



# INC-Forests Bulletin

Summary of the Resumed Fourth Session of the Intergovernmental Negotiating Committee for a Legally Binding Agreement on Forests in Europe (INC-Forests4)  
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## SUMMARY OF THE RESUMED FOURTH SESSION OF THE INTERGOVERNMENTAL NEGOTIATING COMMITTEE FOR A LEGALLY BINDING AGREEMENT ON FORESTS IN EUROPE 7-8 NOVEMBER 2013



INC-Forests Chair Jan Heino and Luca Arnold, Switzerland, during the opening of the session

The Resumed Fourth Session of the Intergovernmental Negotiating Committee for a Legally Binding Agreement on Forests in Europe (INC-Forests4) convened from 7-8 November 2013 in Geneva, Switzerland. The two-day session was: preceded by informal consultations held on 6 November 2013; and attended by about 160 participants, including delegates from 38 countries and the European Union (EU), and observers from the United States (US), five regional and international organizations, and 10 producer associations and non-governmental organizations. The UN Food and Agriculture Organization (FAO) served as the Secretariat during session, assisted by the European Forest Institute and the Liaison Unit Madrid of the Ministerial Conference on the Protection of Forests in Europe (FOREST EUROPE).

The meeting worked in plenary on Thursday and Friday morning, all of Friday evening and into Saturday morning, with a contact group convening on Thursday afternoon, Friday morning before plenary and Friday afternoon. In addition, a legal expert group reviewed the entire convention text Thursday afternoon and evening, and Friday afternoon.

Resumed INC-Forests4 was unable to produce breakthroughs on the bracketed articles of the draft convention text, the draft decision to be sent to the Extraordinary Ministerial Conference, which will review the results of the Intergovernmental Negotiating Committee (INC), and arrangements on institutional matters. The unfinished convention text and draft decision were forwarded to the Extraordinary Ministerial Conference to be held at a date to be determined, for consideration and appropriate action.

**Strasbourg 1990:** The first Ministerial Conference on the Protection of Forests in Europe took place in Strasbourg, France, on 18 December 1990. Participants agreed to initiate scientific and technical cooperation within Europe, adopting a general declaration and six resolutions on monitoring forest ecosystems, conserving forest genetic resources, creating a decentralized European Data Bank on forest fires, adapting mountain forest management to new environmental conditions, expanding a research network on tree physiology, and creating a European research network on forest ecosystems.

**Helsinki 1993:** The second Ministerial Conference was held in Helsinki, Finland, from 16-17 June 1993. Participants adopted a general declaration and four resolutions on: general guidelines for sustainable forest management (SFM) in Europe; general guidelines for conserving the biodiversity of European forests; forestry cooperation with countries with economies in transition; and strategies for a process of long-term adaptation of forests to climate change.

**Lisbon 1998:** The third Ministerial Conference was held in Lisbon, Portugal, from 2-4 June 1998. The Conference focused on the socioeconomic aspects of SFM and affirmed

### A BRIEF HISTORY OF INC-FORESTS

The INC-Forests process was launched by the 2011 FOREST EUROPE Ministerial Conference on the Protection of Forests in Europe, held in Oslo, Norway (Oslo 2011). FOREST EUROPE is a high-level political initiative founded in 1990 to work towards the protection and sustainable management of forests throughout Europe. Forty-six European countries and the EU, in cooperation with a range of international organizations, participate in FOREST EUROPE.

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the outcomes of the Helsinki follow-up process. Participants adopted a general declaration and resolutions on: enhancement of socioeconomic aspects of SFM; and pan-European criteria, indicators and operational level guidelines for SFM.

**Vienna 2003:** The fourth Ministerial Conference took place in Vienna, Austria, from 28-30 April 2003. Conference participants adopted the Vienna Living Forest Summit Declaration and five resolutions on: strengthening synergies for SFM in Europe; enhancing the economic viability of SFM; preserving and enhancing the social and cultural dimensions of SFM; conserving and enhancing forest biodiversity; and addressing climate change and SFM in Europe.

**Warsaw 2007:** The fifth Ministerial Conference was held in Warsaw, Poland, from 5-7 November 2007, during which a proposal was tabled to begin a process for exploring the possibility of a legally binding agreement (LBA) on forests in Europe. This resulted in the establishment of two working groups. The first working group was mandated to explore the potential added value of a LBA and possible options for such an agreement. The second working group was tasked with preparing options for a decision on a possible LBA and producing a non-paper setting out such options.

**Oslo 2011:** The sixth Ministerial Conference was held in Oslo, Norway, from 14-16 June 2011. The Conference adopted the Oslo Ministerial Mandate for Negotiating a LBA on Forests in Europe (the Oslo Mandate), under which the FOREST EUROPE signatories decided to take further international action on forests through the elaboration of a LBA, and established the INC to develop this agreement. Although rooted within FOREST EUROPE (through the Oslo Mandate), the INC is an independent process. Under its mandate, the INC was expected to complete its work by 30 June 2013, and present its results to a FOREST EUROPE Extraordinary Ministerial Conference to be held within six months of the conclusion of the negotiations.

**INC-Forests1:** INC-Forests1 was held from 27 February to 2 March 2012 in Vienna, Austria, and focused on providing guidance to the INC Bureau to elaborate the initial draft negotiating text of the agreement. During the session, the INC considered a “Non-paper on a Possible LBA on Forests in Europe,” and discussed the possible structure of such an agreement. It also established a roadmap for the negotiations and requested the INC Bureau to develop the first draft of a negotiating text.

**INC-Forests2:** INC-Forests2 was held from 3-7 September 2012 in Bonn, Germany, and undertook a first reading of the LBA draft negotiating text. A revised text incorporating proposals by delegates and observers was considered by two sessional working groups, which addressed general provisions, compliance, procedures and final clauses. INC-Forests2 discussed terms and definitions and agreed on a list of those deemed essential for the LBA, indicating that some intersessional work might be required on definitions. INC-Forests2 revised the roadmap for the negotiation process and intersessional work.

