The Elusive Quest for a Global Forests Convention

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The decision by the United Nations General Assembly in 1989 to hold the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro in 1992 led to a flurry of diplomatic activity and multilateral negotiations. Most states agreed early on to negotiate conventions on climate change and biodiversity. In 1990 several fora proposed the negotiation of a legally binding instrument on forests. The proposals ranged from a protocol to the United Nations Framework on Climate Change (UNFCCC)\(^1\) (an idea from a working group of the Intergovernmental Panel on Climate Change) to a convention exclusively devoted to forests (proposed by the G7 summit in Houston and the European Parliament). According to the neorealist view of international relations,\(^2\) which sees outcomes reflecting and reinforcing the global distribution of power in global politics, with the world’s developed countries supporting the idea, a forests convention was likely to be agreed.

However, the UNCED forest negotiations were dominated by a proprietorial tug-of-war. Three competing public claims to the world’s forests were made during the negotiations. The developed North ventured that forests could be seen as a global common, with all humanity having a stake in forest conservation. This claim, never made in the formal negotiations and floated only informally, was sternly rebuffed by the Group of 77 and China (G77), led by Malaysia and India, who claimed that forests are a sovereign national resource, to be used in line with national development objectives. Meanwhile a third, and often unheard, claim was made by non-governmental organizations (NGOs) and indigenous peoples’ groups that contested the negotiations: forests should be seen as local commons, and the best chance for forest conservation was for secure land tenure rights to be granted to those local communities whose livelihoods depend directly on the conservation of forest resources. Of these three claims it is the second — forests as a sovereign resource — that is most widely recognized as legitimate in international law.

With the G77 presenting a united front, a forests convention was blocked. But the neorealist view does have some explanatory value in explaining the negotiations; to neorealists, international politics can be seen as a struggle to protect relative advantages in international trade and finance and, wherever possible, to achieve relative gains. This view helps to explain the UNCED forest negotiations. Throughout the negotiations, the G77 insisted that the forests issue could not be discussed unless other issues were also considered, in particular North to South transfers of new and additional financial resources, the transfer of environmentally sound technologies and external debt relief. The intimation was that a convention could be agreed to, but only if the economic aspirations of the G77 were recognized. In effect, the G77, seeking to use its forest resources as bargaining leverage to achieve relative gains, raised the ‘price’ of a forests convention. The developed countries, for whom forest conservation was never as salient an issue as economic growth, were not prepared to countenance any erosion of their relative advantages in the world economy, and they refused to pay the price set by the G77.\(^3\)

The outputs of the UNCED on forests comprised two pieces of soft international law: a non-legally binding statement commonly known as the ‘Forest Principles’,\(^4\) and Chapter 11, ‘Combating Deforestation’, of Agenda 21.\(^5\)

Thus ended the first consideration given by states to the desirability of a forests convention. This question has never really vanished, and has been a persistent factor in international forest negotiations ever since. What are the possible advantages of a forests convention and, given the failure of states to agree on the need for such an instrument, what are the disadvantages?

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\(^{2}\) See, for example, K. Waltz, *Man, the State and War* (Columbia University Press, 1959).

\(^{3}\) For an overview of the UNCED forest negotiations, see D. Humphreys, *Forest Politics: The Evolution of International Cooperation* (Earthscan, 1996), Chapter 4.


THE ADVANTAGES AND DISADVANTAGES OF A FORESTS CONVENTION

The main arguments in favour of a convention include the following. First, there is the complementarity argument. A forests convention would complement, and in the process strengthen, existing multilateral environmental agreements with forest-related provisions. In particular, as forests play an important part in climate regulation through their role as a carbon sink, reservoir and source, a global forests convention would strengthen the aims and objectives of the UNFCCC. Similarly, as most of the world’s biodiversity is to be found in tropical forests, a forests convention would support the work of the Convention on Biological Diversity (CBD). A forests convention, according to this view, would thus provide the third component of what can be seen as a triumvirate of mutually reinforcing environmental regimes.

