

International Legal Expert Workshop

Legal Instruments to implement the objective „Land Degradation Neutral World“ in international law, especially under UNCCD

Berlin, 8th of December 2014, 09.00 – 18.00

Minutes

Note

These minutes comprise additional conclusions, statements and questions drawn during the workshop on aspects that are important for the ongoing discussions on land and soil governance. They will be grouped according to the topics of the program. An appendix of relevant publications is also included.

Introduction and background

- The workshop member concluded that land/soil issues have gained a place on the international political agenda in the last years. Land has been regarded as a pure national concern for many years. There is a growing perception that land/soil is now becoming a global concern.
- It is recognized that the term 'land' includes 'soil'. However, as the political momentum refers to land, the debate should also focus primarily on land.
- It was concluded that a land-related sustainable development goal (SDG) is extremely important. A precise and ambitious wording for the objective of a "land degradation neutral world" is required.
 - Clear and implementable indicators as well as an agreed monitoring methodology will have to be established once the SDG is finalized (September 2015).
 - Moreover, strategies for the national implementation of the SDG will have to be put in place.
 - The lack of a land-related SDG would be a serious setback.¹

¹ In the proposal of the Open Working Group SDG 15 includes land degradation: "Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss". See especially 15.3 "By 2020, combat desertification, restore degraded land and soil, including land affected by desertification,

- Land and soil still need promotion as a global concern. Terms as “skin of earth”² might be helpful. Especially in developing countries the topic could be provide more motivation by linking it to food security. Moreover the topic has to be seen in the context of the ongoing increase of the world’s population and its link to public health (e.g. on contaminated sites)..
- The workshop also highlighted the dimensions of sustainable management of land for the protection of human rights – especially the right to food, water and security.
- On 4th and 5th of December 2015 launch events of the first UN International Year of Soils took place in Berlin, Germany. Many people attended the events. The atmosphere was very constructive, positive and demanding with regard to better regulatory frameworks on land and soil.

Suitable instruments of national legislation

- The presentations by Ms Dooley, Professor Hannam, Professor Qin and Professor Ruppel underlined the observation that the needs with regard to land use and management vary significantly according to local and national conditions.
- Different general approaches in land governance/regulation exist:
 - In Germany the main instruments are based on a law-and-order approach. Urban planning is a very important mechanism due to the high density of population.
 - On the other hand, in the US land governance/regulation is normally based on a contractual approach, with landowners often using financial incentives (Superfund approach for highly contaminated sites (Comprehensive Environmental Response, Compensation, and Liability Act)). It was however stated that from an environmental perspective the wrong incentives are sometimes in place.
 - It seems to be an important decision where and under which conditions land should be developed/restored. This is a crosscutting issue— at least for industrialized countries with a large number of contaminated sites.
 - In Mongolia, the new framework law on land/soil is a great step forward. However, educational support is urgently required in order to train staff for the responsible land and soil agencies.
 - In China the participation of the general public is one of the crucial next steps.
 - In Namibia the so-far-insufficient implementation must be addressed. International instruments could play a very important role due to the Monist approach (that is, when an international treaty is ratified, it automatically becomes part of Namibian law).
- It was mentioned that all nationally relevant drivers should be considered. Soil sealing of productive, good-quality land close to urban areas due to inadequate and/or ineffective land use planning or salinisation are two of them

drought and floods, and strive to achieve a land-degradation-neutral world.” See:
<https://sustainabledevelopment.un.org/content/documents/1579SDGs%20Proposal.pdf>

² See German Federal Environment Agency, Our Earths “thin skin” needs protection, December 2014.

Which legal instruments are suitable embed international obligations on land and soil?

- This part of the Workshop dealt with the aspect whether and how international provisions could support the implementation of the goal of a “land degradation neutral world”.
- International regulation could be required if one of the following conditions prevail:
 - An issue has transboundary effects.
 - The transboundary effects demand international cooperation for their solutions.
 - An issue could cause conflicts – especially military ones – between states.
- In consequence, the fundamental reason for the up-scaling of suitable national instruments is that there are transboundary effects.
- Further to the clear recommendations provided by Dr Altvater, the workshop concluded that additional international instruments would only be helpful if they comply with the following criteria for good governance.
 - To be specific and clear.
 - To be of obligatory nature.
 - To be able to be verified through a compliance regime

In this regard, the London Protocol to the London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (<http://www.imo.org/OurWork/Environment/LCLP/Pages/default.aspx>) was mentioned as an example of an international regime that has put in place very clear and specific obligations of the Contracting Parties.