**Country-Led Initiative Expert Meeting on Terms and Definitions:** During INC-Forests2, Spain offered to host an expert meeting to consider, in detail, the terms and definitions needed for the LBA. Held from 27-28 November 2012 in Madrid, participants at the meeting examined the list of terms discussed during INC-Forests2 and recommended those they deemed essential for a final LBA text, along with suggested

definitions. They also determined which terms did not require definitions, and elaborated a list of additional terms that they believed should be added to the section.

**INC-Forests3:** INC-Forests3 convened in two parts, the first from 28 January to 1 February 2013 in Antalya, Turkey, and a resumed session from 3-5 April 2013 in Saint Petersburg, the Russian Federation. INC-Forests3: completed the second reading of the draft negotiating text and began the final reading; changed the structure of the draft negotiating text to bring it more in line with convention format; initiated legal scrutiny of the final clauses; decided to bring the agreement “under the UN umbrella”; reviewed a draft annex on arbitration; and decided on the roadmap for negotiations from Saint Petersburg to the Extraordinary Ministerial Conference tentatively scheduled to be held in Madrid, Spain.

**INC-Forests4:** The first part of INC-Forests4 was held from 10-14 June 2013 in Warsaw, Poland. INC-Forests4 revised most of the draft negotiating text, including two annexes on arbitration and conciliation, and continued discussion of: arrangements for bringing the LBA under the UN umbrella; possible financial and secretariat arrangements for the LBA; and presentation of the results of INC-Forests to the Extraordinary Ministerial Conference. The session was unable to conclude its consideration of all issues and reach a final agreement and, consequently, on Friday evening, 14 June, INC-Forests4 was suspended.

## REPORT OF INC-FORESTS4

### OPENING OF THE SESSION

On Thursday, 7 November, INC Chair Jan Heino (Finland) opened the Resumed Session of INC-Forests4. He said the session would be full of hard work and challenges and would require joint efforts, but if delegations tackled the issues with flexibility, a cooperative spirit and commitment, the talks would succeed. He also reported on the informal meeting with the heads of delegations convened by the Chair on 6 November.

Luca Arnold, Federal Office for the Environment, Switzerland, welcomed participants, noting the considerable progress made on technical matters, which has produced a concise draft negotiating text that promotes SFM while addressing all three pillars of sustainable development in a balanced manner. He expressed hope that constructive engagement since the INC-Forests4 meeting in Warsaw, particularly the informal meeting held in Madrid on 19 September 2013, left the question of institutional arrangements



INC-Forests Chair Jan Heino, Luca Arnold, Switzerland, and Malgorzata Busko-Briggs, INC Secretary

less polarized. He noted that all parties present at the Madrid meeting signaled their readiness to find a compromise solution regarding a joint secretariat as proposed by Switzerland, but work remains to be done to find the best combination of comparative advantages of the different international organizations working together in a joint secretariat.

The Russian Federation declared it was time for the INC to make decisions and deliver. He said while the current draft of the LBA provides a good substantive framework, it must be matched with an effective institutional mechanism for implementation. He suggested that the choice of such an institution be based on an organization's proven record in administering and servicing multilateral treaties, as well as its use of engagement rules that make contracting parties feel that: the process is inclusive; they have full ownership of the process; decisions are taken in a transparent manner; and everybody's voice is counted and is respected. Citing, *inter alia*, paragraphs in Rio+20's "The Future We Want" on the role of UN regional commissions, the track record of the UN Economic Commission for Europe (UNECE)/FAO joint section on forestry, the need to build linkages with other conventions, and the need for the LBA to be placed within an organization that closely mirrors the set of LBA contracting parties, the Russian Federation called for the UNECE to host the LBA.

Lithuania, on behalf of the EU, said the EU looked forward to continuing deliberations in the "same good spirit" shown in prior INC sessions with a view to concluding the negotiations successfully in Geneva. Liechtenstein said that for a small country with limited resources that is not a FAO member, the LBA institutional framework is highly important, and supported putting the LBA under UNECE, especially since his country already has a diplomatic presence in Geneva. Serbia, stressing the importance of the LBA for pan-European forestry policy and as the basis for a future global agreement on forests, expressed support for: putting the LBA under UNECE; a joint secretariat with FAO but with UNECE in the lead role; and ensuring that the LBA is open to all UN states.



Valdas Vaiciunas, Lithuania

Norway expressed pride in what the INC has accomplished on the substantive side. He reiterated his country's preference for adopting the LBA under FAO and having a joint secretariat of FAO, UNECE and the UN Environment Programme (UNEP), with FAO in a leading role with administrative responsibility.



Knut Øistad, Norway

The European State Forest Association and the Confederation of European Forest Owners urged the Committee to consider agreeing on an interim secretariat arrangement if a permanent LBA secretariat cannot be agreed upon now.

FAO stressed the need for consistent governance mechanisms in order to ensure that the competing demands on forests are harmonized and scaled so that they do not exceed the present carrying capacity of forest resources. Underlining the importance of the first LBA on forests in this respect, FAO expressed its readiness to serve the convention in whatever manner parties may decide and its commitment to engaging civil society. He also noted that international arrangements on forests would be reviewed in 2015.

Kazakhstan emphasized the importance of the principle of equality of states in the agreement, and supported the Russian Federation and Liechtenstein on having the LBA secretariat in Geneva under UNECE. Kyrgyzstan said UNECE has a comparative advantage as the best institution to service and administer the LBA.

The draft provisional agenda (Document 1/INC4add.1) was adopted without amendment.

Chair Heino outlined the proposed organization of work, welcoming the US as an observer to the session. He reported that Switzerland arranged for an audio archive of the resumed session. The Committee discussed establishing contact groups and informal sessions outside of the plenary to address outstanding issues, and Chair Heino proposed the legal expert group review the draft negotiating text before a final review by the Committee.

