

IUCN Commission on Environmental Law
and the
Department of Sustainable Development of the Organization of American
States

”Dialogue on Soil Protection and the Sustainable Use of Soils”



13 November 2009



”The IUCN Soil Protection Initiative”

Dr. Ian Hannam
Chair

IUCN Commission on Environmental Law
Specialist Group on Sustainable Use of Soil and Desertification

1. OVERVIEW

□ IUCN Soil Protection Initiative

- Ten years of investigations 1999-2009;
- Three World Conservation Congress Soil Resolutions;
- Specialist Group activities; experience and expertise;
- Areas of contribution: publications, analysis, development of laws;

□ Contributions to national and international legislative development:

- Preparing guidelines and assisting with national reforms (some examples);
- Investigating international legislative instruments for soil (UNCCD process);

□ Challenges and Conclusions;

2. OUTCOME OF INVESTIGATIONS

- ❑ From 1980's – has been growth in environmental laws to manage the natural environment – but absence of “soil protection law”;
- ❑ Has been some interest in “soil law” from early 2000's;
- ❑ Legal frameworks for soil protection in most countries are fragmented;
- ❑ Legal protection at global level is significantly inadequate;
- ❑ Current state of the world's soil resources and the legal solutions for sustainable use of soils is the central interest of IUCN;

3. IUCN World Conservation Congress – Three Resolutions on “Legal Aspects of Sustainable Use of Soils”

- October 2000 - Amman Resolution on Soil 2.59
- November 2004 - Bangkok Resolution on Soil 3.072
- October 2008 - Barcelona Resolution on Soil 4.093

Requests IUCN Environmental Law Program:

- To prepare guidelines and explanatory material relating to principles and elements of **national legislation** to assist States to manage their specific soil degradation and land degradation problems;
- To investigate the need for and feasibility of developing **international environmental law** in this field, in particular through an international instrument for the sustainable use of soils,
- To pay particular attention to the ecological needs of soil and their ecological functions for the conservation of biodiversity and the maintenance of human life;

Term - Sustainable Use of Soils

- “Sustainable Use of Soils” means: – the use of soils in a manner that preserves the balance between the processes of soil formation and soil degradation, while maintaining the ecological functions and needs of soil. In this context, ‘the use of soil’ means the role of soil in the conservation of biodiversity and the maintenance of human life”.
- New UNCCD Process introduces the new term “soil security”;

4. ACKNOWLEDGE ROLE OF OTHER GLOBAL STRATEGIES IN REFORM OF SOIL LEGISLATION

- ❑ UNCED 1992;
- ❑ The UNEP Montevideo Program III 2001 (Objective 12 “Soils”);
- ❑ WSSD 2002 - Plan of Implementation and Johannesburg Declaration;
- ❑ World Soils Agenda of IUSS 2002;
- ❑ UNEP Strategy on Land Management and Soil Conservation 2004;
- ❑ New UNCCD process 2007 ► 10 Yr Strategy (2008-2018);

5. IUCN CEL SOIL SPECIALIST GROUP

- ▶ CEL Specialist Group on Sustainable Use of Soil formed in 2000 – expanded in June 2005 to include “desertification”;
- ▶ Members from 8 different countries – with wide range of environmental law expertise (soil problems, biodiversity, ethics, human rights, protected areas):
- ▶ Formation of “Global Soil Science Expert Advisory Group” in 2000 - representatives from key global soil science and related institutions (IUSS, WASWC, IWMI, UNEP, EU, ISRIC) - ensures on-going science-law interaction;
- ▶ On-going consultation with global environmental law network; e.g. IUCN Academy of Environmental Law; ILA;

Meeting WCC Soil Resolutions:

- ▶ IUCN legal research has produced three key EP&LP publications:
 - ❑ 2002 - “*Legal and Institutional Frameworks for Sustainable Use of Soil*” (EPLP 45);
 - ❑ 2004 - “*Guide to Drafting Legislation for Sustainable Soils*” (EPLP 52);
 - ❑ 2009 - “*Legal and Policy Framework for Management of Land Degradation in Dryland Ecosystems of People’s Republic of China*”;
- ▶ Input to national reforms – Oceania, Asia, Europe; South America (Buenos Aires MOU);
- ▶ Presentations at science and law conferences (40 papers available on range of soil law topics);
- ▶ Drafted “*Protocol for Security and Sustainable Use of Soils*” and detailed Commentary (support UNCCD 10 Yr Strategy);
- ▶ Members linked with many countries – China, Mongolia, Kyrgyzstan, Tajikistan, Thailand, Iceland, Serbia;



IUCN
Environmental
Law Programme

Legal and Institutional Frameworks for Sustainable Soils

Ian Hannam with Ben Boer

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 960 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.

