

PART IV

NEGOTIATION SIMULATION EXERCISES



MULTILATERAL NEGOTIATION SIMULATION EXERCISE: THE SUSTAINABLE MANAGEMENT AND CONSERVATION OF FORESTS¹

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An important and practical component of the University of Joensuu – UNEP International Environmental Law-making and Diplomacy Course 2005 was a two-day exercise simulating multilateral environmental negotiations in the context of a working group on the sustainable management and conservation of forests. The exercise aimed to expose the training course participants to the real-world complexities and dynamics of multilateral environmental negotiations, as well as contemporary international forest policy-making issues, without mimicking current or past intergovernmental negotiations. The exercise was developed by a team of negotiation and environmental law trainers and researchers from UNEP, UNITAR, the University of Joensuu and the Fletcher School of Law and Diplomacy of Tufts University. The draft versions of the exercise's background and scenario notes are reprinted in this Review.

The exercise includes information on the scenario and expected outcome of the working group, as well as biographical profiles of the 17 roles. The exercise also includes a background note providing an overview of the various problems of deforestation and unsustainable forest management practices and their implications; confidential instructions for the 17 roles; three draft proposals; and one press

1 For the full set of documents given to participants during the University of Joensuu – UNEP International Environmental Law-making and Diplomacy Course please refer to the Course website, www.joensuu.fi/unesp/envlaw/index.html. It should be noted that the documents available are a draft version.

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release. The exercise's purpose is purely educational; the scenario and role instructions are entirely hypothetical and do not represent any official policy or position of the names of the organizations or countries mentioned.

The simulation exercise was conducted in two different groups (red and black), since the number of participants in the course largely exceeded the number of roles. The participants were randomly divided into the groups and assigned roles, except for the participant asked to play the role of the chairman of each group, which was done selectively. None of the participants was assigned the role of his or her own country of origin. Most participants were assigned individual roles, although several participants were paired to a single role. The two groups were then separated and they conducted the exercise in different university buildings.

The participants were given their confidential role instructions and information and background material one day in advance of the simulation. According to the results of the post-exercise evaluation, approximately 80 percent of the participants (85 percent in the red group and 78 percent in the black group) reported that they read the exercise documents the night before the simulation. When asked whether they undertook any other preparations, such as consulting other delegates, only 52 percent of the participants in the black group indicated in the affirmative, while 80 percent in the red group indicated that they had undertaken such preparations. Seventy-one and 76 percent of the participants in the black and red groups, respectively, rated themselves as highly involved in the exercise, both inside and outside formal debates.

It is interesting to note that the amount and type of preparation undertaken by the participants in the two groups may have conditioned, at least partly, how the negotiation processes unfolded in the two groups. During the first day's negotiation session, the red group's discussions and debates took place in plenary and were highly structured and co-operative. Discussions in the black group, on the other hand, were much less structured, reflected uncompromising behaviour and took part most of the time outside of plenary session in informal consultations, corridor work, etc. While this was certainly the result of the style of the chairman and the behaviour of the individual delegates as well as other possible factors, it may also have resulted from the amount and type of preparation that the participants in the two groups undertook. Much more preparation and consultation was undertaken by the red group which greatly facilitated discussions and debate once the simulation of the informal working group got underway.

The negotiation processes of the two groups also largely determined the nature of the outcomes. Although both groups achieved outcomes, the red group's chairman took the initiative to produce a draft text in the evening before the second day of the simulation. When the red group reconvened, delegates were able to begin

the first, and then second reading of the chair's draft and incorporate revisions to the text as needed. The secretariat in the red group also played an active role during the second day by facilitating the process of revisions to the draft text. The black group, on the other hand, failed to make much progress during the first day's negotiation sessions. As a result, a few delegates convened an informal contact group and discussed options very late into the evening.

In the late afternoon of the second day of the simulation, the course trainers and facilitators conducted a debriefing session of the exercise. Filming the simulation of the two working groups enabled the trainers to play back excerpts and engage the participants in a constructive, yet critical review of the exercise. Participants and trainers also identified and reviewed various factors which contributed to, or impeded, successful performance in multilateral environmental negotiation.

The exercise appears to have met its objectives. Nearly all participants evaluated the exercise as either having entirely (40 percent black, 33 percent red) or mostly (48 percent black, 57 percent red) met the objectives of introducing them to the complexity of multilateral environmental negotiation. A majority (74 percent black, 85 percent red) found the exercise to be highly relevant to the special theme of the 2005 Course: forests. All participants (100 percent) in both groups found their instructions clear and would recommend the exercise to a colleague. One participant mentioned, 'The practical side of negotiation cannot be learnt from the books but [has] to be experienced'; another participant observed that 'it was the most important part of the training course.'

Forest Game Background Briefing Materials³

Overview

Despite international efforts to promote conservation and sustainable forest management, forest areas have continued to decline rapidly in most regions of the world. Forests currently cover an estimated 3.6 billion hectares, about one third of the world's land area, from an originally forested area of 6 billion hectares. According to the Food and Agriculture Organization (FAO) *Global Forest Resources Assessment 2000*,⁴ the gross rate of deforestation in 1990-2000 was estimated to be 14.6 million hectares per year, with a net annual rate of 9.4 million hectares after accounting for reforestation and growth in tree plantations. The total net loss of forests in 1990-2000, 9.4 million hectares, equals an area larger than the size of Venezuela. The vast majority of deforestation, 14.2 million hectares per year, occurs in the tropics.

Where are the World's Forests?