#### **CONSIDERATION OF THE DRAFT NEGOTIATING TEXT**

On Thursday morning, the resumed session of INC-Forests4 continued the final reading in plenary of the draft negotiating text resulting from the first part of INC-Forests4 in Warsaw (Document 2/INC4add.1). A contact group, co-chaired by Ingwald Gschwandtl (Austria) and Liubov Poliakova (Ukraine), was then established to handle all remaining issues, starting with those related to institutional arrangements, while a legal expert group, chaired by Jolyon Thomson (UK), conducted a review of draft negotiating text language and proposed many editorial changes, as well more substantial changes, most of which were accepted by the Committee.

**TITLE:** Resumed INC-Forests4 began with four options in brackets: "European Forest Convention," "Regional Forest Convention," "International Framework Convention on Forests" and "Forest Convention." In plenary on Thursday morning, the EU expressed preference for the title "European Forest Convention," whereas Ukraine, supported by Georgia, Belarus, Kazakhstan, the Russian Federation and Switzerland, preferred "Forest Convention." The Russian Federation, Kyrgyzstan and Switzerland also said they could accept "Convention on Forests." Delegates agreed to remove the options of "Regional Forest Convention" and "International Framework Convention on Forests."

**Outcome:** The draft negotiating text currently contains the options of "European Forest Convention," "Forest Convention" and "Convention on Forests" in brackets.

**PREAMBLE:** The preamble entered the resumed session in Geneva agreed *ad referendum*. On Friday night, the legal expert group suggested several editorial changes in the preamble, such as including the full titles of several treaties and eliminating the footnotes. The Committee accepted these proposals.

**Outcome:** As agreed *ad referendum*, the preamble contains paragraphs on, *inter alia*: the multiple economic, social, cultural and environmental benefits of forests; and the role of forests and SFM in sustainable development.

**TERMS AND DEFINITIONS:** This article entered the resumed session in Geneva agreed *ad referendum*. On Friday night, the legal expert group suggested several editorial changes to the article. The Committee accepted all of these except the group's recommendation to replace use of "and/or" with just "or" in the definition of "national forest programme" when referring to "a participatory, holistic, inter-sectoral and iterative process of policy planning, implementation, monitoring and evaluation at the national and/or subnational level."

**Outcome:** As agreed *ad referendum*, this article includes definitions of: forest; SFM; criteria for SFM; forest ecosystem services; goods; national forest programmes; forest fragmentation; forest degradation; forest restoration; illegal harvesting; and regional economic integration organizations.

**OBJECTIVE:** This article on the convention's objective entered the resumed session agreed *ad referendum*, and no changes were made to it during the Geneva meeting.

**Outcome:** This article states the objectives of the convention, such as: reinforcing and strengthening SFM implementation; ensuring forest multifunctionality; enhancing the role of forests and forestry in contributing to solving global challenges; and providing a framework for fostering national actions and international cooperation.

**PRINCIPLES:** This article entered the resumed session in Geneva agreed *ad referendum*, and no changes were made to it during the Geneva meeting.

**Outcome:** This article includes such principles as: recognizing shared interests and responsibilities concerning forests; good governance and enabling conditions for SFM; active participation of forest owners and other stakeholders in developing and implementing policies; cross-sectoral cooperation and coordination; and reinforcing and strengthening SFM implementation in a way that is mutually supportive with existing rights and obligations under other multilateral agreements.

**GENERAL PROVISIONS:** This article entered the resumed session in Geneva agreed *ad referendum*, and only minor editorial changes were made during the session.

**Outcome:** This article states that parties shall take measures to: ensure that SFM is implemented; use SFM criteria as a guiding framework for policy development; develop, implement and update national forest programmes or the equivalent; maintain and/or strengthen enabling conditions; and strengthen and enhance international, regional and cross-border cooperation and coordination.

#### **FOREST RESOURCES AND THEIR CONTRIBUTION TO GLOBAL CARBON CYCLES:**

This article entered the resumed session in Geneva agreed *ad referendum*. On Friday night, the legal expert group suggested substituting "or" for "and/or other relevant measures" in the subparagraph on forest fragmentation. Ukraine objected, stating the language was the result of protracted negotiations and should not be changed, so the recommendation was not approved.

**Outcome:** As agreed *ad referendum*, this article states that parties shall have in place or adopt legislative, administrative or other policy measures to: maintain or enhance forest resources and the capacity of forests and forest products to act as carbon sinks and reservoirs; substitute non-renewable materials and energy; and contribute to a low-carbon emission economy; and reduce forest fragmentation.

**FOREST HEALTH AND VITALITY:** This article entered the resumed session agreed *ad referendum*, and no changes were made in Geneva.

**Outcome:** This article states that parties shall have or adopt legislative, administrative or other policy measures to: maintain and enhance the health and vitality of forests and forest soils; implement measures on forest resilience, the role of forests in combating desertification, forest pests, diseases and fires; and adapt forest management practices to changing climatic conditions.

**PRODUCTIVE FUNCTIONS OF FORESTS:** This article entered the resumed session in Geneva agreed *ad referendum*, and only minor editorial changes were made in Geneva.

**Outcome:** This article, agreed to *ad referendum*, states that parties shall have in place or adopt legislative, administrative or other policy measures on: enhancing the use of wood from sustainably managed forests; eliminating illegal harvesting of timber and associated trade; and integrating the use of sustainably produced forest products into relevant measures for sustainable consumption and production.

**FOREST BIODIVERSITY:** This article entered the resumed session agreed *ad referendum*, and no changes were made in Geneva.

**Outcome:** This article states that parties shall have or adopt legislative, administrative or other policy measures on: protecting, restoring and, where appropriate, increasing forest biodiversity; maintaining or further developing networks or systems of representative protected forest areas; conserving endemic and threatened species in forests; and preventing and mitigating the negative impacts of invasive alien species.

**PROTECTIVE FUNCTIONS OF FORESTS:** This article entered the resumed session in Geneva agreed *ad referendum*, and only minor editorial changes were made in Geneva.

