

Human Rights and the Global Forest Regime: Does the UNFF's Non-legally Binding Instrument on All Types of Forests Provide Support for Pro-poor Forestry?¹

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The development of people-oriented sustainable forest management is a key element of the work of the United Nations Forum on Forests (UNFF). Currently the UNFF is developing a "Non-legally Binding Instrument on all Types of Forests" (NLBI) which could have implications for the development of international and national laws and regulations with important ramifications for forest-dependent communities (FDCs) and Indigenous Peoples (IPs).

International human rights law, mediated as it is through national laws and regulations, poses important challenges when applied to practical situations rather than the rhetorical flourishes of treaty signatures and ratification. There is a tension in international law between human rights law, trade law, and the principle of state sovereignty over natural resources. For FDCs, practical livelihood decisions are based on issues of effective information, participation, clear land tenure, nondiscrimination, good forest governance and, if all else fails, access to justice. A failure in these basic human rights can prejudice these individuals' and communities' very survival, thus breaching a range of civil, political, economic, and social rights articulated in a number of UN treaties, regional conventions, and the International Labour Organization.

This paper will present a summary of important substantive and procedural human rights that are of direct relevance to the management of forests and trade in forest products at the international, regional, and national levels. It will review whether these international human rights norms, which are often mediated through effective land tenure and property rights, have been incorporated into the proposed NLBI. People-oriented sustainable forest management would, it will be argued, be one that fosters clear land rights for FDCs and IPs. This approach would enable them to fulfil their subsistence rights, and through the development and implementation of effective national legal and policy frameworks, ensure that the state protects those rights by including mechanisms to ensure that FDCs and IPs are not deprived of their rights by the state and nonstate actors.

The paper will conclude with an assessment of whether the UNFF NLBI will help or hinder the development of "pro-poor" sustainable forest management.

¹ This paper is based on an updating of work undertaken for the author's dissertation for an LLM Human Rights Law from the University of Strathclyde, completed in September 2006. It has also been modified following important comments at the recent RECOFTC conference. A pdf version of the dissertation can be obtained from the author on request.

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Introduction

In July 2007 the United Nations Forum on Forests (UNFF) Secretariat in Geneva hosted an Economic and Social Council of the United Nations (ECOSOC) Ministerial Breakfast to discuss “Promoting pro-poor generation of wealth, food security and peace through sustainable forest management: Global Realities and Regional Innovations.”³ The occasion was an opportunity for the UNFF to brief the Ministers on the outcome of the seventh session of the UNFF held from 16 to 27 April 2007, which “Resulted in a landmark international agreement of the sustainable management of the world’s forests.”⁴ That paper goes on to propose four ways to increase the contribution of forest resources to raising people out of poverty through:

- Industrial-scale commercial forestry
- Small- and medium-forest enterprises⁵
- Community-based forest management
- Nonwood forest products

This paper will examine the “landmark international agreement of the sustainable management of the world’s forests”⁶ and discuss why the “rights of obligations of Member States under international law” that were given explicit endorsement are those of “State Sovereignty over natural resources” and “common but differentiated responsibilities” (often used to justify demands for finance and technology transfer) whereas other principles from the Rio Declaration,⁷ including Principle 10 (citizen participation) are not clearly articulated requirements. Could the consideration of basic substantive and procedural rights, as part of the UN commitment to mainstreaming human rights, have led to an agreement that was more pro-poor or would this have foundered, as does much of the move to sustainable forest management (SFM), because the primacy of state sovereignty for implementation of SFM (and human rights) is mediated through national laws and regulations and requires the political will to facilitate people-oriented SFM?

The UNFF, set up by ECOSOC,⁸ agreed at UNFF6 to continue to give attention to the development of a Non-Legally Binding Instrument on All Types of Forest (NLBI).⁹ Would

³ Available at http://www.un.org/esa/forests/pdf/ECOSOC2007_Issues_Paper.pdf

⁴ Ibid.

⁵ Also the subject of a recent conference hosted by the International Tropical Timber Organization (ITTO) available at <http://www.itto.or.jp/live/PageDisplayHandler?pageId=217&id=3448> which calls for a “level playing field” for community forest enterprises.

⁶ The text of the NLBI is contained in an appendix in the UNFF report of the 7th session (24 February 2006 and 16–27 April 2007), Economic and Social Council Official Records, 2007 Supplement No. 22 available at

<http://daccessdds.un.org/doc/UNDOC/GEN/N07/349/31/PDF/N0734931.pdf?OpenElement/> However this instrument is not the only international agreement on forests. The International Tropical Timber Agreement (ITTA), under the United Nations Conference on Trade and Development (UNCTAD), initially agreed in 1983 and renegotiated in 1994 and again in 2006 is legally binding for its signatories. It is managed by ITTO (available at <http://www.itto.or.jp/live/index.jsp>).

⁷ UNCED (1992).

⁸ ECOSOC decision 2000/35 receiving the report from the 4th session of the Intergovernmental Panel on Forests, 18 October 2000.

⁹ 13–24 February 2006, New York (available at <http://www.un.org/esa/forests/>); ECOSOC approved the UNFF outcome with the following amendments: The Draft Resolution para 29 now reads: “.... An open-ended ad hoc expert group (instead of working group).” The Draft Decision on Proclamation of an International Year of Forests now reads: “... proclaim 2001 as the International Year of Forests (instead of 2010)” (available at <http://www.un.org/esa/forests/documents-unff.html>); see Forest Peoples Programme (FPP) briefing: “The UNFF fails indigenous peoples again May 17th 2007 in relation to Indigenous Peoples.”

the development of this instrument incorporate human rights norms given the commitment of the United Nations (UN) itself to mainstream human rights considerations into all aspects of its work?¹⁰ What human rights are important within the forest sector?¹¹ At the state level there is often state-sponsored and facilitated destruction of natural forests, illegal logging, poor resource management (Global Witness 2004), and the seemingly endless consumption of forest products (timber, pulp, and paper as well as nonwood forest products including rare plants and animals) (Spek 2006; World Bank 2005).

The Principle of State Sovereignty

The Principle of State Sovereignty “allows states within limits established by international law to conduct or authorise such activities as they choose within their territories, including activities which may have adverse effects on their environment” (Sands 2003). Linked to this principle there have been many clear statements by the United Nations General Assembly (Schrijver 1997)¹² that forests are to be used for national economic development under the management of the state. This principle was further articulated in both the Rio Declaration¹³ and the Forest Principles¹⁴ agreed at the United Nations Conference on Environment and Development (UNCED) in 1992. States are also responsible for operationalizing agreed international human rights norms through incorporation into national law, and for SFM.

Whilst this sovereignty is usually stated as being conditional or in accordance with the Charter of the United Nations and the principles of international law,¹⁵ states themselves rarely address this important part, effectively putting a conditionality on a state’s use of forest (and other renewable and nonrenewable natural resources). Forest Dependent Communities (FDCs) and Indigenous Peoples (IPs)¹⁶ therefore have an interest in not only the issue of complementarity between international and national legal frameworks, but also in the implementation linkages between different legal regimes, and their oversight and/or enforcement at the international level (Anaya and Williams 2001). For FDCs, practical livelihood decisions are based on issues of effective information, participation, clear land tenure, nondiscrimination, good forest governance, and, if all else fails, access to justice. A failure in these basic rights can prejudice these individuals’ and communities’ very survival, thus breaching a range of civil, political, economic, and social rights articulated in a number of UN treaties,¹⁷ regional conventions,¹⁸ and the International Labour Organization.¹⁹

Furthermore forest lands are often subject to important attention from national and transnational businesses involved in the timber, wood processing, and more recently

(available at http://www.forestpeoples.org/documents/ifi_igo/unff7_briefing_may07_eng.pdf).

