

UN Convention to Combat Desertification: Recent Developments

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I. Introduction

The United Nations Convention to Combat Desertification (UNCCD)¹ was adopted in 1994 as a consequence of the UN Conference on Environment and Development. It entered into force in December 1996 and now benefits from a universal membership encompassing 191 Member States and the European Community.²

¹ Full title: The United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa; in: P.W. Birnie/ A. Boyle (eds), *Basic Documents on International Law and the Environment*, 1995, 513 et seq.

² See under: <<http://www.unccd.int/convention/ratif/doiif.php>>.

UNCCD is a multilateral instrument for environmental protection and for development cooperation.³ Its first objective is “to combat desertification”.⁴ The Convention defines the term “desertification” to mean “land degradation in arid, semi-arid and dry sub-humid areas resulting from various factors, including climatic variations and human activities”.⁵ Thus, the Convention is not concerned with action against land degradation in general. Instead it focuses exclusively on the phenomenon of land degradation occurring in the so-called “drylands”. The shared characteristic of these areas is a paucity of rainfall.⁶ Finally, “land degradation” in drylands is defined as reduction or loss of the biological or economic productivity and complexity of rainfed cropland, irrigated cropland, or range, pasture, forest and woodlands. It may result from land uses or from processes such as: “soil erosion caused by wind and/or water;” “deterioration of the physical, chemical and biological or economic properties of soil” and “long-term loss of natural vegetation”.⁷ The Convention aims to prevent and/or reduce land degradation, rehabilitate partly degraded land, and reclaim desertified land.⁸

The second objective UNCCD pursues is to “mitigate the effects of drought” whereby the expression “drought” is defined as the natural phenomenon that exists when an unusually low precipitation level adversely affects the productivity of land.⁹

According to the UN Millennium Ecosystem Assessment drylands cover 41 per cent of the earth’s land surface and are inhabited by more than two billion people. The Assessment furthermore estimates that 10–20 per cent of drylands are already degraded which means that approximately 1-6 per cent of their inhabitants live in desertified areas, with many more being at risk from desertification.¹⁰

³ B. Kjellén, “The Saga of the Convention to Combat Desertification: The Rio/Johannesburg Process and the Global Responsibility for the Drylands”, *RECIEL* 12 (2003), 127 et seq. (131).

⁴ Article 2 (1) UNCCD.

⁵ Article 1 (a) UNCCD.

⁶ Article 1 (g) UNCCD.

⁷ Article 1 (f) (i)- (iii) UNCCD.

⁸ Article 1 (b) UNCCD.

⁹ Article 1 (c) UNCCD.

¹⁰ Z. Adeel, “Ecosystems and Human Well-being: Desertification Synthesis”, Millennium Ecosystem Assessment, 2005, Summary.

In general terms, poverty is more acute in drylands than in any other ecosystem area. The loss of productive land starts a vicious circle for many rural people in Africa, Asia and Latin America in which land degradation is both a driver and a result of poverty.¹¹ Environmental refugees and conflicts are a consequence.¹²

The Preamble of the Convention stresses its anthropocentric approach which reflects the recognition that an acceptable level of degradation can only be established with reference to the human needs of local people.¹³

The twofold approach of UNCCD, as expressed in its Preamble, is to pursue environmental and socio-economic development objectives. The Convention gives equal importance to both aspects, an "improved productivity of land, and the rehabilitation, conservation and sustainable management of land and water resources" on the one hand and to "improved living conditions, in particular at the community level".¹⁴ The requirements for all State parties to "adopt an integrated approach addressing the physical, biological and socio-economic aspects of the processes of desertification and drought"¹⁵ and to "integrate strategies for poverty eradication into efforts to combat desertification"¹⁶ further underline this balanced approach.

UNCCD is hailed as a unique instrument for one remarkable innovative feature it applies, namely its participatory or "bottom-up" approach. This term is commonly used for UNCCD's requirements of participation in decision-making of local populations affected by desertification, as well as non-governmental organisations. Negotiators of the Convention expected that local community knowledge and support would be vital for a successful implementation. Hence, direct participation has played a significant role in the working practice of the Convention from the outset.

