Issues arising from paragraph 19 of the report of the second session of the INC

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I. EXECUTIVE SUMMARY

This report, by two independent consultants, addresses the issues in paragraph 19 of the report of the INC second session. It is based on responses from four agencies to a letter from Jan Heino, Chair of the INC, as well as research by the consultants. It is structured according to the requests contained in paragraph 19.

1. Information on the procedures for adoption of agreements within the United Nations, its programmes or specialized agencies;

The United Nations agencies consulted described procedures for adoption of agreements by their governing bodies. Each of the agencies underscores the need for early consultation to ensure that the goals, objectives, and procedures of the agreement are in concert with organizational goals, principles, and procedures.

2. Information on agreements adopted outside the UN system for which secretariat services are currently provided by a given body of the United Nations system;

There are many examples of agreements adopted formally outside the UN system for which UN system agencies provide secretariat services. In most cases however, the “outside” agreements have in fact been prepared in cooperation and consultation with UN system agencies. Through consultation, an emerging convention can be aligned with the purpose, objectives, and procedures of the relevant organization or programme.

3. Examples of global or regional agreements adopted outside the United Nations system that were later on brought under the United Nations umbrella and procedures used for doing so;

It is possible to move under the UN umbrella after a convention has been agreed without consultation with the UN agency in question, but the process is complex and uncertain, as arrangements made outside the UN umbrella may be in political or legal conflict with the principles of the UN system. The non-UN convention must formally request the UN body to provide secretariat services. The Ramsar Convention has recently decided to suspend the process of coming under the UN umbrella.

4. Whether the procedures as drafted in the LBA would have implications on bringing it under the United Nations umbrella;

LBA procedures would have to be consistent with the principles and procedures of the relevant United Nations organization if the LBA were to be adopted by that body. The LBA draft text is not sufficiently advanced at present to determine which procedures might be affected.

5. Advantages and implications of bringing the LBA under the UN umbrella for the various options including synergies with other forest-related processes that may be achieved by doing so;
The advantages of bringing the LBA under the United Nations umbrella include direct access to forest relevant processes offering possible synergies to reduce the splintering of forest issues among various processes, linkage to existing operational systems and an ability to draw on expertise in the United Nations system. In addition, the LBA would automatically acquire legal personality through its host organization, whether or not the organization was in the UN family. However, a UN linkage implies the need to negotiate agreements with the relevant UN agency/agencies. The decision to bring the LBA under the UN umbrella, and through which organization, is a political choice. In short, to achieve the sought after synergies, the INC will need to discuss in depth the objectives of the LBA and how they align with those of potential host organizations.

6. Financial aspects including possible cost implications of the different options;

In all cases, the main costs of implementing the LBA, including the costs of the secretariat provided by UN agencies, would be borne by the parties to the LBA. The level of the budget required would depend essentially on the level of ambition of the LBA and the types of activities agreed. Some agencies may be in a position to make contributions from their regular budget. A host country might also wish to contribute, whatever the hosting arrangements chosen. However this would all be subject to negotiation between the INC and the relevant organization(s). Freestanding arrangements (i.e. not affiliated to an existing organization, either UN or non-UN) would require considerable one-time establishment costs and would not necessarily be cheaper than arrangements involving a connection to preexisting agencies.

7. Possibility of secretariat services being provided by the United Nations, its programmes and specialized agencies or a combination of these;

The agencies indicate that they may provide secretariat services for agreements adopted outside the United Nations system provided that the programme, financial procedures and operations of the agreement are consistent with and in furtherance of the objectives of the organization. These would require approval by the FAO Council, Economic Commission for Europe (or its ExCom) and the General Assembly in cases where the legally binding agreement has been set up outside the United Nations system or the UNEP Governing Council respectively.

8. Possibilities regarding an Interim secretariat;

It would probably be possible to make arrangements for an interim secretariat, provided there was strong alignment between the objectives of the LBA and the organization asked to provide the interim secretariat. This would require advance consultation and coordination between the INC and the proposed organization.

9. Implications of staying outside the UN system, including international legal personality.

By staying outside of the United Nations system, the INC or COP would be obliged to establish rules of procedure to guide the governance, administration and financial
management of the convention. Representatives of the convention would have reduced/more difficult access to the UN system, and a greater challenge in establishing the organization. Establishing an international legal personality is a standard but long and complex process, necessarily involving a host country.

10. Conclusion

This review demonstrates the diverse approaches Parties have taken to overcome the many challenges outlined in Paragraph 19. The replies to the INC chair’s letter show that in the four organizations contacted there is good will towards the aspirations of the LBA, and a willingness to explore the issues further, but this must be accompanied by a consultation with the relevant authorities of the four organizations. These responses and the diverse examples of hosting conventions show that there are many possible solutions to the legal, institutional, practical and political challenges which arise. A prerequisite to finding a satisfactory hosting arrangement is that there is a strong convergence of views based on an in-depth consultation, about the ultimate objectives to be achieved, at the policy level, between the LBA and any potential host organization, inside or outside the UN system. Institutional and practical issues, of the sort described in the analysis, can be overcome if this condition can be satisfied.
II. INTRODUCTION

11. This report has been prepared in response to the request from the second meeting of the Intergovernmental Negotiating Committee (INC) on a legally binding agreement on forests in Europe (LBA)\(^1\). In paragraph 19 of its report “The Committee requested the Chair to provide an analytical document on some of the key aspects involved in deciding on bringing the LBA under the United Nations umbrella, to be presented at its next session. The analysis should include the option of the agreement remaining outside the UN system. Some of the elements include: information on the procedures for the adoption of agreements within the United Nations, its programmes or specialized agencies; information on agreements adopted outside of the United Nations system for which secretariat services are currently provided by a given body of the United Nations system; examples of global or regional agreements adopted outside the United Nations system that were later on brought under the United Nations umbrella and procedures used for doing so; whether the procedures as drafted in the LBA would have implications on bringing it under the United Nations umbrella; advantages and possible implications of bringing the LBA under the United Nations umbrella for the various options including synergies with other forest-related processes that may be achieved by doing so; financial aspects, including possible cost implications of the different options; possibility of secretariat services being provided by the United Nations, its programmes and specialized agencies or a combination of these; possibilities regarding an interim secretariat; and implications of staying outside the UN system, in particular in respect of international legal personality.”

