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The Development of Global Forest Policy: Overview of Legal and Institutional Frameworks

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<i>Introduction</i>	3
<i>1 The Construction of Forestry Architecture under the United Nations Conference on Environment and Development (UNCED)</i>	4
1.1 Political and Historical Contexts	4
1.2 UNCED's Legal and Institutional Framework	6
<i>2 Forest Policy Processes</i>	7
2.1 The Intergovernmental Panel on Forests	7
2.2 The Intergovernmental Forum on Forests	10
2.3 Complementary Processes	11
2.4 United Nations Forum on Forests	13
2.5 The effect of the IPF/IFF process	15
<i>3 The International Tropical Timber Agreement</i>	16
3.1 The 1983 Agreement	16
3.2 The 1994 Agreement	19
3.3 Sustainable developments in the ITTO?	20
<i>4 General Conclusions and Lessons from the Global Regime on Forestry</i>	22

Introduction

Forest issues have long been enmeshed in overriding international issues, such as financing for development, international trade, and transfer of environmentally sound technologies. The forest sector is not only a key component of sustainable development; it is in important respects a microcosm of sustainable development. Like sustainable development as a whole, forest issues are very complex. They are politically sensitive. They require cross-sectoral policy harmonisation at the national, regional and global levels, involving the environment, economic and social development, food security, empowerment of women and poverty alleviation. Most significantly, they require long-term political commitment. The most significant factors to be taken into account in the regulation of forests include: addressing the causes of deforestation; effectively conserving and sustainably managing forests as a whole, not just for timber; equitably addressing the interests of forest dwellers and local communities; designing effective intergovernmental institutional support; and implementing existing legal instruments to their full potential.

Yet, as far as global forestry management is concerned, progress has been slow, and except for sporadic attempts to create particular forestry strategies under the auspices of the UN Food and Agriculture Organisation (FAO) and the International Tropical Timber Organisation (ITTO), no comprehensive global regulation has been elaborated to address a whole range of issues connected with the world's forests. Indeed the attempts to address forestry issues lagged behind attempts to deal with the marine environment, the atmosphere and even river-basin ecosystems. The primary reason for this is that forests were seen exclusively as within the province of domestic jurisdiction, and any attempts to approach their management on an international level was regarded as interference with fundamental national economic and development policies.

The 1990s brought about a change in perspectives on forest policy at the national and international level. For the first time, forest-related issues were addressed on a global scale at the 1992 UN Conference on Environment and Development (UNCED). This marked a re-orientation of international forest policy, and a shift away from the objective of sustainable timber production towards ecologically sustainable management and use of forests, including the conservation of biodiversity. There was worldwide recognition that indiscriminate exploitation of natural resources, even those contained solely within the jurisdiction of a particular state, results in ecological impacts that affect the entire planet. Thus enough political momentum was generated to place forestry on the international environmental agenda.

This paper presents an overview of the international forest regime reflected in international treaties such as the International Tropical Timber Agreement (ITTA), and international policy processes under UN auspices, starting with the Intergovernmental Panel on Forests (IPF) and culminating in the UN Forum on Forests (UNFF).

In Part I, the paper starts with an examination of the background political context to the development of the forest regime, and in particular the negotiations in the UN Conference on Environment and Development and its resulting soft and hard law instruments. It focuses on the shifting tensions between developing and developed countries' perspectives

on sustainable forest management. In Part II, the paper examines the IPF, IFF and UNFF processes, commenting on their objectives, outputs and achievements, in light of the complexity of the issues in the forestry sector. It notes the underlying preoccupation with the conclusion of a legally binding instrument, which permeated these processes. In Part III, the paper analyses the ITTA and its constituent organisation, the ITTO, highlighting its successes and failures against the background of the changing dynamics in forest management. Part IV attempts to isolate specific lessons from the international regulation of the forest sector that may provide guidance to regulation of other sectors, including the mines and minerals sector.

I The Construction of Forestry Architecture under the United Nations Conference on Environment and Development (UNCED)

1.1 Political and Historical Contexts

Throughout the early nineties, the international community pursued negotiations on a free-standing global forest convention for signature at UNCED.¹ But the political momentum towards global regulation of forestry issues masked underlying differences in expectations and perspectives between developing and developed countries about tackling forest sector issues. Some countries like Malaysia were vociferous about the need to protect sovereign rights to exploit natural resources including forests.² Others, such as India were suspicious of developed country motives in pursuing a global forest convention, believing it may be an excuse to avoid making cuts in greenhouse gas emissions in favour of capitalising on tropical forests as convenient carbon sinks.³ Developed countries argued for a higher value to be placed on environmental factors in the management of forests. In their view there were global benefits to be derived from sustainable forest management such as climate stabilisation and conservation of biodiversity in addition to the local benefits of watershed management and control of soil erosion.⁴ This notion would provide further weight to the argument that forests (like the atmosphere) are a part of common concern of humankind.

However, many developing countries have pointed out that low commodity prices, the phenomenon of net transfer of resources from developing to developed countries, and their external indebtedness are the major underlying factors reducing their capacity and ability to manage, conserve and develop their forest resources on a sustainable basis. In their view a global forest convention was unlikely to be successful as long as these concerns were not addressed.⁵

¹ The initiative for a global convention on forests emerged from the July 1990 meeting of the G7. The issue was considered by successive sessions of the Preparatory Committees (PrepCom) of UNCED and the Ad Hoc Working Group on Forests.

