
**“Current Situation of the Law on the Conservation of Soil as a Resource:
Strategies and Vision”
28 SEPTEMBER 2009
BUENOS AIRES, ARGENTINA
Minutes of the Meeting**

1. Opening of the Event and Welcome by Sheila Abed, Chair of CEL

Dr. Ricardo Lorenzetti, Supreme Court Justice of Argentina delivered welcoming remarks and thanked all of those present for attending the meeting. He also thanked all those involved in the organization of such an important event, especially the CEL Chair, Sheila Abed; and High Court (STJ) Justice of Brazil, Professor Antonio Benjamin who is also CEL’s Deputy Chair.

The CEL Chair also delivered her opening remarks. She expressed her contentment at being able to organize this event. She gave a brief introduction of the Specialist Group on Sustainable Soils and Desertification Legislation and the IUCN Academy. She mentioned that the most world-renowned professionals in Soils Legislation were present today at the meeting. She also said that this was the first time that such an opportunity was being carried out in Latin America.

Next, the Deputy Chair, Professor Antonio Benjamin spoke about the importance of Soils conservation and sustainability, because it cuts across various other environmental issues. He spoke about the role of the Courts in Soils and the environment. The Deputy Chair also introduced the other soils professionals who were speakers at the meeting.

2. Summary of 10 years of legislative investigations on soil by IUCN—Ian Hannam

Dr. Ian Hannam began speaking about the importance of soil degradation providing the example of the Sydney dust storm, which delayed his departure from Sydney to fly to Buenos Aires to attend the meeting.

Dr. Hannam provided a brief summary of the ten years of soil legislative investigation. He said that although environmental law began to develop quickly since the 1980’s, there was a large gap in soil legislation. Interest in soil legislation grew only since the early 2000’s. Nonetheless, most countries treat soils management in a very fragmented way.

He said that legal solutions for security and sustainable use of soils is a central aspect of IUCN's role in development of international and legal frameworks for soils, as part of the UNCCD DLDD Process. The October 2000 IUCN Amann Resolution on Soil 2.59, presents a framework for the legal aspects of sustainable use of soils. It charged IUCN to prepare guidelines and explanatory material and to investigate the need and feasibility of further developing international environmental law in the field. Resolution 2.59 also defined the term "sustainable use of soils" and "soil security". Bangkok Resolution 3.072 and the resolution on Soil 4.093 that came out from the Barcelona Congress were also discussed.

It is important to acknowledge other associated global drivers in reform of soil legislation, including UNCED 1992, the UNEP Montevideo Program III 2001, WSSD 2002, World Soils Agenda of IUSS 2002, the UNEP Strategy on Land Management and Soil Conservation 2004, as well as the new UNCCD process 2007 (Ten-year strategy).

Next, Dr. Hannam described the history and work of the Specialist Group on Sustainable Soils and Desertification Legislation. He emphasized on the formation of the "Global Soil Science Expert Advisory Group", which gathers representatives from key global soil science and related institutions and ensures the relationship between science and law.

Dr. Hannam explained how the SG's work is meeting WCC Soil Resolutions. This includes the publication of three key EP&LP books, comments on national reforms, presentations at scientific and environmental law conferences, the drafting of the "Protocol for Security and Sustainable Use of Soils", as well as investigations and working with individual countries. He mentioned a few crucial factors that had to be considered when drafting soil legislation. He identified additional legislative guidelines to implement the UNCCD 10-year strategy as the most important need today.

3. National Legislative and Administrative Approaches to Desertification, Land Degradation and Drought (DLDD)—Rob Fowler

Professor Rob Fowler described the UNCCD Ten-Year Strategic Plan and its relation to National Legislation in greater detail, including its operational objectives and expected outcomes. He also gave a brief summary of the IUCN Environmental Policy and Law Paper No. 52 "Drafting Legislation for Sustainable Soils: A Guide", and how it constitutes a product of extensive global legal research.

He also mentioned how this publication included specific legislative elements for disadvantaged people (women, herders, etc.). Last, he mentioned that there are two broad strategies with regards to sustainable soils: non-regulatory (related to education, research, assessment, community participation) and regulatory (statutory soil plans, duty of care, implementation of soil ecological standards, enforcement mechanisms).

4. Discussion

The Deputy Chair opened the table for discussion. Meeting participants (Eduardo Congos, Medio Ambiente, Provincia) highlighted the importance of starting a dialogue on soil legislation and its relation to climate change to thus reorganize it to better

respond to this phenomenon. Dr. Ian Hannam agreed and mentioned his experience with working in Mongolia, where there was no soil legislation, and how they had to take this factor into consideration in the development and reorganization of its environmental law framework.

Professor Fowler spoke about how soil degradation interrupted the natural process of carbon sequestration, thus intensifying climate change. He said that soil could assist in mitigating climate change, particularly through its use to enhance normal bio-sequestration. He mentioned research that has been conducted on how using biochar can not only increase the fertility of soil, but also help capture carbon from the atmosphere.

5. Reform Examples: China and Mongolia—Ian Hannam

Dr. Ian Hannam briefly described the two reform examples carried out with input from the SG on Soils. In China, this involved the reform of the 1991 PRC Soil Conservation Law, taking twenty key soil legislative elements as a basis for the new PRC law. Twelve government agencies were involved and laws and regulations relevant to land degradation control were identified, as well as the strengths and weaknesses of determining the capacity of laws and policies.

In Mongolia, activities included the revision of all environmental law and the outline for a new law on Soil Conservation. The legal revision identified gaps, overlaps and duplications, as well as a lack of enforcement and institutional weakness. A new Grassland Law has been introduced, and the new Soil Conservation Law has been programmed for 2010.

