INC Forests 3 Negotiations

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The Third Session of the Intergovernmental Negotiating Committee for a Legally Binding Agreement on Forests in Europe (INC-Forests3) convened between 28 January and 1 February 2013 in Antalya, Turkey. Pursuant to the Oslo Ministerial Mandate, the INC-Forests has been established to develop “a holistic legally binding framework forest agreement”, strengthening cooperation between the States of the European continent. The Committee, presided over by forest veteran Jan Heino (Finland), has been entrusted to be held by the end of 2013. The Preamble reaffirms Principle 2 of the 1992 Rio Declaration, acknowledging the vital role of forests in achieving sustainable development, as well as their contribution to a range of international goals, including biodiversity, poverty alleviation, and the mitigation of climate change. The Preamble also acknowledges the need for greater coherence in forest-related policy making, and to avoid fragmentation (the latter being one of the original reasons behind the establishment of the INC-Forests in the first place).

The Oslo Mandate, adopted in 1992 by the UN Conference on Environment and Development, and the Non-legally Binding Instrument on All Types of Forests, adopted by the UN Conference on the Environment and Development, and the Non-legally Binding Instrument on All Types of Forests adopted by the UN General Assembly in 2007, remain the main global expressions of State consensus on forests, in the absence of a legally binding agreement.

The Preamble recalls other international instruments dealing with forests and the United Nations Declaration on the Rights of Indigenous Peoples, acknowledging “its relevance in the context of implementing the agreement”. It acknowledges the importance of international cooperation and sustainable forest management in implementing the decisions taken under the UNFCCC and the Convention on Biological Diversity (CBD). It also refers to the Aichi Biodiversity Targets and illegal logging (now harvesting) remains bracketed, and mentions of forest certification have been deleted. Some Parties reportedly expressed a preference for “soft” mechanisms without trying to agree on a single option.

The text remains bracketed, especially where it speaks of “inter alia”, the “maintenance and appropriate enhancement of forest resources and their contribution to global carbon cycles”; and the “maintenance, conservation and appropriate enhancement of biological diversity in forest ecosystems”. Some delegates reportedly suggested that progress on this section requires better clarification of the relationship between the agreement and other international instruments.

The text on reporting and monitoring obligations also remains heavily bracketed, pending definition of the scope of the section on cooperation. Delegates discussed at length the establishment of an compliance committee. While a clear preference for a “soft” mechanism was expressed, delegates could not decide upon important details, such as the powers and composition of the committee. These matters therefore will have to be addressed at future sessions.

The United Nations Umbrella
A particularly thorny issue for consideration at INC-Forests3 was whether or not the agreement should be brought under the UN umbrella. The Oslo Mandate specifically requests the Committee to consider this possibility, inviting the United Nations Economic Commission for Europe (UNECE), the Food and Agriculture Organization of the United Nations (FAO), the United Nations Environment Programme (UNEP) and the European Forest Institute (EFI) jointly to service the negotiating process. These institutional options have remained on the negotiating table.

At INC-Forests3, a working group discussed submissions from candidate institutions and considered the budgetary, logistical and institutional implications of choosing these or opting to accept some form of the UN option, with the aid of two expert reports commissioned for the purpose.

The representatives from the United Nations Universal Peacekeeping Force (UN) and the United Nations Environment Programme (UNEP) were particularly interested in exploring the potential role of the United Nations in supporting and facilitating implementation of the agreement. They also underlined the need to include provisions on the role of the United Nations in supporting and facilitating implementation of the agreement.

Framework Negotiations Continue
by Annalisa Savaresi

Delegates to INC-Forests3 continued discussions on the negotiating text, as revised by INC-Forests2. The agreed text on principles mentions sustainable forest management, good governance, stakeholder participation, and cross-sectoral cooperation. References to the Parties’ common but differentiated responsibilities that appeared in earlier editions of the draft have been definitively expunged.

Progress in finalising the text of general provisions is generally less advanced. While some sections (such as those on criteria for sustainable forest management; national forest programmes; international, regional and cross-border coordination and cooperation; and illegal harvesting) were agreed ad referendum, most of the text remains bracketed, most of the text remains bracketed, pending definition of the scope of the section on cooperation. Delegates discussed at length the establishment of an compliance committee. While a clear preference for a “soft” mechanism was expressed, delegates could not decide upon important details, such as the powers and composition of the committee. These matters therefore will have to be addressed at future sessions.

