Breath of fresh air

Dr. Parvez Hassan welcomes the Global Pact for the Environment

The environment in Pakistan is under serious stress. There are no two opinions on this. Our public waters are polluted, the air in urban areas is contaminated, our forests and wildlife under threat, urban solid waste disposal, particularly hospital waste, remains hazardous to public health, and urbanization and industrialization are taking place in complete disregard of environmental considerations. These concerns continue to be ignored in the implementation of our national policies and actions.

The National Climate Change Policy acknowledges Pakistan's vulnerability to climate change threats. They include extreme weather events, erratic monsoon rains causing floods and droughts, projected recession of the Hindu Kush Karakoram Himalayas glaciers due to global warming threatening unmanageable water inflows into the Indus River System, rising temperatures resulting in enhanced heat and water-stressed conditions, a further decrease in the scanty forest cover, and the threat to the coastal areas due to the projected sea level rise. These are major security concerns for Pakistan, particularly water scarcity, security and energy security. The policy is supported by a time-bound framework for implementation, but it is lagging behind.

Legislative initiatives through environmental ordinances and environmental protection agencies have been, by and large, ineffective because of a lack of implementation. Judicial interventions have been somewhat more effective in Pakistan. The superior courts have stepped in to support environmental causes in their constitutional jurisdiction to protect fundamental rights. The creation of the Climate Change Commission and the Haurbara Bastard Commission, for example, were examples of the Lahore High Court handling public interest issues.

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The courts in Pakistan have been helped, in fact, in developments on environmental law and principles at the international level. The groundbreaking result in the Supreme Court decision in the Shehla Zia case in 1994, declaring the right to the environment as included in the constitutionally protected Fundamental Rights to Life was enabled by the Precautionary Principle in the 1992 Rio Declaration on Environment and Development. The Shehla Zia case was filed against WAPDA to halt the construction of a grid station near a residential area. The judgment was given in favour of the citizens and became a landmark decision in environmental law. It is in that perspective that the environmentalists in Pakistan should welcome the most recent adoption in Paris of the Global Pact on the Environment.

I was at the Sorbonne in Paris on June 24, which for all of us and for environmentalists all over the world, was a day of pride and renewed hope. I was there in my capacity as former Secretary General of the United Nations, Ban Ki-moon, former U.N. Envoy on Climate Change, Mary Robinson, and former Governor of California, Arnold Schwarzenegger, were there, too. President Emmanuel Macron declared his dedication to "Make Our Planet Great Again" (an obvious reference to Trump's "Make America Great Again") and announced his support for the Global Pact of the Environment that 30 of us experts invited by the French Government had adopted following a preparatory process over a few months. It had involved consultations with more than 150 experts from 54 countries. We met for the final deliberations on June 13 at the Constitutional Council of France. The final meeting was chaired by the president of the Constitutional Council of the French Republic and the former president of the Conference of the Parties (COP 21), Laurent Fabius, who had earlier successfully steered the Paris Agreement on Climate Change, 2015. Fabius, a former foreign minister, was, in fact, the moving spirit behind the Global Pact for the Environment.

The pact seeks to protect the human right to a clean and healthy environment. The aim is to see it become an international treaty to be signed in November in Paris. It comes in the wake of the Paris Accord signed in 2015 by 196 nations to reduce greenhouse gases and combat global warming. In particular, the pact's goal is a legally binding treaty under which "states can be brought to justice for flouting the rights of a group or individual". The Global Pact for the Environment is, thus, a proposed global treaty on sustainable development that will transform to hard and binding law, the soft law content of the earlier UN Declarations, including the Stockholm Principles on the Human Environment (1972), the World Charter of Nature (1982), the Declaration on Environment and Development (1992), and the Johannesburg Declaration on Sustainable Development (2002). It will be these declarations that have been the basis of the women's International Conventions on Civil and Political Rights and on Economic, Social and Cultural Rights to the Universal Declaration of Human Rights, 1948.

My main caution for the Paris meetings was to avoid being over-ambitious and, regrettably, unrealistic as I confessed we had been in the IUCN Draft Covenant. My advice, instead, was that the Global Pact should be a draft that is doable and realistic and not be over-ambitious and not provide content or thresholds that may intimidate an inter-governmental process. The travaux preparatoires of the international covenants showed that many Articles were strengthened in the intergovernmental negotiating process. This would likely happen to the original draft of the Global Pact.

The Global Pact has 26 Articles with an elaborate preamble that acknowledges the "growing threats to the environment and the need to act in an ambitious and concert- ed manner at the global level to better ensure its protection". It considers, in particular, the urgency to tackle climate change and observes that the planet is facing an unprecedented loss of biodiversity.

Article 1 provides that "every person has the right to live in an ecologically sound environment adequate for their health, well-being, dignity, culture and fulfillment." This is a right enshrined in Article 9 (right to life) and Article 14 (right to dignity) of the Pakistani Constitution, which has been enshrined with environmental considerations in the Supreme Court-declared law in the Shehla Zia case (1994).

The precautionary principle upheld by the Shehla Zia case is contained in Article 6 while the principle of prevention and the requirement of environmental impact assessment is provided in Article 5. The Polluter Pays Principle is reflected in Article 8. The Aarhus Convention led requirements of access to information, public participation and access to environmental justice find place in Articles 9, 10 and 11.

The more innovative and "pushing the envelope" provisions are on resilience (Article 16) and non-regression (Article 17).

Article 16 provides that the "Parties shall take necessary measures to maintain and restore the diversity and capacity of ecosystems and human communities to withstand environmental disruptions and degradation and to recover and adapt." Article 17 mandates that the "Parties and their sub-national entities refrain from allowing activities or adopting norms that have the effect of reducing the global level of environmental protection guaranteed by current law. A major impetus of the adoption of these two Articles was the IUCN World Declaration on the Environmental Rule of Law adopted at the IUCN World Congress on Environmental Law in Rio de Janeiro, Brazil, in April 2016, which was attended by judges and environmental lawyers from all over the world including Justice (now Chief Justice) Mansoor Ali Shah of the Lahore High Court.

Perhaps the most important Article for developing countries which I prioritized was Article 20 which provides that the "special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable, shall be given special attention and that [aid] which shall be taken, where appropriate, of the Parties' common but differentiated responsibilities and respect for the rights of different national circumstances." The preamble also heralds that "the global nature of threats to the earth's capacity to support life requires that all States cooperate as closely as possible and participate in an international, effective and appropriate action according to their common but differentiated responsibilities and respective capacities, in light of their different national circumstances."

President Macron announced that the Global Pact will be introduced in the UN General Assembly and thereby be included in the global negotiating process. In the 1990s, I had hoped that Al Gore and Al Gore would grasp this global initiative through the IUCN Draft but there was not enough political commitment in Pakistan to claim leadership as France has done now. This hope was based on the stellar leadership that Pakistan provided to developing countries through its chairman- ship of the G-77 (and China) at the Earth Summit in Rio in 1992. But this disappointment notwithstanding, I could not be happier that 22 years after the IUCN Draft was launched, its "reincarnation" has found a nest in the Global Pact that will now hopefully be a success.