

A Land Degradation-Neutral World: Protecting the Skin of the Earth through International Environmental Law

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The role of environmental law

- › One of the principal roles of environmental law is **to encourage and influence behavioural change in the interest of improving the condition of the environment** through conservation and protection measures.
- › Soil and the land that hosts it is poorly catered for at the international level
- › National soil legislation is generally inadequate worldwide although isolated cases of good quality national laws exist which can be used to promote Land Degradation Neutrality.
- › Most other environmental media are well covered by law, but the profile of soil and the land that hosts it must be raised; it requires an upgrade

The importance of soil; raising the profile

- › *Soil is a basic physical foundation of human development and plays a major role in sustaining all societies through agriculture, grazing, forestry and maintenance of water sources.*
- › *Soil is also the basis for all terrestrial biodiversity: must be seen as a strong element of the CBD*
- › *Our argument is that national and international environmental law to promote the conservation and sustainable use of soils must be seen as an integral part of the overall framework of environmental law, policy and to take into account management technological, sociological, economic and ecological issues that affect soil.*

The Status of Soil: the “poor cousin” of Environmental Law

- › International environmental law and policy regime caters quite well for most environmental media; many of the MEAs are relevant to land and soil :
- › Soil maybe a poor cousin, but behind the scenes and underfoot, soil is one of the richest members of the environmental family

Relevant comparable international law regimes:

- › Marine Conventions (UNCLOS, marine pollution treaties; land-based marine pollution)
 - › Ramsar Convention on Wetlands
 - › Biodiversity: two protocols, and *Aichi Targets*
 - › Climate Change: Kyoto Protocol and successor
 - › World Heritage Convention: Operational Guidelines
 - › Convention on Migratory Species and subsidiary agreements
 - › Non-legally binding Forest Principles (no prospect of an MEA yet)
-

Context: 'Land degradation as a Common Concern of Humankind' (Ben Boer book chapter)

MEA	'Common Concern' Formulation
1992 Framework Convention on Climate Change	'Acknowledging that change in the Earth's climate and its adverse effects are a common concern of humankind. '
1992 Convention on Biological Diversity	'Conscious also of the importance of biological diversity for evolution and for maintaining life sustaining systems of the biosphere, Affirming that the conservation of biological diversity is a common concern of humankind. ' (Preamble)
1994 Convention to Combat Desertification	'Affirming that human beings in affected or threatened areas are at the centre of concerns to combat desertification and mitigate the effects of drought, Reflecting the urgent concern of the international community , including States and international organizations, about the adverse impacts of desertification and drought, Acknowledging that desertification and drought are problems of global dimension in that they affect all regions of the world and that joint action of the international community is needed to combat desertification and/or mitigate the effects of drought.' (Preamble)

Focus of UNCCD is on land degradation in drylands: cannot be the basis for addressing land and soil degradation on a global basis

Land Degradation Assessment in Drylands

The project started in 2006 with the general purpose of creating the basis for informed policy advice on land degradation at **global, national and local level**. This goal is to be realized through the assessment of land degradation at different spatial and temporal scales and the creation of a baseline at global level for future monitoring. The project will complete its activity by 2010. **More....**



LADA

Land Degradation Assessment in Drylands

Land degradation components

Loss of biodiversity



Salinization



Water erosion



Sand dune encroachment



Rangeland degradation



Outmigration



The human rights law context of land degradation

Environmental degradation is a human rights issue

- › *'Right to environment' now found in many national constitutions*
- › *'Right to environment' also found in three international human rights regimes:*
 - *African Convention on Human Rights*
 - *Inter-American Convention on Human Rights*
 - *ASEAN Human Rights Declaration*
- › Not yet incorporated into an international human rights convention
- › Non mention in International Covenant on Economic, Social and Cultural Rights (ICESCR) or International Covenant on Civil and Political Rights (ICCPR)
- › BUT: in 2012. *UN Independent Expert on Right to Environment was appointed*