² See S.P Johnson (ed.) *The Earth Summit: The United National Conference on Environment and Development (UNCED)*. 1993, p.103

³ *Ibid.*

⁴ *Ibid.*

⁵ See M. Sanwal, *The Sustainable Development of All Forests*, 1:3 *Review of European Community and International Environmental Law (RECIEL)*, p. 290-291

At the Second UNCED Preparatory Committee (PrepCom) held in March 1991 delegates considered the Report of the Secretary-General of UNCED,⁶ which had been requested by the First PrepCom to aid discussion of all the “options for the co-ordination of national, regional and international action on forests”.⁷ PrepCom II also decided that Working Group I should at its third session:

...be in a position to examine all steps and options (including at a minimum, taking into account the special situation and needs of the developing countries, a non-legally binding authoritative statement of principles) for a global consensus on the management, conservation and development **of all types** of forests, either as an integral part of the proposed Earth Charter, or separately, while noting that the completion of this work may be best decided upon at UNCED 1992. (*emphasis added*)⁸

By the third PrepCom it was clear that it would not be possible to negotiate a forest Convention in time for UNCED, therefore the international community focused on reaching agreement on a set of non-legally binding guiding principles on forests.⁹ Developing countries therefore sought to have included in the Principles, a right to utilise forest resources to serve national development goals, a commitment for developed countries to limit over-consumption, and a new global fund to meet the costs of adjusting to strategies of conservation and sustainable development, with compensation for setting aside forest cover. They also stressed the need for recognition of the role of debt, unequal distribution of wealth and over consumption by developed countries as fundamental underlying causes of deforestation. Developed countries on the other hand sought to stress instead the globally shared benefits of forests such as carbon fixation and the conservation of biodiversity.

As a compromise, the Forest Principles attempt to balance environmental and economic uses of forests. The Preamble states that the

issue of forests is related to the entire range of environmental and development issues and opportunities, including the right to socio-economic development on a sustainable basis.

The preamble further stresses that the principles are to apply to all types of forests in all regions and climatic zones, thus emphasising that international attention should not focus solely on tropical rainforests. For many developing countries the outcome on the Forest Principles was a successful effort at concerted diplomacy limiting the trend in international environmental law towards globalisation of national development assets.

It is of note that Principles 1(a) and 2(a) reinforce the notion of the

sovereign right [of states] to exploit their own resources pursuant to their own environmental policies

and that

⁶ A/CONF.151/PC/27 and A/CONF.151/PC/27/Corr.1

⁷ See *Yearbook of International Environmental Law*, Vol.2 (1991), at p.213.

⁸ Ibid.

⁹ These eventually became the Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all types of Forests, A/Conf.151/26, 14 August 1992.

states have the sovereign and inalienable right to utilise, manage and develop their forests in accordance with their development needs and level of socio-economic development.

The strategic location of these principles is very important. The international community appears to be signalling that the forestry issue is to be dealt with primarily at the level of the State or lower.

1.2 UNCED's Legal and Institutional Framework

The current international forest regime thus consists of substantial soft law (non-legally binding) instruments as well as international and regional treaties. These are further complemented by international policy processes, which have themselves spawned a body of policy instruments. In addition to the Statement of Forest Principles, UNCED also resulted in the Agenda 21 action programme aimed at preventing the destruction of forests (Chapter 11, Combating Deforestation),¹⁰ the UN Framework Convention on Climate Change and the Convention on Biological Diversity.

Even though the Forest Principles are non-binding, they represent the first step in the international law making process. Their adoption illustrates that States feel some sense of obligation, either legal or moral, to abide by their provisions in the elaboration of a regime to manage forests which represent an important part of the earth's limited resources and an integral part of other elements of the global eco-system. The door is left open in the Principles for consideration of a legally binding instrument. Paragraph (d) of the Preamble provides:

These principles reflect a first global consensus on forests. In committing themselves to the prompt implementation of these principles, countries also decide to keep them under assessment for their adequacy with regard to further international co-operation on forest issues.

Chapter 11 of Agenda 21 essentially contains the same theme. In paragraph 11.12(e), it indicates that one of its objectives is:

...to facilitate and support effective implementation of [the Forest Principles]...and on the basis of the implementation of these principles to consider the need for and feasibility of all kinds of appropriate internationally agreed arrangements to promote international co-operation on forest management, conservation, and sustainable development of all types of forests, including afforestation, reforestation and rehabilitation.

Agenda 21 further sowed important institutional seeds that have helped guide the forest policy processes at the regional and international levels. Chapter 38 on International Institutional Arrangements in particular cultivates four different strands of institutional development. First, the chapter mandates that intergovernmental follow-up to the UNCED process should be within the framework of the UN system, with the General Assembly being the supreme policy making forum.¹¹ Second the UN Commission on Sustainable

¹⁰ See <http://www.un.org/esa/sustdev/agenda21chapter11.htm>

¹¹ Agenda 21, para. 38.1

Development (CSD) is tasked with monitoring progress on Agenda 21 implementation, which includes addressing deforestation as required in Chapter 11, and to provide recommendations to the General Assembly through the Economic and Social Council.¹² Third, the UN Environment Programme (UNEP) is given priority to further develop international environmental law, in particular conventions, and to promote co-ordination of increasing numbers of environmental conventions.¹³ Lastly, regional and sub-regional co-operation is to be promoted through such mechanisms as regional economic commissions and close co-operation between UNEP and UNDP.¹⁴

Following UNCED, the General Assembly established the CSD,¹⁵ and under that a forests mandate and agenda has evolved. The General Assembly itself recommended that the CSD should promote the incorporation of the Forest Principles in the implementation of Agenda 21, and to make recommendations on the need for new co-operative arrangements. Taken together these major soft law forest instruments therefore provide a road map for the continued development of forest policy in the international sphere.

2 Forest Policy Processes

2.1 The Intergovernmental Panel on Forests

In 1995, the UN Economic and Social Council (ECOSOC), on the recommendation of the Commission for Sustainable Development (CSD) approved the establishment of an open-ended ad hoc Intergovernmental Panel on Forests (IPF). The IPF was intended to be the best way for assessing forest issues in a credible manner, and indeed it was assumed that it could follow the successful model of the Intergovernmental Panel on Climate Change (IPCC), allowing for reasoned dialogue in an otherwise polarised and highly charged political context.¹⁶ The IPF was open ended and intergovernmental (not an expert group), thus all countries were eligible to participate in the debates, either as members,¹⁷ or as observers.¹⁸ Non-governmental organisations, intergovernmental organisations, representatives of major groups,¹⁹ which are accredited to the CSD, could participate as observers to the Panel in the same way as in the CSD. Encouraged by the IPF's participatory approach to its deliberations, NGOs have been able to make contributions to the substantive negotiations and have influenced the final language of some Panel reports even when governments have expressed opposing views.

