

UNFF EXPERT GROUP HIGHLIGHTS: MONDAY, 11 DECEMBER 2006

On Monday, 11 December, the United Nations Forum on Forests (UNFF) open-ended *ad hoc* expert group (AHEG) on the consideration of the content of the non-legally binding instrument (NLBI) on all types of forests convened at UN Headquarters in New York. In the morning and afternoon plenary sessions, delegates addressed organizational matters, heard opening statements and considered the draft composite text of the NLBI. In the afternoon, a panel discussion was held to clarify legal and financial issues relating to the NLBI.

OPENING PLENARY

Pekka Patosaari, Director, UNFF Secretariat, opened the meeting, noting that the current period of ECOSOC reform presents an opportunity for UNFF to increase its profile. He proposed, and delegates agreed, that the UNFF-7 Bureau act as the bureau for this meeting, including: Hans Hoozeveld (the Netherlands) as Chair; and André-Jules Madingou (Gabon), Arvids Ozols (Latvia), Hamidon Ali (Malaysia), and Christian Maquieira (Chile) as Vice-Chairs.

Chair Hoozeveld said that UNFF is at a critical juncture and ready for a great leap forward. He made an appeal to not reopen previously agreed language, and said that although this was an expert group meeting, participants should approach it as a negotiating session.

ORGANIZATIONAL MATTERS: Delegates adopted the provisional agenda (E/CN.18/AC.1/2006/1) without amendment. Chair Hoozeveld outlined the Bureau's proposal that work be undertaken as a single body in plenary. He explained that during the first two days of the meeting there would be no simultaneous interpretation and that the Secretariat was working to secure interpretation for the remainder of the meeting. He proposed the meeting begin in English, noting all documents would be translated into UN languages. BRAZIL noted the document produced from the meeting should be considered an intergovernmentally-negotiated document, thus requiring the full participation of all delegations. BURKINA FASO agreed to begin in English but proposed suspending the meeting if interpretation could not be secured by Tuesday.

TASKS OF THE AHEG: Patosaari introduced a compilation of proposals and comments submitted by member states and other groups on the NLBI, and a note by the Secretariat on developing an NLBI on all types of forests (E/CN.18/

AC.1.2006/2). Delegates agreed to base the week's discussions on a draft composite text prepared by the Secretariat that incorporates country proposals.

INDONESIA called attention to the country-led initiative to be held in Bali, Indonesia in February 2007, which will contribute to the development of the UNFF multi-year programme of work (MYPOW) for 2007-2015. Jan Haino, Forestry Department of the UN Food and Agriculture Organization, on behalf of the Collaborative Partnership on Forests (CPF), reiterated the CPF's strong commitment to the international arrangement on forests, and expressed hope that the outcome of the AHEG would set the stage for the adoption of an NLBI at UNFF-7.

FINLAND, for the EU, noted divergent views within the proposals, on: financial resources; subscription to the instrument; the relationship between the MYPOW and the instrument; and a facilitative process proposed by the EU. CANADA preferred to begin negotiations of the instrument at UNFF-7, and explained that some elements of Canada's submitted proposal were taken out of context, as they had originally related to a legally binding instrument. INDIA supported the creation of a global forest fund and highlighted the importance of monitoring and assessment, technology transfer and capacity building.

NEW ZEALAND expressed support for a strong UNFF that is capable of coordinating activity in support of sustainable forest management (SFM), noting the need to avoid duplication of existing work, and suggested using the seven SFM thematic elements as a basis for discussion.

IRAN encouraged cooperation and recognition of stakeholder contributions. PAKISTAN urged experts to focus on the root causes of deforestation and to use green accounting to acknowledge the true economic contribution of forests.

CHINA noted that several aspects of the negotiating text require further consolidation, and highlighted the need for a global forest fund and priority issues including poverty reduction, means of implementation and illegal logging.

The US noted that the resulting instrument will be as binding as its content dictates, and encouraged adhering to a voluntary approach. She supported a strong, concise document that will add value to the existing process and cautioned against creating additional bureaucracy.

AUSTRALIA emphasized the need for the instrument to include emerging issues, as well as to agree on the purpose of the NLBI. EGYPT noted the instrument should include man-made forests. The RUSSIAN FEDERATION explained the UNFF process is at a critical and historical juncture, that there is a need for tangible and practical results and that this process

should enhance international consensus. MALAYSIA underlined addressing means of implementation and the need to promote enabling environments, including market access and a premium on green timber. MEXICO underscored the document should reflect the high level of political commitment to SFM and promote the enhancement of domestic forest policies.

Presenting the composite draft text, the Secretariat said that 50 percent of the text was taken from previously agreed language, and highlighted potential areas of contention, including: use of terms; preparation of specific annexes relating to the seven thematic elements of SFM and Proposals for Action; international trade in forest products; finance and a global forest fund; monitoring, assessment and reporting; adoption and subscription; and adoption of annexes and supplementary instruments.