2012 UN Independent Expert on Right to Environment

Land and soil degradation, and human rights

- › 2012 UN Independent Expert on Right to Environment appointed;
 - › Has found that
 - an environmental right is broadly accepted by the practice of states and by international human right institutions
 - one of the “firmly established” aspects of the relationship between human rights and the environment is that “environmental degradation can and does adversely affect the enjoyment of a broad range of human rights, including rights to life, health, food and water” (UNCHR 2102)
 - By extension: land degradation affects all of these rights
- Question: should a Global Soil Convention take human rights directly into account?*
- *In a Preamble, as well as in substance?*
- › See also UN Special Rapporteur on the Right to Food 2014:
 - The Right to Food is also part of the argument in relation to land degradation: without good quality land, adequate food cannot be grown
- › Human rights element is an important political argument for soil protection and land degradation neutrality

Millennium Ecosystem Assessment:
no direct recognition of human rights



ECOSYSTEMS AND HUMAN WELL-BEING

Synthesis

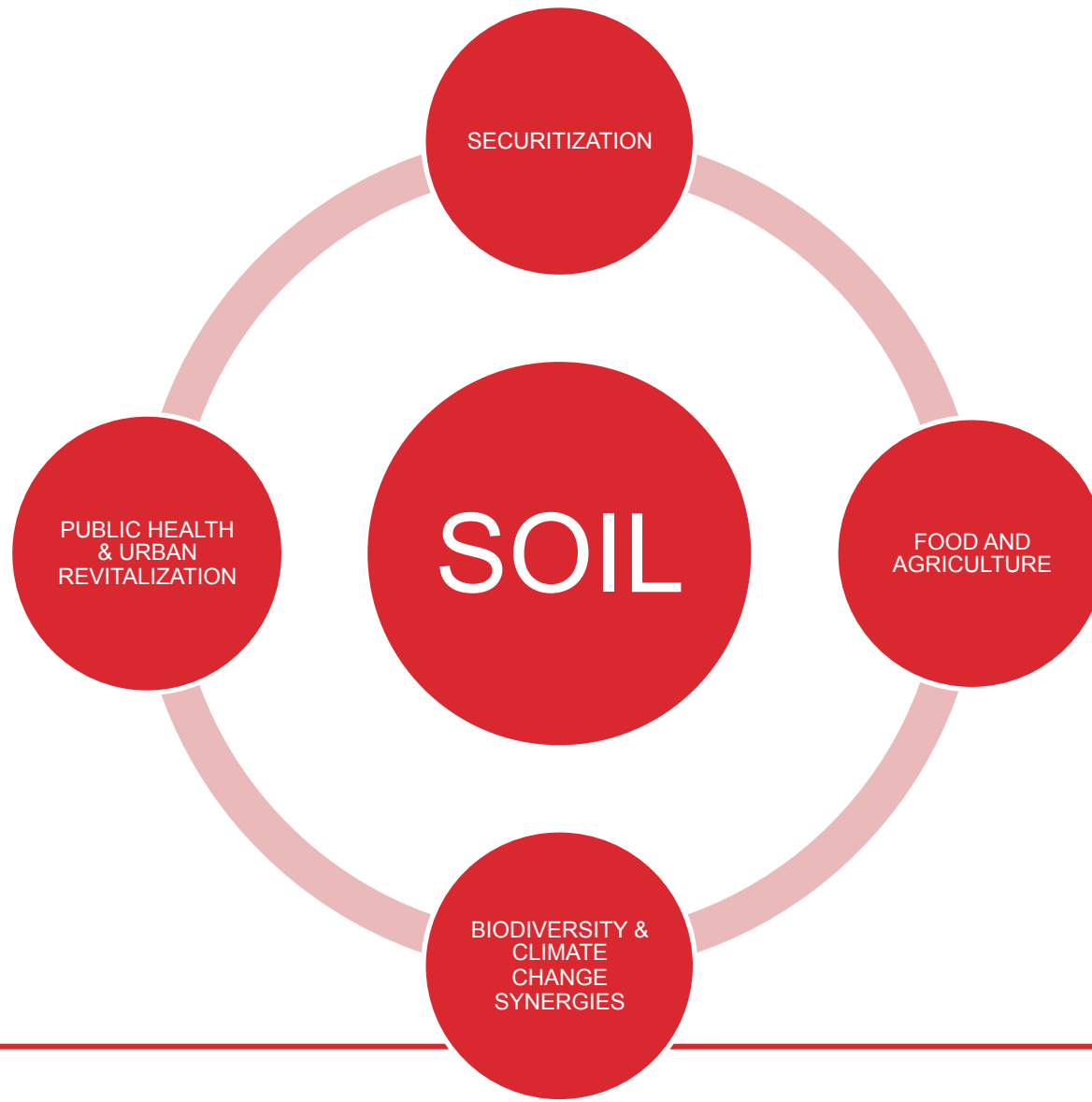


MILLENNIUM ECOSYSTEM ASSESSMENT

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Soil's multifarious functions: basis of all terrestrial ecosystems, climate change, human health, food etc, must be taken into account in any international Convention on Land and Soil



