

REINVIGORATING UNCTAD? COMMENTS ON THE EMINENT PERSONS' PANEL REPORT ON ENHANCING THE DEVELOPMENT ROLE AND IMPACT OF UNCTAD

SYNOPSIS

This South Centre Analytical Note responds to the Eminent Persons' Panel Report on "Enhancing the Development Role and Impact of UNCTAD" by highlighting both the positive and negative aspects of the Report that developing countries might wish to consider. The main focus is on ensuring that UNCTAD's role as the primary intergovernmental mechanism through which the integrated treatment of trade, development and related issues would be maintained and enhanced. UNCTAD's three "pillars" of strategic and appropriate development policy research and analysis, intergovernmental consensus-building, and technical cooperation and assistance must provide UNCTAD Member States, in particular developing countries, with the strategic policy research, sufficient policy space, and appropriate technical assistance that would be required to enable them, especially developing countries, to achieve their national development objectives.

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REINVIGORATING UNCTAD? COMMENTS ON THE EMINENT PERSONS' PANEL REPORT ON ENHANCING THE DEVELOPMENT ROLE AND IMPACT OF UNCTAD

I. Introduction

1. In October 2005, UNCTAD Secretary General Supachai Panitchpakdi set up a Panel of Eminent Persons, chaired by former President Enrique Cardoso of Brazil¹, to advise him in a personal capacity on how to enhance the developmental role of UNCTAD in light of the Bangkok Plan of Action and the Sao Paulo Consensus. In the course of its work, the Cardoso Panel interacted with delegations in Geneva and obtained input from various sources (including the South Centre's then-Chairman Boutros Boutros-Ghali). The Report of the Cardoso Panel was submitted to the UNCTAD Secretary General in June 2006.² The Report gave the UNCTAD Secretary-General twenty-one recommendations (see Annex I).
2. Since then, the Report has been the subject of intense intergovernmental discussions in the UNCTAD Trade and Development Board (TDB). As part of the outcomes of its 23rd special session in October 2006, the TDB stated that it "looks forward to commencing, before the end of the year, intergovernmental consultations which will include, inter alia, the Report of the Panel of Eminent Persons established by the Secretary-General of UNCTAD on possible ways of enhancing the development role and impact of UNCTAD, in the light of its mandate and in accordance with the agreed outcome under the section on strengthening the three pillars of UNCTAD in this document."³

II. Historical Context of UNCTAD's Institutional Evolution

3. UNCTAD is the primary agency of the United Nations for the integrated treatment of all trade and related development problems. In the past, UNCTAD has been the forum where issues related to trade, money, finance, external indebtedness, creation of export production capabilities, including industrialization, shipping, insurance, transfer of technology and the development of technological capabilities, restrictive business practices, regional integration groupings and economic co-operation among developing countries were discussed and international policies arrived at. It has been instrumental in helping shape a coherent framework for framing the development needs and aspirations of developing countries in the field of trade and development.

¹ The other members of the Panel were Gro Harlem Brundtland, Jagdish Bhagwati, Joaquim Alberto Chissano, Tarja Halonen, Yongtu Long, Benjamin Mkapa, and Lawrence Summers. The Chairman and the members of the Panel all served in their personal capacity.

² See UNCTAD/OSG/2006/1.

³ UNCTAD Trade and Development Board, *Agreed Outcome of the Mid-Term Review*, TD/B(S-XXIII)/7 (Vol. I), 11 October 2006, para. 48(a).

4. Developing countries were instrumental in setting up UNCTAD and continue to be actively engaged in its activities. This sense of ownership gives UNCTAD legitimacy from the point of view of the developing world that is unmatched in the international arena. At a time when various multilateral institutions are burdened by perceptions of being unrepresentative and non-reflective of developing country interests. Such legitimacy is a crucial asset for the developmental process as a whole since it could play a crucial role as a bridge between developed and developing countries in the debate on how to move forward on developmental issues.
5. UNCTAD's original functions, based on its charter, were as follows:⁴
 - 3.a. To promote international trade, especially with a view to accelerating economic development, particularly trade between countries at different stages of development, between developing countries and between countries with different systems of economic and social organization, taking into account the functions performed by existing international organizations
 - 3.b. To formulate principles and policies on international trade and related problems of economic development
 - 3.c. To make proposals for putting the said principles and policies into effect and to take such other steps within its competence as may be relevant to this end, having regard to differences in economic systems and stages of development
 - 3.d. Generally, to review and facilitate the co-ordination of activities of other institutions within the United Nations system in the field of international trade and related problems of economic development, and in this regard to cooperate with the General assembly and the Economic and Social Council with respect to the performance of their responsibilities for co-ordination under the Charter of the United Nations
 - 3.e. To initiate action, where appropriate, in cooperation with the competent organs of the United Nations for the negotiation and adoption of multilateral legal instruments in the field of trade, with due regard to the adequacy of existing organs of negotiation and without duplication of their activities
 - 3.f. To be available as a centre for harmonizing the trade and related development policies of Governments and regional economic groupings in pursuance of Article 1 of the Charter
 - 3.g. To deal with any matters within the scope of its competence
6. The original conception of UNCTAD was that it would serve as the primary arm of the United Nations and the international community, in coming up with an integrated approach to the interlinked issues of international trade, finance, and economic development, with the view of enhancing the participation of developing countries in the multilateral trading system under conditions that provide them with maximal developmental benefits. As such, UNCTAD was empowered to serve as a key international negotiating forum where principles, policies, programmes and activities could be agreed upon and adopted by the international community. UNCTAD was also intended to serve as a major

⁴ UNGA, Resolution 1995 (XIX), para. 3.

policy research and advise-generating institution in the UN system with respect to issues of trade, finance and development that would highlight and respond to the development needs and concerns of developing countries.