¹⁰ Footnote 240 in Alston (2005): The Secretary General has recently observed that “[t]he concept of ‘mainstreaming’ human rights has gained greater attention in recent years, but it has still not been adequately reflected in key policy and resource decisions” (UN (2005a).

¹¹ A recent publication, Christie et al. (2007), only considers human rights in relation to indigenous people.

¹² Between 1952 and 1990 the UN General Assembly passed 35 resolutions articulating state sovereignty over natural resources; see Appendix 1 Schrijver (1997).

¹³ UNCED (1992).

¹⁴ UN (1992).

¹⁵ See for instance paper by the FPP: *Indigenous Peoples’ Rights, State Sovereignty and the Convention on Biological Diversity*. February 2004 (available at http://www.forestpeoples.org/documents/conservation/cbd_ips_sovereignty_feb04_eng.shtml)/

¹⁶ For a detailed analysis of Free Prior Informed Consent for Indigenous Peoples see O’Reilly (2007).

¹⁷ UN (1966a); UN (1966b); UN (1965); UN (1979); UN (1989).

¹⁸ See for instance Council of Europe (1950); American Convention on Human Rights, entered into force on 18 July 1978.

¹⁹ International Labour Organization (1989).

pharmaceutical/biotechnology industries. The behavior of these companies in relation to developing international human rights norms for businesses (Amnesty International 2004; Business Leaders Initiative 2006)²⁰ as well as corporate social responsibility (SustainAbility 2004) and certification/verification processes (Atyi and Simula 2002; Global Witness 2005)²¹ may have an important long-term impact on the achievement of human rights for FDCs.

Sovereignty, Responsibility, and Global Public Goods

National sovereignty over natural resources has been stated in many instruments and resolutions within the UN (Schriber 1997). Given that forests, like citizens, are clearly located within a state, even if occasionally they may be the subject of direct transboundary management agreements,²² how can emerging norms relating to state responsibility, as well as a growing awareness of the importance of forests in the Global Public Goods debate be linked together?

Conditional Sovereignty?

The recognition of a state by the international community immediately places the management of the natural resources of that country in the hands of the government, even if the government is a dictatorship which is not accountable in any way to its citizens, let alone the wider international community.²³ The impact of corruption, poor governance, and outright theft of forest resources and citizens has been catalogued many times (Global Witness 2004). The use of forest resources to fund conflicts reached such a point in Liberia that the United Nations Security Council agreed a sanctions regime on timber from that country (Global Witness 2006).²⁴ It is increasingly recognized that a claim to sovereignty from external interference is based on a claim of internal competence (ICHRP 2003; IDRC 2001; UN 2004).

The question of internal competence and capacity (technical, political, and financial) to enable countries to implement SFM and then integrate it into wider socio-economic and human rights agendas is important. Furthermore “[G]overnments must be able not only to negotiate treaties but also create the capacity to comply with them” (Slaughter 2004). It is important for countries with higher technical capacity, including in the legal arena, to support less developed countries to find appropriate ways forward. Levels of ambiguity are often high in forest-related treaties, for example—what exactly is SFM? The “ambiguity that helps statesmen [sic] negotiate treaties is often disastrous for judges, who must actually apply the law” (Slaughter 2004, p. 188). However, if a state is not willing or able to undertake the necessary adjustments to its legal frameworks what, if anything, is the international community prepared to do? Recent military interventions (even those labelled humanitarian) have obviously colored approaches to dealing with states where the government is abusing power for personal enrichment and the impoverishment of the people (Chatterjee and Scheid 2003; Collier 2007). However the time may be fast approaching where **citizens**, who purchase products from international companies registered in their state, may need to take greater account of issues of complicity in relation to human rights and environmental abuses in the countries in which these companies operate with seeming impunity (Collier 2007; de Schutter 2005; Schabas 2001). Development of approaches, within the World Trade Organization (WTO), that link access to international trade to the development of effective governance structures could be a way forward within international law, combined with peer

²⁰ UN (2003).

²¹ See Forest Stewardship Council web site www.fsc.org for technical details of one certification scheme.

²² See Peace Parks Foundation <http://www.peaceparks.org/>.

²³ For an interesting take on this resource curse/trap see Collier (2007).

²⁴ Sanctions established by UN Security Council Resolution 1521 in 2003 and removed in June 2006.

pressure from within regional organizations such as the African Union, European Union, and Association of Southeast Asian Nations (ASEAN).

Global Public Goods and Common but Differentiated Responsibility

Are forests a “common concern of humankind,”²⁵ or only those that are protected, or is it only the biological diversity contained within them? Global public goods, such as a stable climate and biodiversity, underpin all life on Earth and require collective action (Bass et al. 2006). If forests are part of a global public goods framework, what can be done to facilitate stewardship of forests within temperate and tropical regions, given that at UNCED the countries in the South rejected this concept as an infringement on their sovereignty (Humphreys 2001)?

International Oversight?

If a state voluntarily agrees to an international agreement with a transparent reporting structure then, as with key international human rights treaty bodies, the discipline of public reporting to other states, and to the wider international community, can assist states to develop the relevant implementation framework. The balance between the “naming and shaming” approach of international NGOs (Roth 2004) and constructive dialogue of the Committee on the Elimination of All Forms of Racial Discrimination CERD (Thornberry 1991) is achieving results in many countries, especially those that are moving towards democracy. Are there lessons from a human rights regime which “provide[s] practical tools used to limit the worst forms of human behaviour while creating conditions for protection of human dignity” (Landman 2005, p. 553) for a global forest regime to mitigate the worst forms of behavior in terms of unsustainable use of forest resources whilst protecting the resource base for present and future generations?

The acceptance by states of a “sovereignty cost” by delegating a measure of authority to an international organization (Moravcsik 2000, p. 227) can restrict government discretion and decrease domestic political uncertainty. For newly emerging democracies this approach can help to lock in favorable policies especially in relation to human rights (Moravcsik 2000, p. 228). Whether the same approach will work with the forest sector is unclear given the monetary incentives for legal noncompliance (Akella and Cannon 2004). Whether illegal logging, forest destruction, and forced resettlement will be prosecuted as a war crime or crime against humanity under the Rome Statute of the International Criminal Court (ICC) remains to be seen.

When states negotiate loans from international financial institutions and the wider donor community there is a high level of accountability to outside actors in a way that is not available in relation to use of resources and the protection of citizen rights (Evans 2005). Linking the implementation of national forest plans more closely with sustainable development processes including, where appropriate, Poverty Reduction Strategy Papers (PRSPs) may assist here. However there is also a need for national economic development activities to involve all stakeholders, including international financial institutions, and take on board key procedural issues relating to the strategic use of forest and other natural resources (Bass et al. 2006).