The largest share of the world's forests can be found in Europe. However, tropical forests are the most predominant ecological type. Ninety-five percent of forest cover is natural forest and the remaining five percent is plantations. Two-thirds of the world's forests are distributed among 10 countries: Russia, Brazil, Canada, the United States, China, Australia, the Democratic Republic of Congo (DRC), Indonesia, Angola, and Peru.

Causes of Deforestation

Understanding the root causes of deforestation is central to international policy-making. The proximate causes, such as agricultural expansion or forest fires, are driven by larger social, economic, and environmental forces, which must be addressed in order to create viable solutions.

The proximate causes of deforestation include: i) agricultural expansion to feed growing populations combined with increased cultivation of cash crops and livestock; ii) area development, such as road construction, opening up access to forests for logging, settlements and agriculture, large dams, flooding forested areas and mining activities, resulting in the clearing of large areas; iii) unsustainable commercial logging practices, such as clear-cutting and illegal logging which, according to World Bank estimates, cost governments USD 10-15 billion annually; iv) alien invasive species, devastating entire tree species and threatening to fundamentally alter natural forest ecosystems; v) forest fires, burning up to 500

3 The Negotiation Simulation on Global Forests Management and Conservation is for educational use only. The scenario and role instructions in this simulation are entirely hypothetical and do NOT represent any official policy or positions. This simulation exercise was developed in partnership by the United Nations Environment Programme (UNEP), the United Nations Institute for Training and Research (UNITAR), the Fletcher School of Law and Diplomacy (Tufts University), and the University of Joensuu, Finland, under the direction of Barbara Ruis (UNEP), Brook Boyer (UNITAR), Professor Adil Najam (Fletcher School of Law) and Professor Tuomas Kuokkanen (University of Joensuu). Brooke Barton and Nadaa Taiyab, both of the Fletcher School of Law, co-ordinated the role development, and the individual role instructions were written by Brooke Barton, Karoun Demirjian, Joshua Newton, Nadaa Taiyab, and Nirmalan Wigneswaran from the Fletcher School of Law and Hyun-Binn Cho and Arun Seetulsingh from UNITAR. The development of the exercise was supported by the University of Joensuu. This exercise may not be used, reproduced, revised, or translated in whole or in part by any means without written permission.

4 Food and Agriculture Organization, *Global Forest Resources Assessment 2000* (FAO: Rome, 2001).

million hectares of woodlands, open forests, and savannahs annually; vi) climate change, which could drastically alter global forest ecosystems, as well as air pollution and acid rain; vii) The underlying causes of deforestation are far more complex, involving government policy, market failure and poverty.

Government policies in some countries promote the conversion of forestland to agriculture and cattle grazing. In some countries, farmers run the risk of losing their land title if the land is not converted to agriculture or other “useful” purposes. Many governments are also responsible for issuing timber concessions below market prices and for turning a blind eye to, or even profiting from, illegal logging. Subsidies in forestry, agriculture and transportation further encourage practices that are ecologically destructive.

Market mechanisms only assign economic value to the timber extracted from forests and fail to value the environmental services and other cultural, social and subsistence benefits that forests provide. Consequently, demand for forest products is far higher than would be the case if these externalities were factored into prices. Lacking economic incentives to conserve forests, it is unsurprising that landowners choose to convert land to other productive uses. International demand, particularly in industrialized countries, for cheap meat, soybeans for livestock and paper further encourages the conversion of forestland to agricultural uses. Forests are cleared for cash crops that are produced almost exclusively for export to OECD countries.

Poverty and weak land tenure in rural areas also play a role. Landlessness and unemployment drive migration to forest areas. Sustainable use of forests and investment potential in the forest sector is limited by weak land tenure policies. In addition, the exclusion of local communities and indigenous peoples from decision-making and benefit-sharing from forest resources further reduces incentives for sustainable forest management.

Implications

Forests have multiple uses and benefits as storehouses of biodiversity, as stabilizers of the atmosphere and landscape, as human habitat and as an essential natural resource. Consequently, the decline of the world’s forests has far-reaching environmental, economic and social implications. Forests are important repositories of biodiversity, containing 60-90 percent of all terrestrial species on the planet. The World Conservation Union estimated in 1997 that 12.5 percent of the world’s 270,000 species of plants and 75 percent of the world’s mammals are threatened by forest decline. Tropical forests, which cover approximately seven percent of the world’s surface, are the most species-rich environments on earth, containing up to 90 percent of the world’s species. It is estimated that rainforest deforestation leads to a loss of 137 plant, animal and insect species each day. The disappearance of species disrupts the functioning of ecosystems and may mean the loss of yet undiscovered cures for human diseases.

Deforestation is a key contributor to desertification and land degradation and essential to watershed protection. The loss of forested area leaves soil more vulnerable to erosion, which can lead to extensive flooding, aggravated droughts, landslides, the pollution of watercourses and the loss of agricultural productivity. Desertification affects 41 percent of the world’s land area and more than 900 million people in over 100 countries. It is estimated that the annual income lost in areas immediately affected by desertification amounts to USD 42 billion.

Forests play a crucial role in global climate regulation, influencing rain, temperature and winds and are one of the Earth's largest carbon sinks. Forests absorb carbon from the atmosphere through photosynthesis and release carbon when destroyed or degraded. The largest vegetation and soil carbon pools are in tropical forests, 60 percent and 45 percent of the total, respectively, due to their wide area and high carbon densities. Deforestation has serious implications for climate change. About 25 percent of the increase in atmospheric carbon concentrations in the past 150 years has come from changes in land use, such as deforestation and the cultivation of soils for food production. However, reforestation can reduce atmospheric carbon concentrations by sequestering carbon in trees and soil.

