

OUTLINE OF BRAIN STORMING FORUM ON IFF AND A " CONVENTION ON FORESTS "

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ABSTRACT

The IGES Forest Conservation project held a series of forums to brainstorm on the topic of "IFF & Convention on Forests", coinciding with a new initiative declared by the Costa-Rican and Canadian governments (the Costa-Rica/Canada Initiative) at the second meeting of the Inter-governmental Forum on Forests (IFF) held in Geneva in August/September 1998. This initiative aims to build consensus for a new international instrument to deal with global forest issues by clarifying the scope of a possible United Nations Convention on Forests, and other international legal instruments. At the three brainstorming forums, held between December 1998 and March 1999, existing documents related to the IFF and international treaties on forest conservation were analyzed for the purposes of clarifying and studying the results of discussions which had taken place in the international community. Based on the forums, further work is continuing to clarify issues that are necessary to build consensus for a legally binding international instrument. Participants of the forums recognized the Proposals for Action for the IPF (which resulted from the final meeting of the IPF in 1997) as important for considering actions required to establish the hoped-for Convention. Accordingly, analysis of the Proposals was conducted after the brainstorming forums to clarify what actions are required by the international community at present time. Because some actions recommended in the Proposals regarding traditional forest-related knowledge are similar to existing ones relating to legal instruments such as the Convention on Biodiversity, and Convention to Combat of Desertification, etc., it is necessary to coordinate among the existing instruments to effectively achieve objectives.

INTRODUCTION

Attempts to establish a Convention on Forests have been continuing since the UN Conference on Environment and Development was held in Rio de Janeiro in 1992. Problems related to forests, in particular relating to forest degradation and deforestation have attracted attention as global environmental issues since the mid-1980s. Many non-governmental organizations (NGOs) have expressed the view that the instruments available to solve them have not been adequate on the international and national levels, and have recognized the necessity of dealing with these problems through international legally binding instruments. By the beginning of 1991, some proposals had been advanced by developed countries to create international legally binding instruments.

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Although at the Rio conference, there was a good opportunity to achieve a Convention on Forests, this opportunity was lost because of clashes of national interests. Many developing countries, wary that it would be used a measure by developed countries to restrict their right to develop, expressed opposition to a proposed convention. In the end, a Non-legally-Binding Authoritative Statement of principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests was adopted (Statement on Forest Principles), instead of the hoped-for convention.¹ The Statement contains comprehensive and conceptual principles but has no provision for actions to deal with problems.

Since the Rio Conference, discussions about problems and solutions related to forests have continued through processes of policy dialogue such as the Inter-governmental Panel on Forests (IPF, 1995-1997) and Inter-governmental Forum on Forests (IFF, 1997-2000)). Through IPF discussions, countries agreed to adopt the Proposals for Action of the IPF which include about 130 actions. Although this is more practical and clearer than the Statement noted above, the implementation of these Proposals is not a legal obligation for governments. Under the IFF, governments have discussed not only endorsement of the Proposals, but also other matters related to forest conservation, such as traditional forest-related knowledge, underlying causes of deforestation and forest degradation, and international arrangements and mechanisms for all types of forests, etc.

A new initiative was declared at the second IFF meeting by the Costa-Rican and Canadian governments (the Costa-Rica/Canada Initiative) on Category of the Proposals, in which government delegations had been discussing international instruments regarding forest conservation. This initiative seeks to build consensus for a new international instrument to deal with global forest issues by clarifying the scope of international instruments, as well as the coveted Convention on Forests.

The IGES Forest Conservation project held brainstorming sessions on the IFF & a Convention on Forests to coincide with the initiative, with three meetings held between December 1998 and March 1999. At these meetings, existing documents related to the IFF and international treaties on forest conservation were analyzed for the purpose of clarifying and studying the results of discussions which had taken place in the international community. Further work is continuing to clarify issues necessary to build consensus for a legally binding international instrument based on the results of the meetings.

The purpose of establishing an international treaty is to deal with specific problems, which requires parties to take actions, and that a system exists to ensure that contracting parties take those actions. Accordingly, a treaty could be structured in three parts, as follows: one identifying issues dealt with by the treaty; one clarifying the necessary actions to deal with the issues, which are would be written as obligations and rights of contracting nations; and one preparing a system to ensure that actions required by the treaty are taken.