An integrated ecosystem approach must be taken: summary

There is now a more integrated understanding of soil degradation and solutions to it

- Integrated ecosystems management – embraces land, water, vegetation, plants and animals on a regional and transboundary basis
- For example with the Ramsar Wetlands Convention: gradual development of ecosystem approach, rather than focus on wetlands as such



For better understanding the ecosystem approach to soil:
Charles Darwin's book on worms

THE FORMATION
OF
VEGETABLE MOULD,
THROUGH THE
ACTION OF WORMS,
WITH
OBSERVATIONS ON THEIR HABITS.

By CHARLES DARWIN, LL.D., F.R.S.

WITH ILLUSTRATIONS

LONDON:
JOHN MURRAY, ALBEMARLE STREET.
1881.

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Example of integrated approach: Ramsar and UNCCD: the “wet and the dry”

News

UNCCD, Ramsar Commit to Land Degradation Neutrality



14 November 2014: During the "Planet Plenary" at the International Union for Conservation of Nature (IUCN) World Parks Congress, which is taking place in Sydney, Australia, Monique Barbut, Executive Secretary, UN Convention to Combat Desertification (UNCCD), and Christopher Briggs, Secretary General, Ramsar Convention on Wetlands, announced a public commitment "to create a sustainable and resilient future for our children by stopping and reversing land degradation." Also during the plenary, Briggs indicated that Ramsar would launch a global partnership for wetlands restoration with the UNCCD in 2015.

In their announcement, Briggs and Barbut said "the goal that makes sense is to achieve Land Degradation Neutrality" (LDN). They indicated that LDN means "a state where the total area of healthy and productive land and wetlands stabilizes and eventually increases." To accomplish this goal, they noted that the drivers of degradation would need to be addressed, followed by promotion of restoration.

They noted that their organizations have already addressed these topics, with Ramsar's draft Strategic Plan for 2016-2021 incorporating a call to "prevent, stop and reverse the degradation and loss of wetlands and to use them wisely," and the UNCCD working to build a global partnership to reverse and prevent desertification and land degradation and to mitigate the effects of drought in affected areas. [IISD RS Sources]

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- › Establishing Land Degradation Neutrality as a Sustainable Development Goal
 - › UNCCD 2012 Policy Brief



ZERO NET LAND DEGRADATION

A Sustainable Development Goal for Rio+20

To secure the contribution of our planet's land and soil to sustainable development, including food security and poverty eradication

Open Working Group proposal for Sustainable Development Goals:
quintessentially an integrated approach; not just a focus on LDN

- › Land Degradation as part of the Sustainable Development Goals
- › **GOAL 15 Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss**
- › 15.1 By 2020, ensure the conservation, restoration and sustainable use of **terrestrial and inland freshwater ecosystems** and their services, in particular **forests, wetlands, mountains and drylands**, in line with obligations under international agreements
- › 15.2 By 2020, promote the implementation of sustainable management of all types of forests, halt deforestation, restore degraded forests and increase afforestation and reforestation by [x] per cent globally
- › 15.3 By 2020, combat desertification, restore degraded land and soil, including land affected by desertification, drought and floods, and strive to achieve a land-degradation-neutral world
- › ***BUT: How to translate this into international legal provisions?***
- › ***Do we just focus on land degradation and achievement of land degradation neutrality?***

Options for international instrument for Land and Soil: past discussions

Options that have been considered by IUCN Group

- q **Binding stand-alone convention** (treaty) (c.f. EU Soil Directive Proposal rationale): a specific treaty with all of the essential legal elements for soil;
- q **A framework treaty**, which identifies the soil elements in existing treaties and links them through a separate binding instrument. The new instrument would contain additional, specific legal rules for soil;
- q **Protocol to an existing convention** that creates specific rules for soil; (e.g. UNCCD, UNCBD); (compare Protocol to the Alps Convention)
- q **Non-binding instrument;**
 - q Update and expand UN FAO Soil Charter
 - Declaration of principles on sustainable use of soil (debated in Iceland 2005);
 - Global Soil Partnership (GSP) for Food Security and Climate Change Adaptation and Mitigation