12. As requested by the INC, the Chair sent a letter to the heads of four organizations to gather their inputs on the points raised in Paragraph 19. The organizations invited to respond, as decided by the Bureau of the INC, were the European Forest Institute (EFI), the Food & Agriculture Organization of the United Nations (FAO), the United Nations Economic Commission for Europe (ECE) and the United Nations Programme for the Environment (UNEP). The ECE reply underscored that authoritative information on certain elements of paragraph 19 should be solicited from the United Nations Office of Legal Affairs (UNLA). These replies are being circulated in full and are not quoted in full in this document.

13. Subsequently, the Chair of the INC, Jan Heino, asked two independent consultants, Michael Martin and Kit Prins to prepare a document to support the INC in the context of Paragraph 19. The contents of the document are the responsibility of the consultants, not of Mr. Heino, the INC, or any of the organizations mentioned.


\(^1\) For more information on the background and process, see http://www.forestnegotiations.org/
III. METHODS

15. To complete the assignment, the consultants reviewed, categorized and compared the replies to the INC Chair’s letter using the relevant elements of paragraph 19.

16. They distilled relevant information available for a number of international conventions using their websites, other document sources, personal contacts where possible and professional knowledge, to provide relevant examples.

17. Salient information of potential value to the INC process related to the requests found in Paragraph 19 was summarized.

18. Finally, points for consideration were developed to aid the INC in advancing their thinking on the elements of paragraph 19.

IV. REVIEW

19. Document 4/INC2 Information note on consideration of article 24 g. of the Oslo Mandate “the possibility of the agreement being brought under the United Nations umbrella” identifies that:
   a. The wording “the possibility of the agreement being brought under the United Nations umbrella” may be interpreted as covering different situations. For the purposes of this Note, the following possible interpretations are considered:
      i. Establishing a UN agreement - the agreement is adopted by a body of the United Nations (UN) or of one of its specialized agencies and the secretariat services are provided by the UN Secretariat, a programme or a specialized agency or the combination of these; or
      ii. Establishing a self standing (non-UN) international agreement - the agreement is adopted by a FE ministerial conference and the secretariat services are provided by the UN Secretariat, a programme or a specialized agency or the combination of these upon invitation. Such an arrangement would broadly qualify for “the agreement being brought under the United Nations umbrella”, but the agreement itself would not be a UN agreement governed by the UN rules.

20. EFI, FAO, ECE, UNEP and UNLA all replied to the INC Chair’s letter concerning Paragraph 19.
21. Available information on 14 conventions relevant to forestry and the environment were examined by the consultants (see Annex 1). Data were gathered on current practice for a number of aspects of potential interest to the INC, including the process of negotiation and ratification, secretariat and financial arrangements, as well as relations with the UN system. Attention was given to looking at conventions both within and outside the frame of the UN family. Examined were conventions that are global and regional (European) in scope. Some are thematic (e.g., treatment of hazardous wastes) and some look in a holistic way at a specific geographic region (e.g., Alpine or Carpathian region). Some conventions have a small number of Parties (e.g., six) and some have more than 170. Some have substantial trust funds to support the work of the convention and some operate almost wholly on in-kind contributions of the Parties. Ten have secretariats provided through the UN system in one way or another.

22. There are regional conventions with very ambitious ideals that were developed and operate without any or very limited linkage to the UN. These tend to be focused on a specific ecological zone (e.g., Alpine Convention). They rely heavily on voluntary cooperation among in-country institutions pursuing specific thematic clusters. On balance, the use of pooled financial resources is more limited and the role of the Secretariat is focused on liaison among Parties and representation of the convention in international fora. They tend to have smaller economic disparities among the Parties therefore funding for technical assistance or technology transfer is not a significant part of their programme of work.

23. This later point must be emphasized. As the number of Parties increases and diversifies, economic disparities among Parties create the demand for training and technical assistance to implement to objectives of the Convention. This additional aspect of capacity building within the programme of work for the convention expands the skills needed within the Secretariat requiring new capacities in training, contracting, administration and accounting.

24. An example of this reality can be seen in current practice for the Ramsar Convention (again non-UN affiliated). The convention’s programme of work includes line items for several grant funding programmes, financial support for participants to regional meetings and sponsorship to bring delegates to the COP. These are just some of the examples of “budgeted non-core expenditures” that must be funded through a parallel voluntary trust fund. They reflect attempts by the COP to overcome economic disparities and create a leveler playing field to encourage full engagement by all of the Parties in meeting the objectives of the convention.

25. The analysis shows that European countries have manifested a strong capacity to formulate international agreements on a range of economic, environmental and social topics. The pan-European region has developed an extensive number of very progressive agreements and these are often serviced by UN agencies operating under UN rules of procedure. Examples include the Aarhus convention supported by the ECE, UNEP’s support to the regional seas programme and FAO’s support to the General Fisheries Commission for the Mediterranean. As the number of potential Parties to the convention grows, inevitably,
smaller countries articulate a sense of disadvantage relative to large countries. They often manifest a desire to operate within the UN setting seeking equity in language coverage, access to documents, established procedure, etc. The scope of a convention is often determined by the problem it is meant to address. The LBA is being negotiated in a pan-European context, arising from Forest Europe, which not only determines the geographic scope, but also a wide disparity in ecological and social conditions among the Parties.