The world's forests are also the source of an essential economic commodity: timber. In 2000, the international trade in wood and wood-based products was estimated at USD 354 billion, or 1.2 percent of world GDP. In many developing countries, timber can be an important source of revenue and a major foreign exchange earner. The international trade in forest products increases by 4.5 percent per year. Industrialized countries in the Northern hemisphere account for 80 percent of exports and imports of forest products. In 1995, the top five importers were the United States, Germany, Japan, the United Kingdom and Italy and accounted for 50 percent of world imports; the top five exporters were Canada, the United States, Sweden, Finland and Germany, accounting for more than 50 percent of world exports. Brazil, Indonesia and Malaysia accounted for 10 percent of world exports and 50 percent of developing country exports. China is increasingly becoming a major importer of tropical forest products. Timber from plantation forests in the Southern hemisphere, particularly from Latin America, has provided fierce competition for Northern wood producers. Southern hemisphere plantation forests enjoy the advantage of higher productivity, having a faster growth rate than Northern forests. Certified forests constitute only four percent of forest area, 90 percent of which is located in the Commonwealth of Independent States, North America, and Europe. It is estimated that the illegal timber trade makes up 10 percent of the world's timber trade.

Finally, forests serve as habitats and a source of livelihoods for many indigenous and forest-dependent peoples. 1.2 billion people, 90 percent of whom live below the poverty line, depend on forests for wood fuel, food and fodder. Wood fuel is an important source of energy in many parts of the world, accounting for as much as 70 percent of all energy use in 40 developing countries. For 60 million indigenous people of the world, forests provide food, medicinal plants and cultural and spiritual values.

History

In 1990, Swedish Prime Minister Ola Ulstein first put forward a proposal to create an international convention for the conservation and sustainable development of the world's forests in response to the failure of existing international forest protection programmes. Proponents envisioned a regime for tropical forests that would define sustainable forestry and regulate forestry management practices at the global level. At the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro in 1992, nations were fiercely divided over the creation of an international treaty on forests.

Key points of contention were the implications of a forest convention to state sovereignty, whether it was possible or desirable to apply an international definition of sustainable forest management over such a wide range of socioeconomic and ecological conditions and

whether the convention should apply only to tropical forests or to all forests. Although the proposals were expanded to include all forests, a stalemate ensued and the issue was tabled for future negotiation. Instead, UNCED adopted the Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation, and Sustainable Development of All Types of Forests.⁵ Key element of the Forest Principles include that they should apply to all forests, both tropical and temperate. Forests should be protected both for their ecological value and for their subsistence and economic value to local communities. States have the sovereign right to exploit the natural resources within their jurisdiction and the corresponding obligation to ensure that their activities within their territory do not cause damage to the environment of other states or areas beyond the limits of national jurisdiction. States have the sovereign right to manage and utilize their own forests in accordance with their developmental needs and on the basis of national policies. National policies should recognize and support rights of indigenous people and forest dwellers. Finally, unilateral trade restrictions on timber and forest products should be removed

The proposal for a forest convention was revisited in 1995 at the third meeting of the Commission on Sustainable Development. Still unable to achieve consensus, governments established the Intergovernmental Panel on Forests (IPF) (1995-1997) to further examine sustainable forest management and the need for an international forest convention. The IPF was succeeded by the Intergovernmental Forum on Forests (IFF) (1997-2000). The outcome of the IPF/IFF process was a set of 270 proposals for sustainable forest management. A third intergovernmental forum was created in 2000, called the United Nations Forum on Forests (UNFF). Nations convene annually under the UNFF to voluntarily report on their progress in implementing IPF/IFF proposals. Other international fora on forestry include the Committee on Forestry (COFO) of the Food and Agriculture Organization (FAO) and the International Tropical Timber Organization (ITTO).

The first International Tropical Timber Agreement (ITTA) was adopted in 1984 and renegotiated in 1994.⁶ The 1994 agreement removed the emphasis on tropical forests but did not explicitly include temperate forests. All producing countries agreed that their goal would be to export all tropical timber products from sustainably managed forests by 2000. The ITTO has compiled 41 principles and 36 recommendations that comprise sustainable yield forest management: the yield that a forest can produce continuously at a given intensity of production and management. These guidelines include national-level land use strategies with clearly demarcated forests and plantations, a logging plan and wood production targets. By 2000, there had been little progress towards implementing the sustainable management principles. Nevertheless parties to the treaty reaffirmed their commitment to sustainable forestry and renamed the guidelines the ITTO 2000 Objective.

5 Non-legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests, Rio de Janeiro, 3-14 June 1992, UN Doc. A/CONF.151/26 (Vol. III), www.un.org/documents/ga/conf151/aconf15126-3annex3.htm.

6 International Tropical Timber Agreement, Geneva, 26 January 1994, in force 1 January 1997, www.itto.or.jp/live/PageDisplayHandler?pageId=201.

Major Debates

Binding vs. Non-binding

The merits of creating a legally binding versus a non-binding treaty are a major source of controversy amongst nations and civil society. Proponents argue that a legally binding international forest convention is the best way to ensure that the world's forests are sustainably managed by creating a universal regulatory framework with monitoring and compliance features. Opponents counter that lengthy negotiations would only delay action and that a legally binding treaty would further legitimize the commercialization of forests and exclude indigenous and forest-dependent peoples. Such a treaty may also entrench narrow and potentially harmful interpretations of national sovereignty over natural resources.