¹² Ibid. paras. 38.11-38.14

¹³ Ibid. para. 38.22(h)

¹⁴ Ibid. paras. 38.29-38.32

¹⁵ GA Resolution 47/191, Institutional Arrangements to follow up the United Nations Conference on Environment and Development, reprinted in *23 Environmental Policy and Law* (1993), p. 41.

¹⁶ R. Tarasofsky, *The International Forests Regime: Legal and Policy Issues*, IUCN/WWF, Dec. 1995, p. 1.

¹⁷ The 53 member countries of the Commission.

¹⁸ All other countries including the European Community.

¹⁹ Such as farmers, women, youth, local authorities, indigenous peoples, business and industry, the scientific and technological community.

A) Mandate and functions

The IPF's mandate was to pursue consensus among the international community and to formulate options for further actions in order to combat deforestation and forest degradation.²⁰ It was to promote multidisciplinary action on forests at the international level consistent with the Forest Principles, the Rio Declaration and Agenda 21, confirming that these soft law instruments formed the foundation of the IPF's work in further developing international forest policy.

The IPF had five programme elements:

- Implementation of UNCED decisions related to forests at the national and international levels, including an examination of sectoral and cross-sectoral linkages;
- International co-operation in financial assistance and technology transfer;
- Scientific research, forest assessment, and development of criteria and indicators for sustainable forest management;
- Trade and environment in relation to forest products and services;
- International organisations and multilateral institutions, and instruments, including appropriate legal mechanisms.²¹

B) Scope

Early in its existence, the IPF recognised the need to strengthen co-ordination among international organisations and multilateral institutions, in order to provide a holistic and balanced approach to all types of forests. It also acknowledged that there existed no single multilateral body, organisation or instrument with either a mandate or capacity to address, in a balanced, holistic and mutually-reinforcing way, all the issues currently on the international agenda, with respect to all types of forests.

Therefore, there appeared to be a huge expectation surrounding the outcome of the IPF's work:

It is expected that the Panel will make substantive progress towards international consensus on all areas within its mandate. It is hoped that the Panel's deliberations will result in, among other things, improved national forest policies and development strategies at the national level; better co-ordination and enhanced quality of international co-operation; new approaches to forest resources assessment including social and

²⁰ See Report of the Ad Hoc Intergovernmental Panel on Forests on its fourth session (New York, 11-21 February 1997) ('Report of the IPF'). E/CN.17/1997/12. paras.1-2. The IPF met 4 times starting in September 1995

²¹ Within these five categories the CSD elaborated a further set of eleven more detailed programme elements as a basis for deliberation by the Panel, consisting of *inter alia*, the underlying causes of deforestation; traditional forest related knowledge; criteria and indicators; institutions and instruments; and legal mechanisms.

economic values of forest resources; and improved understanding of environmental implications of harvesting and trade of forest products.²²

This expectation was optimistic given that the five programme elements represented issues with varying degrees of maturity and need for further clarification. Some issues had been discussed for years, and possibly could do with a mere reconfirmation of consensus reached at the technical level or in other related intergovernmental fora, while other issues were recent arrivals on the international scene and therefore would require considerable discussion.

Since its establishment the issue of a legally binding instrument (LBI) on forests had dominated the IPF discussions, despite the views of some that this hinders real progress on other fronts. However, the views of some countries have shifted since UNCED on the viability and benefit of a LBI, and there is no longer a straightforward North/South split on this issue.²³ The concerns surrounding this issue included whether starting the process for a new convention would detract attention from implementation of instruments already in place; and fear that the process of negotiation would be long and cumbersome, fraught with the same tensions of the existing policy process; Many environmental NGOs now concurred with those countries that wanted more debate and analysis before opening negotiations on a LBI. They doubted whether a Convention would provide additional resources and feared it would harmonise rules at an unacceptable lowest common denominator.²⁴

C) Output

The IPF reported to the fifth session of the CSD in April 1997.²⁵ The Special Session of the UN General Assembly (UNGASS) in June 1997 adopted its report and specifically the Proposals for Action which

represent significant progress and consensus on a wide range of forest issues.

The Proposals for Action are clustered around 11 thematic elements and sub-elements, corresponding to the IPF's programme elements. They are hortatory in nature, yet they may impose a political (rather than legal) obligation on States to give effect to them at the national level.²⁶ However, compromises between a large group of nations has left them flawed. The IPF's mandate included drawing linkages between sectors, but none are drawn, and the issues to be addressed by national authorities are not always clearly identified. There is frequent repetition and overlap between the issues and the proposed action. Most

²² See Forests in the Global Political Debate. The Intergovernmental Panel on Forests: its mandate and how it works at <http://www.un.org/esa/sustdev/ecn17/ipf1996-ifp.htm>

²³ Some countries such as Malaysia and Indonesia have begun to see merit in the idea, whilst Brazil and several African countries continue to oppose negotiation of an LBI.

²⁴ See Compilation of Suggestions presented by Non-governmental Organisations during the third Session of the IPF (9-20 September 1997), Geneva, Switzerland at <http://www.un.org/documents/ecosoc/cn17/ipf/1997/ecn17/ipf1997-ngoinfo.htm>

²⁵ See Report of the Ad Hoc Intergovernmental Panel on Forests on its fourth session (New York 11-21 February 1997), E/CN.17/1997/12. Paras.1-2.

²⁶ See Report of the International Expert Consultation, Six Country Initiative, 29 June – 3 July 1998, Baden-Baden, Germany, p.1

significantly, the Proposals are inconclusive about the level of intervention needed to address the issues it raised, and they do not sufficiently identify the political, strategic and operational inter-linkages between the international and regional instruments having a bearing on forestry policy.