Second, there is the rationalization argument. At present, the international legal provisions on forests are scattered among several forest-related international instruments which, in addition to the UNFCCC and CBD, include, to name just two, the Convention on Wetlands of International Importance and the Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES). This fragmented and opaque coverage of forests results in an ad hoc and incomplete international regulatory environment and political and legal uncertainties which, so it is argued, would be eliminated if all forest-related provisions – economic, social and cultural – were brought together under a single legal cover. An ‘umbrella’ convention would eliminate potential conflicts between different bodies of law, and would promote harmony, consistency and rationality. The result, to use three words that are frequently employed in international forest discourse, would be a more ‘holistic’, ‘integrated’ and ‘comprehensive’ treatment of forests in international law.

Third, there is what may be termed the strategic leadership argument. A convention would provide clear, focused direction to other forests instruments with a forest-related mandate, such as the CBD. According to this view, a forests convention would re-energize the international forest policy environment and would be the lead forest-related instrument in the international legal system. There are, however, some problems with this argument, as we shall see below.

Fourth, there is the effectiveness argument. Existing arrangements to deal with forests have, to date, been ineffective and limited in scope. Significantly, they have not succeeded in slowing forest loss. With deforestation continuing, and in some cases accelerating, in many forested regions, especially in the tropics, it is clear that there is a need for a coherent hard international legal instrument on forests. As forests provide multifaceted goods and services and as deforestation has multifaceted causes, only a broad and all-encompassing instrument can deal meaningfully with the diverse complexities of the problem.

Fifth, there is the commitment argument. A convention would demonstrate high-level political commitment to conserve and sustainably manage forests. An international convention, which is the highest form of international law, would serve as a statement of intent that states are serious about the problem of deforestation on a worldwide scale. As Jean-Paul Lanly argued in 1996, a global forests convention ‘appears to be a necessary condition to assert, at international level, once and for all the importance of forest conservation and development for present and future generations’.

Finally, there is the clarification argument. Customary international law places responsibility for forests (and other natural) resources in the hands of individual states. (So of the three public claims made to forest resources during the UNCED negotiations it is the second – forests as a sovereign national resource – that has the strongest normative force in international law.) This is enshrined in Principle 21 of the Declaration of the United Nations Conference on the Human Environment, repeated verbatim in the ‘Forest Principles’, which asserts the rights of states to exploit their resources in line with national policies, but marry this with the obligation not to cause damage to the environment of other states. However, while in Principle 21 the right to resource exploitation is clear, the obligation is considerably more vague, which renders application difficult. As Brunnée has argued, the principle ‘may, in the forest context, play more into the hands of resource exploitation interests than preservation and protection interests’. To Alexandrowicz, the necessary corollary to Principle 21 is that ‘the global

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7 Convention on Wetlands of International Importance, especially as Waterfowl Habitat (Ramsar, 2 February 1971).

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community has the right to demand adherence to international programs that seek to coordinate the activities of states so that such activities safeguard the global environment and hence the environment of other states. A forests convention could add legal clarity to Principle 21 with respect to both the rights and, more importantly, the specific obligations of states. In particular, a convention could help clarify what constitutes ‘damage’ to other states with respect to forests.

There are, however, some arguments against a forests convention. In particular, it can be argued that the negotiation of a forests convention would lead to further political and legal uncertainties. A convention would lead to ‘turf wars’ with other legal instruments. It could be unclear, for example, whether the CBD or a forests convention would be the lead organization for forest biodiversity and protected areas. Following on from this, it is often argued that with most of the world’s biodiversity being found in tropical forests, the most obvious choice for a legally binding instrument on forests is not a new convention, but a forest protocol to the CBD.