²⁵ “Affirming that the conservation of biological diversity is a common concern of humankind,” Convention on Biological Diversity (CBD), 5 June 1992 entered into force on 29 December 1993; Chapter 11 Agenda 21 “Combating Deforestation” (see Robinson 1993).

Substantive Human Rights and Sustainable Forest Management

International initiatives related to forestry do not take place in a vacuum in relation to both international and national legal frameworks. From a human rights perspective forests, “Contribute to the livelihoods of many of the 1.2 billion people living in **extreme** poverty. They nourish the natural systems supporting the agriculture and food supplies on which many more people depend.”²⁶

The 1993 World Conference on Human Rights stated that “[A]ll human rights are universal, indivisible and interdependent and interrelated.”²⁷ The importance of the range of treaty obligations that flow from the Universal Declaration on Human Rights²⁸ is made clear (Brownlie and Goodwin-Gill 2002). However there are still issues concerning the mainstreaming (Frankovits 2005) and vernacularization (Ignatieff 2005) of human rights into all work of the UN and states. The application of human rights arguments in international law is variable, so that whilst the right not to be tortured is generally accepted as *jus cogens* within international law²⁹ many other important basic rights (Shue 1996) including those articulated in the Millennium Declaration,³⁰ and the Millennium Development Goals (MDGs),³¹ have not yet been accepted as part of customary international law (Alston 2005) and therefore applicable to all states, even those that have not ratified the major human rights treaties (Brownlie and Goodwin-Gill 2002).

The MDGs are not articulated in the language of human rights but are seen by some commentators as becoming close to a statement of customary international law (Alston 2005; Bass et al. 2006). Not only do the MDGs contain key goals for direct human development including the halving of poverty by 2015, they also contain MDG7 “To Ensure Environmental Sustainability” which includes a target relating to the level of forest cover. The post1992 UNCED work on forestry within the UN and elsewhere shows a reluctance to articulate the rights of FDCs. When the needs of these communities are examined it is usually within the rubric of sustainable development, with a passing reference to the MDGs. This is a very common experience in the “development industry” (Alston 2005). The language of rights is nondominant in mainstream development, with a few exceptions (NORAD 2001). It is even less used in what is often seen as a technical arena, i.e. forestry, with rights being classed as “political” and therefore to be avoided (Tarosofsky 1999; Lipschutz 2000; Humphreys 2001 and 2005; Steiner 2001).

Basic Rights and Correlative Duties?

Rather than just listing all human rights contained within the international human rights regime it is important when considering substantive human rights to focus on those that are seen as basic, i.e. those rights where, “Enjoyment of them is essential to the enjoyment of all other rights. ... When a right is genuinely basic, any attempt to enjoy any other right by

²⁶ From World Bank commentary on MDGs, especially MDG7 on Environmental Sustainability (available at <http://ddp-ext.worldbank.org/ext/GMIS/home.do?siteId=2>).

²⁷ UN (1993).

²⁸ UN (1949).

²⁹ See arguments from Lord Bingham in *A (FC) and others (FC) (Appellants) v. Secretary of State for the Home Department (Respondent)* (2004); *A and others (Appellants) (FC) and others v. Secretary of State for the Home Department (Respondent)* (conjoined Appeals) [2005] UKHL71 on appeal from [2004] EWCA Civ 1123 Judgement 8 December 2005.

³⁰ UN (2000).

³¹ UN (2006).

sacrificing the basic right would be quite literally self-defeating ... protection of a basic right may not be sacrificed in order to secure the enjoyment of a non-basic right” (Shue 1996; O’Reilly 2000). It is proposed that there are three basic rights, security, liberty, and subsistence and that these basic rights have important duties:

- I. Duties to *avoid* depriving
- II. Duties to *protect* from deprivation
- III. Duties to *aid* the deprived (Shue 1996)

These basic duties have been expanded within international human rights law to give five types of state duties:

- 1. **Respect** rights of others
- 2. **Create Institutional Machinery** essential to Realisation of Rights
- 3. **Protect** Rights/**Prevent** Violations
- 4. **Provide** Goods and Services to Satisfy Rights
- 5. **Promote** Rights (Steiner and Alston 2000)

The basic right to subsistence could at the extreme level be said to include the Right to Life as well as a number of rights often put forward in relation to a wider environmental right (Ksentini 1994). Under the International Covenant for Civil and Political Rights (ICCPR) the Right to Life is usually interpreted by states and others in a narrow way, but the Human Rights Committee (HRC) has indicated that “the ‘inherent right to life’ cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures.”³² Much effort is continually expended by states and other legal authorities concerning the question of progressive realization of socio-economic rights because they commit the state to “positive” duties which, it is argued, they are not able to meet.³³ The “perceived” role of the state is important here as is the question of “justiciability” of these rights (Eide and Rosas 1995; Scheinin 1995). It is also clear that a number of rights, e.g. the right to property “serves as a basis for entitlement which can ensure an adequate standard of living, while on the other hand it is a basis of independence and therefore of freedom” (Eide 1995). It is also clear that meeting a number of socio-economic rights can require legal systems, e.g. in relation to the recognition of effective and transparent property rights that are no more complex than having in place a criminal legal regime.

Issue of Market Discipline

Within the ambit of market discipline, as opposed to that of international law, human rights are conceptualized as “the freedoms necessary to maintain and legitimate particular forms of production and exchange” (Evans 2005, p. 1057). These freedoms are usually liberty, security, and property rather than humanitarian issues of poverty/environment and socio-economic rights. Given the importance of the market to trade in forest products are there aspects of this approach especially in relation to property that can link with a subsistence rights approach in the forest sector? The issue of property rights is important in the liberal tradition—traditionally focused on the right to noninterference by the state. Land tenure legality plays an increasingly important role in certification and Forest Law Enforcement, Governance and Trade (FLEGT) processes and therefore understanding the links between market-based property regimes and customary/common-based property regimes is vital given the role that access to forest land plays in the subsistence and livelihood development of

³² CCPR General Comment No. 6, *The Right to Life* (art. 6): 30/04/82, para 5.

³³ See discussion of “negative” rights and “positive” rights in Shue (1996).

FDCs (Atyi and Simula 2002; Cashore et al. 2004; Goodin 1990; Kirton and Trebilcock 2004).³⁴

Link between Subsistence Rights, Property Rights, and Duty Bearers

Poverty can be analyzed in terms of material deprivation and need. This is the focus of the MDGs, but it can also be analyzed in terms of relationships that cause powerlessness and injustice and hence poverty (ICHRP 2003). The means and ends of development activities are important and the implicit values in the operational metric used for evaluation of development should be made more explicit (Sen 1999). A human rights framework can help to analyze who are the:

- Perpetrators (violators)
- Victims
- Duty bearers

Whilst duty bearers and perpetrators are often the same, i.e. the state itself, this is not always so. The duty bearer has a responsibility even if there is no direct perpetrator, i.e. systemic issues, including the economic system, legal system, and discrimination (Pogge 2002). Duty bearers have a responsibility to protect the victim and a failure to address this can lead to charges of complicity and responsibility for any continuing violation (Fafo 2004; ICHRP 2002; Schabas 2001; SustainAbility 2004).³⁵ Rights violations by political, economic, and social structures are difficult to eradicate as these structures are not “legal persons.” If property rights are seen as important values within the current international economic system then the use of property rights/land claims by IPs and local communities ought to fall well within these legal frameworks at national and international levels. However, the use of customary law and historical treaties to make formal land claims is often problematic³⁶ and highlights the difficulties that disadvantaged groups often have with making claims within formal legal systems (Dorsett 2005).