26. CITES is an example of an international convention developed apart from the UN that was folded under the UN umbrella when the Convention was signed. It remains a rare exception. An effort by some Parties to the Ramsar convention to align its secretariat with UNEP did not bear fruit underscoring the political as well as operational difficulties of retrofitting a convention under the UN umbrella after some years of practice outside of the UN framework. Almost universally, the conventions operate under the practice of consensus. Voting by Parties tends to be limited to the election of the head of the Secretariat and, where needed, to specific budgetary matters. Thus, proposals to change the location of the Secretariat, affiliation with the UN and other institutional issues face a tough uphill battle of winning full consensus among Parties.

V. AGENCY REPLIES AND POINTS FOR CONSIDERATION

27. Highlights of the organizational replies and associated analysis are listed below by element of paragraph 19:

28. Information on the procedures for the adoption of agreements within the United Nations, its programmes or specialized agencies;

Agency Replies

29. FAO stated that its Council may approve regional agreements found to be coherent with the mission and objectives of the organization, after the Director General has ensured that proper consultation has taken place. ECE indicated that, once negotiated and agreed upon in a relevant negotiating body, the agreement could be adopted by the relevant ECE Sectoral Committee, but noted that many aspects are only within the competence of the United Nations Office of Legal Affairs. UNEP stated there were possibilities of placing the LBA under UNEP, as a legally autonomous arrangement distinct from UNEP. This would entail the creation of an institutional linkage between the LBA and UNEP, in particular regarding the provision of secretariat functions for the agreement, like other MEAs administered by UNEP.

Points for Consideration

30. The precise procedures for the adoption of agreements with the United Nations system have been described in the organizations’ replies to the INC Chair’s invitation. FAO
describes a process whereby an agreement can be adopted within the context of Article XIV of its constitution. ECE describes a process whereby an agreement can be adopted by a relevant ECE Sectoral Body after negotiation in a relevant negotiating body, and thereafter by ECE or its EXCOM. UNEP describes a process whereby an agreement can be aligned with UNEP and servicing can be authorized by its Governing Council.

31. Each of the agencies underscores the need for early consultation to ensure that the goals, objective and procedures of the agreement are in concert with organizational goals, principles and procedures. This stress placed by the agencies on early engagement has a stronger basis than simply procedural harmony. The key word here is a shared sense of ownership. The Parties to an international convention may often be only a partial list of the members of a UN organization. The agencies, therefore, counsel early engagement to inform members of the potential host organization regularly through the Secretariat of the issue that the agreement is intended to address in order to build ownership to the process.

32. It is worth noting that many of the agreements adopted within the United Nations system arise through requests for action on a subject discussed in a governing body of one of the organizations or programmes (e.g., ECE Commission or Environment for Europe process, FAO Conference or UNEP Governing Council). The point to underscore is that the issue is “owned” or seen to have relevance to the broad membership of the organization, including members who will not become Parties, for instance because they are in a different region. Both the organization and the parties in the negotiation must see benefit in the cooperation: achievement of common goals, efficiency, and access to resources, and improved image (for both sides!). Experience has shown that in the absence of this common ownership, very good efforts may not succeed on technical procedural or budgetary issues.

33. The choice of secretariat and hosting arrangements, it seems to us, is more than a question of international law, practicality and cost: it is a political choice. Asking an organization, UN or non-UN, to host a convention is a clear statement of shared objectives and values, as is the acceptance by an organization to be associated with a legally binding agreement. Even setting up a freestanding convention not connected to any organization can be seen as a political choice – in this case not to engage with any of the existing international organizations who might plausibly host the convention. Although all organizations within the UN system share basic principles and values, they do differ in their priorities, methods and objectives, and maintain links with different communities inside member states. To apply to one UN agency, or indeed a combination of two or three agencies working together, is an indication of the priorities and objectives of the INC, and will have a fundamental influence on the nature of the LBA.

34. Information on agreements adopted outside of the United Nations system for which secretariat services are currently provided by a given body of the United Nations system;
35. FAO and UNEP replied that they are servicing jointly the Rotterdam Convention on the Prior Informed Consent Procedure for certain hazardous Chemical and Pesticides in International Trade (Rotterdam Convention). They described their early involvement with the Conference of Plenipotentiaries, and continuous consultation with the governing bodies of both FAO and UNEP, before finalization of the agreement, as key.

Points for Consideration

36. There are a significant number of conventions adopted outside the UN system for which secretariat services are currently provided by a given body of the UN system. However, in most cases, even if the agreement was formally concluded by a non-UN body, such as a ministerial conference, the UN agency had been closely involved in the negotiating process, so that its role had been foreseen from the start. An exception is the Ramsar Convention which is discussed below. Through consultation, an emerging convention can be aligned with the purpose, objectives, and procedures with the relevant organization or programme. Early consultation with the relevant UN body will certainly facilitate and expedite subsequent steps in the process.