A further argument against a forests convention is that it would not necessarily solve the problem of international coordination, as there is no legal reason why a forests convention should have a higher priority than any other freestanding legal instrument. Far from providing a more rationalized and harmonized treatment of forests in international law, a convention could, by adding another layer of international regulation, lead to further legal uncertainties and complications. As Skala-Kuhmann has argued, ‘the notion of a “super-convention”, designed to serve as a kind of umbrella over existing conventions and harmonize the areas they cover, is unprecedented in international law’. The conferences of parties to other instruments, such as the UNFCCC and CBD, would not be obliged to follow the decisions of the conference of parties to a global forests convention: the provisions of these instruments can only be changed by their own conferences of parties, and not by external decisions. Hence to Skala-Kuhmann, ‘[f]rom a legal standpoint, therefore, a global forests convention would be unable to simply harmonize existing forestry-related instruments which were already binding under international law’.

Here it should be noted that there is often a spillover effect in international law: principles and concepts adopted in one instrument may later find expression in another instrument. However, although one conference of parties may voluntarily accept the decisions of another conference of parties as constituting some kind of a precedent, no decision made by the parties to a global forests convention would in any sense be binding on any other conference. The strategic leadership argument noted above thus runs into difficulties.

Another argument against a forests convention is that in general terms the existence of a multilateral environmental agreement is no guarantee that it will be effective in addressing the environmental problem at hand. This requires first, that the social and structural causes of environmental degradation are addressed by the instrument and, second, that there are binding compliance mechanisms. For example, the CBD can arguably be seen as ineffective in stemming biodiversity loss, including forest biodiversity, as it is almost devoid of substantive content, with caveat phrasing and vague clauses diluting the intended obligations of the convention to the point of meaninglessness.

In addition to these generalized arguments for and against a convention, individual actors may have their own arguments, which are based on considerations arising from their self-interests.

**EXPLAINING THE POSITIONS OF INDIVIDUAL STATES**

A problem with explaining why a particular government supports or opposes a forests convention is that in any series of international negotiations no actor is under any obligation to state how it views its self-interest. Other actors in the negotiations can attempt to judge how a given actor perceives its self-interest from the statements it makes and from the positions it adopts during negotiations. However, such judgements can be fraught with difficulties. First, a negotiator may be bluffing. Second, if a delegation merely presents the interests of its own government, it is not providing any good reason why other delegations

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15 A. Skala-Kuhmann, ‘Legal Instruments to enhance the conservation and sustainable management of forest resources at the international level’, paper commissioned by the German Federal Ministry for Economic Cooperation and Development and GTZ (July 1996).
16 Ibid.

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should agree with it. Skilled negotiators seek to garner political support by framing their statements to appeal to the interests of other actors, both potential opponents and waverers, in order to build a winning coalition. Most governments in favour of a convention argue that a legally-binding instrument is the most appropriate mechanism to ensure sustainable forest management. However, it is far from clear that this is their sole motive.

Despite the complications of gauging the interests of individual actors at international forest negotiations, we can posit four propositions on why states may favour a forests convention, and four propositions on why they may oppose such an instrument. These propositions are grouped under the headings of forest management standards, finance and technology transfer, sovereignty and forest industry. We now present these propositions, briefly discussing each in turn.

FOREST MANAGEMENT STANDARDS

A state with high forest management standards may favour a convention in order to bring other states’ management standards up to its own Canada’s long-term support for a convention can in part be explained by high domestic forest management standards that place Canadian timber at a comparative disadvantage relative to tropical timber. Higher global standards would make Canadian timber more competitive internationally.\(^19\) Many Canadian businesses have signed up to the International Organization of Standards (ISO), and the Canadian Pulp and Paper Association has argued that ISO standards should be made applicable worldwide.\(^20\)

Some states with weak forest management standards may oppose a convention that aims to raise standards, as such an instrument may impose additional costs on their forest industries There is no evidence that states with weak management standards have supported a convention in order to promote improved and uniform worldwide standards. On the contrary, such states are likely either to resist a convention or to support a convention for reasons other than management standards. (On a related point: under the Tuna Dolphin Case, (1991) 30 ILM 1594, the World Trade Organization can forbid the discrimination of like products in international trade on the basis of their manufacture.\(^21\) A forests convention that promotes improved global forest management standards could clash with international trade law if it was to be used as a basis for prohibiting the international trade of forest products that were produced using management standards that are less rigorous than those stipulated in the convention.)

