



DISCUSSION PAPER

Legally-Binding Instrument on Forests: Why bother?

Summary and recommendations

The current crisis facing the world's forests, such as accelerating rates of species loss and deforestation, requires immediate attention and strong political will to shift the trend. Biodiversity loss is a global concern, as stated in the preamble of the Convention on Biological Diversity (CBD), which requires global action. International trade from producer to consumer regions is a key factor causing this forest crisis. A strong, effective and fair multilateral environmental agreement is essential to help address this problem.

Any negotiations that take place on establishing a legally binding instrument on forests must address the current gaps in environmental law, which are, first and foremost, a lack of an innovative financial mechanism to effectively fund forest protection and sustainable forest management that benefits both indigenous peoples and local communities. Secondly, it must include an agreement that assesses illegal and unsustainable logging and trade in forest and timber products.

Greenpeace recommendations:

1. The United Nations Forum on Forests (UNFF) should come to an end in 2005;
2. Governments should focus on the implementation of the Convention on Biological Diversity and review the need for a legally binding instrument later;
3. Concrete, additional and significantly increased financing options should be explored by OECD countries;
4. WTO should be support, rather than undermine Multilateral Environmental Agreements;
5. The trade with timber and timber products (including paper) should be restricted to sustainably harvested products.

Introduction

The forest crisis continues unabated despite decades of discussion and a myriad of agreements on how to address this critical problem. More recently, discussions on the international political stage have moved towards assessing the need for an "international arrangement on forests" (IAF) - in particular the merit of a legally binding instrument (LBI), which concentrates on forests. This issue will be decided on at the 5th Session of the UNFF in May 2005. Whilst international action, which aims to address the forest crisis, is welcomed, a certain degree of caution must be waged on the development of yet another international environmental agreement. Recent history highlights what is absent is political will and financial commitment by countries to make a difference on the ground for those peoples directly dependent on forests.

The time for a successful negotiation is far from ideal. The world's largest economy, the United States, is not willing to ratify a number of important multilateral environmental agreements such as the Kyoto Protocol under the United Nations Framework Convention on Climate Change

(UNFCCC) and the Convention on Biological Diversity (CBD). Instead they are pushing militarism and trade liberalisation to the benefit of only a handful of the richest countries. Furthermore, a new “elite” is emerging within a number of developing countries, where governments want to benefit from trade liberalisation at the neglect of the concerns of the poorest. UN agreements, including the Millennium Development Goals, are not being adequately implemented and lack serious financial support. Donor countries’ budgets are highly in debt, and they are falling short of their commitments to allocate 0.7% of their Gross National Product as official development assistance.

Failure of governments: Endless discussions, but little implementation

Forests have been an issue on the international policy and political agendas for the past 15 years. Following fierce debate at the 1992 United Nations Conference on Environment and Development in Rio de Janeiro, governments agreed to the “Forest Principles” (Non-legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests under national sovereignty), as well as Chapter 11 of Agenda 21: Combating Deforestation.

From 1992 onwards a number of key agreements emerged related to forests- including the Convention on Biological Diversity, the United Nations Framework Convention on Climate Change (UNFCCC), the Convention on Combating Desertification (UNCCD), International Tropical Timber Agreement (ITTA) as well as the 270 non-legally binding proposals for action towards sustainable forest management, which were developed by the Intergovernmental Panel on Forests (IPF) and Intergovernmental Forum on Forests (IFF). Both in 1997 and in 2000 governments failed to agree on a legally binding instrument for forests. So, in its resolution 2000/35, the UN Economic and Social Council took account of the proposal by the IFF regarding the Intergovernmental Arrangement on Forests and established the ‘politics forum’, UNFF and the Collaborative Partnership on Forests in 2000.

Included in the mandate for an intergovernmental arrangement on forests was a decision to consider at the 5th session of the UNFF the need for future actions. A range of ideas are being discussed (see box below), including the further strengthening and improvement of present intergovernmental arrangements on forests, the development of a new legally binding international convention on forests, a framework convention on forests with regional annexes, or the creation of a legally binding protocol under the CBD - (a ‘Kyoto’-Protocol for Forests).

OPTIONS UNDER DISCUSSION FOR A LBI

- CBD protocol on forests
- New forest convention
- New forest framework Convention
- No new LBI, but continuation of UNFF
- UN environmental organisation with
FAO component

Currently there are a host of voluntary and non-binding agreements as well as 40 legally binding instruments relevant to forests – 19 at the global level and 21 at the regional and sub-regional level¹. Considering the large number of legally binding instruments related to forests, the question arises as to what will be the value of negotiating a new instrument?

Current Forest trends – Broken promises

The world’s forest ecosystems are in crisis. Half of the original forests are now gone, and only 20% remain as large tracts that have been largely shaped by natural events and with comparatively little human impact (WRI, 1997). These forests provide the natural habitat of two-thirds of the Earth’s known terrestrial species (WRI, 2000), and maintain the livelihoods and cultural foundation for tens of millions of indigenous peoples and other traditional forest dwellers.

