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Acknowledging the Impact of Climate Change on National Security: A Long and Winding Road

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ACKNOWLEDGING THE IMPACT OF CLIMATE CHANGE ON NATIONAL SECURITY—A LONG AND WINDING ROAD

Professor Linda A. Malone

Each of these newsletter essays demonstrate how critically dependent national security is upon a stable, balanced, natural environment. Each of these qualifying terms to a “natural” environment is relative. A pristine environment devoid of human interference is neither necessary or even possible. Sustainable development is the catch-word for the balance to be struck between the effects of human development and a natural environment able to sustain human existence with an acceptable quality of life for humans and other species.

The earth is veering, perhaps perilously close, to a tipping point in which human destruction of the environment will exceed the earth’s natural ability to heal before widespread human losses. Several of these environmental tipping points have been documented by reputable scientists and accepted scientific methods in extensive studies, including the Nobel Prize winners, the Intergovernmental Panel on Climate Change. *Available at* <http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4syr.pdf>.

Each author in this newsletter moves beyond eight years of the administration’s inaction, and often denial, of the dramatic shifts in climate patterns and the anthropomorphic contribution to these shifts to grapple directly with an environmental crisis of now undeniably significant proportions. The first issue that must now be answered is how far behind have we fallen?

In this context, the United States risks losing more than the international prestige of leading the discussion. For

some island-states, the projected impact of unabated climate change will be annihilation. The magnitude of consequences for the United States itself may not be as climactic, but the nation will inevitably absorb other states' crises as well as its own, as described in the Army's new Operations Manual quoted in Robert Goldstein's essay. Patrick Tolan provides a cautionary tale of domestic repercussions of rising sea levels and acidity in coastal waters, hurricanes, tornados, flooding, and drought. We must similarly face the costs of disaster relief and reconstruction, recession, and our self-destructive dependence on fossil fuels.

Deepa Badrinarayana explains how rethinking national security in terms of climate disruption will challenge some of the United States' long-standing foreign policy stances. In light of the United States' support of the Nuclear Non-Proliferation Treaty and Comprehensive Test Ban Treaty, how is the United States to negotiate with India (a non-signatory to both treaties), control simultaneously nuclear proliferation, stabilize the volatile India/Pakistan conflict, minimize carbon emissions, and enhance energy security?

Finally, the human rights dimension of the consequences of climate change cannot be overlooked. On March 20, 2008, the UN Human Rights Council requested the UN High Commissioner on Human Rights to conduct a study on the interrelationship between climate change and human rights. If climate change continues unaddressed or insufficiently addressed, the global community may be confronted with a perfect storm in national security, environmental security, and human rights.

These problems called out for long-range planning at least a decade ago, but are only now beginning to be addressed. Scientists followed by citizen activists and lawyers, have led the emerging political consensus. On an international level, citizens petitioned UNESCO to list endangered World Heritage sites, and the Inuits petitioned the Inter-American Human Rights Commission to find a violation of their human rights. *See generally*, L. MALONE & S. PASTERNAK, *DEFENDING THE ENVIRONMENT: CIVIL SOCIETY STRATEGIES TO ENFORCE INTERNATIONAL ENVIRONMENTAL LAW* (Island Press 2006).

Domestically, nuisance suits were brought against utilities and car manufacturers; petitions were brought to list species as endangered by global warming; NEPA suits were brought against financial institutions, state and federal agencies; citizen suits were brought to force the government to act in some instances and to stop government action in others. The Environmental Protection Agency (EPA) has been repeatedly sued—for failing to consider greenhouse gas (GHG) emissions in setting CAFE standards, for failing to regulate these emissions from motor vehicles, for failing to regulate them from new power plants, indeed for failing in just about every respect in addressing GHG emissions. States formed the Regional Greenhouse Gas Initiative, and localities organized the Cities for Climate Protection Campaign. California led the charge for several states in implementing the most aggressive regional agreement to implement a cap and trade system. *See generally*, GLOBAL CLIMATE CHANGE AND U.S. LAW (Michael B. Gerrard ed., A.B.A. 2007).

The shift in public perception eventually reached the 110th Congress, in which no less than seven bills were introduced with economy-wide cap and trade proposals, notably sponsored by such politicians as John McCain, John Warner, Joseph Lieberman, and Alan Specter. *Available at* <http://www.pewclimate.org/docUploads/110-Congress-Cap-Trade-01-30-2008.pdf>. Corporations, too, sensed the shift in public perception and raced to greenwash their public image with everything from halogen bulbs at Wal-Mart to formation of Climate Action Partnerships between such companies as Duke Energy, Alcoa, and General Electric. They may also have sensed (as occurred with control of chlorofluorocarbons a decade earlier) that U.S. companies were falling behind in the race for greener technology. Corporate conversion intensified, along with the growing prospect of product liability suits against them and U.S. Securities and Exchange Commission SEC regulations requiring disclosure of financial risks from climate change. *See* M. Gerrard & C. Anderson, *Financial Disclosure of Risks Related to Global Climate Change*, TRENDS (A.B.A. Sec. Env't., Energy, & Resources), March/April 2008, at 14.