¹¹ A. Tal/ J.A. Cohen, "Bringing "Top- Down" to "Bottom-Up": A New Role for Environmental Legislation in Combating Desertification", *Harvard Environmental Law Review* 31 (2007), 163 et seq. (170).

¹² T. Bryant, "A New Approach to an Old Problem: The Convention to Combat Desertification", *Environmental and Planning Law Journal* 13 (1996), 445 et seq.

¹³ Ph. Dobie, "A Future for the Drylands?", *RECIEL* 12 (2003), 140 et seq. (141).

¹⁴ Article 2 (2) UNCCD.

¹⁵ Article 4 (2) (a) UNCCD.

¹⁶ Article 4 (2) (c) UNCCD.

This approach is reflected in the obligation to develop and implement national, subregional and regional action programmes in such a way as to inspire cooperation in a spirit of partnership between the donor community, governments at all levels, local populations and community groups, and facilitate access by local populations to appropriate information and technology.¹⁷ Moreover, affected countries are required to establish and implement their National Action Programmes (NAPs) through participatory means.¹⁸

Even though the bottom-up approach has failed to produce widespread successes,¹⁹ examples of success show that one may hope it will be more effective than the traditional top-down approach of development planning in the long run.²⁰ Provided that the position of the respective civil society in affected countries becomes stronger the Convention's work will become more effective, too.

The Convention does not content itself with promoting bilateral and multilateral arrangements²¹ linking donors and local entities. The need for a comprehensive, coordinating framework for action is reflected by the central element the Convention uses to achieve its aims, the NAPs.

In addition, the Convention obliges affected country parties to strengthen relevant legislation, to enact new laws and to establish long-term policies.²² The Convention remains, however, silent on the specific content and form of such legislation and Convention bodies have so far failed to address this vagueness. This lack of support is one reason for the failure of many affected states to adopt relevant legislation.²³

¹⁷ Article 10 (2) (e) UNCCD.

¹⁸ Article 10 (2) (f) UNCCD.

¹⁹ L.C. Clark, "A Call to Restructure Existing International Environmental Law in Light of Africa's Renaissance: The United Nations Convention to Combat Desertification and the New Partnership for Africa's Development (NEPAD)", *Seattle University School of Law - Law Review* 22 (2003-2004), 525 et seq. (540).

²⁰ S. Bethune, "Review of Legislation and Policies Pertinent to Combating Desertification – A Case Study from Namibia", *RECIEL* 12 (2003), 176 et seq. (180).

²¹ Article 4 (1) UNCCD.

²² Article 5 (e) UNCCD.

²³ U. Beyerlin, "Desertification", in: R. Wolfrum (ed.), *Max Planck Encyclopaedia of Public International Law*, available online in August 2008; Tal/Cohen, see note 11, 181.

One central question dealt with in this article will therefore be whether or not we can expect improved guidance in the development and implementation of legislation to combat desertification. The outcomes of the most recent meetings of UNCCD bodies and their decisions with respect to the future strategy and operation of UNCCD will be analysed. Particular attention will be given to the contents and potential effect of the newly adopted 10-Year Strategic Plan and Framework to Enhance the Implementation of the Convention (2008–2018).

The treaty bodies under UNCCD are first of all the Conference of the Parties (COP)²⁴ and the Secretariat.²⁵ Subsidiary bodies are the Global Mechanism (GM),²⁶ the Committee for the Review of the Implementation of the Convention (CRIC), and the Committee on Science and Technology.²⁷

The COP convenes its meetings once every two years.²⁸ Its functions are, *inter alia*, to promote and monitor the implementation of UNCCD and to further develop the Convention.²⁹

The eighth and most recent meeting of the COP (COP-8) adopted a number of changes to the functioning of the Convention. COP-8 was held in Madrid, Spain, from 3 to 14 September 2007. Additionally, the Committee for the Review of the Implementation of the Convention (CRIC-6) met from 4 to 14 September and the Committee on Science and Technology (CST-8) from 4 to 7 September.³⁰

The Convention itself identified the following deficiencies which impede its proper implementation: insufficient financing compared to both the other Rio conventions,³¹ a weak scientific basis, insufficient advocacy and awareness and institutional weaknesses. It will be examined how far these deficiencies have been addressed by the most recent COP decisions and the Strategic Plan.

