

Additional arrangements for drought under the UNCCD Prospective assessment

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United Nations
Convention to Combat
Desertification

This prospective assessment concerning additional arrangements for drought under the UNCCD looks at a variety of legal instruments of international cooperation, ranging from protocols to gentleman's agreements, and assesses their suitability for addressing drought under the UNCCD. The assessment uses information of experiences in using these tools under other international processes, and takes into account the specific priorities and working modalities of the Convention in addressing drought. On this basis, the assessment presents conclusions on the likelihood of success of each legal instrument in addressing drought under the UNCCD.

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Additional arrangements for drought under the UNCCD: a prospective assessment

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Abbreviations

CBD	Convention on Biological Diversity
CFCs	chlorofluorocarbons
CITES	Convention on International Trade in Endangered Species
CMP	Meeting of the Parties to the Kyoto Protocol
COP	Conference of the Parties
COP-MOP	Meeting of the Parties to the Cartagena Protocol
CPF	Collaborative Partnership on Forests
CPLP	Carbon Pricing Leadership Coalition
CSD	Commission on Sustainable Development
DRAMP	Drought Resilience, Adaptation and Management Policy
DRAPA	Drought Resilient and Prepared Africa
ECOSOC	United Nations Economic and Social Council
EIT	economies in transition
EMAS	Eco-Management and Audit Scheme
FAO	Food and Agriculture Organization of the United Nations
FSC	Forest Stewardship Council
GDP	gross domestic product
GEF	Global Environment Facility
HLF	Paris High-Level Forum on aid effectiveness
HMNDP	High Level Meeting on National Drought Policy
ISO	International Organization for Standardization
LAC	Latin America and the Caribbean
LMO	living organisms that have been modified
MEA	multilateral environmental agreement
MOP	Meeting of the Parties to the Montreal Protocol
ODS	ozone-depleting substances
OECD	Organisation for Economic Cooperation and Development
PRAIS	Performance Review and Assessment of Implementation System
SBI	Subsidiary Body for Implementation (UNFCCC, CBD)
SBSTA	Subsidiary Body for Scientific and Technological Advice (UNFCCC)
SBSTTA	Subsidiary Body for Scientific, Technical and Technological Advice (CBD)
SER	Society for Ecological Restoration
SFM	Sustainable forest management
UNCCD	United Nations Convention to Combat Desertification
UNCED	United Nations Conference on Environment and Development (1992)
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNFF	United Nations Forum on Forests
UNIDO	United Nations Industrial Development Organization
UNOOSA	United Nations Office for Outer Space Affairs
UNW-DPC	UN Water Decade Programme on Capacity Development
USD	United States dollars
WGI	Water Governance Initiative (OECD)
WMO	World Meteorological Organization

1. Introduction

Drought is considered to be one of the most far-reaching natural disasters, bringing short and long-term economic and social losses to millions of people worldwide. Most countries across the globe occasionally face the impacts of drought, yet many of them lack a comprehensive plan for what to do when the first signs of drought appear. Drought and water scarcity – interconnected phenomena that often aggravate each other’s effects – can trigger major setbacks particularly in the poorest countries: from famine to migration and displacement. Just recently, in 2017, drought led to the worst humanitarian crisis since the Second World War, when 20 million people across Africa and the Middle East came to the brink of starvation.

One of the two overall objectives of the United Nations Convention to Combat Desertification (UNCCD) is about mitigating the effects of drought. The Parties to the Convention highlighted the importance of addressing drought also in the new UNCCD Strategic Framework (2018-2030), which was adopted in 2017: its third strategic objective aims to “mitigate, adapt to, and manage the effects of drought in order to enhance resilience of vulnerable populations and ecosystems”. The importance given to drought issues under the UNCCD was also reflected in resolution 72/220 of UN General Assembly in 2017, which called upon Parties to the Convention to enhance and support the preparation of drought preparedness policies on, inter alia, early warning systems, vulnerability and risk assessment, as well as drought risk mitigation measures.

At the 13th session of the UNCCD Conference of the Parties (COP 13), held in September 2017, Parties had an active debate on the ways and means to strengthen the action to address drought under the UNCCD, with suggestions ranging from the development of technical guidelines to moving toward a legally binding drought protocol. Numerous measures to address drought were agreed to, and the COP also requested the Convention secretariat to prepare a report on the need, if any, for additional arrangements on drought, for consideration at the next COP in 2019. In doing so, the secretariat sought to clarify the nature of such additional arrangements, what those would entail in terms of their expected contribution to addressing drought and the measures and resources needed for their establishment under the UNCCD. This work targeted numerous potential additional arrangements, which can be categorized into (1) technical approaches, (2) financing instruments and (3) legal instruments. This assessment, focusing on the likely success of a variety of legal tools in addressing drought under the UNCCD, serves as background information for the third category is used as the basis for related reporting of the secretariat to COP 14.

“Addressing drought” can have many meanings, and the assessment starts with a brief presentation of the drought cycle and related measures that may be used at national level. It continues by an overview of international cooperation on addressing drought, with examples of measures taken by various United Nations system organizations. The UNCCD focus on addressing drought, notably support to drought preparedness and resilience building, is also considered.

The section on potential legal instruments provides a quick overview of the international environmental law and the related tools, covering both the “hard law” and the “soft law”. It outlines the main characteristics of protocols, amendments and annexes, principles, declarations, decisions, standards and gentleman’s agreements, including their generic definition and information of the preparatory process and approval, monitoring and reporting, and institutional and budgetary requirements. It should be noted that while this information is based on academic literature and other reviewed, reliable sources, many

details and nuances of the original definitions and descriptions have been left out for the sake of focusing the text on the most essential content and for reader-friendliness.

Examples of the use of each instrument in other international processes are also provided, mostly from within the UN system. These examples have been selected on the basis of their contribution to the aims of this assessment – some are from other environmental conventions because of the similarity of their context to the UNCCD, while some others involve specific features or modalities that could be of interest to the discussions under the UNCCD. The success or content of the examples is presented only when it is needed to clarify their characteristics and use as legal instruments.

At the end of the presentation of each legal instrument, its potential use for addressing drought under the UNCCD is considered, building on the generic information and the examples and, where feasible, the use of the instrument under the UNCCD so far. These considerations aim at providing ideas and indications of what the use of each legal instrument under the UNCCD could mean in terms of procedures, modalities, costs and to some extent also content, and should not be taken as exhaustive descriptions of available alternatives or proposals for action.

The last section brings together the UNCCD priorities concerning drought and the information and findings on the use of each legal instrument. It compares the usefulness of the instruments and concludes the assessment by summarizing their potential use under the UNCCD.

2. Drought in the context of international cooperation

2.1. About drought

Drought is defined as “a naturally occurring phenomenon that exists when precipitation has been significantly below normal recorded levels, causing serious hydrological imbalances that adversely affect land resource production systems”.¹ It is a complex phenomenon, with varying levels of intensity, duration and spatial extent and impact to many sectors of the society and economy. The climatological community commonly defines four types of drought: meteorological, hydrological, agricultural and socioeconomic drought. Meteorological drought happens when dry weather patterns dominate an area. Hydrological drought occurs when low water supply becomes evident, especially in streams, reservoirs, and groundwater levels, usually after many months of meteorological drought. Agricultural drought happens when crops become affected. Socioeconomic drought relates the supply and demand of various commodities to drought. Meteorological drought can begin and end rapidly, while hydrological drought takes much longer to develop and then recover.

At the national level, action on drought can be generically described in two main categories: proactively managing the risk of drought and reactively managing the drought crisis.

Drought risk proactive management refers mainly to pre-drought or protection actions: mitigation, preparedness, prediction and early warning of drought. Related actions may include structural measures, such as planting drought-resistant crops, building infrastructure that supports water conservation and use regulation, or facilitating income generation that is not dependent on water availability; or non-structural

¹UNCCD Convention Text, Article 1. https://www.unccd.int/sites/default/files/relevant-links/2017-01/UNCCD_Convention_ENG_0.pdf

measures such as drought related knowledge development, risk / vulnerability assessments, capacity building on monitoring and forecasting, and establishment on drought policies and plans.

When drought occurs, it may set off a vicious cycle of impacts ranging from crop-yield failure, unemployment and decreasing income to hunger and (forced) migration. The drought crisis management actions usually start with a drought impact assessment, which serves as the basis for response and recovery planning and actions.

Figure 1: An overview of the drought cycle and related measures²



Drought response is about securing food and other basic subsistence needs of the affected people, and it may also include measures to protect the animals, vegetation or infrastructure in the affected areas. Drought response may be of a short-term or protracted duration. As for drought recovery and reconstruction initiatives, they are decisions and actions taken after a drought with a view to restoring or improving the pre-drought living conditions of the stricken community, while encouraging and facilitating necessary adjustments to reduce future drought impacts.

2.2 Addressing drought through international cooperation

Drought is a recurring feature in most parts of the world, but its impact is particularly critical in the rural areas of poor developing countries. While drought-prone countries bear the main burden for the management of both drought risk and crisis, many international organisations also provide support. This support comes in many forms, and for many aspects of the above-presented drought cycle.

In the field of drought risk management, many long-term international cooperation projects in rural areas contribute to the *mitigation and prevention* of the impact of droughts. Such projects may involve for example support to the establishment of more efficient irrigation systems³, facilitation of the sharing of best practices in drought risk management⁴, and provision of insurance to reduce uncertainty⁵.

² Source: FAO: Chapter 1 - Drought and climate variability in the Limpopo River Basin In *Drought impact mitigation and prevention in the Limpopo River Basin - A situation analysis*, FAO, 2004.

<http://www.fao.org/docrep/008/y5744e/y5744e04.htm#bm04>

³ See for example these FAO activities: <http://www.fao.org/emergencies/fao-in-action/projects/detail/en/c/216344/>

⁴ See for example these UNDP activities: http://www.undp.org/content/undp/en/home/ourwork/global-policy-centres/sustainable_landmanagement/drought_risk_management/aadp/

⁵ See for example these WFP and IFAD activities: <https://www.wfp.org/climate-change/initiatives/weather-risk-management-facility>

International assistance is provided also to the *preparedness*, notably planning of policies and strategies, for drought, which may include for example capacity building for conducting vulnerability assessments⁶, provision of access to updated data⁷, and facilitating coordination and cooperation among various ministries and organisations as well as local authorities that are working on drought from different perspectives⁸. On drought *prediction and early warning*, international cooperation has supported for example capacity building for the collection and use of climate data⁹, improvements to hazard monitoring and alert dissemination¹⁰, and the enhancement of meteorological observation facilities and related information dissemination¹¹.

With regard to drought crisis management, international cooperation is often needed for the preparation of the *impact assessment* that aims to clarify the impact of the drought, i.e. the material damages and losses as well as the humanitarian consequences. This assessment advises the response and recovery planning and implementation.¹² International cooperation for drought *response* may include for example emergency food and cash assistance¹³, seeds for vegetables and fodder as livelihoods protection assistance, as well as provision of clean water, hygiene kits and tools for water treatment¹⁴. Drought *recovery* measures and *reconstruction* are often similar to those for drought impact mitigation and may include for example rebuilding of farmers' capacity to engage in agricultural production, distribution of seeds, plants and seedlings, and support to the improvement of water management practices and facilities¹⁵.

Box 1: The High Level Meeting on National Drought Policy

In March 2013, WMO, the UNCCD secretariat and FAO, in collaboration with a number of UN agencies, international and regional organizations and national agencies, organized a High Level Meeting on National Drought Policy (HMNDP) in Geneva. The objective of this meeting was to provide practical insight into useful, science-based actions to address the key drought issues being considered by governments and the private sector under the UNCCD and the various strategies to cope with drought.