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Legal and Institutional Frameworks for Sustainable Soils



IUCN Environmental Policy and Law Paper No. 45

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6. IUCN INVESTIGATION INTO NATIONAL SOIL LEGISLATION

- ❑ States have been creative in choice and application of individual mechanisms for soil management;
- ❑ Many statutes are developed around individual soil problems, as against soil ecological characteristics or integrated approach;
- ❑ Primary soil functions not mentioned in the legislation;
- ❑ Lack of clear objectives and purpose for soil protection;
- ❑ Inconsistencies in use of terminology;
- ❑ Some states have developed framework of legislation to manage soil and land problems - generally lack a coordinating mechanism;

IUCN ELP *Drafting Legislation for Sustainable Use of Soil: A Guide*

- ❑ To strengthen legal and institutional systems to manage soil - need legal frameworks that can implement the objectives of multilateral treaties, strategies and policies;
- ❑ Provides a choice of regulatory and non-regulatory strategies;
- ❑ Provides options for short term and long term approaches to develop legal frameworks – minor amendment or integrated sustainable soil law;
- ▶ Over 100 “generic” legal elements for drafting national legislation;
- ▶ Special set of legal and institutional elements for “disadvantaged people” – protection for occupiers; right to choose farming systems; women’s rights; disputes, mediation;
- ▶ Guide is being reviewed in context of new UNCCD process to implement the 10 Yr UNCCD Strategy – (introduced with no legal guidelines!);

Drafting National Legal Frameworks for Soil

Some important things to consider:

- Ecological condition of the soil resource;
- What specific actions are needed to prevent soil degradation and to rehabilitate soils;
- Rights-based Approach;
- Land management regimes to ensure food security and manage the effects of climate change;
- What type of legislative, policy and institutional frameworks are needed to address national soil degradation problems;

7. REFORM EXAMPLES

- China
- Mongolia

a. China: two approaches

(i) Reform of 1991 Water and Soil Conservation Law:



(i). Reform of 1991 PRC Soil Conservation Law

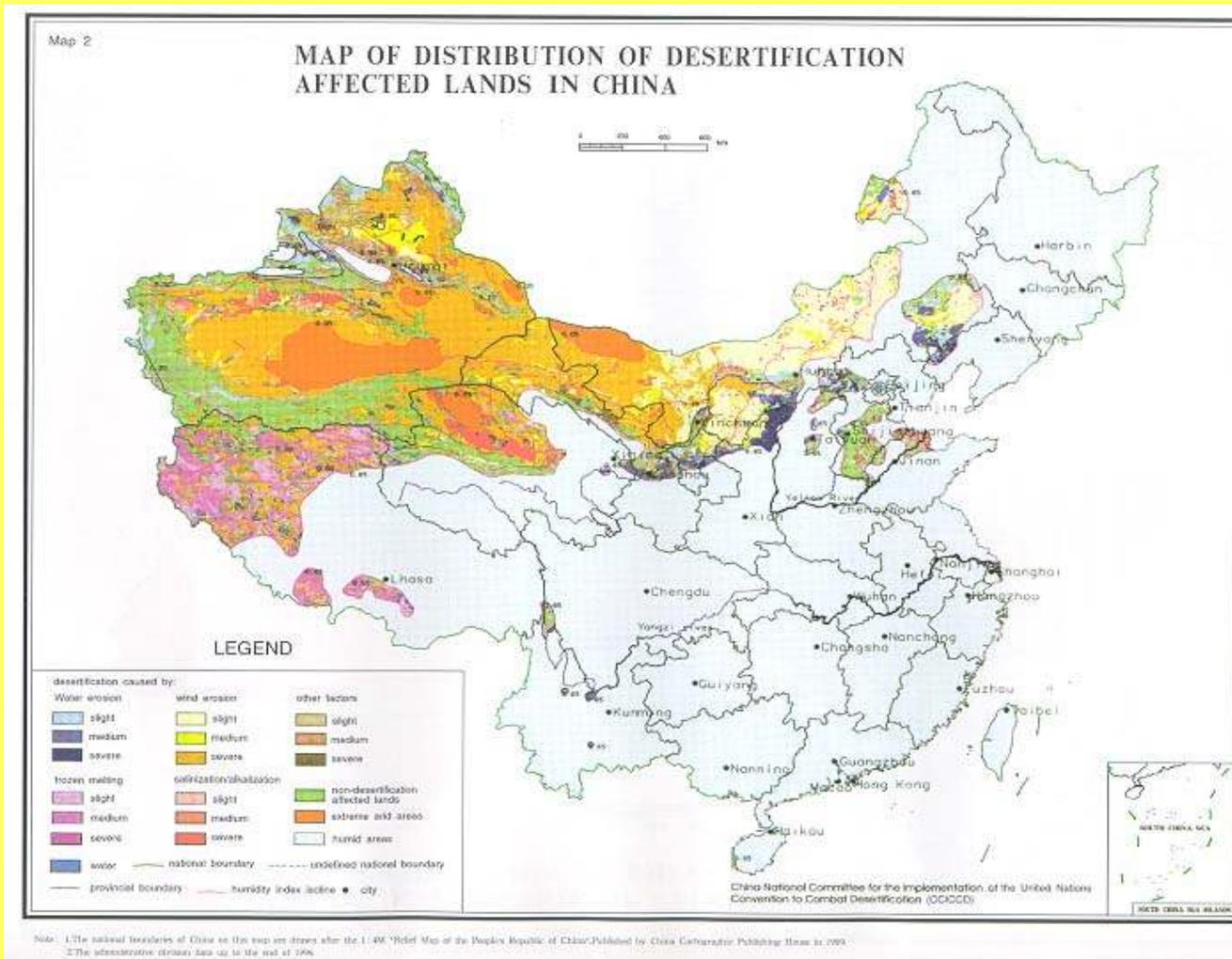
- Was a recommendation from the China National Soil Conservation Strategy of 2002;
- Joint ADB-PRC (MWR) project prepared the new law in 2006-07;
- Worldwide study of international and national laws relevant to soil conservation;
- 20 “key” soil legislative elements as basis for new law;
- Reviewed various institutional models for soil conservation e.g. single law-single authority; integrated law-integrated agency – case studies, NZ, USA, Australia;

