

Forests, International Protection

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A. Introduction

- 1 The issue of forests is related to the entire range of environmental and development issues, including the right to socio-economic development on a sustainable basis. All types of forests embody complex and unique ecological processes which are the basis for their present and potential capacity to provide resources to satisfy human needs as well as environmental values, and as such their sound management and conservation is of international concern for the protection and preservation of environment.
- 2 Forests play an important role in meeting energy requirements through the provision of a renewable source of bio-energy, particularly in developing countries, and the demands for fuel wood for household and industrial needs should be met through sustainable forest management, afforestation and reforestation. However, forests world wide are being threatened by uncontrolled degradation and conversion to other types of land uses, influenced by increasing human needs. The impacts of loss and degradation of forests are in the form of soil erosion; loss of biological diversity, damage to wildlife habitats and degradation of watershed areas, deterioration of the quality of life and reduction of the options for development. Therefore, there is a need to recognize the vital role of forests in maintaining the ecological processes and balance at the local, national, regional and global levels through, inter alia, their role in protecting fragile ecosystems, watersheds and freshwater resources and as rich storehouses of biodiversity and biological resources and sources of genetic material for biotechnology products, as well as photosynthesis.
- 3 The advocates of vigorous protection of forests on a global scale have long called for forests to be recognized as a global common good, thus subjecting them and their overall functions to the rule of international law. However, there are legal objections and political obstacles to this demand, for the present time at least, since recognition of forests as a common good is completely inconceivable for the countries of the South. In addition to offering economic value, forests perform functions that lend themselves to the rule of

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international law (serving as a carbon sink and a reservoir for species, regulating the water balance, etc) and have been covered accordingly (eg by the 1992 Convention on Biological Diversity ['CBD'] and the 1992 UN Framework Convention on Climate Change ['UNFCCC']; see also → *Biological Diversity, International Protection*; → *Climate, International Protection*).

- 4 Global forest policy has been developed in a number of fora. Despite the lack of progress on forests during the UN Conference on Environment and Development of 3–14 June 1992 ('UNCED'/'Rio Summit'), there has been an increase in momentum and political will to address international forest policy over the past 17 years. Significant progress has been made since UNCED. Throughout this time, the main focus within the UN has been to develop coherent policies to promote the management, conservation and → *sustainable development* of all types of forests. The Intergovernmental Panel on Forests ('IPF'), from 1995–1997, and the Intergovernmental Forum on Forests ('IFF') from 1997–2000, both under the auspices of the UN Commission on Sustainable Development, were the main intergovernmental fora for international forest policy development.
- 5 The current international regime which guides the utilization and management of forests is composed of numerous instruments, some of which are legally-binding such as the CBD, the UNFCCC, the 1994 Convention to Combat Desertification ('CCD'; → *Desertification*), and the 1994 International Tropical Timber Agreement ('ITTA'). The most important → *soft law* instruments relating to forests include the Forest Principles and Chapter 11 of → *Agenda 21*, which are the result of UNCED and are considered to represent the first global consensus on principles for the management, conservation and sustainable development of all types of forests. However, the principles lack concrete arrangements, and require more specific detail in order to become operational at the international and national levels.

B. Existing International Instruments and Initiatives

1. Global Forest-Related Issues Framework

- 7 Since the Stockholm Conference in 1972, and more continuously so since UNCED in 1992, awareness and understanding of the nature and extent of global environmental problems has increased significantly. The rapid pace of the adoption of international conventions, international and regional initiatives, and the establishment of soft law, has been impressive, and has led to the adoption of corresponding declarations, guidelines and principles concerning environmental and in particular forest-related issues.
- 8 The political point of departure for all international negotiations on environmental issues has been the strict principle of territorial sovereignty, which governed traditional public international law at an early stage and provided a framework within which to address trans-boundary conflicts. As the international community came increasingly to acknowledge the global dimension of environmental problems, international environmental law developed from a system of 'coexistence' into a system of 'co-operation', incorporating regulations to prevent environmental damage and provide guidance to governments for action geared to sustainable development.