FINANCE AND TECHNOLOGY TRANSFER

Some tropical states may favour a forests convention as a route for increased flows of finance and technology It has been clear during all forest negotiations over the last 15 years that developing countries are using their forests as bargaining chips, and that they will not agree to any binding conservation commitments in the absence of pledges from the developed world to transfer environmentally sound technologies and to increase overseas development assistance. A related argument is that a convention may open a new window on to the Global Environment Facility (GEF). While GEF funding is available for projects that meet the provisions of the UNFCCC, CBD and the Convention to Combat Desertification,\(^22\) no GEF money is available for broader forestry projects.

Some developed states may oppose a convention because they do not wish to commit themselves to additional commitments of finance and technology This proposition is not a particularly strong one, as there is no necessary reason why a forests convention has to bind developed countries to new and additional transfers of finance and technology. In fact, those developed countries that have promoted a convention have done so without being prepared to agree to mandatory transfers. While various promises have been made to developing countries – Restrictions on Imports of Tuna: Report of the Panel\(^21\) – United States (3 September 1991). This ruling forbids countries from restricting access to goods according to production and processing methods (PPMs). Article XX(g) of the General Agreement on Tariffs and Trade (GATT) (Geneva, 30 October 1947) allows for exemptions from the GATT for ‘measures relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption’. GATT 1947 was incorporated into GATT 1994 under the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations (Marrakesh, 15 April 1994).


\(^{22}\) United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (Paris, 17 June 1994).
countries that more assistance will be available if a
convention is agreed, the understanding is that this
will take the form of voluntary donations by individual
states, rather than compulsory contributions to, say, a
multilateral forests fund.

**SOVEREIGNTY**

Some developed states may support a con-
vention in order to gain access to the forest
resources of other forested states Although
this is not something to which any developed govern-
ment will readily admit, there is evidence to support
this proposition. The bulk of the world’s tropical
forests are publicly owned by government agencies, while the states with the ten most important forest
industry corporations are, without exception, in
the developed world. With global investment rules
increasingly prohibiting discrimination in favour of
domestic industries, it is clear that any large-scale
privatization of the world’s tropical forest resources
would pry open some valuable markets for powerful
corporations from the developed world. Perhaps,
therefore, it is not surprising that many developed
countries, especially the USA, have consistently
argued in international negotiations that privatization
of forests resources will enable more effective sustain-
able forest management policies. A forests convention
could, in principle, promote the privatization of trop-
cal forest ownership, although it would not necessarily
do so; much would depend on the clauses negotiated
into such a convention. It is clear that developed
countries are pursuing several routes to push for the
privatization of tropical forests. The 1998 G8 Action
Programme on Forests synchronized the G8 countries
behind a pro-privatization agenda, as well as initiating
action against illegal logging. Arguably, the most
important route through which developed states
pursue privatization in the tropics is through bilateral
relations, with some aid packages conditional upon
some degree of privatization of the public sector,
including forest industry.

Some tropical countries may oppose a con-
vention, which could infringe the sovereign
rights of states to exploit their natural
resources in line with their national develop-
ment policies Having won at the 1972 United
Nations Conference on the Human Environment a
firm recognition that states have sovereignty over their
natural resources, developing countries have since
 strenuously resisted any potential infringements to
sovereignty in international law. During the UNCED
forest negotiations, the view, suggested by some
developed countries, that forests could be seen as a
global common or a common heritage of mankind was
rejected by the Malaysian delegation as an assumption
of supranational rights by the North. The sovereignty
argument appears to be particularly strong for the
Latin American countries, especially Brazil, Columbia,
Argentina and Peru. Malaysia has changed its position
on the desirability of a convention since the UNCED,
and no longer asserts the sovereignty argument so
strongly.

