

# INC-Forests Bulletin

Summary of the Resumed Third Session of the Intergovernmental Negotiating Committee for a Legally Binding Agreement on Forests in Europe (INC-Forests3)  
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## SUMMARY OF THE RESUMED THIRD SESSION OF THE INTERGOVERNMENTAL NEGOTIATING COMMITTEE FOR A LEGALLY BINDING AGREEMENT ON FORESTS IN EUROPE 3-5 APRIL 2013

The Resumed Third Session of the Intergovernmental Negotiating Committee for a Legally Binding Agreement on Forests in Europe (INC-Forests3) convened from 3-5 April 2013 in Saint Petersburg, the Russian Federation. The three-day session was attended by 102 participants, including delegates from 30 governments and the European Union, and observers from eight regional, United Nations (UN) and non-governmental organizations. The UN Food and Agriculture Organization serves as the Secretariat during sessions of INC-Forests, 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 resumed session of INC-Forests3: continued to revise the draft negotiating text for a legally binding agreement (LBA), particularly the preamble, final clauses and sections on terms and definitions, monitoring and reporting, compliance, the secretariat and the conference of the parties; changed the structure of the draft negotiating text to bring it more in line with convention format; decided to bring the LBA “under the UN umbrella,” and to take a decision on where to place the LBA within the UN system at INC-Forests4; reviewed the annex on arbitration drafted by the Secretariat; mandated the Bureau to produce a draft annex on conciliation and a document on finance options for consideration at INC-Forests4; and revised in detail the roadmap for the rest of the negotiation process. The resumed session worked primarily in plenary, while informal contact groups convened in evening sessions. In addition, a legal expert group was created to review the draft final clauses of the LBA.

This summary highlights the negotiations conducted during the resumed session of INC-Forests3.

### A BRIEF HISTORY OF INC-FORESTS

The INC-Forests process was launched by the 2011 Ministerial Conference on the Protection of Forests in Europe (FOREST EUROPE), held in Oslo, Norway (Oslo 2011). FOREST EUROPE is a high-level political initiative that was 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.



A view of the venue entrance

**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.

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**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 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. At the Conference, a proposal was tabled to begin a process for exploring the possibility of a 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 should complete its work by 30 June 2013, and present its results to a FOREST EUROPE Extraordinary Ministerial Conference that will take place 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. It 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 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 the two sessional working groups, which addressed general provisions, compliance, procedures and final clauses. INC-Forests2 discussed terms and definitions, agreed on a list of those deemed essential for the LBA, and indicated that some intersessional work might be required on definitions. The Committee also 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:** The first part of INC-Forests3 was held from 28 January – 1 February 2013 in Antalya, Turkey. Delegates completed a second reading and began a third reading of the draft LBA, making progress on the preamble, principles, objective, terms and definitions, general provisions and compliance sections. The session also addressed a paper on the implications of various options for bringing the LBA “under the UN umbrella,” which was produced by independent consultants at the Chair’s request. The session was suspended after deciding to reconvene from 3-5 April 2013 in Saint Petersburg, the Russian Federation, in order to have additional time to complete key tasks before the last INC-Forests session, allowed under its mandate, to be held 10-14 June 2013 in Warsaw, Poland.

## REPORT OF THE RESUMED SESSION OF INC-FORESTS3

### OPENING OF THE SESSION

On Wednesday, 3 April, the Resumed Third Session of the Intergovernmental Negotiating Committee for a Legally Binding Agreement (LBA) on Forests in Europe (INC-Forests3) was opened by Jan Heino (Finland), Chair of the Intergovernmental Negotiating Committee (INC).

Alexander Panfilov, Deputy Head of the Federal Forestry Agency and Head of Delegation, Russian Federation, said that the recently celebrated International Day of Forests shows the higher priority forests are now given. He urged delegates to make a significant contribution at the Saint Petersburg meeting



L-R: Natalia Orlova, Deputy Chair of the Committee on Natural Resources of the Leningrad Region; Sergey Lyahovenko, Committee on Landscape Management, Saint Petersburg City Administration; Viktor Lozhechko, Chairman of the Committee on Ecology and Natural Resources Management of the Legislative Assembly of Saint Petersburg; INC-Forests Chair Jan Heino, Finland; Alexander Panfilov, Deputy Head of the Federal Forestry Agency, Russian Federation; and Malgorzata Buszko-Briggs, INC-Forests Secretary

towards completion of the LBA. Viktor Lozhechko, Chair, Committee on Ecology and Natural Resources Management, Legislative Assembly of Saint Petersburg, urged INC-Forests to find consensus on solutions to multiply, protect and expand forest stocks.

Chair Heino underlined the need to accelerate the pace and efforts to finalize the negotiating text, and urged delegates to be ambitious. He outlined priorities for the resumed session, including: financial resources for the LBA; institutional arrangements; bringing the LBA under the UN umbrella; possible recommendations to the Ministerial Conference to be held in late 2013 on how to proceed with the LBA; and updating the roadmap for negotiations.

The Council of European Foresters emphasized that education, vocational training, capacity improvement, and rights and responsibilities of foresters, as well as safe working conditions, should be adequately mentioned in the LBA. He also said the Council would propose a new preambular paragraph on forest practitioners.

### ORGANIZATIONAL MATTERS

Chair Heino outlined the proposed organization of work for the resumed session, which was accepted with some adjustments in sequencing of issues. The EU, supported by Ukraine and the Russian Federation, asked for a contact group to be created on compliance. However, Ukraine cautioned against creating too many contact groups, which would limit participation by smaller delegations. The Committee agreed to form a legal expert group, facilitated by Stephan Lowe, UK, to start reviewing final clauses, such as the articles on settlement of disputes, amendments to the LBA, adoption of annexes and protocols, signature, ratification, entry into force, reservations and withdrawal, as well as the draft annex on arbitration.