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- 9 This is the context in which global forest-related issues have to be assessed. The advocates of stringent global forest regulations claim that forests belong to the category of 'global commons' or 'common goods', and should therefore be regulated by a global regime. Sovereignty concerns still govern the international debate, and that it is clear from a legal point of view that forests are national goods and therefore do not belong to the global commons. The present concept of international law only recognizes global commons, if the area is beyond the jurisdiction and sovereignty of any State, and exists for the common benefit of all (such as part of → *Antarctica*, the atmosphere [→ *Atmosphere, International Protection*], part of the oceans [→ *Marine Environment, International Protection*] and → *outer space*). Forests, however, are physically located within national boundaries, and many of their functions are local or national in scope, such as wood production, while other functions possess regional or global dimensions, such as the protection of watersheds of rivers and carbon sequestration. Moreover, forests fall under domestic jurisdiction and are regulated by a complex set of national regulations. However; a common global concern regarding the global functions of forests, such as climate change, biodiversity and genetic resources, can be acknowledged. Accordingly, all the instruments generally available to public international law can be applied to global forest issues (treaties, international customary law and the possibilities of soft law such as declarations, resolutions and any other internationally agreed strategies). The instruments of soft law in particular have played an important role in the development of an international forest regime. Since conventions usually only contain a comprehensive framework, they often may not be adequate to regulate the complexity of forest sector issues, which call for concrete criteria and rather technical regulations. Furthermore, soft law is produced in a less complicated process.

2. International Tropical Timber Organization

- 10 Established in 1983 under the auspices of the UN Conference on Trade and Development ('UNCTAD'), the International Tropical Timber Organization ('ITTO') is an intergovernmental organization promoting the conservation and sustainable management, use and trade of tropical forest resources. Its members represent about 80% of the world's tropical forests and 90% of the global tropical timber trade. It seems alike all commodity organizations, ITTO is concerned with trade and industry. However, like an environmental agreement, it also seems to pay attention to the sustainable management of natural resources. Its mandate includes developing an internationally agreed policy documents to promote sustainable forest management and forest conservation as well as assist tropical member countries to adopt policies that could be relevant to local circumstances. This is expected to be implemented in the field through projects. Apart from this, ITTO collects analyses and disseminates data on the production and trade of tropical timber. It also funds a range of projects and other action aimed at developing industries at both community and industrial scales.
- 11 The origin of the ITTO can be traced back to 1976 when the long series of negotiations that led to the first International Tropical Timber Agreement ('ITTA') began at the fourth session of the UNCTAD as part of the Programme for Commodities. The eventual outcome of these negotiations was the 1983 ITTA. It governed the organization's work until 31 December 1996, when it was superseded by the 1994 ITTA. Negotiations for a

successor to this agreement were concluded in 2006, again under the auspices of UNCTAD. The 2006 ITTA has not yet come into force (as on 26 December 2010) due to complicated requirements laid down in Art. 39. The 46th session of the International Tropical Timber Council (Yokohama, 2010) considered the issue high on its agenda in order to ensure its entry into force in the near future.

- 12 When the first ITTA was being negotiated in the early 1980s, concern over the fate of tropical forests was still growing since the international community was expected to take appropriate action. By that time, → *conservation of natural resources* (such as tropical timber) had already become an important consideration in the trade related negotiations. This was reflected in the preamble to the ITTA, in which conservation and trade were accorded an equal importance. The drafters of the ITTA believed that a flourishing trade in tropical timber, if based on a well-managed forest resource, could be a key to sustainable development. In turn, it could provide valuable foreign exchange and employment while protecting natural forests from destruction, degradation and excision.
- 13 The ITTA that eventually came into operation was not a conventional commodity agreement. In actual effect, it was as much an agreement for forest conservation and development as for trade. It preceded the concerns that were featured in the 1987 Report of the World Commission on Environment and Development *Our Common Future* ('Brundtland Report') as well as the 1992 Rio Summit. Moreover, its trade components were as much instruments for tropical forest conservation as ends in themselves.
- 14 The objectives of the 2006 ITTA are to promote the expansion and diversification of international trade in tropical timber from sustainably managed and legally harvested forests and to promote the sustainable management of tropical timber producing forests. It not only encourages the timber trade but also emphasize upon the improved management of the forests. It also contains provisions for information sharing, including non-tropical timber trade data, and allows for the consideration of non-tropical timber issues as they relate to tropical timber.