Framework Convention vs. a Protocol to an Existing Treaty

A legally binding agreement could be negotiated in several forms including a framework convention, outlining general principles to be operationalized by future protocols, or as a protocol to an already existing treaty. Currently dozens of legally binding treaties exist at regional and global levels related to forests in some manner. However, most existing agreements mainly focus on environment, biodiversity or trade. One major source of debate has been how more effectively to link these overlapping agreements and foster greater cooperation on global forest issues. Relevant treaties in the forest sector include the Convention on Biological Diversity (CBD),⁷ the United Nations Framework Convention on Climate Change (UNFCCC),⁸ the Kyoto Protocol,⁹ the United Nations Convention to Combat Desertification (UNCCD),¹⁰ the International Tropical Timber Agreement¹¹ and the Convention on the International Trade in Endangered Species (CITES).¹²

Utilization vs. Conservation

The stated objectives of international forestry efforts are conservation and sustainable management. However, there is a great tension over which of these objectives should be emphasized in a global treaty. Conservationists tend to view forests in terms of the environmental services they provide and as sources of biodiversity. Conversely, sustainable management is often perceived as a synonym for either sustainable trade or a way to manipulate the international trade of forest products in favour of Northern countries. Sustainable management is also closely tied to issues relating to the rights of local communities to access forest resources.

7 Convention on Biological Diversity, Rio de Janeiro, 5 June 1992, in force 29 December 1993, 31 *International Legal Materials* (1992) 822, www.biodiv.org/doc/legal/cbd-en.pdf.

8 United Nations Framework Convention on Climate Change, New York, 9 May 1992, in force 21 March 1994, 31 *International Legal Materials* (1992) 849, unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf.

9 Kyoto Protocol to the United Nations Framework Convention on Climate Change, Kyoto, 11 December 1997, in force 16 February 2005, 37 *International Legal Materials* (1998) 22, unfccc.int/resource/docs/convkp/kpeng.pdf.

10 United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa, Paris, 17 June 1994, in force 26 December 1996, 33 *International Legal Materials* (1994) 1309, www.unccd.int/convention/menu.php.

11 IITA 1994, *supra* note 6.

12 Convention on International Trade in Endangered Species of Wild Flora and Fauna, Washington D.C., 3 March 1973, in force 1 July 1975, 993 *United Nations Treaty Series* 243, www.cites.org/eng/disc/text.shtml.

Forests for the trees

Much of the international forest policy debate has surrounded the global definition of sustainable forestry management. If a common definition could be agreed upon, countries could have a global standard differentiating green wood, which could then be applied to trade policy. Advocates believe that discrimination in favour of green wood will provide effective economic incentives for implementing sustainable forest management. Other countries view certification or eco-labelling of wood as nothing more than a disguised form of protectionism. They fear that richer players in the forestry sector will use green labelling as a tool to gain a competitive advantage in the global timber market. Furthermore, the World Trade Organization (WTO) does not permit trade discrimination based on process and production methods (PPM). Some believe that a multilateral convention on forests will have primacy over WTO rules but the issue is very contentious.

Forests as carbon sinks

Some countries strongly support a forest convention as a tool to combat global warming claiming that halting the loss of forests will reduce the build-up of carbon in the atmosphere at a fraction of the cost of reducing fossil fuel carbon emissions. Other countries are outraged that forests should be considered as carbon sinks rather than a habitat and a source of food for poor and indigenous peoples. Opponents have argued vociferously that forests are not a global commons but a national resource. They argue that nations with large forest resources cannot be expected to sacrifice their economic interests or the survival of poor forest-dwelling communities to preserve forests as carbon sinks for the rest of the world.

Forests for human habitat

Whereas some countries value forests primarily for timber and for the ecological services they provide, countries with large numbers of forest-dwelling or indigenous peoples view forests as human habitats, central to the subsistence and survival of their poor. They argue that forests are best managed through community control and participatory management systems. These countries fear that an international forestry treaty would centralize decision-making power away from communities and national capitals to the global capitals of the world, leading to policies that are technocratic and anti-people. Furthermore, any international agreement on forests would have to take into account that 22 percent of forests are currently owned by local communities and indigenous peoples.

Forests as sources of biodiversity

As the world's greatest source of species diversity on the planet, forests have long been championed by environmental NGOs and some countries as the richest of all terrestrial ecosystems and thus worthy of concerted conservation efforts. This biodiversity is widely seen as having important scientific value and many forests, particularly tropical ones, are prized as potential sources of new medicinal drugs or agricultural crops. Nevertheless, the scientific and commercial value this biodiversity represents is a hotly contested issue for many countries. Some countries seek to tighten control over their genetic resources and to protect it from uncompensated exploitation or bio-piracy by pharmaceutical or agricultural firms. Others seek to devolve control over these resources to local forest dwellers who are familiar with their use and who claim them as part of their own traditional forest-related knowledge (TFRK). It must be noted, however, that TFRK, although often used with exclusive reference to extractable forest-related products, is a very broad concept with two alternate definitions. In addition to being seen merely as an extractable commodity, TFRK can also be understood as a technical component of sustainable forest management or as a broader knowledge system that incorporates customary tenure systems and the daily-lived experience of local peoples.

Forest Game Scenario¹³

Recent studies have shown that despite public campaigns to reduce deforestation and sustainably manage forest resources, global forest area has continued to decline and that this phenomenon may pose serious risks for human health and livelihoods, biodiversity and economic sustainability. Taking its cue from growing international concern regarding the impact of deforestation, desertification and land degradation, the United Nations Forum on Forests (UNFF) has chosen to dedicate its full attention to this issue in its upcoming meeting. The Director of UNFF has called upon participant nations to create a draft of this framework, to be presented to the plenary assembly of all nations at the next international UNFF summit.