Coffee Break

6. Need for International Instrument on Soil Security and Sustainable Use of Soils—Ben Boer

Professor Ben Boer began by showing the effects of climate change on natural areas, and the severity of forest fires and dust storms in Australia, which is 75% dry.

Next, he spoke of CEL's call on the global community to urgently consider the adoption of a Protocol on Security and Sustainable Use of Soils, because of its relevance to desertification and land degradation, and the Conventions on Climate Change, Biodiversity and Wetlands, among others. Another important thing to take into consideration is the ethical and practical basis for a global approach to desertification, land degradation and drought.

He mentioned the practical motivations for a soils instrument. Such an instrument would encourage politicians to become interested in soil and serve as a stimulus for legislative drafting around the world.

The SG on Soils and Desertification has drafted the Protocol on Security and Sustainable Use of Soils, as an outcome of the deliberations of the SG working in cooperation with a Soil Scientists Expert Reference Group since 2000. The Protocol

aims to provide a legal mechanism to assist Parties to the Convention. The Draft Protocol was distributed to participants at the forum.

He commented on the new legal challenges for land and soil conservation, which are directly related to climate change (bio-sequestration of carbon) and biodiversity (agro-biodiversity).

Professor Boer spoke about the three international conventions relevant to the topic of soils: the UNCCD, the CBD, and the UNFCCC. He spoke about the possibility of adding a Protocol to one of the existing conventions, or adding a Technical Annex or Amendment to the UNCCD, or even perhaps drafting a new convention specific to soils. The role of this new international environmental law framework for soil is to establish links with other conventions to ensure its application at both the national and international level.

Professor Boer briefly went over the draft Protocol, describing the objectives, principles, rights and responsibilities. He highlighted the importance of community participation and rights, transboundary measures, responsibility and liability. He also said that capacity building; education and information are key elements to ensure an effective implementation.

7. Agriculture, Environment and Desertification—Maria Eugenia Di Paola

Dr. Di Paola began by giving some information related to soils and desertification in Argentina. She continued by saying that although the information provided is somewhat discouraging, there are numerous tools available to work on improvement.

First she spoke about land use planning and how the Argentinean legislation sought for a rational and participative land use planning to ensure the sustainable use of soil. She mentioned the importance of environmental impact assessments: a participative procedure that looked at the environmental consequences of an activity. She also spoke about the Strategic Environmental Assessment and its link with the Environmental Impact Assessment.

Next, she spoke about the value of ecosystem services, and how agricultural producers should take ecosystem services into consideration. She also mentioned biofuels and provided examples of how Argentinean legislation includes provisions on biofuels, but that it should again be adapted to better respond to this topic.

Dr. Di Paola continued talking about agrochemicals, and how Argentina requires better legislation that takes into consideration the health and environmental impacts of agrochemicals. She also mentioned the importance of considering native forests and the law regarding this. In conclusion, Dr. Di Paola called for the creation of an integral agro-industrial model, developed cooperatively among all interested parties.

8. Law 22428 on Soils—Nestor Cafferatta

Dr. Nestor Cafferatta began by introducing the background of Law 22428 in Argentina. He stated the importance of reflecting two differing views on soil: one that sees it as an important agricultural resource, and another that sees it as a source of conflict for conservation.

He stated that the regulatory basis on soils directly depends on the views on ownership. In Argentina, the view is that land is a private resource. Particularly since the return of democracy, numerous Provinces have developed legislation on soil conservation.

Law 22428 is an adhesive law based on subsidizing and encouraging individual producers or groups of producers in need of conservation programs. It also included the creation of experimental areas. The bases of the law are productive associations. This law sought to protect productive areas in Argentina. It only benefited a little more than 2,500,000 hectares, 1,000 producers, 200 conservation associations, 82 conservation districts, 19 provinces (particularly Patagonia, Cuyo and Entre Rios). The results were insufficient, and thus require an improvement in the Argentinean national policy for soil conservation.

9. Justice's Role in Environmental Processes—Ricardo Lorenzetti

Supreme Court Justice Ricardo Lorenzetti spoke about how soil degradation and desertification create such a conflict that it has reached the Judiciary. He provided the example of induced forest fires, which have created conflicts among neighbours and have reached the Judiciary.

He also spoke about soil degradation caused by public policies, and the use of genetically modified organisms and the expansion of the agricultural frontier (particularly related to soy production) that have also reached the Judiciary. Thus, soil conservation is a crucial topic for the Judiciary.

Justice Lorenzetti also said that the topic of soils has evolved from being a passive principle to being an active principle. Soil generates its own regulations: as is the case of soil security. This has been observed with other environmental resources. Soil security is an important value added to soils, since it not only entails its present conservation, but it also aims for its protection against future impacts. This implies finding equilibrium between processes that improve and worsen the state of soils, an exercise commonly carried out when developing policies and legislation. Justice Lorenzetti highlighted on the fact of considering long-term effects when analyzing soil.

He said that it was important for the Judiciary to take the international legal framework into consideration as guidelines on how to proceed. This is only one of a plurality of sources available.

He highlighted the transboundary factor when dealing with the topic of soils, as was mentioned by the previous speakers. He also said that it was important to internalize the negative costs of production in order to develop appropriate legislation.

10. Meeting Closure

The CEL Chair thanked all those present for attending this meeting and for their support. She announced the signing of a Memorandum of Understanding between the IUCN Academy of Environmental Law and the University of Buenos Aires. The MoU will open the door to more than 100 universities around the world and an important opportunity to continue to develop capacity and knowledge.