7. UNCTAD's Cartagena (1992) and Midrand (1996) Conferences trimmed its mandate and functions, and shifted its policy direction and inspiration away from its original remit and scope as reflected in the Final Act adopted at UNCTAD I in 1964 and in UNCTAD's institutional charter itself, UN General Assembly Resolution 1995 (XIX). UNCTAD has now been transformed from its original incarnation in several major respects, such as:

- It has lost its role as a primary international negotiating forum for the development of international rules and disciplines relating to trade, finance and development issues (e.g. the WTO is now the main multilateral negotiating forum for trade issues);
- There has been a progressive erosion of its capacity for research and analysis, in terms of the scope of the issues that it covers, its actual capacity to undertake research, and the orientation of its research. It can no longer put forward an overall integrated and comprehensive approach to development which used to be its hallmark.
- Its ability to provide alternative analyses and perspectives on trade, finance and development issues has become circumscribed in the extent to which it is able to take a systemic look at the existing world economic order and bring out its inequalities and imbalances and highlight alternative approaches;
- Its technical assistance activities have tended to focus on promoting developing countries' integration into the world economy under existing terms, rather than assisting developing countries in developing their own domestic strategic approaches to global integration so as to ensure that maximum developmental benefits are obtained. This shifted the emphasis from the external environment of development to domestic development problems (thereby increasing the influence of the IMF and the World Bank), and meant that UNCTAD's technical assistance activities now concentrate on the domestic policies of developing countries and what they should do domestically rather than on helping them build up capacity to address coherently the broader issues of systemic imbalances and inequalities that exist in the global economic system. UNCTAD's TA is donor-driven and is used by the donors to ensure that the beneficiary developing countries follow "correct" policies as seen from the donor's perspective;
- UNCTAD has also de-emphasized the role of governments and of policy measures in development, and emphasize the role of what was referred to as non-state actors (especially the private business sector). Primacy of place was accorded to the private sector, particularly trans-national corporations;

- UNCTAD's capacity to provide direct technical policy support to developing countries has also become much limited. UNCTAD currently provides the G-77 and China in Geneva with a small liaison unit and a small office for the G-77 and China-Geneva Chair.
 - UNCTAD's intergovernmental machinery and processes have also been downgraded. The conversion of the sessions of the Trade and Development Board (TDB) and those of its subsidiary bodies and expert groups, into seminars where experts from outside and agency representatives are invited to give lectures has diluted the negotiating and representative character of these bodies;
 - The number of the standing committees (now commissions) of UNCTAD where Member States could participate was reduced to half. The earlier separate standing committees on Commodities, Manufactures, Financing & Invisibles, Shipping, and Economic Cooperation among Developing countries were abolished. Among the three Commissions authorized to be set up, one was on "Enterprise, Business Facilitation and Development". A single Commission on Trade was set up which combined goods, services and commodities. Manufacturing was deleted from the vocabulary of UNCTAD, as was shipping. Finance did not figure autonomously, and the work on finance for development, including external debt, was whittled away. The main emphasis in the terms of reference of all the Commissions was on technical assistance. Services were confined to trade-related service infrastructure;
 - The number of operational Divisions in the Secretariat was reduced from nine to four, with the most significant change being the closing down of the Divisions on Finance, Manufactures, Commodities, Shipping and ECDC. In the terms of reference of the new Divisions, the emphasis was on domestic issues of development and on areas that lend themselves to the extension of technical assistance;
 - UNCTAD's ability to function as an organization has also been severely affected as a result of budget restructuring and cost-cutting. No other UN body has been subjected to a reduction in budget to the extent that UNCTAD was. Its budget and staff strength were severely reduced and consequently UNCTAD's core competencies have been virtually dismantled.
8. UNCTAD, however, continues to be of great relevance and importance to developing countries, which were instrumental in establishing the institution. Developing countries continue to see UNCTAD as the primary multilateral institution, both within and outside of the UN system, capable of providing an integrated treatment of all trade, development and related issues and challenges facing developing countries.

9. At a time when various multilateral institutions such as the WTO, the World Bank, and the IMF, are facing crises of institutional legitimacy stemming in large part from perceived and actual institutional control by developed countries in their respective governance mechanisms, UNCTAD's legitimacy as an international institution in which developing countries have a strong voice remains unquestioned.
10. The challenge to UNCTAD now is how to retransform, to reinvigorate itself, into becoming a more effective institution, capable of dealing effectively with the developmental issues from the past that continue to be relevant today and with new developmental issues that are now rising. The challenge is how to get UNCTAD right. This is the challenge that the Cardoso Panel Report must address.
11. For developing countries, initiatives with respect to strengthening the role of UNCTAD and getting it right must be gauged on the basis of the following key elements:
 - (i) UNCTAD's role as the primary UN agency dealing with the integrated treatment of trade, development and related issues through the provision of forward-thinking, innovative, and strategic development policy research, analyses, and advice and technical assistance must be maintained and strengthened;
 - (ii) the output of UNCTAD's intergovernmental processes must be made relevant and responsive to the development needs of developing countries through the development of internationally-agreed norms, principles or policies relating to international trade and development on the basis of UNCTAD's policy research work;
 - (iii) UNCTAD's technical assistance work must be relevant and responsive to the needs of those being assisted and implemented on the basis of the assistance requirements of the beneficiaries with significant national ownership over both the design and the output of such technical assistance. It must be demand-based and not supply-driven;
 - (iv) UNCTAD's contributions to the UN reform process must be with a view of enhancing UNCTAD's role in providing the UN system with solid policy research and analytical work on trade, development and related issues (including issues relating to the international financial system), ensuring complementarities, and enabling the UN system to deliver better on development.
12. The changing global economic context reflected in, for example, the changing geography of trade; the increased role of some major developed countries in the global economy; the need to accelerate the achievement by more developing countries of their respective development objectives (including the Millennium Development Goals); the recognition that the diversity of economic circumstances among countries will also require flexibility and

diversity in development policy approaches, will require that UNCTAD also have and show institutional flexibility, efficiency, effectiveness, and adaptability, while at the same time ensuring that its core institutional functions are further strengthened.

13. The Report of the Cardoso Panel is, therefore, timely in view of the need to reinvigorate UNCTAD and strengthen its ability to deliver on its core institutional mandate in promoting the development needs and objectives of developing countries.