2.2 The Intergovernmental Forum on Forests

The IFF was created specifically for the purpose of continuing the intergovernmental policy dialogue on forests started by the IPF. At its Special Session, the General Assembly acknowledged that dealing with forestry sector issues required “a long-term political commitment to sustainable forest management worldwide”²⁷. It specifically wanted to maintain the momentum generated by the IPF process. It was decided that the proposals developed over three years under the IPF process had shown considerable progress and despite the lack of support for the creation of a LBI, the policy dialogue should continue.

A) Mandate

The IFF’s specific mandate included:

- Promoting and facilitating the implementation of the IPF proposals for action;
- Reviewing, monitoring and reporting on progress in the management, conservation and sustainable development of all types of forests;
- Considering matters left pending as regards the programme elements of the Intergovernmental Panel on Forests, in particular trade and environment in relation to forest products and services, transfer of technology and the need for financial resources.

B) Scope

Much of the discussions in the IFF repeated those in the IPF, even though there was recognition that the IFF was to review the IPF’s work, making some replication inevitable. Yet there was some frustration that the debates did not move further.²⁸ Lack of consensus and repetition of the same differences in the IPF dominated the IFF’s work.²⁹ The two main obstacles to the IFF’s progress were financial and institutional. Limited contributions to the IFF Trust Fund meant that the Secretariat was not always able to carry out its work in a timely manner. Institutionally, the IFF appeared to suffer from an identity crisis, due to the fact that it covered areas that constantly overlapped with activities carried out by other bodies, some of whom were more influential and powerful (legally and financially).³⁰ The IFF’s limited legal, financial and time-bound mandate did not allow it to call on other institutions to undertake forest-related work, yet it obviously could not achieve much without this ability. The lack of financial and institutional resources available to the IFF to fulfil its mandate might mean the door would be left open for the international forestry

²⁷ GA Doc. A/S-19/29, Annex, para. 39

²⁸ See Yearbook of International Environmental Law, Vol. 8, p.264

²⁹ See <http://www.un.org/documents/ecosoc/cn17/iff/1998/ecn17iff1998-14.htm>

³⁰ Ibid.

issue to be dropped from this kind of ad hoc institutional framework, leaving the highly contentious issues to be sorted out at the regional level or through civil society initiatives. Yet, this was precisely the scenario that led to the establishment of the IPF and IFF in the first place.

As with the IPF, the one outstanding issue was the question of a legally binding instrument and whether to start the process towards negotiation immediately or sometime in the future. Protagonists of a convention could not envisage reference to a new policy forum on forests without reference to a LBI. Opponents to a LBI simply wanted a new forest forum without an instrument.

C) Output

The compromise text in the report which was presented to the eighth session of the CSD in April 2000,³¹ allows consideration within five years

...with a view to recommending the parameters of a mandate for developing a legal framework on all types of forests...³²

This language is sufficiently ambiguous for both camps to interpret it in their respective points of view.

Other controversial discussions centred on issues relating to new finances, technology transfer, and trade and environment. Discussions on finances concerned the possible creation of a forest fund.

New and additional funding was the sticking point, with developing countries looking for such funding to ensure sustainable forest management, and developed countries unwilling to come up with any new money. The final report states that the IFF discussed but did not reach consensus on, whether to establish a global forest fund.³³ Delegates also agreed to disagree on whether trade and environment should be mutually supportive of each other, and on related issues of access and benefit sharing, intellectual property rights and sui generis systems of plant protection.

In the end, there was a sense of *déjà vu* about the context and content of the outcome. It closely resembled the outcome of the IPF, which also proposed an on-going forum on forests and continued discussion of a legally binding instrument.

2.3 Complementary Processes

The IPF/IFF were able to consider the outputs of a large number of ongoing processes and initiatives in carrying out their work, and draw upon the expertise and resources of relevant organisations within and outside the UN system, as well as from all relevant major groups.

³¹ Report of the Intergovernmental Forum on Forests on its fourth session, New York 31 January – 11 February 2000, E/CN.17/2000/14.

³² Ibid.

³³ Ibid.

A) Intergovernmental input

The Inter-Agency Task Force on Forests (ITFF), made up of representatives of agencies with responsibilities in forest policy,³⁴ was established in 1995 to provide a complement to the discussions in the IPF/IFF. The core strategy of the ITFF was the co-ordination of forestry activities between intergovernmental organisations. Tasks were specifically directed to the organisation most capable of carrying them out thereby avoiding duplication. In this way, the ITFF proved to be efficient and was commended in the IPF Proposals for Action as an example of effective inter-agency collaboration. To facilitate a co-ordinated response on the implementation of the Proposals for action directed at international organisations, the ITFF prepared an implementation plan entitled

Interagency Partnership on Forests: Implementation of the IPF Proposals for Action by ITFF.³⁵

B) Inter-sessional activities

The IPF/IFF work was further augmented by several inter-sessional workshops held at national level in various regions. The workshops provided an opportunity for experts and interested delegates to discuss in detail various themes covered by the IPF/IFF, and to discuss such issues outside the context of a negotiating forum, and therefore benefit fully from expert advice. These meetings were not an official part of the IPF, but were an important element in information gathering and policy dialogue between stakeholders at the national, regional and international levels. One of the most influential was the Six-Country Initiative entitled

Putting the IPF Proposals for Action into Practice.

Its members were the governments of Finland, Germany, Honduras, Indonesia, Uganda and the United Kingdom. The Six-Country Initiative developed a guide to assess the IPF Proposals for Action, carried out six country case studies and convened an International Expert Consultation which met in Baden-Baden, Germany from 29 June to 3 July 1998.³⁶

Other efforts included the initiative between non-governmental organisations and Costa Rica the underlying causes of deforestation and forest degradation. These efforts included the organisation of consultation processes at the regional level, the participation of indigenous people organisations, the elaboration of case studies and the organisation of a global workshop held in San Jose, Costa Rica, 18-22 January 1999.

C) Work under existing agreements

³⁴ Including FAO, UNDP, UNEP, ITTO, World Bank, UNDP, and the Secretariat of the Convention on Biological Diversity

³⁵ See <http://www.un.org/esa/sustdev/iffac.htm>

³⁶ See Report of the International Expert Consultation, Six-Country Initiative, 29 June – 3 July 1998, Baden-Baden, Germany.