The resumed session will continue negotiating the draft agreement, consider whether and how to bring the process under the UN umbrella, and also discuss whether and when to draft a resolution transmitting the final text to the United Nations. INC-Forests is expected to conclude its work at its fourth session, to be held on 10–14 June in Warsaw, Poland. With such limited negotiation time left, it is no surprise that delegates in Turkey decided to adjourn and reconvene for an extraordinary session.

Over the years, several attempts have been made to draft an all-encompassing international treaty on forests; negotiations under INC-Forests are but the most recent episode of a long series of such efforts, confined to a single regional group. INC-Forests can rely upon the well established framework for cooperation provided by FOREST EUROPE which, since 1990, has provided
a high-level political forum to promote the protection and sustainable management of forests on the European continent. FOREST EUROPE has adopted a number of forest policy instruments, including a set of sustainable forest management criteria. INC-Forests also builds upon the common ground provided by declarations adopted at FOREST EUROPE Ministerial Conferences, which delineate a common vision for the European forest sector. In spite of this common basis, the challenges facing the process are far from insignificant.

INC-Forests has been required to facilitate cooperation and coordination and avoid duplication of efforts with other international agreements. The interconnected nature of forest matters, and the multiplicity of international instruments that deal with forests (most saliently, the CBD, the UNFCCC, the UN Convention to Combat Desertification, the International Tropical Timber Agreement, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the World Heritage Convention, as well as the World Bank’s various regional Forest Law Enforcement and Governance programmes and a number of certification endeavours) make this task rather challenging. The fragmentation of the so-called forest regime is notorious, and over the years there has been no shortage of efforts to try and streamline this intricate legal landscape.

It is therefore no surprise that INC-Forests has given so much negotiation time to discussion of the agreement’s relationship with the UN and other international processes. Prolonged negotiations demonstrate that, even in the context of FOREST EUROPE, reaching an agreement upon vexed forest questions is not easy. The forthcoming sessions of INC-Forests in St Petersburg and Warsaw are expected to find some common ground to solve the questions still facing delegates. Reaching consensus in this regional forum would break new ground and provide an important advance in international forest law and policy, with consequences likely to go beyond the remit of FOREST EUROPE.

Notes
2 Ibid., at 23 and 29.
3 Ibid., at 23e, f and i.
6 Ibid., at 24c.  
7 Ibid., at 23 and 29.
8 Ibid., at 25.
9 Ibid., at 27.
11 Ibid., at 24c.
12 Ibid., at 24c.
13 Ibid., at 24c.
14 Ibid., at 24c.
15 Ibid., at 24c.
16 Ibid., at 24c.
17 Ibid., at 7 and 6, respectively.
18 Ibid., at 7 and 6, respectively.
19 Ibid., at 9.
20 Ibid., Article III.
21 Ibid., Article IV.
22 Ibid., at page 5, Article IV, at d quart.
23 Ibid., at page 4, Article V, at 4.
24 Ibid., Article V, at 6.
25 Ibid., at page 4, Article V, at 6.
26 Ibid., at pages 7–10.
28 Ibid., at 7.
29 Ibid., note 1, at 24g.
30 Ibid., at 27.
31 Ibid.
32 Ibid.
33 Ibid.
34 Ibid., at 24c.
35 Ibid.
36 Ibid., at 24c.
37 Ibid.
38 Available at http://www.foresteurope.org/sfm_criteria.
39 Ibid., note 1, at 25.
40 Ibid.

NGO Letter to Negotiating Committee
Prior to the start of the INC-Forests3 negotiations, PanParks, a coalition of 33 European NGOs, addressed a letter to the members of the negotiating committee reiterating their key concerns in regards to the legal binding agreement (LBA). Therein, they “…acknowledge the fact that coordination and coherence in forests and forestry are not efficient enough”, while such an agreement “…should be clearly based on multi-functionality and on a balanced reflection of the seven principles of sustainable forest management. The LBA should be built on the Ministerial Conference on the Protection of Forests in Europe’s own decisions, as well as other relevant international commitments. It should set clear targets and be linked to strong and measurable indicators”. Considering the possibility that the LBA will add value in the form of improved protection of forests in Europe, the letter expresses doubt, stating that “…the negotiations so far (INC-2) give us the impression that [the current inefficient system] will likely remain so and that the [INC’s] final agreement will be at best vague and without a practical content, and at worst a tool for wood products marketing and a boost for large-scale owner’s and exploiter’s rights”.

[Editor-in-Chief]