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INTERNATIONAL ORGANIZATIONS AND MULTILATERAL INSTITUTIONS AND
INSTRUMENTS, INCLUDING APPROPRIATE LEGAL MECHANISMS

Programme element V.2: Contribution to consensus-building
towards the further implementation of the forest principles

Report of the Secretary-General

SUMMARY

The present report describes the preparatory work on programme element V.2 (Contribution to consensus-building towards further implementation of the forest principles) of the work programme of the Ad Hoc Intergovernmental Panel on Forests and provides background information to facilitate the initial discussion of the programme element. While the report of the Secretary-General on programme element V.1 (E/CN.17/IPF/1996/23) focuses on international organizations and multilateral institutions relevant to forests and forest-related activities, the present report concentrates on the appropriate legal mechanisms, describes the relevance of existing instruments to the conservation, management and sustainable use of all types of forests and attempts to define areas where there are gaps and overlaps with respect to forest-related issues in these legal instruments and mechanisms.

* E/CN.17/IPF/1996/13.

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INTRODUCTION

1. The Commission on Sustainable Development, in determining the terms of reference of the Ad Hoc Intergovernmental Panel on Forests, decided, inter alia, that the work being carried out by international organizations and multilateral institutions and under existing instruments, including the Convention on Biological Diversity, the United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa, the United Nations Framework Convention on Climate Change, the Convention on International Trade in Endangered Species of Wild Fauna and Flora and the International Tropical Timber Agreement, in forest-related issues had to be taken into account, as had forest-related decisions of the United Nations Conference on Environment and Development. 1/

2. Subsequently, the Ad Hoc Intergovernmental Panel on Forests agreed at its first session that, under category V of its programme of work (International organizations and multilateral institutions and instruments, including appropriate legal mechanisms), preparations would include a report presenting an overview and description of existing institutions and instruments, including their role and mandates vis-à-vis programme elements I-IV, and identifying institutional linkages, gaps, areas requiring enhancement, and any areas of duplication (E/CN.17/IPF/1995/3, para. 18, sect. V.1).

3. It was also agreed that "the deliberation of this programme element would be based on a step-by-step consensus-building process and would be an item for substantive discussion at the fourth session of the Panel" (E/CN.17/IPF/1995/3, para. 18, sect. V.2).

4. At its second session, the Panel took note of the report of the Secretary-General on programme element V.1 (E/CN.17/IPF/1996/12). The report described the progress made in the preparatory work. It included a general overview of the issue, a short update of the current status and a description of the range of considerations involved in preparing for the substantive discussion of the programme element at the Panel's third session.

5. The present report is complementary to the objective of programme element V.1, and is intended to present background information on the existing legal instruments relevant to the conservation, management and sustainable use of all types of forests. It provides an overview of the Panel's programme of work in relation to the Non-legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests (Forest Principles) agreed upon at the United Nations Conference on Environment and Development. It also provides an overview and description of existing international legal instruments relevant to forests.

6. The report, which was prepared by the Human Development Institutions and Technology Branch of the Division for Sustainable Development of the Department for Policy Coordination and Sustainable Development as task manager for chapter 39 (International legal instruments and mechanisms) of Agenda 21, in close consultation with the secretariat of the Ad Hoc Intergovernmental Panel on

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Forests, makes a preliminary attempt to identify overlaps and gaps for the consideration of the Panel. It does not contain any proposals for action.

RELEVANCE OF EXISTING LEGAL INSTRUMENTS TO THE CONSERVATION,
MANAGEMENT AND SUSTAINABLE USE OF ALL TYPES OF FORESTS

7. To achieve an overview of the relevance of existing international legal instruments to the conservation, management and sustainable use of all types of forests and their relation to issues on the global forest agenda, the present report provides a comprehensive summary of multilateral instruments that are relevant to forest use and conservation. The first step includes a clustering of the Forest Principles and the Panel's work programme, which allows for identifying areas of activity required for conservation, management and sustainable use of forests (see table 1).

A. Priority actions on forests

8. The agenda outlined here is drawn from documents on forest-related issues agreed to by the international community during the past few years, in particular the Forest Principles, chapter 11 (Combating deforestation) of Agenda 21 and the Panel's work programme. Five broad areas are identified: conservation, management and sustainable use of forests; research and assessment; trade in forest products; finance, policy and institutions; and cooperation and coordination. While most actions in these areas are to be undertaken at the national level, international coordination and support play a key role and facilitate implementation at the national level.