Forest policy is also developing through other international instruments such as the Convention on Biological Diversity (CBD), the Convention on Desertification, and the Framework Convention on Climate change (UNFCCC) and its Kyoto Protocol.

The CBD is the first international treaty to address all aspects of biological diversity, including forests. Unlike the other instruments, whose Secretariats merely exchange information, the CBD Secretariat and the Conference of the Parties (COP) have provided specific input into the IPF/IFF processes.

The second COP meeting in November 1995 adopted a Statement on Biological Diversity and Forests,³⁷ which was presented at the second session of the IPF. The Statement highlights issues of mutual concern to the CBD and IPF. In the same decision, the COP, *inter alia*, requested advice and information pertaining to the relationship between indigenous and local communities and forests, and requested a study on links between forests and biological diversity. The IPF Proposals for Action on traditional forest related knowledge (TFRK) were formulated with input from the CBD Secretariat and the parties to the CBD.³⁸ At its fourth meeting in May 1998, the COP adopted its Programme of Work for forest biological diversity.³⁹ Its four objectives are

1. to develop national measures for integrating conservation and sustainable use of biological diversity into national forest management systems;
2. identification and wider application of traditional systems of conservation and sustainable use of forest biological diversity, and equitable sharing of benefits;
3. financing for conservation and sustainable use of forest biological diversity; and
4. to contribute to other international and regional organisations and processes, in particular the IPF proposals for action and input to IFF.

The programme of work as adopted by COP 4 reflects the underlying political dynamic amongst the CBD parties and the contentious negotiations on this issue. This resulted in a programme of work, which at least in the initial stages, focuses more on the gathering of information, institutional co-operation and collaboration, and the identification of further research priorities rather than on concrete substantive output orientated activities. The emphasis on co-ordination and avoiding duplication of work, and in particular the wait for IFF's consideration of certain common priorities, suggests a consideration of synergy, and to some extent, subordination of the CBD's work on forest biological diversity to that of the IFF work process.

2.4 United Nations Forum on Forests

Establishment of the United Nations Forum on Forests (UNFF) was thought useful because the ad hoc arrangements did not provide or maintain sufficient momentum towards

³⁷ Decision II/9, Annex.

³⁸ See E/CN.17/IPF/9, which was the subject of initial discussion of the TFRK programme element at IPF-II, and further elaborated for IPF-III.

³⁹ Decision IV/7 (UNEP/CBD/COP/4/7).

legally binding commitments on sustainable forest management. Nor did they singly reflect the significance of forest issues within the wider international environment and development agendas. It is acknowledged that decisions taken on arrangements and mechanisms in this policy process will have implications far beyond the forest sector.

A) Mandate

The UNFF now has a five year mandate to:

- Facilitate and promote the implementation of inter alia, the IPF/IFF proposals for action;
- Provide a forum for continued policy dialogue and development;
- Enhance co-operation and policy and programme co-ordination on forest related issues;
- Foster international co-operation;
- Monitor and assess progress at the national, regional and global levels and;
- Strengthen political commitment to the management, conservation and sustainable development of all types of forests⁴⁰

B) Scope

The IFF report envisages that the UNFF will work on the basis of a multi-year programme of work, drawing on elements reflected in the Rio Declaration on Environment and Development, the Forest Principles, chapter 11 of Agenda 21 and the IPF/IFF proposals for action. The signal is therefore that these soft-law instruments have continued relevance in the development of forest policy. The first session of the UNFF, which took place in June 2001, duly adopted the multiyear work programme outlined in the organisational meeting, and developed and adopted a Plan of Action for the rest of the UNFF sessions. Each of the subsequent sessions of the UNFF, will include: multi-stakeholder dialogues, enhanced co-operation and policy and programme co-ordination, country experiences and lessons learned; emerging issues relevant to country implementation; inter-sessional work; monitoring, assessment and reporting; implementation of the Plan of Action; promoting public participation; national forest programmes; trade; and enabling environment.

C) Complementary processes

The Inter-Agency Task Force on Forests continues its support to the forest policy process in the form of a Collaborative Partnership on Forests (CPF) with the same intergovernmental members.⁴¹ The establishment of the CPF, specifically intended by the international

⁴⁰ See ECOSOC Resolution E/2000-35 at <http://www.un.org/esa/sustdev/unffdocs/e2000-35.pdf>

⁴¹ Currently, as agreed by the CPF members, the Secretariats of the Convention to Combat Desertification (CCD), the United Nations Framework Convention on Climate Change (FCCC) and the Global Environmental Facility (GEF) are being invited to join the CPF. The CPF membership is expected to expand slightly to include a total of about a dozen international forest-related organisations, institutions and instruments.

community to be a new international partnership on forests, represents the willingness and commitment of the CPF member organisations to support the work of the UNFF and to enhance co-operation and co-ordination among its partners. The CPF's purpose is to support the work of the United Nations Forum on Forests and to present a concrete and co-ordinated proposal to assist the implementation of the IPF/IFF proposals for action.⁴² The member organisations of the CPF are specifically invited to contribute actively to the implementation of the IPF/IFF proposals for action, including through their technical and financial resources. It is expected that the efforts of other groups including NGOs and the private sector will also assist the UNFF's work.

2.5 The effect of the IPF/IFF process

The IPF/IFF process has provided a new perspective on forests and new approaches to the sustainable management of all types of forests. It is interesting that the IPF/IFF avoided formulating a precise definition of sustainable forest management, instead choosing to define it in relation to the criteria and indicators and the national forest programmes to be developed by States, in light of national and regional realities. Despite the incremental progress, international co-operation continues to intensify. Public participation has expanded. The development of mixed partner initiatives involving intergovernmental organisations, governments, and NGOs is an encouraging feature of developments in the area of forest policy. But this should not mask the international community's failure to make good the lack of political will and leadership needed to address underlying problems relating to forests. There are institutional shortcomings across the spectrum on UN and non-UN international bodies dealing with forests and there is failure at the national level to involve stakeholders in the development and implementation of sound forestry management practises.