III. Procedural Aspects Relating to the Intergovernmental Consideration of the Cardoso Panel Report

14. Formally, the UNCTAD Secretary-General heads⁵ the UNCTAD Secretariat, which in turn undertakes “the proper servicing of the Conference, the Board and its subsidiary bodies.”⁶ As such, the performance by the Secretary-General of his functions as the head of a service secretariat for UNCTAD should be on the basis of clear mandates coming from UNCTAD’s governing bodies – either the Conference or the TDB – including with respect to the preparation of Reports, studies or other documents.
15. The Cardoso Panel was initiated and commissioned by the UNCTAD Secretary-General. The panel members were selected in their personal capacity.
16. Under the legal architecture of UNCTAD’s charter, proposals “which would involve changes in the fundamental provisions”⁷ of UNGA Resolution 1995 (XIX) will need to undergo the process of intergovernmental “conciliation” as set out in Paragraph 25 of the UNCTAD charter. This means, in effect, that proposals relating to the adoption or implementation of the Cardoso Panel’s recommendations which would involve substantive changes in the UNCTAD charter will have to be discussed at the intergovernmental level and cannot be simply carried out as an administrative matter by the Secretary-General.
17. The TDB has authorized the commencement of intergovernmental consultations within UNCTAD to allow its intergovernmental machinery to “play its full role in contributing to the outcome of the UN reform process and in addressing its implications for UNCTAD.”⁸ These consultations will include taking as an input, inter alia, the Cardoso Panel’s Report. On 4 December 2006, the UNCTAD Secretary-General issued his reflections on the Panel’s recommendations.⁹

⁵ UNGA Resolution 1995 (XIX), para. 27.

⁶ Id., para. 26.

⁷ Id., para. 25(n).

⁸ UNCTAD Trade and Development Board, *Agreed Outcome of the Mid-Term Review*, TD/B(S-XXIII)/7 (Vol. I), 11 October 2006, para. 48(a)

⁹ See UNCTAD, Report of the UNCTAD Panel of Eminent Persons on “Enhancing the Development Role and Impact of UNCTD”: Reflections by the Secretary-General of UNCTAD on the Panel’s recommendations, TD/B/EX(40)/2, 4 December 2006.

18. In considering the context of the Cardoso Panel Report, other initiatives and intergovernmental processes need to be taken into account. These include, inter alia, the consideration by the UN General Assembly of the Report of the High Level Panel on System-Wide Coherence¹⁰ as well as the preparatory process for UNCTAD XII. The outcome of any intergovernmental consideration of the Report of the UN Secretary General's High Level Panel on System-Wide Coherence on UNCTAD will necessarily form part of the context for any consideration or discussion of UNCTAD reforms. This means, therefore, that any intergovernmental consideration of the Cardoso Panel's Report can be more logically undertaken only after the outcome of any intergovernmental consideration of the Coherence Panel's Report on UN system-wide coherence has concluded.

19. In addition, any discussion of the Cardoso Panel's Report should also be placed in the context of the preparatory process for UNCTAD XII. This will give UNCTAD's highest governing body, the Conference, the opportunity to fully discuss and explore the substantive ramifications on the institution of the Cardoso Panel's Report in the context of the future work programme of UNCTAD coming out of UNCTAD XII. In much the same way that form often determines the functions of a particular tool, reforming or reshaping UNCTAD's institutional structure must be done carefully and with full deliberation so that its essential functions as laid out in its fundamental charter are further enhanced and strengthened.

IV. Overview Comments: Positive Aspects of the Cardoso Panel Report

20. It is clear that UNCTAD needs to reinvigorate itself by looking back to its roots and understanding how its operations can be strengthened in today's context. Despite the difficulties that UNCTAD has faced, it continues to be relevant and important to developing countries. Hence, since the Cardoso Panel's Report is a major contribution to the debate about shaping UNCTAD's role, the positive aspects of the Report should be strengthened so that the final outcome of any discussion about UNCTAD's future is one that reinvigorates UNCTAD.

A. Strengthening UNCTAD's Policy Research and Analysis

21. At a time when other institutions such as the World Bank, the IMF, and the World Trade Organization are now often seen as the primary policy-setting agencies with respect to global economic governance, the Cardoso Panel Report highlights the positive track record of UNCTAD in fulfilling its

¹⁰ The Report was released to the Secretary General and the General Assembly on 9 November 2006. This study, which was called for in the Outcome Document adopted by global leaders at the 2005 World Summit in New York, is intended to lay the groundwork for a fundamental restructuring of the United Nations operational work, complementing other major reform initiatives currently under way at the United Nations, including the creation of a new Peacebuilding Commission, negotiations over the establishment of a new Human Rights Council and a proposal for comprehensive management reform.

mandate and explicitly reiterates its continued relevance and importance in international relations today.¹¹ The Report draws attention to the pioneering role the UNCTAD has played in the past in discussing and providing policy research, technical assistance, and intergovernmental outcomes on issues like trade in services, South- South trade, migration and commodity issues, all of which have become areas of prime importance today in the multilateral arena.

22. The Cardoso Panel Report does well in putting in perspective the reasons for UNCTAD's loss of status as the primary international organization dealing with trade and development question as a global level. The fact that UNCTAD was marginalized despite its record of producing first-rate policy analysis on development issues within its mandate and that it was excluded from shaping the international institutional framework that has evolved to address development issues in a globalizing world are clearly stated in the Report.¹² In addition the contribution of mission creep by the WTO, World Bank and the UNDP to the gradual marginalization of UNCTAD is also mentioned in the Report.¹³
23. To strengthen the message of UNCTAD's continued relevance as one of the primary global economic policy-setting institutions, the Report points out that much will depend on UNCTAD's continued ability to produce quality research and policy analysis on development issues. That is, in the words of the Report, "UNCTAD should be a think-tank on development issues ..."¹⁴
24. However, it must be stressed that the qualitative aspect of the research and policy analysis that UNCTAD produces must be assessed on the basis of the needs of UNCTAD's primary development constituency – the developing countries. This means that in carrying out the Report's recommendations with respect to strengthening UNCTAD's role as a development think-tank, UNCTAD's policy research and analysis agenda must be shaped and influenced by the issues that are deemed to be most important and relevant to the development of:
 - (i) an international trade, finance, and development policy environment and governance architecture that would address and be supportive of the individual development strategies of developing countries;
 - (ii) appropriate development policies and strategies that developing countries could undertake, individually or collectively, in the pursuit of their respective development objectives;
 - (iii) the policies, actions, or strategies that the international community, including developed countries, could undertake to support the development actions of developing countries.

¹¹ Cardoso Panel Report, para. 23.

¹² *Id.*, para. 19.

¹³ *Id.*, para. 18.

¹⁴ *Id.*, para. 23.

