

THE HYBRID HORSEMAN OF THE APOCALYPSE: THE GLOBAL AIDS PANDEMIC & THE NORTH-SOUTH FRACAS

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Abstract

The global AIDS pandemic is increasingly seen by many as an underdevelopment issue, with HIV breeding on poverty and, in turn, perpetuating chronic poverty. AIDS is seen as the single biggest threat to the development, even the very survival, of many developing countries. This article examines the relationship between HIV/AIDS and poverty and the ensuing North-South fracas as the international community grapples with the pandemic. The article argues that to successfully beat back AIDS, the international community must act in concert against the syndrome of chronic poverty as a disease vector. In that regard, the article puts forth a "holistic development approach" that sets forth concrete steps for eradicating chronic poverty.

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INTRODUCTION

The global AIDS pandemic is increasingly seen by many as an underdevelopment issue, with HIV breeding on poverty and, in turn, perpetuating chronic poverty. AIDS is seen as the single biggest threat to the development, even the very survival, of many developing countries. This article examines the relationship between HIV/AIDS and poverty and the ensuing North-South fracas as the international community grapples with the pandemic. This article argues that to successfully beat back AIDS, the international community must act in concert against the syndrome of chronic poverty as a disease vector. In that regard, this article puts forth a "holistic development approach" that sets forth concrete steps for eradicating chronic poverty.

Following an overview of the global scale of the pandemic, Part I examines the increasing nexus between AIDS and development, focusing particularly on the pernicious cycle between pestilence and persistent poverty. With particular focus on the developing countries of Africa, this article will show how AIDS fuels poverty and how, in turn, poverty fuels the spread of AIDS. Part III, discusses the emerging North-South dimensions of the pandemic, focusing on issues such as the North-South health gap, the problem of treatment equity and demand management. Finally, Part IV of this article proposes a framework for holistic development that holds the promise of eradicating chronic poverty and abating the North-South fracas.

Given the relationship between poverty and pestilence, the global agenda for the future must confront the syndrome of poverty as a breeding ground of pestilence. International lawyers and policy makers must intensify their efforts to bring the problem of under-development to the center of the global agenda. It is hoped that the Holistic Development Framework proposed here contributes to the policy debate and provides a model for action.

THE NEW BLACK DEATH

Worldwide, an estimated 18.8 million people have died of AIDS since the beginning of the epidemic.¹ The pandemic has spread like wild fire since the mid 1980's. In 1990, there were about 10 million HIV-infected people worldwide.² By 1997, that figure nearly doubled to an estimated 19.5 million

¹ *Report on the Global AIDS Epidemic June 2000*, 8 (visited July 12, 2000) <http://www.unaids.org/epidemic_update/report/index.html> (Report prepared by UNAIDS, Joint United Nations Programme on HIV/AIDS) [hereinafter *UNAIDS Report June 2000*].

² See, *AIDS Epidemic Update 1999*, 3 (visited July 14, 2000) <<http://www.unaids.org>>

infections, including 1.5 million children.³ By December 1999, there were about 33.6 million people infected worldwide, with 5.6 million infections occurring that year alone.⁴ Last year, there were 2.6 million deaths from HIV/AIDS and the annual number of deaths "can be expected to increase for many years before peaking."⁵ The World Health Organization (WHO) and UNAIDS estimate that about 16,000 new infections are acquired every day.⁶ About one in every 100 adults between 15 to 49 years of age is infected with HIV, the virus that causes AIDS.⁷

Whereas certain problems are of a limited geographic and geopolitical reach, the AIDS pandemic knows no borders. The Joint United Nations Programme on HIV/AIDS (UNAIDS) reports that the proportion of infected persons in the newly independent states of the former Soviet Union doubled between the end of 1998 and December 1999, with the bulk of new infections caused by unsafe injection of drugs.⁸ The total AIDS population in the former Soviet Union, Central and Eastern Europe stands at 360,000, and over 90% of cases reported between 1998 and 1999 in the Eastern European region were in the Ukraine.⁹ By the end of 1999, UNAIDS estimated that about 1.5 million people were living with HIV in Australia, New Zealand and the industrialized countries of North America and Western Europe.¹⁰ Meanwhile, over 1.7 million people in Latin America and the Caribbean, including about 30,000 children are infected.¹¹ Over 6.5 million people in Asia are afflicted, included therein about 4 million Indians.¹²

The continent of Africa, particularly sub-Saharan Africa is being hit especially hard, with entire segments of various populations in peril of decimation. WHO and UNAIDS estimate that sub-Saharan Africa, with just 10% of the world's total population, (about 600 million people) has about 70%

(Report prepared by UNAIDS, Joint United Nations Programme on HIV/AIDS) [hereinafter UNAIDS Update 1999].

³ *UN and Other International Organizations Saving Lives, Working Toward Better Health*, (visited July 18, 2000) <<http://www.state.gov/www/issues/unhealth.html>> (released by the Bureau of International Organization Affairs, July 8, 1997) [hereinafter *Working Toward Better Health*].

⁴ *UNAIDS Update 1999*, *supra* note 2, at 4.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 3.

⁸ *Id.* at 7.

⁹ *Id.*

¹⁰ *Id.* at 10.

¹¹ *Id.* at 11.

¹² *Id.* at 12.

of the total HIV/AIDS cases, a staggering 24.5 million infected people.¹³ Some regions of sub-Saharan Africa have been hit even harder, with over 85% of all AIDS deaths occurring in the crescent of states from Kenya to South Africa.¹⁴ Sub-Saharan Africans comprised 4 million of the 5.4 million people newly infected with AIDS in 1999.¹⁵ Everyday in Africa, over 11,000 people become HIV positive, more than half of them under the age of 25.¹⁶ About 5000 funerals are held daily in Africa for HIV/AIDS related deaths.

Since the beginning of the epidemic about 15 million Africans have died of AIDS,¹⁷ constituting about 82% of the 18.8 million AIDS deaths.¹⁸ Even the wars raging on the continent are taking a backseat to another agent of the Grim Reaper: in 1998, 200,000 Africans died in war, while over 2 million died of AIDS.¹⁹ Even more startling than these figures is the fact that the tragedy was not only foreseeable, but the mammoth scale of calamity had been suspected by some far-sighted United States intelligence specialists as early as the late eighties.²⁰

Most estimates indicate humankind has not yet seen the worst and UNAIDS warns that unless action against the epidemic is "scaled up dramatically, the damage already done will seem minor compared with what lies ahead."²¹ It is estimated that by the year 2020, HIV/AIDS will account for

¹³ *UNAIDS Report June 2000*, *supra* note 1, at 6. The previous UNAIDS Report of December 1999 had put the total number of infected Africans at 23.3 million. See *UNAIDS Update 1999*, *supra* note 2, at 14.

¹⁴ See *Statement for the Record Submitted to the House Committee on Banking and Financial Services, March 8, 2000* (visited July 4, 2000) <http://www.state.gov/www/policy_remarks/2000/000308_holbrooke_hiv_aids.html> (statement by Richard C. Holbrooke, United States Ambassador to the United Nations) [hereinafter *Holbrooke Statement*].

¹⁵ See *UNAIDS Report June 2000*, *supra* note 1, at 8.

¹⁶ See *Remarks as Prepared for Delivery by Vice-President Al Gore, UN Security Council Session on AIDS in Africa, Jan. 10, 2000* (visited July 9, 2000) <http://www.state.gov/www/global/oes/health/000110_gore_hiv_aids.html> [hereinafter *Gore UN Remarks*].

¹⁷ See generally *UNAIDS Report June 2000*, *supra* note 1, at 8-11. The effect of the AIDS pandemic on Africa and the rest of the world was grossly underestimated. In 1991, estimates had predicted that by the end of the 1990's, nine million sub-Saharan Africans would be infected and five million would die. Yet, by 1999 UNAIDS and WHO reported that 23.3 million Africans were infected and 13.7 million Africans had died. See *UNAIDS Update 1999*, *supra* note 2, at 7.

¹⁸ *UNAIDS Report June 2000*, *supra* note 1, at 8.

¹⁹ *Id.* at 21.

²⁰ See generally Barton Gellman, *Death Watch: The Belated Global Response to AIDS in Africa* (visited July 14, 2000) (washingtonpost.com)wyg://68/ <<http://www.washingtonpost.com/issues/aidsinafrica/A47234-2000Jul14.html>>.

²¹ *UNAIDS Report June 2000*, *supra* note 1, at 8. Even the high but stable prevalence rates belie the true state of affairs. Prevalence rates do not truly reflect the real impact of the

37% of all adult deaths from infectious diseases in developing countries.²² As former United States Secretary of State Madeleine Albright noted at a meeting in Nairobi, Kenya, AIDS "has killed more people than all the wars of this century combined."²³ Buried in these statistics are individuals with families and dreams, all lost to the greatest plague of them all; a plague so morphologically variegated that it stands alone as the fifth horseman of the apocalypse: the hybrid horseman.²⁴

I. POVERTY & PESTILENCE: A PERNICIOUS CYCLE

It is becoming increasingly apparent that underdevelopment causes AIDS and that AIDS causes underdevelopment. Below, this article examines the increasing nexus between AIDS and underdevelopment, focusing particularly on the pernicious cycle between pestilence and persistent poverty. With

epidemic. *Id.* at 25. For example, the highly at risk 15-49 year-old age group includes people who are not yet infected with HIV but who are very likely to one day be infected. *Id.* At the same time, the stable 15-49 prevalence rate excludes men and women born 15-49 years ago who were once HIV infected but have already died. *Id.* If one totals the probability that a person will become infected at any period during his/her lifetime, this cumulative figure is higher than otherwise indicated. *Id.* In fact, UNAIDS estimates that in any country where over 15% of adults are currently HIV-infected, at least 35% of boys now aged 15 will die of AIDS. *Id.*

²² See 1999 U.S. International Response to HIV/AIDS, Issue Overview, 7 (visited, June 13, 2000) <http://www.state.gov/www/global/oes/health/1999_hiv_aids_rpt/issues.html> (Report released by the Bureau of Oceans and International Environmental and Scientific Affairs, U.S. Department of State, March 16, 1999) [hereinafter *International Response*]. UNAIDS estimates that about 30% of all AIDS deaths result directly from tuberculosis, especially because persons whose immune defenses are weakened by HIV infection are more vulnerable to microbes, including the bacillus that causes TB. The ensuing infections trigger recurring illnesses that in their late stages are called AIDS.

²³ See Remarks by U.S. Secretary of State Madeleine K. Albright, HIV/AIDS Event, Kibera District Office, Nairobi, Oct. 22, 1999 (visited April 21, 2000) <<http://secretary.state.gov/www/statements/1999/991022.html>> [hereinafter *Remarks by U.S. Secretary Albright*].

²⁴ To be sure, AIDS is not the only major epidemic or disease. The African continent alone faces several major tropical diseases that threaten the lives of over 500 million people, including malaria (270 million people); schistosomiasis (200 million people); filariasis (107 million people) and leishmaniasis (12 million people). See *Working Toward Better Health*, *supra* note 3. Chagas disease, spread by a small bloodsucking bug, which lives in the crevices of houses, causes 45,000 deaths annually. *Id.* On the positive side, some major epidemics are waning. The World Health Organization anticipates polio will soon be eliminated from the face of the earth. *Id.* Following the development of multi-drug therapy, leprosy, a disease that currently infects 5 million people, will soon be eliminated as a public health threat. *Id.* Yet, with its myriad causes, consequences and unrelenting devastation of nations, economies and societies, AIDS stands out from the other diseases, leading to its designation here as the hybrid horseman of the apocalypse.

particular focus on the developing countries of Africa, this article will show how AIDS fuels poverty and how, in turn, poverty fuels the spread of AIDS.

At the onset of the epidemic, HIV/AIDS was mainly seen as a serious health threat. However, there is growing alarm today as the pandemic is now considered a "development crisis,"²⁵ or a "development problem,"²⁶ with a capacity to "adversely impact" all sectors of a developing country including, education, finance, agriculture and labor.²⁷ Peter Piot, the Executive Director of UNAIDS, states that AIDS is "unique in its devastating impact on the social, economic and demographic underpinnings of development."²⁸ This negative developmental impact is aggravated by falling life expectancy, an increase in the number of orphans, extra costs for business and the destruction of family and community structures.²⁹ Meanwhile, the conditions of poverty further aggravate the spread of the disease. As Dumisani Kumalo, South Africa's representative to the Security Council session on AIDS observed, the level of development was the core reason why so many more people are dying of AIDS in Africa and similarly affected regions: "the answer lay in the difference in living standards. Until there [is] a cure, the level of development in each country [will] influence the spread of such a disease."³⁰

In fact, the epidemic is "changing the very nature of development [and,] [a]cross Africa, AIDS is turning back the clock on development."³¹ The developmental impact of the disease is especially acute in African countries

²⁵ *UNAIDS Report June 2000*, *supra* note 1, at 7 (preface by Peter Piot, Executive Director of the Joint United Nations Programme on HIV/AIDS).

²⁶ *International Response*, *supra* note 14, at 8.

²⁷ *Id.*

²⁸ *UNAIDS Report June 2000*, *supra* note 1, at 9.

²⁹ *Id.* at 21.

³⁰ *UN Security Council Press Release, No. SC/6781, Security Council Holds Debate on Impact of AIDS on Peace and Security in Africa*, 10 Jan. 2000, 14 (visited March 24, 2000) <[http://srch0.un.org/plweb-cgi/fastweb?state_id=982004815&view=press&numhitsfound=1&query_rule=%28%28\\$query%29%29%20AND%20%28%28%28\\$query0%29%29%3A title%29%20AND%20%28%28%28\\$query1%29%29%3A symbol%29%20AND%20%28%28%28\\$query2%29%29%3A symbol%29%20%20AND%20%28%23date%28\\$query3%29%3C%3DDATE%3C%3D%23date%28\\$query4%29%29&query1=%2A&Query2=SC%2F6781&query3=01-09-2000&docid=7&docdb=pr2000&dbname=press&sorting=BYFIELD%3A-DATE&operator=adj&TemplateName=predoc.tmpl&setCookie=1](http://srch0.un.org/plweb-cgi/fastweb?state_id=982004815&view=press&numhitsfound=1&query_rule=%28%28$query%29%29%20AND%20%28%28%28$query0%29%29%3A title%29%20AND%20%28%28%28$query1%29%29%3A symbol%29%20AND%20%28%28%28$query2%29%29%3A symbol%29%20%20AND%20%28%23date%28$query3%29%3C%3DDATE%3C%3D%23date%28$query4%29%29&query1=%2A&Query2=SC%2F6781&query3=01-09-2000&docid=7&docdb=pr2000&dbname=press&sorting=BYFIELD%3A-DATE&operator=adj&TemplateName=predoc.tmpl&setCookie=1)> [hereinafter *Security Council Holds Debate*].

