Intergovernmental Negotiating Committee 
for a Legally Binding Agreement on Forests in Europe 

Third Session 
Antalya, 28 January – 1 February 2013 

Agenda item 4. 

Analytical document on some of the key aspects involved in deciding on bringing the legally binding agreement under the United Nations umbrella 

Note by the Chair 

1. At its Second Session held on 3-7 September 2012 in Bonn Germany, the Committee requested the Chairperson to provide an analytical document, to be presented at its next session, on some of the key aspects involved in deciding on bringing the legally binding agreement under the United Nations umbrella. The analytical document is to be guided by paragraph 19 of the Report of the Second Session of the Committee: 

19. “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.” 

2. At its meeting on 25 September 2012 the Bureau discussed options for preparing the above analytical document. The Bureau noted the complexity of the INC’s
request in paragraph 19, which includes collecting existing available information as well as a qualitative analysis including on advantages, synergies and possible implications of various options. Noting the need for making the information available in due time prior to INC3, the Bureau recommended a twofold approach in preparing the analytical document: i) request information on elements raised in paragraph 19 of the INC2 Report from the organizations concerned, and ii) seek the expertise of independent consultants for as many elements of the analysis as possible.

3. The Bureau recommended to focus on a limited number of organizations and to invite FAO, UNECE and UNEP to provide relevant information on the request specified in paragraph 19 regarding the UN system. The Bureau further recommended inviting the European Forest Institute to provide similar information for a non-UN option. It was also suggested that in the short time available other elements contained in paragraph 19 could be described in general terms, and on the basis of existing examples.

4. Based on the above, invitations were sent to the European Forest Institute and the relevant services of the three UN entities (FAO, UNECE and UNEP) requesting advice and information on the issues raised in paragraph 19. All invited organizations have made available their respective replies, which are contained in the Annexes to this document.

5. UNECE proposed in its response to the Chair to contact also the Under-Secretary-General for Legal Affairs and United Nations Legal Counsel to receive information and advice on a range of questions in paragraph 19 which are not within the competence of UNECE. In his letter to the United Nations Under-Secretary-General for Legal Affairs the Chair also asked for providing clarification on procedures to be followed for a request to the Secretary-General of the United Nations to perform a depositary function for an agreement. The response is contained in Annex 3.2 and 3.2.1. The response provided by the United Nations Legal Counsel raised the need for further queries. It should be noted that due to timing reasons they could not be fully considered for analysis.

6. In order to fully explore the legal aspects and implications of the different options the INC may wish to consider the study prepared by independent legal experts, which is set out as Annex 5.

7. Annex 6 contains a compilation of available information on selected conventions relevant to forestry and the environment prepared by independent consultants. Data were gathered on current practice for 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.

8. Annexes 5 and 6 also contain analytical information on advantages and possible implications of bringing the LBA under the United Nations umbrella for the various options and on synergies with other forest-related processes that may be achieved by doing so. They also refer to the implications of staying outside the UN system.

9. The INC is invited to consider the descriptive and analytical information provided in the Annexes. The INC may wish to develop its position regarding paragraphs 24. f. and g. of the Oslo Mandate or give guidance on further work to be undertaken.

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