25. The Cardoso Panel Report has pointed to the fact that UNCTAD's research needs to "ahead of the curve" in its fields of competence, by addressing emerging and strategic development issues on the national and international agenda through its integrated approach."¹⁵ Thus the importance of intellectual and policy leadership by UNCTAD is highlighted. The Report explicitly demonstrates the need for an organization like UNCTAD in international affairs. The unequal effects of globalization, the draw backs of unfettered liberalization, the link between trade and development, and the unequal structure of the world economy have also been recognized both explicitly and implicitly by the Cardoso Panel Report. At a time when the dominant discourse is conspicuously silent on these issues, the Report's recommendations that UNCTAD's policy research and analysis should also address these issues is a very welcome development.

26. UNCTAD should once again become the global institutional focus for an integrated approach to international development cooperation and policy-making. Various sectoral or area-specific issues that are today debated in an isolated fashion in different organizations of the UN system should be pulled together by UNCTAD for analysis on an integrated basis. In addition to addressing the issues suggested in the Report¹⁶, reinvigorating UNCTAD's think-tank role in the context of its existing mandates from its charter, the Bangkok Plan of Action, the Sao Paulo Consensus, and the Agreed Outcome of the UNCTAD XI Mid-Term Review can be done through:

- Focusing on development and the requirements for sustained development in developing countries in all policy discussions taking place at UNCTAD
- Emphasizing growing global inequalities, looking for their root causes, and looking for viable alternative policy solutions that can be adopted to address these inequalities. These could include looking at the following issues:
 - Globalization in all its aspects and its impact on the development prospects of developing countries, especially LDCs
 - Operationalisation and reflection of the concept of economic development policy space
 - Harmonization of trade and development policy
 - Energy security, environmental sustainability, and development
 - Environment, trade, food, bio-safety, sustainability and the role of IPRs.
 - Provision and management of international public goods, resources of global commons (sea bed, space), international regulatory mechanisms for global commons, and provisioning of international public goods and services
 - Market manipulation and failures (including commodity issues)

¹⁵ Id., para. 46.

¹⁶ See id., para. 24.

- Systemic imbalances and inequities in the international trading and financial systems that adversely impact on the development prospects of developing countries
 - New and emerging issues relating to international trade and development, such as technology transfer
 - The operationalisation of the principle of Special and Differential Treatment (S&DT) in international trade and financial relations
 - Global financial flows and transfers, the international financial architecture, and their impact on the development prospects of developing countries
- Addressing pressing international concerns of developing countries, especially commodity problems, financial and natural resource outflows, external indebtedness, agricultural protectionism, non-tariff barriers, technological gaps and various other asymmetries, as well as looking issues relating to the role that South-South regional integration and domestic industrial growth policies play in development.
 - Capitalizing on its unique mandate combining trade, finance, technology and development to explicitly analyze and discuss the inter-relationship between trade, finance, technology and development.
27. While sector- or issue-specific policy research and analysis are useful and important to developing countries, it is just as important that such research and analysis be also with respect to the global economic imbalances that affect the national development prospects of developing countries. This means, as the Report recognizes both explicitly and implicitly, that UNCTAD has to be able to perform “out of the box” policy research and analysis and provide “alternatives” thinking on global systemic issues (as well as with respect to national development problems) so that it can propose global policy solutions that can address the root causes of global development imbalances rather than simply address the symptoms of development failures.

B. Strengthening the Relevance and Role of UNCTAD’s Intergovernmental Processes as Policy-Setting Fora

28. Over the past few years, the intergovernmental machinery of UNCTAD has been marred by confrontations among UNCTAD Member States arising from differing approaches to development issues. Thus in many ways the intergovernmental process has become the weakest link among the three pillars. Any effort to reinvigorate UNCTAD will have to devote a lot of focus on strengthening the intergovernmental process. The Report rightly recognizes the seriousness of this problem and has provided some recommendations to reinvigorate UNCTAD’s intergovernmental process.
29. The Report recognizes that the work of the Secretariat is guided by the overarching and comprehensive mandates from the quadrennial conferences of UNCTAD. In the recent past, the outcomes of UNCTAD’s intergovernmental

machinery have often focused on the creation of a plan of action addressed to the Secretariat rather than policy recommendations or norms addressed to and to be used by Member States. It should be noted, however, that UNCTAD is mandated by its charter to function as an intergovernmental negotiating forum with respect to trade, finance, and other related development issues. Hence, the changes in the past that have tended to lessen the norm and policy-setting nature of UNCTAD's intergovernmental processes have moved UNCTAD away from one of its core institutional functions.

30. The Report rightly suggests that UNCTAD's intergovernmental processes should be made more constructive and relevant to the development needs of its Member States, especially developing countries.¹⁷ UNCTAD should be able to provide positive, relevant and practical policy inputs to national policy formulation and international rule-making processes. The Report has come up with a four staged synergistic approach that clearly identifies the role of UNCTAD's intergovernmental machinery with respect the three pillars of UNCTAD. The underlying idea behind this approach builds upon the synergy between research and analysis, technical assistance and intergovernmental consensus building as envisioned in the founding principles of UNCTAD.
31. The Report also points out that the regionally-defined Group-based system (i.e. the groups defined in UNGA Resolution 1995 (XIX)), to wit: Group A – developing countries in Asia and Africa; Group B – Western Europe, Japan, US, Australia and New Zealand; Group C – Latin America and Caribbean; and Group D – Eastern Europe and former USSR) through which UNCTAD Member States formally interact may indeed no longer suffice to reflect the wide range of views and perspectives that different countries within each regional group may have. But the concept and practice of Member States interacting in UNCTAD meetings on the basis of informal groupings or coalitions based on common interests still has practical value. Any reform in the Group-based system should not constrain Member States from forming or joining informal or formal groupings that they feel have the ability to represent their interests. For developing countries, for example, the collective negotiating strength stemming from having common positions through the mechanism of the G-77 and China has been instrumental in ensuring that they have a full and fair voice and representation in the intergovernmental processes of UNCTAD. This is similar to what is happening in the WTO where the G-20, G-33, ACP, African Group, NAMA-11, the Cotton-4, LDCs, and other similar developing country groupings have made strong inputs into the negotiating process and outcomes. Such groupings, defined by common interests, should continue to play a major role in UNCTAD's intergovernmental processes.
32. Building on the Report's implication that UNCTAD's intergovernmental work be made more practical, pragmatic, and relevant to development realities "on the ground", reinvigorating the policy and norm-setting role of UNCTAD's intergovernmental machinery would require:

¹⁷ Id., see para. 52.