Procedural Human Rights and Sustainable Forest Management

Procedural rights are important in two ways. Firstly as a means to implementing the substantive human rights that flow from the Universal Declaration of Human Rights (UDHR) and are codified in international and regional instruments (Brownlie and Goodwin-Gill 2002). Secondly procedural rights in themselves are important as mechanisms for increasing awareness, fostering self-determination and democratic accountability of governments and their implementing agencies. The ability to use a wide range of civil and political rights³⁷ to enable the substantive rights to be fulfilled has been shown, for example, by the fact that famines no longer occur in countries with a free press and systems of democratic accountability (Drèze and Sen 1989). Calls for substantive human rights such as land rights will remain unmet unless rights such as those articulated in Principle 10 of the Rio Declaration are in place. The gains made by IPs in the Americas have come, in part, through

³⁴ See for example Protocol 1, Article 1 of the European Court of Human Rights (ECHR), but note the public interest limitations which, following *Fredin v. Sweden*, 18 February 1991, can include nature (biodiversity) conservation.

³⁵ This is very important in relation to businesses operating in countries with severe human rights abuse records.

³⁶ *Mabo v. State of Queensland (No.2)* (1992) 175 C.L.R. 1.

³⁷ Including those within the ICCPR, *supra* n9 and regional instruments such as ECHR, *supra* n56.

access to justice (Anaya and Williams 2001) often at an international level. Participation in development projects has led in some cases to better design, including changes in laws to enable community forest management.³⁸ Where participation and safeguards have not been followed, access to complaints' procedures such as the World Bank Inspection Panel (WBIP 2006) can highlight significant problems with development project decision making and the effect on indigenous and local peoples as well as on the overall management of forest resources.

Three areas of procedural rights are emerging as important for the forest sector. The first flows from Principle 10 of the Rio Declaration and relates to information, participation, and access to justice. The second concerns corruption and its impact on the development and implementation of procedural and substantive rights. The third is the emergence of a focus on nonstate actors, including businesses, and their roles in human rights implementation. In a world of increased interlinkages and trade in forest products, including timber, the power and influence of these businesses is often seen as a barrier to the management of forest land for pro-poor development and for biodiversity conservation.

Rio Principle 10 and the Aarhus Convention

The issue of participation in environmental decision making stems from the World Charter for Nature.³⁹ This ultimately led to the formal statement of the "Principle of Participation" in Article 10 of the Rio Declaration (Box 1), which indicates "public participation is at the heart of implementation of sustainable development at the national level."⁴⁰

Box 1: Rio Declaration Principle 10

"Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual **shall have appropriate access** to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. **States shall facilitate** and encourage public awareness and participation by making information widely available. **Effective access** to judicial and administrative proceedings, including redress and remedy, shall be provided." (Emphasis in bold type added.)

On 17 February 2005 the European Union ratified the Aarhus Convention⁴¹ which is the first international binding treaty to focus on the implementation of Rio Declaration Principle 10.

Box 2: Objective of the Aarhus Convention

"In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision making, and access to justice in environmental matters in accordance with the provisions of this Convention."

³⁸ As was the case in Viet Nam which with the promulgation of the Land Law, No. 13/2003/QH11 recognized "population communities" in Article 9 as a Land User so creating the legal space for the scale-up of previous pilot approaches to community-based (commune and village) forestry.

³⁹ UN (1982).

⁴⁰ UN (1997). See also ICJ (1996). Quoted in Chapter 3, Déjeant-Pons and Pallemmaerts (2002).

⁴¹ Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, done at Aarhus, Denmark on 25 June 1998.

Where national legislation provides for public participation in environmental impact activities (EIA) then the Aarhus Convention would also apply. This may cover issues of forest management including logging, road construction, and drainage activities.⁴²

Whilst the main focus of the Convention is in relation to the region of the United Nations Economic Commission for Europe (UNECE) there is a provision in Article 3.7 that:

*Each Party **shall** promote the application of the principles of this Convention in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment. (Emphasis in bold type added.)*

At the second meeting of parties to the Aarhus Convention⁴³ the Parties agreed the Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums Concerning the Implementation of Article 3.7.⁴⁴ Do these guidelines have the possibility of influencing international decision making by “moving towards increased accountability” (Morgera 2005)? The purpose of these guidelines is to “promote the application of the principles of the Convention in international forums in matters relating to the environment.”⁴⁵ The ongoing work under the UNFF in relation to an NLBI would clearly fall within the scope of Articles 4 and 9 where “international forum” means “any multilateral international environmental decision-making process... .” Given that in the past international forestry discussions have seen a concentration on what are seen as less controversial technical issues (Humphreys 2001) did the use of the principles within the Aarhus Convention, which are seen as contributing to a move from “technocratic paternalism to participatory democracy in environmental decision making,” assist in developing an NLBI that clearly articulates human rights (McCracken and Jones 2003)? The evidence from the final document is that the European Union was not particularly successful in getting clear articulation of the *right* of citizens to be able to participate in decision making in relation to forestry although Principle 2(c) does indicate that “major groups ... should be involved.”

Whilst the Aarhus Convention provides an implementation mechanism for some important principles it is worth acknowledging that, “Transparency and access to documents are often invoked as a possible remedy to this issue [democracy deficit].” But if you do not know what is going on, which documents will you ask to see (Slaughter 2004, p. 165)? How much more difficult is this when dealing with oral cultures with little or no access to materials in their own language, or explanation to marginalized groups within that culture of new concepts and ideas as well as potential implications. The intrahousehold as well as interhousehold shift in power and income when moving from subsistence- to cash-based land management has important implications for women and the welfare of those they usually are charged with caring for (Agarwal 1994). Whilst “having a voice in collective discussions is better than being silenced by exclusion, it does not guarantee that you will be heard” (Slaughter 2004, p. 171). Many countries would require significant external assistance to meet the Aarhus objective (Box 2) within the forest sector and wider society but this could provide an important focus for activities under the rubric of Common but Differentiated Responsibilities.

⁴² The application of the Aarhus Convention to forestry is explicitly covered in relation to industrial pulp production (Annex 1.7.a) and paper and board (Annex 1.8.b).

⁴³ At the second meeting of parties to the Convention held in Almaty, Kazakhstan, on 25 May 2005, an invitation was extended to states outside the UNECE region to accede to the Convention and pledge their support for the drawing up of appropriate regional instruments.

⁴⁴ Decision II/4 Promoting the Application of the Principles of the Aarhus Convention in International Forums. ECE/MP.PP/2005/2/Add.5 20 June 2005. Guidelines available from <http://www.unece.org/env/documents/2005/pp/ece/ece.mp.pp.2005.2.add.5.e.pdf/>.

⁴⁵ Almaty Guidelines, Article I.1.