3. 1981 FAO World Soil Charter

- 15 The → *Food and Agriculture Organization of the United Nations (FAO)* Conference adopted the World Soil Charter ('WSC') by its Resolution 8/81 in November 1981. The WSC establishes a set of principles for the optimum use of the world's land resources, for the improvement of their productivity, and for their conservation for future generations. The WSC recognizes that the food requirements of humankind, including the eradication of malnutrition, can be met by the establishment and better utilization of grasslands and forests. The WSC further requires from the governments to integrate appropriate measures in forestry and agriculture for the protection of the environment.

4. UNCED Forest Principles and Chapter 11 of Agenda 21

- 16 Forest issue has been a priority area at the international level for the past two decades. At the 1992 UNCED, the forestry issue was among the most controversial ones that divided developing and developed countries. As a result, this polarization on forestry issue could only permit countries to agree upon somewhat hybrid instrument described as Non-legally Binding Authoritative Statement of Principles for a Global Consensus on the

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Management, Conservation and Sustainable Development of All Types of Forests. It has come to be popularly known as the Forest Principles. The UNCED also saw insertion of a full Chapter 11 'Combating Deforestation' in Agenda 21. The 15 Forest Principles recognize forests as an essential means for economic development and the maintenance of all forms of life. It was to be applicable to all types of forests, both natural and planted, in all geographical regions and climatic zones, including austral, boreal, sub temperate, temperate, subtropical and tropical. Moreover, these principles aim at contributing to the management, conservation and sustainable development of forests as well as to provide for their multiple and complementary functions and uses.

- 17 Although not legally-binding in nature, the Forest Principles are of major importance in the formulation of international forest policies that could, in turn, percolate down to the national level. Their common objective was to address national forest policies to arrest deforestation, to protect and conserve biological diversity within national boundaries, and to increase contribution of the forestry sector to national economic and social development. Among these international initiatives, the most widely used framework for forestry sector planning has been the Tropical Forestry Action Programme ('TFAP').
- 18 These two documents mark a significant paradigm shift. They no longer focus on tropical forests but on all types of forests worldwide and call for holistic instead of sector specific approaches as well as for a shift from State forest monopoly to pluralistic structures. They explicitly underline the contribution of forests and their management to sustainable development. Such multilateral instruments and resolutions that are not legally-binding, such as the Forest Principles, are often quite deliberately employed as an alternative to the 'hard' international legal tools in order to underscore the tentative nature or incompleteness of an agreement while still striving to guide and or regulate the behaviour of the sovereign States. It is part of the interesting pattern of law-making process in international law wherein not only the classical legal sources of treaties (or conventions), but other multifaceted mechanisms could be used for developing a suitable international instrument for protecting a natural resource such as forests as well.

5. IPF/IFF Process

- 19 By 1995, emerging North-South partnerships on the issue enabled the → *Commission for Sustainable Development (CSD)* at its third session ('CSD-3') to establish an Intergovernmental Panel on Forests ('IPF') (1995–1997) as an intergovernmental working group to continue the international forest policy dialogue in order to support the implementation of Chapter 11 of Agenda 21 as well as the Forest Principles. The IPF had an ambitious agenda that focused on the implementation of the UNCED decisions on forests, → *financial assistance*, → *technology transfer*, scientific research, criteria and indicators for sustainable forest management, → *trade and environment*, and international organizations and legal mechanisms on forests.
- 20 During its two year mandate, the IPF developed over 100 negotiated proposals for action on a number of issues related to sustainable forest management ('SFM') including national forest programmes, forest assessment, criteria and indicators, traditional forest related knowledge, and underlying causes of deforestation. It included matters that required further consideration—either because consensus could not be reached or because further analysis was required—such as issues related to financial assistance and

technology transfer, trade and environment, institutions and legal instruments for the management, conservation and sustainable development of all types of forests. An implicit sub-text of this process was whether to begin negotiations on the proposed global forest convention.