**Outcome:** This article states that parties shall have in place or adopt legislative, administrative or other policy measures on: maintaining, enhancing or restoring the protective functions of forests, such as water and soil protection; enhancing the protection of groundwater and surface water resources; and identifying and compiling relevant information for awareness raising, decision making and strengthening inter-sectoral cooperation.

**SOCIOECONOMIC FUNCTIONS OF FORESTS:** This article entered the resumed session in Geneva agreed *ad referendum*. The legal expert group suggested several editorial changes in the article, which the Committee accepted.

**Outcome:** This article states that parties shall have or adopt legislative, administrative or other policy measures on, *inter alia*: taking the social and cultural benefits of forests into account in SFM; broadening and diversifying the financial basis for SFM; increasing the contribution of forests to sustainable development; improving the use of scientific and traditional forest-related knowledge; and facilitating communication between policy makers and all stakeholders.

**MONITORING AND REPORTING:** This article entered the resumed session in Geneva agreed *ad referendum*. On Friday night, the legal expert group suggested an alternative structure for the paragraph on reporting to make it clearer, which the Committee accepted.

**Outcome:** This article, agreed to *ad referendum*, requires parties to: monitor and analyze or assess the status and development of their forests; analyze or assess progress in SFM implementation; and periodically report to the Conference of the Parties (COP) on measures taken to implement the convention, as well as information on the status and development of their forests and progress in implementing SFM.

**CONFERENCE OF THE PARTIES (COP):** At the start of the resumed session in Geneva, no part of this article had been agreed *ad referendum*, although some paragraphs were without brackets. In plenary discussion on Thursday, Chair Heino noted that the Committee had received examples regarding admittance and participation of observers in COP sessions from UN system organizations, and requested to hear proposals from observers to the INC. No proposals were offered by observer organizations. Switzerland suggested bracketing the reference to a regional economic integration organization becoming an observer to the convention if it is a member of, or observer to, the UN, its specialized agencies or the International Atomic Energy Agency.

On Friday evening in plenary, the legal expert group proposed amending the subparagraph on the COP reviewing its programme of work to clarify that only ordinary COPs will do so. The legal expert group suggested adding to this subparagraph that the COP shall adopt a budget. On the paragraph regarding the COP adopting rules of procedure and financial arrangements, the group suggested borrowing the following language from the Minamata Convention on Mercury: “adoption of financial rules and financial provisions.” The Russian Federation asked to reflect these suggestions in the text, but to place them in brackets for the time being.

On admission of observers to the COP, the legal expert group also recommended, and the Committee accepted, adding “at least” before one-third of the parties present at the COP must object to stop the admission of an observer. Legal Expert Group Chair Thomson also announced that during its deliberations Switzerland agreed to lift the brackets around the reference to regional economic integration organization becoming an observer.

**Outcome:** This article contains six paragraphs, four of which are free of brackets, but not agreed *ad referendum* given that brackets still remain around text in the article. The unbracketed portions of this article describe the tasks of the COP as, *inter alia*: carrying out periodical examination of the obligations of parties and the institutional arrangements; recommending future actions; facilitating the exchange of information on SFM; establishing a programme of work; cooperating with international organizations, processes, and intergovernmental and non-governmental bodies; and establishing subsidiary bodies. This article also specifies the frequency of COP sessions and that the first COP shall adopt by consensus, the rules of procedure and financial arrangements, including those for the secretariat. Only two paragraphs, on the first session of the COP and on the admission of observers to COP sessions, contain bracketed text.

**RIGHT TO VOTE:** The Committee began discussions on this article at the resumed INC-Forests4 session with one of two paragraphs bracketed.

**Outcome:** The text on limiting the right to vote of regional economic integration organizations remains bracketed.

**SECRETARIAT:** At the start of the resumed INC-Forests4 session, this article contained brackets in paragraphs regarding the organizations to perform secretariat functions and the first COP making arrangements for such functions. During Thursday morning’s plenary, Switzerland proposed that the heads of UNECE, FAO and UNEP shall set out details of their work-sharing arrangements in a memorandum of understanding (MOU) to be “adopted and subsequently” reviewed on a regular basis by the COP. This proposal is included in the draft negotiating text in brackets.

Switzerland, supported by the Russian Federation, Serbia, Kazakhstan and Ukraine, but opposed by the EU and Norway, proposed deleting the paragraph on the COP making arrangements, at its first session, for the functioning of the secretariat.

**Outcome:** This article contains brackets in the paragraphs regarding: the organizations to perform secretariat functions; and the first COP making arrangements for those functions. Secretariat functions agreed to include: compiling, transmitting and making available reports; reporting on its activities to the COP; and cooperating, as appropriate, with the relevant international organizations, processes, and intergovernmental and non-governmental bodies and organizations.

**COMPLIANCE:** This article entered the resumed INC-Forests4 session with no subparagraphs agreed *ad referendum*. During plenary discussions on Thursday, the Committee agreed to the suggestion by Switzerland that each Party shall take “all” appropriate measures within its competence to ensure compliance with the convention.

Switzerland proposed replacing “of its rules of procedure” with “of its terms of reference,” explaining that this is already addressed in the article on the COP, further proposing, but opposed by the EU and Norway, that this entire section be deleted.

In Friday evening’s plenary, the legal expert group proposed rephrasing the subparagraph on the compliance committee providing advice and facilitating assistance to parties to say that the compliance committee “may” or “shall” do so, depending on which option delegates thought appropriate for the text. Ukraine suggested “may” and the Committee agreed. The group also suggested deleting reference to “individual Parties and groups of Parties” and just saying “Parties,” but Ukraine objected.

The legal expert group also suggested rephrasing another subparagraph to make it clear that the compliance committee shall make its reports available to the public. The INC accepted this recommendation.

**Outcome:** This article, as currently drafted, entrusts the secretariat to review, analyze, compile and report on the information submitted by parties. It also describes the composition of the compliance committee. Text on whether the COP will elect the members of the committee and adopt its terms of reference and rules of procedure by consensus remains bracketed. Text on the information that the committee may consider in carrying out its functions also remains bracketed.