**FOREST INDUSTRY**

Some states with a sizeable forest industry
sector may favour a convention as a mech-
anism to promote the international trade in
forest products After the UNCED, responsibility
for international forest negotiations in Malaysia was
moved from the Ministry of Foreign Affairs to the
Ministry of Primary Resources. Malaysia subse-
quently shifted to support a convention. A factor here
appears to have been the position of the Malaysian
Timber Council. Malaysia is one of the few developing
countries with timber corporations with substantial
logging operations in other countries: Malaysian forest
industry businesses are active in Africa and South
America, and the Malaysian Timber Council has
openly acknowledged that it supports a convention
to enable `access to markets’. As we have seen, the

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23 Promises to this effect were made to the co-chair of the Inter-
governmental Panel on Forests, Manuel Rodriguez of Colombia, by
24 A. White and A. Martin, Who Owns the World’s Forests? Forest
Tenure and Public Forests in Transition (Forest Trends, 2002).
25 In terms of annual revenue per company (2001 figures), the ten
largest companies are based in the USA (five companies), Finland
and Japan (two each) and Sweden (one). (See G. Draffan, ‘World’s
Largest Wood and Paper Products Corporations’ (undated), found
April 2004).) In terms of annual wood consumption by company
(2000 figures), the ten most important companies are based in the
USA (four companies), Finland (three), Canada (two) and Norway
panda.org/> (accessed 21 April 2004).)
26 Group of Eight briefing materials: Government of Canada, ‘G8
Action Programme on Forests, Backgrounders 2002’ (undated) and
Both documents are available online at: <http://www.g8.gc.ca/

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Canadian forest industry also supports a convention, leading one observer to speculate that Canada and Malaysia favour a convention that is weak in environmental terms, but which promotes their logging industries. At the same time as Malaysia moved to support a convention, Indonesia, another South-East Asian country with a major forest industry, did the same. Other countries with major forest industries that have supported a convention over the last 10 years are Finland and Russia.

Some states may oppose a convention as a form of international regulation that would impose additional costs on their forest industry Not all countries with major forest industries support a convention. The most notable case is the USA, which since Rio has persistently opposed a convention. The influence of the corporate sector in the USA helps explain this change. Whereas in countries such as Canada and Malaysia business leaders have argued that a convention will promote timber trade interests, in the USA the business community opposes a convention on the grounds that it would be interventionist and regulatory. The first term of the Clinton administration saw a policy shift in favour of environmental protection, with the administration signing the CBD. However, Clinton’s second term witnessed business reassert its opposition to any kind of global regulation on the environment. The USA business sector has been supported here by the Republican majority in Congress, which has increasingly resisted any kind of multilateral entanglement.

This overview of the various reasons why individual states may support or oppose a forests convention illustrates the complexity of the issue. It is difficult to gauge the underlying interests and arguments at play in domestic forest politics that feed into the international arena. Furthermore, some actors, notably forest businesses and some developed governments, appear to share similar interests, such as improved market access, yet have sometimes adopted very different positions on the desirability of a forests convention.

Some more cynical explanations on why states may favour a convention also exist. First, a government department tasked with managing forests may argue in favour of a convention in order to raise the status of forest management as a national issue, or even to raise the domestic profile of the government department itself: bureaucracies that have responsibility for an international convention generally have a higher status compared to those that do not. Second, a forests convention can be presented to domestic environment constituencies as evidence that the issue is being addressed internationally. Assuming that this is the sole reason, a multilateral environmental convention would, presumably, contain general principles only, and would avoid burdening states with specific obligations. It is possible to see the CBD in this light. Third, in countries where responsibility for forest management has traditionally been decentralized, a federal government may advocate a convention in order to seize control of national forest policy from regional governors.

POSSIBLE MODELS FOR A FORESTS CONVENTION

In terms of obligations, there are various models that a forests convention could follow. Most international conventions adopt one level of obligations for all parties. An innovative alternative, proposed by Alexandrowicz, is a graduated system of obligations under a flexible forests convention. This would have the advantage of sensitizing states to the obligations of the convention, with individual states moving up to higher levels of obligation when it fits their individual socio-economic and environmental circumstances. A convention with a graduated system of obligations could, for example, include a protocol specifying different obligations for different sets of states, perhaps along the lines of the Kyoto Protocol.