Yet, because of the IPF/IFF processes, forests are now understood to be living ecosystems providing diverse environmental benefits and other services. The value of traditional forest-related knowledge has been emphasised. It is also acknowledged that sustainable forest management cannot work in isolation from policy in other sectors such as climate change, biomass and energy. There needs to be a comprehensive and holistic approach to the sustainable management of all types of forests. The international community has made strides in diagnosing the problem and understanding the issues. The time may now be ripe for focused action on forests.

The question remains whether that action should come in the form of a legally binding instrument. Should it take the form of a totally new agreement or would an instrument linking the various forestry provisions in the different environmental treaties and soft law instruments suffice? In such case, how would the development dimension fit in? Would a new agreement require a new Secretariat or would more formal co-ordination among the existing institutions be enough to oversee the agreement? Where would the additional financial resources needed to establish such a system come from? These issues are far from resolved and it may take another five years before answers are forthcoming from the international community.

⁴² See <http://www.un.org/esa/sustdev/unffdocs/ecn182001-3.pdf>

3 The International Tropical Timber Agreement

The International Tropical Timber Agreement (ITTA) was adopted in 1983 and came into force in 1985. It was renegotiated in 1994 (ITTA 1994). The ITTA, as the only global convention specifically addressing tropical deforestation, is primarily a commodity agreement between producer and consumer countries of tropical hardwoods. Under the agreement, the International Tropical Timber Organisation (ITTO) was established, located in Yokohama, Japan. The International Tropical Timber Council (ITTC) operates as a decision-making and recommendatory body having three permanent committees including the Committee on Reforestation and Forest Management.⁴³

3.1 The 1983 Agreement

The main objective of the 1983 agreement was to provide an effective framework for co-operation and consultation between tropical timber producing and consuming countries on all aspects of the tropical timber economy and the expansion and diversification of trade in tropical timber. It also includes the objective of promoting sustainable utilisation and conservation of tropical forests and maintaining ecological balance.⁴⁴

A) Scope

The ITTA is rather narrow in scope; covering only tropical forests and focusing on industrial uses of traded tropical timber. Tropical timber is defined as

non-coniferous tropical wood for industrial uses, which grows between the Tropic of Cancer and the Tropic of Capricorn...⁴⁵

Temperate and boreal forests, estimated to furnish approximately 805 of the world's industrial wood,⁴⁶ fall outside the Agreement. About 6% of the total tropical non-coniferous roundwood production enters international trade, and the main purpose of the Agreement is facilitation of this trade. Yet, the major causes of deforestation are losses to agricultural concession and fuel-wood pressures.⁴⁷

B) Objectives

The ITTA reflects a timber utilisation bias in seven out of eight objectives established in Article 1. The first seven objectives (a to g) emphasise such matters as improving market intelligence, increasing processing of tropical timber in producing nations, promoting wood utilisation and encouraging industrial tropical timber exports. Only subparagraph (h)

⁴³ Article 24 of the ITTA provides for the establishment of three permanent committees: the Committee on Economic Information and Market Intelligence, the Committee on Reforestation and Forest management and the Committee on Forest Industry. The ITTC may establish other committee and subsidiary bodies by special vote.

⁴⁴ See ITTA, Article 1(h)

⁴⁵ ITTA, Article 2(1).

⁴⁶ See FAO, *The Challenge of Sustainable Forest Management: What Future for the World's Forests?* 1993, p. 20.

⁴⁷ As much as 90% of total forest loss may be attributable to agricultural expansion in all its forms from shifting cultivation to cattle ranching. *Ibid.* p.23.

introduces the need to develop national policies dealing with conservation of tropical forests and the maintenance of ecological balance.

Moreover, the voting power for decisions and recommendations of the ITTC is slanted towards exploiting countries. Consuming nations having a total of 1000 votes and an initial individual allotment of 10 votes each, distribute the remaining votes in proportion to the average volume of their respective net imports of tropical timber during a previous three-year period.⁴⁸ The 1000 votes held by producing members are largely distributed according to shares in the value of net exports of tropical timber.⁴⁹

C) The Nature of Obligations

The ITTC has suffered from a lack of clear functions. The ITTA leaves the Council with just a general obligation to carry out the provisions of the Agreement.⁵⁰ No specific powers or mandates are given on, for example, the ability to propose protocols on reforestation and protected areas. In May 1990, at the eighth session of the ITTC, parties agreed to a Target 2000 objective that all exports of tropical timber should come from sustainably managed forests by the year 2000.⁵¹ However, a loose reporting requirement and non-enforceable guidelines have softened the Target. In Decision 3(X), the ITTC merely invited members to report on their proposed programmes towards the Year 2000 Target.⁵² Consequently, few reports have resulted, and these have been mostly from consumer nations. The concept of sustainable management continues to be surrounded by confusion and left to four separate non-binding guidelines, which the ITTO has declared, will assist in the achievement of Target 2000:

- ITTO Guidelines for the Sustainable Management of Natural Tropical Forests⁵³
- ITTO Guidelines on the Conservation of biological Diversity in Tropical Production Forests⁵⁴
- Criteria for the Measurement of Sustainable Tropical Forest Management⁵⁵
- ITTO Guidelines for the Establishment and Sustainable Management of Planted Tropical Forests⁵⁶

⁴⁸ ITTA, Article 10(5).

⁴⁹ Article 10(2).

⁵⁰ Article 7.

⁵¹ Report of the International Tropical Timber Council at its Eighth Session (Denpasar, Indonesia, 16-23 May 1990) ITTC (VIII) /D.1 (6 July 1990), p.26.

⁵² Report of the International Tropical Timber Council at its Tenth Session (Quito, Ecuador, 29 May- 6 June 1992) ITTC (X) /20 (15 August 1991) pp. 68-69.