**SETTLEMENT OF DISPUTES:** This article came to the resumed INC-Forests4 session in Geneva with six paragraphs free of brackets but not agreed *ad referendum*. On Friday night,



Marat Berdyev and Alexander Panfilov, Russian Federation

the legal expert group suggested several changes, including referencing the annex on arbitration as annex A and the annex on procedures related to conciliation as annex B.

**Outcome:** As now drafted, this article states that disputes on the interpretation or application of the convention are to be solved through “consultation, negotiation or any other peaceful means of dispute settlement” including through resort to the International Court of Justice and/or arbitration. When parties to a dispute have not accepted the same means of dispute settlement, each of them could submit the dispute to conciliation, pursuant to the procedure set out in the annex on conciliation.

**AMENDMENTS TO THE CONVENTION:** This article came to the resumed session in Geneva with only one bracket around “deposit with” the depositary. On Friday evening, the legal expert group recommended, and the Committee accepted, removing these brackets as they were unnecessary since a convention can only be deposited with the depositary.

**Outcome:** This article is without brackets but not yet agreed *ad referendum*. As now drafted, the article covers proposals of amendments, rules on voting when an amendment cannot be reached by consensus, and entry into force of an amendment.

**ADOPTION AND AMENDMENT OF ANNEXES TO THE CONVENTION:** This article entered the Geneva session with only one bracket concerning a cross-reference to the article on amendments to the convention, but none of the text was agreed *ad referendum*.

During Friday evening’s plenary, the legal expert group recommended textual changes that would make the process of adopting or amending annexes easier by allowing them to automatically come into force 12 months after their communication by the secretariat, provided that a certain threshold number of parties has adopted them. Ukraine, supported by the Russian Federation, pointed out that this issue had been discussed extensively in previous INC-Forests sessions and asked to retain the current text.

**Outcome:** As presently drafted, this article contains provisions on: annexes as an integral part of the convention; restrictions on their subject matter; and rules for their proposal, adoption and entry into force.

**PROTOCOLS:** This article came to the INC-Forests4 meeting in Geneva with clean text but not yet agreed *ad referendum*.

**Outcome:** As currently drafted, this article covers the rules for proposals, adoption and entry into force of protocols.

**SIGNATURE:** This article entered Geneva with brackets or notations in all three paragraphs and an alternate formulation proposed for one of the paragraphs on which states not in the proposed annex of signatories may also sign onto the convention. During plenary discussions on Thursday morning, Switzerland proposed new text, opposed by the EU and Norway, saying that the convention would be open to: UNECE members; states having UNECE consultative status; and regional economic integration organizations, “constituted by sovereign states members” of UNECE, to which their member states have transferred competence over matters governed by the convention, including competence to enter into treaties with respect to forestry matters.

On Friday evening, the legal expert group suggested several editorial changes that were accepted by the Committee, including referencing a possible annex on states and regional economic integration organizations that are signatories to the convention.

**Outcome:** The entire text under this article remains bracketed.

**RATIFICATION, ACCEPTANCE, APPROVAL OR ACCESSION:** In Thursday morning’s plenary discussion, Switzerland proposed adding accession to the options in the text along with ratification, acceptance and approval, and changing “signatories” with “states and regional economic integrated organizations referred to in the article on signature.” The EU asked to bracket the proposal.

**Outcome:** As currently drafted, this article: specifies a range of dates during which the convention would be open to accession by any state or regional economic integration organization that has not signed the convention; and contains the rule on regional economic integration organizations declaring their competence in matters governed by the convention.

**ENTRY INTO FORCE:** At the start of the resumed INC-Forests4 session, the entire text of this article was bracketed. Thursday morning’s plenary discussion of the article began



Delegates conferring during a break

with the EU supporting Ukraine's proposal to have the convention enter into force 90 days after the deposit of the 35th instrument of ratification, acceptance, approval or accession. Switzerland proposed alternative text, saying that entry into force would occur 90 days after the deposit of the 20th instrument "from states referred to in the article on signature of which not more than 15 states belong to the same regional economic integration instrument." The EU asked to bracket the Swiss proposal. Norway proposed 33 deposits instead of 35, which the EU supported.

**Outcome:** The entire text of this article remains bracketed.

**RESERVATIONS:** The article on reservations entered the INC-Forests4 meeting in Geneva without brackets but was not yet agreed *ad referendum*. On Friday evening, the legal expert group suggested one minor editorial change, which the Committee accepted.

**Outcome:** This article states that there shall be no reservations made to the convention and is not agreed *ad referendum*.

**WITHDRAWAL:** This article entered the resumed INC-Forests4 meeting without brackets, but was not yet agreed *ad referendum* and was not considered in Geneva.

**Outcome:** As currently drafted, this article says that: any time after three years after the convention enters into force, a party may withdraw by giving written notification to the depositary; withdrawal would then take effect one year from receipt of the notification, or at a later date if specified in the notification; and withdrawal from the convention shall be considered as withdrawal from any of its protocols.

**TERMINATION:** This article entered the resumed session in Geneva agreed except for text specifying the minimum number of parties at which, once reached as a result of withdrawals, the convention must be terminated. Ukraine proposed the threshold be set at 20, while Switzerland proposed amending the article to add language calling for termination of the convention if all parties belong to the same regional economic integration organization. The EU asked to bracket the Swiss proposal.

**Outcome:** As now drafted, this article calls for the convention to be terminated if and when, as a result of withdrawals, the number of parties drops below a certain number, unless the remaining parties unanimously decide otherwise. Reference to the number of parties remains bracketed.

**DEPOSITARY:** This article entered the resumed session in Geneva with only the name of the person or entity that will serve as the depositary not yet agreed. During the plenary discussion on Thursday morning, the EU, Norway, Turkey, Georgia, Azerbaijan and Albania supported inserting "the FAO Director-General," while the Russian Federation, Ukraine, Kazakhstan, Switzerland, Kyrgyzstan, Serbia, Belarus, Liechtenstein and Armenia supported inserting "the United Nations Secretary-General."

