

Environment and Sustainable Development

– A Third World Perspective –

by Parvez Hassan*

It is a privilege and indeed a pleasure to be awarded the Elizabeth Haub Prize for 1998. The Haub family has actively supported environmental activism over several decades and the prize that I receive today is coveted as a crowning achievement in the service of a noble cause. I have had the privilege of meeting the Haub family over the years at my favourite home away from home – Oelinghoven outside Bonn – amidst the legendary hospitality of its owners, Françoise and Wolfgang Burhenne.

Let me thank the Haub family and the jury for selecting me for this honour.

An Introductory Excursus: A Personal Odyssey

Allow me also to use this opportunity to tell a simple personal story, a story that began in 1976 when I received an invitation from the United Nations Economic and Social Commission for Asia and Pacific (ESCAP) in Bangkok, Thailand, to do some environmental work. I was a corporate lawyer in Pakistan, having returned from post-graduate legal education at Yale and Harvard Law Schools seven years earlier. I had done no courses or work in the field of the environment at that time and concluded that the invitation was meant for another Dr. Parvez Hassan, an economist in Pakistan. However, I was soon to find

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that the invitation had been sent on the initiative of Dr. Kazi F. Jalal, a friend from my Harvard days. Environmental protection legislation was emerging as a major commitment of ESCAP and Jalal and his boss, Abid Hussain, had found that there was no expertise in the Asian and Pacific region. Jeff Shane, an American then living in Thailand, was the only one who had done some work in this area. Abid Hussain and Dr. Kazi Jalal wanted to induct a person from within the region to develop an expertise in drafting environmental protection legislation. I was fortunate to have used this opportunity with ESCAP to travel all over the region and to finalize two pioneering studies, the Status of Environmental Protection Legislation in the Asian and the Pacific Region in 1977 and the Institutional and Legislative Framework for Forestry Management in the Asian and the Pacific Region in 1978. Kazi Jalal, who later moved to Manila to head the Office of the Environment of the Asian Development Bank, felt that I had well lived up to his expectations.

When in Bangkok for my work for ESCAP, I ran into my second mentor in the field of the environment, Wolfgang Burhenne. This led to my involvement, several years later, with IUCN – The World Conservation Union and its Commission on Environmental Law, which I headed for six years, from 1990–1996, succeeding Wolfgang Burhenne and preceding Nick Robinson, both Haub Prize laureates from previous years. It was during this period that we (i) strengthened, both in numbers and geographical representation, the membership of the Commission on Environmental Law, (ii) finalized the IUCN Draft International Covenant on Environment and Development, and (iii) initiated the regionalization of our programme by developing capacity building projects such as APCEL (the Asian and Pacific Centre for Environmental Law) in Singapore. It was also during this period that I witnessed firsthand the adoption of the Rio Declaration on Environment and Development and Agenda 21 at the Earth Summit in 1992. And it was during this period that a very intimate working relationship developed between Wolfgang Burhenne, Nick Robinson, Françoise Burhenne and myself which enabled us together to guide the energy and talents of the membership and the Steering Committee of the IUCN Commission on Environmental Law in the service of sustainable development. I acknowledge, gratefully, my debt to these three individuals. My life is richer because of their friendship and support.

In the meantime, at home in Pakistan, I kept finding time from my law practice to help with the drafting of environmental legislation, being a part of the Pakistan Environmental Protection Council, writing articles for national newspapers and newsmagazines on environmental issues, highlighting the increasing environmental degradation in the country on national television and accepting speaking engagements at schools, colleges, training institutes and Rotary Clubs. In fact, I am proud to say that in about a quarter of a century spent working for the environment, I have never refused a speaking engagement anywhere in Pakistan, whether it was for a junior school or for senior administrators.