The scientific segment of HMNDP addressed several major themes relevant to national drought policies, including drought monitoring, early warning and information systems; drought prediction and predictability; drought vulnerability and impact assessment; enhancing drought preparedness and mitigation; planning for appropriate response and relief within the framework of national drought policy; and constructing a framework for national drought policy. The meeting resulted in a series of conclusions and practical recommendations around these

⁶ See for example these activities of UN Water and its partners: <http://www.ais.unwater.org/ais/course/view.php?id=37>

⁷ See for example these FAO activities: <http://www.fao.org/emergencies/resources/videos/video-detail/en/c/1152672/>

⁸ See for example these UNDP activities: <http://www.undp.org/content/dam/undp/library/Environment%20and%20Energy/sustainable%20land%20management/Mainstreaming%20DRM-English.pdf>

⁹ See for example these WMO activities: <https://public.wmo.int/en/projects/climate-services-increased-resilience-sahel>

¹⁰ See for example these UNDP activities: http://www.bb.undp.org/content/barbados/en/home/operations/projects/crisis_prevention_and_recovery/strengthening-resilience-and-coping-capacities-in-the-caribbean-.html

¹¹ See for example these WMO activities: <https://public.wmo.int/en/projects/Afghanistan-EWS>

¹² See for example these IDMP activities: <http://www.droughtmanagement.info/pillars/vulnerability-impact-assessment/>

¹³ See for example these WFP activities: <http://www1.wfp.org/emergencies/sahel-emergency>

¹⁴ See for example these activities of OCHA and its partners: https://reliefweb.int/sites/reliefweb.int/files/resources/afg_2018_2021_hrp_revision_drought_31_may_2018.pdf

¹⁵ See for example these FAO activities: <http://www.fao.org/emergencies/fao-in-action/projects/detail/en/c/435278/> and <http://www.fao.org/emergencies/fao-in-action/projects/detail/en/c/195408/>

themes, which have been synthesized into **three pillars of drought management**: 1. Monitoring and Early Warning Systems; 2. Vulnerability and Impact Assessment; and 3. Mitigation and Response. These pillars are now widely used as the basis of international cooperation for supporting the development of drought policies.

The meeting also adopted at a ministerial level a declaration that encouraged the development and implementation of national drought management policies, and called for WMO, the UNCCD and FAO as well as other related organisations and concerned Parties, to assist governments in this task.

HMNDP was followed-up by a capacity building initiative that was carried out by the UN-Water Decade Programme on Capacity Development (UNW-DPC) with the support of WMO, the UNCCD, FAO and CBD. Under this initiative, six regional workshops were organized in 2013-2015, with the aim to assist drought-prone countries in formulating a proactive, risk-based drought management policy at national level.

2.3 Addressing drought in the context of the UNCCD

“To mitigate the effects of drought” is one of the two overall objectives of the UNCCD stated in its Article 2. The Convention text interprets this objective as “activities related to the prediction of drought and intended to reduce the vulnerability of society and natural systems to drought”. That entails an understanding of where and when drought will happen, who, what is vulnerable and why. It calls for information on the incidence and severity of droughts to identify vulnerable population groups and geographic regions, which will facilitate timely development and implementation of drought impact mitigation actions.

Through the new Strategic Framework (2018-2030), the UNCCD is increasing its attention to drought. One out of the five strategic objectives of the Framework is focusing on drought; it aims to “mitigate, adapt to, and manage the effects of drought in order to enhance resilience of vulnerable populations and ecosystems”.

On the basis of the above, in terms of the drought cycle and related measures that were presented in Figure 1, **the UNCCD focus is on the drought risk management, particularly on mitigation/prevention and preparedness**. This prioritization was confirmed in the COP 13 (2017) decisions concerning drought; for example, the COP guided the process of developing national drought policies and drought preparedness systems, authorized the secretariat to use over 1,8 million euros to implement a drought initiative for supporting drought preparedness systems and resilience-building, and promoted the use of the UNCCD drought resilience, adaptation and management policy (DRAMP) framework that aims to reducing drought risk and increasing resilience.

The Convention is essentially about managing land sustainably, and land-based interventions have an important role also in the UNCCD measures to address drought. They direct attention to “proactive drought management” and further lineate the main aims and scope of addressing drought under the UNCCD toward supporting preparedness, adaptation and resilience building.

Recent activities of the UNCCD secretariat and the GM on addressing drought have contributed to these aims. Following the HMNDP and the capacity-building initiative that were presented in Box 1 above, the secretariat supported regional drought conferences in Africa (Windhoek, 2016) and Latin America and Caribbean (LAC) (Santa Cruz, 2017), both of which focused on a regional strategy on drought preparedness. The countries participating in the African conferences adopted a comprehensive regional strategy ‘Drought Resilient and Prepared Africa (DRAPA)’, to be implemented at national level, and the

LAC conference concluded with a declaration focusing on integrated drought management approaches to the development and implementation of national drought monitoring, early warning systems, vulnerability studies, impact assessments, mitigation and preparedness policies and plans.

In follow-up to the regional conferences, a series of pilot projects aiming to help countries strengthen drought preparedness systems were carried out in Namibia, Nigeria and Colombia. These projects looked at potential ways and means of ensuring that the latest and most appropriate policy-relevant knowledge, analysis and best practices on pro-active drought management are accessible and available to key stakeholders to guide policy and action for enhanced drought preparedness. They considered, for example, the integration of risk assessment and monitoring into early warning systems, the communication of alerts to the media, authorities and vulnerable communities; and options for a coordinated response to the drought warnings. The findings of the pilot projects have contributed to the development of the UNCCD drought initiative and DRAMP.

In 2018-2019, the secretariat and the GM have focused their activities on the implementation of the drought initiative. A key element of the initiative is to help a number of countries to build a national drought plan that combines and updates existing national drought response measures into a comprehensive, proactive approach. This process will also involve the identification of possible gaps in the national drought preparedness and planning. As at December 2018, more than 40 countries have joined the initiative. Other elements of the drought initiative include a practical “toolbox” of techniques for resilience building, and development of methodologies to facilitate drought vulnerability/risk assessment.

3. Potential legal instruments for addressing drought under the UNCCD

3.1 An overview of legal instruments for international environmental cooperation

The sources of international environmental law are the same as those of general international law: international conventional law and international customary law. Conventional law refers to multilateral, regional and other treaties that have been the main method by which the international community has responded to the need to regulate activities that threaten the environment. They are prepared through a complex and often lengthy process in which the negotiating mandate is defined, negotiations on both procedural and substantive aspects are held, and eventually the treaty text is adopted. Usually the entry into force of international environmental treaties requires a certain number of participating countries to ratify or accede to the treaty text, which is done through a national parliamentary process.

International customary law derives from country practice repeated over time, and although awareness of global environmental problems is relatively recent¹⁶, numerous related norms and principles of customary law can be identified. Both conventional and customary law rules, often referred to as “**hard law**”, are binding - in other words, they are presumed to create enforceable obligations for countries and other international entities.

Strict enforcement in terms of punishing the violator and compensating the victim is not often used in international environmental law. Unlike national legal systems that may enforce rules through sanctions,

¹⁶ Compared to, for example, practices concerning maritime trade or treatment of war prisoners, which have over hundreds of years built up related customary law norms.

there is no centralized “international court for the environment”. There are examples of environmental disputes having been litigated before various global and regional, judicial and arbitral bodies, but more often, international environmental law relies on the participating/signatory countries to implement the treaties and enforce related rules. There is only limited international oversight of such private enforcement - often done through a periodic duty of national reporting - and in many treaty processes “punishments” for not following the treaty rules are limited to international exposure and embarrassment.

Rather than focusing on enforcement, many international environmental treaties are attempting to encourage and enable compliance in order to foster implementation. They may, for example, offer operational guidance on specific implementation matters, facilitate financial assistance and technology transfer, or support information exchange and coordination. In general, international environmental law tends to focus on influencing future behavior - promoting better practices or preventing further harmful conduct - rather than sanctioning past actions.

Another important dimension of the international environmental law is the development of “**soft law**”, which refers to instruments that are negotiated among countries in an international context but not, strictly speaking, legally binding. Such instruments include a variety of declarations, standards, guidance documents and similar, which lay down aims or guidelines for future action, or through which countries commit themselves politically to meeting certain objectives.

Soft law instruments may do one or more of the following:

- codify pre-existing customary international law, helping to provide greater precision through the written text;
- crystallize a trend towards a particular norm, overriding the views of dissenters and persuading those who have little or no relevant state practice to acquiesce in the development of the norm;
- precede and help form new customary international law;
- consolidate political opinion around the need for action on a new problem, fostering consensus that may lead to treaty negotiations or further soft law;
- form part of the subsequent state practice that can be utilized to interpret treaties;
- provide guidance or a model for domestic laws, without international obligation, and
- substitute for legal obligation when on-going relations make formal treaties too costly and time-consuming or otherwise unnecessary or politically unacceptable.

Soft law is used in situations where countries want to act collectively but are not willing to go through the treaty making process. As soft law instruments are easier to amend or replace than those of hard law, countries may agree to include in them more detailed and precise provisions. Their negotiation process and entry into force are faster (and cheaper) than those of hard law instruments. Furthermore, they may serve as a starting point for the formation of new hard law tools, as a ‘test phase’ for an emerging approach or through generating customary international law as their content (the norms they promote) becomes increasingly applied.

Although soft law instruments do not create enforceable obligations for countries, they are generally expected to be observed. The fact that the soft law instruments are adopted shows that the involved countries are willing to follow the norms that they contain, even if the countries are not (yet) ready for a legally binding commitment. The soft law instruments are also often accompanied by some means for

facilitating their implementation and follow-up, targeting either the involved countries or the international organization that is running the process.

The relationship between international environmental hard law and soft law is complex. Many, if not most, soft law instruments are linked to hard law tools, either as specification to the content of existing tools or as precedents to new tools. The norms that they promote may be integrated into national legislation or incorporated into binding standards of business contracts or codes of conduct, thus becoming hard law. As noted earlier, international environmental law has limited mechanisms for enforcement, and in this respect the difference between international hard law and soft law instruments is not big. But it seems that states and individuals view hard law commitments more seriously, which is reflected in the special domestic procedures which need to be fulfilled in order to enter into a treaty.

3.2 Legal instruments

The following sections present different types of hard law and soft law instruments (from hereon referred to as 'legal instruments') that are being used for international environmental cooperation, and that could be considered to be used under the UNCCD for addressing drought. These instruments are protocols, annexes and amendments, principles, declarations and statements, decisions and standards. For each instrument, a brief generic description is provided on the following:

- Definition: what is the nature of the instrument, what is it used for;
- Preparatory process and approval: what is needed for creating the instrument;
- Monitoring and reporting: how is the implementation followed-up; and
- Institutional and budgetary requirements.

Some real examples of each instrument are also presented, with the aim to give an idea of how each instrument has been used in other processes. The potential use for addressing drought under the UNCCD is considered at the end of the chapter on each instrument.

a) Protocols

Definition

A protocol is a legal instrument that complements and adds to a treaty. It may be on any topic relevant to the original treaty, with the aim to further specify the provisions of the treaty, address a new or emerging concern, or add a procedure for the operation and enforcement of the treaty. Protocols are often created after the elaboration of an international framework convention, which tend to be broad agreements that are intended to serve as platforms for later and more focused negotiations.

A protocol is typically within the same institutional setting as the original convention: it is served by the convention secretariat and holds its official sessions together with the original convention, although often with dedicated resources that are additional to the budget of the original convention. Nevertheless, each protocol has in itself the status of a unique multilateral environmental agreement (MEA), with a separate legal standing and roster of country Parties. With a few exceptions, there are no inherent legal distinctions between MEAs that are designated as "conventions" and those that are designated as "protocols."