²⁴ Article 22 UNCCD.

²⁵ Article 23 UNCCD.

²⁶ Article 21 (4) UNCCD.

²⁷ Article 24 UNCCD, established in Decision 1/COP-5.

²⁸ Article 22 (4) UNCCD, .

²⁹ Article 22 (2) UNCCD.

³⁰ Earth Negotiation Bulletin (ENB), "Summary of the Eight Conference of the Parties to the Convention to Combat Desertification: 3-14 September 2007", 1, <<http://www.iisd.ca/download/pdf/enb04206e.pdf>>.

³¹ The Convention on Biological Diversity (CBD) and the UN Framework Convention on Climate Change (UNFCCC).

II. The 10-Year Strategic Plan and Framework to Enhance the Implementation of the Convention (2008–2018)

The Strategic Plan and Framework (2008–2018) have been drafted by the intersessional intergovernmental Working Group and adopted by COP-8. The Strategic Plan strives to address impediments to an effective implementation of UNCCD. It is a reaction to the changes in the policy and the scientific and financial environment of the Convention over the last decade. These changes are due to the Millennium Assessment (MA) on dryland ecosystems which considerably advanced knowledge about biophysics and socio-economy. Moreover, official development assistance increased recently after a period of stagnation when the Global Environment Facility (GEF) became a financial mechanism of the Convention.³²

The Strategic Plan expresses a shared vision for the progressive development of the Convention over the next ten years. Can the Strategic Plan be expected to redirect actions of Convention bodies, Member States and collaborating institutions such as the GEF?

To ensure a practical effect of the Plan all Convention bodies are required to develop their programmes of work according to the Strategic Plan and to report on progress made in its implementation to the CRIC. This requirement ensures that the actions of the bodies are in line with the Strategic Plan.³³ Notably, the Executive Secretary and the GM are asked to draft a joint working programme to ensure their improved coordination.³⁴

Member States are called to implement the Plan, *inter alia*, within their action programmes and to report on progress made in its implementation.³⁵ The Plan also invites GEF to take the Plan into account in the next replenishment period.³⁶

The COP will have the primary responsibility to assess and review the implementation of the Plan, with assistance from the CRIC and the Committee on Science and Technology.³⁷ Hence it may be presumed

³² Decision 3/COP-8, Annex, The Strategy, Introduction.

³³ Decision 3/COP-8 (3).

³⁴ Decision 3/COP-8 (F).

³⁵ Decision 3/COP-8 (4)–(6).

³⁶ Decision 3/COP-8 (35).

³⁷ Decision 3/COP-8 (43).

that the Plan will impact upon the activities of treaty bodies, Member States and partners.

1. Objectives of the Strategic Plan

The Plan sets forth four “strategic objectives” which are intended to provide guidance to actions of all UNCCD stakeholders and partners. The Plan counts among its stakeholders not only its Member States but also NGOs and scientific communities.³⁸

Under each strategic objective the Plan formulates “expected impacts” i.e. long-term effects to be achieved under the respective strategic objective. “Long term” in this context is defined to mean a period of a minimum of ten years.

The first strategic objective is to improve the living conditions of affected populations. Corresponding expected impacts include an improved livelihood base and an income from sustainable land management for such populations as well as their reduced vulnerability to climate change and drought.

Two further strategic objectives are to improve the condition of affected ecosystems and to generate global benefits through the effective implementation of UNCCD. Such benefits may concern biodiversity and the climate.

The fourth strategic objective, finally, is to mobilise resources to support implementation of the Convention through national and international partnerships.³⁹ These strategic objectives reaffirm the Convention’s endorsement of an integrated multi-faceted approach.

The Plan further contains five “operational objectives” which are to provide short and medium-term guidance over a three to five year-period to stakeholders and partners. They are more action oriented and concrete than the strategic objectives.

The first operational objective is advocacy, awareness raising and education on the international, national and local level. In this context the Plan underlines the role that NGOs and scientific communities should play.⁴⁰ The Committee on Science and Technology and the GM

³⁸ Decision 3/COP-8 V Outcome 1.3.

³⁹ Decision 3/COP-8, Annex, IV.