On the purpose of the composite text, the EU noted inconsistency in terminology and proposed replacing references to development agenda with "Millennium Development Goals (MDGs)." Noting the complexity of the text, NORWAY, supported by AUSTRALIA, MALAYSIA, CHINA, BRAZIL and NEW ZEALAND, proposed simplifying the text to "the purpose of this instrument is to strengthen political commitment and actions to implement effectively SFM and to achieve the global objectives on forests." AUSTRALIA proposed including reference to enhanced cooperation and MALAYSIA proposed adding "on all types of forests and to provide a global platform." The US questioned the need to elaborate a purpose in the document. The RUSSIAN FEDERATION proposed adding reference to the prevention of forest degradation. MEXICO noted that raising political commitment is not the purpose of the NBLI.

On global objectives, the EU and INDONESIA proposed deleting text on the overarching objective of the instrument, noting that the text was no longer necessary. INDONESIA also proposed deletion of language on deciding to set the global objectives and work to achieve progress towards their achievement by 2015. PAKISTAN, CUBA and CHILE opposed, noting that commitment to the global goals should not be ignored, and preferred retaining the language until text on the NLBI's purpose was agreed.

On scope, the RUSSIAN FEDERATION proposed adding that the instrument relate to all types of forests "regardless of the form of their ownership." The US questioned the need for a section on scope.

PANEL DISCUSSION

Daniela Simioni, Office of the UN Secretary-General, facilitated the panel discussion, noting the discussion aimed to clarify legal and financial issues relating to an NLBI. She highlighted the gender perspective on forests, the nexus between gender, energy and forests and the role of women in SFM.

Francisco Rezek, former judge, International Court of Justice, outlined the historical context of non-binding agreements and clarified the legal aspects of an NBLI. He said that due to the non-obligatory language in the text, there would be no difference in outcome if the text were adopted as a treaty or as an NLBI. Rezek noted that non-binding resolutions express a common understanding and concluded that if the draft is well considered and agreement easier to reach through an NBLI, its status as a non-binding instrument would not affect its importance.

Charles di Leva, World Bank, highlighted the importance of clarity of terms, credibility, commitment and continuity of the proposed NLBI. He underscored an increase in understanding the linkages between global forests and climate change, and payment for ecosystem services, since the adoption of the Rio Forest Principles. He noted that subscription was not necessary to represent the global community's commitment to an NLBI.

Markku Simula, forest expert, discussed SFM financing, highlighting the important role of private sector investment. He pointed to existing financing mechanisms, including the Bali Partnership Fund and the World Bank's Programme on Forests, and said that increasing development lending is dependent on recipient countries' willingness to borrow for and prioritize forest-related activities. He brought attention to a feasibility study on the proposed global forest fund to clarify modalities and how it would fit in with other financing mechanisms.

Panelists then answered questions from participants. Responding to a question on efficacy of NLBIs, Rezek discussed differences between international and domestic law, and said strong public support can sometimes make NLBIs more effective than LBIs. To a question on subscription to the instrument, di Leva responded that the elements of the agreement must be defined before deciding whether subscription should be an option. To a query on dispute settlement, Rezek explained that with NLBIs, disputes are usually resolved through diplomatic channels. CUBA noted that although the Forest Principles were considered an NLBI, they did not stop deforestation, and questioned how capacity would be built for implementation of an NLBI in developing countries. Simula noted progress made on SFM since the Forest Principles, highlighting, *inter alia*, forest certification programmes. He noted the GEF's role under the Convention on Biological Diversity and the UN Framework Convention on Climate Change, and said an NLBI would generate more political will, leading to mobilization of funds through voluntary contributions. Noting the fragmented nature of international funding for forests, ZIMBABWE asked how to attract more forest financing. Simula said the instrument might be used to create more enabling conditions for investment and increased political support.

AUSTRALIA noted that countries are increasingly required to assure the legality and sustainability of their forest products and management practices, and said that the draft NLBI text is currently limited to statements of good intentions. INDIA emphasized the need to consider the role that forests can play in poverty alleviation, and the need for capacity building. Simula concurred, adding that linking forests to the MDGs is paramount, at both national and international levels.

UNEP sought clarification on whether a voluntary instrument can potentially have *de facto* legal implications. Rezek noted the need to harmonize definitions and create convergence between forest-related processes. Di Leva emphasized a holistic approach when considering the strength of an instrument, adding that many non-binding agreements have evolved into binding ones. Rezek noted that the International Declaration on Human Rights was based on obvious imperatives, whereas forest issues are less well defined and do not share the same sense of urgency. He concluded by saying that the creation of an NLBI is a good starting point and comes at the right time.

IN THE CORRIDORS

On the first day of the meeting, participants expressed a cautiously optimistic outlook for the week to come, allaying concerns that lack of interpretation may inhibit negotiations. Many experts expressed an interest in building upon gains already achieved in this and other fora, and it appears that participants came prepared to negotiate as though it were a working group, as originally proposed. However, many also acknowledged the challenges for the week to come, including clarifying how the NLBI will relate to the existing international arrangement on forests, such as the MYPOW, and demonstrating how this instrument will add value to the existing body of soft law on forests.