⁵³ ITTO Policy Development Series 1 (July 1992)

⁵⁴ Supplement to ITTO Guidelines for the Sustainable Management of Natural Tropical Forests, adopted by Decision 4 (XIII) of the 13th Session of the ITTC (Yokohama, Japan 16-21 and 24 November 1992) ITTC (XIII) /17 (20 April 1993), p. 52

⁵⁵ ITTO Policy Development Series No. 3 (1992)

⁵⁶ ITTO Policy Development Series N. 4 (1993)

D) Monitoring and Enforcement

The ITTA provides no explicit authority for monitoring and ensuring compliance with sustainable forest management, even if the concept was clearly defined in the Agreement. National submissions on Target 2000 progress were invited by June 1995, and the ITTC was mandated to undertake a major review in 1995.⁵⁷ But not powers were given to the ITTC to secure national reports that are not forthcoming. Neither does the Agreement provide procedures to verify national forest management practices.

E) Involvement of NGOs and other Groups

The ITTA omits to mention the critical need in many countries to clarify and secure land tenure as a basis for protecting the diverse values, including cultural importance of forests. The Agreement, as so many other intergovernmental treaties, restricts participation, including voting powers to governments. The ITTA simply suggests the need for co-operation with non-governmental organisations to avoid duplication,⁵⁸ and the admission of observers at meetings of the ITTC.⁵⁹

The ITTO Guidelines themselves are quite soft and ambiguous as to how countries should interact with local populations. For example the Guidelines on the Conservation of Biological Diversity recommend a general obligation in the form of:

Efforts should be made to involve local people in the management of the forest and to ensure that they obtain benefits, which will motivate the people themselves to use their traditional knowledge in the support of the conservation of biodiversity⁶⁰

The guidelines for the Sustainable Management of Planted Tropical Forests leaves considerable room for interpretation of the recognition to be given to traditional tenures through the language:

...claims based on legal titles or on statutory or customary rights in all types of forest lands must be duly considered, including claims to ancestral territories and cultural sites.⁶¹

F) Financial Resources

The ITTA establishes an Administrative Account to provide for the human resource needs in the ITTO. For this purpose, Members are assessed according to their voting privileges.⁶² A Special Account is established to fund pre-project development and field projects. This Account depends for its viability on voluntary contributions. Individual members, such as the United States, Japan and a number of European countries have largely funded projects, and the annual contributions remain relatively low. At the same time, certain funding initiatives that may have borne fruit have not been followed thorough. For instance,

⁵⁷ See Decision 3(X), supra note 21.

⁵⁸ ITTA, Article 14(2)

⁵⁹ Ibid. Article 15.

⁶⁰ Recommended Action 19.

⁶¹ Principle 15.

⁶² Article 19.

additional financial assistance could have been made contingent on demonstration of a country's progress towards the Year 2000 Target, or a levy could be placed on timber in international trade to meet the costs of sustainable forest management.⁶³

3.2 The 1994 Agreement

On 26 January 1994, the re-negotiated ITTA was concluded.⁶⁴ It came into force on 1 January 1997. ITTA 1994 effects a number of changes to the 1983 agreement, partly in response to the UNCED Statement of Forest Principles and Chapter 11 of Agenda 21. However, much of the 1994 text mirrors the 1983 version. For example, the institutional mechanisms of the ITTO and ITTC remain, and the two categories of membership: producing and consuming countries are continued.

Of the few progressive elements in the new Agreement, one of the most prominent is the balancing and expansion of the objectives (from 8 to 14 in number). Among its objectives, the 1994 Agreement stresses:

- the process of sustainable development;
- the promotion of non-discriminatory timber trade practices;
- the promotion of processing in producer countries;
- the development of mechanisms to provide new and additional financial resources; and
- the promotion of access to and transfer of technology, including on concessional and preferential terms.

Sustainable development language is prominent, including reaffirmation of the goal of sustainable management by the year 2000 in the Preamble and in Article 1(d),⁶⁵ as well as the need to enhance members' capacity to meet the Year 2000 Target.⁶⁶

However, tensions between producer and consumer nations at the ITTO determined that renegotiation of the ITTA was a highly politicised affair. Concern revolved around whether the ITTA should include binding commitments on sustainable management and on whether the agreement's scope should be broadened to include other forms of timber, including temperate and boreal.⁶⁷ In the event, the scope was not broadened. Instead consumer countries pledged in a joint statement to apply the same standards of sustainable forest management as those developed under the ITTO.⁶⁸ Yet no teeth have been added to

⁶³ See London Economics Centre, *The Economic Linkages between the International Trade in Tropical Timber and the Sustainable Management of Tropical Forests: Main Report to the International Tropical Timber Organisation, ITTO Activity PCM (XI) /4 (19 March 1993)*, p.vi

⁶⁴ ITTA 1994 is reprinted in *24 Environmental Policy and Law (1994)*, p. 124.

⁶⁵ Although not as a legally binding target.

⁶⁶ ITTA 1994, Article 1(c)

⁶⁷ For the proposed language from producer and consumer nations, see TD/TIMBER.2/R.2 (26 February 1993).

⁶⁸ Formal Statement by Consumer Members, reprinted in *24 Environmental Policy and Law (1994)*, p. 124

the sustainable forest management target, such as provision for international timber certification programmes or independent review powers by the ITTC. The Council is merely mandated to include in its annual reports

information supplied by members on their progress toward the sustainable management of their timber producing forests.⁶⁹

Although the new ITTA establishes the Bali Partnership Fund,⁷⁰ with contributions from donor members and other sources, there are no concrete targets for the objective of providing new and additional financial resources. According to Article 21, the fund is intended to help build national capacities to implement a strategy for achieving exports from sustainably managed sources by the year 2000. The ITTA expressly recognises that the ability of some countries to implement Target 2000 would be influenced by the availability of resources from the Fund. And it was suggested that the Fund should provide producers with new and additional finances in order to meet the full incremental costs of attaining Target 2000. However, because the funding commitments are not clear or strong, apart from the Target 2000 facilitation, the Bali Partnership Fund appears no different from the Special Account (which remains in existence), with its dependence on voluntary contributions.