- Utilizing UNCTAD's mechanisms as the ideal arena for finding *common but differentiated* policy solutions and approaches to global systemic problems. Today, international issues have become more inter-related and hence more complex than before. Solutions to such complex issues cannot be applied uniformly to all countries and all situations. They call for the exploration of alternative ways, development of alternative approaches and strategies, and different phasing and sequencing of implementation. This could involve negotiating soft laws and rule-making on issues relevant to trade and development.
- Pushing for rule-making on economic development issues in UNCTAD. Among the items which can be taken up for developing "soft law" instruments in UNCTAD are conduct of trans-national corporations, transfer of technology, and debt and finance for development. With respect to "hard law" legal instruments, UNCTAD may explore the possibility of negotiating market regulating agreements on some of the commodities which are subject to severe and frequent price fluctuations as well as decline in prices.
- Maintaining UNCTAD's existing commissions. New commissions to deal specifically with commodity issues, finance (as distinct from investment), and industrial policy should be created to revive UNCTAD's scope for soft law policy-making in these areas. The recommendation of the TDB in paragraph 32(g) of the Agreed Outcome of the UNCTAD XI Mid-Term Review regarding the creation of a Commission on Globalization and Systemic Issues should also be favorably considered.
- Making improvements in the relevance and utility of UNCTAD's inter-governmental process. The distortions that have been introduced, at the behest of major powers, in the procedures of the inter-governmental machinery of UNCTAD, diluting their negotiating function, must be removed. In this regard, the sessions of the TDB, its subsidiary bodies, and its expert groups should ideally be focused on the production of negotiated consensual outcome documents that would provide clear policy conclusions and associated soft or hard law instruments designed to implement and reflect such conclusions, and provide the UNCTAD Secretariat with clear policy guidelines and mandates to require it to undertake work on its three pillars on issues of interest especially to developing countries.

C. Highlighting the Relevance of UNCTAD's Technical Assistance for Development

33. The Report recognizes that given UNCTAD's limited resources, and the possibility of overlapping with organizations better suited to deliver technical assistance (TA), UNCTAD's TA programme must be consolidated and

focused drawing upon its research and analysis, and comparative advantage. The Report rightly states that the comparative advantage of UNCTAD in TA lies in “technical assistance in economic policy related matters and its integrated approach to the delivery of technical assistance.”

34. In addition, the Report reiterates that TA must be demand driven. Most importantly the fact that technical cooperation activities must be commensurate and consistent with the programme priorities as identified in the São Paulo Consensus is highlighted. Another crucial issue that the Report touched upon is the funding of UNCTAD’s TA activities. Secure, stable and adequate ways to finance TA has to be explored, including non-traditional sources of funding like regional development banks, international organizations and the private sector etc. But more importantly, UNCTAD’s TA pillar should be financed out of the regular budget, while voluntary contributions from developed as well as developing countries should form an integral part of the overall resources available to UNCTAD for technical cooperation.
35. To further strengthen the Report’s recommendations above, UNCTAD should ensure that carrying out its TA pillar does not come at the cost of its negotiating or consensus-building role and its research and analysis work. UNCTAD’s TA should focus on helping anchor developing countries’ positions in trade organizations and financial institutions. This could involve strengthening its capacity to provide policy research support, technical advice, and logistical support to developing countries in issue areas of its competence (such as in the GSTP negotiations, LDCs and landlocked countries, etc.). UNCTAD should also substantively backstop and provide the forum to developing countries for discussing and elaborating among themselves their common positions on issues under negotiation in the WTO, World Bank, IMF, WIPO, etc.
36. The policy-oriented TA of UNCTAD should include advice in the formulation of policies relevant to trade, development and related issues (including looking at alternative policy approaches for national, regional and global economic development). This could include advice in the formulation of trade, debt, finance and other development-related macro- and micro-economic policies that would focus on maximizing flexibilities in existing international rules or employ to the maximum extent possible existing development policy space. UNCTAD should ensure that the “aid for trade” discussion does not become the means for inducing developing countries to undertake trade liberalization commitments whose costs are higher than the gains. Neither should “aid for trade” become a substitute for work that needs to be done in addressing the systemic imbalances that marginalize developing countries in the global trading system.
37. UNCTAD’s technical assistance funding base should be diversified and, if possible, incorporated into its regular budget. An increased dependence on a few donors has enormous implications on the independence of the institution as a whole and the policy thrust of the technical assistance or policy advice

being given. The suggestion that such a body could play the role of a central body for fundraising is useful.

D. Ensuring UNCTAD's Contributions to the UN Reform Process

38. The Report rightly recognizes that UNCTAD is the focal point within the United Nations System for the integrated treatment of interrelated development issues of trade, investment, technology and finance. As such, the Report makes the crucial link between the reform of UNCTAD and the larger process of United Nations reform. UNCTAD is a subsidiary body of the United Nations General Assembly and not a specialized agency. Therefore the process of larger United Nations reform has special relevance to the future of UNCTAD, and such reform “should strengthen, not weaken, the development work of the United Nations.”¹⁸
39. It points out, rightly, that “in the context of UN reform. UNCTAD should stand as a distinct entity, taking the lead as the system’s think tank for an integrated treatment of interrelated development issues of trade, investment, technology and finance.”¹⁹ In addition the Report makes the crucial point that a clustering or regrouping of UN system wide activities under the broad categories of development, environment and humanitarian assistance may not be a good way of dealing with core UNCTAD issues.²⁰
40. The Report repeatedly highlights the fact that various organizations have been encroaching on the mandate of UNCTAD – i.e. there has been an increasing pattern of “mission creep”. Particular note is made of the potential for overlap since UNDP is entering the field of trade policy analysis, and the Report points out that this is not a welcome development. The Report suggests that the problem of mission creep among the various UN agencies could be partly addressed by a compact signed by heads of all UN agencies to stick to core competencies of their respective organizations, and the consolidating a registry of mandates of all UN organizations and specialized agencies are extremely useful mechanisms which could play a role in protecting UNCTAD’s mandate from encroachment.
41. It also recognizes the importance of strategic positioning of UNCTAD as an organization to ensure that it is not overshadowed by the complex web of agencies and organizations that make up the UN system. A strong case is made for the strategic positioning of the organization within the UN system based on (a) comparative advantages; (b) differentiation and complementarity; and (c) strategic and catalytic interventions.
42. This approach recognizes the broadness of UNCTAD’s mandate while at the same time helps harness the resources of the organization for maximum impact. Thus the Report states that “UNCTAD’s comparative advantages lie

¹⁸ Id., para. 31.

