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REGIONAL AFFAIRS

Europe / INC-Forests3

Framework Negotiations Continue

by Annalisa Savaresi*

The Third Session of the Intergovernmental Negotiation 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.¹ The Committee, presided over by forest veteran Jan Heino (Finland), has been entrusted to agree upon a set of forest matters that have long eluded international regulation, including measures designed to, *inter alia*, enhance the contribution of forests to climate change mitigation, halt the loss of forest biodiversity, and tackle illegal logging and the associated trade.² It is expected that the final agreement will be considered, and possibly adopted and opened for signature, at an extraordinary FOREST EUROPE Ministerial Conference to be held by the end of 2013.³

INC-Forests3 was attended by representatives from 35 countries and the EU, as well as observers from the Government of Japan and 18 intergovernmental, national and international non-governmental organisations. In Antalya, delegates discussed the draft negotiating text for a legally binding agreement⁴ and a roadmap for further negotiations, as well as the question of whether or not to bring the agreement under the United Nations umbrella. This review summarises progress on each of these points.

Draft Negotiating Text

Delegates to INC-Forests3 continued discussions on the negotiating text, as revised by INC-Forests2.⁵ The text remains articulated in seven sections: preamble; terms and definitions; objective; principles; general provisions; rules, bodies and other procedures; and final clauses. Switzerland, however, proposed an overall restructuring of the text, and its suggested alterations were added on to the text.

Delegates made some progress on matters of substance, but much remains to be done. Large sections of the Preamble have been agreed *ad referendum*, although the EU asked to bracket the entire text. As it stands, the Preamble acknowledges the vital role of forests in achieving sustainable development, as well as their contribution to a green economy, climate change mitigation and adaptation, and the provision of ecosystem services.⁶ It emphasises the need for greater coherence in forest-related policy

making,⁷ and to avoid fragmentation⁸ (the latter being one of the original reasons behind the establishment of the INC-Forests in the first place).⁹

The Preamble reaffirms Principle 2 of the 1992 Rio Declaration, acknowledging States’ sovereign rights to exploit their own resources and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or areas beyond national jurisdiction.¹⁰ It does not refer to the “issues of transboundary nature and common concern”, mentioned in the Oslo Mandate.¹¹ Earlier references to Parties’ common interests and responsibilities have also been deleted.¹² The draft text therefore is in line with wording deployed in the 1992 Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests,¹³ adopted by the 1992 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 2007,¹⁴ which remain the main global expressions of State consensus on forests, in the absence of a dedicated treaty.

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”.¹⁵ It acknowledges the importance of international cooperation and sustainable forest management in implementing the decisions taken under the United Nations Framework Convention on Climate Change (UNFCCC) and the Convention on Biological Diversity (CBD).¹⁶ However, references to the Aichi Biodiversity Targets and illegal logging (now harvesting) remain bracketed,¹⁷ and mentions of forest certification have been deleted.¹⁸

In the section on definitions, brackets have appeared around several crucial terms, such as “forest”, “forest ecosystem services”, “forest restoration”, “forest degradation” and “afforestation”. Definitional matters such as these are of great importance to determine the scope of application of the agreement and have long been debated in international processes dealing with forests. Also here, the term “illegal logging” has been replaced with “illegal harvesting”.¹⁹

Good progress was made on text concerning the objective of the agreement, which encompasses enhancing the role of forests and forestry in contributing to solving global challenges; providing a framework for fostering national actions and international cooperation; and

maintaining, protecting, restoring and enhancing forests. Some brackets remain on text concerning the long-term provision of goods/products and other forest ecosystem services, as well as on forests’ contribution to livelihoods.²⁰

The agreed text on principles mentions sustainable forest management, good governance, stakeholder participation, and cross-sectoral cooperation.²¹ References to the Parties’ common but differentiated responsibilities that appeared in earlier editions of the draft have been definitively expunged.²²

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;²³ international, regional and cross-border cooperation and coordination;²⁴ and illegal harvesting)²⁵ were agreed *ad referendum*, most of the text remains bracketed, especially where it speaks of “legislative, administrative or other policy measures”. This formula is deployed in a set of provisions dealing with measures to secure, *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”.²⁶ Some delegates reportedly suggested that progress on this section requires better clarification of the relationship between the agreement and other international instruments.²⁷

The text on reporting and monitoring obligations also remains heavily bracketed, pending definition of the section on compliance. Delegates discussed at length the establishment of a compliance committee.²⁸ 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.²⁹ 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,³⁰ 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.³¹ These institutional options have remained on the negotiating table.

At INC-Forests3, a working group discussed submissions from candidate institutions and considered the budgetary, logistic and legal 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.³² The reports emphasised the inherently political nature of any decisions on the issue,³³ suggesting, however, that the involvement of UN entities could not only benefit Parties in providing access to expertise, but might also “showcas[e] the agreement as a possible model for other regions to adopt and adapt to their own needs”.³⁴ The institutional oversight question was thus posited as potentially decisive in determining whether the agreement would maintain a regional focus, or become more outward-looking.³⁵

Some Parties reportedly expressed a preference for bringing the agreement under the UN umbrella and saw merit in all three UN organisations (FAO, UNECE, UNEP).³⁶ The Government of Germany offered to host the secretariat in Bonn, independently from whether or not the agreement is placed under the UN umbrella.³⁷ Delegates could not come to a decision on these issues, which will therefore have to be addressed at the next session.