- 21 At the end of the IPF process, CSD-5, in April 1997, and the 19th Special Session of the UN General Assembly, in June 1997, endorsed the IPF's outcome and recommended a continuation of the intergovernmental policy dialogue on forests. As a result, the → ECOSOC (*United Nations, Economic and Social Council [ECOSOC]*) established the Intergovernmental Forum on Forests ('IFF') to continue this work under the auspices of the CSD for a further period of three years (1997–2000). The IFF was for all intents and purposes the IPF with a changed mandate, namely to promote and facilitate the implementation of the IPF's proposals for action, to consider matters left pending from the IPF's programme of work, and to consider the international arrangements and mechanisms on forests. It occupied the same position within the UN system as the IPF, namely as a CSD sub-group. The IFF's deliberations were aimed at resolving several issues on which IPF had not reached consensus, such as financial resources, transfer of environmental sound technologies, and other issues left pending, including deliberations on international arrangements and mechanisms on forests. As with the IPF, the IFF generated a substantial body of proposals for action, and once again the proposed forest convention issue remained a background factor in all its deliberations.
- 22 The IPF and the IFF represent five years (1995–2000) of international forest policy dialogue. IPF and IFF examined a wide range of forest-related topics over this period. The key outcomes of the deliberations under these processes were presented in the final reports of these processes (IPF-4 and IFF-4), in the form of more than 270 proposals for action towards the path of sustainable forest management, known collectively as the IPF/IFF Proposals for Action as well as the management, conservation and sustainable development of all types of forests. These proposals provide governments, international organizations, private sector entities and all other major groups' guidance on how to further develop, implement and co-ordinate national and international policies on sustainable forest management. Although the IPF/IFF proposals for action are not legally binding, the States that participated in these processes could be regarded as under some form of a political obligation to implement the agreed proposals for action. Moreover, each country could be expected to conduct a systematic national assessment of the IPF/IFF proposals for action and to plan for their implementation.

6. UN Forum on Forests and Collaborative Partnership on Forests

- 23 The IFF process led to the birth of a new UN body, the UN Forum on Forests ('UNFF') with the lifespan of five years to 'consider with a view to recommending the parameters of a mandate for developing a legal framework on all types of forests.' The UNFF was established as a subsidiary body of ECOSOC in October 2000 (see ECOSOC Resolution/2000/35) as part of a new non-legally binding International Arrangement on Forests ('IAF'). It was to serve as an intergovernmental body for the international forest policy dialogue to promote management, conservation, and sustainable development of all types of forests as well as to strengthen long-term political commitment to this end. In fact it was expected to carry on the work building on the IPF and IFF processes. To

support the work of the UNFF and enhance co-operation and co-ordination, the ECOSOC resolution also invited the Secretariats of the forest related Conventions as well as international organizations to form a Collaborative Partnership on Forests ('CPF').

- 24 There are three main institutional differences between the UNFF and its predecessors, the IPF and the IFF. First, the UNFF has universal membership. Second, whereas its predecessors reported to the CSD, the UNFF reports directly to the ECOSOC. Third, unlike the IPF and IFF, the work of the UNFF involves, for some sessions, a ministerial segment. Within the UN system, therefore, the UNFF appears to occupy somewhat a higher status and can be said to have a greater political visibility as compared to the IPF and the IFF.
- 25 The establishment of the IAF and the concept of national forest programmes constitute an enormous progress in the development of favourable conditions for sustainable forest management at the national and global level. The work of the IAF arrangement is based on the Rio Declaration on Environment and Development, the Forest Principles, Chapter 11 of Agenda 21 and the IPF/IFF Proposals for Action in carrying out its principal functions. IAF is required to facilitate and promote the implementation of the IPF/IFF proposals for action and to provide a forum for continued policy development and dialogue to enhance co-operation as well as policy and programme co-ordination on forest related issues.
- 26 ECOSOC Working Paper E/2000/L32 also instructed the UNFF to establish a multi-year programme of work ('MYPOW'), drawing on the elements reflected in the aforementioned UNCED decisions and the IPF/IFF Proposals for Action. The multi-year programme of work of the UNFF draws elements from the Rio Declaration on Environment and Development (→ *Stockholm Declaration [1972]* and *Rio Declaration [1992]*), the Forest Principles, Chapter 11 of Agenda 21 and the IPF/IFF Proposals for Action. It was unanimously agreed that the MYPOW should contain an action-oriented approach and should focus on implementation of the IPF/IFF Proposals for Action and other actions.