Preparatory process and approval

The preparatory process of a protocol is that of a treaty. In general, it has four main stages:

1. *Prenegotiation*, during which the issue to be addressed by the treaty is outlined and national positions are formulated. Outlining the issue may be done through, for example, scientific and technical background studies.
2. *Initiation of negotiation*, involving the choice of the negotiating forum and the adoption of the negotiating mandate (scope, types of provisions, schedule etc.)
3. *Negotiations*, which cover both substantive and procedural aspects of the treaty, may involve various committees and working groups devoted to specific matters. A large part of any treaty negotiations is linguistic, reflecting political as well as practical aims.
4. *Adoption and entry into force*, which begins by the adoption of the treaty text by the negotiating body, usually by consensus. The treaty is then open for signature, which represents countries' preliminary support for the treaty. Countries that decide to become bound to the treaty express their consent by ratification or accession, which is done through a national legislative (parliamentary) process. A protocol is not automatically binding on countries that have ratified the original treaty; it needs to be ratified or acceded to independently. The treaty enters into force after an agreed number of countries have ratified/acceded to it.

Monitoring and reporting

Most international environmental protocols obligate Parties to submit national reports on their activities for implementation. Many also contain processes for the review of implementation, and some for the review of compliance with their obligations. The rules and the institutional setting for gathering, assessing, and taking decisions based on information relevant to the implementation vary from one protocol to another. These rules and institutions are typically authorized and defined in the text of each protocol, but often they evolve through subsequent decisions by the Parties. For some protocols, the reporting and review process is supported by other, external institutions or organizations.

Institutional and budgetary requirements

The cost of the preparatory process of a protocol depends on the complexity of the issue it seeks to address and the level of agreement among the involved countries. Commissioning of background studies and organization of expert committees may be a necessary, but also costly, prerequisite for launching the negotiations. If the positions of countries are very diverse, many negotiation sessions, each with a cost, may need to be convened to reach an agreement.

As the protocol has been adopted and enters into force, its institutional and functional modalities are usually linked with those of the original convention: for example, they are serviced by a shared secretariat and organize the regular meetings of their Parties at the same time. As the protocols are about specific or new topics, they may require (additional) staff with expertise that is different from that of the staff of the original convention. Many protocols also establish new processes to support their implementation and monitoring of progress, such as regular national reporting and review, expert working groups and committees, or compliance mechanisms, which require resources that are additional to the budget of the original convention.

The regular budgets of protocols tend to be connected with the regular budgets of their original conventions. Only those countries that are Parties to each treaty decide on and contribute to its regular budget - if the list of Parties to a protocol is different from that of its original convention, this difference has to be taken into account in the budget negotiation and decision process even if the budget is shared. The conventions/protocols have a variety of ways of dealing with this matter. Some divide the total budget into percentage shares between the convention and the protocol, based on their estimated use of the resources, and the contributions to each share are separately assessed among those countries that are

Parties. Some others prepare separate budgets for the convention and the protocol, each of which is based on a proportion/cost of the shared staff and other resources and contains the assessed contributions of those countries that are Parties.

Examples of a protocol

Protocols have been negotiated under the other two “Rio Conventions”, the United Nations Framework Convention on Climate Change (UNFCCC) and the Convention on Biological Diversity (CBD), of which the Kyoto Protocol to the UNFCCC and the Cartagena Protocol to the CBD are briefly presented below. Information is provided also of the Montreal Protocol to the Vienna Convention on the Protection of the Ozone Layer.

The Kyoto Protocol

The Kyoto Protocol was adopted in December 1997 and entered into force in February 2005. Currently, 192 Parties have ratified or acceded to it.

The first meeting of the UNFCCC COP in March 1995 considered that commitments within the Convention were “not adequate” and adopted the Berlin Mandate which outlined a detailed process and timeline to negotiate more concrete obligations and timeframes. Negotiations for a new legal instrument were set to be carried out within an Ad Hoc Working Group that was made open to all Parties of the Convention. This Group finalized its work for adoption at the third meeting of the COP in December 1997. While this adopted Kyoto Protocol presented clear commitments, the terms of its implementation had been left open for further specification and many signatory countries were reluctant to ratify before getting a better idea of what was expected from them. For this purpose, new negotiations were launched and eventually concluded in November 2001, as the UNFCCC COP adopted the Marrakesh Accords. Subsequently, ratification gained speed and the Kyoto Protocol entered into force in February 2005, nearly ten years after the launch of its negotiations.

The first commitment period of the Kyoto Protocol was set for 2008 – 2012. With the aim to timely prepare for the following commitment period starting after 2012, new negotiations were launched at the first Meeting of Parties (CMP) to the Protocol in December 2005. These negotiations had also another ‘track’ focusing on long-term cooperative action. In December 2012, the Doha Amendment to the Kyoto Protocol was adopted, including commitments for the second commitment period 2013-2020 and amendments to several articles of the Kyoto Protocol. To enter into force, the amendment required 144 Parties to the Kyoto Protocol to formally accept it, which has not yet happened: as at September 2018, 117 Parties have deposited their instrument of acceptance and thus the amendment has not entered into force. Nevertheless, the CMP has recognized that Parties may provisionally apply the amendment pending its entry into force.

The Kyoto Protocol follows the annex-based structure of the UNFCCC and places a heavier burden on industrialized countries – it operationalizes the UNFCCC by committing these countries to limit and reduce greenhouse gas emissions in accordance with agreed individual targets. This is to be done largely through national measures, but may be partially covered through three market-based flexible mechanisms:

- International Emissions Trading, which allows countries that have emission units to “spare” (emissions permitted for them but not “used”) to sell this excess capacity to countries that are over their targets;
- Clean Development Mechanism, which allows a country with an emission reduction or limitation commitment to implement an emission-reduction projects in developing countries and thereby earn

certified emission reduction credits that can be counted towards meeting the Kyoto Protocol targets;
and

- Joint implementation, which allows a country with an emission reduction or limitation commitment to earn emission reduction units from a project in another industrialized country, which can be counted towards meeting the Kyoto Protocol targets.

Under the Kyoto Protocol, countries' actual emissions have to be monitored and precise records have to be kept of the trades carried out. Registry systems track and record transactions by Parties under the flexible mechanisms, and the UNFCCC secretariat keeps an international transaction log to verify that transactions are consistent with the rules of the Protocol. Reporting is done by Parties by submitting emission inventories and national reports under the Protocol at regular intervals.

The Kyoto Protocol has a compliance system to facilitate, promote and enforce compliance with the commitments. The Compliance Committee is made up of two branches: a facilitative branch that provides advice and assistance to Parties to promote compliance, and an enforcement branch that determines consequences for Parties not meeting their commitments, subject to approval by the CMP. The sanctions may include a declaration of non-compliance, penalty for excess tons, and suspension of eligibility to participate in the flexible mechanisms.

The UNFCCC Conference of the Parties (COP) serves as the meeting of the Parties to the Kyoto Protocol (CMP). It meets annually during the same period as the COP. The Subsidiary Body for Scientific and Technological Advice (SBSTA) and the Subsidiary Body for Implementation (SBI) established under the UNFCCC also serve the CMP. Bodies that were specifically constituted under the Kyoto Protocol are the Clean Development Mechanism Executive Board, the Joint Implementation Supervisory Committee and the Compliance Committee.

An Adaptation Fund was established at the same time with the Marrakesh Accords in 2001 and launched in 2007 to finance adaptation projects and programmes in developing countries that are Parties to the Kyoto Protocol. It is supervised and managed by the Adaptation Fund Board, which is serviced by the Global Environment Facility (GEF). The World Bank serves as the trustee of the Adaptation Fund.

The secretariat of the UNFCCC serves also the Kyoto Protocol. The share of the expenses of the Protocol is presented as percentages of the overall UNFCCC regular budget and its level is decided in CMP budget negotiations for each biennium, which are separate from the negotiations for the rest of the UNFCCC budget. For most of the time between 2008 and 2018, the Kyoto Protocol share was around 30% (17-20 million US dollars) of the total UNFCCC budget, while for the 2018-2019 biennium, it fell to 15% (close to 10 million US dollars). Only the Kyoto Protocol Parties contribute to that part of the UNFCCC budget.

The regular budget covers mainly costs related to the core work of the UNFCCC secretariat. Funding for the implementation of the Protocol, including national measures as well as activities carried out under the flexible mechanisms, is not considered in this document.

The Cartagena Protocol on Biosafety

The Cartagena Protocol on Biosafety was adopted in January 2000 and entered into force in September 2003. Currently, 171 Parties have ratified or acceded to it.

In November 1995, the CBD COP established an Open-ended Ad Hoc Working Group on Biosafety to develop a draft protocol on biosafety. This Group held six meetings between July 1996 and February 1999, followed by two informal consultation meetings in 1999, and the resulting text of the Protocol was adopted in January 2000 at an extraordinary CBD COP. This same COP decided to establish an Intergovernmental Committee to work on the procedural aspects, information-sharing, capacity-building, compliance and monitoring, among others, under the Protocol, and the Committee met three times between December 2000 and April 2003. The Protocol entered into force in September 2003 - eight years after the launch of the negotiations. The Cartagena Protocol is supported by the Nagoya-Kuala Lumpur Supplementary Protocol, which was adopted in October 2010 and entered into force in March 2018, with 42 Parties.

The Protocol sets rules for the safe use of living organisms that have been modified through modern biotechnology (LMOs). It establishes procedures for making decisions for the import and export of these organisms. Its implementation involves risk assessments for LMOs to be imported, safe handling, packaging and transportation of LMOs, prevention and penalizing of illegal LMO movements, and information-sharing through a Biosafety Clearing House, among other activities. There are two main sets of procedures, one for LMOs intended for direct introduction into the environment, known as the advance informed agreement procedure, and another for LMOs intended for direct use as food or feed, or for processing. The Nagoya-Kuala Lumpur Supplementary Protocol on complements the Cartagena Protocol with more detailed rules on liability and redress for damage resulting from transboundary movements of LMOs.

The Cartagena Protocol requires Parties to monitor implementation of their obligations under the Protocol and to report to the CBD COP serving as the meeting of the Parties to the Protocol (COP-MOP) on measures taken to implement the Protocol. So far, four sets of reports have been submitted: in 2005 (interim reports) and in 2007, 2011 and 2015. The Protocol requires the COP-MOP to undertake five years after the entry into force and at least every five years thereafter an evaluation of the effectiveness of the Protocol, including an assessment of its procedures and annexes. Such evaluations have been conducted in 2008, 2012 and 2016.

The Cartagena Protocol has procedures and mechanisms on compliance, as well as a Compliance Committee to promote compliance, address cases of non-compliance, and provide advice or assistance. This Committee held its first meeting in 2005 and has since met once a year (except for 2007, when it met twice). The measures to address non-compliance under the Cartagena Protocol may include provision of advice or assistance; request for the development a compliance action plan; financial and technical assistance; issuing a caution; and making the case of non-compliance public.

As noted above, the CBD COP serves as the meeting of the Parties to the Cartagena Protocol (COP-MOP). It meets annually during the same period as the COP. The Subsidiary Body for Scientific, Technical and Technological Advice (SBSTTA) and the Subsidiary Body for Implementation (SBI) established under the CBD also serve the COP-MOP. A Biosafety Clearing House has been established as part of the CBD Clearing-House Mechanism to facilitate the exchange of scientific, technical, environmental and legal information on, and experience with, LMOs and to assist Parties to implement the Protocol.

The regular budget of the Cartagena Protocol was negotiated and decided by the COP-MOP separately from the CBD budget until the end of 2016. From thereon, it has been part of the integrated CBD budget. The staffing and resources for the protocol have increased steadily from 4,0 million US dollars and five core staff members in 2005-2006 to 6,4 million US dollars and 12,5 core staff members in 2015-2016. In the decision on the integrated CBD budget for 2017-2018, the Protocol share of the overall CBD budget is stated as 16% (approximately 5,9 million USD), and there is no information of staffing specifically assigned to the Protocol. The regular budget covers mainly costs related to the core work of the CBD/Protocol secretariat. Funding for the national or multi-national implementation of the Protocol is not considered in this document.