37. Examples of global or regional agreements adopted outside the United Nations system that were later on brought under the United Nations umbrella and procedures used for doing so;

Agency Replies

38. The term United Nations “umbrella” is quite broad and the agencies found it difficult to respond explicitly to this element of the request. There appears to be two types of action that can be taken to bring an agreement under the United Nations “umbrella.” Firstly, a governing body of a UN organization or programme may adopt the agreement and subsequently open it for signature by the parties and arrange for servicing and support. Or secondly, the governing body can agree to provide for servicing and support without formally adopting the agreement itself. In the first case, where brought “under the United Nations umbrella” means adopted by a governing body of the United Nations then the procedures are under the section Information on the procedures for the adoption of agreements within the United Nations, its programmes or specialized agencies. Where the provision of secretariat support means brought “under the United Nations umbrella,” then the example provided by FAO and UNEP support to the Rotterdam Convention illustrate the point.

Points for Consideration

39. Of the 14 conventions analyzed, nine were negotiated under UN auspices (direct or indirect, such as the “Environment for Europe” process, based on periodic ministerial conferences, but with major secretariat and technical input from ECE and UNEP), and approved by a body.
of the relevant agency before being opened for signature: Aarhus, Basel, Carpathian, CITES\(^2\), Espoo, Industrial Accidents, LRTAP, Rotterdam, Water.

40. Two conventions, Alpine and EFI, have shown no interest in coming under the UN umbrella, although both seem to cooperate well with UN system bodies.

41. Outside of those conventions adopted through closely linked processes, only one convention of the fourteen was adopted outside the UN system and has subsequently considered coming under the “UN umbrella”: the Ramsar Convention. This convention was signed before the foundation of UNEP and has recently been engaged in a difficult discussion over whether to move its secretariat from IUCN to UNEP\(^3\). A decision was recently taken to suspend any move on this. Proponents of a move mentioned better synergies and access to the high levels of the UN system, as well as practical matters, such as visas, and IUCN concerns about legal and financial liabilities, while opponents mentioned the possibility of achieving much the same result in a “IUCN+” framework, without the expected problems with regional organizations, staff disruption (staff would have had to reapply for their jobs under different conditions) etc. Proponents hoped to benefit from the “promotion” of UNEP to a specialized agency status, which was expected by many at Rio+20, but did not take place.

42. The communication from the UN Office for Legal Affairs (UNLA), responding to a request from ECE, makes it clear that the procedures necessary to bring a convention under the UN umbrella require the active support of a UN department, office or regional commission, and that there are well understood formal processes in place to handle such requests, and conditions to be satisfied. Providing secretariat services for institutions set up by a legally binding agreement concluded outside the UN would require the approval of the General Assembly as it may, inter alia have financial implications for the Organisation. FAO also has a formal process in place to accept conventions under either Article XIV of its Constitution. UNLA did not say whether the same rules applied to UNEP, which is a UN programme, not a “department, office or regional commission.”

43. The conclusion for the LBA negotiations could be that it is possible to move under the UN umbrella after a convention has been agreed, but that the process is complex and uncertain, as arrangements made outside the UN umbrella may be in political or legal conflict with the principles and practice of the UN system. In any case, a non-UN convention would formally request the UN body to provide secretariat services. If the decision is to move towards the UN umbrella, it should be prepared in advance, preferably before negotiations are concluded, by detailed consultations with potential host organizations.

\(^2\) CITES was negotiated under the auspices of IUCN before the foundation of UNEP. However, UNEP was founded just before the negotiations were concluded and the Convention has UNEP as secretariat.

\(^3\) See ENB account at [http://www.iisd.ca/download/pdf/enb1739e.pdf](http://www.iisd.ca/download/pdf/enb1739e.pdf)
44. Whether the procedures as drafted in the LBA would have implications on bringing it under the United Nations umbrella;

Agency Replies

45. FAO notes that if FAO Members were invited to adopt the LBA under Article XIV of the FAO Constitution, some of the procedures drafted may need to be harmonized with FAO’s Constitution and Principles. The FAO submission identifies specific points to be noted (membership, notably of regional economic integration organizations, territorial application, amendments to the agreement, need to include financial aspects). Equally, ECE underscores that if the intention would be to place the LBA under ECE, it would be important to ensure that the provisions agreed be compatible and do not contradict the possibility of being serviced by ECE. The UNLA notes that a determination would be made if a request for the secretary general to perform depositary functions whether the treaty falls within the scope of those treaties in respect of which the Secretary General exercises his depositary functions. The Bulletin ST/SGB/2001/7 outlines procedures to be followed by departments, offices and regional commissions who submit treaties to UNLA. Similarly, UNEP indicates that in the case that there is a desire to align the LBA with UNEP, the text of the LBA should, at the time of adoption, be in conformity with UN practices.

Points for Consideration

46. Precedent, practice and the agency letters underscore early consultation with legal experts of the relevant United Nations organizations to avoid adoption of procedures or rules that would create a conflict. Areas of conflict are often technical such as the rules on arbitration of disputes, auditing and accounting practice, access to all members of an organization, definition of territories etc. A detailed review of all the provisions of the LBA would certainly be necessary before it could be accepted under the UN umbrella, so it would avoid confusion and conflict if this review was incorporated into the negotiating process. However, at the present state of the draft LBA, it is not possible to say which, if any, provisions would require change to be in conformity with the provisions of the UN system.

47. Advantages and possible implications of bringing the LBA under the United Nations umbrella for the various options including synergies with other forest-related processes that may be achieved by doing so;

Agency Replies

48. FAO noted that it currently hosts the International Poplar Commission and highlighted that this and other conventions hosted with the organization act through FAO drawing on its legal personality. Accordingly, they benefit from the international status of the organization, its privileges and immunities, the established relations with its host countries, and its ability to establish legal relations of all kind (employment, procurement, contracting of services, communications, etc.) with other entities.
49. ECE notes that it currently hosts a joint ECE/FAO office covering forest matters and highlights its proximity to the Regional Offices of UNEP and key forest partners such as IUCN, CITES, PEFC and UNREDD.