In terms of scope and coverage, again there are different models that a convention could follow. A comprehensive convention that aims to address all forest-related issues is one such model. However, and as we have seen, this model entails the risk of overlap and duplication with other legal instruments, hence there are questions about its viability on an operational level. A second model, which we can call a ‘gap filling’ convention, would specifically avoid challenging the forest-related mandates of other instruments and would aim only to fill the omissions in the international forests regime. While this model would avoid potential legal complications, it would do so at the price of losing comprehensiveness and holistic coverage. A third model is a framework convention, along the lines of the ozone and climate change conventions, which would elaborate general principles, with more substantive commitments being added later in

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31 R.S. Dimitrov, n. 19 above, at 23.
32 This proposition can be used to explain Russia’s support for a convention. See ibid., at 23.
33 See G.W. Alexandrowicz, n. 14 above.
34 Kyoto Protocol to the UNFCCC (Kyoto, 11 December 1997). Annex B of the Protocol provides quantified emission limitations or reduction commitments for individual developed countries and countries with economies in transition.
the form of separate protocols. This model allows for the progressive strengthening of the forests regime over time. It would also provide an element of adaptability in response to changing political circumstances.

**FOREST CONVENTION NEGOTIATIONS SINCE RIO**

Following the UNCED forest negotiations, the international deadlock on forests was broken with the creation, in 1995, of the Intergovernmental Panel on Forests (IPF), a sub-group of the Commission on Sustainable Development (CSD) with a 2-year lifespan. 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.

To understand how the IPF functioned, a brief detour into negotiating theory is needed. Oran Young has distinguished between distributive bargaining and integrative bargaining. Distributive bargaining sees negotiation as conflictual, leading to a zero-sum game, with actors contesting slices of a fixed pie. Negotiators tend to view each other as adversaries. Under integrative bargaining, negotiations are cooperative, leading to a positive-sum game. The aim is to generate original and innovative proposals that benefit all actors, leading to an enlarged pie so that all actors gain. Negotiators tend to view each other as partners.

Essentially, the assumptions of distributive bargaining dominate the neorealism view of international politics, with actors concerned about their gains or losses relative to other actors, while the assumptions of integrative bargaining, namely that actors are concerned first and foremost with achieving absolute gains, informs the neoliberal institutionalist view of international relations, which seeks to explain the growth of multilateral environmental regimes over the last three decades.

The mode of negotiating during the UNCED forest negotiations was almost exclusively distributive, with blocs of states seeking to shift the boundaries of responsibility for each other while conceding nothing in return. The developed countries demanded conservation commitments from the developing countries, while the latter demanded concessions on finance and technology from the former. However, the IPF specifically set out to avoid the distributive model that had characterized the UNCED by concentrating on what can be seen as ‘soft’ apolitical and technical issues, such as valuation techniques for forest goods and services, diagnosing the underlying causes of deforestation, assessing the needs and requirements of low forest cover countries, scientific research and criteria and indicators for sustainable forest management. The spirit during the negotiations on these issues was cooperative and constructive (although in some cases the issues were so technically complex that they could not be satisfactorily addressed in a multilateral negotiating forum), and the IPF generated some 150 proposals for action by states.

These negotiations can be seen as integrative in nature. However, the ‘hard’ political issues – such as finance, technology and whether there should be a forests convention – that had dominated the UNCED forest negotiations had not disappeared, and they resurfaced in the latter stages of the IPF. During the negotiations on these issues there was a marked shift from integrative to distributive bargaining.