At the Brainstorming Forums, participants analyzed issues related to a Convention on Forests using a document dealing with international legal instruments which had been distributed at the second IFF meeting, and studied existing international treaties regarding forests conservation. As a result of the work, the current situation of discussions of international community were clarified. Issues dealing with a possible

¹ Gareth Porter and Janet Welsh Brown, *Global Environmental Politics*, Westview Press(1991).

Convention are being discussed through the IFF's Category III. In this category, an agenda for actions on forest conservation is being discussed and will clarify what instruments are necessary. Regarding actions and measures for ensuring implementation, they should be based on the Proposals noted above. The hoped-for Convention would be the only document dealing with actions for all types of forests at the global level and agreed to by almost all governments as necessary actions for forest conservation.

ANALYSIS OF DISCUSSIONS BY THE INTERNATIONAL COMMUNITY WITH RESPECT TO THE PROPOSED CONVENTION ON FORESTS

1. Purpose of the Convention and Country Attitudes Towards It

Sustainable forest management (SFM) has been recognized as a key concept in documents which resulted from IFF and IPF discussions and other frameworks for forest conservation since the Rio Summit. Accordingly, SFM might be the purpose of the proposed Convention.

Many other legally international binding instruments already exist, and those which are concerned in some way with SFM include: the Convention on Biological Diversity (CBD), the Kyoto Protocol of the United Nations Framework Convention on Climate Change (Kyoto Protocol), the Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar Convention), the Convention Concerning the Protection of the World Cultural and Natural Heritage (WHC), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and the International Tropical Timber Agreement (ITTA). Some countries have expressed concern about duplication between existing instruments and a new Conventions on Forests, and also point out the necessity of implementing existing instruments effectively before establishing new ones.

On the other hand, it could be said that there are too many instruments to achieve SFM, and inconsistencies between the existing instruments have been noted. For example, the possibility exists of a conflict emerging between the CBD and the Kyoto Protocol due to differences in their respective purposes. Plantations are important for both these instruments as well as for SFM. However, the CBD aims to conserve biological diversity whereas the Kyoto Protocol values increased carbon sinks. If plantations are expanded in order to increase sinks, problems will arise from the perspective of conserving biological diversity. As contradictions may become obstacles when plantations are being established, for example, some countries feel that new international instruments, including legally binding ones, are necessary.

2. Analysis of Possible Elements for Legally Binding Instruments

Throughout this work, the basic principles of international law are recognized. An important principle is *lex posterior derogat priori*, which states that if a country ratifies many international treaties, and there are contradictions between previous treaties and newer ones, the newer ones are effective in that country, with some exceptions. Another principle is *lex specialis derogat lege generali*, which states that if a country ratifies many international treaties and there are contradictions between general international treaties and special ones, the special law is effective in that country,

with some exceptions. According to these principles, existing international treaties do not provide sufficient reason against establishing a new law, even if the same issue is covered by the existing law.

Analyzing a Secretariat note which was distributed at the second IFF meeting², Category III and other frameworks related to SFM (especially criteria and Indicators) and possible elements for the Convention could be divided into three categories as follows:

Possible elements to be dealt with at the domestic level

Many elements can be dealt with at the domestic level. Forest preservation and utilization are connected to the local community and national policy. Thus, improving local and national level management is a crucial issue in dealing with forest conservation.

Possible elements to be dealt with at the international level

Some elements are dealt with not only at the national level but also at the international level. In IPF and IFF processes, international cooperation has been discussed with regard to financial assistance and technology transfer. In particular, it has been pointed out that the timber trade can seriously affect site management.

Possible elements of the “Underlying Causes” Process

In IPF and IFF processes, the underlying causes of forest degradation and deforestation have been discussed constantly, an indication that the international community recognizes these as important issues. Some underlying causes may be come possible elements for the Convention.

3.Actions that would be Required by the Proposed Convention on Forests and Measures for Ensuring Implementation of Treaties

By analyzing existing multilateral environmental agreements (MEAs), one can see that obligations required by treaties and measures for ensuring implementation of treaties can affect the scope of the Convention, because obligations mean actions required by the Convention, and there are different actions to be taken even when the same issue is covered. Differences in measures for ensuring implementation of treaties can also affect difficulties in achieving their purposes. For example, if contracting parties are required only to research issues regarding forest conservation and to exchange their results through the Convention on Forests, all issues could be included in the scope. Moreover, if financial assistance and technology transfers are covered in the Convention, even if it covered issues which are difficult for developing countries to comply with, they could agree to include them in the Convention. Therefore it is necessary to consider what actions are required for international legal instruments and what measures are possible for ensuring implementation of the Convention on Forest.