50. UNEP underscores seven advantages of aligning a Secretariat for the LBA with UNEP: strengthened implementation of the LBA, enhanced access to funding, direct access to expertise and capacity of UNEP, enhanced status of the LBA, applicability of UN rules and regulations, expert experience in creating synergies and practice in operating a MEA secretariat.

Points for Consideration

51. The advantages of bringing the LBA under the United Nations umbrella include direct access to forest relevant processes offering possible synergies to reduce the splintering of forest issues among various processes. Under the UN umbrella, a European LBA on forests would have direct access to UNFF, other major forest relevant processes such as UNFCCC or CBD, technical agencies with expertise in agriculture, genetic resources and forest management as well as regional specialized bodies such as those in ECE on environment or energy. Operating under the UN umbrella provides linkage to existing operational systems and an ability to draw on expertise in the United Nations system. Importantly, the LBA would acquire legal personality by attaching itself to an existing international organization with an international legal personality. However, this linkage implies the need to negotiate agreements with the relevant UN agency/agencies for support and services and operate within UN rules and procedures. Some Parties may view these rules and procedures as heavy or inflexible while other Parties may see the same rules and procedures as balanced promoting fairness and transparency.

52. The decision to bring the LBA under the UN umbrella, and through which organization, is a political choice. The boundaries of responsibility for individual UN organizations vary. Member countries often assign liaison with a specific UN organization with a specific Ministry or department which then serves as the locus for internal coordination. Again, this alignment varies by country. So the choice of host organization, inside or outside the UN system, will influence the nature of the activities of the LBA.

53. Possible advantages of being under the UN umbrella are:
   - As part of the United Nations system, the LBA would have direct access to these key processes and legally binding conventions which influence the forest based sector such as the CBD and UNFCCC, CITES and UNFF. Outside the UN system, the LBA can only participate as observer.
• Existing systems for headquarters agreements, staff rules and salary scales, network of security rules, visa services and the like would make the setting up and administration of the LBA simpler and quicker.
• The LBA would have access to the expertise of the UN system including the specialized agencies in forest related matters and in providing secretariat services to conventions.
• The host organization would provide an international legal personality.

54. Possible disadvantages are:
• In all UN system cases, the Convention secretariat staff is employed by the relevant UN agency, and is part of a chain of command separate from the institutions of the Convention. In some cases, for instance the Rotterdam convention, there is a detailed Memorandum of Understanding between the Convention authorities (Chair of executive Committee) and the head of the servicing organizations (UNEP Executive Director and FAO Director-General), but this is not always the case. This holds the potential for misunderstanding.
• Possible rigidity and inflexibility of existing procedures and structures in the UN system, which would apply to the new LBA.
• The necessity to be part of a larger process, which has shared broad objectives, but is not exclusively focused on the topics covered in the LBA.

55. Financial aspects, including possible cost implications of the different options;

Agency Replies

56. The agencies noted that the question lacked the needed specificity for a substantive answer. In particular, to advance this issue, the INC will need to refine further its thinking on the foreseen frequency of meeting of the Parties, the number of subsidiary bodies that will require support, as well as the scale and dimension of a work programme and technical support that the LBA might envision for member countries. Where the enquiry focuses on the costs of staffing the Secretariat, the agencies note that costs within the UN framework are quite standardized by staffing category and grade level. Once the tasks, roles and responsibilities of the Secretariat are known, the agencies can provide estimates using standard costs. The ECE makes a very indicative estimate for substantial servicing at around $750,000 per year. The agencies underscore that the bulk of the financial support for the LBA should be foreseen as additional resources coming from the Parties, although ECE stated that for the five MEAs at present serviced by ECE, substantive secretariat support for “core” activities like servicing Meetings of Parties is absorbed within regular budget resources and conference servicing is provided within the ECE quota.

Points for Consideration
57. As mentioned above, the review of a wide range of conventions reveals many budgets which are quite modest as well as very sizeable financial commitments by Parties. The size of the budget reflects the ambition of the Parties and the complexity of the agreed work programme. It also reflects how the work is distributed between the convention secretariat and member states (obligations to report, review compliance of other members, follow certain procedures etc.) and special institutes/projects (for instance the programme centres and task forces set up under the convention on Long Range Transboundary Air Pollution, are not covered by the convention secretariat budget but under separate agreements). An active legally binding convention would imply quite significant commitments of resources at the national as well as international level, and perhaps also in non-secretariat specialized institutions.

58. It must be underscored that these secretariat services and the associated programme of work of the convention must be funded in large part by the Parties whether the convention is associated with a UN family member or not. Some of the conventions have legally binding provisions for assessment of contributions, but others (e.g. the ECE Conventions) have no financing provisions in the Convention itself, which according to personal communications with convention secretaries, can cause considerable uncertainty and disruption if expected pledges are not converted into transfers of funds. Most conventions have found the need to establish a reserve account to finance operations as they await periodic deposits from Parties. Arrears and the best approach to deal with them remains an issue that plagues all conventions.

59. In the context of the UN, the costs to implement the programme of work of a convention and any associated secretariat are largely, if not wholly, financed through extra-budgetary resources and not through the mandatory assessed budget of the host organization. In principle, in-kind resources provided by the host organization should be funded by a mandatory Programme Support Costs (PSC) applied to the Trust Fund established by the Parties to support the secretariat and work programme of the convention. Most UN agencies are required by their Governing Bodies to recover the costs of support to non-regular programme activities including those activities funded by Trust Funds. The cost recovery factor varies among UN agencies and programmes but averages 13 percent. It is recognized that the 13% overhead charge is quite modest and may not fully cover the costs of office space, administration, etc., thus becoming a modest indirect support from the agencies to the convention.