Jan Heino, INC-Forests Chair, Finland

### CONSIDERATION OF THE DRAFT NEGOTIATING TEXT

Throughout the resumed session, INC-Forests continued the third reading of the draft negotiating text, picking up where it left off at the end of the Antalya session (Document 2/INC3add.1). Most work on the text was undertaken in plenary, except for: the final clauses and draft annex on arbitration, which was considered by the legal expert group; compliance, which was discussed by a contact group, co-facilitated by Ingwald Gschwandtl, Austria, and Otrakçier Tamer, Turkey; and terms and definitions, which was taken up in a contact group, facilitated by Liubov Poliakova, Ukraine.

**STRUCTURE OF THE TEXT:** During Wednesday afternoon's plenary, the EU introduced a proposal for reformatting the LBA as an alternative to the proposal made by Switzerland in Antalya, explaining that while the EU version would keep many of the same chapter titles as the Swiss proposal, it would substantially simplify the subtitles in the

chapter on general provisions. Chair Heino agreed to distribute the proposal electronically so that it could be discussed in detail during Thursday's plenary.

On Thursday, the Committee resumed discussion of the EU proposal. Switzerland proposed, and the Committee agreed, to delete all chapter headings. The Committee then went through the draft negotiating text paragraph-by-paragraph, adopting a simplified numbering system, shorter titles, and, in the case of the thematic articles based on the Helsinki Criteria on sustainable forest management (SFM), an abbreviated chapeau clause for each article calling on parties to "have in place or adopt legislative, administrative or other policy measures," followed by a list of measures.

**TITLE:** In Friday's plenary, Ukraine asked if the Committee could decide on the final title for the LBA. The current draft negotiating text has a range of options, including deleting the reference to Europe and calling the LBA a "Forest Agreement," "Forest Convention," "Framework Convention," "Framework Agreement on Forests" or "Framework Agreement on Sustainable Forest Management." The EU requested, and the Committee agreed, to defer discussion of the title until INC-Forests4.

**PREAMBLE:** This article was discussed on Friday in plenary. All paragraphs not previously agreed in Antalya were agreed *ad referendum* in Saint Petersburg through: lifting brackets on a passage on the importance of efficient measures to eliminate illegal harvesting of timber and associated trade and to promote sustainable consumption and production; lifting brackets on a citation of Principle 2 (state sovereignty) of the Rio Declaration on Environment and Development; reaffirming parties' commitment to fully implement the Rio Declaration; deciding on "recalling" rather than "reaffirming" commitments to achieve internationally agreed development goals; and lifting the brackets around the reference to the Aichi Biodiversity Targets as one set of these goals.

The Committee discussed a proposal by Norway to add a new paragraph to the preamble or the principles article, emphasizing that the LBA is intended to reinforce and strengthen the implementation of SFM in a way that is mutually supportive with other international treaties and instruments that also contribute to SFM. Norway preferred placing it in the principles article, and the EU and Ukraine in the preamble, while Switzerland said it could support either option. INC-Forests3 decided to place the paragraph in brackets in both places and decide on its placement at INC-Forests4.

**TERMS AND DEFINITIONS:** This article was discussed on Thursday and Friday in meetings of the plenary, and by the contact group on Thursday night.



Delegates consulting during the session

The Committee agreed *ad referendum* on the definitions of the following terms: “criteria for sustainable forest management”; “illegal harvesting”; “national forest programme”; “sustainable forest management”; and “regional economic integration organization.” Brackets were removed from definitions for the terms “forest ecosystem services,” “forest restoration” and “forest fragmentation,” but they were not yet agreed *ad referendum* pending decisions on translation issues or related provisions of the draft negotiating text. The Committee also deleted the definition of “afforestation.”

On “forest,” Ukraine, Turkey and the Russian Federation supported the view that each country should be able to define forest according to its national legislation. The EU, supported by Switzerland, suggested the provision should contain the actual definition of forest and then refer to the possibility for a party to choose another forest definition based on existing national legislation or inventory system, which should be communicated in writing to the secretariat. The contact group developed new language for the definition of forest, but no agreement was reached among delegates and all three options remain in brackets.

On “goods,” the Committee agreed to replace the original definition of goods and services with the definition of goods as “materials which people create or derive from ecosystem services and are tangible and transportable.” Switzerland asked to keep this definition bracketed.

On “forest degradation,” the contact group rephrased the definition as “changes which adversely affect the structure or function of forests in the long term,” but the EU suggested deleting reference to the long term, instead proposing an alternative language on lowering forests’ long-term capacity to provide ecosystem services and goods derived from them. Ukraine and Switzerland disagreed with the EU’s proposal, and the definition remains bracketed. In addition, Poliakova, facilitator of the contact group, requested that translation of the terms “forest fragmentation” and “forest restoration” into Russian be addressed by the Secretariat together with the UN Food and Agriculture Organization’s (FAO) Russian terminology group. The Russian Federation proposed rearranging the order of terms and definitions in the article; it was decided to finalize the order at INC-Forests4.

**OBJECTIVE:** The Committee discussed this article during Wednesday’s plenary, and agreed to refer to “goods” and not “products” due to translation difficulties of the latter term into Russian. The word “other” remains bracketed in the text relating to the objective of ensuring the long-term provision of a broad range of goods and other forest ecosystem services.

The EU and Norway supported, and the Committee agreed, keeping text on ensuring that forests contribute effectively to livelihoods.

Except for the single aforementioned bracket, the rest of the article was agreed *ad referendum*.