Corruption and the Rule of Law

The entry into force in December 2005 of the UN Convention against Corruption highlights the rising attention being paid to the question of corruption by states and businesses. It makes a very specific reference in the preamble “acknowledging the fundamental principles of due process of law in criminal proceedings and in civil or administrative proceedings to **adjudicate property rights.**”⁴⁶

Why is corruption so important in relation to forestry and human rights? Whilst there is no articulated free standing right to a corruption-free environment, corruption creates a situation which facilitates the violation, by the state and nonstate actors, of both the duty to protect and the duty to avoid depriving rights holders of their basic rights.

The difficulty for the international community dealing with funding into states with a high level of corruption is clear. These states often have high numbers of chronically poor people and there is a need to avoid the “concept of ‘double punishment’ on people of our [WB] client countries by turning our backs on them because of the human rights record of their government” (Danino 2005). However, the linkage of anti-corruption drives with economic conditionality has recently been criticized by the UK Department for International Development (DFID) (Easterly 2006).⁴⁷

Whether the forest sector is more corrupt than other extractive industries is open to argument, however its activities often take place in remote areas well away from media attention. Only recently have physical and institutional tools for tracking timber been developed so that tracking of forest products becomes a viable, if still costly, activity. Independent verification of the timber trade is seen as vital to build an effectively functioning public administration in the forest sector (Brown and Tucker 2006). Without efforts to remove corruption from the forest sector, governments will continue to lose around US\$10 billion per year in lost revenues (World Bank 2006), individuals and communities will lose their rights to land and forest resources, biodiversity will continue to decline, and downstream communities will be put at risk of flooding and landslides due to poor watershed management.

Businesses and Human Rights

Businesses are significant and influential nonstate actors in the forest industry. They range from small- and medium-sized enterprises often serving local and national markets, through to highly capitalized multinational corporations, based not only in countries of the North but increasingly in forest-rich countries of the South such as Malaysia and Indonesia. There is growing awareness at the international level of the role that businesses could play in assisting with human rights enforcement within their sphere of influence.⁴⁸ How decisions are made and who decides is critical such that the “challenge in governing towards responsible forest business is to clarify for what, for whom and over what time frame governance is required” (McQueen 2006).

There is an increasing number of initiatives to link businesses and human rights, usually through attempts to increase the transparency of decision-making and reporting processes (IMF 2001, 2005; OECD 2001). Businesses are coming under pressure to conform to human rights and environmental norms through a combination of shareholder- and consumer-led

⁴⁶ UN (2005b).

⁴⁷ DFID decision to withhold £50 million from the World Bank over concerns about its approach to corruption and linkages to economic policy reforms (13 September 2006) (available at <http://news.bbc.co.uk/1/hi/business/5344752.stm/>)

⁴⁸ A key concept of the UN Global Compact as business cannot be responsible for nor complicit in all human rights abuses within a state with which it does business.

processes including Corporate Social/Environmental Reporting (CSER), insurance industry concerns over human rights, and environmental liability claims (Atyi and Simula 2002; Cashore et al. 2004; Goodin 1990; Kirton and Trebilcock 2004). The UN Global Compact contains 10 principles including the important cross-cutting principle relating to eradication of corruption. The current Compact focuses on voluntary initiatives to “create the moral framework that makes law enforcement effective.”⁴⁹ Businesses that operate in a legal way and are moving to sustainable management practices are keen that their efforts are both recognized, e.g. through clearly labelled and verified certification processes, and not undermined by continued support, often by corrupt regimes, for companies that operate in a corrupt and illegal fashion (Global Witness 2004). There is however great concern that the growth of international business based in the People’s Republic of China could undermine attempts to implement strong legality requirements on businesses. The good news however is that there is a growing interest within China to stem the tide of corruption and develop appropriate approaches to CSER within the Chinese business system (Business for Social Responsibility 2006).

Opportunities and Constraints Relating to Procedural Rights

Procedural rights are important not only for the contribution that they make towards effective substantive human rights implementation, but also because they create conditions for accountability and increase the legitimacy of regulation. Participation and the arguments that surround public decision-making processes may be valuable and act as an aid to the development of more innovative and valid opinions and solutions (Waldron 1993). The “fact is that social justice is not something anyone can do on their own; it is something we pursue together” (Waldron 1999).

However the difficulties of instituting effective information and participatory mechanisms should not be underestimated. People need to aware of their rights to information in order to begin to know what they need to know. There are problems of physical accessibility with electronic media not being a panacea—especially in societies with multiple languages and a high level of illiteracy in the national language. The information itself needs to be comprehensible, i.e. there must be resources to provide interpretation and presentation of raw data for a nontechnical public. Judicial review processes must be fair, equitable, timely, and not prohibitively expensive. The corrosive effect of corruption can easily be felt here, including direct and indirect attacks on people who are prepared to defend the human rights of marginalized people against large vested interests in business and states.⁵⁰

Participation is vital to build effective human rights regimes, as well as being a right in itself. However to implement this right, important capacity building processes are required alongside the creation of legal and policy frameworks. Time and resources are required to facilitate attitudinal change amongst government employees and elites to allow the involvement of marginalized groups in society. Strong cultural constraints can restrict the rights of women to participate. Implicit and explicit discrimination can exclude IPs, people of color as well as mobile communities. Establishing effective practices will not happen overnight within the forest sector, nor wider society, but perhaps the creation of virtuous circles can assist in such a way that once the processes are started they are less likely to be taken away, and will feed on themselves to create further engagements.

⁴⁹ UN Global Compact (2004).

⁵⁰ UN General Assembly Resolution [A/RES/53/144](#), 1998 adopting the Declaration on Human Rights Defenders.

Principles for the NLBI

Key Principle Relating to Sovereignty and Responsibility

The principle of national sovereignty over natural resources is well established (Schrivjer 1997). However, national sovereignty over natural resources is increasingly seen in international law to be closely linked to questions of responsibility (ICHRP 2003). In international law much of the focus relating to state responsibility has been in relation to transboundary issues (ILC 2001).⁵¹ Much as the debate concerns self-determination in relation to Common Article 1 of the International Covenant for Civil and Political Rights (ICCPR) and the International Covenant for Economic Social and Cultural Rights (ICESCR)⁵² in states where people have little or no say in the disposition of a state's assets, it is now time to revisit Principle 2 of the Rio Declaration and combine it more closely with, for example, Principle 4 whereby "in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it." It is increasingly clear that the states have responsibilities to utilize natural resources in a responsible manner that contributes to the overall health and development of their citizens.⁵³

Box 3: Statement in the Preamble of the NLBI⁵⁴

"Reaffirming their commitment to the Rio Declaration on Environment and Development, including that States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction and to the common but differentiated responsibilities of countries, as set out in Principle 7 of the Rio Declaration on Environment and Development."

It is therefore important that the standard statement (Box 3) concerning the principle of national sovereignty should have included:

Responsibility to citizens:

States have the responsibility to ensure that the utilization of forest resources within their jurisdiction should be undertaken in a transparent manner, with full recognition of the rights of citizens to be involved in decision-making processes. Citizens should have clear and open recourse to individual, community, and private forest land tenure processes that are legally certain and are based on customary law and procedures (where appropriate) and accessible socially just as national laws in conformity with the states' international obligations.

