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*INTERNATIONAL ENVIRONMENTAL LAW-MAKING AND DIPLOMACY*

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**Mr. Chairman, Ladies and Gentlemen,**

It is a great pleasure for me to be here with you in beautiful Joensuu for this UNEP Course on International Environmental Law-making and Diplomacy. I would like to thank the University of Joensuu, UNEP and the Government of Finland for co-hosting this initiative. It clearly resonates and responds to several proposals and suggestions for a continued dialogue to clarify and better understand the possible options for better governance and law-making.

Being a forester by profession and heading the Secretariat of the UNFF, I would like to present some facts and views on forests in the context of international environmental lawmaking and diplomacy. I am sure that during this course, participants will receive in-depth theoretical and practical aspects of environmental law and diplomacy from highly qualified experts in the field.

I will first discuss about forest and forest policy in the context of the recent development, then I will discuss the linkages between international law and forest policy, particularly as it relates to the work of the UN Forum on Forests. Finally, I will talk about some lessons learned and present some suggestions for the future negotiators and practitioners.

## **Forests as a microcosm**

The world has about 4 billion hectares of forests that constitute about 30 % of the earth's surface area and all the people depend to varying degrees on forests for their livelihoods. Our major challenge is how to respond to the growing needs of these people and their communities.

Forests provide subsistence and income to about 350 million people who live within or near forests. Forest industries provide employment to nearly 100 million people. Forests are the largest reservoir of terrestrial biological diversity, regulator of climate and water cycles, habitat for known and unknown plant and animal gene pools, and space for cultural and spiritual well-being of human civilization. However, forests of the world are at grave risk today. Millions of hectares of forests are lost every year due to deforestation and forest degradation, risking welfare of present and future generations.

Forests have one particular characteristic, which is both advantageous and disadvantageous. Due to the wide range of products and services that forests provide, forests also have a multitude of stakeholders with a wide range of interests. Often times such interests are conflicting. For example, a patch of forests could be seen as a source of lumber or paper by an industry and source of revenue by government, excess land for cultivation by a poor landless farmer, wildlife habitat to be protected for some, watershed for downstream population, spiritual and hunting ground for indigenous people, and gaming or recreational refuge for city-dwellers.

The growing significance of international trade and environmental problems and climate change make forests an issue of global concern too. Additionally, policies and actions in other sectors such as energy and agriculture impact on the health and survival of forests. In such a complex and challenging circumstance, sustainably managing this precious resource of nature in the best possible way is a big policy challenge to national and international decision makers.

## **Sustainable forest management is part of a broader development agenda**

Five years ago Heads of States and governments came together to create a holistic vision for development encapsulated in the eight inter-connected Millennium Development Goals. Forests could help a great deal in finding solutions to development challenges, in particular, alleviating poverty, as contained in the Millennium Development Goals.

Despite such a huge potential and adoption of the Forest Principles and Chapter 11 of Agenda 21, 13 years ago at the Earth Summit, we still face many challenges in halting deforestation and land degradation. Globalization and the fast development pace in several parts of the world also present new pressures on forests and its ability to contribute to critical socio-economic and environmental challenges.

The United Nations Forum on Forests (UNFF) was established, in 2000, particularly for discussions and policy development on these interlinked forest-related issues and to foster cooperation on such cross-sectoral priorities at all levels. As a high-level body under the Economic and Social Council of the United Nations, with universal membership and a mandate to address sustainable management of all types of forests, UNFF has pulled together various forest-related international and regional processes, institutions and instruments, as well as stakeholders from civil society, and integrated these pieces into an international arrangement for action, for forests and for people.

Implementation of these policies has to occur in countries, facilitated by international and regional organizations and instruments and various stakeholder groups. To support the work of the UNFF, the heads of other international organizations have formed a voluntary partnership - Collaborative Partnership on Forests. This voluntary Partnership has not only supported the UNFF and its Member States in the implementation of the IPF/IFF proposals for action, but it has also provided technical and financial support to various countries.

### **International law and forests**

Nation states have opted for formal agreements to solve certain cross-border and global problems, preventing further damage to environment or human health and/or achieving desired objectives of higher environmental quality. These agreements can take a number of forms and labeling and collectively constitute “International Law”.