² *Category International arrangement and mechanisms to promote the management, conservation and sustainable development of all type of forest ; Note by secretariat (E/CN.17/IFF/1998/9).*

"Proposals for Action of the IPF"

A report of the fourth meeting of the IPF included many actions required for forest conservation, called Proposals for Action of the IPF, which is the only formal document in which actions at the global level at the present time are called for. Although this is not an International legal instrument, all countries involved have agreed upon it with the exception of sections on "establishment of a new international fund" and "trade and environment". Since these actions may affect the Convention, it is useful to consider what actions would be required under the Convention.

ANALYSIS OF THE PROPOSALS FOR ACTION OF THE IPF

As mentioned above, the Proposals for Action of the IPF are important for considering actions required for the Convention. These are discussed below:

1. Actions Required by the "Proposal for Actions of the IPF"

More than 130 actions are called for according to the Proposals.³ Six categories of actions are especially required for countries, as follows:

Institutional arrangements / Formulation of Policy,⁴ International Cooperation,⁵ Research,⁶ Ensuring Participation⁷, Training⁸, and Open Information / Information Exchange⁹. Institutional Arrangements, International Cooperation and Research play important roles in the Proposal.

Institutional arrangements / Formulation of Policy

The Proposals require countries to take action to organize their policies, particularly the formulation of basic policy regarding forest conservation, and also prioritization existing policies. Countries are required to formulate National Forest Programs in order to address issues regarding forest conservation with an inter-sectoral approach. Almost all issues prescribed in the Proposals are dealt with under these National Forest Programs. Institutional arrangements are also required when international cooperation is undertaken. Donor and recipient countries must prioritize activities regarding forest conservation with international cooperation. Recipient countries are also urged to clarify a national authority responsible for national coordination of financial assistance.

International Cooperation

Countries are required to deal with various issues under international cooperation. Financial assistance and technology transfer are important tools. However, regarding financial assistance, no agreement was reached on the establishment of a new international fund during the IPF process. Therefore, the Proposals require countries to prioritize existing frameworks, to utilize debt cancellation and to promote investment

³ *Report of the Ad Hoc Intergovernmental Panel on Forests on its fourth session* (E/CN.17/1997/12).

⁴ See *ibid.* (N.3). para17, 29,40, 46, 58, 70,77,115,132.

⁵ See *ibid.* (N.3) para17, 30,31,40, 46, 50, 58,70,77,78,80,115,131,132,133.

⁶ See *ibid.*(N.3). para27,31,40, 46,58,71,104,128,131,134,135.

⁷ See *ibid.*(N.3). para17,29,40, 46,58,70,115,133.

⁸ See *ibid.*(N.3). para17,40, 46,58,70,77.

⁹ See *ibid.*(N.3). para27,30,50,58,77,78,104,133,134,135.

from the private sector. Furthermore, developed countries are required to support developing countries with regard to certification and eco-labelling systems.

Research

In the Proposals, countries are called on to conduct research on various aspects of forests, in combination with international cooperation.

Ensuring Participation, Training, Open Information / Information Exchange

These are supplementary actions for the three actions mentioned above. Ensuring participation plays an important role in the process of formulating the National Forest Programs. Several issues also require participation, especially relating to local and indigenous people, whose important roles in forest conservation are recognized. Training for national authorities and the local community is necessary for implementing National Forest Programs effectively and for dealing with several issues. Open information and information exchange is required for effective research.

2.Problems of the "Proposal for Actions of the IPF"

Actions for preserving and utilizing forests, and basic forest policy are not prescribed clearly in the Proposals.

Institutional arrangements, international cooperation and research are required by the CBD, Ramsar Convention and WHC, however these treaties clarify actions for preserving and utilizing natural resources. If utilization of natural resources has a negative impact on the eco-system, countries are required to preserve them. If utilization does not damage the eco-system, countries are required to use them in a sustainable manner.

According to these conventions, formulation of national strategies and policies must be based on these actions. In the case of the Ramsar Convention and the WHC, contracting parties must nominate an area that deserves to be preserved by the international community¹⁰. In the case of the CBD, contracting parties are encouraged to establish a protected area¹¹. Guidelines exist to promote the sustainable utilization of those areas¹².