¹⁹ Id., para. 32.

²⁰ Id., para. 31.

in several areas: its technical excellence in policy analysis and policy advocacy; its unique information and data capacities at the global level; its convening power in international consensus building; and its track record in several specialized areas of technical assistance.”²¹ The Report goes on to state that “UNCTAD's focus should be on the areas of its core competence, namely, trade, investment, technology, finance and the cross-cutting issues of South-South cooperation, LDCs and Africa”²².

43. Strengthening its “core competencies” should be focused on providing an integrated and comprehensive treatment of trade, development and related issues, especially as these affect developing countries. This may require ensuring the complementarity of approaches with other international organizations, but such complementarity should not prevent UNCTAD working on issues that other organizations may already be working on if such work would be required for UNCTAD to carry out its primary mandate.
44. The Report’s recommendation of increased involvement by stakeholders is very welcome. Civil society and the private sector, especially from developing countries play an important role in the developmental process. The Report’s recommendation that in light of UNCTAD’s direct link to the field, increased engagement with grassroots civil society is desirable is especially pertinent. At the same time while calling for increasing engagement with civil society and the private sector, the Report does take care to highlight the fact that UNCTAD is primarily an intergovernmental forum and thus a careful balance has to be struck.

V. Overview Comments: Notes on Other Aspects of the Cardoso Panel Report

45. The twenty-one (21) recommendations of the Cardoso Panel’s Report can be clustered into several key themes that, in themselves, give a clear overview of the direction in which the Cardoso Panel foresees that reforms of UNCTAD as an institution will take.
46. These are:

On policy research and analysis:

- Focus policy research and analysis to “pragmatic solutions” on “key emerging issues”
- Improve UNCTAD’s exposure to thinking from external development stakeholders (especially from developing countries)

On consensus-building and the intergovernmental process:

²¹ Id., para. 33(a).

²² Id., para. 33(b).

- Change UNCTAD’s intergovernmental mechanisms and processes to make them more efficient and focused on “pragmatic solutions”
- Rationalize UNCTAD’s commissions by further reducing its commissions from three to two

On technical assistance:

- Enhance UNCTAD’s ability to engage in and provide technical assistance

On internal management and external coordination:

- Focus on “core competencies” and avoid duplication of work with other agencies
- Strengthen internal “vertical and horizontal coordination” to ensure synergy among UNCTAD’s three pillars and responsiveness to developing country needs

47. In general, unless the original mandate of UNCTAD is fully factored into the future of UNCTAD and unless the positive aspects of the Cardoso Panel Report are focused on and further strengthened, the recommendations of the Report could have the overall impact of further reducing the ability of UNCTAD to function as the UN’s primary trade and development policy research institution fully capable of giving a systemic, global, integrated and comprehensive treatment to trade, development and related issues (especially insofar as these affect developing countries).

48. Systemic global imbalances, however, continue to exist and will continue to dominate the development futures of developing countries. Therefore, UNCTAD needs to have the mandate and the ability to propose systemic global solutions for such imbalances through its work.

49. The discussion below tries to point out some aspects of the Cardoso Panel Report that UNCTAD Member States might wish to consider carefully so that UNCTAD’s mandates and functions will not be adversely affected or weakened.

A. On Policy Research and Analysis

50. A “pragmatic solution” normally seeks to address and respond to a specific perceived developmental problem in the immediate to short-term. In practice, it is a “solution” that treats the symptoms rather than one that addresses underlying global systemic power imbalances. While addressing immediate and short-term problems is important and necessary, UNCTAD’s intergovernmental mechanisms and processes must also be capable of supplying it with outcomes that provides a commonly agreed multilateral perspective or analysis on global systemic problems and the global policy solutions that need to be undertaken to address such problems.

51. Keeping in perspective the already debilitated capacity of UNCTAD to undertake broad, systemic, and integrated policy research and analysis of the development problems and challenges that developing countries face, it is important that this capacity is not further diminished.
52. It is not clear what the Cardoso Panel's Report meant by "marginal publications" that should be dropped. UNCTAD should have flexibility in entering into new areas of research which may result in new publications. The development of "flagship" research products are the result of years of work, in many cases on the basis of a preliminary set or series of publications that do not necessarily have "flagship" status. Thus care must be taken as to what sort of publications are to be limited.
53. In addition, care must also be taken to ensure that UNCTAD's intellectual independence with respect to its policy research and analytical conclusions would not be impaired or affected by any external consultative body.

B. On UNCTAD's Intergovernmental Mechanisms

54. The significance of UNCTAD's charter-mandated function as an intergovernmental negotiating forum cannot be over-emphasized. Under its mandate, UNCTAD should be capable of negotiating legally binding hard or soft law treaty instruments, principles, policies, norms, or rules to govern State and non-State behavior with respect to trade, finance, and other related development issues. This important mandate would be compromised were UNCTAD to focus only on "pragmatic solutions."
55. The Report does not fully capture the depth and complexity of the intergovernmental process in UNCTAD. It is the intergovernmental process that gives a sense of ownership to the developing countries. Therefore it is not really clear what is meant by "the value of outcomes should not be judged by their format". It is through these intergovernmental mechanisms that direction is given to UNCTAD's work.
56. The Conference is the highest level of intergovernmental machinery in the UNCTAD. It is a political process which involves arduous multilateral negotiations. Thus there are limits to which preparation time can be shortened. The Report argues that a biennial conference would increase the engagement of ministers from line ministries. This may not necessarily work out in practice. Delegations to previous quadrennial UNCTAD conferences have consisted of ministers with diverse portfolios. In addition there are other intergovernmental mechanisms like the high level segment to ensure participation at a high level from Member States. Keeping this in mind, the current system of a Conference every four years with Mid Term reviews and meetings of the Trade and Development board seem to be currently satisfactory.