ITTA 1994 includes no special procedures or programmes for increasing non-governmental involvement. The Agreement is silent on recognition of indigenous rights and hardly mentions the needs of local communities.⁷¹

3.3 Sustainable developments in the ITTO?

Yet, the resulting 'stunted' ITTA, while disappointing some commentators,⁷² may be a transitional step towards a more comprehensive regime that may gradually shift focus and incorporate more sustainable forest management elements. The ITTA 1994 mandates the ITTC to review the scope of the Agreement four years after entry into force.⁷³ ITTA 1994 was duly extended by the Council for a period of three years, with effect from 1 January 2001 until 31 December 2003.⁷⁴

The ITTO has begun responding to the developments in other forums such as the IPF/IFF processes, which have improved understanding of the components of sustainable forest management. In 1998 it updated the ITTO Criteria for the Measurement of Sustainable Tropical Forest Management, which focused primarily on sustainable management for the production of timber. The ITTO Criteria and Indicators for the Sustainable Management of Natural Tropical Forests covers the full range of forest goods and services, including

⁶⁹ ITTA 1994, Article 30(3)(c).

⁷⁰ Ibid. Articles 18 and 21.

⁷¹ Article 1 (j) merely encourages members "to support and develop industrial tropical timber reforestation and forest management activities as well as rehabilitation of degraded forest land with due regard for the interests of local communities dependent on forest resources."

⁷² See "Environmentalists Call Pact 'A Step Backwards'", 17:3 International Environmental Reporter (9 February 1994), p. 106.

⁷³ ITTA 1994, Article 35.

⁷⁴ See <http://www.itto.or.jp/inside/REPORT2000/>

biological diversity and other non-timber values.⁷⁵ The purpose of ITTO's Criteria and Indicators is to provide member countries with an improved tool for assessing changes and trends in forest conditions and management systems at the national and forest management unit levels. By identifying the main elements of sustainable forest management, the criteria and indicators provide a means of assessing progress towards the Year 2000 Target. The information generated, through using such Criteria and Indicators in assessing the state of the forest, should help policy- and decision-makers to communicate the status of the efforts towards sustainable forest management more effectively to the public. It should also assist in developing policies and strategies for sustainable forest management, in focusing research efforts where knowledge is still deficient, and in identifying those areas that are in special need of international assistance and co-operation. If the indicators are made operational and appropriate prescriptions and standards are set, a sound basis should be created for measuring sustainable forest management.

Moreover, as if to cement the intangible obligations and commitments contained in the ITTA 1994, the ITTO established the Libreville Action Plan 1998 to 2001 at its 24th session in May 1998.⁷⁶ The new Action Plan elaborates a strategy for advancing ITTO's objectives, operational activities and statistical work as elaborated in the ITTA 1994. As such, it is intended to provide guidance on the overall direction and priorities of the ITTO, both in terms of policy initiatives and project activities. An important component of the Action Plan is the number of "cross cutting strategies" that ITTO will undertake to facilitate progress in all three areas of its substantive work on Economic Information and Market Intelligence, Reforestation and Forest Management and Forest Industry. These crosscutting strategies will include activities to:

- actively co-operate, co-ordinate and collaborate with international organisations and other international forums which undertake activities relevant to ITTO's objectives, operational activities and statistical work, with a view to sharing expertise, reducing duplication, enhancing complementarity and harmonising activities;
- encourage the participation of non-government stakeholders, including industry and trade associations, environmental organisations and indigenous groups, in the activities of the Organisation, with a view to promoting transparency and dialogue;
- mobilise financial resources to support project proposals submitted by members;
- formulate and test guidelines, criteria and indicators related to the organisation's work in the field of forest management and other areas as appropriate;

It remains to be seen how these latter efforts made by the ITTO to place sustainable forest management at the centre of its activities are carried through to ensuring the effectiveness of the Organisation and its policy and legal instruments.

⁷⁵ ITTO Policy Development Series No. 7 (1998)

⁷⁶ See ITTO Policy Development Series No. 8 (1998) at <http://www.itto.or.jp/policy/pds8/1.html>

4 General Conclusions and Lessons from the Global Regime on Forestry

The experience of the IPF/IFF processes and the ITTA demonstrate that the efforts to develop a global regime on forests that promotes sustainable forest management in a way that:

1. slows the destruction of ecosystems, and
2. protects the socio-economic interests of the producer countries,

has not yet proved possible. From the foregoing discussion, it is evident that this can be attributed to:

- (a) The nature of the forestry sector itself. The destructive activity is by and large located in the South, although it is perpetuated by the drive for increasing consumption in the North. The situation is further complicated by the close inter-dependence of the stakeholders in the forestry sector, including local and indigenous communities, who are increasingly making their voice heard on issues of production of forest resources;
- (b) The different development and environment priorities of the North and South. Developing countries are concerned about separating the issues of exploitation of natural resources that they consider development assets from the environmental problems that merit international regulation. Developed countries are of the view that forests are a common concern of mankind, requiring international rules. Where the environment and development agendas coincide, the balance between national and international interests needs defining.
- (c) The weakness of the system of global governance. There is increasing fragmentation in the activities of international organisations with resulting duplication and inefficiency. The respective players, such as multilateral development banks, the ITTO, UNDP, UNEP, FAO, GEF, UNESCO require increased co-ordination.⁷⁷ There is also a need to harmonise the multiple and potentially conflicting international instruments impacting on forests. the inter-relationship of global conventions, such as those on climate change, biodiversity and desertification needs to be reconciled as does the appropriate role of existing iregional agreements, such as those covering protection of wildlife. The lack of financial resources to adequately fund oversight of treaties and their implementation is a major factor that needs careful planning. Moreover, intergovernmental regulatory processes or negotiations take time to put in place. They usually require consensus to be legitimate, especially if they involve complex issues as those in the forestry sector; this adds to the difficulty of achieving resolution of the necessary regulatory framework.

⁷⁷ Para 11.16 (d) of Agenda 21 notes the need to strengthen the co-ordination and abilities of intergovernmental organisations with forest responsibilities.