The Montreal Protocol

The Montreal Protocol on Substances that Deplete the Ozone Layer was signed in 1987 and entered into force in 1989. Currently, 197 Parties have ratified or acceded to it.

Following the scientific discovery of an “ozone hole” above the Antarctic in 1985 and its proven connection with chlorofluorocarbons (CFCs), 20 countries including most of the major CFC producers signed the Vienna Convention, which established a framework for negotiating international regulations on ozone-depleting substances. Within the next 18 months, a binding agreement was reached of the Montreal Protocol for phasing out the production of numerous substances that are responsible for ozone depletion. Since then, the Montreal Protocol has undergone eight revisions: a series of amendments to add more substances and other measures as well as adjustments to tighten the control measures: in 1990 (London), 1991 (Nairobi), 1992 (Copenhagen), 1993 (Bangkok), 1995 (Vienna), 1997 (Montreal), 1998 (Australia), 1999 (Beijing) and 2016 (Kigali). All amendments except the Kigali one have entered into force.

The Montreal Protocol phases down the consumption and production of different ozone-depleting substances (ODS) in a step-wise manner, with different timetables for developed and developing countries. All Parties have specific responsibilities related to the phase out of the different groups of ODS, control of ODS trade, annual reporting of data and national licensing systems to control ODS imports and exports, among other matters. Developing and developed countries have equal but differentiated responsibilities, but both groups of countries have binding, time-targeted and measurable commitments.

In terms of monitoring and reporting, the Montreal Protocol requires all Parties to provide statistical data about ODS and other information to the Ozone Secretariat every year. This data is used for assessing each country’s compliance with the ODS phase-out schedules agreed under the Protocol, and for tracking overall progress in phasing-out ODS.

In addition, countries that are supported by the Multilateral Fund of the Protocol must provide information annually on progress in the implementation of their country programme.

The Montreal protocol has a non-compliance procedure, according to which the following measures may be taken in respect of non-compliance with the Protocol: Appropriate assistance, including assistance for the collection and reporting of data, technical assistance, technology transfer and financial assistance, information transfer and training; Issuing cautions; and Suspension of specific rights and privileges under the Protocol.

The Meeting of the Parties (MOP) is the governance body for the Montreal Protocol, with technical support provided by a subsidiary body called an Open-ended Working Group, both of which meet on an annual basis. Three Panels (the Technology and Economic Assessment Panel; the Scientific Assessment Panel; and the Environmental Effects Assessment Panel) guide Parties on issues related to the science of

the ozone layer protection, the technical and financial implications of the transition to new refrigerants and the implications to human health and the ecosystems from ozone layer depletion.

The Implementation Committee is responsible for receiving, considering and reporting on any submissions related to non-compliance with the Montreal Protocol.

The financial mechanism of the Montreal Protocol is the Multilateral Fund, which assists selected Parties in implementing the decisions taken by the MOP and to comply with the phase-out targets. Financial and technical assistance as well as transfer of technology are provided through four Implementing Agencies (UNDP, UNEP, UNIDO and World Bank). The Fund is managed by an Executive Committee, with support provided by the Multilateral Fund Secretariat.

The Ozone Secretariat provides administrative support to both the Montreal Protocol and the Vienna Convention. The regular budgets for the two treaties are approved separately, and as several staff members serve both of them, the expenses of these posts are divided between the two budgets.

At the beginning of its functioning, in 1990-1991, the regular budget of the Montreal Protocol amounted to approximately 5,8 million US dollars and it was supported by five staff members, all of which were shared with the Vienna Convention. In recent years, the budget has been around 10 million USD per biennium, with 12 core staff of which roughly half are shared with the Vienna Convention.

The regular budget covers mainly costs related to the core work of the Ozone Protocol secretariat. Funding for the national or multi-national implementation of the Protocol and the contributions to the Multilateral Fund are not considered in this document.

Using a protocol for addressing drought under the UNCCD

Preparation of a protocol on drought under the UNCCD would follow the usual phases of prenegotiation, initiation of negotiations, the negotiation process, adoption and entry into force. The topic of the protocol (what is meant by addressing drought through it) should be well defined, possibly through scientific background studies, so as to enable the countries and other stakeholders that are advocating for the protocol to clarify their positions and aims, as starting points for the negotiations.

For the negotiations to be launched within the UNCCD process, the COP should agree on the need for a protocol and adopt the negotiating mandate (scope, types of provisions, schedule etc.). The COP should also agree on the modalities for the negotiations, which could include different committees or working groups; and on the provision of related resources. After the completion of the negotiations, the text of the protocol should be adopted by the COP and opened for signature, ratification and accession. The protocol would enter into force after an agreed number of countries have ratified/acceded to it.

As may be noted from the examples presented above, the time and effort needed for a protocol to be negotiated and enter into force varies drastically from one to another. The Montreal Protocol took only two years to start first measures, while for the Cartagena Protocol the entry into force took eight years and for the Kyoto Protocol ten years. The quick progress of the Montreal protocol has been attributed to the certainty of the problem that needed to be addressed, clarity of the action to be taken to implement the Protocol (reduction/phasing out of CFCs, followed by other ODS), commitment by key countries including some major donors, and availability of (commercially) viable alternatives to the CFCs. For the other two protocols, many of these factors have been missing: there is uncertainty of the most effective implementation measures, carrying out the identified implementation measures involves immediate and

often significant costs, the risk of “free-riders” is higher, and the results of the implementation are less visible in short term.

Preparing a protocol to address drought is more likely to follow a similar path as the Cartagena and Kyoto Protocols than that of the Montreal Protocol. While the impacts of drought are generally recognized and there is commitment to address them all over the world, these impacts and the measures to address them differ greatly from one country to another. Defining a common “nominator” or a target on which a global protocol can be built could be challenging and lead to lengthy negotiations. Clarity of the purpose of the protocol would be, however, critical for the establishment of effective measures to implement the protocol and to monitor its progress. Formulation of the protocol should also ensure the interest of drought-affected developed countries in joining the protocol, so as to engage their technical expertise and financial support. For them, participation in the protocol should generate added value to the drought-related domestic measures and/or international cooperation that they are already carrying out.

For decision-making, monitoring compliance and assessing progress, a protocol to address drought under the UNCCD would probably require at least some additional institutional arrangements and resources. The UNCCD COP could serve as the meeting of the Parties to the protocol, similarly as is done for the other protocols presented above, and the functions of the CRIC could be adjusted for the requirements for monitoring, reporting and review under the protocol. The need for a compliance committee, specific working groups, panels or other expert bodies would depend on the content of the protocol.

In terms of financial implications, a protocol would require additional expertise in the UNCCD staffing and the additional institutional arrangements would create new expenses as well. Using the Kyoto Protocol and Cartagena Protocol budgeting for an indication of the range (protocol funding amounting from 15% to 30% of the Convention secretariat’s budget), the increase needed for the UNCCD secretariat regular budget (currently approximately 10,7 million euros) could be roughly estimated at around 1,8 to 3,6 million euros per biennium. This amount covers mainly costs related to the presumed core work of the secretariat. Estimated funding for the national or multi-national implementation of the protocol is not considered in this document.

b) Annexes and amendments

Definition

Many international environmental treaties contain provisions for annexes and amendments. Annexes are additions detailing some aspects of the treaty. They are part of the main text of the treaty but placed at the end of the document separately. An amendment is a modification of a treaty by adding supplemental information, deleting unnecessary or outdated information or correcting errors in the text.

Annexes and amendments and legally speaking equal with the text of the treaty. They contain information that is essential for the treaty but for some reason not included in the original treaty text body. Such information may be specific to a certain geographic area, topic or period of time, or it may have come up after the adoption of the treaty. The procedures for amendments and annexes offer a simplified process for updating or specifying a treaty in a relatively short time. On the other hand, amendments and annexes are likely to be adopted only if their content is such that it can be accepted by the involved Parties without extensive negotiations.

Preparatory process and approval

Typically amendments and annexes to international environmental treaties may be proposed by any party to the treaty, for adoption at the governing body of the treaty. The proposal is submitted to the treaty secretariat within a given timeframe before the governing body meeting, for circulation to all Parties. The adoption of the amendment or annex is by consensus or voting, usually requiring a specific proportion of votes. The adopted amendment or annex is then submitted to the depositary (for UN system treaties, the Secretary-General) that circulates it to all Parties of the treaty for their consent. This consent may be by acceptance or ratification; acceptance involves a lighter domestic process than ratification. After a specified number of acceptances/ratifications, the amendment or annex enters into force. It may be binding only those that have accepted/ratified it, or “automatically” binding for all Parties, the latter of which often presumes that no party formally objects the amendment or annex within a given timeframe from the adoption.

Monitoring and reporting

Monitoring and reporting requirements that are directly attributed to amendments or annexes vary greatly from one treaty to another, depending on the content and purpose. Some have direct monitoring and reporting obligations - for example, each Montreal protocol amendment introduced additional substantive components (new ozone-depleting substances) to be addressed, monitored and reported on by Parties. Some others have critical political or procedural importance but do not *per se* generate monitoring and reporting requirements – for example, the UNFCCC Annex I list of countries signifies the principle of common but differentiated responsibilities throughout the Convention process but does not in itself require monitoring or reporting.

Institutional and budgetary requirements

The preparations for amendments and annexes may involve some substantive background work in the form of studies or expert committees. Other than that, their preparations are usually dealt with in the regular treaty process of meetings, at no or minor additional costs.

Similarly to the monitoring and reporting requirements, the institutional and budgetary requirements of amendments and annexes vary greatly. Some entail additional staff or other resources while others are entirely embedded to the existing processes.

Examples of amendments and annexes

Below are overviews of the provisions concerning amendments and annexes to the UNFCCC and the CBD, with information of how amendments and annexes have been used under these treaties.

UNFCCC

Article 15 of the UNFCCC contains the provisions concerning amendments to the Convention. It states that any Party may propose amendments, which must be adopted at an ordinary session of the COP. The proposed text has to be communicated to the Parties by the secretariat at least six months before the COP at which it is proposed for adoption. Agreement on the proposed amendment should be by consensus; as a last resort the amendment may be adopted by a three-fourths majority vote of the Parties present and voting at the meeting. The adopted amendment will be communicated to the Depositary (UN Secretary-General) for circulation to all Parties for their acceptance. The adopted amendment will enter into force for those Parties having accepted it on the 90th day after the date of receipt by the Depositary of an instrument of acceptance by at least three fourths of the Parties to the Convention.

Article 16 of the UNFCCC contains provisions for the adoption and amendment of annexes to the Convention. It states that the Annexes form an integral part of the UNFCCC and a reference to the Convention constitutes at the same time a reference to any of its annexes. It also restricts annexes to lists, forms and any other material of a descriptive nature that is of a scientific, technical, procedural or administrative character. The procedure for proposing and adopting annexes to the UNFCCC is similar as for the amendments, except that an adopted annex enters into force for all Parties six months after the date of the communication by the Depository of the adoption of the annex, except for those Parties that have notified the Depository, in writing, within that period of their non-acceptance of the annex.

The UNFCCC has two annexes, which are to divide countries into groups according to differing commitments:

Annex I Parties include the industrialized countries that were members of the Organization for Economic Co-operation and Development (OECD) in 1992, plus countries with economies in transition (EIT), including the Russian Federation, the Baltic States, and several Central and Eastern European States.

Annex II Parties consist of the OECD members of Annex I, but not the EIT Parties. They are required to provide financial resources to enable developing countries to undertake emissions reduction activities under the Convention and to help them adapt to adverse effects of climate change.

There are no amendments to the UNFCCC text, but the lists of countries in its Annexes have been amended. An amendment was adopted also to the Kyoto Protocol in 2012 in Doha, although that is yet to enter into force.

CBD

The CBD Article 29 contains provisions for the amendment of the Convention. These provisions are identical to those of the UNFCCC, except for the majority needed for adoption by vote (two-third) and the number of Parties whose ratification, acceptance or approval is needed for the entry into force (at least two-thirds of Parties). No amendments have been made to the CBD.