9. The Forest Principles and the Panel's work programme allow for the clustering of components and areas, as follows:

1. Conservation, management and sustainable use of forests

- (a) Protected areas establishment; unique ecosystems
- (b) Protection of soil, water and climate functions of forest lands
- (c) Restoration of forest ecosystems affected by drought/pollution
- (d) Sustainable use; forest and land-use plans
- (e) Participation of all stakeholders in decision-making
- (f) Protection of traditional forest-related knowledge and practices

2. Research and assessment

- (g) Assessment of forest quality and quantity (at the national and international levels)

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- (h) Valuation of multiple benefits and development of methodologies for such valuation
- (i) Criteria and indicators for sustainable forest management (globally agreed; nationally and locally implemented)
- 3. Trade in forest products
 - (j) Supportive relationship between trade and sustainable forest use; cost-internalization
 - (k) Market access/non-discriminatory practices in the global forest-products trade
 - (l) Certification of sustainably managed forests and forest products
- 4. Finance, policy and institutions
 - (m) Financial resources and mechanisms (at the national and international levels)
 - (n) Technology transfer
 - (o) Capacity-building, institutional reform and policy formulation (at the national level)
- 5. Cooperation and coordination
 - (p) Intersectoral coordination
 - (q) Cross-sectoral coordination; impacts on forests (national and international)
 - (r) International institutional cooperation and policy coordination

10. Table 1 shows how these five areas and their components are derived from the Forest Principles and the Panel's work programme.

Table 1. Identification of areas that might be relevant for an overall assessment of forest-related issues, derived from the Forest Principles and the work programme of the Ad Hoc Intergovernmental Panel on Forests

B. Overview and description of existing international legal instruments relevant to forests

11. With the components of a forest agenda identified, a number of international instruments relevant to that agenda are examined, as suggested by the Panel (see para. 2 above). They include the following:

Convention on Biological Diversity (Biodiversity, CBD);

International Tropical Timber Agreement (ITTA);

United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa (Desertification);

United Nations Framework Convention on Climate Change (Climate change, UNFCCC);

Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES).

12. Further, the following international legal instruments are also incorporated in the overview:

Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar);

UNESCO Convention for the Protection of the World Cultural and Natural Heritage (World Heritage);

General Agreement on Tariffs and Trade/World Trade Organization (GATT/WTO);

Convention Concerning Indigenous and Tribal Peoples in Independent Countries (Indigenous People) (ILO Convention No. 169).

13. The analysis is limited to multilateral global instruments, and thus no regional instruments have been included. This does not pre-empt their significance in relation to forests. For example, there are many regional environmental conservation conventions that, by their nature, include forests. However, in order to facilitate comparison and identification of possible gaps and overlaps on a global scale, only global instruments are included.

14. None of the instruments listed above were specifically developed with a direct orientation towards sustainable forest management, but they have or may have a strong influence on the conservation, management and sustainable use of forests.

15. An overview of these multilateral legal instruments is given in table 2. Information is provided on the status of the instrument; its scope and objectives; the general relationship to forest conservation, management and use; provisions with particular relevance to forests; recent debates in the framework

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of the instrument and operational effectiveness; and its potential role in a comprehensive forest strategy.

16. Table 3 provides an overview of the main areas of the Panel's work programme that are covered by the international instruments shown in table 2. Table 3 also indicates areas where there may be gaps and overlaps between the legal instruments. It should be noted that the areas covered by each instrument are formulated in accordance with the chief objectives of the instrument. For example, ITTA applies only to tropical timber, and the reference to traditional knowledge under the Biodiversity Convention refers mainly to issues related to biological diversity, and not to forests in particular. Table 4 indicates links between programme elements of the Panel's work programme and chapter 11 of Agenda 21.*

* The relevant paragraphs of chapter 11 of Agenda 21 as identified by Diana Ponce Nava in "Overview of international legal instruments related to forests", draft paper prepared for discussion by the Independent Expert Group of the Swiss-Peruvian Initiative on Forests, June 1996.

Table 2: Existing international legal instruments related to forests

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Table 3. Forest-related issues and actions identified in the programme of work of the Ad Hoc Intergovernmental Panel on Forests and covered by existing international legal instruments: a preliminary overview of gaps and overlaps

Table 4. Links between chapter 11 of Agenda 21 and programme elements
of the work programme of the Ad Hoc Intergovernmental
Panel on Forests

C. Existing international legal instruments - overlaps and gaps with respect to forest-related issues: preliminary observations

17. Given the scope and substantive content of the nine legal instruments examined above, overlaps and gaps in their treatment of forest-related issues can be identified in a preliminary way, as set out below:

Overlaps

18. There is a presumable overlap in issues related to finance, technology transfer and international coordination. Several instruments contain provisions on such issues. They vary from encouraging coordination of activities with other international agreements, to the provision of financial resources to developing country parties to facilitate compliance.

19. Trade in forest products can be viewed as another area in which there are overlaps. Distinct instruments cover various facets of trade in forest products and services, varying from endangered tree species to tropical hardwood timber. However, there is a general lack of synergy between trade-related instruments and environmental conventions at the international level.

20. Another apparent area of overlap is in actions calling for the conservation of natural resources, including forest lands. Most environmental legal instruments are conservation-oriented. Although not specifically aimed at forests, they may include forest lands or unique types of forests.