³¹ *World Bank Group News Release No. 2000/172/S, Wolfensohn Calls for "War on AIDS," First Appearance by World Bank President Before UN Security Council*, Jan. 10, 2000 (visited March 27, 2000) <<http://wbln0018.worldbank.org/news/pressrelease.nsf/673fa6c5a2d50a67852565e200692a79/a45ef563d190e01e85256862005384d5?OpenDocument>> [hereinafter *Wolfensohn*].

where momentous progress was made in the course of the past decade with respect to democratization, privatization of enterprises, stabilization of currencies, open markets and other economic reforms.³²

In all developing countries, persons afflicted with AIDS are generally from the most productive ranks of urban society, including those who "serve in the military, run the schools and hospitals, and govern the country."³³ Consequently, the pandemic weakens economic strength, imperiling prospects for development. In the words of the World Bank's James Wolfensohn, "[c]ommunities that are riven apart by disease are weak communities,"³⁴ with significant implications for stability and sustainable development. President Thabo Mbeki of South Africa warned his fellow countrymen that as a result of the unchecked spread of HIV/AIDS, "the economy will shrink."³⁵ With 4.2 million infected persons, South Africa has the highest number of people living with AIDS in the world.³⁶ It was estimated that South African economic growth could slow by one percent a year because of AIDS.³⁷ In addition, the mushrooming number of AIDS patients is straining national budgets as chronically poor countries are overwhelmed by demand for complex and comprehensive care systems.³⁸ Economists estimate that the "shrinking labor pool—coupled with rising welfare costs, reduced spending power and lost investment" will reduce Africa's rate of economic growth by about 1.4% each year for the next two decades.³⁹ In some of Africa's most industrialized states, including South Africa, Kenya and Zimbabwe, the pandemic could precipitate a 20% reduction of Gross National Product (GNP).⁴⁰ As David Bloom, Professor of Economics and Demography at the Harvard School of Public Health warns, "the whole economy in Africa could unravel."⁴¹

³² *Gore UN Remarks*, *supra* note 16. Over 50% of African nations now elect their own leaders (nearly four times as many compared to a decade ago) and economic growth in sub-Saharan Africa has tripled, thus offering some hopes for a better quality of life throughout the continent. *Id.*

³³ *See Working Toward Better Health*, *supra* note 3.

³⁴ *See Wolfensohn*, *supra* note 31.

³⁵ *Gore UN Remarks*, *supra* note 16.

³⁶ *UNAIDS Report June 2000*, *supra* note 1, at 11. Currently, about 19.9% of South African adults are infected, up from 12.9% two years ago. *Id.* Of the estimated 3 million South Africans living with HIV about 700,000 became infected in 1997.

³⁷ *See International Response*, *supra* note 22 (Introduction: World AIDS Situation).

³⁸ *Id.*

³⁹ Jon Peter, *AIDS Sickening African Economies*, WASH. POST, Dec. 12, 1999, at A1, 2.

⁴⁰ *Id.*

⁴¹ *AIDS Leaves Africa's Economic Future in Doubt* (visited June 16, 2001) <<http://www.cnn.com/SPECIALS/aids/stories/economic.impact/>>. Incidentally, economists have not always made the same divinations regarding the economic impact of the pandemic. An internal World

As a result of the pandemic, companies doing business in Africa are "hurting and bracing themselves for far worse as their workers sicken and die."⁴² AIDS is causing a syndrome of absenteeism, lower productivity, higher overtime costs, higher levels of health/treatment spending, more outlays for death benefits, additional staff recruitment and training expenses.⁴³ A survey of commercial farms in Kenya reveals that illness and death have replaced old-age retirement as the main reason for employees ceasing to work, with conventional retirement accounting for just 2% of employee drop-out by 1997.⁴⁴ HIV also poses a threat to companies' balance sheets and bottom lines. In a typical case, at one Kenyan sugar estate, where a quarter of the total workforce was infected with HIV, direct cash costs related to AIDS rose dramatically.⁴⁵ Direct health expenditure increased ten-fold while company spending on funerals increased five-fold between 1989 and 1997.⁴⁶ The estate's managers also reported increased absenteeism, sharp declines in productivity and higher overtime, as workers were paid extra hours to fill in for sick co-workers.⁴⁷ Farmers in hard hit areas reported reduced cultivation of cash crops and food products and declines in livestock production.⁴⁸ Largely due to AIDS, the output of communal agriculture in Zimbabwe has fallen by 50% in the last five years; maize production has fallen by 54%; the number of hectares of cotton decreased by 34%; and the production of groundnuts and sunflowers has decreased by 40%.⁴⁹ As infected farmers in developing countries fall ill from AIDS, the sick person and the family

Bank Study in 1992, by the Bank's population and Human Resources Department saw something akin to a "silver lining" in the coming plague: It observed that if the sole effect of the epidemic were to reduce the population growth rate, then "it would increase the growth of per capita income in any plausible model" just as occurred during the Black Death. See Gellman, *supra* note 20, at 11. It is estimated that about 25 million people in Europe (about one-third of the population) died from plague during the Black Death. See, ENCYCLOPEDIA BRITANNICA, "Black Death" (visited July 31, 2000) <<http://members.eb.com/bol/topic?>>.

⁴² UNAIDS Update 1999, *supra* note 2, at 5.

⁴³ *Id.* See also UNAIDS Report 2000, *supra* note 1, at 33.

⁴⁴ UNAIDS Update 1999, *supra* note 2, at 5.

⁴⁵ *Id.* at 17.

⁴⁶ *Id.* Between 1985 to 1995, a flower farm for a company with 7,000 employees in Kenya faced AIDS-related employee health care costs estimated at \$1 million. With significantly diminished profits, the owners were forced to sell the company. *Id.*

⁴⁷ *Id.* One of the estates reported a 50% drop in the ratio of processed sugar obtained from raw cane. *Id.*

⁴⁸ UNAIDS Report June 2000, *supra* note 1, at 32.

⁴⁹ *Id.* at 33. As AIDS reduces the productive sector and output falls, some NGOs are already warning of a food crisis in food rich countries like Zimbabwe. *Id.*

members spend less time working,⁵⁰ lose income from cash crops and may even have to sell equipment to survive.⁵¹ This "vicious circle" is further "compounded by the high costs of health care."⁵²

The pandemic is also blamed for weakening workforces and draining economic strength, especially because it attacks teachers and students, reduces family budgets for education/tuition, creates orphans, and increases the pressure on children to drop out of school,⁵³ marry or enter the work force.⁵⁴ In the Central African Republic, where about one in every seven adults is infected with HIV, there are about a third fewer primary school teachers than needed—largely because almost as many teachers died, as retired, between 1996 and 1998.⁵⁵ It is estimated that due to the worsening AIDS-triggered teacher shortage, over 71,000 children in Central Africa aged 6-11 will be deprived of access to a primary education by 2005.⁵⁶ Similarly in the Ivory Coast, where HIV-infected teachers missed six months of classes before dying, seven out of ten teacher deaths were attributable to HIV/AIDS.⁵⁷

It is estimated that "the greatest economic impact" of AIDS will occur over the long term as "trade opportunities are curtailed with developing nations suffering from severe epidemics."⁵⁸ Trade and travel is negatively impacted as investors "find it difficult to carry on business in nations beset by infectious diseases or to locate plants and send employees to areas posing great health risks."⁵⁹ As the spread of AIDS is increasingly linked to globalization, marked by increasing tourism, business travel, and immigration of infected people across more open borders,⁶⁰ the advancing pandemic may create a backlash

⁵⁰ See *UNAIDS Report June 2000*, *supra* note 1, at 32. A recent study in the Bukoba district of Tanzania found that a woman with a sick husband generally spends 60% less time on agricultural activities than she would otherwise.

⁵¹ *Id.*

⁵² *Id.* See discussion *infra* at 38-43.

⁵³ See *UNAIDS Report June 2000*, *supra* note 1, at 29. For example, studies undertaken of commercial farms in Zimbabwe, where most farm worker deaths are caused by AIDS, show that 48% of orphans of primary-school age had dropped out of school usually at the time of their parent's illness or death, and not a single orphan of secondary school age was still enrolled. *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* Over 85% of the dead teachers were HIV positive and died an average of ten years before reaching the minimum retirement age of 52. See *id.*

⁵⁶ See *id.*

⁵⁷ See *id.*

⁵⁸ See *Working Toward Better Health*, *supra* note 3.

⁵⁹ *Emerging Infectious Diseases Are a National Security Challenge to the United States* (visited June 16, 2001) <<http://www.state.gov/www/policy.html>> (redefining national security in light of the AIDS threat) [hereinafter *Emerging Infectious Diseases*].

⁶⁰ See *Working Toward Better Health*, *supra* note 3.

against open trade and movement of people, thereby hampering globalization and the growth of the global economy.

The absence of effective prevention and health care programs, a symptom of under development, has been very damaging in the area of mother to child transmissions. In 1998, about 600,000 children were infected through mother-to-child transmissions, accounting for about 5-10% of the total of new infections in many developing countries.⁶¹ Virtually all AIDS deaths in young children can be traced to mother-to-child transmissions, a fact that has contributed significantly to the recent increase in under-5 child mortality.⁶² This situation is expected to continue, since over 1.5 million HIV-infected women become pregnant each year, with the majority of these at-risk pregnancies occurring in Africa and Asia. Over 90% of the children born with the virus or infected through breastfeeding in 1999 were from sub-Saharan Africa.⁶³

In developing countries, AIDS is the leading cause of death among the 25-44 year-old age group,⁶⁴ a segment of the population vital to economic growth. Due to the havoc wrought by the pandemic on African life expectancy, many African nations dropped precipitously in the 1999 Human Development Index—a ranking published by the United Nations Development Program (UNDP) that reflects health, wealth and education.⁶⁵ South Africa, for example, one of the main economic engines of the continent, will experience a sharp drop in life expectancy. Whereas life expectancy at birth rose from 44 years in the early 1950's to 59 in the early 1990's, the AIDS plague will reduce life expectancy to 45 years between 2005 and 2010, according to the Population Division of the United Nations (UN).⁶⁶ The UNDP study also reveals that less than half of South Africans currently alive are expected to

⁶¹ See *International Response*, *supra* note 22.

⁶² See *UNAIDS Report June 2000*, *supra* note 1, at 23. Thus, countries like Zambia and Kenya with high adult prevalence rates have experienced a steep rise in infant mortality. *Id.* at 23.

⁶³ See *UNAIDS Update 1999*, *supra* note 2, at 14.

⁶⁴ See *Working Toward Better Health*, *supra* note 3.

⁶⁵ See *UNAIDS Update 1999*, *supra* note 2, at 16.

⁶⁶ See *id.* Similarly, the U.S. State Department reports that in many sub-Saharan countries, the pandemic "has increased infant mortality and reduced life expectancy to levels not seen since the 1960's. Infant and child mortality rates are expected to double and even triple early in the next century. By the year 2010, life expectancy in some sub-Saharan countries could decrease by 30 years or more. AIDS is doubling, or even tripling, death rates among young adults in countries in southern Africa. In Botswana and Zimbabwe, prevalence among young adults has reached 25 percent—one person in four, a historic new high." See also *International Response*, *supra* note 22.

reach the age of 60, compared to an average of 90% for all industrialized countries.⁶⁷

The most significant developmental impact of AIDS is its effect on the children in developing countries. As Secretary Albright noted, AIDS is stealing the future of many developing countries, reducing life expectancy and turning "back the clock on decades of development."⁶⁸ By the end of 1999, 1.2 million children were *living* with AIDS⁶⁹ while close to 2.7 million children under 15 had already died of AIDS.⁷⁰ About 50% of all HIV infections occur before the victims reach the age of 25, and they typically die of AIDS before their 35th birthday.⁷¹ The younger generation of Sub-Saharan Africa is being hit especially hard. For example, 7 out of 10 HIV-positive Kenyans are between 18 and 25 years old, and the life expectancy of this population segment has been reduced by 15 years.⁷² About 3.5 million of the total African AIDS deaths have been children.⁷³

AIDS-orphaned children, perhaps more than anyone else, bear the full brunt of the developmental impact of HIV/AIDS. They often suffer from depression, malnutrition,⁷⁴ lack of immunization or healthcare, increased demands for labor, loss of schooling, forfeiture of inheritance, forced migration, homelessness,⁷⁵ vagrancy, starvation, crime, abuse, sexual exploitation and increased exposure to HIV.⁷⁶ These orphans must also "grapple with the

⁶⁷ See *UNAIDS Update 1999*, *supra* note 2, at 16. A man who was 15 years old in 1983 would have had only a 15% chance of dying before reaching the age of fifty. But by 1997, about 50% of fifteen-year-old boys could expect to die before fifty. Similarly, the likelihood of a woman dying before the end of her reproductive years quadrupled from about 11% in the early 1980's to over 40% by 1997. *UNAIDS Report June 2000*, *supra* note 1, at 28.

⁶⁸ *Remarks by U.S. Secretary Albright*, *supra* note 23.

⁶⁹ *UNAIDS Update 1999*, *supra* note 2, at 4.

⁷⁰ See *International Response*, *supra* note 22.

⁷¹ *UNAIDS, Update 1999*, *supra* note 2, at 4.