**PRINCIPLES:** During the discussion of this article in Wednesday’s plenary, the Russian Federation supported, and the



Knut Øistad, Norway

Committee agreed, to keep the text on the contribution of SFM to sustainable development. Switzerland proposed text stating that SFM “contributes to the sustainable development of Parties” rather than “should contribute to.” However, “should” remains bracketed at the request of the Russian Federation.

Other principles were agreed *ad referendum*.

**GENERAL PROVISIONS:** In Friday’s plenary, the Committee made only editorial changes to this article. As agreed *ad referendum*, this article commits parties to take measures to ensure that SFM as defined in the LBA is implemented, “taking into account their specific forest conditions and national priorities,” particularly through: using six SFM criteria as a guiding framework for policy development on forests and their management; developing, implementing and updating national forest programmes “or equivalents”; maintaining and/or strengthening enabling conditions for long-term economic viability of SFM; and strengthening and enhancing international, regional and cross-border cooperation and coordination.

**FOREST RESOURCES AND THEIR CONTRIBUTION TO GLOBAL CARBON CYCLES:** This article was discussed by the Committee on Wednesday in plenary. The Committee agreed to delete two subparagraphs on carbon storage and global carbon cycles in favor of working with an alternative combined text on enhancing the capacity of forests and forest products to act as carbon sinks and reservoirs, substituting non-renewable materials and energy, and contributing to a low carbon emission economy “in accordance with international and regional obligations.”

Norway proposed, but the EU opposed, striking the reference to regional and international obligations in favor of adding a new subparagraph to the preamble or principles article on linkages with international instruments contributing to SFM. Switzerland said it was open to the Norwegian proposal, while the Russian Federation asked to study it further. Turkey asked for clarification of the reference to “low carbon emission economy” and the Russian Federation asked that the phrase be bracketed for further reflection.

The Committee agreed to add reforestation to the list of relevant measures to reduce the negative impacts of forest fragmentation. The Russian Federation highlighted the need to return to the paragraph of forest fragmentation in conjunction with the terms and definitions article subparagraph on forest fragmentation. Portions of the article remain in brackets.

**FOREST ECOSYSTEMS’ HEALTH AND VITALITY:** The Committee discussed this article on Wednesday in plenary. Delegates agreed to refer to the provision of “goods” instead of “products” similar to the approach taken in the objective article. The word “other” also remains bracketed in the text relating to the long-term provision of a broad range of goods and other forest ecosystem services as in the objective article.

The Committee also agreed that parties shall cooperate in preventing and combating forest pests, diseases and fires, where appropriate. Switzerland proposed this should be done “also in the context of climate change” but others bracketed



Alexandra Orekhovich, Russian Federation

this reference. On monitoring of forest pests, diseases and fires, the Russian Federation noted the need to harmonize the provision with the article on monitoring. The article remains partially bracketed.

**PRODUCTIVE FUNCTIONS OF FORESTS:** The Committee discussed this article on Wednesday in plenary. The Russian Federation pointed out difficulties in legal interpretation of the wording “wood from sustainable sources” and the Committee agreed to replace it with “wood from sustainably managed forests.” The article does not contain any brackets, with some provisions agreed fully and others *ad referendum*.

**FOREST BIODIVERSITY:** This article was discussed by the Committee on Wednesday in plenary. The Committee agreed *ad referendum* that parties shall take measures to protect, restore and, where appropriate, increase forest biodiversity at all levels through its effective and efficient integration of SFM with the aim of halting biodiversity loss and contributing to reducing forest degradation.

On the provision that parties shall have measures to maintain and further develop protected areas, Switzerland and Norway asked to keep text on maintaining and developing “networks of representative protected forest areas,” but Ukraine and the EU called for deleting “representative.” The Russian Federation proposed “networks or systems” of protected areas. This part of the article remains bracketed.

**PROTECTIVE FUNCTIONS OF FORESTS:** In Wednesday’s plenary, the Committee discussed the only subparagraph not yet agreed, on the protection of groundwater and surface water. Ukraine, with Turkey, proposed deleting all bracketed text so it would read “enhance the protection of groundwater and surface water through appropriate forest management practices.” The EU supported keeping the reference to cross-border cooperation, but conditioned it with “if applicable.” Switzerland proposed an alternate paragraph emphasizing integrated basin management and international, rather than cross-border, cooperation. Georgia suggested referencing watershed management instead of integrated basin management, but Switzerland pointed out the latter is the term most commonly used in Europe and is included in the Johannesburg Programme of Action. The subparagraph remains with brackets around “if applicable” and “through cross-border cooperation.”

**SOCIOECONOMIC FUNCTIONS OF FORESTS:** In Wednesday’s plenary, the Committee discussed the two remaining subparagraphs not yet agreed to in this article. On broadening and diversifying the financial basis for SFM through forest ecosystem services, delegates debated whether to reference “considering,” “incorporating,” “integrating” or “taking into account” the values of such services in the development of national forest policies, with most favoring the last option. However, Switzerland cautioned that the last option would undermine the international commitments represented by the Aichi Biodiversity Targets. Much of this subparagraph remains bracketed.

The Committee agreed *ad referendum* on a paragraph on taking measures to facilitate communication between policy makers and all stakeholders in order to improve policy development and implementation and to increase awareness of SFM.

**MONITORING AND REPORTING:** In Wednesday’s plenary discussion on two paragraphs on reporting by member states, Ukraine proposed deleting one and reordering the other to clarify that reporting would be on SFM criteria and on indicators elaborated by the conference of the parties (COP).

The EU proposed alternative text for both paragraphs. One stresses regular reporting and assessment, with specific reference to the six SFM criteria agreed *ad referendum* at Antalya and indicators established by the COP. Another proposes reporting to the COP, through the LBA secretariat, information both on measures taken to implement the LBA and on the status and development of forests and SFM implementation, using “as far as applicable” reports used for FAO’s Global Forest Resources Assessment.