60. The flexibility that agencies have with respect to in-kind support to conventions is again highly connected to the degree to which the convention is seen by the member countries of the organization as fully consistent with the purpose and intent of the UN agency. For example, the ECE regular budget (part of the overall UN budget, approved by the Fifth Committee of the General Assembly) supplies secretariat posts for the core functions of its existing conventions, typically 1-2 staff per convention, as detailed in the annex table. FAO

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4 UNFCCC has 470 staff and a budget of over €25 million.
provides the secretariat for the International Poplar Commission IPC (0.3 staff) and support to the Secretariat to the International Treaty for Plant Genetic Resource for Food & Agriculture from its regular budget as these are regarded by the membership as mainstream activities of the organization.

61. A freestanding non-UN organization (i.e. not affiliated to a preexisting non-UN organization such as EFI) would require considerable one-time investment costs to establish a legal personality, negotiate a headquarters agreement\(^5\), find office space, and engage local staff etc. Although it is not possible to be specific without more information, it is possible that a freestanding arrangement would be more expensive than being under the UN umbrella, for the same level of ambition and duty station.

62. For a given level of activity (number and grade of staff, duty station, distribution of tasks between secretariat and member states), the cost to the contracting parties of the LBA would be approximately the same in all the UN options, with the following possible variations:
   i. The host organization might contribute resources from its regular assessed budget (in addition to the resources covered by the 13% overhead)
   ii. A host country might offer attractive terms for office space or other costs, even staff, in order to attract the convention to its country.

63. Possibility of secretariat services being provided by the United Nations, its programmes and specialized agencies or a combination of these;

   **Agency Replies**

64. The agencies indicate that they may provide secretariat services for agreements adopted outside the United Nations system provided that their programme, financial procedures and operations are consistent with and in furtherance of the objectives of the organization. These require approval by the FAO Council, Economic Commission for Europe (or ExCom), or the UNEP Governing Council respectively.

65. ECE indicated that in the case of a request from Forest Europe to ECE to service the LBA, the Commission, or its Executive Committee (ExCom), would consider the issue based on a request from the ECE Timber Committee. In response to ECE’s request, UNLA stated that with regard to the provision of secretariat services for the institutions set up by a legally binding agreement that is concluded outside the United Nations, this would require the approval of the General assembly, as it may, inter alia, have financial implications on the Organization. The General Assembly may look in particular as to whether participation

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\(^5\) A freestanding agreement would necessarily have to have a host country, if it did not accept to have the status of a private enterprise or charitable foundation. EFI changed from a Finnish foundation to an international organisation after about 15 years of existence.
would be open to member states of the UN or to members of ECE, if it envisioned that the agreement will be serviced by ECE.

Points for Consideration

66. Secretariat services are provided by members of the UN family to a wide variety of conventions where it has been determined by the relevant governing body of the UN family member that the purpose and methods of the convention are in alignment with the purpose and methods of the organization/programme. These are often provided on a cost-basis where the Parties commit themselves to funding a Trust Fund dedicated to support the staff and work programme of the convention. Some UN agencies contribute staff facilities or meeting services from their own regular budget, but this must be negotiated on a case-by-case basis. In fact, FAO, UNEP and ECE all have extensive and positive experience of providing secretariat services to conventions. There are a few cases of cooperation between agencies, such as FAO and UNEP for Rotterdam or FAO and OIE (a non-UN organization) for EuFMD. This requires careful definition of the roles and contributions of each organization.

67. The written replies from EFI, FAO, ECE and UNEP indicate a readiness to seek authority from their respective governing bodies for secretariat support based on a decision by the Ministerial Conference to adopt an LBA and seek to align the LBA with the organization …………………

68. Possibilities regarding an interim secretariat;

Agency Replies

69. UNEP indicates that it may provide interim secretariat services for agreements under consideration provided that the programme, financial procedures and operations of the agreement are consistent with and in furtherance of the objectives of the organization. FAO cites the example of the Rotterdam convention where FAO member countries agreed through the FAO Conference to authorize the FAO Director-General to provide interim secretariat support on a full-cost recovery basis.

Points for Consideration

70. History, precedent and practice show that bodies charged with crafting international agreements, such as a convention, struggle profoundly over the issue of location, size, authorities, privileges and responsibilities of the secretariat. Sometimes the “final” decisions on the secretariat are not settled until years after the convention enters into force. As such, an interim secretariat (before and after adoption of the convention) is not uncommon. At present, UNEP is providing an interim secretariat to the Carpathian Convention. While opting for an interim secretariat and deferring the hard decision on secretariat arrangements may seem to avoid conflict and advance the discussion it is a practice that only pushes the pain forward in time and forces the conference of parties to devote considerable time to the issue after the convention comes into force.
72. However, it may also be assumed that an organization would not be prepared to commit to providing an interim secretariat unless there was strong alignment between the objectives of the convention and the organization, and a firm commitment by those negotiating the convention to working closely with the organization also in future. This latter provision is not the same as a firm commitment in advance to basing the secretariat in that particular organization: the negotiators would not be legally bound by the interim secretariat arrangements in their choice of a final secretariat arrangement. However, in terms of trust and cooperation, as well as image, the organization which supplies an interim secretariat and the negotiators for the convention would have already established a deep relationship.

73. Implications of staying outside the UN system, in particular in respect of international legal personality.

Agency Replies

74. The UN agency replies did not address the implications of staying outside the UN system.

75. EFI, a non-UN body, said a natural option would a combined solution under the UN umbrella, like the one used for the INC process. However, EFI is open to consider and explore the option of staying outside the UN system. Such an option would require a decision by EFI governing bodies, a mandate from INC and sufficient resources to analyse the option.