⁷² *Remarks by U.S. Secretary Albright*, *supra* note 23.

⁷³ *Gore UN Remarks* *supra* note 16.

⁷⁴ Peter Wehrwein observes that orphans suffer from malnutrition and other disadvantages even when relatives care for them because orphans are not fed as well as other children. See Peter Wehrwein, *AIDS Leaves Africa's Economic Future in Doubt* (visited Feb. 8, 2001) <<http://www.cnn.com/SPECIALS/2000/aids/stories/economic.impact>>.

⁷⁵ In an official trip to Africa, Ambassador Holbrooke's delegation saw "first-hand the terrible costs reaped by AIDS" on thousands of orphans in Lusaka, Zambia who were forced to live in a bus depot, many of them HIV-infected. See *Holbrooke Statement*, *supra* note 14; See also *UNAIDS Report June 2000*, *supra* note 1, at 28 (citing malnutrition illness abuse and sexual exploitation as being among orphans due to AIDS death as compared to orphans for other reasons).

⁷⁶ *International Response*, *supra* note 22.

stigma and discrimination so often associated with AIDS, which can even deprive them of basic social services and education."⁷⁷

It is also estimated that about 5 million children were orphaned in the 1990's after their parents died of AIDS.⁷⁸ Since the beginning of the pandemic, about 15.6 million children have lost one or both parents in the twenty-three countries most affected by the pandemic;⁷⁹ and this number is expected to rise to 22.9 million in the next ten years.⁸⁰ From the onset of the epidemic in the late 1970's until early 1998, about 8.2 million children worldwide lost their mothers to the disease.⁸¹ About 95% AIDS-orphaned children live in Africa,⁸² with about half a million in Kenya alone.⁸³ The number of orphans will continue to rise, as HIV continues to cause large increases in the death rate of younger adults who are in their child rearing or family-building years.⁸⁴ For example, UNAIDS estimates that 40% of children who have lost one of their parents by age 15 have now been orphaned by HIV/AIDS.⁸⁵ In some countries, children who have lost one or both parents to AIDS comprise one-third of the population of under fifteen years old.⁸⁶

Whereas AIDS afflicted households often depend on extended family structures to care for children/orphans-to-be, the overwhelming increase in orphans has dramatically reduced the number of caregivers.⁸⁷ Consequently, households headed by orphans are becoming common in areas with high HIV/AIDS prevalence rates.⁸⁸ These orphans are less likely to attend school;

⁷⁷ *UNAIDS Report June 2000*, *supra* note 1, at 28.

⁷⁸ See *Working Toward Better Health*, *supra* note 3.

⁷⁹ *International Response*, *supra* note 22.

⁸⁰ *Id.* If paternal orphans are included, the total number of orphans from all causes is estimated to rise from 34.7 million in 2000, to 41.6 million in the 23 countries most affected by HIV/AIDS. *Id.*

⁸¹ *Id.*

⁸² *UNAIDS Report June 2000*, *supra* note 1, at 27. See also *International Response*, *supra* note 22. Prior to the mid eighties when the pandemic gained steam, only about 2% of all children in developing countries were orphans. *UNAIDS Report June 2000*, *supra* note 1, at 28. But, by 1997, the number of children who had lost one or both parents to AIDS had reached 7%, and up to 11% in many African countries. *Id.*

⁸³ *Remarks by the U.S. Secretary Albright*, *supra* note 23.

⁸⁴ *International Response*, *supra* note 22.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *UNAIDS Report June 2000*, *supra* note 1, at 27.

⁸⁸ *Id.*

they suffer from increased malnutrition⁸⁹ and are generally susceptible to the risk of disease.⁹⁰

Given its dramatic impact on children and young people, the epidemic "will create a lost generation—a sea of youth who are disadvantaged, vulnerable, undereducated, and lacking both hope and opportunity."⁹¹ The creation of such a large and disaffected demographic "youth explosion could propel some of these societies to significant unrest and destabilization."⁹² As a result, the "threat[s] to the prospects for economic growth and development in the most seriously affected countries is considerable."⁹³

AIDS-afflicted households suffer a "dramatic decrease in income," which consequently leads to "fewer purchases and diminished savings."⁹⁴ Studies of the developmental impact of AIDS in urban areas in the Ivory Coast show that the money spent on education was cut in half, purchases of food decreased by 41% per capita, and health care expenses increased four-fold.⁹⁵ As urbanites become infected, in order to receive care, those infected return home to their families, thus increasing not just the economic burdens, but also the probability of spreading infection to a spouse or others in the rural community.⁹⁶

It appears that the relative illiteracy and low educational levels generally associated with underdevelopment are fueling the pandemic. Generally, less educated people have less access to the information necessary to make informed decisions about many aspects of contemporary life including health matters.⁹⁷ Studies of 15-19 year old teens in Africa and Latin America show that as education level increases, some types of risk behavior decrease.⁹⁸ More educated girls are more likely to postpone sexual activity until much later; for example, the percentage of girls who were sexually experienced by the age of eighteen was 24% lower among those with a secondary education.⁹⁹ More highly educated people were more likely to use contraceptives or prophylac-

⁸⁹ *Id.*

⁹⁰ See *infra* at page 41 (discussing adverse impact of HIV/AIDS on the health of children).

⁹¹ *International Response*, *supra* note 22.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *UNAIDS Report June 2000*, *supra* note 1, at 27.

⁹⁵ *Id.*

⁹⁶ *Id.* at 27.

⁹⁷ *Id.* at 42 (noting that "in general, people with more education lead healthier, more productive lives").

⁹⁸ *Id.* at 43-44.

⁹⁹ *Id.* at 43. Yet, other risky behaviors manifest themselves, as better-educated individuals were generally more likely to have casual partners. Nevertheless, people with more education were also more likely to use condoms. *Id.*

tics.¹⁰⁰ Poverty, under-development, illiteracy and disease all reinforce each other in a vicious cycle, with consequences for world peace and security.¹⁰¹

The AIDS pandemic is placing even greater stress on the already burdened and relatively impoverished health sectors of developing countries. In the mid-1990's, it was estimated that HIV treatment consumed 66% of public health spending in Rwanda and over 25% in Zimbabwe.¹⁰² In 1997, public health spending for AIDS alone exceeded 2% of the gross domestic product (GDP) in 7 of 16 African countries sampled, a massive proportion considering total health spending in those countries averaged 3 to 5% of GDP.¹⁰³ With up to 70% of beds in some hospitals occupied by AIDS patients, HIV positive patients are frequently crowding out HIV-negative patients, leading in some cases to increased mortality among the latter.¹⁰⁴ With over 40% of HIV-infected persons suffering from active tuberculosis, there is a great risk that the tubercle bacillus will infect others in the community, with tragic consequences if untreated.¹⁰⁵ The World Bank estimates that about 25% of HIV-negative persons will die of tuberculosis in countries in the throes of the epidemic, due to the inability of strained health care systems to cope with demand.¹⁰⁶ In addition, HIV-infection and death among workers in the health care sector is rising, with one study showing that Zambia experienced a thirteen-fold increase in deaths of health care workers in the eighties.¹⁰⁷

In sum, the pandemic further challenges many countries already suffering from chronic ailments, including poor management, high inflation, pervasive corruption, crumbling infrastructure, ethnic/civil conflicts, population displacement, excessive military spending, inequitable distribution of resources and chronic youth unemployment.¹⁰⁸

¹⁰⁰ *Id.* at 43. For more on the relationship between social factors and vulnerability to HIV/AIDS, see generally J.M. Spectar, *The Hydra Hath But One Head: The Socio-Cultural Dimensions of the AIDS Epidemic and Women's Right to Health* (publication pending).

¹⁰¹ See *International Response*, *supra* note 22 (National Interest Strategy) (noting cases such as Rwanda and the countries of the former Soviet Union where increase in incidences of AIDS linked to the spiral of political instability and poverty).

¹⁰² *UNAIDS Report June 2000*, *supra* note 1, at 31.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* Hospital data from Africa reveals that about 40% of HIV infected persons have tuberculosis. *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *UNAIDS Update 1999*, *supra* note 2, at 16-17; *UNAIDS Report June 2000*, *supra* note 1, at 21 [hereinafter *UNAIDS Report June 2000*]. With many young Africans unemployed (for example South Africa where 52% of the 11 million people aged 16-30 are unemployed), it is "hardly surprising, then, that young people think of short-term survival before long-term well-

The social and economic effects reverberate in all areas, including health, education, industry, agriculture, transport, human resources and the economy in general.¹⁰⁹ When economies fail, or are drastically weakened, healthcare systems collapse, leaving populations increasingly prone to illness and even further economic decline.¹¹⁰ As Cape Verde's representative to the Security Council noted, the struggle against AIDS in Africa would be even more difficult if "the environments of poverty and development were not addressed."¹¹¹ Thus, the interlocking relationship between AIDS and hyper-underdevelopment suggests that conditions of poverty fuel the AIDS pandemic and, at the same time, AIDS also exacerbates acute underdevelopment.

II. THE AIDS PANDEMIC & THE NORTH-SOUTH DEBATE

A. Overview of the North-South Development Debate

As colonialism ended in the South, a vocal majority of economically disadvantaged, yet politically sovereign, states emerged in the international arena. The prevailing conditions of material poverty in much of the South affected the South's perceptions of the international economy as well as its preferences for changing them. In the main, the South was resentful of the North because it perceived the North as the benefactor of a system of unjust economic and legal rules.¹¹²

Consequently, the Third World began to argue that international economic arrangements should be restructured in order to achieve equitable distributions of global wealth. Third World delegates meeting at Bandung, Indonesia, in 1955 jointly called for immediate and substantial transfers of capital, technology and other forms of aid from the industrialized countries of the North to the new developing countries of the South.¹¹³ As more developing

being. Short-term survival strategies often include exchanging sex for schooling, a job, money or a roof over one's head. In a country where so much of the population is already infected with HIV, such strategies are a recipe not for survival but for premature death." *Id.* at 17.

¹⁰⁹ *UNAIDS Report June 2000*, *supra* note 1, at 21.

¹¹⁰ *See International Response*, *supra* note 22 (National Interest strategy).

¹¹¹ *Security Council Holds Debate*, *supra* note 30, at 14.

¹¹² Anand posits the Third World states share "certain common tendencies and common attitudes and resentments . . . toward certain problems of international law, resulting more or less from their common experiences under colonial bondage, their struggle for independence and their present underdeveloped nature." *See R.P. ANAND, NEW STATES AND INTERNATIONAL LAW* 3-4 (1972).

¹¹³ PHILIPPE BRAILLARD & MOHAMMAD-REZA DJALILI, *THE THIRD WORLD AND INTERNATIONAL RELATIONS* 161-63 (1984).

states gained admission into the United Nations (UN) in the 1960's and 1970's, they sought to achieve their national developmental goals through the world body, using the General Assembly to rail against the economic policies of the rich industrialized states.

In 1964, the developing countries sponsored the creation of United Nations Conference on Trade and Development (UNCTAD).¹¹⁴ UNCTAD was intended to remedy, among other things, the decline in trade between the primary commodities of the developing countries and the manufactured products of the developed countries, and thereby narrow the gap between North and South.¹¹⁵ Additionally, the Group of 77 (G-77), was formed to represent developing countries at the 1964 UNCTAD summit,¹¹⁶ and it has continued to lobby on behalf of the developing countries at subsequent North-South negotiations ever since.

By the seventies, the developing countries were at the zenith of their legislative power, laying down "new orders" as well as a Charter of the Economic Rights and Duties of States, all of which was designed to improve their prospects for development. A decade after UNCTAD was formed, the United Nations General Assembly (UNGA) adopted the Declaration on the Establishment of a New International Economic Order (NIEO).¹¹⁷ The new order based on "equity" was supposed to accelerate economic development and eliminate the North-South gap through greater cooperation involving North-South technology and resource transfers.¹¹⁸ Due to extensive lobbying by the G-77, the new order was codified in the Charter of the Economic Rights and Duties of States adopted by the UNGA in 1974.¹¹⁹ The Charter declared the fundamentals of a just world order, including principles such as "mutual and equitable benefits, promotion of international social justice; [and] international co-operation for development."¹²⁰

During the height of the North-South debate there was often considerable dissension on both sides of the divide about the actual causes and best

¹¹⁴ LOUIS HENKIN et al., *BASIC DOCUMENTS SUPPLEMENT TO INTERNATIONAL LAW* 1412 (3d ed. 1993).

¹¹⁵ *Id.*

¹¹⁶ See RICHARD L. JACKSON, *THE NON-ALIGNED, THE UN, AND THE SUPERPOWERS* 178 (1983). The G-77 focuses primarily on economic issues and it acts as a recognized negotiating body in the North-South dialogue.

¹¹⁷ G.A. Res. A/Res/3201 (S-VI) (1974), *reprinted in* 13 I.L.M. 715 (1974) and HENKIN *supra* note 114, at 519-22.

¹¹⁸ *Id.*

¹¹⁹ G.A. Res. 3281 (XXIX) (Dec. 12, 1974), *reprinted in* INTERNATIONAL ECONOMIC LAW: BASIC DOCUMENTS 406-07 (Philip Kunig et al. ed., 1989).