Provisions for annexes under the CBD are presented in Article 30. It states that the Annexes form an integral part of the CBD and a reference to the Convention constitutes at the same time a reference to any of its annexes. It restricts annexes to procedural, scientific, technical and administrative matters. The procedure for proposing and adopting annexes to the CBD is similar as for the amendments, except that Parties that are unable to approve the annex have one year's time from the date of the communication of the adoption to so notify the Depository. On the expiry of the one year limit, the annex enters into force for all Parties that have not submitted a notification of non-acceptance.

CBD has two annexes:

Annex I presents an indicative list of categories of biological diversity important for its conservation and sustainable use, for the purposes of identification and monitoring at the level of Parties;

Annex II outlines the processes of arbitration (Part 1) and conciliation (Part 2).

Using an amendment or annex for addressing drought under the UNCCD

The UNCCD has five regional implementation annexes. Four of them were prepared and entered into force together with the Convention; the fifth was adopted at COP 4 in 2000 and entered into force in 2001. No amendments have been made to the Convention or its annexes.

The UNCCD provisions for the amendment of the Convention, as contained in Article 30, are similar to those of the CBD. Most provisions concerning annexes, as contained in Articles 29 and 31, are similar to

those of the UNFCCC, but without any restrictions on the content of the annexes. The UNCCD includes some provisions specifically for regional implementation annexes, notably that adopting a regional implementation annex or an amendment to such annexes has to include a two-thirds majority vote of the region concerned.

There are no formal obstacles in the UNCCD Articles or procedures for preparing an amendment or annex for addressing drought under the Convention. In principle, addressing drought can be considered as such additional or updated information that amendments are intended for. With regard to an annex, the UNCCD does not restrict the form or content of annexes like the other Rio Conventions do, thus using an annex for addressing drought is not ruled out.

However, the rationale of preparing an amendment or an annex for addressing drought can be questioned, for the time being at least. Amendments and annexes tend to be practically oriented tools that build on existing content or specify some concrete details of the Convention – this is clear also in the UNCCD regional implementation annexes that, while spelling out region-specific conditions and ambitions, derive directly from the structure and content of the Convention text. The ideal added value of addressing drought through an amendment or annex would be in specifying the (technical) measures to be taken toward broader UNCCD aims concerning drought, which would entail that Parties already have a shared understanding of what such broader aims are, and that they are committed to work toward them, in order for the amendment or the annex to be adopted and entered into force smoothly and rapidly. If the political process to generate such understanding and commitment is yet to be completed, an amendment or an annex may not be among the most useful tools for addressing drought under the UNCCD. The preparatory process, finding and agreeing on the wordings to be used, would probably take longer than usually for amendments and annexes, and in case of many diverse positions, the risk of countries deciding to stay outside the adopted amendment or annex by non-acceptance would be high.

c) Principles

Definition

“Principles” may refer to different types of rules in the context of the international environmental law.

General principles of law recognized by civilized nations are one primary source of (customary) international law, although sometimes their application is controversial as knowledge of the origin and methods for the ascertainment of such principles may be limited. Recognized general principles of international environmental law include, for example, the principles of precaution, polluter pays and common but differentiated responsibilities.

This assessment does not consider the general principles, but focuses instead on *principles as general norms*. Such principles are frequently found in the preambular section of various treaties, setting out the overall approaches or rules for implementing the treaty. They have also been used as independent instruments of international environmental law, which are typically about matters that are critically important but on which countries differ significantly, either in terms of needed measures for implementation or political interest, so that reaching an agreement on specific and detailed rules would be difficult. Such principles may offer, for example, a framework for convergence of national and multi-national laws, a tool for integrating an international environmental topic with other related fields, or a basis for negotiating and implementing new and existing treaties.

Principles often reflect emerging legal obligations and are formulated broadly. They allow for a wide range of meanings and serve primarily as defining the parameters for countries' obligations. These parameters establish an agreed basis for developing more specific and differentiated rules and measures later. Although principles leave considerable room for interpretation and elaboration, they do prescribe standards or objectives that are expected to be taken into account in the actions of the involved countries. They facilitate international environmental decision-making and law-making process by providing an approach that allows proceeding in an incremental manner, and in situations when there's disagreement and uncertainty over the details of the topic. There exists a variety of views about the exact legal status of principles, notably their "positioning" in the hard law or the soft law, but their overall importance to the development of the international environmental law is widely recognized.

Preparatory process and approval

The preparation of principles usually involves formal negotiations, often linked to a treaty or a high-profile process around the topic. As the principles are meant to articulate or establish norms and rules for the activities of the participating countries, the process of formal negotiations adds legitimacy and credibility to their content. This is further strengthened by the commonly used approach of having stand-alone principles adopted or endorsed at high political level, as an expression of commitment.

Stand-alone principles are broader and "softer" tools than protocols, amendments or annexes, and their negotiation process may be opened to other than governmental stakeholders, such as private sector, international or regional organizations or sub-national authorities. The aims and concerns of these stakeholders may be included in the content of the principles, and they may commit to implement the principles in their own field of work.

Principles that are an integral part of a treaty are negotiated, approved and ratified together with the rest of the treaty text. Stand-alone principles are not subject to any national acceptance or ratification process; they are valid as soon as the body that is working on them decides to adopt them.

Monitoring and reporting

As principles represent general norms that may cover a broad range of different activities and interests, monitoring and reporting on their topic may take various forms. There may be, for example, globally used indicators that respond to selected or all principles, accompanied by periodic global assessments or reviews. Alternatively, or in addition, monitoring and reporting may be built on regionally or nationally specific data that is used as case studies, with emphasis on identifying lessons and practices that can be shared, instead of looking for global status information.

Institutional and budgetary requirements

The institutional and budgetary requirements depend on the scope of the principles and the working modalities that are used or established, and may vary greatly from one to another.

Examples

The Forest Principles, or the "Non-legally binding authoritative statement of principles for a global consensus on the management, conservation and sustainable development of all types of forests" as their full title reads, contains 15 general recommendations. They were negotiated in 1990-1992 in the context of United Nations Conference on Environment and Development (UNCED) and its preparatory process. The negotiations started with a proposal to establish a convention for the protection of forests, but as countries had very diverse positions and interests in this topic, the document that was eventually agreed upon by UNCED in June 1992 is a statement of principles. Although the Forest Principles are voluntary and

labelled as non-legally binding, they were created through an intergovernmental negotiation process and agreed to at the highest political level, which can be considered to make them at least morally binding on countries.

The Forest Principles are applicable to all types of forests and represent the first global consensus on sustainable forest management (SFM). They paved the way for a more elaborated setting for substantive exchanges and cooperation on forests, including new institutional arrangements. In 1995, the UN Commission on Sustainable Development, in follow-up to the UNCED, established the Intergovernmental Panel on Forests (1995–1997), which was followed by the Intergovernmental Forum on Forests (1997–2000). Under these two bodies, around 280 Proposals for Action to implement the Forest Principles were agreed. In 2000, the UN Economic and Social Council (ECOSOC) established the United Nations Forum on Forests (UNFF) as a subsidiary body positioned directly under ECOSOC. To support the UNFF, a Collaborative Partnership on Forests (CPF) consisting of major forest-related international organizations was also formed. In May 2007, after several years of negotiation, the UNFF adopted the Non-legally Binding Instrument on All Types of Forests, commonly known as the Forest Instrument. This Instrument builds on the Forest Principles and the Proposals for Action, and provides an integrated global framework for promoting actions aimed at achieving SFM throughout the world. It articulates a series of agreed policies and measures at the international and national levels to strengthen forest governance, technical and institutional capacity, policy and legal frameworks, forest sector investment and stakeholder participation. The activities to implement these policies and measures are adjusted to the specific conditions and needs of each country. In January 2017, the UNFF agreed on the first-ever UN Strategic Plan for Forests, which was adopted by ECOSOC and subsequently the UN General Assembly in April 2017.

Monitoring, assessment and reporting on the Forest Principles and later on, the Forest Instrument, is one of the functions of the UNFF. It covers three main areas: Progress in the implementation of the Proposals for Action; progress towards sustainable management of all types of forests; and review of the effectiveness of the international arrangement on forests. As biophysical conditions and socio-economic characteristics related to forests and their monitoring vary greatly from one country to another, several criteria and indicator approaches are used in different parts of the world. The national reports that are submitted to the UNFF are based on the most commonly used criteria, which are translated into four global goals and seven thematic elements of SFM. FAO as the forestry task manager in the UN system has actively supported improvements to the quality and comparability of data and participated in various criteria and indicator processes, and its periodic Global Forest Resources Assessment is an important source of information for the UNFF work.

With regard to the budgetary requirements concerning the Forest Principles and its follow-up process, the negotiation process and the bodies that were established have been covered from the regular UN budget and through voluntary funding provided by interested donors. Support from organizations participating in the CPF has been an important contribution as well. Currently the UNFF is serviced by a secretariat of 13 staff.

The OECD Principles on Water Governance present twelve must-dos for governments to design and implement effective, efficient, and inclusive water policies. They have been endorsed by over 170 stakeholder groups or governments, which include 35 OECD member countries, 7 non-member countries and 140 stakeholder groups.

The Principles on Water Governance were initiated in March 2012 at the 6th World Water Forum, as the OECD led a thematic group on good governance that concluded by calling for policy guidance in support

of better governance of water policy. In follow up, the OECD Water Governance Initiative (WGI) was created in March 2013 as an international consultative network of experts, policymakers and practitioners. Among the tasks of the WGI was to contribute to the design of principles on water governance, and to support its work, the OECD secretariat prepared early 2014 an inventory of existing tools, guidelines and principles on water governance. WGI collaborated closely with various OECD Committees and organized broad-based multi-stakeholder consultations, and at the beginning of 2015, it completed the drafting of the Principles. After being approved at an OECD Committee level, the Principles were presented in May 2015 to the OECD Council that welcomed them, and eventually to the Ministerial level OECD Council meeting, which backed them. In December 2016, the Principles were formally adopted within the OECD Council Recommendations on Water, through which they became a new OECD legal instrument¹⁷ to guide better water policies and reforms.

The Principles are clustered around three main driving goals of water governance, namely its effectiveness, its efficiency, and its ability to generate trust and engagement, and are meant to inspire actions leading to better water governance at all levels of government and across the range of stakeholders involved in water policy design and implementation. Since their adoption, they have been used for multiple purposes to guide decision-makers and water practitioners on policy development and implementation, research, assessments and analysis of water governance and gaps.

There are no uniform monitoring requirements or reporting templates for countries and other stakeholders that are committed to the OECD Water Governance Principles, taking into account the massive variety of policies, practices, approaches and resources that are associated with water governance in different locations and settings. Instead, the OECD has conducted a series of case studies and a survey for taking stock of the use and dissemination of the Principles. With support from the WGI, it also recently published indicators and guidance for voluntary self-assessments as well as information of successful practices, with the aim to support interested countries to monitor and improve their performance and to stimulate collective learning and peer support.

The OECD secretariat work on the Principles is largely through its staff at the Environment Directorate/ Water division, which is financed through the OECD regular budget and voluntary contributions from the member states. WGI, which is not an OECD body but has a major role in different aspects of the Principles, is a self-funding entity. Its annual budget was in 2015 roughly 360,000 euros, covering two staff members and two WGI meetings, and it was funded from voluntary contributions from some participating countries and organizations.

Using principles for addressing drought under the UNCCD

Similarly to the other two Rio Conventions, the UNCCD has principles in its Article 3. These principles are to guide Parties in using a participatory approach, improving cooperation among and within countries, and targeting of resources.

Using principles as the legal instrument for addressing drought under the UNCCD would not mean modifications to Article 3, but rather the establishment of new “Drought Principles” as a separate document. As the examples of the Forest Principles and the OECD Water Governance Principles show, principles can be useful tools for outlining (global) commitments to topics that are complex and entail diverse implementation measures or interests – which can be said about addressing drought as well.