Roadmap for Further Negotiations

Given the number and scale of outstanding issues, delegates in Antalya decided to suspend INC-Forests3 and to reconvene in Saint Petersburg, 3–5 April 2013. 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 extraordinary FOREST EUROPE Ministerial Conference. 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



INC-Forests Chair, Jan Heino thanking Ismail Üzmez, Deputy Director-General for Forestry, Turkey.

Courtesy: IISD

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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.³⁸ 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.³⁹ 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.⁴⁰ 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

- 1 "Oslo Ministerial Mandate for Negotiating a Legally Binding Agreement on Forests in Europe", at 23. Available at http://www.forestseurope.org/docs/ELM/2011/FORESTEUROPE_MinisterialConference_Oslo2011_OsloMinisterialMandate.pdf.
- 2 *Ibid.*, at 23e, f and i.
- 3 *Ibid.*, at 23 and 29.
- 4 "Draft negotiating text for a legally binding agreement on forests in Europe", available at http://foris.fao.org/static/forestnegotiations/english/AnnexC_Chairs%20SummaryINC3_FirstWeek.docx.
- 5 "Draft negotiating text for a legally binding agreement on forests in Europe as of 7 September end of INC2 Plenary session", at <http://www.forestnegotiations.org/node/57>.
- 6 *Supra*, note 4, Preamble, at 1.
- 7 *Ibid.*, Preamble, at 3.
- 8 *Ibid.*, Preamble, at 9.
- 9 *Supra*, note 1, at 15 and 16.
- 10 *Supra*, note 4, Preamble, at 5.
- 11 *Ibid.*, at 1.
- 12 *Supra*, note 5, Preamble, at 5.
- 13 "Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests", 31 ILM 881 (1992), Preamble.
- 14 "Non-legally Binding Instrument on Sustainable Forest Management of all Types of Forests", UNGA/Res/62/98, at 1(a).
- 15 *Supra*, note 4, Preamble, at 5 and 5bis.
- 16 *Ibid.*, at 7.

- 17 *Ibid.*, at 7 and 6, respectively.
- 18 *Cf.*, *Supra*, note 5, at pages 2 and 9.
- 19 *Supra*, note 4, Article II, at 5.
- 20 *Ibid.*, Article III.
- 21 *Ibid.*, Article IV.
- 22 *Supra*, note 5, Article IV, at d quart.
- 23 *Supra*, note 4, Article V, at 4.
- 24 *Ibid.*, Article V, at 6.
- 25 *Ibid.*, unnumbered article, page 8, at 16.
- 26 *Ibid.*, at pages 7–10.
- 27 Covert, J. *et al.* 2013. "Summary of the Third Session of the Intergovernmental Negotiating Committee for a Legally Binding Agreement on Forests in Europe (INC-Forests3)". *INC-Forests Bulletin* 180(4): 1–12, at 5.
- 28 *Ibid.*, at 7.
- 29 *Ibid.*
- 30 *Supra*, note 1, at 24g.
- 31 *Ibid.*, at 27.
- 32 Cook, K. and Sands, P. 2012. "Analytical Document on some of the Key Aspects Involved in Deciding to Bring the Legally Binding Agreement on Forests in Europe under the United Nations Umbrella", at http://foris.fao.org/static/forestnegotiations/Annex5_DOC5_INC3_EN.pdf (Annex 5 Document 5/INC3); and Martin, M. and Prins, K. "Issues arising from paragraph 19 of the report of the second session of the INC", at http://foris.fao.org/static/forestnegotiations/ANNEX_6_DOC5_INC3_EN.pdf (Annex 6 Document 5/INC3).
- 33 Annex 5 Document 5/INC3, at 4; and Annex 6 Document 5/INC3, at 5.
- 34 Annex 5 Document 5/INC3, at 82–3.
- 35 *Ibid.*, at 44–48.
- 36 "Chair's Summary of discussions at the First Week of the Third Session of the Intergovernmental Negotiating Committee for a Legally Binding Agreement on Forests in Europe: 28 January to 1 February 2013, Antalya, Turkey", at http://foris.fao.org/static/forestnegotiations/english/CHAIRS_SUMMARY_INC3_FirstWeek.pdf, Annex D.
- 37 *Ibid.*
- 38 Available at http://www.forestseurope.org/sfm_criteria.
- 39 *Supra*, note 1, at 25.
- 40 *Ibid.*, at 24c.



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".

Full text at <http://www.panparks.org/sites/default/files/docs/news/Letter-to-the-INF-Jan-2013.pdf>. [Editor-in-Chief]

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