¹²⁰ *Id.* at chapter I(e), (m), (n). res. 3281.

solutions to underdevelopment. Many Marxists and adherents of the Dependencia school of international political economy claimed that the unbridled global capitalism of the "metropolitan" centers of the developed world were largely responsible for the depredation of African resources and economies.¹²¹ Other writers blamed underdevelopment on chronic political corruption, poor governance and perpetual ethnic strife. Meanwhile, some contended that many post-colonial states were inherently non-viable entities created to serve colonial caprice and avarice. Much of sub-Saharan Africa, was viewed by some as a hodge-podge of marginal entities with limited geographical space, insufficient natural resources and incompatible populations. As one writer observed:

[m]any emergent African states were not very soundly constituted at the time of independence and some offered little promise of achieving empirical viability afterwards. The boundaries of many countries, particularly but by no means exclusively in French-speaking Africa, were arbitrarily drawn by the colonial powers and were not encouraging frameworks of unified, legitimate and capable states. . . .¹²²

In the North-South debates of yesteryear, the South's positions on the new order issues, including the right to development, reflected a strong distrust of markets.¹²³ Partly due to Marxist descriptions of capitalism, dependency theory or analogies from politics, many governments in the South shared "zero-sum conceptions of economics."¹²⁴ Consequently, they were more inclined to adopt "interventionist attitude[s] towards markets," a policy orientation that was often fueled by nationalism when private corporations from industrial states were involved.¹²⁵

¹²¹ See generally GWENDOLYN MIKELL, *COCOA AND CHAOS IN GHANA* (1992). Mikell, using Ghana as a case study, contends that the global capitalist economy caused severe socio-economic distortions in Ghanaian society, thus contributing to the impoverishment of the vast majority of people. For works devoted to the dependencia or quasi-Marxist analysis of African and Third World political economy see, e.g., VÖGLER AND DE SOUZA (eds.), *DIALECTICS OF THIRD WORLD DEVELOPMENT* (1980), and WALTER RODNEY, *HOW EUROPE UNDERDEVELOPED AFRICA* (1972).

¹²² GWENDOLYN CARTER & PATRICK O'MEARA, *AFRICAN INDEPENDENCE: THE FIRST TWENTY-FIVE YEARS 45-465* (1985).

¹²³ M.J. Peterson, *Antarctic Implications of the New Law of the Sea*, in 16 *OCEAN DEV. & INT'L L.* 164-65 (1988).

¹²⁴ *Id.*

¹²⁵ *Id.*

On the other hand, many Western economists argue that the problem of underdevelopment, which the NIEO program seeks to resolve, is inherently a local problem caused by anti-market, inefficient, government economic policies and mismanagement. This view, the neo-classicist theory of poverty, posits that most of the Third World states are poor, not because of the international capitalism as the dependencia school alleges, but because they suffer from "inappropriate population, poor natural resources, inadequate capital funds, [and] low technology."¹²⁶ According to the proponents of this view, the solution to Third World poverty lies not in concerted international action or multilateral assistance, but in, *inter alia*, opening the various economies to massive amounts of foreign capital.¹²⁷

Writers who question the morality of developmental assistance itself adopt an even more skeptical approach. In a so-called "moral argument" against foreign aid, P.T. Bauer argued that aid does not solve the problem of underdevelopment, and, if anything, exacerbates it.¹²⁸ Similarly, Irving Kristol, (referring to the North-South conflict as the "new cold war") has argued that the bellicose attitude of the Southern NIEO movement towards the North makes the South ineligible for Northern assistance.¹²⁹ Kristol writes that "when the poor start 'mau-mauing' their actual or potential benefactors, when they begin vilifying them, insulting them, demanding as a right what is not their right to demand"¹³⁰ any self-imposed obligation to be charitable toward the poor ought to be superseded by national self-respect. According to Kristol, in order to protect their national self-respect, the developed states ought to tell the developing states that "they can go to hell in a handbasket, taking their demands for system reform with them."¹³¹

In sum, both North and South had contrasting views of the international economic system and the prescriptions for change. The North-South struggle,

¹²⁶ NEW PERSPECTIVES AND CONCEPTIONS OF INTERNATIONAL LAW, AN AFRO-EUROPEAN DIALOGUE 18 (K. Ginther & W. Benedek eds.) (1983).

¹²⁷ *Id.*

¹²⁸ See P.T. Bauer, *The Case Against Aid*, 2 MILLENNIUM J. INT'L STUDIES (1973); P.T. Bauer & Basil Yamey, *Why We Should Close Our Purse to the Third World*, THE TIMES (London), Apr. 11, 1983, at 10.

¹²⁹ See Irving Kristol, EDITORIAL, WALL STREET JOURNAL, July 17, 1975, at A14.

¹³⁰ *Id.*

¹³¹ ROGER HANSEN, BEYOND THE NORTH-SOUTH STALEMATE 61 (1979). For arguments that respond to the views of P.T. Bauer & Kristol, see Tom Clausen, *Third World Aid Must Not Be Cut*, THE TIMES, Apr. 22, 1983, at 12; G.F. Salkeld, *Professor Bauer's Case Against Aid Unproven*, 3 MILLENNIUM J. INT'L STUDIES 71-75 (1974); Amartya Sen, *Just Desserts*, 24 N.Y. REV. BOOKS 3-6 (Mar. 4, 1982); James F. Paradise, *International Social Justice: Philosophical and Politico-Economic Considerations*, 14 MILLENNIUM J. INT'L STUDIES 64-77 (1985).

in one sense, symbolized the paradigmatic transition from orthodox liberalism to embedded liberalism.¹³² Whereas orthodox liberalism had prescribed nondiscrimination and efficiency as foundational norms for international governance, the embedded liberalism of the post-World War II period prescribed state action to "contain domestic social and economic dislocations generated by markets."¹³³ Perhaps reflecting the new approach of embedded liberalism, many Third World representatives argued that "the basic norms of the international economic order should be redistribution and equity, not nondiscrimination and efficiency."¹³⁴

B. North-South Resource Allocation Dilemmas

Given the range of issues involved in the HIV/AIDS pandemic, it was only a matter of time before the discussions about AIDS took on a North-South hue. The North-South dimensions of the pandemic centers on questions involving Northern assistance for AIDS diagnosis, prevention, care, and research, as well as general developmental assistance to the South to combat poverty and narrow the North-South health gap. As the financial, technological and medical assistance to fight AIDS has been slow in arriving, many in the South are expressing resentment at the North's seeming indifference, or even callousness. Meanwhile, as a result of its overwhelming material and technological edge, the North has been able to contain and control the pandemic, thus highlighting the relationship between wealth and health. Below, this article discusses several prominent issues that define the North-South aspect of the pandemic, focusing especially on how calculations of interest in the North have shaped the course of the pandemic in the South.

From the onset of the pandemic, the international response to HIV/AIDS has been shaped by underlying tensions, perceptions and interests across the North-South divide. Although Washington was armed early on with extensive intelligence about the looming pandemic, and could conceivably have taken proactive steps to slow the spread of the disease, it chose not to act for various reasons, including a myopic calculation of national interest.¹³⁵ In 1987, Katherine J. Hall, a United States Central Intelligence Agency (CIA) national

¹³² Stephen Krasner, *Structural Causes and Regime Consequences: Regimes as Intervening Variables*, 36.2 INTERNATIONAL ORGANIZATION 195 (1982).

¹³³ *Id.* at 189.

¹³⁴ *Id.*

¹³⁵ See generally, Gellman, *supra* note 20, at 3. It must be stated here that political leaders in the South were even more complacent about the disease, denying its reality or diminishing its likely impact.

intelligence officer and her colleague, Walter L. Barrows tried in vain to obtain CIA support to study the "burgeoning growth of AIDS,"¹³⁶ especially in developing countries. Between 1987 and 1990, the CIA refused to grant approval for use of personnel and computer resources, with critics arguing that global AIDS was "an unfit subject of intelligence" or that U.S. interests would be benign.¹³⁷ One military officer at the National Intelligence Council reportedly told Brown that the coming AIDS pandemic "will be good, because Africa is overpopulated anyway."¹³⁸

By 1990, Hall and Barrows were finally able to obtain permission to study the imminent pandemic.¹³⁹ The CIA's classified Interagency Intelligence Memorandum 91-10005 of July 1991, "foretold one of the deadliest calamities in human experience."¹⁴⁰ Titled the "Global AIDS Disaster" the report projected 45 million infections by 2000.¹⁴¹ The Global AIDS Disaster report, and another subsequent intelligence report, IIM 91-10005, were reportedly met with "indifference"¹⁴² by senior U.S. government officials at the White House and Cabinet agencies. Meanwhile, as early as 1990-1991, the World Health Organization (WHO) projected a caseload and an eventual death toll in the tens of millions by 2000.¹⁴³ Unlike the reign of the Black Death of the Fourteenth century that was marked by ignorance about the disease, the means of controlling AIDS were known. Yet, political leaders at all levels refused to act¹⁴⁴ mostly due to narrow interest calculations.

Many in the South observe that while the North has the resources, it lacks the political will and leadership to make the urgent and necessary resource allocation decisions to effectuate a "Marshall Plan" style of intervention in Africa.¹⁴⁵ Some speakers at the UN Security Council marveled at how quickly

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.* Another officer reportedly said: "It may be big, but what are you going to do about it?" *Id.* Others pointed out that the death of officers in allied militaries will "boost morale" as there would be more opportunities for upward mobility for junior officers. *Id.* Another security official was unconcerned by the prospect of an increasing death rate in Africa's militaries, reasoning that Africa's "limitless pool of unemployed men" left armies with a permanent reservoir of potential fighters. *Id.* He stated: "If you have one 18-year-old with a Kalishnikov [rifle] and he dies, you find another 18-year-old." *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Security Council Holds Debate, supra* note 30, at 11.

the North was able to jointly mobilize a whopping \$600 billion to combat the Y2K problem, "a largely irrelevant threat" while it "laconically watched the exponential growth of the HIV epidemic."¹⁴⁶ Even when Northern donor support has been forthcoming, it has been sporadic, inadequate and uncoordinated.

In addition, Northern developmental assistance has continued to fluctuate with myopic calculations of the North's interests, in many cases to the detriment of the South. In the early years of the epidemic there was a sense of urgency among Northern policy makers, as many feared a major heterosexual epidemic in the North.¹⁴⁷ Consequently, donor support while seemingly minuscule now, was rapidly growing.¹⁴⁸ By 1990, it became apparent that there was not going to be "a major heterosexual epidemic" in the North and funding began to slow down accordingly.¹⁴⁹ Similarly, funding from international organizations declined precipitously. In 1996, World Bank loans dropped from \$50 million to less than \$10 million, WHO spending dropped from \$130 million to \$20 million, UNICEF funding declined from \$45 million to \$20 million.¹⁵⁰ On the whole, there was a significant decline in North-South developmental assistance during the 1980's and 1990's, and donor support to fight AIDS leveled off between 1996 and 1998.¹⁵¹

The North-South dimension of the HIV/AIDS pandemic is dramatically illustrated by the growing health gap. In 1997, public health spending for AIDS alone exceeded 2% of GDP in 7 of 16 African countries sampled, a massive proportion in countries where overall health spending averaged just about 3 to 5% of GDP.¹⁵² Current funding, even taking into account the pledges made during or after the Durban Conference, still falls far short of the funding required to stave off AIDS.¹⁵³ Estimates to control the pandemic in

¹⁴⁶ *Id.* at 8 (statement of Timothy Stamps, the Minister of Health of Zimbabwe).

¹⁴⁷ GELLMAN, *supra* note 20, at A12. As William H. Foege, the former Director of the Center for Disease Control (CDC) states: "Tie the needs of the poor with the fears of the rich. When the rich lose their fear, they are not willing to invest in the problems of the poor." *Id.* at A12-A13.

¹⁴⁸ *Id.* at A13.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ UNAIDS Report June 2000, *supra* note 1, at 113.

¹⁵² *Id.* at 31.

¹⁵³ At the Durban Conference, the international community pledged to increase resources to fight AIDS. The World Bank offered to make available \$500 million as soft loans for HIV programs. See International Partnership Against AIDS in Africa (IPAA) Bulletin, *Special Edition International AIDS Conference, Durban*, 2 (visited on August 1, 2000) <<http://www.unaids.org.org/africapartnership/bulletin/apb130700.html>>.

Africa keep rising, with the latest figure about \$3 billion dollars. Yet, before the new monies promised during and after the International AIDS Conference in Durban (July 9-14, 2000), the total level of official international assistance for AIDS prevention in Africa (with 24.5 million cases) stood at about \$165 million.¹⁵⁴ In comparison, the United States (with just about 40,000 cases annually) spent \$10 billion each year on AIDS prevention.¹⁵⁵ Additionally, the United States spends about \$3 billion on health care daily and about a trillion dollars annually.¹⁵⁶ Meanwhile, the health care systems of developing countries are piteously strained, and the current AIDS assistance of about \$165 million¹⁵⁷ fails to meaningfully address the current needs. Due to the staggering health gap, infectious diseases remain a leading cause of premature death in developing countries, a crisis exacerbated by the AIDS pandemic.¹⁵⁸

The dearth of access to AIDS therapies is a symptom of the larger "health gap" between developed and developing countries.¹⁵⁹ Fewer than 2% of all the 34.3 million known HIV-infected persons have access to anti-retroviral therapies or even basic treatment for associated ailments.¹⁶⁰ Although potent new combinations of antiretroviral drugs¹⁶¹ have reduced viral load in patients, "the extreme costs and difficulty in the treatment regimen, undermines the long-term prospects for continued success and their widespread availability beyond the developed world."¹⁶² The costs of antiretroviral therapy ranges from \$10,000 to \$15,000 per person annually. This requires an "established public health infrastructure that can assure compliance with a continuous, comprehensive, and vigorous treatment regimen, making the treatments impractical and unwise for much of the developing world."¹⁶³ Due to the high cost and complexity of the drug regimens, "most infected individuals in the

¹⁵⁴ *Security Council Holds Debate*, *supra* note 30, at 2.

¹⁵⁵ *Id.* at 11.

¹⁵⁶ Gellman, *supra* note 20, at 2. This amount includes about \$200 million spent on boutique health concerns, such as baldness therapy. *Id.*

¹⁵⁷ *Security Council Holds Debate*, *supra* note 30, at 2.

¹⁵⁸ See David P. Fidler, *Symposium on Globalization at the Margins: Perspectives on Globalization from Developing States: Neither Science Nor Shamans: Globalization of Markets and Health in the Developing World*, 7 *IND. J. GLOB. LEG. STUD.* 191, 195-96 (1999) [hereinafter *Globalization at the Margins*].

¹⁵⁹ *Id.* at 194-96.

¹⁶⁰ Gellman, *supra* note 20, at 2.