Points for Consideration

76. Possible consequences of staying outside the UN system would include:
   • The INC or COP would be obliged to establish rules of procedure to guide the governance, administration and financial management of the convention. This is not a trivial task and some COPs continue to address and readdress the issue years after entry into force of the agreement.
   • Reduced/more difficult access to the UN system and its ongoing cross-sectoral work and policy bodies, expertise and so on.
   • More difficulty in establishing the organization legally, politically and practically (finding premises and staff, headquarters agreements, staff working status and privileges etc.)
   • Failure to bring forests (as an issue or as a sector) to parity with other key intergovernmental processes aiming at achieving sustainable development.

77. To create a legal personality capable of undertaking operational obligations (accepting, accounting for and obligating funds), the LBA must create an institution or be adopted by an
existing one. Establishing a legal personality after the signature of a valid international treaty is a standard process in international law but complex and time consuming, involving negotiations with the host government to gain formal recognition through a headquarters agreement, establish diplomatic privileges and immunities, work permits, fiscal arrangements etc. The outcome of these negotiations can have a significant effect on costs, as well as the effectiveness of the secretariat.
VI. CONCLUSION

78. This review of history, practice and precedent in developing international conventions demonstrates the diverse approaches Parties have taken to overcome the many challenges outlined in Paragraph 19.

79. The replies to the INC chair’s letter show that in the four organizations contacted there is good will towards the aspirations of the LBA, and a willingness to explore the issues further, but this must be accompanied by a consultation with the relevant authorities of the four organizations.

80. These responses and the diverse examples of hosting conventions show that there are many possible solutions to the legal, institutional, practical and political challenges which arise. A prerequisite to finding a satisfactory hosting arrangement is that there is a strong convergence of views about the ultimate objectives to be achieved, at the policy level, between the LBA and any potential host organization, inside or outside the UN system. All the members of the potential host organization, not just potential parties to the LBA, must be able to accept that resources and management time are devoted to furthering the objectives of the LBA.

81. Institutional and practical issues, of the sort described in the analysis, can be overcome. It is vital that there is an in-depth consultation between the INC and potential host organizations so that the LBA can accommodate the formal and practical requirements of the organizations concerning hosting the LBA and/or its secretariat. This would imply that INC3 decides whether to recommend bringing the LBA under the UN umbrella and the way of doing it or leaving it outside the UN system. Further, the INC should establish a process to consult with the relevant authorities on the modalities, legal, institutional, financial and practical steps needed.
### VII. Annex 1 Conventions Reviewed