¹⁷ OECD Council Recommendations are not legally binding but as they represent the political will of OECD members, there is an expectation that members will do their utmost to fully implement them.
<https://www.oecd.org/legal/legal-instruments.htm>

Negotiation of drought principles under the UNCCD could aim at creating generally formulated norms of various aspects of addressing drought, with the understanding that more precise definitions and measures would be specific to countries or situations. This would make it easier for all UNCCD Parties to identify with, and accept, the principles. The negotiation process could also be more inclusive than negotiations on a UNCCD protocol or an amendment/annex would be, involving for example major international organizations, scientific institutions and non-governmental organizations working on drought. Their involvement could be reflected in the language of the principles too, as norms that influence decisions and activities beyond the usual UNCCD stakeholder groups.

The principles would be adopted as a COP decision, possibly at the high-level segment so as to highlight their importance. For further recognition, they could be submitted for the endorsement of the UN General Assembly after the adoption by the COP. Should other organizations or institutions choose to follow the principles in their work, their commitment could be expressed through statements of endorsement or similar formal expressions.

The monitoring and reporting requirements and modalities would depend on the scope of the drought principles and the extent of participants that are external to the UNCCD process. The new UNCCD strategic framework already has an objective on drought and related indicators will be selected or developed in the coming years. Should the principles be limited only to work to be carried out in the UNCCD context, the monitoring and reporting requirements would be within the UNCCD reporting and review system. Were the principles to have broader coverage and participation of organizations and processes outside the UNCCD, the monitoring and reporting could involve a variety of tools. Information from different sources could be compiled into a global assessment or status report, to be published in regular intervals.

With regard to institutional and budgetary needs, the preparation of the drought principles could be dealt within the regular UNCCD process, probably through a working group to draft them, with minor additional costs. The additional staff and other resources needs concerning the implementation and monitoring of the principles after they have been adopted would depend on the scope of the principles and the roles of the UNCCD and participating organizations and institutions.

d) Declarations

Definition

A declaration is a formal statement, proclamation, or announcement of intent. In the context of the international environmental cooperation, it is typically a political statement that expresses the aspirations of the participating countries. It does not create a legally binding obligation, but its content may be anchored in a legally binding instrument, for example by interpreting or specifying the provisions of a treaty, or it may spell out principles recognized by the customary international law. Such declarations have binding force.

Preparatory process and approval

The scope and content of declarations vary greatly, from broad and general statements to detailed action plans. Their drafting may be done through intergovernmental negotiations, or proposed by the president or chair of a meeting or process. Declarations are often approved at the level of political authorities, ideally heads of state or ministers. They do not entail any ratification procedures.

Monitoring and reporting

The requirements and procedures for follow-up, monitoring and reporting differ from one declaration to another. Many declarations are an integral part of a process, with the main purpose of expressing political commitment or authorization to proceed in a certain manner, and they do not have distinct follow-up activities of their own. Some declarations are key building blocks for a treaty or a process, which provide the overall framework for monitoring and monitoring in that treaty/process. Some others set up within their provisions an approach for monitoring and reporting.

Examples

The Rio Declaration

Among the outcomes of the United Nations Conference on Environment and Development - UNCED – that was held in Rio in 1992 was the Rio Declaration on Environment and Development; commonly referred to as the “Rio Declaration”. Its content was subject to difficult negotiations during the five sessions of the UNCED preparatory committee in 1990-1992, resulting eventually in a declaration of 27 principles that reflect the competing aims and priorities of the participating States. They concern, among others, the right to development, common but differentiated responsibilities, the precautionary principle, environmental impact assessments, and participation of women, youth and indigenous peoples. Some of the principles restate existing rules, others set forth new norms, and some proclaim policy goals and ideals. The Rio Declaration was adopted by UNCED in June 1992, and further endorsed by the UN General Assembly in December of the same year.

The Rio Declaration was not adopted as a legally binding instrument, but large part of its content is within the international environmental “hard law”. Several of its principles are contained in various treaties and/or recognized as customary international law, and some others are influencing the development of international environmental law, although their status as customary international law is not (yet) clear.

The Commission on Sustainable Development (CSD) was created in December 1992 to ensure effective follow-up of UNCED, and it conducted a review of the Rio principles in 1997. Their implementation was considered also in the UNCED follow-up conferences in Johannesburg in 2002 and Rio in 2012, both of which reaffirmed countries’ commitment to them.

With regard to institutional and budgetary needs, the preparation, adoption and monitoring of the Rio Declaration have been part of the broader process of UNCED and its follow-up and related resources.

Paris Declaration on Aid Effectiveness

The Paris Declaration is the outcome of the 2005 Paris High-Level Forum (HLF) on aid effectiveness, in which close to one hundred countries and 30 development agencies, including major international financial institutions, committed to specific actions to improve the quality of aid and its impact on development. It was designed, drafted and negotiated within and by the OECD, building on exchanges that took place at the 2003 HLF held in Rome. The OECD and other signatories further specified its implementation in the 2008 HLF in Accra through the ‘Accra Agenda for Action’.

The Paris Declaration is non-binding and while its signatories include both developing and developed countries, it does not constitute any contractual relationship between the signatories. It has been

described as “a compact between donors and developing countries”¹⁸, with differing commitments to donors and aid recipients, although the initiation and lead in its design, establishment and implementation has been more on the donor side.

In terms of content, the Paris Declaration is different from many other declarations. In addition to general principles, it also provides a practical, action-oriented roadmap and a series of specific implementation measures to improve the quality of aid and its impact on development. Furthermore, it includes a set of measurable indicators, benchmarks and targets for donor agencies. Monitoring surveys on progress in meeting its targets were carried out in 2006, 2009 and 2011, and independent evaluations were conducted in 2007 and 2010-2012. Building on the second evaluation outcomes, the 2011 HLF in Busan endorsed many updates and improvements to the implementation of the Paris Declaration principles.

Using a declaration for addressing drought under the UNCCD

Declaration is a frequently used tool in the UNCCD process. At COP 4 in 2000, Parties approved the “Declaration on the commitments to enhance the implementation of the obligations of the Convention” and at COP 7 in 2005, they adopted the “Nairobi Declaration”. The COP high level segment has concluded a declaration also in 2003, 2007, 2013, 2015 and 2017, all of which have been taken note of by the COP and included as an annex to the COP report.

Similar procedure has been applied to declarations that have been concluded in the context of COPs although not as part of the official agenda, which are the declarations of the Parliamentarian Round Tables (since COP2 at every COP), civil society organizations (COP 6, and since COP 8 at every COP), the Sustainable Land Management Business Forum (since COP 10 at every COP), the Trade Unions Forum and the Youth Forum (both at COP 12 and COP 13). The total number of declarations that have been concluded in the context of the UNCCD COPs and annexed to the COP reports is 33. While the number seems high, it is not exceptional - declarations have been widely used for high-level outcome documents and major group statements also in other intergovernmental processes, including the other two Rio Conventions.

A declaration of addressing drought under the UNCCD would be a political statement about Parties’ commitment to the matter. Its content could outline the aims for the coming years, as well as the measures that Parties intend to take to address drought. This “UNCCD drought declaration” would be negotiated in the context of the COP and concluded through a COP decision. COP could also decide to actively monitor and review its implementation, or it could be taken as a general framework that guides other actions and assessing its implementation would be through their monitoring and reporting.

As the preparation of the drought declaration could be dealt with in the regular UNCCD process, possibly through an intersessional drafting group, related additional costs would be minor. There could be some resource needs concerning its monitoring and review, although more likely the data needs for that purpose would be covered within the existing reporting process concerning drought, and additional resources would be needed only for compiling assessment reports or conducting a review process specific to the content of the declaration.

¹⁸ Talaat Abdel-Malek and Bert Koenders: Progress towards more effective aid: What does the evidence show? In: Aid Effectiveness 2011. Progress in Implementing the Paris Declaration. OECD 2011.

e) Decisions

In the context of the UN system, decisions and resolutions are formal expressions of the opinion or will of the member states. There are many types of them on a broad range of topics, including for example adoption of a budget, election of officers, establishment of a working group, adoption of an amendment, approval of the credentials of delegations and taking note of a report.

The nature of the decision or resolution determines if it is considered binding on countries – as a general rule, it may be said that a decision/resolution is binding when it is capable of creating obligations on its addressee. The terminology that is used is also important: a decision through which member states *decide*, *adopt* or *request* something generates more explicit responsibilities than a decision through which member states *invite* or *take note of* something.

There is a wide variety of approaches and interpretations of decisions and resolutions in different UN system entities; in the light of the purpose of this assessment, the focus here is only on the decisions of the COPs of international environmental treaties. This chapter does not follow the structure of those on other potential legal tools, as the intended audience of this assessment, the focal points and other key stakeholders of the UNCCD, are well aware of the preparation, follow-up and costing of COP decisions. With similar logic, the examples concerning COP decisions are not presented separately by instrument, but integrated into those aspects in this chapter that they seek to clarify.

The role of the COP is to promote the effective implementation of the treaty. It has a recognized authority to interpret the treaty provisions, and its decision-making offers a quick and continuous process for adapting and developing the treaty implementation. The range of actions and topics that can be covered through a COP decision is wide, limited only by the willingness of the Parties. The flexibility and rapidity of COP decisions are particularly useful for integrating new information and modalities into the implementation of the treaty.

Although most COP decisions are considered non-legally binding, some may have impacts that are equal to or even more important than formal amendments to a treaty, as they guide Parties about the meaning of ambiguous treaty terms and thereby define implementation. For example, under the Basel Convention, Parties negotiated a guidance document that determines when used electronic equipment should be considered “waste” that is subject to the trade disciplines set out in the Convention. This decision shapes the approach that national regulators are likely to adopt and thus informs the processes of shippers of such material; thereby influencing significantly the trade flows.

Some treaties expressly provide for the adoption of decisions that have legally binding effect, which allows for rapid evolution of legal obligations. This is the case with, for example, the Convention on International Trade in Endangered Species (CITES) COP decisions to list or delist species, which triggers obligations on Parties to impose trade restrictions on those species.

With regard to the follow-up concerning COP decisions, many decisions include a provision requesting the treaty secretariat to report on its implementation to the following COP session, and that reporting serves as a detailed account of measures taken on each decision. The treaty secretariats maintain detailed websites offering direct access to the decisions as well as the official documentation submitted to the COPs (including reporting on the implementation of decisions), thus tracking the documentation is easy. Some secretariats also provide compilations or “handbooks” of COP decisions, which index and organize the COP decisions by topic or by COP session.

Using a decision to address drought under the UNCCD

The UNCCD COP decisions are the main tools for the Parties to jointly bring forward the Convention. They have been used for the establishment of rules and norms to guide the work of the COP and its subsidiary bodies, setting of objectives and priorities, integration of global development goals into the UNCCD implementation, leveraging of synergies and partnerships, directing collaboration with the Global Environment Facility, promoting and improving scientific collaboration, establishment of a reporting and review system, and agreeing on the programme and budget for the Convention bodies; among other matters.

Since the High-level Meeting on National Drought Policy in 2013, several COP decisions have requested action on addressing drought. Decision 9/COP.11 (2013) urged Parties to develop and implement national drought management policies, requested the secretariat to promote and strengthen partnerships for this purpose, and invited WMO, FAO and the UNW-DPCD to collaborate with the UNCCD in this context. At the same COP, the high-level segment concluded with the Namib Declaration, which calls for addressing drought mitigation as a matter of priority. By decision 9/COP.12 (2015), the COP requested the secretariat to continue improving partnerships fostering capacity development for national drought preparedness planning, drought early warning, risk and vulnerability assessments, and enhanced drought risk mitigation.