¹⁶¹ While antiretroviral therapy is not a cure, it can prevent mother-to-child transmission of the disease. Unfortunately it does not provide protection to the mother. *International Response*, *supra* note 22.

¹⁶² *Id.*

¹⁶³ *Id.*

developing world have no access to the latest therapies—and often not even to simple treatments to fight their infections and to diminish their pain.”¹⁶⁴ Less than 5% of those living with AIDS in Africa have access to even basic care and consequently, most are likely to die without any treatment for opportunistic infections like tuberculosis and malaria.¹⁶⁵ As the absence of affordable AIDS therapies in the developing countries exacerbates the “enormous human and economic costs”¹⁶⁶ of the pandemic, many are calling for more “treatment equity” between the North and the South.¹⁶⁷

Children in developing countries are damaged the most by the healthgap. As the AIDS pandemic rages on, millions of children in the developing countries lack access even “to the most rudimentary preventive or curative health care.”¹⁶⁸ The problem is especially acute in rural areas of the developing world where less than 20% of children have access to any care at all.¹⁶⁹ One-fifth of children in developing countries have no access to healthcare, while about fifty percent of children in the least developed countries have no access to health care.¹⁷⁰ Consequently, preventable diseases exact a stultifying toll: 4.3 million children die annually from acute respiratory infections (particularly pneumonia), 3.8 million die from neo-natal or peri-natal causes, 3.2 million from diarrhea and over 2 million die because of lack of access to essential vaccines.¹⁷¹ In part because poor children suffer more from lack of

¹⁶⁴ *Id.*

¹⁶⁵ *Gore UN Remarks, supra* note 16.

¹⁶⁶ *International Response, supra* note 22.

¹⁶⁷ *See, e.g., J.M. Spectar, Patient Necessity: Treatment Equity for HIV & the Question of Intellectual Property Rights* (forthcoming Fall 2002. Manuscript on file with author).

¹⁶⁸ Gerald Abraham, *Giannella Lecture: The Cry of the Children*, 41 *VILL. L. REV.* 1345 (1996). In 1996, UNICEF reported that about twelve and one-half million children under five die annually from preventable diseases, malnutrition, and warfare—a staggering death rate of about 34,000 children daily. *Id.* at 1347. Over 8 million children are killed annually by measles, diarrhea, malaria, pneumonia and malnutrition. *Id.* at 1353. Between 1986 and 1996, two million children died as a result of warfare alone. *Id.* at 1347, 1348. The atrocities of war tend to diminish children’s access to the health as they “provoke displacement, aggravate levels of malnutrition and risks of disease, separate children from their families . . . exacerbate pre-existing discrimination of girls and minorities, and vastly reduce access to education and health services.” *See* Stuart Malsen, *Symposium: Implementation of the United Nations Convention on the Rights of the Child*, 6 *TRANSNAT’L L. & CONTEMP. PROBS.* 329, 330 (1996). For example, the United Nations Children’s Emergency Fund (UNICEF) estimates that in African wars, “lack of food and medical services, combined with the stress of flight have killed about 20 times more people than have armaments.” *Id.* at 330.

¹⁶⁹ Gerald Abraham, *supra* note 168, at 1352.

¹⁷⁰ *Id.* at 1353.

¹⁷¹ *Id.* at 1352. Women and young girls are often forced to endure barbaric cultural or traditional practices, including genital mutilation, infanticide and bride-burning. *Id.* at 1354.

access than rich children, the life expectancy of children in the industrialized world increases after the first month of life, while that of children in developing countries actually decreases.¹⁷² Poverty and ancillary factors such as ignorance, malnutrition and poor living conditions further worsen childrens' susceptibility to disease.¹⁷³

The health gap between developed and developing countries is also a research gap. Of the \$5.45 billion governments spent on HIV research between 1982 and 1991, about 97% was spent in developed countries, with the U.S. alone spending about \$4.78 billion and accounting for 83% of the public funding.¹⁷⁴ Despite advances in biomedical research, only two percent of all biomedical research is directed to the major killer diseases in the developing world.¹⁷⁵

Calculations of national interest in the North on the matter of AIDS assistance, as reflected in the practice of demand management, had disastrous implications for the spread of the pandemic in developing countries.¹⁷⁶ At almost every level, policy responses to HIV/AIDS reflected a "reluctance to take available steps for fear of prompting still greater claims on time and money"¹⁷⁷—a process described as demand management. According to physician and Health and Human Services official, Dr. Gregory Pappas, the "philosophy in development circles was, don't create demand."¹⁷⁸

The process of demand management was ostensibly motivated by calculations about available resources, political will, public support, feasibility and utility. Duff Gillespie of USAID explained the lack of political will and resources to combat the spread of HIV as follows: "decisions made by policy makers and program administrators are almost always based on rational process."¹⁷⁹ Gillespie added that it would be wrong to assume such calcula-

For a discussion of these practices, see Kirsten M. Backstrom, *Note, The International Human Rights of the Child: Do They Protect the Female Child?* 30 GEO. WASH. J. INT'L L. & ECON. 541, 545 (1997). See generally, Spectar, *supra* note 100 (arguing that for women to realize their right to health, these and other oppressive customs that increase vulnerability to HIV/AIDS, must be outlawed forthwith).

¹⁷² Abraham, *supra* note 168, at 1353.

¹⁷³ *Id.*

¹⁷⁴ Allyn L. Taylor, *Women's Health at a Crossroad: Global Responses to HIV/AIDS*, 4 HEALTH MATRIX 306, 314 (1994) [hereinafter *Crossroads*].

¹⁷⁵ Gore UN Remarks, *supra* note 16.

¹⁷⁶ See Gellman, *supra* note 20, at 2.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* at 11. Dr. Pappas took part in the debates about AIDS developmental assistance in those early years. *Id.*

¹⁷⁹ See Gellman, *supra* note 20, at 11.

tions were "based on gross ignorance, or morally bankrupt."¹⁸⁰ For the most part, such decisions or choices were "simply the product of a different world view and set of priorities."¹⁸¹ In addition, the managers of international organizations such as the WHO also had to be sensitive to "constituency politics"—a fact that required these managers to be sensitive to the priorities of their major donors.

Policy makers were concerned that if people in developing countries knew that HIV was a manageable condition and not necessarily always fatal, such knowledge would create "demands on development assistance agencies."¹⁸² The argument was that testing, counseling and treating HIV in developing countries was "too expensive, and it led to things that were more expensive."¹⁸³ For governments in the North, the process boils down to a "calculation" as they try to "postpone paying for interventions that they don't think they can afford."¹⁸⁴

As policy makers make calculations on which areas or issues in the developing world merit financial support, AIDS is seen as having "several disadvantages,"¹⁸⁵ including its being perceived as a disease of marginalized peoples. The afflicted populations are seen as lacking "an inherently sympathetic victim,"¹⁸⁶ especially when considering that HIV-infected persons are often stereotyped as promiscuous and drug abusers. Furthermore, for a long period of time, there was no tool that "directly and invariably" prevented transmissions.¹⁸⁷ In addition, there is no cure (no magic bullet), costs of AIDS programs are high and AIDS interventions are not always seen as cost-effective.¹⁸⁸ As WHO official Dennis Atkin queried, "If tomorrow there was a disease out of the blue that you could cure with a hundred million dollars per person, would we focus on it at all?"¹⁸⁹

Furthermore, while AIDS lacked the proverbial sympathetic victim, other diseases afflicting developing countries appeared to provide a better bang for the buck.¹⁹⁰ For example, saving the life of a dehydrated child with diarrhea

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

requires little more than a foil packet of salts; antibiotics can effectively treat an otherwise fatal case of tuberculosis.¹⁹¹ USAID and other agencies were more interested in such treatable conditions because measurable results could be produced for the inevitable Congressional audits.¹⁹²

The U.S. response to the global AIDS pandemic reflected many of these currents, at least prior to the UN Security Council Session on AIDS and the Durban Conference. For several years, the U.S. response to the global pandemic was weak because the Reagan and Bush administrations and, for awhile, the Clinton administration, were all stymied by a manana syndrome of denial and demand management.¹⁹³ During its early years, the Clinton administration argued the pros and cons of paying for AIDS testing and counseling for vulnerable populations overseas, approaches that had been successful in hard-hit areas like San Francisco.¹⁹⁴ The Center for Disease Control (CDC) and the U.S. Agency for International Development (USAID) staunchly refused to entertain the notion of paying for tests overseas, except for the traditional "surveillance" required to track the pace of the pandemic.¹⁹⁵ Crushed by years of Congressional assaults on foreign assistance and family planning, USAID chose not to propose budget increases to fight AIDS.¹⁹⁶ In addition, WHO's Jonathan Mann and USAID were also involved in a bureaucratic fracas over control of AIDS assistance.¹⁹⁷ USAID sought to withdraw its mandatory funding of AIDS programs after Mann persuaded the U.S. Congress to earmark portions of USAID's budget for his WHO-based efforts.¹⁹⁸ Miffed by Mann's efforts, USAID concentrated much of its legislative efforts on "eliminating or reducing the earmark in order to recapture control of its budget."¹⁹⁹

With the advent of preventive methods and treatment through AZT and drug cocktails, policy makers in the North had to "decide what they thought a life saved in Africa was worth."²⁰⁰ For the most part, Northern policy makers "did not contemplate" efforts to transfer expensive AIDS therapies to Africa,

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.* at 9.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ Barten Gellman, *Death Watch: The Global Response to AIDs in Africa; World Shunned Signs of Coming Plaque*, WASH. POST, July 5, 2000, at A1.

due to cost concerns and the lack of health care apparatus or infrastructure for effective delivery.²⁰¹ As one analyst observed, transfers of these therapies would "siphon off resources" with "limited or no impact."²⁰²

By the mid 1990's, the worsening epidemic in developing countries, coupled with the sense that the North had escaped the worst, was leading to what one observer called "a syndrome of abdication."²⁰³ The prevailing view was that with treatments such as AZT and anti-retroviral cocktails, the developed world would avoid or mitigate the harshest effects of the pandemic.²⁰⁴ Many donors sharply reduced their funding to the global AIDS fight²⁰⁵ to the detriment of the developing countries of Africa.

Unfortunately, many North-South debates are often tinged with racial overtones; an analysis of this issue would be incomplete without a reference to this troubling aspect of the problem. Questions about poverty, susceptibility to AIDS and the causes of the pandemic are regrettably enmeshed in the morass of racial geopolitics and the value the North assigns to the non-whites of the South.²⁰⁶ Some AIDS authorities "suspect" that the "place of Africa at the center of the pandemic accentuated" skepticism of the severity of AIDS or "muffled the urgency of the response."²⁰⁷ Discussions of the pandemic often touch on "the question of race," with many believing that the international community would have declared an emergency if "[thirty] million white people" faced imminent deaths.²⁰⁸ For example, many of the participants at the Global Health Council's Conference (June 20-22, 1990) expressed "concern for the racial and class issues" in Africa's AIDS crisis.²⁰⁹ As one participant stated, "[It is] really painful that in this global village, some of us are living with HIV, and some of us are dying."²¹⁰ Sometimes, the analysis of the racial element is peppered with conspiratorial overtones, with notable personalities such as Namibia's President, Sam Nujoma, leading the charge.²¹¹ In June of

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ See *id.* at A14 (discussing the reason for the delay of the wealthy nations' involvement in fighting the AIDS pandemic).

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ See International AIDS Economics Network, *A Continent in Crisis: Africa and the AIDS Pandemic* (visited May 20, 2000) <<http://www.worldbank.org/aids-econ/africa/global.htm>> [hereinafter *A Continent in Crisis*].

²¹⁰ *Id.* (comments of Michael Angaga of Network of African People with HIV/AIDS).

²¹¹ Gellman, *supra* note 200, at 4.

2000, President Nujoma rejected a bland prepared text about measures to combat AIDS and he lashed out at alleged creators of the disease: "We in Namibia are the sufferers of this dreadful disease. It is also a historical fact that HIV/AIDS is a man-made disease. It is not natural. States that produce chemical weapons to kill other nations are known, they are probably represented here, they know themselves too."²¹² President Nujoma further stated that since "these countries unleashed the plague, they should cure it."²¹³

The notion of a racial motive in the lethargic international response to the AIDS pandemic in Africa (at least prior to Durban) is not necessarily confined to actors in the South. Peter Piot, the famed Belgian virologist and Executive Director of UNAIDS, has observed that the response would have been undoubtedly different if the devastation witnessed in Africa had occurred elsewhere. As Piot states, "if this would have happened in the Balkans, or in Eastern Europe, or in Mexico, with white people, the reaction would have been different."²¹⁴

A further sign of the growing schism between North and South over HIV/AIDS is the relative weight assigned to the economic determinants of the pandemic, specifically the matter of poverty or underdevelopment as a disease vector. To the chagrin of some in the North, many African leaders tend to focus almost exclusively on factors such as poverty, social inequity and malnutrition as the driving forces behind diseases on the African continent, including AIDS.²¹⁵ For example, during the seminal UN Security Council meeting on AIDS in Africa (January 10, 2000), Dumisani Kumalo, South Africa's representative to the Security Council maintained that poverty and underdevelopment were the root causes of the AIDS epidemic, as they destroyed health systems²¹⁶ and increased vulnerability to AIDS. He further claimed that the "only way to immediately address the epidemic's spread was through uplifting the standard of living in developing countries. Addressing the issue of poverty was central to that approach."²¹⁷ Later, at the International AIDS Conference at Durban, South Africa, (July 9-14, 2000) South African President Thabo Mbeki spoke extensively about the relationship between poverty and HIV/AIDS and other diseases plaguing Africa.

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ See generally David Brown & Jon Peter, *Hundreds Walk Out On Mbeki; S. African's Speech Protested*, WASH. POST, July 10, 2000 at A1.

²¹⁶ *Security Council Holds Debate*, *supra* note 30.