**Outcome:** A placeholder bracket remains in this article for the name of the person or entity that will serve as the depositary.

**AUTHENTIC TEXTS:** This article entered the resumed session in Geneva with no agreement regarding which languages the authentic texts would be in, and who they should be deposited with. In the plenary on Friday evening, the legal expert group proposed, instead of referencing a specific person or entity for deposit, that the article only refer to "the depositary." The Committee agreed to this suggestion.

**Outcome:** As drafted after the resumed session, this article states that authentic texts shall be deposited with the depositary. Placeholder brackets remain regarding languages of the authentic texts.

**ANNEXES:** Both the annex on arbitration and the annex on conciliation entered the INC-Forests4 meeting in Geneva with clean text except for cross-references to convention articles. On Friday evening, the legal expert group suggested a number of editorial changes, including titling the annex on arbitration as annex A and the annex on conciliation as annex B. The Committee accepted these changes.

**Outcome:** The agreed annex text on arbitration includes rules on: initiation of the arbitration process; composition, powers and rules of procedure of the arbitral tribunal; obligations of parties; costs; intervention in arbitral proceedings; time limits; and right to appeal. Brackets remain in provisions making reference to the organization invited to host the convention.

The agreed annex text on conciliation includes rules on: initiation of the conciliation procedure; composition, powers and rules of procedure of the conciliation commission; obligations of parties; costs; and time limits. Brackets remain in provisions making reference to the organization invited to host the convention.

A proposed annex listing states and regional economic integration organizations that are signatories to the convention is currently in brackets, pending a decision on whether to retain the annex.

## CONSIDERATION OF INSTITUTIONAL ARRANGEMENTS

On Thursday afternoon, at the Russian Federation's request, the contact group discussed what functions and attributes parties expected from organizations participating in a joint secretariat. Delegations agreed to work overnight on creating their own matrix of secretariat functions as listed in the relevant article of the draft negotiating text, identifying which organization they wanted to fulfill each function and why. On Friday morning before plenary, the contact group examined and discussed a composite matrix.

During Friday morning's plenary, Switzerland said the INC faced two choices: postpone taking key decisions; or negotiate a package deal in Geneva. He argued that postponement was not a desirable option, since: the Oslo Mandate does not allow for more sessions; and it would create a credibility problem for the draft convention. He underscored that if foresters really aspired to an eventual agreement at the global level, they must first show that they can reach consensus at the regional level. He noted the Spanish non-paper on the possible option of a diplomatic conference discussed at the September meeting in Madrid, characterizing it as a procedural rather than a substantive approach that would not resolve any of the key outstanding substantive questions.



Contact Group Co-Chair Liubov Poliakova, Ukraine



Delegates met in an early morning contact group session

Switzerland suggested, in the context of how to proceed going forward, that since a package deal approach with FAO as the lead in a joint secretariat had failed at the INC-Forests4 Warsaw meeting, a package deal approach with UNECE as the lead should be negotiated, and that those countries favoring UNECE as the lead should indicate what other issues they might be willing to compromise on. Ukraine and the Russian Federation said that a diplomatic conference was not a viable option, and, with Serbia, Belarus and Liechtenstein, supported exploring consultations on a package along the lines suggested by Switzerland.

The EU said that while they were open to discussing any option, they doubted whether considering a package deal based on UNECE, rather than FAO, as the lead in the secretariat, would be a “well-balanced approach.” Norway preferred to continue addressing outstanding issues one-by-one instead of negotiating a package deal. Ukraine suggested considering the Swiss proposal in the contact group.

When plenary reconvened in the afternoon, Chair Heino invited further comments regarding the Swiss proposal to negotiate a package deal. Reiterating that such a package deal would be “unbalanced,” the EU, supported by Turkey, instead recommended exploring the option of a diplomatic conference. Norway said since this option had never been formally proposed, he was open to hearing the details. Ukraine said a diplomatic conference was not suitable and outside the Oslo Mandate, which specified that the LBA should be elaborated within the INC. The Russian Federation expressed surprise that the EU would consider a package as unbalanced before knowing its contents, and suggested postponing key decisions to a diplomatic conference would be unproductive.

Chair Heino suggested discussing the diplomatic conference option, either in plenary or in the contact group. The EU, supported by Turkey, supported discussing it in the contact group.

During the afternoon session of the contact group, experts from FAO, UNEP and the UN Office of Legal Affairs answered questions from delegations regarding the legal implications of FAO, UNEP and UNECE serving in different roles in a joint secretariat. A proponent of the diplomatic conference option was invited to detail the proposal. The proponent suggested having a diplomatic conference approve the UN Secretary-General as the convention depositary, and a joint convention secretariat with UNECE, FAO and UNEP “on equal footing,” with details of the secretariat arrangements to be finalized at the first COP.

Several delegations expressed doubts about a diplomatic conference, with one pointing out that all substantive issues would have to be worked out beforehand anyway,

since diplomatic conferences traditionally do not undertake substantive negotiations. The contact group co-chairs offered to explore possible elements for a package deal centered on UNECE as lead in a joint secretariat, but no delegation was willing to propose such elements and one group repeated its characterization of any deal with UNECE in the lead as “unbalanced.”

When plenary reconvened Friday evening, Co-Chairs Gschwandtl and Poliakova reported on the contact group’s discussions. Poliakova noted that during the discussions on the diplomatic conference option, questions remained unanswered regarding how the conference would be paid for, who would serve as its secretariat, what the conference’s specific objectives would be, where it would be held, and whether all substantive questions must be decided beforehand.

Acknowledging the associated costs, the EU expressed confidence that additional funding for a diplomatic conference could be raised if the political will to have such a conference existed, adding that a “corresponding UN system organization” could be asked to carry out secretariat functions. He further noted that they had proposed having a joint secretariat administering and servicing the convention with the participating organizations placed “on equal footing,” but said the EU proposal had not been “well met” by others. Switzerland said it had suggested a package deal approach whose elements would be discussed and decided upon jointly by delegations, not on the basis of a proposal by a single delegation.