The Director believes that one of the most important steps to creating a widely accepted and actionable treaty is to encourage representatives of both developed and developing countries to engage in upfront and informal dialogue early on, before they are required to commit to official state positions and accompanying public scrutiny that invariably narrows one's flexibility of position. The UNFF Director hopes that such a period of brainstorming will allow the 17 assembled nations to produce a draft treaty that reflects the most vital concerns of all parties while taking account of the best scientific advice available.

As the first step towards initiating a constructive international dialogue, UNFF has decided to convene 16 nations and one Chair in a Working Group. The Working Group's responsibility is to address the issues of sustainable forest management and conservation with the ultimate objective of outlining an appropriate and well-defined agenda of issues, options and potential solutions that may be presented for full-scale negotiations on the subject at a later, and more formal, stage of negotiations. It must be stressed that the exercise is preliminary, and that though a draft framework is the goal, it is not expected that any document produced at this meeting can be a final, formal word on the subject. The end product document will define key issues and areas for potential agreement and/or conflict for the plenary session's later consideration.

The UNFF has attempted to select a representative body of nations that will give voice to the major relevant concerns and issues, while realizing that no representative body can be a true microcosm of the global community. The countries to be assembled include both industrialized and developing nations, the global North and the global South, the largest exporters and importers of timber and other forest products and nations that may speak to the issue of

13 The Negotiation Simulation on Global Forests Management and Conservation is for educational use only. The scenario and role instructions in this simulation are entirely hypothetical and do NOT represent any official policy or positions. This simulation exercise was developed in partnership by the United Nations Environment Programme (UNEP), the United Nations Institute for Training and Research (UNITAR), the Fletcher School of Law and Diplomacy (Tufts University), and the University of Joensuu, Finland, under the direction of Barbara Ruis (UNEP), Brook Boyer (UNITAR), Professor Adil Najam (Fletcher School of Law) and Professor Tuomas Kuokkanen (University of Joensuu). Brooke Barton and Nadaa Taiyab, both of the Fletcher School of Law, co-ordinated the role development, and the individual role instructions were written by Brooke Barton, Karoun Demirjian, Joshua Newton, Nadaa Taiyab, and Nirmalan Wigneswaran from the Fletcher School of Law and Hyun-Binn Cho and Arun Seetulsingh from UNITAR. The development of the exercise was supported by the University of Joensuu. This exercise may not be used, reproduced, revised, or translated in whole or in part by any means without written permission.

balancing livelihoods and forest cover. These nations are Brazil, Canada, China, Costa Rica, DRC, Ecuador, France (EU), Finland, India, Indonesia, Japan, Laos, Madagascar, Russia, Tanzania and the United States. A representative from Switzerland will serve as the chair.

The Director seeks for the participants of this meeting to generate a consensus document on sustainable forest management and conservation. Such a document could range from a statement of principles to a declaration to a draft of elements of a potential treaty. The consensus document that is arrived at may be presented as recommendations to the plenary assembly. With apologies for any redundancy, the Director again stresses that the purpose of this meeting is to reinvigorate discussion on the subject, identify key issues and options and create a *draft* framework for possible options. To assist you in these efforts, the UNFF staff has identified a preliminary list of three general areas of discussion, outlined below. As these are broad areas, however, it is hoped that the meeting will enable participants to narrow the debate within each area to identifiable, and manageable, issues and options.

Nature and Form of the Instrument

To assist in your deliberations, UNFF has identified three options for the potential form that international legislation on deforestation may take, although the Working Group may collectively be able to suggest a more appropriate model. The strongest option would be a stand-alone Framework Convention on Forests, under which deforestation and an action plan for curtailing it would be confronted as a problem for unique consideration, funding and implementation. Alternatively, nations may consider capitalizing on existing synergies by creating an agreement on forests as a protocol to a pre-existing treaty such as the Convention on Biological Diversity,¹⁴ the United Nations Framework Convention on Climate Change,¹⁵ the Kyoto Protocol,¹⁶ the United Nations Convention to Combat Desertification,¹⁷ the International Tropical Timber Agreement¹⁸ and the Convention on the International Trade in Endangered Species.¹⁹ A third and least proactive option would be to simply strengthen the role of the UNFF as the co-ordinating mechanism for continued forest action and research. However, the Director of UNFF wishes to stress that this course of action is hardly innovative, and marks only a marginal improvement to the current status quo.

Possible Actions

A draft framework should take specific action with regards to the timber trade, ecosystem services, local livelihoods and traditional forest-related knowledge (TFRK), as well as monitoring and assessment. First, concerning the timber trade, the strongest option would be to oblige nations to commit to sustainably managing all of their timber stands and implementing mandatory certification schemes. Canada and Finland have been working on a set of international certification standards and have further suggested that nations impose import restrictions on uncertified timber (see the attached Vancouver-Helsinki proposal).²⁰ Voluntary national certification is the other option, but would be a fairly weak measure, as

14 CBD, *supra*, note 7.

15 UNFCCC *supra* note 8.

16 Kyoto Protocol, *supra*, note 9.

17 UNCCD, *supra* note 10.

18 ITTA 1994, *supra* note 6.

19 CITES, *supra* note 12.

20 This document is available on the University of Joensuu – UNEP International Environmental Law-making and Diplomacy Course website, www.joensuu.fi/unesp/envlaw/index.html.

each nation would be free to set its own criteria. With regard to ecosystems protection, nations could choose from a range of options including setting firm targets on the reduction of deforestation rates, mandatory increases in conservation areas and the strengthening of national legislation to protect conservation areas. The UNFF would strongly advise setting up an inter-governmental panel to identify endangered ecosystems or no-go areas that could then be protected under national conservation regimes. Any plan must address concerns regarding the livelihoods of local communities, forest-dwellers and indigenous peoples, as well as poverty alleviation. Several governments and NGO groups have also advocated for the recognition of local rights to TRFK. Monitoring and assessment efforts could include the continuation of the existing UNFF system of annual reporting. However, given the low level of actual implementation of national forest management plans, it may be advisable to consider employing third party verification of these reports by NGOs or international bodies. These are the general areas the UNFF feels are necessary to confront, but the Working Group should not feel constrained to these particular topics or options for its consideration.