²¹⁷ *Id.*

The emphasis on the historicity of poverty on the African continent rankles many in the North, especially those in the scientific community, who would rather talk about prevention campaigns and effective therapies to address the immediate threat. Passions ran so high during Mbeki's speech that several hundred of the 15,000 conferees walked out in disgust, with one Northern delegate chastising Mbeki for diverting attention from the "real issue," the prevention of HIV.²¹⁸ As another delegate observed, Mbeki "blames AIDS on capitalism and imperialism, and people continue to die . . . [t]he whole poverty thing is worth examining, but you've got to do something until you can work it all out."²¹⁹ It would be remiss to ignore how calculations of economic interest in the North²²⁰ have shaped, and continue to affect, the course of the pandemic in the South, for ill or for good.

There is also increasing concern over the impact of the Northern-driven process of globalization on the health of people in developing countries, particularly with regard to the spread of infectious diseases.²²¹ For example, Fidler maintains the negative health consequences from globalization in developing countries arise from "structural imbalances in the international system that the processes of globalization exacerbate."²²² Fidler suggests these structural imbalances manifest themselves in four basic ways: (1) Increases in international trade, including the use of international trade law and interna-

²¹⁸ See Brown & Peter, *supra* note 215, at 2. Meanwhile, many Western observers at the Durban Conference blamed South Africa's President, Thabo Mbeki, for fueling conspiratorial theories with his skepticism about the cause of AIDS. *Id.* Mbeki has angered many in the AIDS research community with his "blunt questioning" of Western medicines such as AZT, his publicizing of the works of dissident AIDS researchers, and his insistence on an African solution to the pandemic. *Id.*

²¹⁹ *Id.*

²²⁰ There are also calculations of economic interest and resource allocation decisions in the South that undermine efforts to control the pandemic, which either occur through excessive military expenditures, or bellicose state policies that lead to destructive warfare. Yet, given the vast resources of the North and its power to affect material change, the impact of the Northern allocations (or lack thereof) is more pronounced.

²²¹ It is quite fashionable today in some circles to blame globalization for all ills. This writer is, of course, also concerned about the adverse effects of rapid globalization on people at the margins. Yet, on balance, current trends indicate that sustainable globalization, with the proper safeguards, will deliver a net positive good to more and more people in the not too distant future. Nevertheless, in the meantime, it is necessary to ensure the protection of global labor through the payment of living wages. See, e.g., J.M. Spectar, *Pay Me Fairly Kathie Lee! The WTO, The Right to a Living Wage, and a Proposed Protocol*, 20 N.Y. L. SCH. J. INT'L & COMP. L. 61 (2000) (arguing in favor of the human right to a living wage and a plurilateral WTO protocol on living wages).

²²² See *Globalization at the Margins*, *supra* note 158, at 199.

tional trade institutions, to open developing country markets to health-endangering goods such as tobacco exports from developed country companies.²²³ Furthermore, as a result of globalization of markets through international trade, processed food exports from developed countries may have a negative impact on the dietary habits of peoples in developing countries.²²⁴ (2) Structural adjustment programs (SAPs) maintained by international financial organizations are blamed for "sacrificing public health and health care on the altar of neo-liberal economic policy."²²⁵ In particular, the mandated budgetary changes lead to a reassessment of expenditures on public health and health care systems, in turn leading to the imposition of users' fees on patients (including the indigent) who had previously enjoyed government subsidized care.²²⁶ These SAPs are generally blamed for diminishing both "the quality of and the access to health services" with the most "vulnerable groups-such as women, children, and persons with HIV/AIDS" suffering the most.²²⁷ (3) Increases in international trade in services and in transnational investments in service industries such as fast-food contribute to the growing problem of diet-related, non-communicable diseases in developing countries.²²⁸ As insurance companies in developed countries penetrate new markets in developing countries, governments in less developed countries may move away from universal systems of health care coverage to privatized systems relying on private health care insurance.²²⁹ International trade in health services may also weaken health care systems in developing countries by "shifting resources and policy priorities away from the real threats to health in the country."²³⁰ (4) The international regime on intellectual property is seen as exacerbating the problem of access to healthcare, particularly to the extent that World Trade Organization's TRIPS requirements contribute to "a higher cost burden for newer, patent-protected essential drugs."²³¹

As this section of this article reveals, the AIDS pandemic is increasingly becoming a North-South issue. Yet, as the geopolitics of HIV/AIDS unfolds,

²²³ *Id.* at 200.

²²⁴ *Id.* at 201.

²²⁵ *Id.* at 205.

²²⁶ *Id.*

²²⁷ *Id.* at 206.

²²⁸ *Id.* at 207.

²²⁹ *Id.* at 209.

²³⁰ *Id.*

²³¹ *Id.* at 210 (citing World Health Organization, WHO to Address Trade and Pharmaceuticals, May 22, 1999 (visited Sept. 10, 1999) <<http://www.who.int/inf-pr-1999/en/pr99-wha13.html>>).

it is important to focus on the heart of the matter, to wit, the historicity of poverty as a breeding ground for infectious diseases, a pandemic multiplier. Below, this article will suggest a comprehensive approach to dealing with this problem.

III. TOWARDS HOLISTIC DEVELOPMENT

A. Taking the Right to (Holistic) Development Seriously

To defeat AIDS, and ensure the survival of tens of millions of people, especially on the African continent, the international community must act in concert against the syndrome of chronic poverty as a disease vector. In that regard, this article suggests a "holistic development approach" that sets forth a bold and long-term strategy for eradicating chronic poverty in the South. First, this article proposes that the right to development be reformulated as the right to holistic development and treated seriously by policy makers in the North and the South. Then, based on this comprehensive view development, this article proposes a framework for holistic development that includes steps for eradicating extreme and pernicious poverty worldwide. This article concludes with reflections on signs of hope and the importance of international law in the age of the virus.

The right to development includes the fundamental human right of the individual to "full development" as well as the "right to development of developing States and peoples,"²³² with the latter enabling the former. It is the individual and peoples' collective right to benefit from, and participate in, a development policy founded on the satisfaction of material as well as nonmaterial human needs or wants.²³³ In addition, it includes the collective right of individuals and peoples to play an equal role in a sustainable developmental process.²³⁴ The right to development also embraces the collective right of countries to succeed in establishing a just and equitable world order and "eliminating the structural obstacles to their development inherent in current international economic relations."²³⁵

²³² Karin Mickelson, *Rhetoric and Rage: Third World Voices in International Legal Discourse*, 16 WIS. INT'L L. J. 353, 376 (1998) (citing Hector Gross Espiell, *The Right to Development as a Human Right*, 16 TEX. INT'L L. J. 189 (1981)).

²³³ Mickelson, *supra* note 232, at 376 n.105 (citing definition by Stephen P. Marks, *Emerging Human Rights: A New Generation for the 1980s?* 33 RUTGERS L. REV. 435, 445 (1981)).

²³⁴ *Id.*

²³⁵ *Id.*

Issa Shivji posits that this “new right” emerged from the “contemporary demands of the Third World states for better terms on the international market, greater aid and assistance and generally in, what has come to be known as, the demand for the new international economic order.”²³⁶ Meanwhile, Mohammed Bedjaoui has called the right to development, “a fundamental right, the precondition of liberty, progress, justice and creativity.”²³⁷ Many proponents believe that to achieve the right to development, the international community is required to “build a new system, based not only on the theoretical affirmation of the sacred rights of peoples and nations but on the actual enjoyment of these rights.”²³⁸

Additionally, the right to development is seen as the “right to environmentally sound and sustainable development” or the right to “eco-development.”²³⁹ This new approach recognizes that “to posit an unqualified right to development implies a perpetuation of the patterns of exploitation” responsible for current environmental crises.²⁴⁰ Furthermore, the right to development also goes beyond an “external” South-North focus and highlights domestic issues of participation in the development process²⁴¹ by marginalized groups such as women.²⁴²

The “core sources” of the right to development are rooted in several international instruments that are already binding on states as customary

²³⁶ See Jennifer Myers, *Human Rights and Development: Using Advanced Technology to Promote Human Rights in Sub-Saharan Africa*, 30 CASE W. RES. J. INT'L L. 343, 349 (citing, ISSA G. SHIVJI, *THE CONCEPT OF HUMAN RIGHTS IN AFRICA* 81 (1989)).

²³⁷ Satvinder Juss, *Global Environmental Change: Health and the Challenge for Human Rights*, 5 IND. J. GLOBAL LEG. STUD. 121, 157 (1997) (citing MOHAMMED BEDJAOU, *THE RIGHT TO DEVELOPMENT IN INTERNATIONAL LAW: ACHIEVEMENTS AND PROSPECTS* 1177, 1182 (1991)).

²³⁸ Mickelson, *supra* note 232, at 375 (citing speech by the foreign minister of Senegal to the UN General Assembly in 1966).

²³⁹ Mickelson, *supra* note 232, at 378.

²⁴⁰ *Id.*

²⁴¹ *Id.* (citing, Konrad Ginther, *Participation and Accountability: Two Aspects of the Internal and International Dimension of the Right to Development* in THIRD WORLD LEGAL STUDIES 55 (1992)); Marilyn Waring, *Gender and International Law: Women and the Right to Development*, 12 AUSL. Y.B. INT'L. L. 177 (1992) (a critique of the right to development that focuses on the exclusion of women's concerns); and Hilary Charlesworth, *The Public/Private Distinction and the Right to Development in International Law*, 12 INT'L. L. 190 (1992).

²⁴² Speaking at the 23rd Session of the UN General Assembly on June 9, 2000, U.S. Secretary of State Madeleine Albright stated, “it is also no longer possible to conceive of development separate from the advancement of women, because no society can move ahead if half its population is held back.” See *Twenty Third Session of the UN General Assembly* (visited June 16, 2001) <<http://www.unhcr.ch/hurricane/hurricane.nsf/>>.

international law,²⁴³ as well as in the progressive development of the concept in the past five decades. References to a right to development have been traced as far back as the process leading to the adoption of the Universal Declaration of Human Rights (UDHR).²⁴⁴ In the 1940's, Ecuador submitted a draft document entitled "Declaration of Rights and Duties of States" that referred to "a right to peaceful and secure development."²⁴⁵ The UDHR states that everyone is "entitled to realization, through national effort and international cooperation . . . of the economic, social and cultural rights indispensable for his dignity and the free development of his personality."²⁴⁶ All human beings are also entitled to "a social and international order" wherein the rights of the Declaration can be "fully realized."²⁴⁷ Then, in 1966, the International Covenant on Economic, Social and Cultural Rights recognized, as part of the right of self-determination, the right of all people "to freely pursue their economic, social and cultural development."²⁴⁸ By the 1970's, the South's calls for recognition of the right to development became a part of its general strategy of changing the perceived inequities in the international system.²⁴⁹

²⁴³ Michele L. Radin, Comment, *The Right to Development as a Mechanism for Group Autonomy: Protection of Tibetan Cultural Rights*, 68 WASH. L. REV. 695, 700 (1993).

²⁴⁴ Mickelson *supra* note 232, 375. Many saw the Right to development as continuing and completing the Universal Declaration of Human Rights. See *id.* at 376 (noting that the Commission on Justice and Peace meeting in Algeria had proposed that the Universal Declaration of Human Rights be completed through the proclamation of a Right to Development). Article 22 of the Universal Declaration for its part, states that "[e]veryone, as a member of society . . . is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality." *Universal Declaration of Human Rights*, U.N. GAOR, 217A (III), 3d Sess., U.N. Doc A/Res/217A (1948). In addition the "right to development" is arguably in the spirit of Articles 55 and 56 of the UN Charter. Article 55 states, that in order to achieve its purposes of international stability, well-being, and peace, the United Nations:

shall promote: a higher standards of living, full employment, and conditions of economic and social progress and development; [and] b. solutions of international economic, social, health, and related problems; and international cultural and educational co-operation; . . . U.N. CHARTER art. 55.

Meanwhile, Article 56 of the Charter states that "[a]ll Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55." U.N. CHARTER art. 56.

²⁴⁵ Mickelson, *supra* note 232, at 375.

²⁴⁶ UDHR, *supra* note 244; see also UNITED NATIONS BULLETIN, January 1, 1949 at 6-8 (Article 22).

²⁴⁷ *Id.*

²⁴⁸ *International Covenant on Economic, Social and Cultural Rights*, G.A. Res. 2200, U.N. GAOR, 22d Sess., Supp. No. 16, U.N. Doc. A/6316 (1966).

²⁴⁹ Mickelson, *supra* note 232, at 375.

By the mid-1970's, Senegalese jurist Keba M'Baye and other international jurists began to treat the concept of the right to development as an international human right.²⁵⁰ Mohammed Bedjaoui has referred to the right to development as "the alpha and omega of human rights, the goal of human rights" and "the core right from which all others stem."²⁵¹ Thus, beginning in the 1970's, the right to development "was frequently identified as part of the 'third generation' of human rights, referred to as collective rights or solidarity rights."²⁵² According to proponents, "the concept represented an attempt to expand the traditional understanding of international human rights law."²⁵³

In 1974, the evolution of the right to development received a major boost in Article 17 of the Charter of Economic Rights and Duties of States that stated that "international cooperation for development is the shared goal and common duty of all countries."²⁵⁴ Echoing this growing consensus, the UN Commission on Human Rights adopted a controversial resolution in 1977 that "specifically mentioned the right to development, recommending a study be undertaken on the subject."²⁵⁵ Later, the UN Declaration on the Right to Development adopted by the General Assembly in 1986 by a vote of 146 to 1, with 6 abstentions, represented a significant step towards the right to development.²⁵⁶ The Declaration calls the right to development an inalienable and universal right, pertaining to individuals and peoples:

(1) States have the duty to take steps, individually and collectively to formulate international development policies with a view to facilitating the full realization of the right to development. (2) Sustained action is required to promote more rapid development of developing countries. As a complement to the efforts of developing countries effective international co-operation is essential in providing these

²⁵⁰ *Id.* at 376. Jack Donnelly maintains that M'Baye put forth "the first serious proposal of an international human right to development." *Id.*

²⁵¹ Satinder Juss, *supra* note 237, at 156 (citing MOHAMMED BEDJAOUJ, *supra* note 237, at 1182).