Key Principles from International Environmental Law

It is important that the NLBI sits clearly within wider international environmental law. Obviously not all principles of environmental law apply to the development of SFM but it is clear that a number do. Based on the Rio Declaration and the Forest Principles the key principles for the NLBI would include:

⁵¹ Trail Smelter Arbitration (United States v. Canada), 16 April 1938 and 11 March 1941 in *AJIL*, 1939, 33:182 and *AJIL*, 1941, 35: 684.

⁵² "All peoples have the right of self-determination."

⁵³ UN (1995).

⁵⁴ Document to the ECOSOC, p.2.

- **Principle of Sustainable Forest Management:** This should have been the overarching principle of the NLBI and should have been recognized as the proposed goal, but has been reduced somewhat in Purpose 1(a)
- **Principle of Prevention**—usually used in relation to pollution but of importance to forestry, especially given the speed of forest destruction and the length of time for regeneration and/or restoration
- **Precautionary Principle/Approach**
- **Common but Differentiated Responsibilities**
- **Principle of International Cooperation** to support national efforts
- **Principle of Responsibility** including Transboundary Harm—especially important in relation to transboundary watershed and frontier forests
- **Principle of Common Heritage** and global public goods including climate, biodiversity, and trade regime (Patosaari 2005)
- **Principle of Biodiversity Conservation and Protected Areas** to articulate the close link between the NLBI, the Convention for Biological Diversity (CBD), and Convention on Trade in Endangered Species (CITES)

The **Principle of Common but Differentiated Responsibilities** is referred to, but this is normally a move to facilitate calls for financial and technology transfers. However, is it possible that this approach from environmental law (Sands 2003) could include a duty obligation with respect to subsistence rights? The relationship between A55 and A2(7) of the UN Charter is such that human rights are “obligations *erga omnes*”⁵⁵ and that even though transnational responsibilities are still developing, states and other actors do have obligations under international human rights law which are likely to “become more specific and significant over time” (ICHRP 2003, p. 42).

Key Principles from Human Rights Law

The NLBI contains no mention of human rights. The only mention in the report to ECOSOC comes in the Chairman’s summary of multistakeholder dialogue with reference to the calls from IPs to halt forest destruction using human rights norms as a basis for this (UNFF 2007, para 7, p. 39). Given the emerging focus on mainstreaming human rights within the UN and its activities, a number of important principles have emerged from human rights law. These have recently been restated in the United Nations Declaration on Indigenous Peoples (UNDIP)⁵⁶ and a similar paragraph should be included in the principles’ section of the NLBI:

Principle of Human Rights Compliant Implementation: “The provisions set forth in this Instrument shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, nondiscrimination, good governance, and good faith.”

Conclusion

Did the UNFF follow a human rights approach to SFM when negotiating the NLBI? The answer is no. There is some indication that the role of SFM in poverty reduction was considered with Purpose 1(b) “To enhance the contribution of forests to the achievement of the international agreed development goals, including the Millennium Development Goals, in particular with respect to poverty eradication and environmental sustainability.” Whether

⁵⁵ Barcelona Traction, Light and Power Co (Belgium v Spain) [1970], ICJ Rep 4; Vienna Declaration, 1993.

⁵⁶ United Nations Declaration on the Rights of Indigenous Peoples. Adopted by the Human Rights Council, Resolution 2006/2, 29 June 2006. Article 46.3.

states will take a positive approach to this remains to be seen given that there are three key areas which will affect implementation.

Firstly the Global Forest Regime is not a self-contained regime (Lindross and Mehling 2006) and will operate alongside a public law culture which, if not in principle, at least in practice leads to the situation where trade and investment international law are de facto if not de jure stronger than human rights and environmental law. States will need to work, in all international forums, towards the situation where human rights law and environmental law are on the same level as international trade law (Humphreys 2003).

Second is the capacity of states to deliver on any agreement. All three pillars of SFM (environment, social, economic) require a high level of knowledge and a suitable enabling environment for implementation as well as the overarching political will at local, national, regional, and international levels. Is the capacity available in countries, and if not are resources, technical knowledge, finance, and training capacity to mention just three factors, available to enable capacity to be built? This is a case where international donors can play an important role in transferring knowledge, skills, and processes to countries in serious need. Funding is important, but it needs to be linked to real political will by states to improve governance not only in the forest and land management sectors, but in wider society. This is especially important in those countries that are rich in natural resources and emerging from conflict.

Thirdly is there the political will? Will there be a need to “buy” agreement to the instrument and its implementation through appropriate financial assistance, especially for tropical forest management (Humphreys 2005)?⁵⁷ Forests, like state citizens, are located within the jurisdiction of the state. Any international agreement therefore requires national implementation and agreement to international oversight. If state sovereignty is seen as the overriding principle then this is likely to limit effectiveness of implementation until wider international and national processes to deal with state responsibility, corruption, and poor governance have a chance to impact on the forest sector.

⁵⁷ UNFF8 will consider a “voluntary global financial mechanism/portfolio approach/forest financing framework for all types of forest, aiming at mobilizing significant increased, new and additional resources from all sources..... to support the implementation of sustainable forest management, the achievement of the global objectives on forests and the implementation of the non-legally binding instrument on all types of forests.”

References

- Agarwal, B.** 1994. *A Field of One's Own. Gender and Land Rights in South Asia*. Cambridge University Press.
- Akella, A.S. & Cannon, J.B.** 2004. *Strengthening the Weakest Links. Strategies for Improving the Enforcement of Environmental Laws Globally*. Centre for Conservation and Government, Conservation International.
- Alston, P.** 2005. Ships passing in the night: the current state of the human rights and development debate seen through the lens of the Millennium Development Goals. *Human Rights Quarterly*, 27: 755–829.
- Amnesty International.** 2004. *The UN Human Rights Norms for Business: Towards Legal Accountability*. London, Amnesty International (available at www.amnesty.org/)
- Anaya, S.J. & Williams, R.A., Jr.** 2001. The protection of indigenous peoples' rights over lands and natural resources under the inter-American human rights system. *Harvard Human Rights Journal*, 14: 33–86.
- Atyi, R.E. & Simula, M.** 2002. *Forest Certification: Pending Challenges for Tropical Timber*. Background paper. ITTO International Workshop on Comparability and Equivalence of Forest Certification Schemes, Kuala Lumpur, 3 to 4 April, 2002.
- Bass, S., Bigg, T., Bishop, J. & Tunstall, D.** 2006. Sustaining the environment to fight poverty and achieve the Millennium Development Goals. *RECIEL*, 15: 39–55.
- Brown, D. & Tucker, J.** 2006. *On Independence in Verification Work*. Verification Briefing Paper, No. 2, May 2006 (available at <http://www.verifor.org/index.html/>)
- Brownlie, I. & Goodwin-Gill, G.S., eds.** 2002. *Basic Documents on Human Rights*. 4th edition. Oxford University Press.
- Business for Social Responsibility.** 2006. *In Perspective – CSR in the People's Republic of China* (available at http://www.bsr.org/CSRResources/LeadingPerspectives/2006/2006_Summer.pdf/)
- Business Leaders Initiative on Human Rights.** 2006. *A Guide for Integrating Human Rights into Business Management*. United Nations Global Compact and Office of the United Nations High Commissioner for Human Rights (available at www.unglobalcompact.org/)
- Cashore, B., Auld, G. & Newsom, D.** 2004. *Governing Through Markets. Forest Certification and the Emergence of Non-State Authority*. Yale University Press.
- Chatterjee, D.K. & Scheid, D.E., eds.** 2003. *Ethics and Foreign Intervention*. Cambridge University Press.
- Christie, L.C., Di Leva, C.E., Lindsay, J.M. & Talla Takoukam, P.** 2007. *Forest Law and Sustainable Development Addressing Contemporary Challenges Through Legal Reform*. World Bank.
- Collier, P.** 2007. *The Bottom Billion. Why the Poorest Countries are Failing and What Can Be Done About It*. Oxford University Press. See also <http://users.ox.ac.uk/~econpco>
- Council of Europe.** 1950. Convention for the Protection of Human Rights and Fundamental Freedoms, European Treaty Series No. 5 Rome, 4.XI.1950.
- Danino, R.** 2005. The legal aspects of the World Bank's work on human rights: some preliminary thoughts. Chapter 20 In P. Alston & M. Robinson, eds. *Human Rights and Development. Towards Mutual Reinforcement*. Oxford University Press.
- Déjeant-Pons, M. & Pallemarts, M.** 2002. *Human Rights and the Environment*. Council of Europe Publishing (available at <http://book.coe.int/>)
- De Schutter, O.** 2005. Transnational corporations as instruments of human development. Chapter 16 In P. Alston & M. Robinson, eds. *Human Rights and Development. Towards Mutual Reinforcement*. Oxford University Press.
- Dorsett, S.** 2005. An essay on jurisdiction, jurisprudence, and authority: the High Court of Australia in Yorta Yorta (2001). *Northern Ireland Legal Quarterly*, 56(1): 1–20.
- Drèze, J. & Sen, A.** 1989. *Hunger and Public Action*. Oxford, Clarendon Press.
- Easterly, W.** 2006. *The White Man's Burden. Why the West's Efforts to Aid the Rest Have Done So Much Ill and So Little Good*. Oxford University Press.