Financing

There are several options that could be considered for financing sustainable forestry management and conservation activities. First, a new financing mechanism, such as the proposed Forest Financing Fund (see the attached Brazilian proposal),²¹ could be created via some sort of global tax or via voluntary donations. This alternative would allow nations to create a unique mechanism focused solely on forestry and governed in an appropriate and equitable manner, but would entail significant start-up and administrative costs as well as a learning period. Another route would be to channel money through existing mechanisms such as the Global Environment Facility (GEF), which has a great deal of experience in forestry projects. Other options include public-private partnerships that would facilitate foreign direct investment into national forest sectors to promote more efficient and sustainable timber production, as well as a market-based mechanism that would essentially rely on increased tax revenue from timber exports to fund ongoing certification efforts.

Representatives of the 16 countries, as well as the Chair, have received common background briefing materials from UNFF to help them prepare for this meeting, as well as individualized, confidential instructions from their respective governments. The confidential instructions detail each role's views on the three issues under consideration.²² Moreover, some of the parties have prepared proposals that may be distributed to the other members of the Working Group during the course of the negotiation.

21 This document is available on the University of Joensuu – UNEP International Environmental Law-making and Diplomacy Course website, www.joensuu.fi/unep/envlaw/index.html.

22 The individual country instructions are available on the University of Joensuu – UNEP International Environmental Law-making and Diplomacy Course website, www.joensuu.fi/unep/envlaw/index.html.

BLOC NEGOTIATION SIMULATION EXERCISE: UN FRAMEWORK CONVENTION ON FORESTS CONFERENCE OF THE PARTIES¹

Johannah Bernstein²

The University of Joensuu – UNEP International Environmental Law-making and Diplomacy Course 2005 aimed to emphasize the practical side of international environmental negotiations. Alongside the lectures and presentations given on various topics related to international environmental law-making were two negotiation simulation exercises, run in the first and second weeks of the course, respectively. While both exercises incorporated the special theme of the 2005 course, forests, they differed in the approaches taken and elements introduced.

The first exercise was based on multilateral negotiations from a country perspective, and participants had the remit of negotiating a draft treaty on the sustainable conservation and management of forests, which best met the interests of the country they were selected to represent. This second exercise, held during the second week, acted as a sort of follow up to the negotiation simulation held during the first week. Having simulated the negotiations of a framework convention, parties were brought together in the second week in a hypothetical first Conference of the Parties to resolve certain outstanding issues. The important difference in approach between the exercises was that rather than negotiating from individual country positions, participants were called upon in this second exercise to negotiate in blocs of countries. This distinct approach introduced participants to another

1 The materials prepared for the August 24 UNFCF COP-1 negotiation simulation exercise are intended for educational purposes only. The materials were prepared by Johannah Bernstein and are entirely hypothetical and ARE NOT official UN documents.

2 Environmental Law and Policy Consulting, Brussels, Belgium.

central aspect of multilateral environmental negotiations: bloc negotiations and positions.

Prior to the exercise, participants were given an information pack which included, in the form of an explanatory note, background information on the exercise, general instructions on how the exercise would be run and information on substantive elements to be negotiated by the blocs. The information pack also included a Chair's summary of the negotiating points and a copy of the hypothetical framework convention. Lecture notes on MEA Negotiating Processes, Negotiation Strategies and Techniques were also provided. The explanatory note and Chair's summary are reprinted in the present Review.³

The one day bloc negotiation simulation exercise began with a general introduction to the purpose and scope of the exercise, as well as an outline of the main negotiating processes and negotiation strategies and techniques. Participants were randomly designated individual countries, not their own, which they would represent within their respective blocs. These four blocs were the European Union, the Group of 77 and China, JUSCANZ (Japan, the United States, Canada, Australia and New Zealand) and AOSIS (Association of Small Island States). The blocs began negotiations internally during a working lunch in which they prepared bloc opening statements and amendments to the draft texts provided earlier. This was followed by a general debate on the proposed amendments. The exercise continued with further meetings within the blocs to prepare unified positions. The participants were then divided into two working groups, each with a remit to negotiate specific outstanding issues. The importance of a unified bloc position was highlighted here as there was only one participant per country and participants were therefore not in a position to individually take part in each of the working groups. Positions had to be negotiated in advance and partners within the respective blocs had to be relied on to carry out negotiations in the bloc's interests. The negotiation exercise closed with a reconvening of the plenary to hear the rapporteurs of the two working groups.

3 For the full set of documents given to participants during the Course please refer to the University of Joensuu – UNEP International Environmental Law-making and Diplomacy Course website, www.joensuu.fi/unesp/envlaw/index.html.