57. The Report's recommendation with respect to the rationalization of UNCTAD's commissions must also be seen from a historical institutional perspective. Limits to UNCTAD's independence and institutional remit in the past had been accompanied by reductions in the number of its commissions that allowed it to cover a wide range of issues. The original six committees (now the commissions) that UNCTAD had when it was set up in 1964 were reduced to the present three as a result of the Midrand and Cartagena conferences. Such an exercise may have less to do with improving operational efficiency and more to do with further limiting UNCTAD's institutional remit with respect to trade, development and related issues that are of global and systemic importance to developing countries.
58. Therefore, with regard to rationalization of commissions care must be taken to ensure that in the process of transferring issues dealt with by the current enterprise commission, no critical issues are left out.

C. On Technical Assistance

59. Technical assistance is not what UNCTAD is primarily about, although it is an important component of UNCTAD's work. UNCTAD's primary role under its charter is to serve as a development policy research and policy formulating institution that looks at and addresses developing country challenges in the global economic system.
60. Recommendations that would try to increase UNCTAD's technical assistance activities along current lines may further accelerate UNCTAD's shift away from providing developing countries with development policy advice and policy solutions towards becoming a technical assistance agency. For example, UNCTAD is not well-equipped to provide country-level technical assistance on a sustained basis because, unlike other UN agencies such as UNDP, it does not have country offices.

D. On Internal Management and External Coordination

61. Any changes in UNCTAD's internal management and external coordination mechanisms should be done with the objective of ensuring that UNCTAD continues to perform its key function of providing an integrated approach to trade and development issues.
62. Conceptually, complementarity and non-duplication of work among international organizations would be good. However, many of the agencies and institutions were set up by the UN to address specific issues and problems that have arisen and their operations continue to be relevant. In the case of UNCTAD, its mandate requires it to address issues that may or may not be covered by the mandates of other organizations. UNCTAD is supposed to be the UN General Assembly's dedicated agency for undertaking a comprehensive and integrated approach to the problems associated with trade and related issues in connection with the development of developing countries. UNCTAD's analytical remit, therefore, necessarily has to be broad.

63. But the Report's recommendations, if taken the wrong way, could require UNCTAD to further minimize or decrease its ability to undertake initiatives that would allow it to develop international principles, policies, norms, or rules with respect to issues that could be arguably developed in other international forums (such as the WTO with respect to trade, the World Bank/IMF with respect to finance policy, etc.).
64. This will make it more difficult for UNCTAD to carry out its mandated functions as the UN General Assembly's primary institutional arm for the integrated consideration and development of international principles and policies on trade and related development issues under its charter. It will effectively result in the cession of primacy of place with respect to global economic governance and policy-making to the WTO, the World Bank and IMF, rather than to the United Nations through UNCTAD.
65. Hence, while complementarity and non-duplication of work are important considerations for UNCTAD, these considerations should not be interpreted as limiting UNCTAD's ability to undertake broad analyses and policy development work.
66. UNCTAD is primarily a body for cutting edge developmental research. Development being a multifaceted concept encompassing a broad range of issues, there is bound to be differences in approach among different agencies. UNCTAD, in its role as a think tank, should be open to, take advantage of, or come up with new, alternative and innovative policy ideas and solutions. A strong internal coordination mechanism, coupled with mechanisms that would allow UNCTAD to respond quickly to specific issues as they arise, are important suggestions of the Report and need to be acted upon.
67. The utility of UNCTAD to Member States, developing countries in particular, would be strengthened if its work on all three pillars – research and analysis, consensus-building, and technical assistance – is timely and relevant to the issues that its constituencies need to address. However, care must be taken to ensure that the creation of the "rapid response" or "strategic policy advisory" teams do not adversely affect the ability of UNCTAD's divisions to carry out *strategic* policy research and analysis as their primary functions.

VI. Conclusion

A. Summary of South Centre Comments on the Cardoso Panel Report

68. In summarizing and concluding the South Centre's comments on the Cardoso Panel Report, the following points should be recalled:
 - (i) The challenge to UNCTAD is how to reinvigorate itself into becoming a more effective institution, capable of dealing effectively with the developmental issues from the past that continue to be relevant today and

with new developmental issues that are now rising. The challenge is how to get UNCTAD right;

- (ii) Any discussion of the Cardoso Panel Report must take into account other initiatives and intergovernmental processes (such as UNCTAD XII, the Review Conference of UNFfD, the consideration of the Coherence Panel's Report on UN system-wide coherence), and should also be placed in the context of the preparatory process for UNCTAD XII;
- (iii) As a major contribution to the debate about the future role of UNCTAD, the positive aspects of the Report should be strengthened as discussed in this paper so that the final outcome of any discussion about UNCTAD's future is one that reinvigorates UNCTAD;
- (iv) UNCTAD's policy research and analysis agenda must be shaped and influenced by the issues that are deemed to be most important and relevant to the development of an international policy environment that is supportive of and conducive to the development of developing countries. It is important that this capacity and intellectual independence is not further diminished nor be impaired or affected by any external consultative body;
- (v) UNCTAD should once again become the global institutional focus for an integrated approach to international development cooperation and policy-making, especially with respect to policy issue areas within UNCTAD's remit (such as trade, finance, debt, commodities, etc.) relating to the global economic imbalances affecting the national development prospects of developing countries. UNCTAD has to do "out of the box" policy research and analysis and provide "alternatives" thinking on global systemic issues (as well as with respect to national development problems) so that it can propose global policy solutions to address the root causes of global development imbalances rather than the symptoms of development failures;
- (vi) Reinvigorating the policy and norm-setting role of UNCTAD's intergovernmental machinery would require:
 - Utilizing UNCTAD's mechanisms as the ideal arena for finding *common but differentiated* policy solutions and approaches to global systemic problems;
 - Pushing for rule-making on economic development issues within UNCTAD's competence;
 - Maintaining UNCTAD's current commissions and creating a new Commission on Globalization and Systemic Issues. Limits to UNCTAD's independence and institutional remit in the past had been accompanied by reductions in the number of its commissions that allowed it to cover a wide range of issues. Hence, in the rationalization of UNCTAD's commissions, care must be taken to ensure that in the

process of transferring issues dealt with by the current enterprise commission, no critical issues are left out;