Ukraine and the Russian Federation asked for time to analyze the EU proposal. Switzerland, supported by Turkey, suggested adding a call for parties to ensure that such



Ivonne Higuero, UNEP

information is available to the public within their national territory. The UN Environment Programme (UNEP) expressed caution regarding the reference to reports used for the FAO Global Forest Resources Assessment, since such reporting is voluntary whereas LBA reporting would be obligatory.

**CONFERENCE OF THE PARTIES:** The Committee addressed this article paragraph-by-paragraph on Friday morning in plenary.

On functions of the COP, the Russian Federation asked to bracket language stating that the COP will develop guidance on establishing national targets, emphasizing the need to respect sovereign rights.

On the COP adopting rules of procedure at its first session, Norway suggested the COP also adopt a budget for the LBA. Switzerland proposed new language detailing financial provisions to be adopted by the COP, and the EU asked to keep the paragraph bracketed.

On the timing of COPs, the EU proposed ordinary COPs convene every two years, while Switzerland preferred every three years.

On observer status for international organizations, Switzerland proposed language taken from the recently-concluded Minamata Convention on Mercury, which states that these organizations “may be represented” at COPs instead of “being entitled to participate.” Norway bracketed this proposal.

On observer status for nongovernmental organizations (NGOs), Norway underlined the importance of ensuring NGO participation from the first COP and suggested textual changes accordingly. Switzerland noted this can be arranged in another way, not through the draft negotiating text, and also proposed NGOs “may be admitted” to COPs instead of “being entitled to participate.”

Parts of the article remain bracketed as described above.

**RIGHT TO VOTE:** The Committee discussed this article in the Friday morning plenary. Switzerland, supported by Norway, Ukraine and Turkey, proposed an amendment that the votes of regional economic integration organizations should be equal to the number of their member States present in the

session. The EU explained that it has the competency to vote on behalf of all member States, regardless of their presence at a meeting. This part of the article remains bracketed.

**SECRETARIAT:** The Committee discussed this article in the Friday morning plenary. On language regarding the functions of the secretariat, Switzerland suggested that it refer to “the head of the host organization” and not the “secretariat.” She also proposed that the functions include: preparing and making available to the parties periodic reports on secretariat activities based on information received pursuant to the article on monitoring and reporting, and other available information; and cooperating, as appropriate, with the competent international organizations and intergovernmental and non-governmental bodies. Ukraine asked to bracket references to intergovernmental bodies and NGOs, and Norway said it needed time to further consider these proposals.

The whole article remains bracketed with some text remaining in internal brackets.

**COMPLIANCE:** On Thursday in plenary, Co-Facilitator Ingwald Gschwandtl, Austria, reported on the compliance contact group’s suggested changes to the draft negotiating text’s paragraphs on compliance. The group proposed to, *inter alia*: add a provision for the secretariat to compile reports submitted by parties; delete a provision for the COP to analyze reviews; delete text calling for the compliance committee to assist parties in LBA implementation; delete a provision for the committee to provide scientific and technical assessment of parties’ reports; delete a provision allowing the committee to consider written submissions from stakeholders; and delete a provision whereby any party can draw the attention of the COP to activities which, in its opinion, affects implementation of the LBA’s objectives and principles.

The Russian Federation, supported by Switzerland, Ukraine and Norway, proposed adding provisions regarding compliance committee members serving in their personal capacity and the adoption of committee terms of reference and rules of procedure by consensus. The EU asked to bracket both proposals for further consideration.

Chair Heino proposed agreeing *ad referendum* to some of the article’s paragraphs, but the Russian Federation and Ukraine objected, stating that they could not agree to any portion of this article pending the outcome of decisions on bringing the LBA under the UN umbrella, which they said were linked.

**SETTLEMENT OF DISPUTES:** This article was reviewed by the legal expert group, which on Friday recommended to the Committee that it delete two subparagraphs on conciliation if the Committee decides, as originally suggested when the INC-Forests process began, to draft an annex on conciliation. Norway, supported by Switzerland, called for the Bureau to draft such an annex for consideration at INC-Forests4, which the Committee agreed to. Chair Heino asked the Committee if the rest of the article could be agreed *ad referendum*, but Ukraine said nothing in the final clauses can be agreed until the outcome of deliberations on bringing the LBA under the UN umbrella is known.

**AMENDMENTS TO THE AGREEMENT:** This article was reviewed by the legal expert group, which on Friday recommended removing the remaining brackets. The Committee accepted this recommendation.

**ADOPTION AND AMENDMENT OF ANNEXES TO THE AGREEMENT:** This article was reviewed by the legal expert group. On Friday, the group recommended, and the Committee agreed, to amend the first subparagraph by striking a reference to the article on settlement of disputes and changing language on restricting annexes to “scientific, technical, procedural or administrative matters” rather than the prior formulation of “lists, forms and any other materials of a descriptive nature that is of a scientific, technical, procedural or administrative character.”

**PROTOCOLS:** The legal expert group reviewed this article and recommended removing internal brackets but leaving the article as a whole bracketed pending a Committee decision about whether the LBA will have protocols. The Committee agreed to this recommendation.

**DEPOSITORY:** On Friday, the legal expert group reported that it did not address this article, since its language depends on Committee decisions elsewhere in the LBA.

**SIGNATURES:** The legal expert group reported that it decided to leave the brackets around the reference to FOREST EUROPE, since the fate of this passage depends on decisions regarding bringing the LBA under the UN umbrella.

