Sustainable Development and Terrorism: International Linkages and a Case Study of Sri Lanka

Sumudu Atapattu
SUSTAINABLE DEVELOPMENT AND TERRORISM: INTERNATIONAL LINKAGES AND A CASE STUDY OF SRI LANKA*

SUMUDU ATAPATTU**

INTRODUCTION

International law has focused on regulating war for a long time¹ and, in fact, humanitarian law constitutes one of the oldest branches of international law.² Terrorism, on the other hand, is of more recent origin. While terrorism is occasionally state sponsored, it is more often carried out by non-state actors, and therefore falls outside the realm of traditional international law. Until recently, terrorists confined their attacks to within their own


** Ph.D., Cambridge; Lecturer, Adjunct Faculty, University of Wisconsin-Madison, Law School; Lead Counsel, Human Rights and Poverty, Center for International Sustainable Development Law, Montreal, Canada; and formerly, Senior Lecturer, Faculty of Law, University of Colombo, Sri Lanka. The author would like to thank the organizers of the Symposium for inviting her to the Symposium and the Editorial Board for their helpful suggestions and comments. She would also like to thank University of Wisconsin-Madison Law School and the Institute for Legal Studies for facilitating her research.

¹ The International Committee of the Red Cross (“ICRC”) was established in 1863 by Henry Dunant, who witnessed the massive human suffering caused by the Battle of Solferino during the war of Italian unification in June 1859. Int’l Comm. of the Red Cross, From the Battle of Solferino to the Eve of the First World War (Dec. 28, 2004), http://www.icrc.org/Web/Eng/siteeng0.nsf/iwpList288/FAFDE5C21CBC5ACDC1256B66005B0E39.

national borders. With the attacks of September 11, 2001, in New York and Washington, D.C., however, terrorism assumed another dimension. Even compared to the many terrorist attacks throughout the world, the attacks of September 11th were the largest in history, both in terms of number of lives lost and damage to property. It was even more startling given the victim of the attack was the most powerful nation on earth.

The international community reaction was swift and condemnatory. The U.N. Security Council adopted a resolution the very next day condemning the attack. Resolution 1373 (the "Resolution"), adopted later in the month, embodies specific obligations for states. The Council reaffirmed that international terrorism "constitute[s] a threat to international peace and security," and emphasized the inherent right of individual, as well as collective, self-defense. It called upon countries "to work together . . . to prevent and suppress terrorist acts . . . through increased cooperation and full implementation of the relevant international conventions relating to terrorism." The Security

---


7 Id.

8 Id. pmbl.
Council, acting under Chapter VII of the U.N. Charter, called upon all states to

[p]revent and suppress the financing of terrorist acts ... [c]riminalize the wilful [sic] provision or collection ... of funds ... [f]reeze ... funds and other financial assets or economic resources of persons who commit terrorist acts ... [p]rohibit their nationals ... from making any funds ... available [to these groups and] ... [d]eny safe haven to those who finance, plan, support, or commit terrorist acts.9

The Security Council also established a Committee to monitor the implementation of the Resolution and requested all States to report to the Committee within ninety days on the steps they had taken to implement the Resolution.10

Upon review of these facts, two issues become immediately apparent: the Resolution was adopted under Chapter VII of the U.N. Charter; and the Resolution is referred to as a “decision.”11 Under Chapter VII, the Security Council takes action on events that threaten international peace and security.12 The Security Council may authorize enforcement action, including the use of force, in order to maintain international peace and security.13 Under Article 25 of the Charter, decisions of the Security Council are binding on the members.14 The Resolution imposes specific obligations on States, including the obligation to report on the measures taken to implement the Resolution.15

9 Id. ¶ 1-2.
10 Id. ¶ 6.
11 See id. pmbl., ¶ 1 (“[a]cting under Chapter VII of the Charter of the United Nations, 1. Decides that all states shall . . . .”).
13 U.N. Charter art. 42.
14 U.N. Charter art. 25.
15 See S.C. Res. 1373, supra note 6, ¶ 6. Some of the statements made by delegates in the Counter-Terrorism Committee of the U.N. are discussed infra notes 154-65 and accompanying text.
It is no secret that terrorist attacks can have a severe impact on the environment. However, no comprehensive study exists on the environmental impact of armed conflict in economic terms. In the same way that wars and armed conflict cause environmental degradation, environmental degradation can be the cause of conflicts. Increasingly, "[t]ensions created by resource degradation, resource scarcity, and forced migration have exacerbated conflict both within and between nations." Traditionally, states have concentrated on military power and have ignored, to a large extent, the national security threats caused by resource scarcity and environmental degradation. Water and land issues for example, have traditionally been prime reasons for conflict. Indeed, former Vice President Al Gore noted that "all the missiles and artillery in our arsenal will not be able to protect our people from rising sea levels, poisoned air, or foods laced with pesticides. Our efforts to promote democracy, free trade, and stability in the world will fall short unless people have a livable environment." Interestingly, Mr. Gore makes a comparison environmental degradation and weaponry, noting that weaponry cannot protect people from the adverse effects of environmental degradation.

The events of December 2004 in South Asia reinforced the proposition that a livable environment is necessary for human survival. A natural disaster of unprecedented proportions, the tsunami in the Indian Ocean, killed approximately 280,000 people and displaced millions more in eleven countries stretching from

16 But see NORMAN MYERS, ULTIMATE SECURITY: THE ENVIRONMENTAL BASIS OF POLITICAL STABILITY (1st ed. 1993) (discussing several case studies ranging from the Middle East to sub-Saharan Africa, and from the Philippines to Mexico).
17 DAVID HUNTER ET AL., INTERNATIONAL ENVIRONMENTAL LAW AND POLICY 1375 (2d ed. 2002); see also GLOBAL RESOURCES AND INTERNATIONAL CONFLICT: ENVIRONMENTAL FACTORS IN STRATEGIC POLICY AND ACTION (Arthur H. Westing ed., 1986) (outlining the types of resources over which conflicts arise and the nature of those resources that make their scarcity specifically susceptible to generating conflict).
18 See GLOBAL RESOURCES AND INTERNATIONAL CONFLICT, supra note 17, at 8-9.
19 Id. at 7-8.
Indonesia to Somalia.\textsuperscript{21} Sri Lanka was among the hardest hit. Although this was a natural disaster, the message is clear— one should not underestimate the importance of the relationship between human beings and the environment. Human beings depend upon the environment for their daily needs, which include water, food, and shelter. As the recent catastrophe showed, humankind's very survival depends upon environmental factors. Natural disasters also have an adverse impact on the environment, although it is unlikely they can be avoided altogether. While human beings can aggravate natural disasters, humans have created many environmental crises and global environmental problems, such as the greenhouse effect\textsuperscript{22} and the depletion of the ozone layer.\textsuperscript{23}

The relationship between the environment and national security did not receive close scrutiny until recently, although international humanitarian law has contained at least some provisions concerning the environmental impact of armed conflict for some time.\textsuperscript{24} International law also deals with the use of the environment as a weapon, a topic that is the subject of the Environmental Modification Convention.\textsuperscript{25} Part I of this article discusses sustainable development's relationship to terrorism, addresses international law's role in dealing with terrorism, and points out the rather obvious relationship between sustainable development and terrorism, which has hitherto not received a close and holistic study. Part I also discusses the role of good governance in dealing with both sustainable development and terrorism. Part II of the article presents Sri Lanka as a case study of the impact that years of terrorist attacks can have on sustainable development. The case study is, unfortunately,

\textsuperscript{22} See HUNTER ET AL., supra note 17, at 589.
\textsuperscript{23} Id. at 526.
\textsuperscript{24} See discussion infra notes 57-90 and accompanying text.
\textsuperscript{25} See discussion infra notes 63-73 and accompanying text.
similar to the situation in many other countries subject to long term civil strife and terrorism.

I. INTERNATIONAL LAW, SUSTAINABLE DEVELOPMENT, AND CONFLICT

A. What Is Sustainable Development?

Sustainable development means different things to different people. While some attempt has been made to define it, academics have hesitated to refine it further given its nebulous nature. Rather, they have treated it as an "umbrella term," seeking instead to identify the components that fit within that umbrella. Perhaps the concept's most important contribution is elevating a state's management of its natural resources to international scrutiny:

The most potentially far-reaching aspect of sustainable development is that for the first time it makes a state's management of its own domestic environment a matter of international concern in a systematic way. . . . It also has potential implications for the future development of national and international human rights law. . . .

---

27 See infra notes 28-56 and accompanying text.
29 See PHILIPPE SANDS, PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW 252 (2d ed. 2003).
Sustainable development has also become a yardstick to evaluate
development activities and continues to influence the decision-
making process. One of the tools to achieve integration, environ-
mental assessment, is already part of the national law of many
states and is accepted at the international level.