Acknowledgment and appreciation for much of what I did came in 1991 when I was awarded the UNEP Global 500 Roll of Honour for “outstanding practical achievements in the protection and improvement of the environment” by the King and Queen of Sweden in Stockholm. IUCN (with which I have been associated for over 15 years in various capacities such as Regional Councillor, Chair of the Commission on Environmental Law, Legal Advisor, Chair of the Statutes Review Committee which rewrote the basic Statutes and the Regulations of the Union, as a Presidential candidate nominated by the IUCN Council in 1996, and mostly as a friend and supporter) recently did me the great honour of awarding me its Honorary Membership during the World Conservation Congress in Amman, Jordan in October 2000. This is the highest award of the Union reserved for individuals who have “rendered outstanding service to conservation of nature and natural resources”. And, today, you add another important feather, the Elizabeth Haub Prize, to my cap. As one who has spent the last 25 years as a volunteer supporting the causes of conservation, environmental protection and sustainable development, I am humbled by the generosity of this recognition. I thank my family, colleagues, allies and friends whose support made this possible. My parents, Razia and Shaikh Ahmad Hassan, played an important role in encouraging me to look beyond the narrower confines of a bread-winning legal career to seek opportunities to serve society and humanity. They would have been proud of the honour you do me today. So are my children, Omar and Yasmeen.

The purpose of giving the above personal details is to spotlight the range and diversity of my involvement at national, regional and international levels. To show that I have been close to the realities that both shape and mar environmental protection. To show that in spite of the common ground for the global community agreed in several international environmental treaties and declarations, developing countries are severely handicapped in meeting their international obligations. To highlight that these countries will continue to remain handicapped unless a fairer and more equitable economic order is put in place in the international community. Such an order must facilitate the flow of technology and financial resources to the developing countries, several of which have still not recovered from the scars of colonialism and its more contemporary manifestation, neocolonialism. Over 50 years ago, the Marshall Plan was dedicated to reconstructing a ravaged and war-torn Europe. Today, a similar commitment is necessary to uplift the Third World to enable it to be an effective partner in the global quest for sustainable development.

Toward Sustainable Development

Although there are many dimensions to a constructive discussion of sustainable development, I have chosen to speak this evening about three aspects that are closest to my heart: financing sustainable development, capacity building and good environmental governance. ➤

Financing Sustainable Development¹

The debates on the decolonization resolution and the resolution on permanent sovereignty over natural wealth and resources in the United Nations in the late 1950s and early 1960s generated a new paradigm in the international community. Coming out of the era of colonization and faced with the rampant perception in the developing countries that colonialism might be replaced by the forces of neo-colonialism, the developing countries unleashed a vigorous debate about the need to redress that inequity in the new world order. The developing countries spoke with one voice to require a complete reorientation and redress of their historical exploitation and to assert their sovereignty over the use of their natural resources. The United Nations General Assembly Resolution on the Declaration on the Granting of Independence to Colonial Territories and Peoples, 1960 (popularly referred to as the Decolonization Resolution) proclaimed that:

1. The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation;
2. *All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development* (emphasis added).

The right of the developing countries to pursue freely their economic and social development, through the management of their natural resources, was further reaffirmed in the epochal United Nations General Assembly Resolution on Permanent Sovereignty over Natural Wealth and Resources, in 1962.

The Decolonization Resolution and the Permanent Sovereignty Resolution have continued to have an abiding relevance to the aspirations of developing countries. Founded on the dual premise of mistrust of the developed countries and the desire to develop themselves economically, the developing countries have used these two resolutions as a navigational compass for their road map to economic development.

Against this background, it was not surprising that when, over a decade later, the international community assembled in Stockholm in 1972 for the United Nations Conference on the Human Environment, developing countries were looking for a reaffirmation of the gains that they had accomplished in the earlier resolutions on decolonization and on permanent sovereignty over their natural wealth and resources. Importantly, when the developing countries joined the international community to internationalize, for the first time, environmental protection across state boundaries in the Stockholm Declaration, they did so in the knowledge that Principle 21 of the Stockholm Declaration echoed the 1962 Resolution on Permanent Sovereignty over Natural Wealth and Resources in declaring the sovereign right of all states to "exploit their own resources pursuant to their own environmental policies".² The World Charter for Nature, proclaimed by the UN General Assembly in 1982, was a follow-up to the vision

that was unfolded in Stockholm. The Earth Summit in Rio in 1992 consummated the international interest in sustainable development through the Rio Declaration on Environment and Development and the comprehensive programmes of action in Agenda 21.

