



International Legal Experts Meeting Berlin 2014: Legal instruments to implement the objective “Land Degradation Neutral World” in international law/UNCCD

IUCN Perspective

Dr. Irene L. Heuser

**IUCN World
Commission on
Environmental Law**

**Deputy Chair,
Specialist Group on
Sustainable Use of
Soils and
Desertification**



Overview

- The IUCN World Commission on Environmental Law (WCEL) has been investigating international law for soil since 2000
- From 2000 to 2014 the IUCN WCEL *Specialist Group for Sustainable Use of Soil and Desertification* has:
 - Carried out investigations under three WCC “Soil Resolutions”
 - Consulted widely and accumulated extensive knowledge and expertise on international and national legislative aspects of soils
 - Prepared publications that summarize the main outcomes and options
 - Drafted different versions of *Soil Protocols* for discussion
 - Assisted countries develop national soil laws
 - Established cooperative relationship with soil science institutions.
- Provided assistance to UNCCD Secretariat on legal aspects of ZNLD, and following Rio+20, on pathway to draft a legal instrument on soil for discussion



IUCN
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IUCN – The World Conservation Union

Founded in 1948, The World Conservation Union brings together States, government agencies and a diverse range of non-governmental organizations in a unique world partnership: over 980 members in all, spread across some 140 countries.

As a Union, IUCN seeks to influence, encourage and assist societies throughout the world to conserve the integrity and diversity of nature and to ensure that any use of natural resources is equitable and ecologically sustainable.

The World Conservation Union builds on the strengths of its members, networks and partners to enhance their capacity and to support global alliances to safeguard natural resources at local, regional and global levels.

IUCN Publications Services Unit
219c Huntingdon Road
Cambridge, CB3 0DL, UK
Tel.: ++ 44 1223 27 78 94
Fax: ++ 44 1223 27 71 75
E-mail: books@iucn.org

IUCN Environmental Law Centre
Godesberger Allee 108-112
D-53175 Bonn, Germany
Tel.: ++ 49 2 28 2 69 22 31
Fax: ++ 49 2 28 2 69 22 50
E-mail: Secretariat@elc.iucn.org

Legal and Institutional Frameworks for Sustainable Soils

Legal and Institutional Frameworks for Sustainable Soils

Ian Hannam with Ben Boer



IUCN Environmental Policy and Law Paper No. 45

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Binding Instruments

International:

- 1992: UN Framework Convention on Climate Change (UNFCCC)
- 1992: Convention on Biological Diversity (CBD)
- 1994: UN Convention to Combat Desertification (UNCCD)

Regional (Examples):

- 1986: Conv. f. the Protection of the Nat.Resources & Environment of the South Pacific Region
- 1998: Alpine Convention (1991) Soil Protection Protocol (ACSPP)
- 2003: Revised African Convention f. the Conservat. of Nature and Natural Resources

Soil and the three Rio Conventions

| | UNFCCC | CBD | UNCCD |
|-------------------|---|---|--|
| Strengths | <ul style="list-style-type: none"> ▪ Link soil management with climate change ▪ Soil is the major global carbon “sink” (contain organic carbon) ▪ Fundamental role of organic matter decline ▪ Use UNFCCC NAMA process to protect soil ▪ Climate Change Fund for developing countries to access for mitigation actions | <ul style="list-style-type: none"> ▪ Soil recognized as “ecosystem” ▪ Focus on ecological aspects of soil ▪ Recognize “soil biodiversity” ▪ Soil as a key habitat for many living organisms ▪ Soil integrated with other ecological elements ▪ “Soil Biodiversity Initiative” | <ul style="list-style-type: none"> ▪ UNCCD focused on land degradation (DLDD) ▪ Soil degradation is critical aspect of ZNLD ▪ Link UNCCD to 10 Year Strategy and ZNLD ▪ Soil security is key to food security ▪ Establish rules for national soil legislation ▪ Links between UNCCD and global soil strategies |
| Weaknesses | <ul style="list-style-type: none"> ▪ Major focus of UNFCCC is on GHG emissions ▪ Soil issues overshadowed by other climate change issues ▪ Soil carbon sequestration not part of CDM mechanism | <ul style="list-style-type: none"> ▪ Soil has to “compete” with all other aspects of ecosystems ▪ Important soil issues overshadowed by other biodiversity issues ▪ Lack of implementation (although Aichi targets mention soil fertility, erosion control) | <ul style="list-style-type: none"> ▪ Soil not been recognized as ecological element (def. of land degradation) ▪ Limited regional scope ▪ UNCCD obligations are demanding on States ▪ Implementation of national soil law is slow ▪ UNCCD process has not provided guidance on |

Legal Options under UNCCD

- Separate stand alone convention on ZNLD & sustainable use, management and protection of soils
- Amendment to the UNCCD to expand the scope of the definitions of “desertification” and “land degradation” (Art. 1) to encompass all regions of the world & to introduce the Land Degradation Neutrality goal (Art. 30: consensus/majority)
- Protocol to UNCCD (as proposed by IUCN WCEL): amendment be required to the UNCCD → definition + legal basis?
- Introduction of a general Annex under Article 31 UNCCD to conform with the UNCCD
- Drafting an instrument to amend each existing Annex by expanding the “Purpose” and “Particular Conditions” and the framework of the NAPs etc.