7. Non-legally Binding Instrument on all Types of Forests

- 27 In 2007, at its seventh session, the UNFF adopted a Non-Legally Binding Instrument on All Types of Forests, following nearly three years of intense negotiations, starting from UNFF-5 and culminating at UNFF-7. The purpose of this instrument is to strengthen political commitment and action at all levels to effectively implement sustainable management of all types of forests so as to enhance the contribution of forests for the achievement of the internationally agreed development goals and to provide a framework for international and national action.

8. Forest Investment Program

- 28 Approved in July 2009, the Forest Investment Program ('FIP') is a program within the Strategic Climate Fund (a multi-donor trust fund within the Climate Investment Funds). Administered by the World Bank, the FIP's overall objective is to mobilize significantly increased funds to reduce deforestation and forest degradation and to promote sustainable

forest management, leading to emission reductions and the protection of carbon reservoirs.

- 29 The main purpose of the FIP is to support developing countries' REDD (reducing emission from deforestation and forest degradation) efforts, providing up-front bridge financing for readiness reforms and investments identified through national REDD readiness strategy building efforts, while taking into account opportunities to help them adapt to the impacts of climate change on forests and to contribute to multiple benefits such as biodiversity conservation and rural livelihoods enhancements. The FIP could finance efforts to address the underlying causes of deforestation and forest degradation and to overcome barriers that have hindered past efforts to do so.
- 30 The SCF Trust Fund Committee established a Sub-Committee for the FIP to oversee the operations and activities of the Pilot Program. The FIP Sub-Committee is the decision-making body responsible for overseeing and deciding on the operations and activities of the FIP. In fact, six countries (namely, Australia, Denmark, Japan, Norway, UK and US) have pledged to contribute US\$558 million for this program. It seems no funds have yet been disbursed, as of the meeting of the Sub-Committee in July 2010 (the next meeting will be during 7–11 November 2011). The FIP Sub-Committee approved the following countries to become pilots under FIP: Brazil; Burkina Faso; Democratic Republic of Congo; Ghana; Indonesia; Mexico; Laos; and Peru.

C. Need for a Global Forest Convention?

- 31 The diversity and complexity of forest issues is used as an argument by advocates of a comprehensive forest convention. In light of the failures of the existing instruments, they contended a holistic approach which could be designed to integrate all aspects of forests into one single convention. For instance, it could include the conservation of forests and their biodiversity, the local socio-economic significance of forests, the effects of international trade, and the cultural and spiritual values of forests. These arguments appear inconclusive as well as unconvincing to most countries, especially the developing ones. It appears that though a treaty is a favourable instrument from the point of view of international law, still an 'integrative' global forest convention would not be able to abolish the existing inconsistencies or redundancies of other instruments. Since the existing conventions contain binding regulations for States on forestry issues, a forest convention per se would not be able to simply 'harmonize' all existing instruments. Linking different legal instruments would entail an enormous re-negotiation process for each of these instruments, which is unnecessarily time-consuming and unfeasible given the present divergent interests of the various actors involved in forestry sector. The resultant problematic also would be that such a convention would only represent the lowest common denominator, and undermine other important initiatives by its rather general nature. On the positive side, a forest convention could regulate the foundation of sustainable forest management, for instance by turning the Forest Principles and Chapter 11 of Agenda 21 into legally-binding instruments.

D. Prospects for the Current International Process

- 32 The dilemma of 'to treaty' or 'not to treaty' has in many respects dominated international forest policy discourse since the preparations for the UNCED commenced in 1990. There are some strong legal and political arguments why a forests convention could be negotiated, but there are also other equally compelling arguments that underscore as to why a convention is neither desirable nor feasible. However, it seems to be generally agreed upon that there could be an institutionalized international dialogue on forests within the UN system. The pattern since the UNCED has been to create institutions with a fixed life span, and this is likely to continue. As such a permanent UN institution for international protection of forests seems unlikely at the present juncture. It is possible that the type of temporary institutional arrangement that has prevailed since 1995, with the creation of the IPF, which then morphed into the IFF in 1997 and the UNFF in 2001, could continue for the foreseeable future. This type of arrangement has demonstrated several advantages: it has facilitated information and experience sharing; it has helped to establish trust and confidence between States; and it has added to the growing body of soft international law on forests in the form of the IPF and IFF proposals for action. Thus, it seems, any abandonment of international political co-operation on forests may not be desirable in the near future.

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