**RATIFICATION, ACCEPTANCE, APPROVAL OR ACCESSION:** On Friday, the legal expert group recommended lifting the brackets around the subparagraph on accession and streamlining the article’s opening subparagraph to read “The



A view of the room during plenary

Agreement shall be subject to ratification, acceptance or approval by the Signatories.” The Committee agreed to this recommendation.

**ENTRY INTO FORCE:** In its report to plenary, the legal expert group made no recommendation on this article. The EU asked to place the entire article in brackets.

**RESERVATIONS:** The legal expert group made no recommendation to the Committee on this article.

**WITHDRAWAL:** The legal expert group reported that it could not lift the brackets on the subparagraph that considers a party’s withdrawal from the LBA as also being a withdrawal from any LBA protocol to which it is a party, since this depends on a Committee decision on whether the LBA will have protocols.

**AUTHENTIC TEXTS:** The legal expert group made no recommendation to the Committee on this article, pointing out that it depends on the decision regarding where the LBA will be hosted.

**ANNEXES:** In its report to plenary on Friday, the legal expert group said it did not address the list of possible annexes pending a political decision by the Committee on which annexes, if any, it wished to have. Ukraine, with the Russian Federation, called for deleting the reference to a protocol on indicators. Ukraine further specified that given the limited time left in INC-Forests negotiations, either a draft annex on indicators should be produced for Committee discussion at INC-Forests4 or the reference to such a protocol should be deleted now. Chair Heino said given the divergence of opinion, the reference would remain in brackets for now.

**Annex on Arbitration:** In Wednesday’s plenary, the INC-Forests Secretariat introduced the draft annex on arbitration (Document 2/INC3 add.2), noting it takes into account examples of arbitration procedures in other environmental agreements. She said the draft annex contains provisions on, *inter alia*, the composition of an arbitral tribunal, appointment of arbitrators, rules of procedure and method of work, decision making and applicable law. The text was forwarded to the legal expert group for its review.

On Friday, the legal expert group reported general approval of the draft text, with the caveat that the Committee needs to take a political decision on whether to include an arbitration procedure for the LBA. The group suggested one major addition to the annex: an opening paragraph on a party initiating recourse to arbitration through written notification to the other party to the dispute, along with a statement of the claim and supporting documents stating the subject matter for arbitration, and particularly noting which LBA articles are at issue. The Committee agreed to this addition.

#### **FINANCIAL RESOURCES FOR THE AGREEMENT**

This issue was addressed on Wednesday and Thursday in plenary. At the start of the discussion, Chair Heino suggested that finance issues comprise what arrangements would be made to fund activities envisaged under the LBA, including national implementation, technical cooperation, exchange of experiences and communications, as well as administrative costs of the agreement. He explained funding sources can include assessed contributions of parties, voluntary contributions or a combination of both.

Norway suggested that national implementation is the responsibility of parties, noting the discussion should focus on finances for shared actions and administrative costs. The Russian Federation recommended discussing general ideas now and providing further details later.

As a way forward, Chair Heino proposed that the Bureau assist the Committee by preparing a summary that includes



Christoph Dürr, Switzerland

major cost elements, possible sources of financing and options for draft text. The Russian Federation supported the proposal, noting that draft text could include brief text stating that the COP decides on finance issues separately, or detailed text similar to other conventions. Switzerland stressed that such a document needs to be ready before the end of April to allow sufficient time for countries to

consult prior to INC-Forests4.

The Committee agreed to the Chair’s proposal for a Bureau paper, and asked that it be circulated by the end of April.

#### **POSSIBILITIES FOR BRINGING THE LBA UNDER THE UN UMBRELLA**

On Wednesday and Thursday, INC-Forests3 discussed at length the question posed to the Committee by the Oslo Mandate, and addressed at both INC-Forests2 in Bonn and the INC-Forests3 session in Antalya: whether the FOREST EUROPE Ministerial Conference will endorse the LBA text for adoption under UN or UN system auspices; or whether the Ministerial Conference itself will adopt the agreement as a non-UN treaty. In addition to the documents considered in Antalya (Document 5/INC3 and its annexes), the INC-Forests Secretariat, on Wednesday, introduced new submissions by the UN Economic Commission for Europe (UNECE), UNEP and FAO on questions related to bringing the agreement under the UN umbrella.

Germany explained the basic elements of its formal offer to accommodate the headquarters of the LBA secretariat in Bonn, pointing out that Bonn already hosts the Secretariats of the UN Framework Convention on Climate Change and the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services. He underlined that Germany’s offer is unconditional and valid whether or not the treaty is under the UN. The UN Office of Legal Affairs (OLA) and UNECE commented on secretariat-related aspects of the German offer. Switzerland called for discussing the LBA’s institutional set-up before deciding on the location of the secretariat.

In both Wednesday’s and Thursday’s plenaries, delegates posed a series of questions to FAO, UNEP, UNECE and OLA about aspects of the UN or UN system options. The answers, together with information provided in the aforementioned documents, were summarized in chart form in a Bureau non-paper circulated to delegates on Friday.

Responding to a question from the EU, OLA explained that there are three options for adopting the LBA: a non-UN treaty with no UN servicing; a non-UN treaty with UN servicing; and a UN treaty with UN servicing. She noted each of the options has implications in terms of whether it necessitates submitting the treaty to a parent organ for approval, but said that whether

the treaty is regional or global makes no difference. As for the impact of UN organization governing bodies on treaty interpretation and implementation, she explained that the UN does not intervene and that parties are “the masters” of their treaty. FAO added that while each UN entity has its own rules, many elements are common to them all.

In response to an inquiry from the Russian Federation, OLA cautioned against continuing to use the phrase “under the UN umbrella” since it is not used within the UN system, where agreements are considered to be either “under UN auspices” or “under UN system auspices.” She explained that a treaty under UNECE or UNEP would be considered “under UN auspices” because they are a regional commission and a programme, respectively, while a treaty under FAO is considered “under UN system auspices” because FAO is a specialized agency.