Gaps

21. It could be concluded that there is a gap regarding the lack of international coordination with regard to forest-related activities, including lack of coordinated policy formulation at the global level, and lack of coordinated financial assistance for conservation and sustainable management. None of the existing international legal instruments, as they currently stand, may have the potential to fully ensure a coordinated approach in international policy, financial issues and integration at the institutional level regarding forests and forest-related activities. A variety of plans and strategies are currently required to meet the objectives of each individual agreement, which might be competing. They also raise concerns regarding bureaucratic and financial burdens, especially for developing countries.

22. Among the most evident gaps is the lack of provision in existing legal instruments for reliable information on forest quantity and quality, including a lack of information on the multiple benefits provided by forests, as well as valuation methodologies. These are critical components of the Forest Principles, chapter 11 of Agenda 21 and the Panel's work programme. Comprehensive and coordinated research and assessment activities with regard to forests and forest-related activities are not mandated by any existing international legal instrument.

23. In the area of management and sustainable use of forests, incentive systems, the involvement of the private sector, multinational codes of conduct,

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and environmental impact assessments that can discern cross-sectoral impacts on forests are not well covered within the Forest Principles, the Panel's work programme, or any other legal instrument. While the Convention on Biological Diversity calls for private sector involvement and incentive systems with regard to biodiversity, the focus is directed more at issues relating to access to genetic resources and the role of the biotechnology industry than at general private sector involvement in the transition to sustainable forest management.

24. The protection and use of traditional forest-related knowledge and its application to sustainable forest management is not covered by existing international legal instruments. The Convention on Biological Diversity and especially the Convention Concerning Indigenous and Tribal Peoples in Independent Countries include provisions which recognize the importance of indigenous and traditional knowledge in general, not pertaining to forests in particular.

25. There is at present no global international legal instrument addressing the specific needs and requirements of countries with low forest cover, or concerning the effects of airborne pollution on forests.

Notes

1/ Official Records of the Economic and Social Council, 1995, Supplement No. 12 (E/1995/32), chap. I, sect. D, annex I; and E/CN.17/IPF/1995/3, annex III.

Annex

STUDIES DEALING WITH FORESTS AND INTERNATIONAL LEGAL
INSTRUMENTS AND WITH INTERNATIONAL COORDINATION FOR
SUSTAINABLE FOREST MANAGEMENT

The present annex contains a list of studies having a bearing on elements V.1 and V.2 of the Panel's work programme. These studies, together with the texts of international instruments related to forests, could provide useful background for further work in this area.

"Report of the Independent Expert Group: Swiss-Peruvian Initiative on Forests", final draft version, July 1996; meetings held at Geneva, 4-7 March and 24-28 June 1996.

"Overview of international legal instruments related to forests", draft paper prepared by Diana Ponce Nava for discussion by the Independent Expert Group of the Swiss-Peruvian Initiative on Forests, June 1996.

The International Forests Regime: Legal and Policy Issues, Richard G. Tarasofsky, International Union for Conservation of Nature and Natural Resources (IUCN) Forest Conservation Series, December 1995.

"Assessing the advantages and disadvantages of a legally binding instrument on forests", FAO Committee on Forestry, Secretariat Note of January 1995, prepared for the twelfth session of the Committee, Rome, 13-16 March 1996.

"Review of the Forest Principles: 20 months after Rio", paper prepared by the United Nations Environment Programme for the FAO/UNEP Workshop on the Follow-up to UNCED and Implementation of the Forest Principles, Bangkok, 16-19 January 1995.

Issues and Ideas: Opportunities to Save and Sustainably Use the World's Forests Through International Cooperation, Nigel Sizer for World Resources Institute, December 1994.

"References to UNCED Forest Principles on the topics under consideration by the Intergovernmental Working Group on Forests (IWGF)", prepared by Kathryn Buchanan, Canadian Forest Service, for the second Meeting of IWGF, Ottawa, October 1994.

"Dialogue on forests: approaches, opportunities and options for actions", IWGF Report, October 1994.

"A Study on coordination in sustainable forestry development", paper prepared by the Forest Advisors Group, June 1993.

Quest for a Global Forest Strategy: Barking up the Wrong Tree?, G. K. Rosendal, The Fridtjof Nansen Institute, June 1993.

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"Model for a Convention for the Conservation and Wise Use of Forests",
Global Legislators Organization for a Balanced Environment (GLOBE),
April 1992.

"World forestry leadership", Canadian International Development Agency
(CIDA) Discussion Paper, Roberts, Pringle and Nagle, December 1991.

"Towards an international instrument on forests", background paper prepared
by J. S. Maini for the Informal Intergovernmental Consultation,
21-22 February 1991, Geneva.

"An international instrument on forests", J. S. Maini and
Franz Schmithüsen. Department Wald- und Holzforschung, Arbetsberichte.
Internationale Reihe Nr. 91/5 ETH, 1991. Zurich and Geneva.