The most widely used definition of sustainable development
is the one put forward by the World Commission on Environment
and Development ("WCED") in its report entitled "Our Common
Future" in 1987. The Commission defined sustainable develop-
ment as "development that meets the needs of the present without
compromising the ability of future generations to meet their own
needs." The U.N. General Assembly appointed the WCED in 1983
to find ways to reconcile the increasingly polarizing debate on
economic development and environmental protection between
developing and developed countries.

Ironically, the definition of sustainable development adopted
by the WCED in response to the General Assembly mandate
makes no reference to environmental protection at all. The
definition does, however, contain several important components.
It gives primacy to economic development (which was the main
contention of developing countries). By emphasizing inter-genera-
tional equity, it seeks to ensure that environmental protection is

31 See Atapattu, supra note 26, at 280.
32 Id. at 284. The United States was the first country in the world to promulgate
laws on environmental assessment. Since then, many countries have enacted
laws on environmental assessment for activities likely to have a significant
impact on the environment. Id.
33 See, e.g., U.N. Econ. Comm'n for Eur., Convention on Environmental Impact
Assessment in a Transboundary Context, http://www.unece.org/env/eia (last
in 1997[.]").
34 World Comm'n on Env't and Dev., Our Common Future (1987) [hereinafter
Our Common Future].
35 Id. at 43.
36 Id. at ix.
37 See United Nations Conference on Environment and Development, June 3-14,
A/CONF.151/26 (Aug. 12, 1992) (Principle 3 refers to the need to meet the needs
taken into consideration when pursuing economic development. Economic development will not be sustainable if environmental factors are not taken into consideration at the planning stage. Integration of economic development with environmental protection is the main message of the WCED report.

The intention here is not to regurgitate the extensive literature on sustainable development. It is generally understood that it contains both substantive and procedural elements. The substantive elements include the right to equity (both intra-generational and inter-generational equity), the principle of integration, the common but differentiated responsibility principle, and the precautionary principle. The procedural elements include the right to information, participatory rights,

of present and future generations in the context of the right to development. Principle 5 refers to the need to “eradicat[e] poverty” and “decrease the disparities in standards of living.”) [hereinafter Rio Declaration].


See Rio Declaration, supra note 37, at princ. 3; Edith Brown Weiss, In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity (1989). Weiss is considered the architect of the principle of inter-generational equity. See id.

See Rio Declaration, supra note 37, at princ. 4 (embodying the principle of integration).

See Rio Declaration, supra note 37, at princ. 7. Although several treaties incorporate this “principle,” its application has been critiqued, particularly by developed countries. See also Hunter et al., supra note 17, at 402.

See Rio Declaration, supra note 37, at princ. 15. The “precautionary approach” could also be considered a tool (akin to the environmental assessment process) to achieve sustainable development. Id.
and the right to effective remedies.\textsuperscript{45} There is consensus at least with regard to the procedural elements of sustainable development.\textsuperscript{46} In 1998, in fact, these procedural elements formed the basis of an international convention adopted under the auspices of the Economic Co-operation for Europe ("ECE"). Called the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters,\textsuperscript{47} the Convention endorsed the rights of information, participation, and remedies in relation to environmental issues—rights hitherto reserved to the human rights field.\textsuperscript{48}

Sustainable development received the attention of the International Court of Justice ("I.C.J.") in 1997 in the \textit{Gabčíkovo-Nagymaros Case},\textsuperscript{49} although only in passing. In deciding whether the parties had breached their obligations under the 1978 bilateral treaty between the parties in suspending the operation of the Gabčíkovo power plant by Hungary for environmental reasons and the operation of Variant C by Slovakia, the ICJ noted the relationship between economic development and environmental protection.\textsuperscript{50}

Throughout the ages, mankind has, for economic and other reasons, constantly interfered with nature. In the past, this was often done without consideration of the effects upon the environment. Owing to new

\textsuperscript{45} Information, participation, and remedies are rights recognized under international human rights law and form part of customary international law.  
\textsuperscript{46} See Atapattu, \textit{supra} note 26, at 273-74.  
scientific insights and to a growing awareness of the risks for mankind—for present and future generations—of pursuit of such interventions at an unconsidered and unabated pace, new norms and standards have been developed, set forth in a great number of instruments during the last two decades. Such new norms have to be taken into consideration, and such new standards given proper weight, not only when States contemplate new activities but also when continuing with activities begun in the past. This need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development.\textsuperscript{51}

Thus, the I.C.J. directed the parties to take a fresh look at the effects on the environment in the light of the new environmental principles in negotiating a settlement.\textsuperscript{52} While some environmentalists were disappointed that the I.C.J. missed a golden opportunity to develop principles of international environmental law,\textsuperscript{53} the I.C.J. at least indicated that States were under a constant duty to evaluate their development activities against the evolving principles of international environmental law.\textsuperscript{54} While this is an important step forward, the I.C.J. did not define sustainable development, and the above quotation indicates that the I.C.J. equated sustainable development with the principle of integration.\textsuperscript{55} I.C.J. Vice President Weeramantry, on the other

\textsuperscript{51} Case Concerning the Gabčíkovo-Nagymaros Project, \textit{supra} note 49, ¶ 140.
\textsuperscript{52} \textit{Id.} ¶¶ 140-41.
\textsuperscript{54} Case Concerning the Gabčíkovo-Nagymaros Project, \textit{supra} note 49.
\textsuperscript{55} As the above discussion shows, however, the principle of integration is only one component of sustainable development.
hand, wrote an insightful separate opinion addressing the role of sustainable development in contemporary international law.\textsuperscript{56}

B. Terrorism, Environmental Protection, and Sustainable Development

As noted earlier, international law has been concerned with the environmental impact of armed conflict for some time.\textsuperscript{57} Although the environmental impact of armed conflict seems rather obvious, international legal provisions applicable to it are of more recent origin compared to general humanitarian law. Additional Protocol I to the Geneva Conventions of 1949 ("Geneva Protocol") contains several references to protecting the environment during armed conflict.\textsuperscript{58} According to Article 35: "It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment."\textsuperscript{59}

Article 55 specifically relates to the protection of the natural environment. It provides that:

\begin{footnotesize}
\begin{itemize}
\item[\textsuperscript{56}] Case Concerning the Gabčíkovo-Nagymaros Project (Hungary/Slovakia), 1997 I.C.J. 92 (Sept. 25), separate opinion of Vice-President Weeramantry, available at http://www.icj-cij.org/icjwww/idocket/ihs/ihsjudgement/ihs_ijudgment_970925_frame.htm (follow "Separate opinion of Vice President Weeramantry" hyperlink). While greatly inspirational, the separate opinion has nonetheless been critiqued for its conclusion that sustainable development is a legally binding principle in international law. See FUTURE CHALLENGES, supra note 28, at 19-21.
\item[\textsuperscript{59}] Id. art. 35(3).
\end{itemize}
\end{footnotesize}
1. Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population.

2. Attacks against the natural environment by way of reprisals are prohibited. 60

However, the Geneva Protocol defines neither “natural environment” or what is meant by “widespread, long-term and severe damage” to the environment. 61 Since the suffix “and” is used and not “or” as in the ENMOD Convention, 62 the Geneva Protocol requires a high threshold, as all three requirements have to be present in a given instance: widespread, long-term, and severe. This could prove to be nearly impossible! While it is heartening that environmental protection has received international attention in the context of armed conflict, given the high threshold to establish a violation, the question arises whether these provisions will remain devoid of any practical use.

The international community has also addressed the issue of manipulating the environment as a weapon during an armed conflict. 63 The parties to the ENMOD Convention, 64 adopted in 1977, undertake “not to engage in military or any other hostile use of environmental modification techniques having widespread, long-lasting or severe effects as the means of destruction, damage or injury to any other State Party.” 65

60 Id. art. 55(1)-(2).
61 Id. art. 55(1) (emphasis added).
62 See infra notes 63-73 and accompanying text.
65 Id. art. 1 (emphasis added).
refers to widespread, long-lasting or severe damage, implying a lower threshold requirement than the Additional Protocol of 1977. The ENMOD Convention contains an understanding about the interpretation of these terms. "Widespread" is defined as "encompassing an area on the scale of several hundred square kilometers." The term "long-lasting" is interpreted as "lasting for a period of months, or approximately a season." The term "severe" "involv[es] serious or significant disruption or harm to human life, natural and economic resources or other assets."  