Explanatory Note by the Executive-Secretary of the UNFCF Secretariat⁴

Background to the UNFCF

The first session of the United Nations Conference of the Parties to the Framework Convention on Forests will take place in Joensuu, Finland, on 24 August 2005. At this first meeting, the COP will resume the negotiation of outstanding issues related to the draft Convention, which could not be resolved at the final session of the United Nations Intergovernmental Negotiating Committee on Forests (INCF-10). The INCF negotiation process was undertaken over a period of two years and followed, inter alia, on the policy dialogue that had been facilitated by the Intergovernmental Panel on Forests (IPF) and the Intergovernmental Forum on Forests (IFF). Notably, the IPF Proposals for Action provided an important substantive basis for the elaboration of the draft Convention.

In July 2003, the United Nations Economic and Social Council (ECOSOC), in resolution E/2003/47, established the INCF with the main objective to adopt a legally binding instrument on the sustainable management, protection and conservation of forests. The first organizational session of the INCF took place on 1-10 July 2003, at UN headquarters in New York. At that session, member states agreed on a work programme for the subsequent sessions of the INCF. They also agreed that the INCF and subsequent UNFCF Secretariat would be located in Joensuu, Finland. Under the auspices of INCF Sessions 2-10, intergovernmental negotiations were carried out on the elements of the draft Convention. Multi-stakeholder dialogues and high-level ministerial segments were held at each of these sessions.

Purpose of UNFCF COP-1

The draft United Nations Framework Convention on Forests provides that the Conference of the Parties, as the supreme body of the Convention, shall keep under regular review the implementation of the Convention and shall make, within its mandate, the decisions necessary to promote the effective implementation of the Convention. Furthermore, the Conference of the Parties shall periodically examine the obligations of the Parties and the institutional arrangements under the Convention in the light of the objective of the Convention, the experience that will be gained in its future implementation and the evolution of scientific and technological knowledge regarding the state of the world's forests.

The principal objective of COP-1 in this context will be to finalize negotiations regarding the outstanding issues in the draft Convention, which could not be resolved at the tenth and final session of INCF-10.⁵ Following an INCF Secretariat fact-finding mission to assess proposed facilities, the members of the INCF-10 Bureau accepted the generous offer of the University of Joensuu to host COP-1. This acceptance was communicated to all Parties in an information note. The INCF secretariat and the University of Joensuu recently concluded a host country agreement.

4 The materials prepared for the 24 August 2005 UNFCF COP-1 negotiation simulation exercise are intended for educational purposes only. The materials were prepared by Johannah Bernstein and are entirely hypothetical and ARE NOT official UN documents.

5 See Section 4 of this explanatory note.

Proposed organization of UNFCF COP-1**Item 1 of the provisional agenda (Opening statements)**

COP 1 will be opened by the newly adopted Chair of the COP, Ambassador Johannah Bernstein. The Committee of the Whole (CoW) will commence with opening statements. The Chair's opening statement will be followed by opening statements to be presented by the four negotiating blocs in the following order: G-77, European Union, AOSIS, JUSCANZ. In order to dispose quickly of opening procedures, it is proposed that these be the only statements at the opening of the session. The blocs will be allocated five minutes each to highlight their overarching priorities and concerns regarding the challenges of the management, conservation and sustainable development of all types of forests. It is important to note that the opening statements, amendments and proposals, which will be tabled by the blocs, will have been prepared in advance, notably during the period immediately preceding the opening of COP-1.

Item 2 of the provisional agenda (General debate on Article 4)

Following the opening statements, the first plenary meeting of the Committee of the Whole will proceed to consideration of Item 2, whereby the negotiation blocs will prepare their new amendments and proposals to the seven substantive commitments contained in Article 4 of the Draft Convention. The blocs will be invited to identify the following points in their amendments and proposals to each of the seven substantive commitments: contested elements and the underlying rationale for objections to existing elements of the text and proposals for alternative elements.

The Chair will conclude discussion of each of the seven substantive commitments in their consecutive order. Each of the blocs will have a maximum of five minutes to present their amendments and proposal for each of the seven substantive commitments. Once the blocs have tabled their amendments and proposal to each of the seven commitments, the Chair will open the floor for general debate on the proposals tabled for each commitment. At this stage, the blocs will be invited to comment on the proposals that will have been tabled. Following conclusion of the general debate, the Chair will identify the outstanding issues that will require priority attention by the two Working Groups, which will be established under the CoW. The Chair will then adjourn the CoW to provide sufficient time for the negotiation blocs to prepare new proposals in response to the outstanding issues that will not have been resolved in the CoW.

Item 3 of the provisional agenda (Working Groups A and B)

The Chair will appoint Bureau officers to preside over working group negotiations. Working Group A will address substantive commitments 1-4 and Working Group B will address substantive commitments 5-7. The negotiation blocs will be represented in each of the working groups and will divide their respective members to ensure optimal regional representation in each of the working groups. The working group chairs will undertake informal consultations where necessary and may refer drafting tasks to informal groups, as appropriate. As well, COP-1 Chair Ambassador Bernstein will undertake Friends of the Chair consultations to assist in working group deliberations.

Item 4 of the provisional agenda (Closing Plenary)

The final session of the CoW will convene to review the progress of the Working Groups. The Chair of COP-1 and the chairs of the Working Groups will present the agreements

reached on the seven substantive commitments and will review the results of informal consultations. The Chair will summarize the outstanding issues to be deferred to COP-2.

Substantive issues to be taken up by COP-1

The tenth and final session of the Intergovernmental Negotiating Committee on Forests (INCF-10) was able to adopt most of the draft text of the UN Framework Convention on Forests. However, it was unable to reach conclusion on Article 4, which contains the seven substantive commitments to be undertaken by Parties. At INCF-10, Parties decided to defer final negotiation regarding the seven commitments to COP-1.