Legal Options: Protocol

- Longer-term approach: Additional protocol to UNCCD
- New international treaty under the UNCCD umbrella
- UNCCD provision which allows for the creation of a specific protocol (see Art. 17 UNFCCC, Art. 28 CBD) needed?
- Ratification of UNCCD Amendment required first?
- Opinions: protocol needs to be in line with the scope of UNCCD vs. protocol defines its own scope of application

IUCN Draft Instruments for Soil

- *Draft Protocol for Sustainable Use of Soil*
 - prepared in **2005** (from discussions at Iceland Soil Forum)
 - Revised version in 2006 as a “Draft Protocol to CBD” - focus on ecological aspects of soils
- *Draft Protocol for Security and Sustainable Use of Soil*
 - prepared in **2009** as a framework to support UNCCD and its 10 Year Strategy and Framework (2008-2018)
 - Aims to integrate the concept of “soil security” (UNCCD Secretariat)
- *Draft Protocol to achieve ZNLD and sustainable use and protection of soil (2013)*, prepared in the context of the Rio + 20 discussions to implement the concept of ZNLD

Legal Options: Annex

- Introduction of a general (thematic) Annex on land degradation neutrality and on the sustainable use and protection of soils
- Based on Article 31.2: "other than a regional Annex"
- Procedure: Art. 30, consensus – two-thirds majority
- Annex not characterized as an amendment to the UNCCD (which would require ratification by all parties, Art. 30)
- Result: Integral part of the UNCCD, best option to introduce ZNLD and sustainable use of land and soil

Elements of a general Annex

- Similar framework to that of regional Annexes
- Use of existing mechanisms, such as the National Action Programs
- Introduce the concept of ZNLD and other aspects of sustainable use, management and protection of soils to achieve the SDG
- Primary vehicle would be: provisions on “purpose” and “particular conditions”
- Each country obliged to establish their own targets

Possible content of an Annex

The provisions of a new UNCCD legal instrument on ZNLD could facilitate (UNCCD Policy Brief s. 5.2.2):

- The incorporation of emerging economic instruments, such as payments for ecosystem services (e.g., carbon sequestration, water conservation) to be used in *preventing* degradation of non-degraded land, as well as supporting the *restoration* of already degraded land;
- The negotiation and setting of achievable and verifiable targets for ZNLD at Conferences of the Parties to the Convention under advice of the CST;
- The development of policies, measures, guidelines and mechanisms for the implementation of ZNLD at national and regional levels; and
- The provision of legal frameworks, guidelines and models for national and sub-national policies to promote ZNLD.

Structure of international law

- Relation between states and nations
- primarily not concerns private citizens
- consent-based governance
- State sovereignty
- Transformation into national law /
process of ratification

Developing a targeted policy

- “Modules” of
 - information gathering / public awareness
 - precaution and prevention
 - damage remediation
 - standardisation
- No restriction of range of soil protective possibilities at the moment

Soil Threats Identified

- Erosion
- Decline in Organic Matter
- Contamination
- Salinisation
- Biodiversity Loss
- Compaction
- Sealing
- Floods and Landslides

Next Political Steps

- Further discuss the outcome of this workshop (expert group, Part 4)
- 2015: Intergovernmental Negotiations on Post-2015 Development Agenda (1st session Jan., NY); SDGs prepared by UN Open Working Group to be considered by the 69th UN General Assembly (Sept. 2015)
- March 2015: UNCCD 3rd Sc. Conference in Cancun – discussion about legal instruments of ZNLD/sustainable use, management and protection of soils (maybe side event?)
- April 2014: Presentation of the concept at the 3rd GSW in Berlin, also at other relevant meetings, like the 18th ISCO in El Paso
- May 2015: EXPO “Feeding the Planet, Energy for Life” in Milan
- 2015 in Turkey: UNCCD COP 12 which will consider LDN and the work of the IWG (Intergovernmental Working Group)

Thank you very much for your attention!



Dr. Irene L. Heuser
IUCN WCEL, Deputy Chair of
Soils Specialist Group
Irene.Heuser@googlemail.com