The ENMOD Convention excludes non-hostile as well as hostile manipulations of the environment that fall short of the threshold in Article 1. Although similar language is used in the Geneva Protocol, the ENMOD Convention makes it clear that the interpretation cannot be applied in a different context. Although setting fire to oil wells in Kuwait during the 1991 Gulf War clearly fell within the ENMOD Convention, because Iraq had not ratified the ENMOD Convention, its provisions could not be invoked. The U.N. Security Council, however, for the first time in its history, 

[id. at Understanding Relating to Article 1.]

[id.]

[id.]


[See HUNTER ET AL., supra note 17, at 1392 (noting that "[w]hile the Gulf War obviously was not the first war resulting in environmental damage, it was the first for which parties actively relied on international law to seek compensation for wartime environmental damage").]

[Iraq has signed, but not ratified the ENMOD Convention. It is doubtful whether its provisions are part of customary international law, but interestingly there may be an obligation on Iraq not to defeat the object and purpose of the treaty between signature and ratification. Under Article 18 of the Vienna Convention on the Law of Treaties:]

A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

(a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty . . . .

Vienna Convention on the Law of Treaties, art. 18, opened for signature May 22, 1969, 1155 U.N.T.S. 331. Thus, there is a clear obligation.
held a state responsible under international law for environmental damage—in this instance for environmental damage Iraq caused during the Gulf War and for the depletion of natural resources.\footnote{U.N. SCOR, ¶¶ 16-19, U.N. Doc. S/RES/687 (Apr. 8, 1991).} Victims were able to claim compensation under the Compensation Claims Commission established by the U.N. Security Council.\footnote{Id. ¶¶ 18-19.}

This important milestone in the history of international environmental law reiterated a clear obligation for States to protect the environment even during an armed conflict.

Several non-binding instruments also establish this obligation. Interestingly, the Stockholm Declaration of 1972 refers to weapons of mass destruction, but does not contain a general reference to environmental protection during an armed conflict.\footnote{United Nations Conference on the Human Environment, June 5-16, 1972, Declaration of the United Nations Conference on the Human Environment, U.N. Doc. A/CONF.48/14 (June 16, 1972).} “[M]an and his environment must be spared the effects of nuclear weapons and all other means of mass destruction. States must strive to reach prompt agreement, in the relevant international organs, on the elimination and complete destruction of such weapons.”\footnote{Id. princ. 26.}

The World Charter for Nature of 1982\footnote{G.A. Res. 37/7, U.N. Doc. A/RES/37/7 (Nov. 9, 1982).} provides that “[m]ilitary activities damaging to nature shall be avoided,”\footnote{Id. princ. 20.} while the 1992 Rio Declaration on Environment and Development\footnote{Rio Declaration, supra note 37.} has two separate provisions for warfare and peace and makes a link between sustainable development and warfare. Principle 24 provides that “[w]arfare is inherently destructive of sustainable development. States shall therefore respect international law providing protection for the environment in times of armed conflict and cooperate in its further development, as necessary.”\footnote{Id. princ. 24.} Principle 25 adopts a holistic approach and provides that “[p]eace, development and environmental protection are interdependent and
indivisible."\textsuperscript{80} Both provisions are pertinent to the present discussion for several reasons:

- They link warfare with sustainable development. Terrorism falls into the category of warfare conducted by non-state actors.
- Principle 25 reiterates the need to respect existing international law on environmental protection during an armed conflict.
- Principle 26 clearly articulates that development requires peace. Terrorism and other kinds of warfare take away scarce resources otherwise necessary for economic development, education, and health care, as well as other social infrastructure projects.

The ICRC, instrumental in developing humanitarian law, has also dealt with the issue of environmental damage during conflict. Following the Gulf War, the ICRC drafted the Guidelines for Military Manuals and Instructions on the Protection of the Environment in Times of Armed Conflict,\textsuperscript{81} contending that existing provisions under international conventions were sufficient to protect the environment during conflict. According to the Guidelines, "[d]estruction of the environment not justified by military necessity violates international humanitarian law."\textsuperscript{82} It further provides that the "general prohibition to destroy civilian objects ... also protects the environment."\textsuperscript{83}

Threats to national and international security extend beyond traditional military threats. Some writers have specifically demonstrated that such threats can arise from non-military sources such as access to natural resources or environmental factors.\textsuperscript{84}

\textsuperscript{80} Id. princ. 25.
\textsuperscript{82} Report of the Secretary-General, supra note 81, ¶ 8.
\textsuperscript{83} Id. ¶ 9.
\textsuperscript{84} GLOBAL RESOURCES AND INTERNATIONAL CONFLICT, supra note 17, at 192.
The adverse effects of soil erosion, of water and air pollution, of harvesting renewable resources faster than their rates of renewal, of the rising demands for land, fresh water, fuels, and minerals, and of the accelerated rates of extinction of flora and fauna are all among the threats to national or international security in the expanded sense that have been identified as being of particular concern.\textsuperscript{85}

Every region of the world is experiencing environmental problems of varying magnitudes and access to resources in even traditionally resource-rich areas is becoming a problem. Thus, for example, access to freshwater is becoming a problem in some parts of the United States, even though the Great Lakes contain twenty percent of the world’s surface freshwater.\textsuperscript{86} The more threatened the resource is, the greater the likelihood of conflicts over its exploitation. Rapidly increasing population is a major contributing factor.\textsuperscript{87} Another potential source of conflict involves shared natural resources, such as utilization of waters in rivers and lakes.\textsuperscript{88}

\textsuperscript{85} Id.
\textsuperscript{87} See MYERS, supra note 16, at 152 (noting that “environmental problems are compounded by the factor of population growth, if not caused by it. This factor serves both to exacerbate environmental decline and to leave still larger numbers of people suffering environmental impoverishment. Thus there is great scope in population growth for conflict of multiple types . . . .”).
\textsuperscript{88} International law contains several principles in this context requiring States to cooperate in good faith, to ensure that downstream States have adequate water for their needs (in other words, upstream states cannot divert water or pollute the water without regard to the rights and needs of downstream States) and enter into negotiations as to allocation of water rights and maintaining the water quality. See Convention on the Law of the Non-Navigational Uses of International Watercourses, March 24-April 4, 1997, Report of the Sixth Committee Convening as the Working Group of the Whole, U.N. Doc. A/51/869 (Apr. 11, 1997). This convention is not yet in force. The principles contained in this Convention include: “[e]quitable and reasonable utilization and participation” (Article 5); “[o]bligation not to cause significant harm” (Article 7);
The report of the World Commission on Environment and Development ("WCED") devoted a separate chapter to the importance of peace and security to sustainable development.\footnote{OUR COMMON FUTURE, supra note 34, at 290.} The WCED notes that "[c]ertain aspects of the issues of peace and security bear directly upon the concept of sustainable development. Indeed, they are central to it." The WCED report discusses both environmental stress as a source of conflict and conflict as a cause of unsustainable development. Both are relevant to the present discussion.

1. Environmental Stress as a Source of Conflict

Environmental stress has caused conflicts in many parts of the world, particularly in Africa. Prolonged drought and famine have forced millions to flee their homes, giving rise to a new category of refugees, "environmental refugees."\footnote{OUR COMMON FUTURE, supra note 34, at 291-92.} These refugees have fled to cities and, in some instances, to neighboring States, further increasing tension in the region.\footnote{Id. at 291 (citations omitted).} Many receiving States have their own problems—and conflicts arise when an influx of refugees compete with the local population for scarce natural resources.\footnote{Id. at 291-92.}

At the global level, competition for the use of global resources such as fisheries\footnote{See, e.g., Fisheries Jurisdiction (U.K. v. Ice.), 1974 I.C.J. 4 (Jul. 25); Fisheries Jurisdiction (Spain v. Can.), 1998 I.C.J. 4 (Dec. 4).} and the delimitation of the continental...
shelf\textsuperscript{95} can lead to conflict and threaten international peace and security. Use of freshwater is becoming another bone of contention due to its steadily decreasing availability. Water was recognized as a human right by the Committee on Economic, Social and Cultural Rights in 2002,\textsuperscript{96} but some states feel this designation could lead to problems. It could imply a legal obligation on states to physically provide water to those states that do not have an adequate supply to meet their needs.\textsuperscript{97}

The WCED report also highlights the security threat posed by global warming.\textsuperscript{98} As a result of global warming, agricultural patterns could change, giving rise to the migration of large masses of people.\textsuperscript{99} Sea level rise could "radically change the boundaries between coastal nations"\textsuperscript{100} and disrupt the breeding grounds of fish.\textsuperscript{101} Even small variations in water temperature can cause coral reefs to die, disrupt spawning grounds for fish, and result in fewer fish for harvesting.\textsuperscript{102} This, in turn, can lead to conflict as states

\textsuperscript{95} See, e.g., North Sea Continental Shelf (FRG/Den.; FRG/Neth.), 1969 I.C.J. 4 (Feb. 20); Continental Shelf (Tunis./Libya), 1982 I.C.J. 4 (Feb. 24); Continental Shelf (Libya/Malta), 1985 I.C.J. 4 (June 3).