⁴⁰ Decision 3/COP-8, V Outcome 1.3.

are called to play a supportive role in the implementation of this objective.

The second operational objective is to support the creation of enabling environments through a policy framework. This aspect includes, *inter alia*, a reformulation of NAPs with a view to making them more strategic, basing them firmly on biophysical and socio-economic knowledge, and incorporating them into an investment framework. From the developed country's side this involves mainstreaming UNCCD objectives into their development cooperation programmes. Support from the GM is to facilitate these tasks.

The third operational objective for UNCCD is to become a global authority on scientific and technical knowledge in the fields of anti-desertification work.⁴¹ The Committee on Science and Technology is given primary responsibility to fulfil this objective.⁴²

Operational objective number four aims at engagement for capacity-building and the fifth and final objective is to mobilise and improve the use of national, bilateral and multilateral financial and technological assets.⁴³ Here the GM has a central responsibility.⁴⁴

The Secretariat too is called to assist in the implementation of all operational objectives.⁴⁵ The primary responsibility in the achievement of the Plan's objectives pertains, however, to the parties.⁴⁶

2. Reform of UNCCDs Implementation Mechanisms

a. Strengthening of the Scientific Basis

In its section detailing the roles and responsibilities of UNCCD bodies, partners and stakeholders in the implementation of the plan the COP states the necessity to strengthen the Committee on Science and Technology so it can "assess, advise and support implementation, on a comprehensive, objective, open and transparent basis" of scientific informa-

⁴¹ Decision 3/COP-8, Annex, V.

⁴² Decision 3/COP-8, Annex, VI, A. 13.

⁴³ Decision 3/COP-8, Annex, V.

⁴⁴ Decision 3/COP-8, Annex, VI, C. 17.

⁴⁵ Decision 3/COP-8, Annex, VI, D. 19.

⁴⁶ Decision 3/COP-8, Annex, VI, F. 23.

tion.⁴⁷ The dissemination of scientific data is necessary to share solutions about the drylands of this world.⁴⁸

To clarify the Committee on Science and Technology's mandate the Plan emphasises that the Committee's recommendations aim to be policy-oriented, scientifically sound and peer reviewed. It mobilises experts under its auspices and engages in information exchange between institutions, parties and end users.

The Committee is called upon to refine the global indicators stated with respect to the strategic objectives. Those global indicators are not new. They mostly stem from the GEF strategic objectives, Millennium Development Goals and the Convention on Biological Diversity (CBD) 2010 Target. The aim is now for the Committee to establish both biophysical and socio-economic baselines on desertification/land degradation at the national level and also guidelines to monitor trends.⁴⁹

The hitherto used Group of Experts mechanism was deemed to be inadequate to provide scientific advice. Their reports contained a number of research projects and resulting recommendations and were of varying quality. Some experts showed limited engagement which can partly be attributed to the fact that they were not backed by any budget.⁵⁰

Consequently, the COP merely took note of the final report of the Group of Experts and encouraged the States parties to consider and use, as appropriate, the final report for the implementation of their NAPs.⁵¹

To improve the Convention's scientific basis the COP decided to organise future Committee on Science and Technology sessions as scientific and technical conferences. These conferences will focus on a specific theme which is determined by the COP.⁵²

The COP requested the Committee's Bureau to link with networks, institutions, agencies and bodies and to include the NGOs and other civil society stakeholders in the network.⁵³ Interestingly, no clear distinction is drawn between NGOs and scientists.

⁴⁷ Decision 3/COP-8, Annex, VI, A. 13.

⁴⁸ Kjellén, see note 3, 132.

⁴⁹ Decision 3/COP-8, Annex, VI, A. 14.

⁵⁰ ENB, see note 30, 16.

⁵¹ Decision 17/COP-8.

⁵² Decision 13/COP-8.

⁵³ Decision 14/COP-8.

The new format was welcomed by the scientists present at COP-8. It can be hoped that this alternative format will increase scientists' attendance at the Committee on Science and Technology sessions and more thoroughly involve the scientific community in UNCCD's work. Thus, the scientific base of UNCCD will be strengthened. The problem how to formulate scientific advice in a way that is usable by Member States remains however unresolved.

b. Improved Compliance Monitoring and Support

The CRIC function is to review the implementation of the Convention and to facilitate the exchange of information on measures taken by the parties. In the past, Member States have criticised the CRIC for its unclear function and mode of operation, i.e. its statements concerning country reports failed to provide to Member States the information needed to ensure improved implementation. The CRIC's mandate has been clarified under the Strategic Plan.