²⁵² Mickelson, *supra* note 232, at 376.

²⁵³ *Id.* at 376.

²⁵⁴ G.A. Res. 3281 (XXIX) (1974) reprinted in 14 I.L.M. 251 (1975) and HENKIN, *supra* note 114, at 511-19.

²⁵⁵ Mickelson, *supra* note 232, at 376 (referring to Human Rights Commission Resolution 4 (XXXIII) of February 21, 1977).

²⁵⁶ G.A. Res. 41/128 (Dec. 4, 1986) U.N. GAOR, 41st Sess., Supp. No. 53 U.N. Doc. A/41/925 1986.

countries with appropriate means and facilities to foster their comprehensive development.²⁵⁷

Similarly, Article 8 requires states to take "all necessary measures for the realization of the right to development," including "equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income."²⁵⁸ States are required to undertake "appropriate economic and social reforms . . . with a view to eradicating all social injustices."²⁵⁹

At the 1992 Earth Summit in Rio, the right to development was affirmed for the first time in an international document adopted by consensus.²⁶⁰ Principle 3 of the Rio Declaration on Environment and Development states that "the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations."²⁶¹ The right to development was affirmed in the 1993 Vienna Declaration of the Second World Conference on Human Rights, where the participants noted that "development facilitates the enjoyment of all human rights."²⁶² Meanwhile, the right to development has been echoed in several regional human rights instruments, most notably the African Charter on Human and Peoples' Rights (the Banjul Charter).²⁶³

Nevertheless, critics of the right to development claim it lacks the essential aspect of a true "human right."²⁶⁴ As Jack Donnelly argues, no right to development can be deduced from either international legal standards or moral

²⁵⁷ *Id.*

²⁵⁸ *Id.* (Article 8).

²⁵⁹ *Id.*

²⁶⁰ Mickelson, *supra* note 232, at 378 (citing, *Rio Declaration on Environment and Development: Application and Implementation: Report of the Secretary-General to the Commission on Sustainable Development*, UN.Doc.E/CN.17/1997/8 (visited February 10, 1997) <gopher://gopher.un.org/00/esc/cn17/1997/off/97—8.EN>). In the Secretary general's report, the U.S., which views development not as a right but as "a goal," insisted that "joining consensus" did not mean that it had changed its "long-standing opposition to the so-called 'right to development.'" Mickelson *supra* note 232, at 379.

²⁶¹ UN.Doc. A/CONF.151/15/Rev. 1, *reprinted in* 3 I.L.M. 874 (1992).

²⁶² United Nations World Conference on Human Rights, Vienna, 14-25 June 1993, Vienna Declaration and Programme of Action, *reprinted in* 14 HUMAN RIGHTS L.J. 352, 354 (1993).

²⁶³ Article 22 of the Banjul Charter states: "All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity . . ." 21 I.L.M. 58 (1982), *reprinted in* HENKIN, *supra* note 114, at 311. The Charter also states that "[a]ll peoples shall have the right to a general satisfactory environment favorable to their development." *Id.* at article 24.

²⁶⁴ Mickelson *supra* note 232, at 377.

considerations.²⁶⁵ In fact, Donnelly argues that the claim to a right to development was a "dangerous delusion" of "well-meaning optimists," "that feeds off of, distorts, and is likely to detract from the urgent need to bring together the struggles for human rights and development."²⁶⁶ The recognition of the right to development by United Nations agencies was criticized as hasty, especially because the purported right had "no basis in academic theory."²⁶⁷

Meanwhile, there was some concern among those who believed that the main objective of the right to development was to "establish an obligation for wealthier countries to provide financial and other types of assistance to poorer countries."²⁶⁸ Philip Alston and Gerard Quinn note that certain provisions in the Declaration of the Right to Development can be interpreted as giving rise to an obligation by richer states to provide assistance to poorer states.²⁶⁹ There was also considerable controversy about the Declaration's dual individual/collective aspects, especially because the right to development, as propounded by the South, appeared to mean that one state or bloc of states held a right that imposed duties on other states.²⁷⁰

The controversy about the right to development pits civil and political rights on the one hand, and economic and social rights on the other.²⁷¹ Additionally, many U.S. policy makers have "persistently denied that social rights have the same importance as civil rights. . ."²⁷² Furthermore, many Western countries are concerned that the right to development may be invoked by certain regimes to balance or derogate from other generally recognized fundamental human rights.²⁷³ As Hendriks observes, the attempts to reinforce

²⁶⁵ *Id.* (citing Jack Donnelly, *In Search of the Unicorn: The Jurisprudence and Politics of the Right to Development*, 15 CAL. W. INT'L L.J. 473, 492 (1985)).

²⁶⁶ Mickelson, *supra* note 232, at 377 (quoting Jack Donnelly, *supra* note 265).

²⁶⁷ *Id.* at 376 N.103 See also Philip Alston, CONJURING UP NEW HUMAN RIGHTS: A PROPOSAL FOR QUALITY CONTROL, 78 AM. J. INT'L L. 607, 612 (1984).

²⁶⁸ Juss, *supra* note 237, at 157-58.

²⁶⁹ *Id.* at 158. For example, Article 11(1) requires "States Parties to take appropriate steps to ensure the realization of an adequate standard of living," while article 11(2) requires "States Parties to take, 'individually and through international cooperation,' relevant measures concerning the right to be free from hunger." *Id.*

²⁷⁰ Mickelson, *supra* note 232, at 376-77.

²⁷¹ *But see* Rajni Kothari, *Human Rights as a North-South Issue*, in HUMAN RIGHTS IN THE WORLD COMMUNITY: ISSUES & ACTIONS 134 (RICHARD P. CLAUDE & BURNS H. WESTON eds., 1989).

²⁷² Aart Hendriks, *The Right to Health: Promotion and Protection of Women's Right to Sexual and Reproductive Health Under International Law: The Economic Covenant and the Women's Convention*, 44 AM. U. L. REV. 1123, 1130 (1995).

²⁷³ Mickelson, *supra* note 232, 377. For example, in 1991, the government of the People's Republic of China issued an official statement on human rights issues that appeared to

the perceived differences between the categories of rights have effectively undermined the "complementary nature" of both categories.²⁷⁴

In sum, critics charge that like most third generation human rights, the right to development is vague and does not create any specific obligations. Lacking North-South consensus, the right to development has lapsed into the purgatory of international human rights.

Despite its detractors, this writer maintains that acceptance of the right to development is the starting point for combating poverty as a disease vector. Further, this article urges that the right to development should be implemented or operationalized through the adoption of a "holistic development framework" that has its objective the satisfaction of basic human needs, especially subsistence, human security, health, peace, environmentally sound/sustainable development²⁷⁵ and equal participation of all in governance.

Given the relationship between underdevelopment and pandemics that threaten the very survival of nations, the right to development can no longer be consigned to the purgatory of a third generation human right. As policy makers recognize the magnitude of the problem, and the enormous risks of inaction, it should become increasingly apparent that an approach to holistic development that safeguards humankind against extant and impending plagues is a common obligation. Additionally, the proposed framework for holistic development moves beyond the limitations of the North-South dialectic.

subordinate human rights to the right to development stating:

China pays close attention to the issue of the right to development. China believes that as history develops, the concept and connotation of human rights also develop constantly . . . To the people in the developing countries, the most urgent human rights are still the right to subsistence and the right to economic, social and cultural development. Therefore, attention should first be given to the right to development

See Juss, *supra* note 237, at 155.

²⁷⁴ Hendriks, *supra* note 272, at 1130.

²⁷⁵ See, e.g., Mickelson, *supra* note 232, at 378.

B. *The Holistic Development Framework (HDF)*

The Holistic Development Framework (HDF)²⁷⁶ introduces a two-level reciprocal strategy of poverty reduction that exchanges a range of pledges on the part of nation states for debt cancellation at the donor level. It maintains that the current level of debt among the poorest developing countries is incompatible with the right to development. Any AIDS assistance strategy for developing countries is unlikely to succeed without debt cancellation for many areas worst hit by the pandemic. For example, thirty-two of the thirty-nine heavily indebted poor countries (HIPC) are in Africa, and together, they owe about \$2.2 trillion in debt!²⁷⁷ About four-fifths of humanity lives in the world's poorer countries in conditions of extreme poverty.²⁷⁸ Meanwhile, 1.3 billion of the world's poor, including 500 million Asians and 300 million

²⁷⁶ While the HDF proposed here is inspired the World Bank's Comprehensive Development Framework to reducing poverty, it is significantly different in form and substance. The World Bank's Comprehensive Development Framework (CDF) strives to achieve "better balance in policy making by highlighting the interdependence of all elements of development" including the social (health), structural, human, environmental, economic, as well as financial. See *Comprehensive Development Framework* (visited July 1, 2000) <www.worldbank.org/html/extdr/pb/pbcdf.htm>. The World Bank's CDF is based on (1) a long term vision that includes institutional change to effect poverty reduction, capacity building and strengthening governance and accountability as well as addressing macro/financial/structural and social issues simultaneously. (2) The CDF requires "country ownership," and direction of the national development agenda with the support and input of other actors in civil society, the private sector and the international arena. (3) The CDF entails strong partnerships between government and donors that boost efficiencies and maximize synergies. (4) Finally, the CDF includes a results oriented approach that uses reliable techniques to measure success by meeting goals, such as poverty reduction as well as other international development goals. The CDF represents "best practice," (heuristically) as it takes advantage of the "critical lessons" learned from over fifty years of development experience. *Id.* See *Entering the 21st Century, World Development Report 1999/2000* (visited July 1, 2000) <<http://www.worldbank.org/wdr/2000/overview.html>> [hereinafter *21st Century*]. World Bank experts have identified four key insights that embody 50 years of lesson of development experience: "First macroeconomic stability is an essential prerequisite for achieving the growth needed for development. Second, growth does not trickle down; development must address human needs directly. Third, no one policy will trigger development; a comprehensive approach is needed. Fourth, institutions matter; sustained development should be rooted in processes that are socially inclusive and responsive to changing circumstances." *Id.* As the Report indicates, investment in physical and human capital, should, as a general matter, encourage economic growth. *Id.*

²⁷⁷ *UNAIDS Report June 2000, supra* note 1, at 114.

²⁷⁸ *World Bank Press Release, No. 96/S3, The Challenge of the Millenium, World Bank President Speaks at American University Commencement* (visited July 3, 2000) <<http://www.worldbank.org/html/extdr/extme/96s3.htm>>.

Africans struggle to eke out a livelihood on a dollar a day or even less.²⁷⁹ It is no coincidence that these extremely poor states are the most HIV-afflicted.

Given that current AIDS relief funding falls woefully short,²⁸⁰ relieving the crushing debt burden, particularly on the countries with the highest incidences of AIDS, is already seen as "one of the more promising new approaches" that could increase the funds available to fight AIDS.²⁸¹ Already, the World Bank, the IMF and the OECD countries have expressed support for the HIPC debt reduction initiative.²⁸² The funds freed up should be used for poverty reduction strategies and a robust anti-AIDS campaign that should be transparent and whose results can be assessed²⁸³ by the international community. In June 1999, the G-7 launched the Cologne Debt Initiative, a groundbreaking commitment to faster and deeper debt relief for the heavily indebted poor countries.²⁸⁴

The HDF is a two-prong long term strategy to decrease and eventually eliminate extreme poverty: a national strategy (level one) and a complementary international strategy (level two). The national strategy will constitute an all-encompassing *Pact for Accountability, Responsibility, Restoration (PARR)* whereby debtor governments will pledge to undertake specific, and measurable commitments to their peoples with respect to realizing the right to development. At the international level, the creditor nations should agree to *Performance-Related Debt Cancellation in Stages (PRDS)* whereby, in graduated stages only, they will undertake to cancel the debt of countries that successfully complete the agreed upon reforms, policies, actions and programs of the PARR. Successful participation in PARR (at the national level) is an absolute and essential precondition for receiving debt cancellation and other available benefits under the PRDS. The funds derived from debt cancellation

²⁷⁹ See Annan Chides U.S. for 'Shameful' Level of Aids, WASH. POST, May 22, 2000, at A11.

²⁸⁰ Even with the recent increases in support after the Durban Summit (*see supra* note 153), the current funding to fight AIDS in Africa is still very inadequate.

²⁸¹ *UNAIDS Report June 2000*, *supra* note 1, at 116.

²⁸² *HIPC Initiative Update, Fact Sheets*, 1 (visited on June 27, 2000) <<http://www.worldbank.org/html/extdr/pb/pbhipc.htm>>. The currently proposed debt relief package will cut external debt servicing by about \$50 billion. While this is a commendable step, progressive debt cancellation within the context of the proposed Holistic Development Framework (HDF) will be more meaningful over the long term.

²⁸³ As the UNAIDS Report suggests, lending nations will be more likely to reduce debt if there are "clear and measurable ways of assessing the benefits." *UNAIDS Report June 2000*, *supra* note 1, at 117. It is hoped that the proposed HDF can serve as a model for developing performance related debt cancellation.

²⁸⁴ *Gore UN Remarks*, *supra* note 16.

could be directed to specific purposes as determined by consultation with creditors, NGOs and grassroots organizations, private voluntary organizations (PVOs), scientists, academics and other key actors in the eligible countries. These reciprocal and stringent arrangements ensure that the debt cancellation program yields benefits to the people in the debtor nations, as well as to international community, to the degree that the restored states become viable, responsible partners in international interactions. When the funds released from debt cancellation are inadequate to make the necessary reforms, the international community should consider additional grants to countries eligible under the PARR.

Desirable policies at the national level under the PARR will include agreed upon reforms, actions, and programs (on a case by case basis) that substantially enhance the attainment of the right of the people to development, including the realization of subsidiary rights of sustenance (living wages),²⁸⁵ education, shelter and health. The PARR framework would generally require deep, identifiable and assessable reform of governance structures, transparent processes, financial accountability and intensive support for education, especially education of girls and people in rural areas.