Ukraine said they could not agree to a conference without prior clear understanding of its parameters and knowing whether the institutional question would be agreed on before the conference. The Russian Federation said if the diplomatic conference option is to be agreed upon, the details of its form and format must be known beforehand.

Upon reconvening after a break for consultations, the plenary did not further address the issues of institutional arrangements or a possible diplomatic conference.

#### **CONSIDERATION OF THE INC RESULTS AND THEIR PRESENTATION TO THE EXTRAORDINARY MINISTERIAL CONFERENCE**

In Thursday morning’s plenary, the Committee reviewed the text of the draft ministerial decision as amended in Warsaw (Document 5/INC4add.1), with the Russian Federation suggesting that the preamble should have two options for ministers: “welcoming” or “taking note of” the INC results. Switzerland proposed language that would have UNECE, FAO and UNEP submit a MOU on joint interim secretariat functions that would be adopted jointly with the convention, to

last from the convention's entry into force until the first COP. Switzerland also proposed new text calling for a separate MOU on joint permanent secretariat functions to be submitted to the COP for its adoption and periodic review.

In Friday evening's plenary, Contact Group Co-Chair Gschwandtl reported that the group had discussed legal and procedural aspects regarding adoption of the text.

Ukraine, supported by the Russian Federation, Belarus and Switzerland, suggested forwarding the following text to ministers: "The Intergovernmental Negotiating Committee transmits the text of the draft legally binding agreement to the Extraordinary Ministerial Conference of FOREST EUROPE for consideration and appropriate actions."

The EU and Norway preferred including the draft decision text as an annex to the INC-Forests4 report, saying it provides ministers with a complete and accurate representation of discussions during the INC. The Russian Federation and Ukraine opposed this suggestion, explaining that the Ukrainian proposal reflects the recommendation of the INC more accurately than the draft decision text, which is still heavily bracketed, and doing so would be "an overstretch and abuse of the mandate." Switzerland said there should be consensus on items to be included in the report, and if consensus does not exist, the item should not be included.

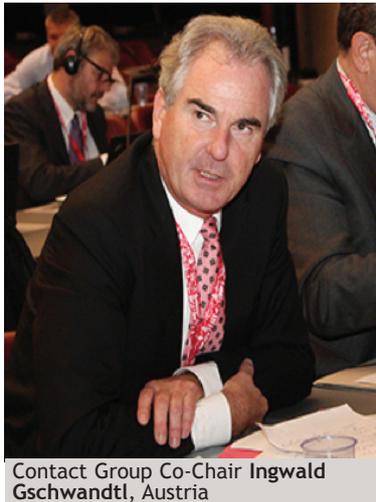
The Committee agreed to come back to this item after going over the report of the session. During discussions on the report, the Committee agreed to attach the draft ministerial decision as an Annex to the report and change the title to "Compilation of proposals regarding draft elements for decision to be conveyed to the Extraordinary FOREST EUROPE Ministerial Conference."

#### **CONSIDERATION OF POSSIBLE INTERIM ARRANGEMENTS AFTER INC4**

During the Friday evening plenary, Chair Heino asked if the Committee wished to discuss this agenda item, given the state of progress in the negotiations. It was concluded to not discuss this issue. Ukraine asked that, during this interim period, the secretariat involve native speakers in order to check the translation of the draft negotiating text into Russian.

#### **OTHER MATTERS**

FAO reported that contributions to the Trust Fund received from Austria, Norway, Finland, France, Sweden and Ireland totaled US\$411,000, adding that further pledges made by Sweden, France, Austria and Norway totaled US\$118,000. He said approximately US\$30,000 is left in the Trust Fund to cover any activities following this session.



Contact Group Co-Chair Ingwald Gschwandtl, Austria

#### **REPORT OF THE SESSION**

Late Friday night, the Committee considered the draft report of INC-Forests4. Several corrections were proposed to more accurately reflect discussions of the draft negotiating text, an annex to the report, including specifying at which meeting a discussion and statement took place, and identifying who made statements referenced in the draft report. The Committee deliberated particularly the paragraph of bringing the LBA under the UN umbrella, and changed the title of the Annex to the report on recommendations to the ministerial conference to "Compilation of proposals regarding draft elements for decision to be conveyed to the Extraordinary FOREST EUROPE Ministerial Conference," as Switzerland reiterated the Annex is a compilation of proposals rather than a recommendation. The Committee also made adjustments to passages on: secretariat arrangements; the presentation of the INC results to the Extraordinary Ministerial Conference; consideration of possible interim arrangements after INC-Forests4; and the list of annexes to the report.

#### **CLOSURE OF THE SESSION**

The EU expressed its regret at the failure to reach agreement on the final text of the convention and that others had been unwilling to consider the EU proposal for a diplomatic conference and shared secretariat, saying the EU had shown "maximum flexibility." The Russian Federation expressed hope that the Extraordinary Ministerial Conference would be well prepared and able to take the appropriate level of political decisions so as not to lose progress made during the INC process. Chair Heino called the INC a stimulating and inspiring process, which, while not reaching all the desired results, did produce good text that he would be happy to forward to the Extraordinary Ministerial Conference. He thanked all who had contributed to the INC process, including the Secretariat, Bureau members, UN system organizations, and the various hosts for the INC sessions.

The final session of INC-Forests was gavelled to a close at 4:30 am.