Objectives

- Key objectives to frame new PRC SC Law:
 - Based on underlying ecological philosophy;
 - Embody the principles of the National Soil Conservation Strategy;
 - Expand the organizational and administrative procedures;
 - Expand opportunities for education in soil management;
 - More sophisticated procedures for monitoring and auditing;
 - Clear outline of research and investigation responsibilities;
 - Wider involvement of community in soil conservation;
 - Introduce EIA procedures for soil protection;
 - Expand dispute resolution techniques;

(ii). Legal and Policy Frameworks for LD Control

- Integrated approach developed under the Legal Component of PRC-GEF Partnership Project – dryland provinces, Western China (2004-2007)



Approach

- 12 government agencies involved;
- Each province established a Legal and Policy Team to identify laws and regulations for LD control [9 law areas];
- Determine the capacity of laws and policies for LD control using IUCN Method;
- Main task was to prepare a LD legal and policy framework for each province, which featured:
 - Staged introduction of new provincial laws and regulations;
 - Plan to revise existing policies - new policy development;
 - Recommendations for institutional changes;
 - Each framework is part of Provincial LD Strategy and Action Plan;

Issues addressed

- Issues addressed by each framework:
 - Introduces an ecological philosophy to laws and policies;
 - Greater role for EIA in LD control;
 - Improving law enforcement to protect ecological environment;
 - Establishing a public interest litigation system;
 - Introducing legislation that benefits women, minorities, farmers;
 - Improving property rights, access to finance and knowledge;
 - Greater role for community in LD control;
 - Developing financial mechanisms;
 - Strategies to improve agency coordination;