- It is often argued that imposing rules on land management is difficult because land usually is under private ownership. This should be especially true for international regulatory frameworks. It was mentioned that the US government fundamentally opposes an international regime on land/soil.³ However, it was also stated during the workshop that the regulation of land is not specific because most environmental provisions conflict with economic behaviour and opportunities. For example: international regulation of international shipping interferes with the economic rights of ship owner. The workshop identified this question as a potential aspect for future research (“myth of impossibility of land regulation”).

Long-term perspective

- The workshop discussed the options for an international instrument of land governance and identified the following:
 - Stand-alone treaty
 - Protocol to UNCCD or CBD
 - Amendments to UNCCD
 - Coordination and Cooperation of various international instruments
- Concerning UNCCD the workshop identified the following weaknesses of the instruments:

³ See for example, IUCN Resolution 2.59 Legal Aspects of the Sustainable Use of Soils, Amman https://portals.iucn.org/library/sites/library/files/resrecfiles/WCC_2000_RES_59_EN.pdf

- UNCCD's scope of application is limited to drylands - according to the provisions.
 - UNCCD includes environmental as well as development aspects.
 - For the time being, the legal obligations under UNCCD to implement the objectives are relatively weak. Only the establishment of a National Action Plan is required. There are almost no specific obligations.
- The UNCCD secretariat is heavily engaged in intensifying the cooperation with other international bodies, for example the recent cooperation with the Ramsar Convention.⁴ There seems to be no strong support at present to extend the scope of application of UNCCD – especially by amending the Convention text, or adding a Protocol or Annex.
- The workshop concluded that the regional conventions, especially African ones, should be analysed to see whether they could support the implementation of the goal of a “land degradation neutral world”.⁵ Furthermore, they could be analysed to examine how they could be strengthened in order to be effective with respect to land degradation neutrality.
- If a new instrument is to be put in place, the links to all other relevant conventions should be analysed and clarified in order to avoid overlaps, gaps and uncertainties.
- In the meantime, regional and national activities as well as technical guidance should be stimulated and promoted.
- The workshop emphasized that independently of an international instruments on land governance suitable instruments will be required for the implementation of a land-related Sustainable Development Goal.⁶

Establishment of an expert network

- Based on the presentation given by Dr Ginzky, the workshop fully supported the idea to promote the establishment of land governance/regulation network using the list of participants as a starting point.
- The workshop also supported the idea of a periodical publication tool. Details would have to be worked out with a publisher. Dr Ginzky offered to contact Springer Publishing.
- The results of the legal study and the workshop should be disseminated. Options are *inter alia*:
 - Soil governance conference in Brazil, 25 to 27 of March 2015
 - Global Soil Week, April 2015

⁴ Restoring wetlands and drylands: achieving Land Degradation Neutrality, available at: <http://www.ramsar.org/sites/default/files/documents/library/wpc-pledge-ramsar-uncd.pdf>

⁵ For example the African Convention on the Conservation of Nature and Natural Resources (revised version); see <https://portals.iucn.org/library/efiles/documents/EPLP-056.pdf>

⁶ See Footnote 1.

Appendix

Documents and articles relevant to the Workshop

Zero Net Land Degradation: A Sustainable Development Goal for Rio+20, UNCCD 2012

Policy Brief 2012 available at

http://www.unccd.int/Lists/SiteDocumentLibrary/Rio+20/UNCCD_PolicyBrief_ZeroNetLandDegradation.pdf

A Stronger UNCCD for a Land-Degradation Neutral World 2013 available at:

http://www.unccd.int/Lists/SiteDocumentLibrary/Rio+20/issue%20brief%2004_09_13%20web.pdf

Ben Boer and Ian Hannam, 'Developing a Global Soil Regime (draft only) available at:

<http://ssrn.com/abstract=2491983>