\textsuperscript{98} Our Common Future, supra note 34, at 2-3.

\textsuperscript{99} Id. at 294.

\textsuperscript{100} Id. at 294. The tsunami of December 2004 in the Indian Ocean demonstrated the power of the sea and how much destruction it can cause. While sea level rise due to global warming will be gradual, it could nonetheless inundate low lying cities such as Bangkok and Dhaka and completely submerge countries such as the Maldives. Needless to say that this can cause tension, jeopardizing international peace and security.

\textsuperscript{101} Id.

\textsuperscript{102} Id. See generally Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection [GESAMP], Protecting the Oceans from Land-based
compete for fewer resources. These examples demonstrate the close relationship between environmental degradation and international peace and security. It is thus necessary to gradually adapt to these changes in order to "reduce the risks of conflict."

2. Conflict as a Cause of Unsustainable Development

Armed conflict and terrorism lead to unsustainable development as they make a huge dent on scarce resources, particularly in developing countries. Monetary resources earmarked for health, education, and economic development are instead sometimes diverted to procure arms and train military personnel. While national security is important, it does not justify the colossal amount of money spent today on production of arms and fighting in wars.

Environmental threats pose both direct and indirect threats to the territorial integrity of states. Environmental issues such as ozone depletion or global warming constitute direct threats. The direct impact on people is analogous to "battlefield injur[y]," and the need arises to negotiate multilateral environmental agreements similar to "arms control agreements." On the other hand, "environmental degradation" in one country that "undermines the stability of another" constitutes an indirect threat. The most obvious result is the mass migration of "environmental refugees."

The WCED makes the link between sustainable development and conflict as follows:


103 OUR COMMON FUTURE, supra note 34, at 294.

104 Id.

105 Id.

106 HUNTER ET AL., supra note 17, at 1376.

107 Id.

108 Id. (quotations omitted).
Arms competition and armed conflict create major obstacles to sustainable development. They make huge claims on scarce material resources. They preempt human resources and wealth that could be used to combat the collapse of environmental support systems, the poverty, and the underdevelopment that in combination contribute so much to contemporary political insecurity.\footnote{OUR COMMON FUTURE, supra note 34, at 294.}

In a nuclear age, states must seek security through cooperation.\footnote{Id. at 295.} "[I]nter-dependence, which is so fundamental in the realm of environment and economics, is a fact also in the sphere of arms competition and military security."\footnote{Id.} This interdependence requires states to achieve security within an international framework. The attacks of September 11th showed the vulnerability of even the world’s only superpower when the enemy is terrorism.

C. Military Spending

The colossal amount of money the world spends on protecting itself against threats to national security\footnote{National security is used here in the traditional sense and does not encompass threats to security caused by environmental factors.} is a great cause for alarm. Even more alarming is that military spending has increased not only in developed countries, but also in many developing countries. The WCED report notes that "[s]ince the early 1960s, military spending in developing countries as a whole has increased fivefold."\footnote{OUR COMMON FUTURE, supra note 34, at 299.} While South Korea has "achieved a high level of development in spite of high military spending . . . systematic analysis suggests that increases in military spending have had negative effects on economic performance."\footnote{Id.} This is
hardly surprising. In many developing countries, governments struggle to provide basic health care, education, and other services to their citizens. When governments allocate large portions of their budgets to security and the procurement of arms (which often comes from overseas, tying up much needed foreign exchange), they necessarily must reduce the expenditure on basic amenities, exacerbating poverty-related issues. A vicious cycle of poverty breeding conflict and conflict breeding poverty results.

"[A]ction to reduce environmental threats to security requires a redefinition of priorities, nationally and globally." States must focus instead on their "common future" and not on the "destructive logic of... 'arms culture:'" "[t]hey must face the common challenge of providing for sustainable development and act in concert to remove the growing environmental sources of conflict."" The world spent... [an estimated] $900 billion [in U.S. dollars] on military purposes in 1985, more than $2.5 billion a day." In 1991, this figure went up to $1 trillion. Governments often claim that they do not have enough resources to allocate to sustainable development programs. Even a fraction of the military expenditure expended on health care, education, or environmental protection would have reaped beneficial results. Thus, the issue is not often a lack of resources, but rather the reallocation of existing resources for basic necessities. While the world spent $900 billion on military purposes in 1985, an Action Plan for Tropical Forests would have cost only $1.3 billion a year (equivalent of half a day of military expenditure worldwide), and the U.N. Water and Sanitation Decade "would have cost $30 billion a year" or the "equivalent of 10 days of military spending."
According to the Stockholm International Peace Research Institute ("SIPRI"), global military expenditure and arms trade form the largest spending in the world at $956 billion for 2003, an 11% increase.\textsuperscript{121} In 2002, the increase had been about 6.5%.\textsuperscript{122} This amount is "10 times higher than their combined levels of official development assistance in 2001."\textsuperscript{123} The main reason for this increase is "the massive increase in the United States, which accounts for almost half of the world total."\textsuperscript{124}

The U.N., created to maintain international peace and security, has a budget of only a minute fraction of the world's military expenditure, about 1 percent.\textsuperscript{125} It is ironic that the world spends so much on defense, yet contributes "so little to the goals of global security, peace, [and] international co-operation."\textsuperscript{126}

Global Priorities in $ Billions (USD)\textsuperscript{127}

<table>
<thead>
<tr>
<th>Global Priorities</th>
<th>in $ Billions (USD)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic education for everyone in the world</td>
<td>6</td>
</tr>
<tr>
<td>Cosmetics in the United States</td>
<td>8</td>
</tr>
<tr>
<td>Water and sanitation for everyone in the world</td>
<td>9</td>
</tr>
<tr>
<td>Ice cream in Europe</td>
<td>11</td>
</tr>
<tr>
<td>Reproductive health for all women in the world</td>
<td>12</td>
</tr>
</tbody>
</table>


\textsuperscript{122} Id.

\textsuperscript{123} Id.

\textsuperscript{124} Id.

\textsuperscript{125} Id.

\textsuperscript{126} Id.

\textsuperscript{127} Volunteer Now!, Consumerism, http://volunteernow.ca/take_action/issues_consumerism.htm (last visited Mar. 1, 2006); see also Shah, supra note 121.
Ironically, "the world spends more on things to destroy each other (military) and to destroy ourselves (drugs, alcohol and cigarettes) than on anything else." It is disheartening that the world has spent a mere $6 billion on education and has spent almost double that amount ($11 billion) on ice cream in Europe alone! It is obvious where the international community’s priorities lie.

Of the global military expenditure of over $900 billion, about half was spent by the United States alone. In other words, United States military spending is almost as much as the rest of the world put together. Russia places a distant second with $65 billion. Other developed countries’ military expenditures come nowhere near the massive amount of money spent by the United States.

### D. Conflict Prevention, Good Governance, and Poverty

Conflict prevention should form part of a nation’s sustainable development agenda, tied to poverty alleviation, good governance and respect for human rights. For example, the conflict in Sri Lanka arose out of the alleged discrimination against the Tamil minority.