No one convention is suitable as a basis for a Protocol to achieve these aims

- › It is clear that soil issues are relevant to each of the Rio conventions, on Climate Change, Biological Diversity and Desertification, and in combination can address a number of aspects; but not, for example, contaminated sites
- › **None of these instruments is an entirely satisfactory vehicle *by itself* for a subsidiary instrument** such as a protocol on soil protection and land degradation neutrality

Role of a Convention on Land and Soil

One role should be to stimulate regional and national action by motivating States to legislate or reform legislation for **achievement of land degradation neutrality and soil protection and achievement ;**

- It could:
 - Promote rewriting of law to include land degradation neutrality
 - Provide clear indications on the legal, ecological and policy requirements for the protection and sustainable management of soil;
 - Contain the fundamental ecological principles for and sustainable use of soil;
 - consolidate relevant elements of existing international soil policies;
 - Forge links between an instrument on soils and other multi-lateral environmental agreements – CBD; UNFCCC; UNCCD, and perhaps the Forest Principles;

Convention on Land and Soil?

- › What chance does this have of gaining political support?
- › If it did gain political support, what would such a convention look like?
- ›

Would be broader than the UNCCD

- Would be *additional* to UNCCD
- Would *not compete* with UNCCD, but would *integrate* with it as far as possible (compare the marine pollution regime chemicals regime)
- Compare international conventions on marine pollution: slow development of a comprehensive regime

Scope of a proposed Convention: suggestions and questions

1. *Should* take an ecosystemic approach: soil, water and wetlands, vegetation, forests
2. *Should* link to the relevant conventions and policies: UNCCD, CBD UNFCCC, Forest Principles
3. *Could* include human rights considerations: right to life, right to health, right to food, food security, right to water

Main contents of a Convention on Land and Soil

1. Would it include some basic principles, (following 1992 Rio Declaration, CBD, Cartagena)
 - i. : Principle of state responsibility for trans-border obligations: Rio Principle 2
 - ii. Access to information, Public participation, access to justice:
 - iii. Precautionary principle: Rio Principle 15 Environmental impact assessment: Rio Principle 10 and Aarhus Convention
 - iv. Non-regression principle (Brazilian Constitution, and jurisprudence; see also Prieur study
2. Provision for Protocol
 - Compare CBDs Cartagena Protocol on Biosafety
 - Compare CBD's Nagoya Protocol on Access and Benefit Sharing
4. Would it include national legislative guidelines, see Ramsar Convention

Possible scope of a proposed Convention: national legislative guidelines

Legal Mechanisms: which ones should be included in a Convention, and how much in a Technical Annex?

- i. Encouragement of ad setting specific national targets for land degradation neutrality (compare Aichi Targets under the Convention on Biological Diversity)
- ii. Spatial Planning Mechanisms
- iii. Soil contamination
 - a) Soil protection measures
 - b) Restitution obligations
- iv. Environmental Impact Assessment, Strategic Environmental Assessment, Cumulative impact Assessment, Social Impact Assessment
- v. Offsetting mechanisms
- vi. Land use covenants between government and private land use
- vii. Conservation easements
- viii. Permitting schemes for potentially harmful activities
- ix. Use of protected areas concepts from CBD: How relevant are protected areas concepts to land degradation and soil conservation?
- x. Others?

The bottom line

1. All ecological, economic and social indicators point to the need to pay more attention to land degradation on a global basis
2. Land degradation should also be seen as part of the debate on the right to a safe, clean, healthy and sustainable environment
3. It is clear that land degradation needs to be addressed through international environmental law, adding to and going beyond the UN Convention to Combat Desertification.
4. The concept of land degradation neutrality, including the agreement for specific targets for individual countries, should be part of a new land degradation instrument
5. A new instrument on land degradation should become a central part of the debate concerning the achievement of the 2015 Sustainable Development Goals
6. More research is required at national and sub-national levels to establish legal capacity to address land degradation and the achievement of land degradation neutrality