Markus Holzer, European Commission

#### **UPCOMING MEETINGS**

**ITTC-49:** The 49th Session of the International Tropical Timber Council and the Associated Sessions of the four Committees (Finance and Administration, Economic Information and Market Intelligence, Forest Industry, and Reforestation and Forest Management) are scheduled to take place in Libreville, Gabon. **dates:** 25-30 November 2013 **location:** Libreville, Gabon **contact:** ITTO Secretariat **phone:** +81-45-223-1110 **fax:** +81-45-223-1111 **e-mail:** itto@itto.or.jp **www:** <http://www.itto.int>

**Strength in Numbers: International Conference on Forest Producer Organizations:** FAO, the Forest and Farm Facility, and the Asia-Pacific Network for Sustainable Forest Management and Rehabilitation are convening this conference in collaboration with a number of partners in



Mona Ali Khalil, UN Office of Legal Affairs, and Lorenza Colletti, Italy

order to follow up on the findings of the report “Strength in numbers: Effective forest producer organizations.” As such, the objective of the conference is to support SFM by smallholders and communities through forest producer organizations. The conference will identify challenges and criteria for success with regard to forest producer organizations, build an enabling environment for capacity building, and explore ways and means to deliver multiple benefits through forest producer organizations, including for society and the environment. **dates:** 25-28 November 2013 **location:** Guilin, Guangxi, China **contact:** Sophie Grouwels **phone:** +39 6 570 55299 **e-mail:** forest-farm-facility@fao.org **www:** <http://www.fao.org/partnerships/forest-farm-facility/83759/en>

**European Forest Week:** The week will be celebrated under the theme “Forests, their products and services,” and will focus on the contribution of forests to the green economy. The main celebrations will be centered on Metsä 2013, the joint meeting of the UNECE Timber Committee and the FAO’s European Forestry Commission. Additional events will be held throughout Europe. **dates:** 9-13 December 2013 **location:** Rovaniemi, Finland **contact:** Eve Charles **phone:** 41 22 917 3922 **e-mail:** eve.charles@unece.org **www:** <http://www.unece.org/index.php?id=31600>

**Metsä2013 – Joint Session of the FAO European Forestry Commission and UNECE Timber Committee:** Metsä2013 will be a joint-meeting of the UNECE’s 71st Timber Committee and FAO’s 37th European Forestry Commission. The meeting will take place during the second European Forest Week, and will highlight the societal importance of forests and the achievements of the forest community. Metsä2013 will include various side events for organizations working on forest- and forest products-related issues. **dates:** 9-13 December 2013 **location:** Rovaniemi, Lapland, Finland **contact:** Paola Deda **e-mail:** paola.deda@unece.org **www:** <http://www.unece.org/forests/metsa2013.html>

**21st Session of the Near East Forestry and Range Commission:** The meeting, convened by the FAO Near East Forestry and Range Commission, will facilitate discussions on forest issues in the Near East among government officials, civil society, and regional and sub-regional organizations. The meeting will also consider progress on the achievement of recommendations from the 20th meeting, as well as an update on current and emerging issues. **dates:** 26-30 January 2014 **location:** Jordan **contact:** Abdelhamied Adam **e-mail:** abdelhamied.adam@fao.org **www:** <http://www.fao.org/forestry/31112/en/>

**FOREST EUROPE Expert Level meeting:** Expert Level Meetings are the decision-making bodies that meet between the FOREST EUROPE conferences. They discuss, *inter alia*,

the FOREST EUROPE work programme and the FOREST EUROPE Roadmap to 2020. **dates:** 4-5 February 2014 **location:** Valladolid, Spain **contact:** Edurne Lacalle **phone:** +34 914458410 **email:** liaison.unit.madrid@foresteurope.org **www:** <http://www.foresteurope.org/events/forest-europe-expert-level-meeting-0>

**World Congress on Agroforestry:** The World Congress on Agroforestry is organized under the theme “Trees for Life – Accelerating the Impacts of Agroforestry.” This Congress is intended to raise awareness and share knowledge and information on agroforestry and associated research. The Congress is also intended to increase support for agroforestry on all fronts, including through collaboration with the private sector. The event will be organized by the World Agroforestry Center, in collaboration with the Indian Council of Agricultural Research, the Indian Society of Agroforestry and Global Initiatives. **dates:** 10-14 February 2014 **venue:** Vigyan Bhavan and Kempinski Hotel **location:** Delhi, India **contact:** Global Initiatives **phone:** +254 20 722 4000 **e-mail:** info@wca2014.org **www:** <http://www.wca2014.org>

**Open Ended Intergovernmental Ad Hoc Expert Group of the UN Forum on Forests on the International Arrangement on Forests:** The Ad Hoc Expert Group was established at the tenth meeting of the UN Forum on Forests (UNFF 10) with a mandate to review the performance and effectiveness of the International Arrangement on Forests (IAF) and to develop recommendations on a strategic direction for the IAF for the period beyond 2015. **dates:** 24-28 February 2014 **location:** Nairobi, Kenya **contact:** UNFF Secretariat **www:** <http://www.un.org/esa/forests/pdf/iaf/NV-AHEG1.pdf>

**UN Forum on Forests Eleventh Session (UNFF 11):** UNFF 11 will consider the future of the IAF, based on challenges and its effectiveness. The meeting will also review progress in the implementation of the global objectives on forests and the non-legally binding instrument on all types of forests. Thematic issues under consideration will include SFM and forest law enforcement, as well as cooperation and coordination. **dates:** 4-15 May 2015 **location:** New York City, US **contact:** UNFF Secretariat **phone:** +1 212 963 3401 **e-mail:** unff@un.org **www:** <http://www.un.org/esa/forests/session.html>

**International Conference “Economic Evaluation of Forest Management Sustainability”:** The primary goal of this conference is to promote scientific information interchange between researchers in the field of economic evaluation of forest management sustainability. **dates:** 29-30 May 2014 **location:** Kaunas, Lithuania **contact:** Liana Sadauskienė **phone:** +370 37 547283 **email:** l.sadauskiene@mi.lt **www:** <http://www.mi.lt/intconf/>

## GLOSSARY

COP	Conference of the Parties
FAO	Food and Agriculture Organization of the United Nations
INC	Intergovernmental Negotiating Committee
LBA	legally binding agreement
MOU	memorandum of understanding
SFM	sustainable forest management
UNECE	United Nations Economic Commission for Europe
UNEP	United Nations Environment Programme