Responding to the Russian Federation’s question about its experience in servicing conventions that go beyond the limits of Europe, UNECE stressed that it services both regional and global conventions, including some, like the Water Convention, that began as a regional agreement and is transitioning to global status. Asked by the Russian Federation for examples of positive interactions FAO and UNECE have had in jointly servicing a convention, the two organizations explained that they do not yet service any conventions together, but that they have had extensive experience cooperating in servicing the UNECE Timber Committee and the FAO European Forestry Commission.

In response to a question from the Russian Federation, OLA explained that if the Ministerial Conference simply endorses the convention text, it can then be forwarded to the UN or a UN system organization for adoption, whereas if it adopts the convention itself, the agreement will have the status of a non-UN treaty.

Switzerland asked about how a joint secretariat for the LBA might work. She noted that the Water Convention’s Protocol on Water and Health has text specifying that UNECE and the World Health Organization, a specialized agency like FAO, share the Protocol Secretariat on equal footing, which is governed by a memorandum of understanding (MOU) between the two, with Protocol administration handled by the UNECE and servicing handled by both organizations. OLA pointed out if the lead entity is outside the UN system, approval for such an arrangement would require approval by the relevant UN governing body.

FAO pointed to the example of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, which was adopted by a diplomatic conference and is serviced jointly by FAO and UNEP based on a MOU. UNECE said that if it is the administrative entity in a joint secretariat, approval from the UN Economic and Social Council or UN General Assembly would not be required. OLA pointed out that the diplomatic conference for the Rotterdam Convention was the result of decisions taken by both the UNEP Governing Council and FAO Conference, whereas the LBA process was initiated outside the UN system.

Responding to a question posed by the EU about whether a LBA adopted under FAO would be registered under the UN and operate under the same principles as UN agreements, OLA said that pursuant to Article 102 of the UN Charter, all treaties, no matter what form and under what organization, have to be registered with the UN Secretary-General (UNSG).

FAO explained that an agreement adopted under FAO would be registered by the FAO Director-General. OLA added that most aspects of staff benefits and entitlements are the same among UN system organizations, as set by the International Civil Service Commission.

Asked by Germany how two agencies can have equal footing when OLA and UNECE indicated that one agency should take the lead, UNECE explained that usually one agency handles administration while two or more agencies



Paola Deda, UNECE

can handle servicing, since administering and servicing are not the same thing. UNEP pointed out that determining which agency handles administration can be resolved among the agencies through a MOU.

In response to a question by the EU on who would appoint the LBA’s executive secretary, OLA explained that several models exist among treaties: appointment of the executive secretary by

the UNSG; appointment of a sub-secretariat within the UN Secretariat by the UNSG; or appointment of the executive secretary by the UNSG in consultation with the governing body of the treaty. UNEP explained this would be a regular recruitment process and, depending on rank, the executive secretary could be appointed by the UNEP Executive Director in consultation with the UNSG or through consultations with the bureau of the convention. FAO said the executive secretary will be appointed by the Director-General in consultation, and in some cases in agreement, with the treaty’s governing body. The UNECE said their recruitment process is similar to that of FAO.

On Thursday, the Committee agreed to bring the LBA under the UN umbrella, thereby excluding non-UN options.

Asked by the Chair for delegates’ views on which UN organization or organizations should host and serve the LBA: the Russian Federation supported UNECE; Switzerland indicated a preference for UNECE, but could accept a joint secretariat between UNECE and FAO with UNECE administering and both organs servicing; and Norway, with Turkey, supported a joint secretariat of FAO, UNECE and UNEP, with FAO in charge of administrative duties and taking a leading role in servicing. A decision on this issue was deferred to INC-FORESTS4.

#### **ROADMAP FOR THE NEGOTIATION PROCESS**

The INC-Forests Secretariat introduced the updated roadmap for the negotiation process (Document 3/INC3 add.1) in Thursday afternoon’s plenary, and asked for guidance on what the Committee and Bureau would be mandated to do both between INC-Forests3 and INC-Forests4, and between INC-Forests4 and the Extraordinary FOREST EUROPE Ministerial Conference scheduled for early November 2013 in Madrid, Spain. Ukraine expressed concern about the limited time between INC-Forests3 and INC-Forests4, given that INC-Forests4 documents must be in delegations’ hands no less than six weeks before the meeting.



OLA, with the Russian Federation, suggested noting in the roadmap when the necessary consultations would take place with UN organs that might be invited to adopt and/or service the LBA, and scheduling approval by the appropriate UN governing body or bodies where that might be necessary.

The Russian Federation, with Ukraine, suggested requesting the Bureau to draft, for consideration at INC-Forests4, the elements of a document, whether a resolution or a decision, by which the final draft of the negotiating text would be presented at the Ministerial Conference. Chair Heino said that the draft document would be prepared by the next intersessional meeting of the Bureau, scheduled for 24-25 April 2013, and the mandate to prepare the document would be reflected in the INC-Forests3 session report.

The EU called for more details about the preparatory process between INC-Forests4 and the Ministerial Conference. Ukraine voiced concern over the amount of time needed for national preparations for the Ministerial Conference. Switzerland asked to start discussions at INC-Forests4 on interim operations for the LBA until it comes into force.

At the suggestion of Ukraine as a way to give governments more time to prepare, the Committee agreed that for the rest of the INC-Forests process, English language versions of documents would be circulated as soon as they become available, in advance of official translations.