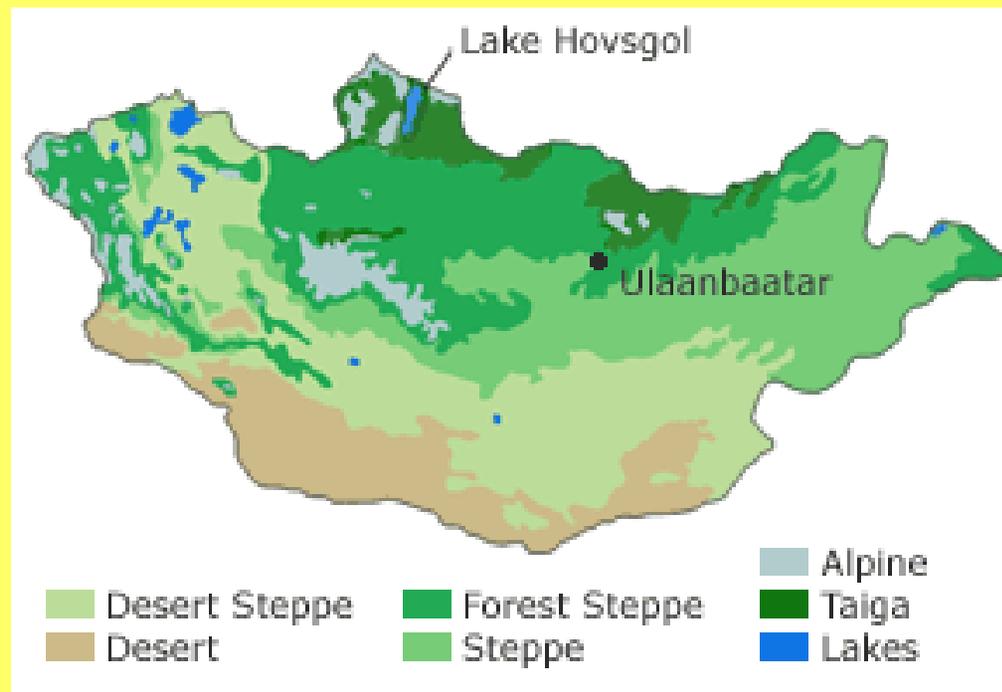
b. Mongolia



- Revision of all environmental law – UNDP SLM Project;
- Prepare new Soil Conservation Law – UNDP assistance



MONGOLIA - Ecological Zones



Mongolia

(i). Revision of all environmental law – UNDP SLM Project;

- 30 environmental laws and 200 regulations analysed using IUCN Method (2005);
 - Identified gaps, overlaps, duplication, synergies;
-
- ▶ No logical basis in development of laws;
 - ▶ No legislation for land degradation and desertification control;
 - ▶ No legislation for biodiversity management;
 - ▶ Poor enforcement system, sanctions and liabilities;
 - ▶ Weak institutional structure; overlaps in responsibility;
 - ▶ Inadequate environmental law and policy education system;

Mongolia

- Reform approach - considers Four Administrative Areas;
- Program of capacity building and environmental education;
- Priority list to reform laws and introduce new laws - Soil Conservation Law;
- Improving sanctions and liabilities;
- Establish an environment court;

Outline of New Environmental Law System for Mongolia

Box 1

Environmental Management
Legislative Administration

Environmental Management and
Climate Change Coordination Law
Responsible for coordination of
legislative cluster - environment
management, EIA, climate change;
Establish primary rules for all
administrations to follow in national
approach to manage the
environment;

Box 2

Environmental Protection
Legislative Administration

Protection of the Environment
Coordination Law
Responsible for coordination of
legislative cluster - air, water, noise
pollution and waste management;

Specialist agencies

Box 3

Natural Resources Management
Legislative Administration

Natural Resources Management
Coordination Law
Responsible for coordination of
legislative cluster - land, soil,
water, forests, grassland;

Specialist agencies

Box 4

Biodiversity Management
Legislative Administration

Biodiversity Management
Coordination Law
Responsible for coordination of
legislative cluster - flora and fauna
species, special protected areas,
nature reserves, buffer zones;