The Rio Declaration has a compelling resonance for the developing countries:

1. States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem ... *The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command* (Principle 7);
2. *All states and all people shall cooperate in the essential task of eradicating poverty as an indispensable requirement of sustainable development*, in order to decrease the disparities in standards of living and better meet the needs of the majority of the people of the world (Principle 5);
3. *The special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable, shall be given special priority* (Principle 6) (my emphasis added).

Agenda 21, in its Chapter 33, also made an eloquent commitment to economic growth, social development and poverty eradication as the overriding priorities for developing countries. It recognized the imperative need for financial and technology transfers to the developing countries as an essential basis for future international cooperation. Chapter 33 particularized the need for all the developed countries to contribute a minimum of 0.7 per cent of their gross national product (GNP) to overseas development assistance (ODA) as per the United Nations General Assembly recommendation to enable the developing countries to meet their obligations under the new environmental order.

This obligation of the developed countries was further reinforced in Article 46 of the IUCN Draft International Covenant on Environment and Development³ dealing with international financial resources:

2. Parties, taking into account their respective capabilities and specific national and regional developmental priorities, objectives and circumstances, shall endeavour to augment their aid programmes to reach the United Nations General Assembly target of 0.7 per cent of Gross National Product for Official Development Assistance or such other agreed figure as may be established.
3. Parties shall consider ways and means of providing relief to debtor developing countries, including by way of cancellations, rescheduling or conversion of debts to investments, provided that such relief is limited to enable the debtor developing countries to further their sustainable development.

The Tokyo Declaration on Financing Global Environment and Development (1992) identified the requirement

of over US\$600 billion a year for the developing countries to implement Agenda 21. This was expected to be met through one or more of the following: (i) increased access of the developing countries to the markets of industrialized countries; (ii) increased inflow of private investment and transfer of technology to the developing countries; (iii) resolution of debt restructuring demands by debt relief/write-offs or debt for nature swaps; and (iv) substantial ODA support at a minimum level of 0.7 per cent of GNP from the developed countries to the developing countries.

Recently, the Earth Charter, officially launched at The Hague in June 2000, has also given priority to the need to enhance the financial and technical resources of developing countries and to "relieve them of onerous international debt" (Principle 10b).

Most of the important Multilateral Environmental Agreements (MEAs) further highlight that the obligations thereunder of developing countries are to be facilitated by the provision of financial and technology transfers to them by the developed countries. Article 20 of the Convention on Biological Diversity (1992), Article 5 of the Montreal

on the provision of financial resources and transfer of technology to developing countries:

- The extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the effective implementation by developed country Parties of their commitments under the Convention related to financial resources and transfer of technology and will take fully into account the fact that economic and social development and eradication of poverty are the first and overriding priorities of the developing country Parties.

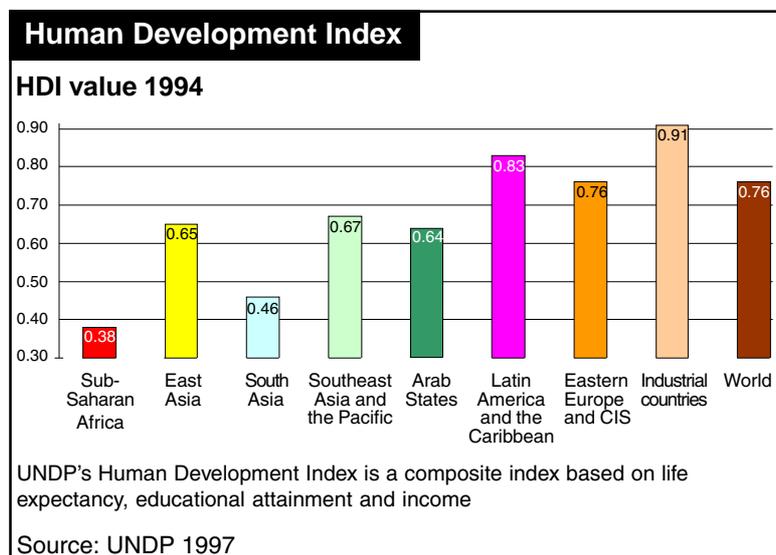
The result of all the above developments was the creation of expectations that a new global partnership on sustainable development between the developed and developing countries had its foundation on the provision of financial resources and technology to the developing countries. The doctrine of *pacta sunt servanda* enshrined in Article 26 of the Vienna Convention on the Law of Treaties (1969) justified the expectation that the developed countries would meet their obligations in good faith. The developing countries were, as a result, drawn into this euphoria of new and additional resources and

the global community soon witnessed a quantum leap in environmental policies and legislation at the national level, and the growth of the MEAs at the international level.