Ancient forest ecosystems are not only harbingers of biodiversity but also perform a number of key roles such as air purification, watershed preservation, they help improve the quality and quantity of freshwater supplies, stabilise soil in order to prevent erosion and reduce the risk of landslides. They are also an important source of carbon, and when destroyed will unleash large quantities of carbon dioxide into the atmosphere. Forest conservation is therefore an important tool to contribute to halting climate change.

¹ <http://www.un.org/News/Press/docs/2004/envdev791.doc.htm>

The traditional way of life of a large number of indigenous peoples and local communities are based on an interdependent relationship with the natural environment. Forest destruction therefore poses a direct threat to the survival of indigenous cultures and local communities' livelihoods. These communities generally lose out the most from the over-exploitation of forest resources by large-scale commercial industries. Their land and user rights related to forests, as well as human rights, are not fully respected or secured.

Despite the recognised environmental, social and cultural value of ancient forests, governments continue to ignore the seriousness of the problem by not implementing the agreements they have made to conserve forests, and deforestation rates in some forest regions are accelerating. For example, the Amazon rainforest which is the largest remaining tropical forest in the world has been experiencing deforestation rates which have climbed to the equivalent to 11 football fields per minute (Laurance et al., 2004), and huge areas are being lost every year to illegal and destructive logging, mining, industrial agricultural plantations and other human industries such as road building. The planting of plantations in response to increasing deforestation will not serve to offset the negative impacts of forest loss. Plantations are not forests; they do not contain the vast diversity of flora and fauna, nor support indigenous peoples and local communities associated with old-growth forests.

Deforestation has also been strongly linked with human rights abuses. The Brazilian Amazon State of Pará has suffered the worst impact from logging, and forest loss has shot up by 48% in the past two years (Laurance et al., 2004). In addition, there are serious conflicts over land and forest resources. Illegal occupancy of public land, violence, murder and modern-day slavery is rife.

Need for a legally binding instrument on Forests?

Countries debating the value of a legally binding instrument at the upcoming discussions at the UNFF need to ensure that efforts will not be spent on replicating previous agreements. In order to ensure the best co-ordination and coherence of further agreements with those that have already been made, it is essential that any future agreement that is made falls under the auspices of the Convention on Biological Diversity, which has the objective of conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources.

The Convention on Biological Diversity has a number of agreements, decisions and programmes of work, which directly relate to addressing the forest crisis. Countries therefore must concentrate on developing initiatives to address the gaps in current environmental international law, which are namely a legal regime which addresses

- (i) **a financing mechanism** to implement forest conservation and ecologically and socially responsible forest management **with the benefit for forest dependent people.**
- (ii) **trade** in forest products, including illegal logging and related enforcement activities.

Any legally binding instrument must challenge the conflict between national sovereignty and global responsibility for forest conservation. Without an incentive and/or sanction mechanism any new agreement will replicate the bottom-line compromise similar to the IFF/IPF 'Proposals' for Action, which have not been implemented anyway. A key incentive would be a substantive increase in financial and technical assistance worldwide, which has been estimated at an extra \$US 25 billion per year (Balmford et al, 2002) for all protected areas both marine (\$US 10 billion) and terrestrial (\$US23 billion -not only forests). A legally binding instrument could facilitate a mechanism where money is made available to developing countries and countries in transition. The facilitation of money at the local, national and regional levels should become more transparent, democratic and integrated into local decision-making processes, with the full involvement of local communities and indigenous peoples.

There is no political will to implement existing agreements, and in the current neo-liberal economic climate, environmental measures (such as CBD requirements) are not, or not sufficiently, being implemented. There is not the financial commitment and resources earmarked for forests. Without attributing adequate economic value to the conservation, sustainable use and equitable sharing of the benefits of forests, these areas will lose out to other immediate industrial uses such as agriculture. Therefore the issue of financing commitments will be central to any

international instrument. Without a significant increase in funding by wealthy countries - any new legislation, agreement, convention is doomed to failure and will be meaningless.

The high commercial value of many forest products has meant that forests, in particular the timber product trade, is a lucrative business. Booming trade in these products has meant that many forest areas are being stripped bare irrespective of the rights of indigenous peoples, local communities and the biodiversity that they house. Furthermore high commercial value has led to increases in illegal and destructive logging in tropical, temperate and boreal forests. Increasing demands from markets in the US, the EU, Japan and recently from China for timber, timber products and paper is one of the driving forces of forest destruction and degradation. This consumption must be steered towards an ecologically sustainable manner that also benefits forest peoples. The forest and timber industry is generally trans-national organised, therefore accountability and responsibility for these sectors should be established internationally. This involves incorporating a reform of tariff and non-tariff systems, which supports sustainable development into a multilateral legally binding instrument, as well as legislation on trade in timber and timber products deriving from illegal and unsustainable sources.