Specialist agencies

8. INTERNATIONAL LEGAL FRAMEWORK FOR SOIL

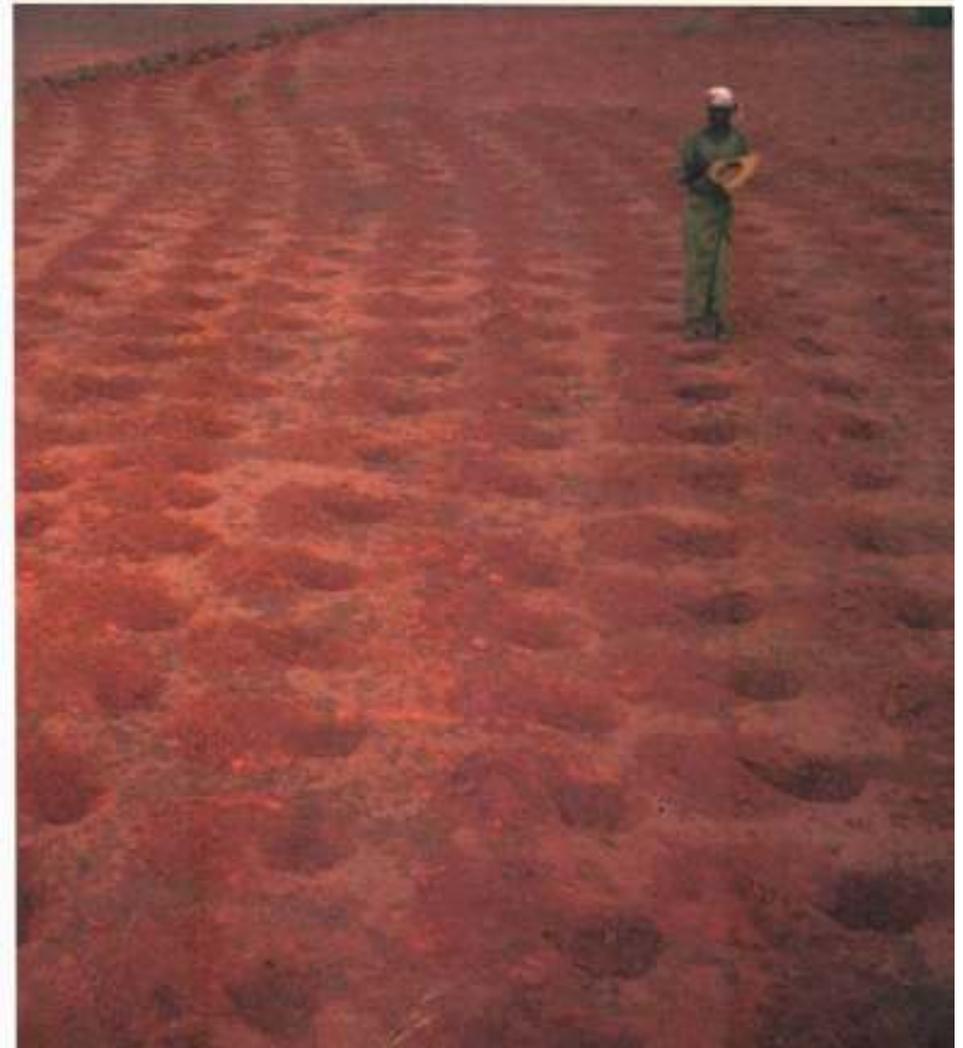
IUCN research indicates that an international instrument for soil could:

- Contain the fundamental ecological principles for sustainable use of soil;
- Consolidate relevant elements of existing international soil policies;
- Provide guidelines on the legal, ecological and policy requirements for the sustainable management of soil;
- Forge links between an instrument on soils and other international environmental instruments – CBD; UNFCCC; UNCCD;
- Motivate States to legislate or reform legislation for soil protection;

- **The impetus for international action for a Soils Convention has come from leading soil scientists - not lawyers or policy makers**

a world soils agenda

Discussing International Actions
For the Sustainable Use of Soils



Options considered by IUCN for international framework for soil

- ❑ Binding stand-alone convention (treaty);
- ❑ Protocol to an existing convention (e.g. UNCCD, UNBDC);
- ❑ Non-binding instrument;
 - Update and expand UN FAO 1983 Soil Charter;
 - Declaration of principles on sustainable use of soil (debated in Iceland 2005);

International Activity

- Canvassed options with Soil Scientists Expert Group;
- Options discussed at many forums between 2004-2009;
- In 2005 a “*Draft Protocol for Protection and Sustainable Use of Soils*” as outcome of Global Soil Forum in Iceland;
- In 2009 a “*Draft Protocol for Security and Sustainable Use of Soils*” prepared for Soil legislation side-event at UNCCD COP9;

10. CHALLENGES

- ❑ Critical that the plan to manage soils into the 21st Century includes a sound legal and institutional framework at international and national levels - **focus on soil security and food security**;
- ❑ Maintain consistent dialogue between the legal and soil science disciplines on **soil security and sustainable use of soil**;
- ❑ To use innovative and practical legal and policy tools to **implement global environmental strategies** to improve soil protection;
- ❑ Continued effort is needed to ensure soil is a critical and essential element of the **total ecosystem debate**;

11. CONCLUDING POINTS

- ▶ A solid body of information and knowledge is available from the international law to use in framing national and regional approaches to laws and policies for sustainable use of soils – more effort needed by State's;
- ▶ Number of frameworks have been “tested” - available for national reforms;
- ▶ Guidelines, tools and legal and policy frameworks developed by IUCN ELP are assisting many developing countries – (international TA programs; through regional organizations (UNEP, UNDP, ADB, GEF);
- ▶ Continue the debate on international legislative options to protect soil;
- ▶ Continue collaboration between scientific and environmental law disciplines - to ensure that laws and policies are based on practical soil management issues;