- Eide, A.** 1995. Economic, social and cultural rights as human rights. In A. Eide, C. Krause & A. Rosas. *Economic, Social and Cultural Rights. A Textbook*. Martinus Nijhoff.
- Eide, A. & Rosas, A.** 1995. Economic, social and cultural rights: a universal challenge. In A. Eide, C. Krause & A. Rosas. *Economic, Social and Cultural Rights. A Textbook*. Martinus Nijhoff.
- Evans, T.** 2005. International human rights law as power/knowledge. *Human Rights Quarterly*, 27: 1046–1068, p. 1060.
- Fafo.** 2004. *Business and International Crimes: Assessing the liability of Business Entities for Grave Violations of International Law*. International Peace Academy and Fafo, Norway, (available at www.fafo.no/liabilities/index.htm)/
- Forest Stewardship Council.** Website www.fsc.org
- Frankovits, A.** 2005. *Mainstreaming Human Rights. The Human Rights-based Approach and the United Nations System*. Desk Study prepared for UNESCO, March to April 2005. Human Rights Council of Australia Inc.
- Global Witness.** 2004. *Taking a Cut. Institutionalised Corruption and Illegal Logging in Cambodia's Aural Wildlife Sanctuary*. A Report for Global Witness. November 2004 (available at <http://www.globalwitness.org/>)
- Global Witness.** 2005. *A Guide to Independent Forest Monitoring*, (available at www.globalwitness.org/projects/)
- Global Witness Briefing Document.** 2006. *Cautiously Optimistic: The Case for Maintaining Sanctions Against Liberia* (available at <http://www.globalwitness.org/reports/index.php?section=liberia/>)
- Goodin, R.E.** 1990. Property rights and preservationist duties. *Inquiry*, 33: 401–432.
- Humphreys, D.** 2001. Forest negotiations at the United Nations: explaining cooperation and discord. *Forest Policy and Economics*, 3: 125–135.
- Humphreys, D.** 2003. Life protective or carcinogenic challenge? Global forests governance under advanced capitalism. *Global Environmental Politics*, 3: 40–55: 52.
- Humphreys, D.** 2005. The elusive quest for a global forests convention. *RECIEL*, 145: 1–10.
- International Council on Human Rights Policy (ICHRP).** 2002. *Beyond Voluntarism. Human Rights and the Developing International Legal Obligations on Companies* (available at www.ichrp.org/)
- ICHRP.** 2003. *Duties sans Frontiers. Human Rights and Global Social Justice*. International Council on Human Rights Policy. p. 47 (available at www.ichrp.org/)
- Ignatieff, M., ed.** 2005. *American Exceptionalism and Human Rights*. Princeton University Press.
- International Court of Justice (ICJ).** 1996. Advisory Opinion on the Legality of Nuclear Weapons, 8 July 1996.
- International Development Research Centre (IDRC).** 2001. *The Responsibility to Protect*. Report of the International Commission on Intervention and State Sovereignty. December 2001. Published by IDRC, Canada (available at www.iciss.ca/)
- International Monetary Fund (IMF).** 2001. *Revised Code of Good Practices on Fiscal Transparency*. Updated on 28 February, 2001 (available at <http://www.imf.org/external/np/fad/trans/code.pdf>)/
- IMF.** 2005. *Guidelines on Resource Revenue Transparency* (available at <http://www.imf.org/external/pubs/ft/grrt/eng/060705.pdf>). See website, <http://www.imf.org/external/np/fad/trans/code.htm>
- International Labour Organization.** 1989. Convention 169, Indigenous and Tribal Peoples (available at www.ilo.org/)
- International Law Commission (ILC).** 2001. *Draft Articles on Prevention of Transboundary Harm from Hazardous Activities*. Adopted by the International Law Commission at its 53rd session.
- Kirton, J.J. & Trebilcock, M.J., eds.** 2004. *Hard Choices, Soft Law. Voluntary Standards in Global Trade, Environmental and Social Governance*. Ashgate.
- Ksentini, F.Z.** 1994. *Human Rights and the Environment*. UN Doc. E/CN.4/Sub.2/1994/9, 6 July 1994.