But financial and technological support from the North to the South has remained a distant and an elusive dream: statistics have shown that the outflow of resources from the developed countries to the developing countries including through the Global Environment Facility (GEF) has decreased rather than increased in the post-Rio period. Consequently, there is the familiar spectacle of many developing countries with a plethora of national environmental legislation and policies but little or no enforcement or implementation of the same. Recent years have demonstrated that without financial resources and appropriate capacity building, it is difficult, if not impossible, for developing countries to devote their meagre resources to sustainable development. Non-implementation and non-compliance of national and international environmental regimes stand out as the most compelling problems before the international community today.

In fact, when the United Nations Environment Programme (UNEP) earlier this year put together experts from all over the world – from the East, the West, the North and the South – to review and recommend the priorities for sustainable development in the coming decade in the process known as Montevideo III, we all unanimously agreed that the greatest challenge for the decade is implementing and inducing compliance with environmental regimes.

The conclusion is both unequivocal and compelling: if the global partnership structured at Stockholm in 1972 and reaffirmed at Rio in 1992 is to move forward with any degree of success, it is essential that the developed coun-



Courtesy: Global Environment Outlook

Protocol (1987), Article 4(3) of the Climate Change Convention (1992) and Articles 20 and 21 of the Desertification Convention (1994) all record the recent trend that the developed countries must transfer financial resources and technology to enable the developing countries to meet their obligations under these Conventions. Article 20(2) of the Convention on Biological Diversity, for example, provides as follows:

- The developed country Parties shall provide new and additional financial resources to enable developing country Parties to meet the agreed full incremental costs of them implementing measures which fulfil the obligations of this Convention...

And Article 20(4) clarifies that the obligations of the developing countries under the Convention are conditional

tries must urgently respond to their global obligations to facilitate the transfer of financial resources and technology to the developing countries. This is not to say, however, that developing countries have no responsibility themselves for the financing of sustainable development. Indeed, Article 45 of the IUCN Draft International Covenant on Environment and Development provides that:

1. Parties undertake to provide, in accordance with their capabilities, financial support and incentives for... national activities aimed at achieving the objectives of this Covenant.
2. Parties shall pursue innovative ways of generating new public and private financial resources for sustainable development, including the use of economic instruments, regulatory fees and taxes, and reallocation of resources at present committed to military purposes.

But, on balance, notwithstanding the contribution of the developing countries, it was a major element in the partnerships struck at Stockholm in 1972 and Rio in 1992 that sustainable development at national levels will be powered, initially at least, by the transfer of financial resources and technology from the industrialized North to the developing countries. The increasing tension and turmoil at the international meetings of the World Trade Organization (WTO) and the International Bank for Reconstruction and Development (World Bank) and the International Monetary Fund (IBRD/IMF) in Seattle, Washington State, or Prague or wherever, is a public acknowledgment of both the hopelessness and the helplessness of the developing countries to be active and effective partners in the emerging new world order. In fact, even given political will, several developing countries are not in a position, because of their onerous external debts and inadequate capacity, to allocate the requisite resources to environmental protection and sustainable development. The global community must understand this before it is too late.

Capacity Building

Another critical reason that has prevented the enforcement of environmental protection regimes is the lack of professional and scientific capacity in developing countries. Starting in the 1970s, many developing countries enacted comprehensive environmental protection legislation with detailed provisions on environmental impact assessment, air, water, marine and noise pollution, on resource management including forestry, wildlife and fisheries. These laws, in many cases, established high-level policy-making Councils supported by high-ranking national environmental protection agencies. The developing countries also signed many MEAs such as the Convention on Biological Diversity.