The next administration will support federal legislation to control GHG emissions. Perhaps the most significant

political parting of the ways between President Bush and John McCain is on environmental issues, including climate change. That is not to say, of course, that climate change legislation will necessarily make it through the Senate, but there is at least that possibility. According to an April, 2007 New York Times/CBS News poll, 90 percent of Democrats, 80 percent of Independents, and 60 percent of Republicans say immediate action is necessary to curb global warming, and that carbon-loader Americans want the United States to be the leader in addressing environmental problems and developing alternative fuel sources. If public support to curb global warming is predicated shallowly on high fuel prices and weather patterns, there may not be the long-range commitment necessary to effectuate long-term alterations of lifestyles and land use. For now, however, as summer approaches and fuel prices reach record highs, the factors leading the public to demand more fuel-efficient cars and alternative energy sources show no signs of abating.

The current administration's inaction is continuing. One year after the Supreme Court's ruling in *Massachusetts v. EPA*, eighteen state attorneys general, the cities of Baltimore and New York, and thirteen environmental advocacy groups petitioned the D.C. Court of Appeals to order EPA to respond to the ruling by deciding whether it would or would not regulate GHG emissions from motor vehicles. EPA had prepared an endangerment determination and proposed regulations in December 2007, but then changed its position and declared that it would not decide until after a lengthy public comment period later this year on all sources of GHGs, not just motor vehicles.

Furthermore, EPA Administrator Stephen Johnson on Feb. 29, 2008 justified his December decision to deny California's request to implement its own motor vehicle emission standards for GHGs because the "compelling and extraordinary conditions" of climate change existed in every state, not just in California. L. Heinzerling, "EPA Comes Clean on Climate," *available at* http://gulcfac.typepad.com/georgetown_university_law. In other words, climate change is a "compelling and extraordinary" environmental problem nationwide, which according to Johnson, thereby precludes a rush

to judgment on a single issue at the local level. The administration's approach would allow an examination of all the potential effects of a decision with the benefit of public insight, but at the cost of even further delay.

One aspect of the "public insight" according to the N.Y. Times/CBS poll is that Americans want the United States to seize the initiative in curbing global warming. Regardless of what happens on the domestic front with a new president, can the United States regain its leadership position internationally in addressing global warming? Formulating a globally acceptable cap and trade treaty, with the participation of India and China, is going to be a daunting task for any president confronting domestically what each candidate now acknowledges as an economic recession.

There is though one other international initiative that might be considered, and with some significant chance of widespread acceptance. On April 17, 2007, the UN Security Council debated whether the potential for global warming to cause wars brought it within the Security Council's authority over international peace and security. For some time now, there has been discussion of a global emergency response force for environmental disasters. *See, e.g.,* L. Malone, "Green Helmets": A Conceptual Framework for Security Council Authority in Environmental Emergencies, 17 MICH. J. INT'L L. 515 (1995-96); R. Goldstein, Comment, *Proposal for Institutionalization of Emergency Response to Global Environmental Disasters*, 4 PACE Y.B. INT'L L. 219 (1992). No country is better suited in terms of expertise and resources to lead the Security Council in establishing a humanitarian rapid deployment force to address the next tsunami, the next Chernobyl, the next Bhopal, or similar environmental disasters in distressed states, with or without state consent. The United Nations Environment Programme and other UN agencies have taken some steps in this direction; however, much has yet to be done and there are a variety of proposals as to how it should be done. With the impacts of climate disruption looming over many of the states least able to respond to them, the United States' leadership in this initiative would allow the United States to claim once again the higher moral ground of humanitarian law. As

the rest of the world moves forward to face climate change, hopefully no U.S. president will be left behind.

Note: As this newsletter was going to press, a cyclone swept through Myanmar leaving as many as 100,000 dead, hundreds of thousands homeless, and 1.5 million people facing imminent starvation and disease due to the military government's refusal to accept and facilitate humanitarian aid. With unusual forcefulness, the UN "all but demanded" that Myanmar open its border to aid efforts. N.Y. TIMES, May 9, 2008, at A1, col. 6, and breaking news reports indicated the the Myanmar government had confiscated all aid which had entered the country. The Myanmar tragedy illustrates precisely the type of environmental and humanitarian emergency that calls for a UN emergency humanitarian force, with Security Council authorization, to provide assistance with or without the consent of the country affected.