COP 13 (2017) took major steps in developing measures for addressing drought under the UNCCD. It adopted the new UNCCD Strategic Framework (2018-2030) that sets “to mitigate, adapt to, and manage the effects of drought in order to enhance resilience of vulnerable populations and ecosystems” as one of the five strategic UNCCD objectives for the coming years. It also invited Parties to, among others,

- use the UNCCD Drought Resilience, Adaptation and Management Policy (DRAMP) framework to strengthen their capacity to enhance drought preparedness and provide an appropriate response to drought;
- pursue a proactive approach on integrated drought management in the process of developing national drought policies based on the three key pillars of national drought policy: (i) implementing comprehensive drought monitoring and early warning systems; (ii) completing vulnerability and impact assessments for sectors, populations and regions vulnerable to drought; and (iii) implementing drought preparedness and risk mitigation measures;
- develop a comprehensive system on drought preparedness that embraces the following: (i) analysing drought risk; (ii) monitoring the location and intensity of an upcoming drought; (iii) communicating alerts to authorities, media and vulnerable communities; and (iv) responding to drought warnings;
- promote drought resilience building which is gender-responsive and which prioritizes people in vulnerable situations; and
- to scale up and facilitate effective financing for the implementation of drought mitigation measures at all levels.

Furthermore, at COP 13, Parties requested the secretariat and appropriate UNCCD institutions and bodies, including the Science-Policy Interface, within their respective mandates to:

- implement the drought initiative for the biennium 2018–2019 which proposes action on: (i) drought preparedness systems; (ii) regional efforts to reduce drought vulnerability and risk; and (iii) a toolbox to boost the resilience of people and ecosystems to drought;
- support countries to develop and implement national drought management policies, as well as the establishment and strengthening of comprehensive drought monitoring, preparedness and early warning systems;

- take a leading role at the institutional level through the strengthening of existing strategic partnerships and the establishment of new strategic partnerships on drought preparedness with relevant stakeholders at all levels, including UN agencies, inter alia, WMO, FAO, UNEP and the United Nations Office for Outer Space Affairs (UNOOSA), development partners, public and private sectors, land users and civil society, with a view to ensuring coherence, coordination and complementarity;
- assist Parties, as appropriate, in using the Drought Resilience, Adaptation and Management Policy framework;
- increase awareness on drought issues, including through capacity building, to develop national drought management policies based on the principles of risk reduction;
- promote North-South cooperation, South-South cooperation and triangular cooperation, including the transfer of appropriate technology and up-to-date methodologies necessary for developing and improving drought monitoring, seasonal forecasts, preparedness and early warning and information delivery systems

The UNCCD Science-Policy Interface was assigned to provide guidance to support the adoption and implementation of land-based interventions for drought management and mitigation.

As may be noted from the above, COP decisions are a regular tool for addressing drought under the UNCCD and likely to be used also in the future. There are no limitations to matters or aspects that can be covered by COP decisions to address drought, as long as the Parties are willing to agree on them. The negotiation and approval of COP decisions takes place within the regular UNCCD process, involving all UNCCD Parties, and the decisions are valid as soon as they are decided upon. The process of making COP decisions has no cost implications other than those already include in the UNCCD budget, but the content of a decision may involve measures that require additional resources.

Drought matters are now included in the new UNCCD Strategic Framework, and thereby reporting and review of related country-level progress will be part of the UNCCD Performance Review and Assessment of Implementation System (PRAIS). In addition, the secretariat is required to report to the COP on the measures taken to implement the COP decisions concerning drought. The content and scope of the reports of the secretariat depend on the content of the respective COP decisions.

f) Standards

Definition

International standards are documented agreements containing technical specifications or other precise criteria to be used consistently as rules, guidelines or definitions of characteristics, to ensure that materials, products, processes and services are fit for their purpose. Standards may be mandatory (usually technical regulations) or voluntary. Although international standards are not legally binding, they are frequently referenced by regulators and legislators for protecting user and business interests.

International standards are meant to ensure the safety and reliability of products and services, and a certain level of environmental and social care in the production process. They raise the confidence of the product/service users. For producers and manufacturers, participation in standard systems offers opportunities for competitive advantage and easier market access, and may lead to significant economic benefits. It also encourages sustainable use of natural resources. However, participating in a standard system can be expensive in terms of meeting the requirements for being accepted into the system, as well

as maintaining the status (increase in cost of production), which can be challenging particularly for companies in developing countries.

Preparatory process and approval

Each standard system has its own preparatory and approval process – they can be set unilaterally or negotiated. International standards are typically launched by an interest group or network, which may include people using the natural resource, related product or service in concern, civil society organizations or companies, or the initiative may also come from a group of governments. The preparatory process involves the definition of the standard and design of a certification, accreditation and monitoring system, and also the establishment of a structure for the governance and functioning of the system.

Most standards are independent and based on voluntary participation. The extent of their “approval” may be considered to be reflected in the rate of their users: organizations and companies register themselves only to those standards that they consider credible, useful and respected.

Monitoring and reporting

Each standard system has its own requirements for monitoring, reporting and verification, and the basis for them is established as the organization or company seeks to register to the system. For many standard systems the applicant organization or company must comply with a large set of rules and procedures and fully meet the set standards, in order to be able to qualify for registration or be issued the certification.

Institutional requirements and budget implications

The institutional setting and budget varies from one standard system to another, depending on the topic as well as the geographical coverage. Generally speaking, all of them have a technical or scientific committee or similar and an office/secretariat for the basic operations, as well as support for verification and audits. The largest ones are governed and run by international and national bodies and have their own network of verifiers and auditors. The smallest ones, often focusing on one specific topic and/or geographical area, may consist of only a handful of people, although many of them belong to, or partner with, larger organizations and benefit from their expertise and services.

The standard systems are funded from a diversity of sources, which may include grants from governments, foundations and associations, accreditation or certification fees and royalties, fundraising campaigns and individual donations. Support may be provided also as in-kind, as expert personnel or office facilities. Many systems, particularly those that target specific commodities, do not accept funding from their “client” industries, for the sake of maintaining independence.

Examples

ISO 14001 and EMAS are among the most well-known environmental standards. Both are voluntary environmental resource management instruments used by public and private sector entities worldwide.

ISO - the International Organization for Standardization- is a voluntary federation of standard-setting bodies of over 160 countries. It promotes the development of standardization and related activities to facilitate international trade in goods and services and cooperation on economic, intellectual, scientific and technological aspects. Nearly 20,000 standards have been set, with coverage ranging from manufactured products and technology to food safety, agriculture and healthcare.

The ISO 14001 standard follows a “plan-do-check-act” cycle: it starts with developing an environmental policy and plan that reflects an organisation's commitments and continues by the implementation of the plan. Next steps are monitoring and measuring progress to achieve the objectives of the plan, reviewing

the policy/plan as needed, and on that basis continuing the improvement of the organisation's environmental performance. For verification/certification, ISO 14001 requires an external full audit every three years.

EMAS - the Eco-Management and Audit Scheme - is the European Union voluntary scheme designed for companies and other organisations committing themselves to evaluate, manage and improve their environmental performance. It includes all ISO 14001 standards and has some further requirements. For example, it involves an environmental review as basis for the planning phase, has more conditions to the internal and external audits, and requests more publicly accessible information.

International Standards for the Practice of Ecological Restoration were launched in December 2016 during the CBD COP 13. They were prepared by the Society for Ecological Restoration (SER) and reviewed by numerous restoration ecologists and practitioners worldwide. These Standards aim to increase the likelihood of success of ecological restoration projects by providing a framework for planning, implementing, monitoring and evaluating such projects, applicable in all ecosystems. They are built on six key concepts that emphasize the importance of target ecosystems' biodiversity conservation along the improvement of its ecological services, prioritizing assistance to natural recovery processes, and active stakeholder engagement, among other matters. They also include a five-star project rating system/typology ranging from the implementation of restorative actions to full ecological restoration.

The International Standards for the Practice of Ecological Restoration are voluntary guidelines that are to be used at the level of individual projects or programs. They are meant to be continuously developed as new, more advanced knowledge becomes available. Consequently, their use does not involve any regularized compliance or verification system. Rather they serve as general norms for good conduct, and as reference for more coherent terminology and definitions in various ecological restoration projects and programmes.

Environmental certification is a form of presenting compliance with a given standard, which can be used by private or public sector. It involves a process by which the organization or company voluntarily chooses to comply with a predefined process set forth by the certification service. Most certification services have a logo ("ecolabel") which can be applied to products certified under their standards. Here are two examples of environmental certification:



The Forest Stewardship Council (FSC) is a voluntary certification mechanism to promote responsible management of forests at international scale. It involves an inspection of forest management practices based on sustainable forest management standards, and can be applied on both privately and publicly owned forests. The products manufactured from certified forests can be tracked through the value chain.



The frog seal of the Rainforest Alliance targets agriculture, forestry and tourism as three industries with a major impact on forests and land. Having received the frog seal certification indicates that a farm, forest, or tourism enterprise has been audited to meet the Rainforest Alliance standards. There are separate standards for each of the three industries. For example, for agriculture the standard is built on the principles of biodiversity conservation, improved livelihoods and human well-being, natural resource conservation and effective planning and farm management systems.

Using standards for addressing drought under the UNCCD

In October 2017, after several years of preparation, ISO published a new standard, ISO 14055, for establishing good practices for combatting land degradation and desertification. The standard defines a framework for identifying good practices in land management, based on assessment of the drivers of land degradation and risks associated with current and past practices, for use by private and public sector organizations with responsibility for land management. It also provides guidance on monitoring and reporting implementation of good practices. This standard advocates a shift in behavior towards a more sustainable use of land and is intended to complement and support the activities of the UNCCD. It will consist of two parts: a good practices framework (ISO 14055-1), which was published in October 2017, and regional case studies illustrating the application of the framework (ISO/TR 14055-2), which is currently under development.

Similarly to ISO 14055 standard, an international standard on addressing drought could be established, for example on drought impact mitigation. Such standard could aim at setting the minimum level of measures that need to be in place in drought-prone areas, including for example a drought risk/vulnerability assessment or policies to regulate water use. It could be initiated by a government or a group of governments, and the drafting should be done by a qualified expert group. Should the standard be established within the UNCCD process, it could share the characteristics of the International Standards for the Practice of Ecological Restoration presented above – it would provide general guidance and support the harmonization of practices and terminology, but with only light or no processes for registration, monitoring and verification. A more detailed or technical standard with stricter requirements could benefit from association to an existing international standard system, with the UNCCD taking the role of an advisor.

Other possibilities for using standards for addressing drought under the UNCCD could be the establishment of an environmental certification system that targets some aspects of addressing drought, or integrating related criteria into an existing certificate. The inspection/audit procedures needed for such certification would require specific expertise that could be best availed through leaning on existing certification systems targeting similar topics.

The cost of preparing and maintaining an international standard on addressing drought could vary greatly, depending on the depth and duration of the preparatory process and the requirements for registration, monitoring and verification process. However, resources needed from the UNCCD budget are likely to be minor or none if the standard is under an existing international standard system.

g) Gentlemen's Agreements

Definition

Gentlemen's agreements are produced by informal or formal negotiation processes between or among countries and/or other stakeholders such as organizations, regions or individuals. They may take various forms such as declarations of intent, joint statements, joint press releases or discussion reports, and their fulfillment relies upon the moral of the participants. Traditionally, they have been agreements between strong personalities on behalf of a country, organization or company, aiming to create credible commitments without having to go through legal procedures and processes. More recently, gentlemen's agreements have been used as a framework for voluntary collaboration arrangements on topics of shared interest, which often involve different types of participants (private/public, national/municipal...) that implement their activities in various ways.

Preparatory process and approval

Usually gentlemen's agreements are focused on one target or problem, in which the participants have a shared interest. Their preparation may have various forms – they may be launched spontaneously on a short notice, or as a result of extensive talks. They may be started by two or more participants and joined by others later. They do not entail any formal accession or approval procedures.