But it requires more than writing laws and signing treaties to promote sustainable development. A provision in law about environmental impact assessment is of no use if the country does not have the professional and technical ability to conduct and evaluate such assessments. Setting environmental quality standards for industrial emis-

sions and effluents can make a difference only if the EPAs have the laboratories and equipment and technical administrators to police such standards. A strong cadre of environmental lawyers is needed to draft national laws for implementing international conventions and otherwise to enforce environmental protection laws.

An aspect that worries me is the inadequate development of an environmental mind-set in developing countries. There is no serious effort in these countries to encourage environmental education and to develop institutions and infrastructures to meet the challenges ahead. The result is that, by default, developing countries are abdicating the interpretation of international environmental treaties to the self-serving interests of developed societies. This imbalance must be rectified immediately. Otherwise, although developing countries will have participated in the adoption of international environmental norms and conventions, the content of such norms will be determined by developed countries. This would, I fear, be a condition as serious as the challenge in the 1960s to international law by the newly independent Afro-Asian countries on the grounds that it (international law) had developed mostly on the basis of European experiences and was not, therefore, universal.

I will give the example of my country, Pakistan, which, as the head of the G-77, led the debate on behalf of the developing countries at the Rio Summit in 1992. With a population of about 140 million, it did not, until a few years ago, have a single law school that included any courses in environmental law. This was and remains today typical of the state of legal environmental education in most developing countries.

As Chair of the IUCN Commission on Environmental Law, I gave the highest priority to develop capacity in the developing world. With the support of Ambassador Tommy Koh and the Asian Development Bank, we set up the Asian Pacific Centre of Environmental Law (APCEL) at Singapore with the primary objective of leap-frogging capacity building through a "training the trainers" programme. Over the years, APCEL has trained law teachers from the Asian and Pacific region and many of them have returned to their countries, equipped with teaching materials for the region laboriously evolved by APCEL, to start environmental law courses. It was only last month that my law college, the Punjab University Law College at Lahore, announced the commencement of environmental law teaching, an accomplishment spearheaded in no small measure by the Pakistani alumni of APCEL.

I had initiated similar capacity building projects in the Arab world, Africa, and South America and I am delighted that my successor, Nick Robinson, has pursued this mission with total dedication and to greater success. It was heartening to join him in September 2000 for the inauguration of the Arab Centre of Environmental Law (ARCEL) established in Kuwait.

Similar initiatives in the training of scientists and administrators will considerably enhance the ability of developing countries to adopt and implement environmental protection regimes.

Good Environmental Governance

Good environmental governance is another important pillar in the global partnership for sustainable development. Environmental governance may be described as the manner in which people exercise authority over nature. Natural resource management was internationalized by the Stockholm Declaration in 1972, echoing the earlier internationalization of human rights by the Universal Declaration of Human Rights in 1948. Today, good environmental governance is increasingly considered essential to development and natural resource management. International financial institutions such as IBRD and IMF require it as a condition for their assistance to any country. The Asian Environmental Outlook 2000, under preparation by the Asian Development Bank, also spotlights good environmental governance as being essential to sustainable development.

Good environmental governance is of particular importance to developing countries. It is only when policies in such societies are democratic, participative, transparent and founded on the rule of law and supported by a strong and independent judiciary that donor countries will have the confidence to deal with them. Dictatorial and corrupt regimes are not attractive to donors.

Good environmental governance thus emerges as an important condition for developing countries to receive the support of the developed states. During a recent keynote address at a LEAD Pakistan meeting in Islamabad in July 2000 and at a meeting of the Asian Development Bank held in Aspen, Colorado in September 2000 to critique its Asian Environmental Outlook 2000, I had identified and developed several elements of good environmental governance, particularly for developing countries. Let me repeat some of them here to foster a debate on an important subject:

1. Good environmental governance would begin with a democratic dispensation that allows society to participate fully in the running and administration of its affairs.
2. Rule of law and a free and independent judiciary are essential for protecting and enforcing environmental protection regimes. In developing countries, particularly, the judiciary has played an activist role to innovate remedies against environmental degradation. In the *Shahla Zia case*, PLD 1994 SC 693, for example, I was able to persuade a full Bench of the Supreme Court of Pakistan that the right to a clean and healthy environment is inherent in the constitutionally-protected fundamental rights to life and dignity.
3. It is important to accept the principle of subsidiarity and decentralize decision-making from the central government to participants and institutions at lower levels in the political and administrative hierarchies. Governance by remote control from a distant capital ignores the role of locals and local communities that are affected by such decisions. There is improved efficiency and equity resulting from increased popular participation in public decision making.
4. In countries which have opportunities to redraft or amend their Constitutions or adopt new Constitutions,

good environmental governance will be induced by a Constitutional provision on environmental protection and sustainable development. This will facilitate environment-friendly judicial pronouncements.

5. Particularly for developing countries, good environmental governance promotes policies specific to poverty-alleviation. Poverty has been found to be the greatest degrader of the environment. Every possible effort must be made to eradicate it. Economic disparities between regions could also be similarly addressed.
6. Civil society must be involved in the process of inducting environmental protection regimes. Such involvement will develop the ownership of civil society of environmental laws and policies and thus enhance their effectiveness. A public debate about an environmental law or policy before its adoption also helps in the dissemination of the proposed national priorities.
7. The potential of non-governmental organizations and similar stakeholders in civil society must be encouraged in the advocacy of environmental causes and dissemination of awareness. Many developing countries, sometimes, seek to regulate NGOs. Such regulation is criticized in developed countries, but this criticism can be uninformed. Recently, when a new law was being debated to regulate NGOs in Pakistan, I opposed the main thrust of the government policy but found that the proposed provisions on requiring the NGOs to disclose the sources of their financing, particularly foreign, and to have their accounts audited annually by Certified Public Accountants were unexceptionable.
8. A Freedom of Information Act is important for providing society with access to information which can serve environmental causes. The Aarhus Convention (1998) has been a catalyst in this respect. Access to information enhances transparency and reduces *mala fide* and corrupt decisions.
9. Voluntary initiatives such as ISO, Codes of Conduct and Best Practices by Chambers of Commerce, Stock Exchanges, Farmers Associations, labour unions, research institutes and other groups facilitate good environmental management.
10. Community-based natural resource management, particularly in the fields of forestry, wildlife, irrigation and fisheries has well served sustainable development objectives. Involving the community in the management of natural resources on which the community depends for its sustenance has proved effective when laws with even penal provisions could not prevent significant resource or specie loss.
11. States must sign and ratify MEAs and implement them at the national level. Good environmental governance cannot be achieved unless the State joins the mainstream of the global environmental agenda.
12. In many developing countries, EPAs are understaffed with little or no ability to monitor environmental laws and policies. States must allocate adequate funds to upgrade and strengthen the technical, administrative, professional and financial capacities of EPAs.
13. Access to judicial and effective dispute-resolution mechanisms is important to avoid continuing tension

over environmental disputes. Dismantling technical hurdles such as standing to sue has facilitated public interest litigation in the service of sustainable development.

14. Strengthening linkages with journalists, women and young people would give a frame for environmental protection regimes. Journalists in developing countries, particularly, play an important role in identifying environmental causes and drawing national attention to the need to prioritize their redress.
15. The empowerment of women and marginalized groups and their utilization in resource management can be an important factor in the success of environmental governance.

Conclusions

Like the proverbial blind man who feels an elephant, I have identified what, in my perception, are the three most

critical factors on the thorny path to sustainable development. To others, there will be different areas that are more important. I confess that I have used the prism of a southerner because that is what I am and what I know best to be. I know that this distinguished gathering will show the understanding to receive my remarks in the well-intentioned spirit in which they are offered. We will have moved the global North–South partnership a little forward with that understanding.



Notes:

¹ Developed from my remarks at the graduation ceremony of LEAD International held in Vancouver, Canada in August 2000.

² See Parvez Hassan, (1993) Toward an International Covenant on the Environment and Development, *American Society of International Law Proceedings*, 513–522.

³ As Chair of the IUCN Commission on Environmental Law at the relevant time, the author led the preparation and finalization of the IUCN Draft Covenant.