The seven commitments contained in Article 4 are the following: guarantee the protection, sustainable management and conservation of all forests; protect local livelihoods; protect traditional forest-related knowledge; promote sustainable timber trade; establish capacities for monitoring, assessment and observation of forests and related programmes, projects and activities; strengthen financing for forest management; guarantee technology transfer.

The Chair's Summary of INCF-10 provides an overview of the main points of disagreement, which could not be resolved at that session. The Chair's Summary has been distributed to member states as an unofficial document. COP-1 will be invited to adopt draft decisions or conclusions pertaining to the seven commitments contained in Article 4.

COP-1 Bureau

Consultations with regional group co-ordinators were initiated at INCF-10 on nominations to the Bureau of COP-1. At the last INCF meeting, the Chair called for the election of the Chair of COP-1. The unanimously elected COP-1 Chair will invite the first session of the COP to elect the remainder of its officers and the chairs of the subsidiary bodies. This election will take place at the beginning of the session, provided that consultations on the nominations to the Bureau of COP-1 have been completed. If further consultations are needed, the election of the other officers could be deferred. Each of the five regional groups shall be represented on the Bureau.

COP-1 Negotiating Blocs

The Conference of the Parties is of course an open-ended negotiating process with parties who have not yet ratified the Convention invited to attend as observers. The following blocs are expected to be active at COP-1.

EU

Austria
Czech Republic
Finland
France
Greece
Latvia
Slovakia
Sweden
United Kingdom

JUSCANZ

Canada
Japan
Russia⁶
Switzerland
United States of America

G-77 and China

Argentina
Brazil
Burkina Faso
Chile
China
Congo
Costa Rica
Ecuador
India
Indonesia
Kenya
Laos
Madagascar
Malaysia
Malawi
Pakistan
Senegal
Tanzania
Thailand

AOSIS

Bahamas
Maldives
Papua New Guinea
Samoa
Seychelles
Togo⁷
Trinidad and Tobago

6 Russia does not normally negotiate with JUSCANZ but will be invited to join this group for the purposes of COP-1.

7 Togo does not normally negotiate with AOSIS but will be invited to join this group for the purposes of COP-1.

Chair's Summary

10th Session of the United Nations Intergovernmental Negotiating Committee on Forests (INCF-10)⁸

1. The tenth and final session of the United Nations Intergovernmental Negotiating Committee on Forests (INCF-10) was held 15-19 August at the new UN headquarters in Joensuu, Finland.
2. More than 100 Ministers with Environment and Forest portfolios met together with the heads of a number of UN agencies and international organizations, as well as a broad-based representation of major groups to adopt the final text of the United Nations Framework Convention on the Protection, Sustainable Management and Conservation of All Types of Forests Especially in Countries with Fragile Ecosystems, including those of Low Forest Cover Countries.
3. During the course of the meeting, parties were able to reach agreement on most of the draft Convention, with the exception of Article 4, which contains the seven substantive commitments and which is entirely bracketed.
4. Commitment 1, Guarantee the protection, sustainable management and conservation of all forests, calls for the development of national forest strategies to address, inter alia, the establishment of protected areas and deforestation reduction targets. Deforestation reduction rates were the subject of protracted negotiations with many member states opposed to mandatory reduction rates and to the compulsory creation of new protected forest areas. For many developing countries, their acceptance of either reduction targets or protected areas was conditional upon the agreement of developed countries to increase financial and technical support for sustainable forest management.
5. Commitment 2, Protect local livelihoods, calls for the protection of the rights of local communities and indigenous peoples to subsistence, food security and livelihoods. Contentious issues included the recognition of such rights in accordance with basic international human rights standards. Member states were also divided regarding the extent to which the unique role of indigenous peoples should be recognized.
6. Commitment 3, Protect traditional forest-related knowledge, calls for the protection of traditional forest related knowledge (TFRK). Member states were divided regarding recognition of the intellectual property rights of indigenous and forest-dependent peoples who possess TFRK. The issue of illegal international trafficking in uncertified forest products and the fair and equitable sharing of benefits were also the subject of protracted debate with parties unable to reach agreement on the final wording.
7. Commitment 4 'Promote sustainable timber trade' calls for improvement in market access for forest goods and services. Member states were divided regarding the complete elimination of tariff and non-tariff barriers to trade, as well as on the call

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for mandatory codes of conduct for promoting sustainable forest management. No agreement could be reached on a universal forest certification and labelling scheme or the phasing out and eventual ban of uncertified timber imports and other products developed from illegal logging practices.

8. Commitment 5, Monitor and assess sustainable forest management, calls for annual monitoring, assessment and reporting of the state of forests and the implementation of sustainable forest management practices and programmes. Agreement could not be reached regarding the mandatory or voluntary nature of such monitoring and parties could not resolve outstanding issues related to the development of national forest inventories as an important basis for the effective formulation of national forest programmes.
9. Commitment 6, Ensure financing for forest management, identifies a range of financing mechanisms to be considered for forest activities. Member states were unable to reach agreement on language related to reversing the decline in Official Development Assistance for forest-related activities, on the call for a new global forest fund, or on the mechanisms necessary to mobilize national resources.
10. Commitment 7, Guarantee technology transfer, calls on parties to promote, facilitate and finance, as appropriate, access to and the transfer of environmentally sound technologies related to sustainable forest management. Agreement could not be reached on the terms to underlie technology transfer or on the modalities for strengthening international co-operation.
11. Member states agreed to defer these outstanding matters to the first substantive session of the Conference of the Parties to the UN Framework Convention on Forests.