Monitoring and reporting

Gentlemen's agreements are essentially voluntary commitments without procedures for formal follow-up, monitoring and reporting. However, usually participants want to demonstrate progress made through their commitment, which entails tracking of actions and results at the level of individual participants, even if there is no shared methodology for collecting and reporting information.

Examples

The Carbon Pricing Leadership Coalition (CPLC) was initiated at the 2014 UN Climate Summit, where 74 countries and more than 1,000 companies expressed support for carbon pricing. It was officially launched at the UNFCCC COP21 in 2015. Currently it comprises 32 national and sub-national government partners, 150 private sector partners from a range of regions and sectors, and 67 strategic partners representing NGOs, business organizations, and universities. The target of the CPLC is to double the percentage of global emissions covered by explicit carbon prices to 25% by 2020, and to double it again to 50% within a decade. Its partners work together to, among others, share best practices and experiences on designing and implementing carbon pricing instruments to support low-carbon pathways while maintaining competitiveness, creating jobs, and spurring innovation; advocate for successful carbon pricing initiatives; and (businesses) setting an internal carbon price and reporting on progress. Each participant must demonstrate their support for carbon pricing to enter the CPLP, but they are free to determine the level of engagement to contribute to the work of the Coalition.

Local agreement on water use – Mesa Verde National Park/town of Mancos, Colorado USA

In 2013, a local level gentlemen's agreement was used as a temporary solution to balancing water use between the authorities of the Mesa Verde National Park and the town of Mancos in Colorado, USA. Formally, the park officials of the Mesa Verde National Park are decreed to draw their water from a water reservoir, while the nearby town of Mancos uses the Mancos River. Following a period of drought, the park and the town authorities agreed to temporarily exchange their water access, with the aim to reduce the pressure on the river and as the water reservoir was abundant with water. The allocation of water rights is very detailed and strict in the area, and any formal change to them would be a lengthy and politically sensitive judicial process. The gentlemen's agreement offered a rapid solution for the needed flexibility in water use, without questioning the existing legal rights.

Using gentlemen's agreement for addressing drought under the UNCCD

A gentlemen's agreement could be used to complement the UNCCD normative guidance and policy approaches on addressing drought, as tools to establish targeted collaboration on specific challenges or geographical areas. It could offer a framework for defining shared objectives and goals for a diverse group of participants, without limiting their freedom to operate according to their own modalities. Although gentlemen's agreements are essentially voluntary commitments of willing partners and thereby not subjects to COP decisions, they could be linked with the UNCCD process by, for example, the establishment of a register for such agreements on drought under the maintenance of the Convention secretariat, or including information of their outcomes and successful practices in the UNCCD national reporting and review process.

4. Conclusions

As mentioned earlier, one of the aims of the new UNCCD Strategic Framework (2018-2030) is to mitigate, adapt to, and manage the effects of drought in order to enhance resilience of vulnerable populations and ecosystems. At COP 13, Parties decided on a wide range of measures toward these aims, some of which targeted the countries and some the secretariat and the GM. The COP also requested the secretariat to prepare a report on the need, if any, for additional arrangements on drought, for consideration at the next COP in 2019. Through this prospective assessment, the secretariat aims to clarify the potential of a variety of legal instruments to serve as such additional arrangements: what could they entail in terms of their expected contribution to addressing drought and the measures and resources needed for their establishment under the UNCCD. The secretariat has also commissioned other studies on potential technical approaches and financing instruments for addressing drought under the UNCCD, and the main points of this information are presented in related reporting of the secretariat to COP 14.

The findings and analysis concerning each legal instrument that was reviewed in this assessment is briefly presented below, and they are also summarized as a table in the annex.¹⁹

A protocol is a formal legal instrument that follows standardized phases of negotiation, approval and national ratification. Experiences from other conventions indicate that protocols require precision of content to be successful: a well-defined objective, exact rules and clear assignment of implementation responsibilities. Negotiating such content on drought risk management globally is likely to be challenging and time-taking, possibly stretching over eight to ten years. Experiences from other conventions indicate that protocols require reporting and review processes that are relevant to their provisions, and they also tend to involve additional institutional facilities and specialized staff. Using the UNFCCC/Kyoto and the CBD/Cartagena Protocols as reference, a protocol on drought could increase the UNCCD regular budget by around 1,8 to 3,6 million euros per biennium, to be paid by those countries that decide to join the protocol.

Annexes and amendments have an equal legal status with the Convention text, and they are meant to further develop or spell out details of an existing provision. For example, the five regional UNCCD annexes specify the provisions on implementation at each region. The preparation and approval of annexes and amendments follow standard, formal phases but usually the process is lighter than that for the protocols. In many conventions, annexes and amendments are used for precise procedural, scientific and administrative lists that remain valid indefinitely. Similarly, the ideal use of a UNCCD annex or amendment on drought could be to specify continuous (technical) measures to be taken toward broader political UNCCD aims concerning drought. This would entail that Parties have already agreed on such broad political aims - if that agreement is missing, there could be a high risk of Parties deciding to stay outside the annex or amendment by non-acceptance. An annex or amendment on drought would probably influence the current UNCCD reporting and review concerning drought, while related institutional or financial needs would depend on its content.

Principles are typically about critically important matters on which countries differ significantly, either in terms of national implementation or political interest, so that reaching an agreement on detailed rules would be difficult. They describe wide standards or objectives that allow for various interpretations and

¹⁹ Parties may note that relevant, comparable information about institutional and budgetary requirements, which could be used to credibly indicate similar requirements under the UNCCD, was available only for one instrument (a protocol). For the other instruments, there was such a variety of these requirements that indicating the likely measures for the UNCCD on their basis was not possible.

implementation measures, and may serve as the first step for setting more specific rules. Under the UNCCD, principles could establish generally formulated norms of various aspects of addressing drought, leaving the definition of exact measures to the country or regional level. Principles are usually prepared through formal negotiations that could be opened for a broader group of stakeholders than for a protocol or an annex/amendment, including for example interested international organizations, scientific institutions and non-governmental organizations. Principles do not require specific acceptance procedures; they are valid as soon as they are agreed upon. Political commitment to principles may be underlined through their adoption at high level or endorsement in different forums. The requirements for reporting and review, institutional or financial needs would depend on the content of the principles and the role of stakeholders other than the UNCCD.

Declarations are formal statements, proclamations or announcements of intent. For addressing drought under the UNCCD, a declaration would be a political statement about Parties' commitment, expressing the aspirations of the participating countries, which could be later translated into concrete action by the COP or at the country or regional level. A declaration could be drafted by one or more countries with support from the Convention secretariat and considered and adopted at high level. It would not require any immediate changes to the UNCCD reporting and review, institutional setting or financing, but could lead to new requirements over time.

Decisions are formal expressions of the opinion or will of the Parties and the main tools for them to jointly bring forward the Convention. They can cover any kind of actions and topics if Parties are willing to agree on them, and being fast to prepare, they are particularly useful for integrating new information and constantly evolving modalities into the UNCCD process. The effectiveness of decisions can be improved by increasing the specificity of the language, so that the obligations that they contain are explicit and their implementation easy to monitor. Since 2013, several UNCCD COP decisions have included requests concerning drought, which have led to a variety of actions, from inter-organisational partnerships to national level support. Depending on the content of the decisions, they may establish new requirements for reporting and review, institutional setting or financing.

International standards are documented agreements containing technical specifications or other precise criteria to ensure that materials, products, processes and services are fit for their purpose. They may be mandatory or voluntary. In 2017, the International Organization for Standardization published a new standard, ISO 14055, for identifying good practices in combating desertification and land degradation, based on assessment of the drivers of land degradation and risks associated with current and past practices, for use by private and public sector organizations with responsibility for land management. Similarly, an international standard could be initiated for measures for drought impact mitigation, for example. However, any detailed technical standard with monitoring and verification responsibilities would require the expertise of an existing international standard system, with the UNCCD taking the role of an advisor. Related requirements for the UNCCD reporting and review, institutional setting or financing would be probably minor.

Gentlemen's agreements are voluntary collaboration arrangements, such as declarations of intent, joint statements or joint press releases, among two or more participants, on topics of shared interest. They may involve different types of participants that focus on a joint objective while implementing their activities in various ways. For the UNCCD process, a gentlemen's agreement could be used to complement the normative guidance and policy approaches of the Convention, as a tool for targeted collaboration among willing participants. As voluntary commitments, gentlemen's agreements are not subjects to COP decisions but they could be registered under the UNCCD process or information of their outcomes and

successful practices could be brought up in the UNCCD national reporting and review process. Otherwise the gentlemen's agreements would not influence the requirements for the UNCCD reporting and review, institutional setting or financing.

As may be noted from the above, all studied legal instruments could be in principle used for addressing drought under the UNCCD, but for differing purposes and at a wide range of costs. In considering which instrument to opt for, Parties could start by specifying their expectations: should the additional arrangements for drought present an international regulatory framework for addressing drought? Or is there a more pressing need for political recognition and commitment, or technical and financial support? Could the identified expectations be met under the UNCCD, or should other organizations or stakeholders be involved as well? Another key question would be the willingness and capability of Parties to commit to a new arrangement: realistically speaking, what measures could be implemented in order to ensure that the new instrument is successful? What is the likelihood of securing the needed resources?

Answering to these questions could provide the response also to the inquiry behind this assessment – whether or not there is need for additional arrangements for addressing drought under the UNCCD. The Convention process already has an able, flexible tool in the form of the COP decisions, and it might turn out that the most cost-effective way forward is not to establish a new instrument but to improve the strength and coverage of the COP decisions.

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Annex: Potential legal instruments for addressing drought under the UNCCD: a comparison

Instrument	Type of content to address drought	Preparatory process	Approval and entry into force	Monitoring & reporting	Institutional needs for the UNCCD	Financial implications
Protocol	Legal text on (global) obligations. Should have well-defined objectives.	Formal intergovernmental negotiations following standard phases. Likely to take several years.	Parliamentary ratification in each country. Countries choose whether to join.	Regular formal reporting on progress at national level (indicators for protocol objectives). Periodic review.	More drought expert staff and for the reporting. Longer CRIC sessions or other review mechanisms	Estimated at 1,8 - 3,6 million euros increase in the core budget per biennium.
Amendments and annexes	Specific additions or modifications to the UNCCD text. Should be relatively explicit and non-controversial.	Negotiations in the context of the COP. Likely to take at least two COPs to complete.	A specified number of Parties to give formal acceptance. May be binding all or selectively.	Likely to be something to be added to the current reporting and review process	Likely to involve some additional staff and facilities for reporting and review.	Dependent on the content of the amendment or annex
Principles	Broadly formulated general norms and standards; detailed implementation to be defined by country or situation	Negotiations in the context of the COP. Preparatory work may involve also other stakeholders	Approval by a COP decision. Other stakeholders may endorse in their own forums.	May be added to the current reporting and review process, and/or compile elements from different sources to a global overview	May involve some additional staff and facilities for reporting and review.	Dependent on the content of the principles and the role of the UNCCD/other stakeholders in it
Declarations	Political announcement of commitments	Negotiations in the context of the COP if to be adopted.	Adoption or approval by a COP decision	No immediate effect, but may lead to new requirements later	No immediate effect, but may lead to new requirements later	No new funding needs, but may lead to new requirements later
Decisions	Any topic that Parties agree on	Negotiations in the context of the COP	Approval by COP	May involve new requirements	May involve new requirements	Depends on the content of the decision
Standards	Clearly defined technical norm or minimum requirement	Initiated at the UNCCD, to be done by an expert entity	Through the expert entity process; may be endorsed at the UNCCD	Through the expert entity; may be linked to the UNCCD reporting system	Minor or none	No additional funding needs
Gentleman's Agreements	Any topic that involved partners agree on	To be done by partners outside the UNCCD process	Agreement by partners	No influence on the UNCCD system	None	No additional funding needs

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