In particular, the convention question dominated the final IPF session in 1997. In addition to Malaysia and Indonesia, some other developing countries now favoured a convention, including Costa Rica, the Philippines and Papua New Guinea. There was also some movement from the African countries in favour of a forests convention. At the UNCED, the African countries had adhered to the unified G77 stance against a convention. This was despite a rather clumsy attempt by the EU to split the G77 at Rio by promising the sub-Saharan African countries a convention on desertification if they would support a forests convention. The African states did not take the bait at Rio. However, by 1997 many African countries were prepared to support a convention. According to an observer, the pro-convention French and Canadian delegations were able to exert some influence on the Francophone African countries, which were more inclined to agree to a convention than the other African states. However, with the major South American

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36 ‘Programme of work and organizational modalities for the open-ended *ad hoc* Intergovernmental Panel on Forests of the Commission on Sustainable Development’ (E/CN.17/IPF/1995/2, 16 August 1995).


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states remaining firmly opposed, the position of the G77, which sought to speak with one voice, was that it was too early to start negotiations for a convention, although the desirability of a convention would be reassessed at a later stage. Both the EU and Canada continued to argue for a convention. However, the USA was now opposed, and Japan, which had formally endorsed a convention at the UNCED without actively supporting it, opposed the idea during the IPF’s negotiations, as did Australia and New Zealand.

There was a major shift in the NGO community. At Rio, NGOs had been divided on this subject, although many international NGOs tended to favour a convention, providing it contained strong conservation commitments and firm provisions respecting the rights and traditions of indigenous forest peoples. However, at the IPF, a declaration was issued by NGOs against a convention. NGOs had noticed the shift by major tropical timber producers such as Malaysia and Indonesia in favour of a convention. Coupled with the long-term support from the Canadian government and the Canadian forest industry, along with support from Finland and Russia, this led NGO campaigners to query the underlying interests supporting a convention and the values it would promote. It seemed likely that any convention would promote trade and business interests rather than conservation. The result of the NGO discussions was an international citizen’s declaration against a forests convention. It was clear that the 81 NGOs that endorsed the declaration feared that a convention would be dominated by trade interests. A convention ‘could formalize unacceptably weak forest management standards, thereby giving a global “green light” to unsustainable forest practices’. It ‘will be dominated and driven by powerful timber and commercial trade interests, and fail to address the predatory and unethical behaviour of an increasing number of transnational industrial timber corporations.’

The shift in the NGO community can also be explained by disillusionment with intergovernmental initiatives. The main thrust of the NGOs’ arguments is that a convention would reinforce a global governance structure that gave authority to states to the exclusion of local communities. NGOs that adhered to this position included Greenpeace International, Friends of the Earth, World Rainforest Movement and the World Wide Fund for Nature (WWF). Some of the bigger international NGOs saw the Panel’s negotiations on the merits of a convention as a diversion from the need to ensure a greater role for civil society in forest policy making at all levels. (The Environmental Investigation Agency (EIA) was the only major environmental NGO to support a convention at the Panel. The EIA shared the concerns of the other NGOs about the activities of timber corporations, but differed from them in considering that a convention would help to regulate the global timber industry.)

At the end of the IPF process in 1997, the CSD created the Intergovernmental Forum on Forests (IFF) with a 3-year life span. The IFF was to 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. As with the IPF, the IFF generated a substantial body of proposals for action, and once again the convention issue was a background factor in its deliberations, coming to the fore during the final round of negotiations in 2000. There had been little movement by the major actors in the 3 years since the IPF concluded its work. The heavily forested South American countries were still against, as was the USA, Japan, Australia, New Zealand, some African states and the major NGOs. Canada, Malaysia, Indonesia, Finland, Russia and most Central American states remained in favour. However, there was no longer a unified view within the EU. Most notably, the UK no longer supported a convention. With some EU states now opposed to a convention, there was considerable confusion within the EU, which formally had been bound to support a forests convention since 1996, when a joint policy was agreed as part of the EU’s preparations for the 1997 UN General Assembly Special Session on Environment