Important to Ensure

There are many concerns that the development of a legally binding instrument in the form of a forest convention will potentially marginalise indigenous peoples and local communities, by endorsing narrow interpretations over rights to natural resources. Therefore it is essential to ensure that the development of any new instruments ensures that measures developed ensure the securing of land and user rights of Indigenous Peoples and local communities, as well as respecting the human rights of these communities.

Furthermore, it needs to address the underlying causes of deforestation and degradation- including addressing the financing of activities that fund ancient forest destruction (perverse subsidies and investment / credits), as well as encourage a decrease in the rampant consumption of forest products.

It is fundamental that any further development of a legally binding instrument should also not circumvent the implementation and enforcement of existing agreements on forests. The necessary financial and human resources must be provided for the implementation of these prior commitments, as well to fund the development of strong implementation instruments and mechanisms. Without these commitments, we are faced with the danger of being embroiled in a very long negotiation process, which diverts attention, energy and resources away from other actions that address the problems on the ground and require immediate attention and implementation.

New forests (framework) convention = reinventing the wheel?

It has been argued that a legally-binding instrument in the form of a convention that is specifically focused on forests is a necessary measure in order to implement existing commitments, generate additional funds and political will, as well as raise the international political profile that is required to address the forest crisis. The legally binding aspect of an agreement is essential- without which there are little legal and formal incentives to adhere to agreements and commitments made.

- However, would a **new** legally binding instrument in effect raise the necessary political will, when previously only meagre political will has been shown on other far-reaching legally binding initiatives?
- How can we be assured that this time will be different?
- How can we be assured that governments and stakeholders will not be embroiled in years of discussion- only to find that the possible value-added that this convention could have, has been diluted or chiselled away by those same countries that have resisted implementing already-existing agreements on forests?
- Do we want to establish new institutions and bodies or can we entrust the existing institutions and bodies with a new or additional mandate?

There is a serious risk that we end up with a meaningless agreement after years have gone by, millions of hectares of forests lost and tens of millions of dollars spent on just talking.

- What will be the **value-added** of setting up a new forest convention in addition to those already existing agreements?
- Will the underlying causes of deforestation and forest degradation be addressed?
- Will the new legally binding instrument help to secure the land and user rights of indigenous peoples and local communities?
- Will participation in decision-making processes at the international, regional, national, local levels significantly improve with a new legally binding instrument?

Should UNFF continue? Role of CBD?

The UNFF has failed to have a significant mitigation effect on deforestation. It has not respected the rights of indigenous peoples and local communities in an adequate manner. The multi-stakeholder processes have not provided meaningful input into decisions. Following the UNFF5 meeting in May 2005 it would be more effective if the UNFF process concluded, and any results be merged and transferred to the processes of the Convention on Biological Diversity This would also support the overarching goal of reforming/streamlining the UN system and its conventions.

The Convention on Biological Diversity is the most logical framework for any further agreement on forests to be housed under. In 2002 the governments attending the 6th Conference of the Parties of the CBD agreed on a Programme of Work on Forest Biological Diversity and committed to the '2010 biodiversity target' to significantly reduce the loss of biodiversity until 2010. This 2010 target was also endorsed by Heads of States at the World Summit on Sustainable Development in Johannesburg. In order to achieve this target, all Programmes of Work under the CBD have been established with measurable goals, targets and objectives. In 2004 at the 7th Conference of the Parties of the CBD governments agreed to an ambitious Programme of Work on protected areas with globally agreed clear goals and targets which are highly relevant to the conservation of forests. Also, they agreed to start negotiations about a regime on Access and Benefit Sharing on plant genetic resources, which is highly relevant for forests (e.g. medical plants). Both governments that have ratified the CBD (which does not include the USA), and also a large number of stakeholders are committed to a tight timeline for implementation, as well as an ongoing process to monitor this implementation. In June 2005 a meeting of donors will convene to address the financial needs of developing countries and countries in transition.

The advantage of developing a Protocol under the Convention on Biological Diversity, as opposed to establishing a new convention, is that there is an already established conceptual and institutional basis, and it would ensure coherence and integration of approaches. It is also important that the scope of the instrument is global, recognising that this is indeed a global problem, which requires a concerted international response. However, it is key that the scope and the contents are specific, narrow and have explicit priority-setting with clear goals, targets and objectives, to ensure a much greater chance of success in being effective and alleviating the forest crisis. Furthermore, the CBD already has experience of housing a supplementary agreement to the Convention through the Biosafety Protocol, which seeks to protect the environment from the potential risks of Genetically Modified Organisms. A CBD Protocol on Forests could have a similar profile to the Kyoto-Protocol under the United Nations Framework Convention on Climate Change (UNFCCC), which is a good example of the 'protocol concept' under a convention.

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