Many factors compel the international community to initiate a negotiating process. Generally, increased public concerns of a problem; greater scientific knowledge about the causes and seriousness of a problem; and broadening the understanding and consensus among the states and other actors in sharing the burden of addressing the problem, increase the likelihood of achieving an agreement.

Issues of international concern are often addressed through a legal instrument, however, there is a general need to strike a balance between cooperation and regulation; to recognize State sovereignty; and to take

into account voluntary commitments, the role of stakeholders and the business sector, and the importance of access to relevant information. These are among the key elements that may form part of the basis for an effective international legal regime.

These international agreements are developed to modify the behaviours of states, and through them, those of private actors related to specific sectors. Once created, an international agreement will be as effective as the parties commit to make it. Thus, the implementation or compliance of the provisions (and spirit) of the agreement should be paramount, and would require to be systematically monitored, assessed and reported.

There are various ways in which some existing international law or regimes have incorporated or applied non-binding instruments or decisions in order to address certain matters or facilitate the application or development of the regime in question. Good examples can be drawn from the Convention on Biological Diversity, CITES, the Ramsar Convention, The Technical Barriers to Trade Agreement and the Agreement on the Application of Sanitary and Phytosanitary Measures of WTO, the United Nations Convention on the Law of the Sea and the United Nations Framework Convention on Climate Change.

International instruments or agreements frequently contain an articulation of general principles and frameworks for action to address specific problems under the preview of the instruments. They often call for specific national level actions, such as the adoption of national regulations standards and implementation strategies. Other common provisions of such instruments include international cooperation, monitoring and reporting, research, exchange of information, well established dispute resolution processes, coordination among related agreements and establishment of independent secretariats.

### **An effective international forest regime**

As the past has shown, there is little doubt that developing an effective international forest regime would not be easy. As with most international agreements, developing and effectively implementing an international policy framework on forests needs to meet the challenge of balancing the territorial sovereignty issue with cross border nature of most environmental problems.

The sovereign rights over forest resources and on their use for national economic development, particularly for poverty reduction, jobs and income generation, dominate national priorities on forests. Some argue that forest policy is a national issue that should not be internationalized. Furthermore, tropical

forests often have the greatest biological diversity and some of the most complex problems. International trade in forest products is significant and there are difficult issues relating to illegal logging and trade.

The growing concerns for human and intellectual property rights, particularly regarding indigenous people and local communities, tension on rural-urban interface, and local-global priorities present another set of challenges. Furthermore, forests have a multitude of interest groups - often with conflicting demands on - uses of forest goods and services. Balancing their concerns in policy and programming for sustainable forest management even at the national level is sometimes complicated enough, and doing so at global level is even much more challenging.

## **UNFF 5**

Let me now briefly look back to the fifth session of the UN Forum on Forests, held from 16 to 27 May 2005, where it faced three major challenges that were inter-linked. First, how to continue the advancement of the implementation of actions already agreed on by the UNFF, the Intergovernmental Panel on Forests and the Intergovernmental Forum on Forests. The second challenge was to assess the performance and effectiveness of the Forum in its first five years, and to consider with a view to recommending to the ECOSOC and through it to the General Assembly the parameters of a mandate for developing a legal framework on all types of forests. And third one was to chart the way forward for the Forum - to consider its future work (mandate) and structure within the institutional framework of the UN system.

The Secretary-General in his reports to the fifth session of the UN Forum on Forests, discussing the possible future arrangement, concluded that there are only two main options to be considered by the Forum:

1. Strengthening of the current international arrangement on forests; and
2. Developing a legally-binding instrument on all types of forests.

When considering modalities of the first option, the reports emphasized a need to understand how, in a real sense, the current arrangement could be made stronger in terms of its mandate, working method and programme of work. To this end, the lessons from international environmental regimes indicate that the development of international technical guidelines could be a potential approach. Such voluntary guidelines, or similar other so-called "soft law", are developed in a less formal and incremental manner and can come into effect relatively quickly because they normally do not require national ratifications. However, it also carries an inherent risk of limited or non-compliance by states because of its very nature

of informality. Thus, the guidelines should be developed in a realistic manner and coupled with concrete programming and assured means of implementation, in particular financial resources and capacity building. A potential advantage of a soft law approach is that it could evolve into a more legally-binding instrument as information, experience and political consensus of states increase.