- Making improvements in the relevance and utility of UNCTAD's inter-governmental process by producing negotiated outcomes that provide clear policy conclusions and associated soft or hard law instruments designed to implement and reflect such conclusions, and provide the UNCTAD Secretariat with clear policy guidelines and mandates to require it to undertake work on its three pillars on issues of interest especially to developing countries;
- (vii) UNCTAD's intergovernmental process – especially the Conference - is a political process which involves arduous multilateral negotiations. Sufficient time will be necessary and should be provided in terms of the preparatory period for conferences so as to allow for adequate preparation, participation, and discussion by Member States. Thus there are limits to which preparation time can be shortened and hence recommendations for such shortening should be considered cautiously;
- (viii) UNCTAD's TA should focus on helping to anchor developing countries' positions in trade negotiating fora (such as the WTO and regional trade arrangements) and financial institutions (such as the Bretton Woods institutions). It should strengthen its capacity to provide policy research support, technical advice, and logistical support to developing countries in issue areas of its competence (such as in the GSTP negotiations, LDCs and landlocked countries, etc.), and substantively backstop and provide the forum to developing countries to discuss and elaborate among themselves their common positions on issues under negotiation in the WTO, World Bank, IMF, WIPO, and regional trade negotiations such as the ACP-EU negotiations on Economic Partnership Agreements, ASEAN with non-ASEAN partners, the FTAA, etc.;
- (ix) The policy-oriented TA of UNCTAD should include advice in the formulation of policies relevant to trade, development and related issues (including looking at alternative policy approaches for national, regional and global economic development) that would focus on maximizing flexibilities in existing international rules or employ to the maximum extent possible existing development policy space;
- (x) UNCTAD's technical assistance funding base should be diversified and substantially incorporated into its regular budget;
- (xi) While ensuring the complementarity of approaches with other international organizations, UNCTAD should continue to work on issues that other organizations may already be working on if such work is needed to allow UNCTAD to approach trade, development and related issues in an integrated manner;

- (xii) The original mandate of UNCTAD must be fully factored into the future of UNCTAD so that the recommendations of the Report will not have the overall impact of further reducing weakening UNCTAD.

B. Considerations for the Cardoso Panel Report: “Getting UNCTAD Right” at UNCTAD XII

69. UNCTAD has the potential, the experience, and the mandate to be a viable, strategic, and reinvigorated multilateral institution that helps developing countries. In particular, UNCTAD should be at the forefront of international organizations in helping developing countries address in a strategic manner the challenges of a rapidly changing world in order to ensure that their peoples, the majority of the world’s poor, achieve standards of living reflective of human dignity, economic equity, and ecological sustainability.
70. The recommendations of the Cardoso Panel, *if done right*, are important contributions to enhancing the utility and relevance of UNCTAD to promoting the development prospects of developing countries and thereby creating a better global future for all.
71. Hence, a more nuanced and cautious approach to the Cardoso Panel Report is needed, keeping in mind that UNCTAD XII will be held in Ghana in 2008, and that initiatives are also under way with respect to the broader UN reform process. In addition UNCTAD has a host of intergovernmental mechanisms to draw upon expertise from civil society, academia, the private sector and government. These too must be drawn into the debate on the future of UNCTAD.
72. The Cardoso Panel Report is but one of the many inputs that Member States will need to look at and sift through in any future discussions regarding UNCTAD reform. In particular, the reflections of the UNCTAD Secretary-General with respect to the process, context, and content of the Report should also be carefully considered.²³ Papers and analyses from other organizations interested in the work of UNCTAD could also be referred. UNCTAD also needs to look back to its founding principles under its charter and learn from its history in order for it to move forward to a reinvigorated institutional future.
73. Organizations take years to build up and similarly reform is a slow process. In light of the critical role that UNCTAD fulfils and its great importance to developing countries, the Cardoso Panel’s Report’s implications and potential impacts will need to be considered in a deliberate way. In particular, it should serve as a useful springboard, together with other contributions from other quarters and from UNCTAD Member States on UNCTAD reform, for discussions during the preparatory process or UNCTAD XII on how to make

²³ See UNCTAD, Report of the UNCTAD Panel of Eminent Persons on “Enhancing the Development Role and Impact of UNCTAD”: Reflections by the Secretary-General of UNCTAD on the Panel’s recommendations, TD/B/EX(40)/2, 4 December 2006.

sure that the outcome of UNCTAD XII will get it right as far as the future of UNCTAD is concerned.

74. UNCTAD XII, and with it the discussions on UNCTAD reform, must get the vision, the context, the process, the substance, and the outcome right. Discussions over the Cardoso Panel Report must get it right for UNCTAD.
75. UNCTAD XII will be a watershed Conference for the organization. In the context of initiatives relating to UN reform, UNCTAD reform, the review of the international financial architecture through the UNFfD review process, the possibility of the recommencement of the WTO negotiations, and the changing geography and patterns of trade and economic growth globally, UNCTAD XII carries within it the potential of reinvigorating and revitalizing UNCTAD as among the key international institutions that will shape our global future.
76. The Cardoso Panel Report, the UNCTAD Secretary-General's reflections thereon, UNCTAD Member States' own contributions to the debate, and the input of other major development stakeholders interested in the future role of UNCTAD, can all key roles in reinvigorating UNCTAD. Member States should hence focus on those aspects of the Report, as well as the other input mentioned above that are relevant to the process of determining UNCTAD's future, that would strengthen and enhance UNCTAD's ability to serve as:
 - (i) a key source for alternative and "ahead of the curve" strategic development policy research and analyses, especially for developing countries;
 - (ii) a primary forum for multilateral North-South intergovernmental dialogue and consensus-building leading to policy-setting and rule-making, with respect to both soft and hard law, on global trade, finance, and related development issues; and
 - (iii) a mechanism through which developing and developed countries can provide technical assistance and technical cooperation to enhance development outcomes.
77. UNCTAD's reinvigoration will allow it to play an important role in shaping the world to come, together with the rest of the UN system, the family of international organizations, Member States, and the broader global community of peoples. It is therefore important that any changes in how UNCTAD operates, its implementation of its mandates, the very wording of its mandates, will be changes that affect UNCTAD positively so that it can be better placed to support the efforts of developing countries and other UNCTAD Member States to create a better, more symmetrical and equitable world for their own peoples and for the global community as a whole.

READERSHIP SURVEY QUESTIONNAIRE
 South Centre Analytical Note

REINVIGORATING UNCTAD?
COMMENTS ON THE EMINENT PERSONS' PANEL REPORT ON ENHANCING THE DEVELOPMENT ROLE AND IMPACT OF UNCTAD

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