The Plan states the necessity to strengthen the CRIC⁵⁴ and lists the following tasks for the CRIC: to determine and disseminate best practices on the implementation of the UNCCD; to review the implementation of the Plan and of the Convention; and to assess CRIC performance and effectiveness.⁵⁵ Future CRIC and the Committee on Science and Technology sessions will be synchronised so as to benefit from synergies between both bodies.

The Plan stresses the importance of simplifying the reporting procedure using new reporting guidelines and to provide generally comparable information, taking into account action programmes.⁵⁶

However, the COP did not modify the terms of reference of the CRIC. It postponed the consideration and revision to the ninth COP session.⁵⁷ To bring the compliance monitoring forward the COP asked the Secretariat, in collaboration with the GM, to develop and establish draft reporting guidelines for reports on implementation of action programmes.⁵⁸ It remains to be seen what the next COP will agree upon. The clarification resulting from the Plan, at least, shows the way to address the noted deficiencies in the work of the CRIC.

⁵⁴ Decision 3/COP-8, Annex, VI, B. 15.

⁵⁵ Decision 3/COP-8, Annex, VI, B. 16.

⁵⁶ Decision 3/COP-8, Annex, VI, C.

⁵⁷ Decision 7/COP-8.

⁵⁸ Decision 8/COP-8.

III. Guidance in the Development and Implementation of Legislation

A solid legislative or other regulatory framework is a precondition for the creation of a stable enabling framework to combat desertification. Legislation and regulation is necessary not to impose solutions from above but to encourage and support such solutions and to create transparency and coherence.

The Convention includes five Regional Implementation Annexes for Africa, Latin America and the Caribbean, Asia, the Northern Mediterranean and for Central and Eastern Europe. Those Annexes contain guidelines for the preparation of action programmes and for their focus and content.

In the spring of 2008 there are 37 NAPs and six Subregional Action Programmes in Africa, 28 NAPs and one Subregional Action Programme in Asia, 25 NAPs and one Subregional Action Programme in Latin America and the Caribbean, four NAPs in the Mediterranean and four NAPs in Central and Eastern Europe.⁵⁹

The most recent Parliamentary Round Table pointed out various weaknesses that impede the effectiveness of NAPs, such as their lack of appropriate strategic actions, limited funding, missing links between policymakers and scientists and an incomplete integration of international policies on the national level.⁶⁰ Most NAPs are irrelevant in national policy development.⁶¹ The Strategic Plan's second operational objective points out the necessity for action in this context.

The Parliamentary Round Tables strive to formulate public policies and environmental legislation. Do they assist legislators in developing legislative initiatives?

Unfortunately, the members of parliaments do not go beyond stating deficiencies. They do not provide practical advice on the content of legislation needed to address the perceived shortcomings. Finally, during the last Round Table (COP-8) the members of parliament themselves noted with regret the weak contributions that parliaments made

⁵⁹ <<http://www.unccd.int/actionprogrammes/africa/africa.php>>.

⁶⁰ Declaration of Members of Parliaments para. 6.

⁶¹ Ch. Bassett/ J. Talafre, "Implementing the UNCCD: Towards a Recipe for Success", *RECIEL* 12 (2003), 133 et seq., 135.

to the UNCCD implementation process.⁶² The Round Tables remain a mere platform to exchange views.⁶³

IV. Financing of the Convention

UNCCD is the only multilateral Convention which is primarily promoted by developing countries. Land degradation is not a priority issue for donor governments which makes it difficult to agree on financial matters. While the importance of sufficient funding for UNCCD's effectiveness is continually pointed out, COP-8 failed to adopt its anticipated decision on the future budget. The Secretariat's budget has evolved into the most hotly debated COP issue. The problem has been aggravated by diminishing voluntary contributions to the Secretariat and the depreciation of the dollar which is the accounting currency of the United Nations, since the Euro is the Secretariat's main currency.⁶⁴ The Parliamentary Round Table described current financial resources that are at the disposition of UNCCD as "neither substantial nor adequate, nor timely or predictable".⁶⁵