On the issue of the legally-binding instrument, the reports noted that the use of the framework-protocol has become the most common environmental treaty prototype in the past decades. The convention-protocol prototype allows an incremental approach in treaty-making from general agreement to more specific and concrete obligations in gradual steps. However, such an approach often implies a very long and drawn out negotiation process. Furthermore, in the case of forests, it would be necessary to establish whether it covers all types of forests in the world; and to ensure that it respects sovereign rights of nation states consistent with international law; and promotes democratic values, human rights of the present and future generations. It would probably build upon the "Forest Principles", the provisions of Agenda 21, Chapter 11, the IPF/IFF proposals for action and the work of the UNFF.

The Forum deliberated on those issues, based on the Secretary-General's reports and other inputs. There were intense discussions around how to address: means of implementation, working modalities, including regional aspects, establishment of global goals and/or targets and a possible voluntary code or international voluntary guidelines. However, different expectations among countries on how, and what is required to strengthen the arrangement might have contributed to the resulting lack of agreement within the available time at UNFF5. As such, deliberations on the future arrangement will continue in February 2006, at UNFF6.

### **Modus operandi**

The principal objective of the new international forest arrangement should be to ensure that all of the world's forests are sustainably managed, and for this it should be logical to start by setting specific international goals and targets. This should be the basis for designing an overarching and comprehensive framework for a good global governance structure for all types of forests.

The lack of a coordinated, holistic approach leads to a sub-optimal use of resources at the national and international level. In the case of official development assistance (ODA) financing, the lack of a common agenda has resulted in ineffective and inefficient aid delivery. The sector has been unable to convince policy makers of the need for increased long-term ODA to support international forest agenda. In fact, total commitments have decreased in recent years.

Many of the challenges to sustainable forest management come from issues outside the forest sector. The new framework would give forest policy issues a higher level profile and allow for the improved cross-sectoral policy coherence that is needed to address the above issues.

The existing conventions relevant to forests were developed with specific objectives that do not necessarily reflect all the priorities necessary to achieve sustainable forest management. This has led to a situation where different approaches to sustainable forest management and the decision-making processes have been piecemeal and fragmentary with many gaps and overlaps. A new Framework on Forests should be able to overcome this shortcoming. In so doing, it would also complement the existing obligations and enhance their forest-related objectives.

### **Future international forest policy**

Let me now reiterate some of the key elements in support of the future international forest policy.

First, we need coherent and predictable forest policies, which recognize all forest benefits and concerns of all stakeholders. This is a cornerstone for sustainable forest management. These supportive policies and enabling environments are instrumental in attracting the socially and environmentally responsible private sector and in creating the much needed forest markets and revenues from forest products and services.

Forests and forest products should be used in support of social development, environmentally sound management and conservation, and economic growth in a sustainable manner, thus contributing to the overall development of the society as a whole. Also, policies that bring stability and expand the capabilities of individuals and communities, dependent on forests, can diversify their income base and is essential for long term sustainability. Strengthening institutional capacity for governance and providing extensive opportunities for education, especially for girls, will be important factors in maintaining a healthy local and national economy.

This leads to my second point: efficient and effective land tenure systems and access to forest resources are crucial for local and indigenous communities and provide an economic incentive for sustainable forest management. When people have control and ownership of forests, then they have greater opportunities to capitalize on forest assets, and even greater incentive to sustain the resources. Good land stewardship and clear principles of social responsibility are pre-requisites for sustainable forest management.

None of these pieces can come together without the third basic tenet of sustainable forest management, that of good governance and strong law enforcement. A lack of economic opportunities combined with weak law enforcement often leads to illegal logging, which can destroy ecosystems and deprive the local forest-dependent community of the possibility of sustainable livelihood.

Illegal logging and trade in illegally harvested forest products have been eroding the resource bases of many countries and impacting on their socio-economic and ecological health. We have seen that internal conflicts and illegal harvesting of natural resources, including forest resources, go hand in hand in many countries. Often, illegally harvested timber is exported to finance violent activities. Such crises are mostly beyond the coping ability of national governments, and require the international community's support.

With these few words I also wish you all a productive meeting and an enjoyable stay here in Joensuu. The UNFF family will be looking forward to the results of your deliberations.

I thank you for your attention!