<table>
<thead>
<tr>
<th>Convention (short title)</th>
<th>Full title</th>
<th>Purpose</th>
<th>Depositary</th>
<th>Type</th>
<th>Parties</th>
<th>Negotiating authority</th>
<th>Relationship of Secretariat to UN or other body</th>
<th>Secretariat Location</th>
<th>Secretariat by umbrella Organization</th>
<th>Staff Contribution by umbrella Organization</th>
<th>Financial Mechanisms</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aarhus</td>
<td>Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters</td>
<td>Grants the public rights and imposes on Parties and public authorities obligations regarding access to information and public participation and access to justice.</td>
<td>SG of UN</td>
<td>UN regional</td>
<td>46</td>
<td>ECE/Environment for Europe</td>
<td>Provided entirely by ECE</td>
<td>Geneva (ECE)</td>
<td>7.5 ECE staff</td>
<td>2.5 RB staff, 1 funded from Trust Fund overheads</td>
<td>Interim voluntary scheme of contributions aimed at covering the costs of activities under the work programme that are not covered by the United Nations regular budget</td>
</tr>
<tr>
<td>Alpine</td>
<td>The Alpine Convention</td>
<td>Promotes sustainable development in the Alpine area while protecting the interests of the people living within it.</td>
<td>Austria</td>
<td>Non-UN regional</td>
<td>9</td>
<td>Ministers of the Alpine States</td>
<td>UN system observers to the Conference of Parties, no UN role in the Secretariat.</td>
<td>Innsbruck, Austria</td>
<td>10 staff</td>
<td>NA</td>
<td></td>
</tr>
<tr>
<td>Basel</td>
<td>Control of Transboundary Movements of Hazardous Wastes and Their Disposal</td>
<td>Reduce hazardous waste generation and promote their environmentally sound management, restrict transboundary movements of hazardous wastes, apply a regulatory system to cases where transboundary movements are permissible.</td>
<td>SG of UN</td>
<td>UN</td>
<td>179</td>
<td>Governing Council of UNEP</td>
<td>UNEP (same UNEP team is responsible for Basel, Rotterdam and Stockholm Conventions)</td>
<td>Geneva (UNEP)</td>
<td>16 staff</td>
<td>3 staff funded by Trust fund overheads</td>
<td>Two trust funds: convention and technical cooperation</td>
</tr>
<tr>
<td>Carpathian</td>
<td>The Framework Convention on the Protection and Sustainable Development of the Carpathians</td>
<td>Protection and sustainable development of the Carpathian region.</td>
<td>Ukraine</td>
<td>Non-UN regional</td>
<td>7</td>
<td>Ministerial Conference “Environment for Europe”</td>
<td>UNEP provides interim secretariat</td>
<td>Vienna, Austria</td>
<td>2 staff</td>
<td>1 staff member, and administrative services Geneva and Vienna</td>
<td>Member country assessments, trust fund. Project servicing charge funds support by UNEP, ASC Geneva and UNOV</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)</th>
<th>Aims to ensure that international trade in specimens of wild animals and plants does not threaten their survival.</th>
<th>Switzerland</th>
<th>Global UN</th>
<th>175</th>
<th>Plenipotentiary Conference, under IUCN auspices</th>
<th>UNEP</th>
<th>Geneva (UNEP)</th>
<th>24 staff</th>
<th>Not clear whether contribution from UNEP Regular budget</th>
<th>Core administrative costs financed from the CITES Trust Fund, replenished from contributions from the Parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>EFI (short title)</td>
<td>European Forest Institute</td>
<td>To undertake research on forest issues at the pan-European level</td>
<td>Finland</td>
<td>Regional, non-UN</td>
<td>23 plus 132 associated members</td>
<td>EFI as a Finnish association</td>
<td>No IGO input to permanent arrangements</td>
<td>Joensuu, Finland, plus regional offices, project centre</td>
<td>129 staff (83.2 person years), mostly researchers</td>
<td>No umbrella organisation</td>
</tr>
<tr>
<td>Espoo</td>
<td>Convention on Environmental Impact Assessment in a Transboundary Context</td>
<td>Obliges Parties to assess the environmental impact of certain activities at an early stage of planning and to notify and consult each other on all major projects that are likely to have a significant adverse environmental impact across boundaries</td>
<td>SG of UN</td>
<td>UN regional</td>
<td>45</td>
<td>ECE Executive</td>
<td>ECE Executive Secretary performs secretariat functions</td>
<td>Geneva (ECE)</td>
<td>Some staff supplied by ECE</td>
<td>Some staff supplied by ECE</td>
</tr>
<tr>
<td>EuFMD</td>
<td>European Commission for the Control of Foot and Mouth Disease</td>
<td>To promote national and international action with respect to preventive and control measures against foot-and-mouth disease in Europe.</td>
<td>DG of FAO</td>
<td>FAO regional</td>
<td>36</td>
<td>FAO, OIE</td>
<td>Staff appointed by FAO DG, considered FAO staff</td>
<td>Rome (FAO)</td>
<td>3/4 staff</td>
<td>None (but infrastructure provided)</td>
</tr>
<tr>
<td>Industrial accidents</td>
<td>Convention on the Transboundary Effects of Industrial Accidents</td>
<td>The Convention promotes active international cooperation between countries, before, during and after an industrial accident.</td>
<td>SG UN</td>
<td>UN regional</td>
<td>40</td>
<td>Senior Advisers to UN/ECE Governments on Environmental and Water Problems</td>
<td>ECE Executive Secretary provides secretariat</td>
<td>Geneva (ECE)</td>
<td>3 staff, plus shared GS staff</td>
<td>1 P4, part of 1 GS, + 1 associate expert funded by a member country</td>
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<tr>
<td>IPC</td>
<td>International Poplar Commission</td>
<td>Promote study and research of poplars and willows</td>
<td>DG FAO</td>
<td>UN global</td>
<td>37</td>
<td>FAO DG provides the secretariat</td>
<td>Rome (FAO)</td>
<td>0.3 staff</td>
<td>Expenses of the secretariat borne by FAO</td>
<td>None</td>
</tr>
<tr>
<td>Convention (short title)</td>
<td>Full title</td>
<td>Purpose</td>
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<td>Secretariat Location</td>
<td>Secretariat</td>
<td>Staff Contribution by umbrella Organization</td>
</tr>
<tr>
<td>LRTAP</td>
<td>Convention on Long-range Transboundary Air Pollution</td>
<td>To protect man and his environment against air pollution</td>
<td>SG UN</td>
<td>UN regional</td>
<td>51</td>
<td>ECE Committee on Environmetal Problems</td>
<td>ECE Executive Secretary provides secretariat</td>
<td>Geneva (ECE)</td>
<td>16 permanent staff, employees of IUCN.</td>
<td>All staff paid out of Ramsar funds</td>
</tr>
<tr>
<td>Ramsar</td>
<td>The Ramsar Convention on Wetlands</td>
<td>The conservation and wise use of all wetlands</td>
<td>UNESCO</td>
<td>Global, non-UN</td>
<td>163</td>
<td>Free standing, led by NGOs with support of the Netherlands</td>
<td>Recent discussion about whether to transfer secretariat functions from IUCN to UNEP, failed to be accepted</td>
<td>Gland, Switzerland</td>
<td>16.5 staff</td>
<td>Assessed contributions for &quot;core costs&quot;, especially staff, supplemented by voluntary &quot;non-core&quot; contributions. All staff paid out of these sources, with 13% overhead to IUCN.</td>
</tr>
<tr>
<td>Rotterdam</td>
<td>Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade</td>
<td>To promote shared responsibility and cooperative efforts among Parties in the international trade of certain hazardous chemicals and to contribute to the environmentally sound use of those hazardous chemicals,</td>
<td>SG UN</td>
<td>UN global</td>
<td>150</td>
<td>Conference of Plenipotentiaries</td>
<td>UNEP Executive Director and FAO Director General jointly provide secretariat services</td>
<td>Geneva (UNEP) and Rome (FAO)</td>
<td>21.5 staff</td>
<td>FAO: 2.5 staff as in kind contribution UNEP: some staff funded from programme support costs</td>
</tr>
<tr>
<td>Water</td>
<td>Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention)</td>
<td>To prevent, control and reduce any transboundary impact connected with transboundary watercourses and international lakes.</td>
<td>SG UN</td>
<td>UN regional</td>
<td>39</td>
<td>ECE</td>
<td>ECE Executive Secretary provides secretariat</td>
<td>Geneva (ECE)</td>
<td>8 staff not including those servicing protocol on water and health</td>
<td>8 staff</td>
</tr>
</tbody>
</table>