Depending on the prevalence of conflict in the debtor nation, the PARR may include or require the debtor nation to agree to immediately suspend all military hostilities and accept mediated or negotiated settlements as determined by neutral international organizations and NGOs such as the Carter Center. To be eligible for the PRDS, states agree to impartially negotiated cease-fires, to terminate hostilities and engage in negotiations sponsored by neutral parties in the international community. In addition, depending on the relationship between GNP and military expenditures, debtor nations may be required to make immediate and substantial reductions of military expenditures and/or disarmament.

In sum, to be eligible for the PRDS, national governments should pursue democratic policies of good governance, respect for human rights, political accountability, sustainable development, social responsibility and peaceful co-existence. All peoples in these states, including people in rural areas and women, should be integrated into decision making processes, and governments should undertake necessary social reforms to empower women and other marginalized sectors of society. Partnerships between the public and the private sector, including community organizations, businesses, churches, educators, NGOs, private voluntary organizations (PVOs), corporations,

²⁸⁵ See Spectar, *supra* note 221 (arguing that the fundamental right to earn living wages should be consistent with international law).

media, scientists, academics and civic organizations should be encouraged and sustained in order to foster economic and social progress.

The gradual debt cancellation arrangement is in the long term interest of both the North and the South and will reduce poverty. If extreme poverty, a pandemic causing/fueling factor, is alleviated or eliminated, the entire community of humankind will benefit from better health and trade. It is unquestionably in the interest of the creditor nations of the North to cancel debt in stages in return for (or as a reward for) specific, transparent, measurable and demonstrable commitments that improve not just the nations receiving the debt relief, but the entire community of humankind.

The proposed framework for holistic development unifies the efforts and energies of the North and the South against the fury of the global AIDS pandemic, in a systematic long range strategy that imposes burdens on both sides of the divide. The prevailing ad hoc approaches to the persistent structural problems of developing countries are stopgap measures, regulating the hemorrhage of the *crise du jour*, without addressing the underlying causes of the infections. It is highly inefficient and wasteful (not to mention frustrating) for the North, albeit well-meaning, to lurch from crisis to crisis, disaster to disaster: today, AIDS, tomorrow, Ebola, the next famine, then another war, and yet another. By the same token, instead of another ad hoc salve, the HDF is designed to enable the developing countries to fight and defeat AIDS, as well as to reduce the development gap between North and South. The HDF is also an all-encompassing long-term strategy that focuses on the structural determinants of AIDS and other diseases and it relies on extensive partnerships and networks, involving state and non state entities including NGOs, private voluntary organizations (PVOs), corporations, scientists, academics and other key actors.

C. Glimmers of Hope: A Time to Talk and a Time to Act

Major international conferences in the last few years, involving the OECD countries, the G8 Summits of seven industrial democracies as well as Russia, have placed developmental assistance to the South at the top of the international agenda.²⁸⁶ Recently, the International AIDS Conference in Durban, South Africa, (July 9-14, 2000) and the Okinawa Summit of the G8 (July 18-

²⁸⁶ At the recent Okinawa summit of the G8, the industrialized democracies pledged to be more aggressive in the fight against AIDS. See *G8 Communiqué Okinawa 2000*, 6 (visited August 1, 2000) <<http://www.g8kyushu-okinawa.go.jp/e/documents/commu.html>> (pledging to reduce the number of HIV/AIDS-infected young people by 25% by 2010).

22, 2000) have made North-to-South development assistance a major priority going forward.

The international community is increasingly affirming the link between sustainable development and health. For example, the Canadian representative at the Security Council meeting pledged to "promote sustainable development through a broad approach including such basic human needs as education, primary health care and gender equity."²⁸⁷ Similarly, as former U.S. Vice President Al Gore stated, "to win the ongoing global battle against AIDS, we must also fight the poverty that speeds its spread."²⁸⁸ The U.S. has also challenged G-7 members to do more in the worldwide crusade against AIDS.²⁸⁹ This commitment should include helping poor countries gain access to affordable HIV/AIDS therapies,²⁹⁰ increasing biomedical research directed toward the major killer diseases in the developing world,²⁹¹ developing vaccines for strains of the virus found in sub-Saharan Africa and Asia²⁹² and training medical personnel to deliver care to those who need it.²⁹³

There are also indications that the World Bank is prepared to undertake significant efforts as a partner in the fight against AIDS. James Wolfensohn, the President of the World Bank Group, has pledged that the World Bank is ready to work with the Security Council on a range of developmental assistance projects and human security issues to curb the pandemic:

We will be judged on whether we understand the nature of human security and sustainable development . . . Security develops from within societies. If we want to prevent violent

²⁸⁷ *Security Council Holds Debate*, *supra* note 30. Similarly, the World Bank has stated that a comprehensive view of sustainable development should have many goals, including raising per capita income, providing health service and educational opportunities, greater participation in public life, a clean environment, and intergenerational equity. *See 21st Century*, *supra* note 276.

²⁸⁸ *See Gore UN Remarks*, *supra* note 16.

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ *Id.*

²⁹² *See International Response*, *supra* note 22. "Because of the tremendous genetic diversity of HIV, one of the greatest challenges facing vaccine developers is to produce a vaccine that can protect against infection with diverse viral isolates. This avoids the need for many isolate-specific vaccines." *Id.*

²⁹³ *See Gore UN Remarks*, *supra* note 16. Ambassador Holbrooke believes that the international community is looking to the U.S. for leadership in the international effort to fight HIV/AIDS. *See Holbrooke Statement*, *supra* note 14. Holbrooke maintains U.S. national strengths (in science, in resources, and in international influence) can "help deliver a global good of unambiguous positive effect." *Id.*

conflict, we need a comprehensive, equitable, and inclusive approach to development. A culture of prevention needs to permeate our work. Security, empowerment and opportunity must be recognized as key to freedom from poverty—just as freedom from poverty must be recognized as key to security.²⁹⁴

Mr. Wolfensohn is also concerned about the paucity of current financial resources: "Every war needs a war chest, but that provided by the international community is woefully empty."²⁹⁵ Consequently, he has exhorted the international community to "raise more resources," and he has pledged that World Bank offices in Africa will "provide governments with the maximum available funding to create and implement programs."²⁹⁶ Recognizing that "AIDS and development are inextricably tied together," Mr. Wolfensohn promises that the World Bank will "mainstream AIDS" in all its work and he promises to back the commitment with increased funding and a long term partnership.²⁹⁷

Yet, as Ambassador Holbrooke observed, simply admitting that AIDS is a global problem is not enough: nations must also back words with deeds.²⁹⁸ While the amount required to fight AIDS is "relatively small," the cost of inaction will be exceedingly high.²⁹⁹ Despite the promises and the grand rhetoric, there remains a nagging sense in the South that the international community has the resources but lacks the political will and leadership to effectuate a Marshall Plan-style AIDS program.³⁰⁰ Nevertheless, Hasmy Agam of Malaysia suggests wealthier developed countries "should—out of enlightened self-interest, if not pure altruism—make available more resources" for the fight against AIDS, particularly to the affected African countries.³⁰¹

²⁹⁴ *Wolfensohn, supra* note 31, at 1.

²⁹⁵ *Id.*

²⁹⁶ *Id.* at 5.

²⁹⁷ *Id.*

²⁹⁸ *Holbrooke Statement, supra* note 14.

²⁹⁹ *Wolfensohn, supra* note 31, at 6.

³⁰⁰ *Security Council Holds Debate, supra* note 30, at 11. In fact, some speakers at the U.N. Security Council marveled at how concerted international effort was able to mobilize about \$600 billion to combat the Y2K threat, "a largely irrelevant threat," while the international community "laconically watched the exponential growth of the HIV epidemic." *Id.* (statement of Timothy Stamps, Zimbabwe Minister of Health).

³⁰¹ *Id.* (statement of Representative Hasmy Agam of Malaysia).

D. Internationalization of Health in the Age of the Virus

Traditional international law was largely unconcerned with economic relations between states and states recognized very few extra-territorial obligations.³⁰² Traditional international law was a web of customary rules of international behavior with respect to co-existence among sovereign and equal state actors in areas such as navigation, trade and rules of war. After World War II, international law has increasingly focused on the problem of development, including related issues of equity, morality and international justice.

Nevertheless, in the immediate post-War period, there was less interest in using international law to address global health problems, in part because successes in scientific advances against many infectious diseases may have given rise to some complacency.³⁰³ David P. Fidler observes that as a result of the current resurgence of infectious diseases, public health antipathy toward international law is changing.

Due to the fact that viruses do not need passports, public health is no longer just another matter essentially within the domestic jurisdiction of nations. The health of nations is a matter of global concern and warrants extraordinary global action as proposed in the HDF. The "globalization of public health" is increasing the importance of both international cooperation and international law.³⁰⁴ In addition, activists in the public health area are increasingly recognizing that international law can play a very important role.³⁰⁵ The internationalization of health concerns is giving rise to the need for greater cooperation between states and it is ushering in a rethinking of myopic conceptions of national interest.³⁰⁶ In a sense, the re-revised globalization of

³⁰² A. CASSESE, INTERNATIONAL LAW IN A DIVIDED WORLD 317-18 (1986).

³⁰³ David P. Fidler, *International Law and Global Public Health*, 48 KAN. L. REV. 1, 24 (1999) [hereinafter *Global Public Health*]. Fidler contends that the North's achievements in the battle against major infectious diseases at the beginning of the twentieth century gave rise to complacency, that in turn diminished the urgency of concerted international action to stave off looming pandemics: "Armed with advanced public health systems and arsenals of antimicrobials, developed states had neither a burning interest in, nor prominent international systemic problems with, infectious disease control. The commitment to the common rules of international health law and the common institutions in the form of international health organizations was shallow, particularly in the post-1945 period." *Id.* at 24, (citing David P. Fidler, *Microbialpolitik: Infectious Diseases and International Relations*, 14 AM. U. INT'L L. REV. 1, 26 (1998)).

³⁰⁴ *Id.* at 2.

³⁰⁵ *Id.*

³⁰⁶ *Id.* Fidler hopes to build on this momentum and he has proposed an international

public health policy is reminiscent of coordination in the nineteenth century to combat cholera and other infectious diseases.³⁰⁷ In the "battle" or "sacred crusade,"³⁰⁸ against this pandemic, humankind must acknowledge its "moral duty" and accept its "grave responsibility" to end the scourge and suffering of AIDS.³⁰⁹ Given the sheer scope of the pandemic it appears that isolated uncoordinated efforts to address the problem are doomed to failure.

Many believe the UN system is "uniquely placed to provide assistance," especially in terms of galvanizing and coordinating a much needed global plan of action.³¹⁰ Beating back the pandemic requires bold thinking calls for a program as grand as the "Marshall Plan" of the post-war era.³¹¹ As Patricia Durrant, Jamaica's representative to the UN, claims the Security Council should provide the "political and moral commitment necessary to obtain global financial and technical resources" needed to support an international partnership of governments, the UN, civil society, the private sector and the Bretton Woods institutions.³¹² It is critical that the international community mobilize the resources to fight the pandemic. The urgency of the situation

convention on infectious diseases. See generally David P. Fidler, *Return of the Fourth Horseman: Emerging Infectious Diseases and International Law*, 81 MINN. L. REV. 771, 863-67 (1997).

³⁰⁷ See Fidler, *Global Public Health*, *supra* note 303, at 16. Prior to the creation of the WHO, international law was a crucial "instrument for the international promotion of health concerns." *Id.* at 20. The WHO Constitution also reflects the "the perceived importance of international law and national law to WHO's public health mission." *Id.* at 21. Yet, the WHO has, by and large, neglected its legal powers and responsibilities, as evidenced by the fact that it has not yet adopted a single treaty to date on a matter within its competence. *Id.* at 21. Fidler observes that for about half a century after its founding (1945-1995) the World Health Organization (WHO) "neglected international law" and pursued an "isolated" non-legal approach, acting as if it were a "transnational Hippocratic society made up of physicians, medical scientists, and public health experts." *Id.* at 15-16. As a result, some charged that the WHO has "frustrated the full potential of its own "Health for all" campaign by not using its constitutional powers to encourage states to develop international law that details national obligations pursuant to the right to health. See *id.* at 22 (citing Allyn Lise Taylor, *Making the World Health Organization Work: A Legal Framework for Universal Access to the Conditions of Health*, 18 AM. J.L. & MED. 301, 326 (1992). WHO's personnel has historically consisted of physicians, medical scientists, and public health experts. This group produced "an ethos that looks at global health problems as medical-technical issues to be resolved by the application of the healing arts." See *Global Public Health*, *supra* note 303, at 22-23. This narrowly focused, non-political and largely inflexible "medical-technical ethos" failed to capture the interdisciplinary dimensions of global public health problems and it ignored the normative solutions of international law. *Id.* at 23.

³⁰⁸ *Gore UN Remarks*, *supra* note 16.

³⁰⁹ *Id.*

³¹⁰ *Security Council Holds Debate*, *supra* note 30, at 10-11.

³¹¹ *Id.* at 11.

³¹² *Id.* at 9.

mandates a large-scale multi-sectoral, multilevel approach exemplified by the HDF.

Many believe that the successful fight against AIDS is a precondition for African development and a key test of whether the international community is "serious about Africa's development and inclusion."³¹³ At the same time, the fight against AIDS is also a crucial test of how well the international community can come together to face up to the increasingly rapid pace of globalization.³¹⁴

The global AIDS pandemic, a morphologically variegated catastrophic event, has a myriad of causes, consequences and symptoms. Besides being a global health emergency, AIDS is increasingly a human rights issue, a socio-cultural problem, a trade issue, and, increasingly, the latest political football in the seemingly moribund North-South fracas. The African AIDS pandemic is also a problem of under-development, with HIV thriving on poverty and perpetuating chronic poverty. With the potpourri of causes, effects and manifestations, and remedies, the global AIDS pandemic rides alone, apart from the historic equestrian quartet. He is the Fifth One: *The Hybrid Horseman of the Apocalypse*.

³¹³ Wolfensohn, *supra* note 31, at 3.

³¹⁴ *Id.*