The prolonged negotiations at COP-8 on this aspect came to an end when Japan refused to accept the five per cent increase in the Euro value of the Secretariat's budget which the draft decision on the future budget provided for. Japan stuck to its position for zero nominal growth. This matter was taken up again at the first Extraordinary COP meeting which took place in New York on 26 and 27 November 2007.⁶⁶ The consensus finally reached provides a 4 per cent budget Euro value growth for the biennium 2008/2009. The COP also agreed to use the total amount for the current biennium as a starting point for negotiations concerning its budget for the subsequent biennium.⁶⁷

This increase indicates a positive assessment of and commitment to the strategic Plan by Member States. It therefore gives reason for optimism towards UNCCD's work over the next few years.

⁶² Declaration of Members of Parliaments para. 7.

⁶³ Declaration of Members of Parliaments para. 9.

⁶⁴ ENB, see note 30, 15.

⁶⁵ Declaration of Members of Parliaments para. 13.

⁶⁶ Press Release, "The First Extraordinary session of the COP approves the UNCCD budget for 2008/2009", <http://www.unccd.int/publicinfo/pressrel/showpressrel.php?pr=press27_11_2007>.

⁶⁷ See above.

The Strategic Plan gives high importance to the need for additional funding for the implementation of the Convention in a wider sense. Lack of financial resources is the most frequently cited impediment to effective implementation.⁶⁸ Official development assistance should at least reach the 0.7 per cent target by 2015.⁶⁹

V. Conclusion

In spite of the efforts under UNCCD desertification trends have not abated.⁷⁰ Parliamentarians at the last COP lamented that many affected States parties fail to prioritise tackling land degradation in their development plans. Many developed parties, on the other hand, abstain from promoting the provision of sufficient financial resources. The parliamentarians noted a lack of peasant participation causing a neglect of rural policy.⁷¹

Can the latest developments under the UNCCD improve the performance of the Convention and yield tangible progress? Or is the Strategic Plan nothing more than a new mechanism requiring additional planning and monitoring without delivering anything substantial?

The increase of the Secretariat's budget is a positive indicator for future UNCCD work. The same is true for the modification of the format of Committee on Science and Technology meetings. Other aspects, such as the assistance in the development of legislation and the restructuring of the reporting system still need to be addressed adequately. The Strategic Plan gives the necessary momentum for such reform. It clarifies the mandates and methods of work of its treaty bodies in reaction to their perceived operational inefficiencies. The Plan is also a success in that it adopts a results-based management approach, stating global indicators which will be refined by the Committee on Science and Technology. NGOs lament passivity and inaction in combating desertification.⁷² The Strategic Plan inspired their optimism for the future however.⁷³

⁶⁸ Bassett/ Talafre, see note 61, 133 et seq.

⁶⁹ Declaration of Members of Parliaments para. 23.

⁷⁰ Declaration of Members of Parliaments para. 3; Clark, see note 19, 541.

⁷¹ Declaration of Members of Parliaments para. 4.

⁷² Declaration of NGOs para. 3.

⁷³ Declaration of NGOs para. 15.

The Convention is gradually evolving into an implementable shape with strong treaty bodies, procedures and mechanisms.⁷⁴ The Strategic Plan has further advanced this development.

As stated in the Madrid Declaration, the outcome of the ministerial segment of COP-8, stronger political will is most important for the success.⁷⁵ Fully implementing the Convention is necessary to secure water and food for the poorest and most vulnerable people. Desertification is a global problem directly or indirectly affecting the whole of humankind.⁷⁶ One step to clarify this global responsibility might be to recognise topsoil as a global public good.⁷⁷

⁷⁴ Bassett/ Talafre, see note 61, 133 et seq.

⁷⁵ <<http://www.unccd.int/cop/officialdocs/cop8/pdf/16eng.pdf>>, Declaration of Madrid, para. 4.

⁷⁶ Madrid Declaration, *ibid.*, para. 1.

⁷⁷ Declaration of Members of Parliaments para. 15.