#### OTHER MATTERS

**INC-FORESTS TRUST FUND:** On Friday, FAO informed the Committee on the state of the Trust Fund, noting contributions by Austria, Finland, Sweden and others, as well as by hosting countries, such as Germany, Turkey, the Russian Federation and, in the future, Poland. He acknowledged contributions by the EU for travel support of representatives of eligible countries. He remarked that total contributions amount to US\$330,000, of which US\$300,000 have been spent, and in this context stressed the need for further financial resources.

Hungary said it is ready to contribute €10,000 and Sweden said it would contribute US\$10,000 to the Fund.

#### PROVISIONAL AGENDA FOR INC-FORESTS4:

Chair Heino explained that the Bureau elaborated a proposal for a provisional agenda for INC-Forests4. The Russian Federation, with Switzerland, asked to reflect in the agenda the need to further consider issues relating to bringing the agreement under the UN/UN system auspices, finance and the secretariat. Norway and the EU preferred using the language from the Oslo Mandate and referring to “UN umbrella” rather than “UN auspices.” In the end, the Committee agreed to the Russian proposal, but with reference to “UN umbrella” rather than “UN/UN system auspices.”



Peter Csóka, FAO

#### REPORT OF THE SESSION

On Friday afternoon, the Committee considered the draft report of INC-Forests3. Several corrections were proposed to more accurately reflect the discussion on bringing the agreement under the UN umbrella. Switzerland also suggested adding the non-paper summarizing responses to the enquiry of the INC-Forests Chair regarding key aspects involved in deciding whether to bring the LBA under the UN umbrella and additional submissions by UN entities, to the list of information papers attached to the report. With these changes, the Committee adopted the draft report.

Noting the need for representatives of OLA, UNECE and UNEP to report back to their respective organizations on matters affecting their work, OLA enquired about the possibility of obtaining an audio recording of the meeting. Chair Heino said he would consult with the legal advisers concerning this request.

#### CLOSURE OF THE SESSION

Switzerland and the EU, on behalf of its Member States and EU applicant Croatia, hailed the constructive spirit of the resumed session of INC-Forests3 and progress made, and thanked the host country, the INC-Forests Bureau and the Secretariat for their contributions to the process.

Chair Heino thanked Committee members for their fruitful discussions and contributions during INC-Forests3, and expressed hope that the same constructive spirit would prevail in Poland during INC-Forests4 in June 2013. The Chair closed INC-Forests3 at 5:23pm.

#### UPCOMING MEETINGS

**UNFF 10:** The tenth session of the UN Forum on Forests (UNFF) will focus on forests and economic development, including agenda items on: forest products and services; national forest programmes and other sectoral policies and strategies; reducing risks and impacts of disasters; and benefits of forests and trees to urban communities. **dates:** 8-19 April 2013 **location:** Istanbul, Turkey **contact:** UNFF Secretariat **phone:** +1-212-963-3401 **fax:** +1-917-367-3186 **e-mail:** unff@un.org **www:** <http://www.un.org/esa/forests/session.html>

**38th Meeting of the Afforestation and Reforestation Working Group:** The Clean Development Mechanism (CDM) Afforestation and Reforestation Working Group (A/R/WG) will hold its 38th meeting to consider matters relating to CDM A/R project activities, including preparing recommendations on submitted proposals for new baseline and monitoring methodologies for A/R CDM project activities. **dates:** 17-19 April 2013 **location:** Bonn, Germany **contact:** United Nations Framework Convention on Climate Change Secretariat **phone:** +49-228-815-1000 **fax:** +49-228-815-1999 **e-mail:** secretariat@unfccc.int **www:** <http://cdm.unfccc.int/calendar/index.html>

**UNECE/FAO/InnovaWood Seminar on Innovation in the Forest-Based Sector:** UNECE and the FAO will co-host a one-day seminar with InnovaWood on innovation in the forest sector for a green economy. The seminar will consist of two parts: the framework for forest-based sector innovation for aiding the transition towards a green economy; and examples of forest-based sector innovation in business, including examples of innovation in processes, products and materials. InnovaWood is an umbrella organization that supports innovation in European forest, wood-based and furniture industries. **date:** 22 April 2013 **venue:** Palais des

Nations **location:** Geneva, Switzerland **contact:** Elina Warsta **phone:** +41-22-917-2872 **fax:** +41-22-917-0041 **e-mail:** elina.warsta@fao.org **www:** <http://www.unece.org/forests/wood-innovation2013.html>

**35th Session Joint FAO/UNECE Working Party on Forest Statistics, Economics and Management:** The Working Party is expected to provide guidance and exchange views on issues of forest statistics and other elements of the UNECE/FAO Joint Work Programme. **date:** 23-25 April 2013 **venue:** Palais des Nations **location:** Geneva, Switzerland **contact:** Alex McCusker **phone:** +41-22-917-2880 **fax:** +41-22-917-0041 **e-mail:** alex.mccusker@unece.org **www:** <http://www.unece.org/forests/wpfssem2013.html>

**Seminar on Climate Change in European Forests: How to Adapt:** The high-level discussion and information-sharing forum on the future of forests in Europe – ThinkForest – will examine how the revised EU Forest Strategy should address the need to adapt forest management to the changing climate. ThinkForest is coordinated by the European Forest Institute. This event is organized in collaboration with the European Parliament Intergroup on Climate Change, Biodiversity and Sustainable Development. **date:** 25 April 2013 **venue:** European Parliament **location:** Brussels, Belgium **contact:** Marc Palahi, ThinkForest Coordinator **e-mail:** marc.palahi@efi.int **www:** <http://www.thinkforest.efi.int/portal/events/?bid=896>