---

128 Volunteer Now!, Consumerism, supra note 127; see also Shah, supra note 121.
129 Volunteer Now!, Consumerism, supra note 127; see also Shah, supra note 121.
130 Shah, supra note 121. The U.S. spent over $399 billion in 2004. Id.
131 Id.
132 For 2004: China—$56 billion, U.K.—$41 billion, Japan—$45.1 billion, France—$40 billion. Id.; see also SIPRI YEARBOOK 2004, supra note 121, ch. 10.
by the majority, particularly in relation to their language.\footnote{Kumari Jayawardhana, Ethnic Conflict in Sri Lanka and Regional Security (Oct. 1987), http://infolanka.com/org/srilanka/issues/kumari.html.} The ensuing conflict between the Tamil rebels and government forces claimed at least 60,000 lives over a period of twenty years, not to mention those disabled by the conflict, the destruction of property, and the huge impact on the country's economy.\footnote{See discussion \textit{infra} notes 236-73 and accompanying text.}

In a report to the General Assembly, the U.N. Secretary General Kofi Annan identified several issues needing attention in the new millennium, including globalization and governance, freedom from want, freedom from fear, and sustaining our future.\footnote{Kofi Annan, \textit{We the Peoples: The Role of the United Nations in the 21st Century} (2000), available at http://www.un.org/millenium/sg/report/full.htm.} The Secretary General noted that while wars between states have become less frequent, internal wars have claimed more than five million lives in the last decade and driven many more from their homes: "We now think of security less as defending territory, more in terms of protecting people."\footnote{Annan, supra note 135, Exec. Summ., available at http://www.un.org/millennium/sg/report/summ.htm.} He reiterated that the threat of conflict must be tackled at every stage: "[p]revention . . . [p]rotecting the vulnerable . . . [a]ddressing the dilemma of intervention . . . [s]trengthening peace operations . . . [t]argeting sanctions . . . [p]ursuing arms reductions."\footnote{Id.} With regard to prevention of conflict, he noted the link between conflicts and under-development:

Conflicts are most frequent in poor countries, especially in those that are ill governed and where there are sharp inequalities between ethnic or religious groups. The best way to prevent them is to promote healthy and balanced economic development, combined with human rights, minority rights and political arrangements in which all groups are fairly represented.\footnote{Id.}
This statement highlights the urgent need to promote sustainable development, including social development, as a means of conflict prevention. Conflict, and terrorism by analogy, often rear their ugly heads when groups feel marginalized and when there are little or no opportunities for economic development. Equality of opportunity is an important component of sustainable development. This statement also highlights the link between terrorism and good governance, an essential element of sustainable development.\textsuperscript{139}

Noting that resource depletion, as well as severe forms of environmental degradation, may increase social and political tensions in dangerous ways, the Secretary General called upon states to prevent conflicts\textsuperscript{140} by identifying and addressing the root causes of conflicts. The majority of wars today are those among the poor:

Poor countries have fewer economic and political resources with which to manage conflicts. They lack the capacity to make extensive financial transfers to minority groups or regions, for example, and they may fear that their state apparatus is too fragile to countenance devolution. Both are routine instruments in richer countries.\textsuperscript{141}

The political declaration adopted at the World Summit on Sustainable Development also identifies armed conflict and terrorism as posing severe threats to sustainable development.\textsuperscript{142} The Plan of Implementation adopted at the Summit highlights the importance of peace and security: “Peace, security, stability and respect for human rights and fundamental freedoms, including the right to development, as well as respect for cultural diversity, are

\begin{footnotes}
\item[139] See \textit{Sustainable Development and Good Governance}, supra note 40.
\item[140] See Annan, supra note 135, at 45.
\item[141] Id.
\end{footnotes}
essential for achieving sustainable development and ensuring that sustainable development benefits all." Thus, steps taken to reduce poverty and achieve economic growth are also steps toward conflict prevention. Poverty alleviation programs, as well as conflict prevention and reconciliation programs, should factor in this important link. While terrorism in the United States is relatively new, "[f]or most of the rest of the world,... terrorism is only one manifestation of protracted, deadly conflict." Sustainable development advocates must address deadly conflict prevention because environment, development, and deadly conflict are part of one system. Development failures cause social pathologies that contribute to violent conflict. Violent conflict makes development failures more probable. In concert, development failure and violent conflict can create a pervasive, vicious cycle—and the outcomes can be devastating."

A few days of conflict can destroy infrastructure that took years to create. Similarly, "[s]table ecosystems that have required eons of evolution can be ravaged overnight." The best strategy to manage protracted conflict is to prevent it entirely. Sustainable development does not guarantee that result, but it certainly can create conditions that minimize reasons for resorting to deadly conflict.

---

145 Id.
146 Id.
147 Id.
148 Id.
The Brundtland Report emphasizes one way that practitioners might deal with deadly conflict, namely by incorporating into sustainable development a sensitivity to the quality of life of our grandchildren and their children. In other words, "[t]he Brundtland Report compelled development practitioners to extend their time horizon." The report also showed that "development practitioners and environmental advocates [must] see themselves as partners rather than competitors."

Regarding the link between conflict and governance, "[a] stable democracy manages conflict effectively by being open to political feedback about what is not working in the country and responding with remedial measures." This is an important point. The link between sustainable development and good governance has been identified time and time again. A society that does not respect principles of good governance, that is not transparent or accountable, and that does not respect the rule of law, finds it difficult to achieve sustainable development. Because the link between good governance and conflict is apparent, sustainable development is also tied to conflict and terrorism. Good governance seems the secret ingredient necessary to achieve sustainable development and to avoid, or at least manage, conflicts.

Some also identify a link between the rule of law and terrorism. The Chairman of the Counter-Terrorism Committee in the U.N., for example, noted that "[t]o pursue security at the expense of human rights was short-sighted, self-contradictory and, in the long run, self-defeating. In places where human rights and democratic values were lacking, disaffected groups were more likely to opt for a path of violence."
Richardson further articulates that

[p]rotracted deadly conflict is predictable and preventable. Proponents of sustainable development and proponents of “internal security” should be functioning as colleagues, not inhabitants of distinct cultures that rarely communicate with one another. They share a common goal, to shape more humane and peaceable development scenarios. Such scenarios could make it unnecessary for future generations to contemplate protracted deadly conflict’s legacies—devastation, suffering, and hopelessness.\(^\text{155}\)

The Mexican Delegate, speaking before the Counter-Terrorism Committee of the United Nations Security Council noted that terrorism is an “assault on fundamental human values of understanding, compassion and tolerance"\(^\text{156}\) and the “basic premise of the struggle against terrorism was respect for international law and human rights.”\(^\text{157}\) He also stressed that the “fight against terrorism must go to the root of the impulses that motivated causes of terrorist action,”\(^\text{158}\) and further noted that “social and economic development, promotion of values, and fostering education and health were among the most effective weapons against terrorism.”\(^\text{159}\) Many delegates underscored the need to respect human rights and “uphold the rule of law”\(^\text{160}\) when combating terrorism.\(^\text{161}\) Others referred to the need to address root causes of terrorism, poverty, and deprivation.\(^\text{162}\) Thus, many of the delegates underlined the link

\(^{156}\) Richardson, supra note 144, at 23.
\(^{158}\) Id.
\(^{159}\) Id.
\(^{160}\) SC Press Release April 2002, supra note 154 (referring to the comments of Christian Wenoweser, Delegate of Liechtenstein).
\(^{161}\) Id.
\(^{162}\) Id. (referring to the comments of Noureddine Mejdoup, Delegate of Tunisia and Munir Akram, Delegate of Pakistan).
between terrorism and development, stating that the Security Council should promote "just and peaceful solutions to conflicts" as well as "prosperity for all peoples." Similarly, delegates stressed that promoting peaceful solutions to conflict and broad prosperity are "necessary to achieve the Millennium Development Goals of combating poverty and achieving social development [as these] would help to address the causes of terrorism."

The U.S. State Department draws a connection between peace and prosperity and environmental protection. "The United States is providing the leadership to promote global peace and prosperity. We must also lead in safeguarding the global environment upon which that prosperity and peace ultimately depend." Although environmental issues were not previously considered part of national security, today they very much are a "part of the mainstream of American foreign policy."

Writing on environmental security, Norman Myers points out that "nobody can feel finally secure as long as others are persistently insecure." He stresses that

national security is no longer about fighting forces and weaponry alone. It relates increasingly to watersheds, croplands, forests, genetic resources, climate, and other factors rarely considered by military experts and political leaders, but that taken together deserve to be viewed as equally crucial to a nation's security as military prowess.

---

164 Id.
165 Id. (referring to the comments of Bruno Stagno, Delegate of Costa Rica).
167 Id.
169 Id. at 21 (noting further that "[t]he situation is epitomized by the leader who proclaims he will not permit one square meter of national territory to be ceded to a foreign invader, while allowing hundreds of square miles of topsoil to be eroded away each year").
Myers, however, cautions us not to “overstate the case,” since “[n]ot all environmental problems lead to conflict, and not all conflicts stem from environmental problems.” Furthermore, environmental causes are rarely the “exclusive causes” of conflict. Together with environmental factors, “unjust social systems . . . and repressive governments” are among those factors that play a major role in conflicts.

In addition, poverty plays a major role in both environmental degradation and conflict. Poor people become desperate and start “support[ing] . . . guerrilla groups.” They also feel driven to “overwork their croplands,” overuse the land and cut down forests because they have no other alternative. “The biggest factor . . . in many developing countries is the population explosion.” At the same time, affluent countries consume far more resources than needed and create many environmental crises.

There is a growing recognition of the connection between environmental problems and conflict. “Environmental deficiencies engender conditions which render conflict all the more likely.” Thus, it is necessary to expand our concept of security to include environmental challenges. At the same time, we should “plac[e] greater emphasis on collective security.” The response required is one of “cooperation rather than confrontation.” “No nation can meet the challenges of global change on its own.”