The Proposals contain prescriptions regarding protected areas. However, as they do not deal with all types of forests, it is necessary to clarify the actions necessary for management of valuable ecosystems or habitats of endangered species and other areas in all types of forests. To establish an internationally protected forest area, establishing an international system to identify valuable ecosystems and promote the establishment of national protected areas under each country's national law may be a possible option. With respect to promotion of sustainable utilization of forest resources, establishment of an international certification system may be possible. It is necessary to clarify what actions from these options are required to conserve forests.

¹⁰ Convention on wetland of International Importance Especially Waterfowl Habitat, Art3;
Convention Concerning the Protection of the World Cultural and Natural Heritage, Art 4.

¹¹ Convention on Biological Diversity, Art 6

¹² Convention on wetland of International Importance Especially Waterfowl Habitat,
Art4,Resolution /7.

TRADITIONAL FOREST RELATED KNOWLEDGE AND PROPOSALS FOR ACTION OF THE IPF

1. Action Required under the Proposals

Traditional forest-related knowledge (TFRK) is included in the Proposals as one of thirteen issues it deals with¹³. In the Proposals, not only preservation but also utilization of TFRK are required.

To achieve these purposes, countries are required to take several actions such as to research about TFRK, to ensure indigenous people and local people's participation in the National Forest Programs from planning to implementation, and to promote public awareness, etc.

One research objective is the relationship between intellectual property rights and TFRK. Other important research objectives are the measure of sharing benefits equitably derived from utilization of TFRK. Regarding this issue, intellectual property rights are recognized as playing important roles.

2. Need to Coordinate with Other Existing Instrument

Actions required under the Proposals are similar with Article 8(j) of the CBD. This article requires contracting parties to respect, preserve and utilize traditional knowledge related to management of biological resources. Regarding the article, the 4th Conference of the Parties (COP 4) of the CBD adopted Decision 8 to set up a working group to ensure its implementation. This working group will advise COPV regarding development of laws or forms to apply traditional knowledge for sustainable utilization of biological resources and will do other work to implement the article. Under the CBD, the work program for forest biological diversity also plays an important role in preservation and utilization of TFRK¹⁴. It should be noted that for an article regarding TFRK in the CCD an implementation measure is not yet clear as not much time has passed since the CDD went into force¹⁵.

As mentioned above, indigenous people and local people's participation is recognized as important for preservation and utilization of TFRK. Regarding public participation, many instruments exist at the international and national levels. At the international level, Ramsar Convention adopted a resolution which requires contracting parties to ensure indigenous and local people's participation at its COP7¹⁶. CBD Article 8(j) also requires contracting parties to involve indigenous and local people in implementation, and a similar article exists in the CCD¹⁷.

¹³ See *ibid.* (n.3) para32-40.

¹⁴ Decision 7.

¹⁵ International Convention to Combat Desertification, Art 16.

¹⁶ Resolution 7/8.

¹⁷ International Convention to Combat Desertification, Art 10.

In addition, local and indigenous people's participation is an important element in the human rights protection regime¹⁸.

As shown here, coordination is necessary among existing instruments, and between existing instruments and a possible instrument to conserve forests. In particular, research on TFRK needs to avoid duplication and overlapping of existing instruments to conduct research effectively. To ensure this, it will be necessary to set out cooperation among regimes and exchange information regarding research. Clearly, it is crucial that implementation of existing instruments be ensured.

CONCLUSION

It is not certain whether the proposed Convention on Forests will be adopted or not. In either case, it is crucial to clarify actions required for forest conservation. As mentioned above, it is especially important to clarify actions required for the preservation and utilization of forests. Traditional knowledge regarding forest management can play an important role in both actions. Regardless of the fate of the Convention on Forests, it is necessary to coordinate between existing instruments, and with any new instrument in order to achieve objectives effectively.

¹⁸ Universal Declaration of Human Rights, Art.21; International Covenant on Civil and Political Rights, Art.25 ; European Convention on Human Rights, Protocol ,Art.3; American Declaration of the Rights and Duties of Man, Art.20,24; American Convention on Human Rights, Art.23; African Charter of Human and Peoples' Rights, Art.13; ILO Convention no.169 concerning Indigenous and Tribal Peoples in Independent Countries.