Our global public health system has deteriorated and is ill-equipped to protect us against existing and emerging deadly infectious diseases. The report recommends a major initiative to build public health capacity throughout the developing world, at both local and national levels. This will not only yield direct benefits by preventing and treating disease in the developing world itself, but will also provide the basis for an effective global defence against bioterrorism and overwhelming natural outbreaks of infectious disease.” *Id.*, at pp. 2-3.