Developing nations have their own environmental disputes; why then should developed nations concern themselves with

---

170 Id. at 21.
171 Id. at 22.
172 Id.
173 Id.
174 Myers, supra note 16, at 22.
175 Id.
176 Id.
177 Id. at 23.
178 Id.
179 Id. at 24.
181 Id.
disputes in developing countries?\textsuperscript{182} "[T]he developed world has a decisive stake in the well-being of the developing world"\textsuperscript{183} through the world economy and "political stability in developing countries."\textsuperscript{184} Environmental problems in one country can spill over to other countries,\textsuperscript{185} and environmental degradation, population growth and poverty cause mass migration, which threatens traditional boundaries and global security.\textsuperscript{186} The numbers of such refugees could grow from the current 10 million to as many as 100 million due to global warming alone.\textsuperscript{187}

Norman Myers draws a parallel between health and security.\textsuperscript{188} It is often easier to define disease and insecurity rather than health and security.\textsuperscript{189} "Just as health is more than the absence of disease, so security . . . is more than the absence of hostilities."\textsuperscript{190} "[S]ecurity applies most at the level of the individual citizen . . . [and] amounts to human wellbeing. It is the collectivity of these citizen needs—overall safety and quality of life—that should figure prominently in the nation's view of security."\textsuperscript{191}

Regarding the war on terrorism, one writer notes that

\begin{quote}
[i]n the current climate, sustainable development will largely be a secondary objective of US foreign aid activities. . . . Peace and security are prerequisites for sustainable development. Without peace and security, it is unlikely that progress will be made with
\end{quote}

\begin{itemize}
  \item Id. at 25.
  \item Id. Further, "the economic health of the United States is tied to the environmental health of developing countries." \textit{Id.} at 26. According to George Shultz, "]security and peace for Americans are contingent upon stability and peace in the developing world." \textit{Id.}
  \item Id. at 26.
  \item Id. at 27.
  \item Id. at 27.
  \item \textsc{Myers}, \textit{supra} note 16, at 27.
  \item \textit{Id.}
  \item \textit{Id.} at 31.
  \item \textit{Id.}
  \item \textit{Id.}
  \item \textit{Id.} (Myers defines well-being as including "protection from harm and injury" as well as "access to water, food, shelter, health, employment, and other basic requisites").
\end{itemize}
respect to environmentally responsible economic and social development. A nation at war—with another nation, with itself, or with terrorists—will be more concerned about short-term survival, not long-term sustainable development.  

While anti-terrorism activities may channel development assistance in the present climate, such aid can also "contribute to sustainable development. . . . Anti-terrorist assistance and sustainable development assistance can be mutually reinforcing. . . . A principal component of sustainable development is economic progress. A . . . [person] in the developing world may be less likely to resort to war and terrorism if economic opportunities are available." It is imperative that we recognize that terrorism is inherently destructive of sustainable development. Clearly, terrorist attacks directly undermine a nation's peace and security and its economic and social development. Such attacks, however, also disrupt sustainable development indirectly. As a consequence of terrorist attacks, governments will necessarily divert funds from development and aid programs to military and security operations.  

"[S]ustainable development requires peace and security, economic development, social development, and national governance that encourages peace and development." Many commentators and

---


193 Id.

194 Id. at 10,682 (citations omitted).


196 See, e.g., *GLOBAL RESOURCES AND INTERNATIONAL CONFLICT*, supra note 17; *MYERS*, supra note 16; Richardson, supra note 144.
international organizations\(^{197}\) have noted the linkage between sustainable development and peace and security.

Starting from "the premise that a state's . . . central role[] . . . [is] to provide for . . . military security and social welfare of its people," it is arguable that environmental protection and national security are "interrelated and compatible."\(^{198}\) Moreover, "'security' today can no longer be viewed in strictly military terms."\(^{199}\) Social welfare must encompass environmental protection and vice versa.\(^{200}\) Governments have often provided military security to the detriment of social welfare, resulting in severe health and environmental consequences.\(^{201}\)

Security concerns can no longer be confined to traditional ideas of soldiers and tanks, bombs and missiles. Increasingly they include the environmental resources that underpin our material welfare. These resources include soil, water, forests, and climate, all prime components of a nation's environmental foundations. If these foundations are depleted, the nation's economy will eventually decline, its social fabric will deteriorate, and its political structure will become destabilized. The outcome is all too likely to be conflict, whether in the form of disorder and insurrection within a nation or tensions and hostilities with other nations.\(^{202}\)


\(^{199}\) *Id.*

\(^{200}\) *Id.*

\(^{201}\) *Id.* at 676-77.

\(^{202}\) *Id.* at 654-55 (quoting Myers, *supra* note 16, at 20).
Writers have recognized the link between environmental protection, sustainable development and conflict, and they have called upon governments to recognize this link and adjust their policies accordingly. Environmental protection and national security are compatible and can coexist. In order to do so, however, we need to expand our definition of national security to include social welfare. Only then can we strive to realize a "holistic approach" to security.

E. International Linkages and Response

While inter-state conflicts have decreased in number over the years, intra-state conflicts (civil wars) and acts of terrorism have actually increased. Terrorism, in particular, has assumed international proportions. Perpetrators operate from many different nations and affect victims in many parts of the world. As these are not state sponsored acts of terrorism, the state from which these groups operate is not generally liable, unless the state in question provided a safe haven to these groups. This was one of the issues that arose with regard to the relationship between the Taliban and Al-Qaeda when the United States decided to bomb Afghanistan in response to the September 11 attacks.

Given the increasingly international dimension of terrorist attacks, an international response to these attacks is necessary. Many international and regional conventions on terrorism have

203 Id. at 651.
204 Id. at 651, 656.
205 Id. at 704-05.
been adopted within the auspices of the United Nations, including the International Convention for the Suppression of Terrorist Bombings ("Convention on Bombings")\textsuperscript{209} and the International Convention for the Suppression of the Financing of Terrorism ("Convention on Financing Terrorism").\textsuperscript{210}

These conventions stress the importance of international co-operation in adopting measures for the prevention of acts of terrorism and the punishment of perpetrators. The Convention on Bombings states that any person who "delivers, places, discharges or detonates an explosive or other lethal device in [a public place] . . . [w]ith the intent to cause death or serious bodily injury; or . . . [w]ith the intent to cause extensive destruction of such a place"\textsuperscript{211} commits an offence under the Convention. The Convention does not, however, define terrorism.

These two international conventions to suppress bombings and terrorist financing explicitly disavow their application to offenses committed within a single state by alleged offender(s) of that state against nationals of that same state.\textsuperscript{212} In other words, these conventions apply to incidents of an international dimension. When that international dimension is lacking, the criminal law of the state where the unlawful act took place applies. The preamble to the Convention on Bombings refers to the General Assembly Declaration on Measures to Eliminate International Terrorism in which, "[t]he States Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and


\textsuperscript{210} International Convention for the Suppression of the Financing of Terrorism, supra note 208.

\textsuperscript{211} International Convention for the Suppression of Terrorist Bombings, supra note 208, art. 2.

\textsuperscript{212} Id. art. 3.
practices of terrorism, as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States.\textsuperscript{213}

Importantly, the only way to stop cross-border terrorism is with the increased cooperation among States and the elimination of safe havens to those groups engaged in acts of terrorism, whatever the nation's motive or ultimate goal. Governments cannot condone attacks against civilian populations or targets. Indeed, the Geneva Protocol prohibits such acts even during times of war.\textsuperscript{214}

Despite the obvious relationship of sustainable development to terrorism, these Conventions seem to adopt a sectoral approach, embodying provisions only on terrorism. On the other hand, the soft law instruments,\textsuperscript{215} such as the Rio Declaration, the World Charter for Nature and the Political Declaration of the World Summit for Sustainable Development links sustainable development, environmental protection, and conflict. These instruments signal that the way forward is by adopting a holistic approach to these issues.