**International Conference on Forests for Food Security and Nutrition:** The Conference, organized by FAO in partnership with the Center for International Forestry Research, the World Agroforestry Centre, the World Bank and Bioversity International, will focus on the impact of forests, trees on farms, and agroforestry on food security and nutrition. Objectives include exploring policy options and improving available information and technology that will support the contribution of forests to food security. **dates:** 13-15 May 2013 **venue:** FAO Headquarters **location:** Rome, Italy **fax:** +39-0657055514 **e-mail:** Forests-foodsecurity@fao.org **www:** <http://www.fao.org/forestry/food-security/en/>

**2013 Forest Communicators Network Meeting:** The Forest Communicators Network (FCN) is hosting this meeting to help improve the ability of the forest and forest products sector to communicate effectively both within and outside of the sector. FCN is a joint-initiative of the UNECE Timber Committee and FAO's European Forestry Commission. **dates:** 21-23 May 2013 **location:** Tallinn, Estonia **contact:** Eve Charles **phone:** +41-22-917-3922 **fax:** +41-22-917-0041 **e-mail:** eve.charles@unece.org **www:** <http://www.unece.org/forests/fcn2013-annual-meeting.html>

**Workshop on Forest Products and Technologies for the Future:** The workshop, jointly organized by the Federal Forest Agency of the Russian Federation and the UNECE/FAO Forestry and Timber Section, will focus on the key policies and technologies that could define the modernization of the Russian forest sector to maximize its potential as a global contributor to climate change mitigation and an important source of timber in response to the growing demand for sustainable forest bioenergy. **dates:** 22-24 May 2013 **venue:** Forestry Research Institute **location:** Saint Petersburg, Russian Federation **contact:** Tatyana Yakusheva **phone:** +7-499-615-9925 **e-mail:** tanaeva@gmail.com **www:** <http://www.unece.org/index.php?id=32202>

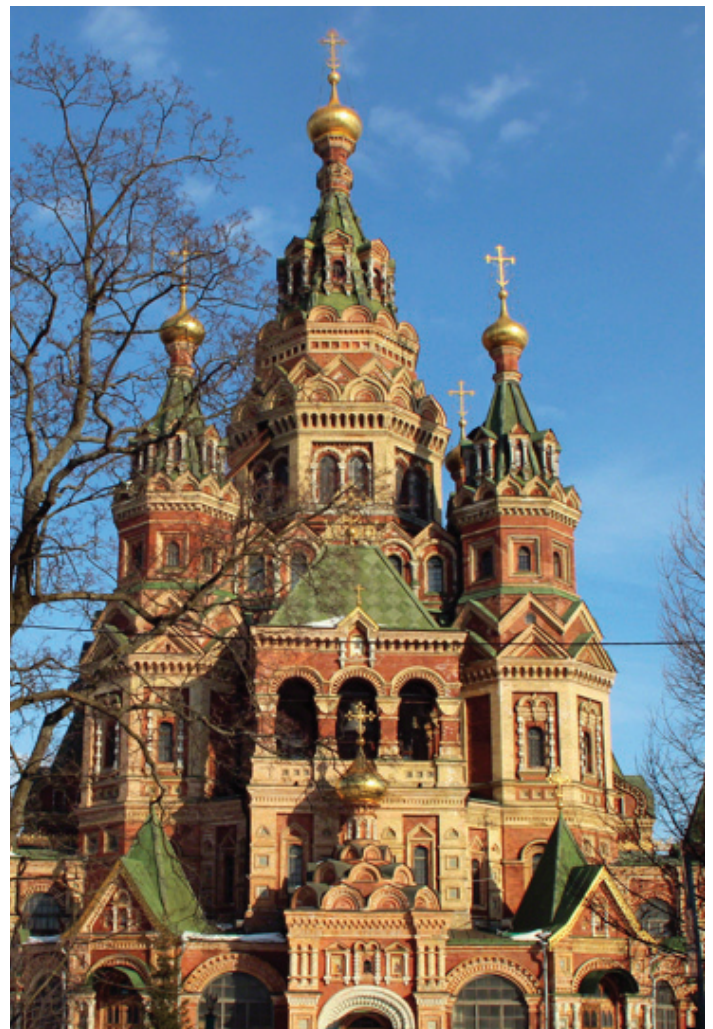
**54th Session of the Advisory Committee on Sustainable Forest-based Industries (ACSFI):** This yearly meeting of the ACSFI provides guidance on the activities and work programme of FAO's Forestry Department on issues relevant to the paper and forest products industry. ACSFI is a statutory body of the FAO, composed of senior executives from the private industry sector worldwide. The Associação Brasileira

de Celulose e Papel, International Council of Forest and Paper Associations and FAO are organizing the event. **dates:** 4-5 June 2013 **venue:** Hotel Intercontinental Al. Santos **location:** São Paulo, Brazil **contact:** Jukka Tissari **phone:** +39 0657054179 **e-mail:** jukka.tissari@fao.org **www:** <http://www.fao.org/forestry/industries/9530/en/>

**INC-Forests4:** The fourth and final session of the INC for a LBA on Forests in Europe (INC-Forests4) is slated to complete negotiations at this meeting. **dates:** 10-14 June 2013 **location:** Warsaw, Poland **e-mail:** INC-Forests@foresteurope.org **www:** <http://www.forestnegotiations.org>

## GLOSSARY

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| COP   | conference of the parties               |
| FAO   | UN Food and Agriculture Organization    |
| INC   | Intergovernmental Negotiating Committee |
| LBA   | legally binding agreement               |
| MOU   | memorandum of understanding             |
| NGO   | nongovernmental organization            |
| OLA   | UN Office of Legal Affairs              |
| SFM   | sustainable forest management           |
| UNECE | UN Economic Commission for Europe       |
| UNEP  | UN Environment Programme                |
| UNSG  | UN Secretary-General                    |



Saint Peter and Paul's Cathedral across the street from the venue