43 Three are from Africa, 17 from Asia and Russia, 14 from Europe, 14 from Latin America and the Caribbean, 28 from North America, two from Australia, and three are international NGOs.
44 ‘International Citizen [sic] Declaration Against a Global Forests Convention’ (10 February 1997), available online at <http://www.fern.org/pubs/archive/ipf.html> (accessed 15 November 2004). NGOs whose logos appeared on this declaration were WWF, World Rainforest Movement, Greenpeace International, Friends of the Earth, FERN (Belgium and UK) and Urgewald (Germany).
47 ‘Proposed programme of work and organizational modalities for the open-ended ad hoc Intergovernmental Forum on Forests of the Commission on Sustainable Development’ (E/CN.17/IFF/1997/2, 22 August 1997).
and Development. This policy, which was not revisited during the IFF, was no longer tenable, but the EU states at the IFF could not speak against it. Embarrassingly, the EU asked for more time to consider its position when the final IFF plenary convened in New York.

The delegation most strongly in favour of a convention at the IFF was Canada. During the final plenary, Canada bargained hard for a convention, even threatening to scupper the consensus the IFF had forged to create a new UN body, the United Nations Forum on Forests (UNFF). But after an all-night negotiating session, the strongest language that Canada could extract from other delegates was that the UNFF would, within 5 years, ‘consider with a view to recommending the parameters of a mandate for developing a legal framework on all types of forests’. This tortured syntax did not, however, give Canada what it wanted, namely a firm agreement to start negotiations for a convention after the UNFF had completed its initial 5-year term in 2005.

The UNFF first met in 2001. It has agreed a plan of action, which essentially focuses on the implementation of the IPF and the IFF proposals for action, and agreed that national reporting on the implementation of the proposals for action should be voluntary rather than compulsory. 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 UN Economic and Social Council. 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 occupies a higher status and has a greater political visibility compared to the IPF and the IFF.

CONCLUDING THOUGHTS

The question of whether or not there should be a convention on forests 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 should be negotiated, but there are also some convincing arguments why a convention is neither desirable nor feasible. However, it is generally agreed that there should be an international dialogue on forests within the UN system. It is likely 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, will continue for the foreseeable future. This type of arrangement has demonstrated various 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. To abandon international political cooperation on forests would be seen as highly retrogressive.

The pattern since the UNCED has been to create institutions with a fixed life span, and this is likely to continue; a permanent UN institution on forests is unlikely. The pro-convention states will argue for a short life-span for any future institutional arrangement, as the longer the life of any international forests institution, the weaker is the case for a convention. For this reason, the anti-convention states will argue for a long life-span, in order to push the next consideration of this politically contentious question as far into the future as possible.

In order for a forests convention to be agreed three main factors must be in place. First, given the strong issue linkage that the G77 has established between forest conservation on the one hand and financial and technology transfers on the other, a convention will only be agreed if the developed states are prepared to commit some additional overseas development assistance to tropical forests. It would be pointless to speculate just how much money the developed countries would need to offer in order to ‘buy’ a convention, but it does seem likely that even those developing states that presently favour a convention would draw back if no additional resources at all were offered. Second, a convention requires the support of the country that is home to the world’s most powerful forest industry corporations, namely the USA. Third, a convention is unthinkable without the support of the world’s largest tropical forest state, Brazil, and at least some of its South American neighbours.

If these three factors were simultaneously aligned, political momentum for a convention would build up.

53 At the time of writing (November 2004) the UNFF has commenced its review of the options for the international arrangement on forests after the completion of the UNFF’s initial 5-year term. This review is scheduled for completion in 2005.
especially if the USA and Brazil were actively to promote a convention, rather than merely to cease opposing one. In such circumstances, it would be unlikely that many states currently opposed to a convention, such as the UK, Australia, Japan and the South American Hispanic countries, would continue to maintain their opposition. Those states that did continue to oppose a convention would soon find themselves outnumbered. The key point, however, is that there is absolutely no evidence to suggest that the key actors that currently oppose a convention and/or aid increases to tropical forest states are prepared to change position. A major shift in the international climate of forest politics is thus unlikely, and for its proponents a global convention on forests is likely to prove an elusive quest for quite some time.

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