II. CASE STUDY OF SRI LANKA\textsuperscript{216}

A. Introduction

Having examined the link between international environmental law, sustainable development and terrorism, this Article will now consider the socio-economic impact nearly two decades of terrorism has had on Sri Lanka. Sri Lanka gained independence from the British on February 4, 1948.\textsuperscript{217} Since then, Sri Lanka’s

\begin{itemize}
\item \textsuperscript{213} G.A. Res. 49/60, ¶ 1, U.N. Doc. A/RES/49/60 (Dec. 9, 1994).
\item \textsuperscript{214} See Additional Protocol, supra note 47, arts. 51-52.
\item \textsuperscript{215} See discussion supra notes 34-56 and accompanying text.
\item \textsuperscript{216} Many observations in this section are based on the author's personal experience in both teaching and law reform in Sri Lanka as well as growing up amidst a civil war.
\end{itemize}
political history has been marred by violence, sometimes at brutal levels.\textsuperscript{218} Sri Lanka is comprised of three main ethnic groups, seventy-four percent Sinhalese, eighteen percent Tamils, and seven percent Muslims.\textsuperscript{219}

\textbf{B. Sri Lanka's Environmental Laws}

Sri Lanka is an island nation in the Indian Ocean endowed with natural beauty and home to many endemic species of fauna and flora and is a global biodiversity hotspot.\textsuperscript{220} This tiny island of only 25,000 square miles is amazingly rich in biodiversity and has seven places named as World Heritage Sites by the United Nations Educational, Scientific and Cultural Organization ("UNESCO").\textsuperscript{221} Sri Lanka still boasts of beautiful beaches, spectacular mountains and wildlife, but haphazard development, industrialization and greedy politicians and developers have had a toll on the country's environment.\textsuperscript{222} The capital, Colombo, is becoming highly polluted as vehicular emissions become a major issue.\textsuperscript{223} Deforestation is another problem, and some bodies of water have now become highly contaminated.\textsuperscript{224}

Sri Lankan environmental laws are recent compared to those in the United States. The main environmental statute, The

\textsuperscript{218} See Jayawardhana, supra note 133.
\textsuperscript{222} See generally Atapattu, supra note 26.
\textsuperscript{224} Country Profile: Implementation of Agenda 21, supra note 220 ("[d]eforestation is one of the critical environmental problems in Sri Lanka").
National Environmental Act, was enacted in 1980, but it lacked teeth.\textsuperscript{225} Environmental groups played a major role in drafting the 1988 amendments to the law, which added two tools: the need to obtain an environmental protection license ("EPL") for industries; and the preparation of an environmental impact assessment ("EIA") for activities likely to have a significant impact on the environment.\textsuperscript{226} While not without problems, the amendments have created a culture of environmental protection in Sri Lanka. Thanks further to a vibrant civil society and an innovative Supreme Court, Sri Lanka now has a body of environmental jurisprudence. Developments in other jurisdictions in the region, particularly the Indian Supreme Court, have had a positive impact on the development of environmental law in Sri Lanka.\textsuperscript{227}

C. Economy

Sri Lanka's economy changed from a plantation-oriented economy to a market-based economy in the latter part of 1970s.\textsuperscript{228} It was the first country in the South Asian region to liberalize its economy. Sri Lanka is now the largest exporter of tea in the world.\textsuperscript{229} In addition to tea, its economy is dependent on tourism, the garment industry, and the revenue from migrant workers.\textsuperscript{230}

\begin{footnotesize}
\begin{itemize}
\item[225] See Atapattu, \textit{supra} note 26.
\item[226] \textit{Id.} (discussing Sri Lanka's environmental laws in the light of international developments relating to sustainable development).
\item[230] See CENTRAL BANK ANNUAL REPORT, 2004, \textit{supra} note 229, at 1-34.
\end{itemize}
\end{footnotesize}
D. The Social Indicators

Sri Lanka’s social indicators are high. The literacy rate is approximately eighty-five percent and health indicators are comparable to developed nations. Women enjoy equality with men although they are generally under-represented in public life. The outgoing President was a woman, however, and Sri Lanka boasts of the first female Prime Minister in the world. According to the 2005 World Health Report, life expectancy at birth in 2003 was 71 years, while child mortality for the same year was 15 per 1000.

E. The Civil War

Alleging discrimination at the hands of the Sinhalese majority, a Tamil group initiated guerrilla warfare against the government in the early 1980s. Called the Liberation Tigers of Tamil Ealam (“LTTE”), this group demanded a separate State in the northeastern part of Sri Lanka. The ensuing armed conflict

---

231 Sri Lanka in Brief, supra note 219. The literacy rate for males as of 2003, when the page was last updated, was 90.5% while the rate for females was 82.4%. Id.
235 Id. (child mortality based on death occurring before the age of five).
236 HAYDEN WETZEL, SRI LANKA COUNTRY COMMERCIAL GUIDE FY2003, ch. 3, available at http://www.buyusainfo.net/info.cfm?id=110283&dbf=ccg1&loadnav=no (discussing the political environment during the ethnic civil war).
238 Id.
between the LTTE and the Sri Lankan armed forces claimed at least 60,000 lives (including two heads of state, the President of Sri Lanka in 1992 and the Prime Minister of India in 1990). The LTTE was responsible for many terrorist attacks on civilian targets such as the Central Bank, a tourist hotel in Colombo, and a commuter train among others, causing massive loss of life and damage to property. The LTTE also carried out many suicide missions, including the Temple of the Tooth in Kandy, a sacred place for Buddhists and a major tourist attraction, and many political and military targets. In 1997, the U.S. State Department named the LTTE as a foreign terrorist organization, and the Sri Lankan government similarly proscribed the LTTE in 1998.

Government forces, in turn, have retaliated with numerous violent attacks against the LTTE and their allied groups. International scrutiny and a significantly more liberal Sri Lankan Supreme Court have helped to bring down the number of human rights violations perpetrated by the armed forces. The LTTE, however, refused to abide by any humanitarian norms, and became noted internationally for its recruitment and use of child soldiers in combat.

F. The Impact of Civil War on the Economy

As a result of the ongoing civil war and attacks against civilian targets, the economy of the country deteriorated. Tourism,
one of the major sources of foreign exchange, suffered a major setback as a result of the ongoing violence, including sporadic attacks in the City of Colombo.\textsuperscript{247} Everyone from major hotel chains to tour guides suffered economically, forcing closures and reductions in work forces.\textsuperscript{248} A terrorist attack on the country’s only international airport in July 2001 exacerbated the delicate situation.\textsuperscript{249} The attack resulted in an “imposition of a high war risk insurance premium on ships and airlines,”\textsuperscript{250} which substantially reduced external trade, and was a major blow to the economy.\textsuperscript{251} Investors pulled out of the country’s economy. For the first time since independence, the country recorded a negative growth in 2001.\textsuperscript{252} In addition, political uncertainty in the country did not bolster investor confidence.\textsuperscript{253} In short, economic development came to a standstill.

In its Annual Report for 2001, the Central Bank of Sri Lanka noted the relationship between peace and development as:

\begin{quote}
The progress, of course, would also depend on the restoration of peace in the country. The continuing war has been an enormous drain on this country, in terms of both human and material resources. In addition, it has significantly suppressed the growth potential of the economy. In economic terms, the country cannot continue to bear the cost of a prolonged war, and hence, a speedy resolution of the conflict is essential. The ongoing peace efforts, with strong and wider domestic and international support, have created optimism with regard to finding a lasting solution. The international community will
\end{quote}

\begin{footnotes}
\textsuperscript{247} See CENTRAL BANK ANNUAL REPORT, 2001, \textit{supra} note 229, at 1-42.
\textsuperscript{248} Id.
\textsuperscript{249} Id. at 9.
\textsuperscript{250} Id. at 1.
\textsuperscript{251} Id.
\textsuperscript{252} Id.
\textsuperscript{253} Id.
\end{footnotes}
not only help Sri Lanka in its efforts to find a lasting peace, but has also pledged to assist in its subsequent rehabilitation, reconstruction and reconciliation efforts. However, it will be up to Sri Lanka, to find long-term solutions to its economic, political and social problems, which it faces at present, and to implement them with conviction. The international community can only be of help.\(^{254}\)

The report contains a summary of government fiscal operations for the years 1980, 1985, 1990, 1995, 1999, 2000, and 2001. The table reproduced below shows how the government expenditure on security as a percentage of GDP has increased dramatically over the years, with 1995 as the peak.\(^{255}\)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1.3</td>
<td>4.5</td>
<td>4.1</td>
<td>6.5</td>
<td>4.4</td>
<td>5.6</td>
<td>4.9</td>
</tr>
</tbody>
</table>

The report also noted that the current expenditure significantly overshot the original budget estimate mainly due to overruns in the defense expenditure.\(^{256}\)

Independent organizations such as the Institute for Policy Studies, the MARGA Institute and the National Peace Council, all based in Colombo, have carried out studies on the cost of war in Sri Lanka. According to the Institute for Policy Studies, "[i]t is reasonable to conclude that, under even the most conservative assumptions, the country has incurred a war cost amounting to two years of annual GDP (at 1996 rates)."\(^{257}\) According to that

\(^{254}\) Id. at 2.
\(^{255}\) Id. at 19. The table was adapted from a larger table entitled "Summary of Government Fiscal Operations" containing more data than the current security expenditures included here. Data for 2001 is given as provisional, noted by "(a)." Id.
\(^{256}\) See id. at 19.
report, the civil war has wreaked havoc on the country's economy. "The Institute found that military spending by the government between 1984 and 1996 totalled $4.1 billion or was equivalent to 41 percent of Sri Lanka's 1996 GDP while on a conservative estimate military spending by the rebels would have been around 10 percent of government costs." The report, however, does not include reduced health stock and the corresponding higher health costs, 'brain drain,' mental agony of those affected by the war, and disruption to the education system. Another source estimated the cost of war from 1983 to 1996 at "$17 billion U.S." From 1997 to 1999, the government allocated nearly "$2.3 billion U.S." for the war. By 1996, Sri Lanka's annual income had only risen to "$760 billion U.S." from "$400 billion U.S." in 1979. The civil war is an impediment to sustainable development.

The Marga Institute study calculated the government and the LTTE combined war expenditures at a total of $33 billion U.S. for the above period. Had these funds been invested in the economy, the average growth rate for this period would have been 7% instead of 4%, average household income would have increased 40%, and the unemployment rate would have dropped to 4% from the current 12%.

Another study compares the Sri Lankan defense expenditure with its social expenditure:

---

258 Id.
259 Id.
261 Id.
262 Id.
264 Ratnayake, supra note 260.
Defense/Social Expenditure as a Proportion of Total Public Expenditure (%)\textsuperscript{266}

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Defence [sic]</td>
<td>11.2</td>
<td>12.0</td>
<td>10.9</td>
<td>12.9</td>
<td>14.3</td>
<td>17.7</td>
</tr>
<tr>
<td>Social</td>
<td>11.2</td>
<td>13.0</td>
<td>9.9</td>
<td>12.8</td>
<td>12.7</td>
<td>13.5</td>
</tr>
<tr>
<td>-Education</td>
<td>3.5</td>
<td>5.4</td>
<td>4.3</td>
<td>4.5</td>
<td>3.5</td>
<td>4.2</td>
</tr>
<tr>
<td>-Health</td>
<td>2.4</td>
<td>3.1</td>
<td>1.9</td>
<td>2.6</td>
<td>5.2</td>
<td>5.0</td>
</tr>
<tr>
<td>-Poverty</td>
<td>5.3</td>
<td>4.5</td>
<td>3.7</td>
<td>5.7</td>
<td>2.0</td>
<td>3.2</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Social</td>
<td>16.8</td>
<td>16.9</td>
<td>16.4</td>
<td>17.0</td>
<td>14.2</td>
</tr>
<tr>
<td>-Education</td>
<td>12.6</td>
<td>12.0</td>
<td>12.7</td>
<td>9.8</td>
<td>9.3</td>
</tr>
<tr>
<td>-Health</td>
<td>4.2</td>
<td>4.7</td>
<td>5.0</td>
<td>3.8</td>
<td>2.6</td>
</tr>
<tr>
<td>-Poverty</td>
<td>4.7</td>
<td>4.0</td>
<td>4.8</td>
<td>3.9</td>
<td>3.8</td>
</tr>
</tbody>
</table>

It is not clear, however, from where this data came. For defense expenditure, the report indicates that the data comes from the Central Bank reports, but contends that such data does not include hidden military costs, such as treating wounded soldiers at civilian hospitals, or the use of civilian vehicles for military offensives.\textsuperscript{267} While social expenditure was on par with defense expenditure during the first part of the 1990s, the latter part of the 1990s and 2000 show a marked disparity.\textsuperscript{268} In 2001, education received a mere 2.6%, poverty alleviation 2.4%, and health only marginally better with 3.8%.\textsuperscript{269} Defense expenditure for 2001 was

\begin{footnotes}
\item[267] Id.
\item[268] Id.
\item[269] Id.
\end{footnotes}
Imagine the social issues and poverty alleviation the country could have addressed if it did not have to spend such a large amount of money on defense activities.

Writing on the impact of the conflict on health and education in Sri Lanka, the State of Human Rights Report notes:

Sri Lanka generally has very low social expenditure and standards of education and health have been deteriorating for years. In 1999, Sri Lanka spent 2.5 per cent of GDP and 10 per cent of total public expenditure on education. The World Bank minimum standards for expenditure on education are 5% of GDP and 20% of total public expenditure. Health expenditure in real terms has been declining. Although Sri Lanka is highly rated for access to health care in the region, these statistics do not take account of the appalling conditions in the areas affected by the war. Sri Lanka's health budget amounts to 1.4 per cent of the GDP.

Since the parties declared a ceasefire in late 2001, formalized through a peace agreement facilitated by the Norwegian government in 2002, some optimism about the economic environment in Sri Lanka has emerged. When road blocks and military check-points decreased, particularly in the City of Colombo, tourism and investment increased slightly. Optimism was short-lived, however, and was dashed by the tsunami waves hitting the country in December 2004.

---

270 Id.
271 Haniffa, supra note 246, at 108 (citations omitted).
272 WETZEL, supra note 236.
273 CENTRAL BANK OF SRI LANKA, ANNUAL REPORT, 2002, at 5-7 http://www.centralbanklanka.org/publications.html; see also supra note 229 and accompanying text.
CONCLUSION

The link between sustainable development and terrorism is clear. When countries face the threat of terrorism, they often allocate large sums of money for defense activities—monies that could be spent on social development, including sustainable development and poverty alleviation. Unfortunately, Sri Lanka’s story is not unique. It reflects the situation in many developing countries that are engaged in a costly war they cannot afford. As a result, the unemployment rate is high; malnutrition and health costs have increased; education has suffered, particularly for those in refugee camps; and the labor force has suffered due to the numbers killed or maimed by war. In many developing countries, corruption and lack of good governance is a major problem. Fighting corruption and bribery, promoting good governance, and establishing proper institutions with inter-agency coordination are necessary for both sustainable development and to combat terrorism.

It is critical the world adopt a holistic approach to “security,” including environmental security. Countries must seriously consider reallocating funds presently expended on military activities and arms procurement toward development activities. A single day’s spending on military activities could provide family-planning facilities to all who need such services. “To save 2 million . . . children who die each year from diarrhea,” as a result of polluted water, would require only $50 million, equivalent to less than half an hour’s spending on military activities. To “reverse desertification” would cost only the equivalent of “four days of military spending” while “[t]o fund the Tropical Forestry

274 See supra notes 247-73 and accompanying text.
275 See supra notes 151-73 and accompanying text.
276 MYERS, supra note 16, at 220.
277 Id.
278 Id.
279 Id.
280 Id.
Action Plan"²⁸¹ annually would cost only the "equivalent of sixteen hours of military spending."²⁸² Obviously, the international community must make some trade-offs when it comes to global military expenditure and the monies spent on health care, education and other social welfare projects. The world must reverse the present unsustainable trends, especially given the close relationship between environmental issues and conflict. Thus, we must ask ourselves whether it makes sense to divert some of the military expenditures to environmental protection programs such as reforestation, water purification, and land tenure reform. Given that environmental stress is increasingly a source of conflict, it is imperative that policy-makers look at environmental stress as a threat to security.

However, because conflict can arise as a result of unsustainable development, it is necessary to divert funds for sustainable development projects. When economic development opportunities and access to resources are available, there is less likelihood of people resorting to violence or engaging in conflict.²⁸³ The increased military expenditure in the South is a cause for alarm. Not only do these countries lack the resources to fight wars, increasing conflict suggests that unsustainable development or lack of development opportunities have increased the incidence of conflict in these countries. Lack of good governance principles may also have contributed to the problem.

While increased international cooperation is necessary to fight the menace of international terrorism, much needs to be done at the national level by making sure that economic opportunities are available to all sections of society, regardless of ethnic, religious or social backgrounds. Discrimination and marginalization are the prime reasons that the seeds of terrorism germinate. Thus, like sustainable development, terrorism also needs action at different levels, including at the local, national, regional, and international levels.

²⁸¹ Id.
²⁸² MYERS, supra note 16, at 220.
²⁸³ See supra notes 133-50, 174-205 and accompanying text.
Until the root causes of terrorism are addressed at every level—poverty, lack of development opportunities and marginalization—it would be very difficult to achieve sustainable development. It is necessary to stop the vicious cycle of poverty breeding conflict and conflict breeding poverty.

As the United Nations Secretary-General noted:

The threats to peace and security in the twenty-first century include not just international war and conflict but civil violence, organized crime, terrorism and weapons of mass destruction. They also include poverty, deadly infectious disease and environmental degradation since these can have equally catastrophic consequences. All of these threats can cause death or lessen life chances on a large scale. All of them can undermine States as the basic unit of the international system.  