- Landman, T.** 2005. Review article: the political science of human rights. *British Journal of Political Science*, 35: 549–572, p. 553.
- Lindroos, A. & Mehling, M.** 2006. Dispelling the chimera of ‘self-contained regimes’ international law and the WTO. *The European Journal of International Law*, 16: 857–877.
- Lipschutz, R.D.** 2000. Why is there no international forestry law? An examination of international forestry regulation both public and private. *UCLA Journal of Environmental Law and Policy*, 19: 153–179.
- McCracken, R. & Jones, G.** 2003. The Aarhus Convention. *Journal of Planning & Environmental Law*, July 2003: 802–811.
- McQueen, D.** 2006. *Governance towards Responsible Forest Business. Guidance on Different Types of Forest Business and the Ethics to Which They Gravitate*. International Institute for Environment and Development.
- Moravcsik, A.** 2000. The origins of human rights regimes: democratic delegation in postwar Europe. *International Organization*, 54: 217–252, p. 227.
- Morgera, E.** 2005. An update on the Aarhus Convention and its continued global relevance. *RECIEL*, 14(2): 138–147.
- Norwegian Agency for Development Cooperation (NORAD).** 2001. *Handbook in Human Rights Assessment. State Obligations, Awareness & Empowerment*. NORAD.
- Organization for Economic Co-operation and Development (OECD).** 2001. *The OECD Guidelines for Multinational Enterprises: Text, Commentary and Clarifications*. Directorate for Financial, Fiscal and Enterprise Affairs, Committee on International Investment and Multinational Enterprises. DAF/IME/WPG(2000)15/FINAL, 31 October 2001.
- O'Reilly, S.M.G.** 2000. Why Does the Environment Matter. An Analysis of Environmental and Development Ethics within the Debate on Sustainability and Social Justice. Unpublished Ph.D. thesis, University of Wales.
- O'Reilly, S.** 2007. *Legal and Practical Issues of the Emerging Principle of Free Prior Informed Consent for Protected Area Management*. Paper for the 9th Annual BIOECON Conference on “Economics and Institutions for Biodiversity Conservation”, Kings College Cambridge, 20–21 September 2007.
- Pogge, T.** 2002. *World Poverty and Human Rights*. Polity Press.
- Patosari, P.** 2005. The International Arrangement on Forests after UNFF5. Discussion points delivered to the XXII IUFRO World Congress, Brisbane, 8–13 August 2005.
- Peace Parks Foundation.** <http://www.peaceparks.org/>
- Robinson, N.A.** 1993. *Agenda 21: Earths Action Plan*. IUCN Environmental Policy & Law Paper No. 27. Oceana Publications Inc.
- Roth, K.** 2004. Defending economic, social and cultural rights: practical issues faced by an international human rights organization. *Human Rights Quarterly*, 26: 63–73.
- Sands, P.** 2003. *Principles of International Environmental Law*. 2nd edition. Cambridge.
- Sen, A.** 1999. *Development as Freedom*. New York, Alfred A. Knopf. p. 80.
- Schabas, W.** 2001. Enforcing international humanitarian law: catching the accomplices. *IRRC*, 83(842): 439–459.
- Scheinin, M.** 1995. Economic, social and cultural rights as legal rights. In A. Eide, C. Krause & A. Rosas. *Economic, Social and Cultural Rights. A Textbook*. Martinus Nijhoff.
- Schrijver, N.** 1997. *Sovereignty over Natural Resources. Balancing Rights and Duties*. Cambridge.
- Shue, H.** 1996. *Basic Rights. Subsistence, Affluence and U.S. Foreign Policy*. 2nd edition. Princeton University Press.
- Slaughter, A.-M.** 2004. Disaggregated sovereignty: towards the public accountability of global government networks. *Government and Opposition*, 159–190.
- Spek, M.** 2006. *Financing Pulp Mills: An Appraisal of Risk Assessment and Safeguard Procedures*. Indonesia, CIFOR (available at www.cifor.cgiar.org/)
- Steiner, M.** 2001. After a decade of global forest negotiations, where are we now? *RECIEL*, 10: 98–105.

- Steiner, H.J. & Alston, P.** 2000. *International Human Rights in Context. Law, Politics, Morals*. 2nd edition. Oxford University Press.
- SustainAbility Ltd.** 2004. *The Changing Landscape of Liability. A Director's Guide to Trends in Corporate Environmental, Social and Economic Liability*.
- Tarasofsky, R.G., ed.** 1999. *Assessing the International Forest Regime*. IUCN Environmental Policy and Law Paper No. 37 (available at www.iucn.org/)
- Thornberry, P.** 1991. *International Law and the Rights of Minorities*. Oxford, Clarendon Press.
- United Nations (UN).** 1949. Universal Declaration of Human Rights, adopted 10 December 1948 at the General Assembly of the United Nations, UN Doc A/811.
- UN.** 1965. International Convention on the Elimination of All Forms of Racial Discrimination, adopted by General Assembly Resolution 2106(XX) 21 December 1965 and entered into force on 4 January 1969.
- UN.** 1966a. International Covenant on Economic, Social and Cultural Rights, Annex to General Assembly Resolution 2200 A (XXI) of 16 December 1966 (UN Doc. A/6316 1966) and entered into force on 3 January 1976.
- UN.** 1966b. International Covenant on Civil and Political Rights Annex to General Assembly Resolution 2200 A (XXI) of 16 December 1966 (UN Doc. A/6316 1966) and entered into force on 23 March 1976.
- UN.** 1979. Convention on the Elimination of All Forms of Discrimination Against Women, adopted by General Assembly Resolution 34/180 on 18 December 1979 and entered into force 3 September 1981; UN (1989) Convention on the Rights of the Child, adopted General Assembly resolution 44/25 20 November 1989 and entered into force on 2 September 1990.
- UN.** 1982. CCPR General Comment No. 6, The Right to Life (art. 6): 30/04/82, para 5.
- UN.** 1982. World Charter for Nature, UNGA Resolution 37/7, 28 October 1982.
- UN.** 1992. Non-legally binding authoritative statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests. Rio de Janeiro, 3–14 June 1992.
- UN.** 1993. Vienna Declaration and Programme for Action, World Conference on Human Rights, Vienna, 14–25 June 1993. UN Doc A.CONF.157/23 12 July 1993, Article 5.
- UN.** 1995. Department for Policy Coordination and Sustainable Development. Report of the Expert Group Meeting On Identification of Principles of International Law for Sustainable Development, Geneva, Switzerland, 26–28 September 1995. Prepared by the Division for Sustainable Development for the Commission on Sustainable Development, Fourth Session 18 April to 3 May 1996, New York.
- UN.** 1997. *Rio Declaration on Environment and Development: Application and Implementation. Report of the Secretary-General*. UN Doc. E/CN.17/1997/8 10 February 1997, para 64.
- UN.** 1998. UN General Assembly Resolution A/RES/53/144, 1998 adopting the Declaration on Human Rights Defenders.
- UN.** 2000. United Nations Millennium Declaration, UN Doc. A/Res/55/2, 18 September 2000.
- UN.** 2003. *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*. E/CN.4/Sub.2/2003/12/Rev.2.
- UN.** 2004. *A More Secure World: Our Shared Responsibility*. Report of the UN Secretary Generals' High-level Panel on Threats, Challenges and Change, United Nations, 2004 (available at www.un.org/secureworld/).
- UN.** 2005a. *In Larger Freedom: Towards Development, Security and Human Rights for All: Report of the Secretary-General*, U.N. GAOR, 59th Sess., 144, UN Doc. A/59/2005 (2005).
- UN.** 2005b. Convention against Corruption, adopted by the General Assembly of the United Nations on 31 October 2003 and entered into force on 14 December 2005. UN Doc A/58/422 (available at http://www.unodc.org/unodc/crime_convention_corruption.html)

- UN.** 2006. *The Millennium Development Goals Report 2006* (available at www.un.org/millenniumgoals/)
- United Nations Conference on Environment and Development (UNCED).** 1992. United Nations Conference on Environment and Development, Rio Declaration on Environment and Development, 1992.
- United Nations Forum on Forests (UNFF).** 2007. *Report of the Seventh Session (24 February 2006 and 16 to 27 April 2007)*. Economic and Social Council Official Records, 2007. Supplement No. 22. UN Doc No: E/2007/42 and E/CN.18/2007/8.
- United Nations Global Compact.** 2004. *A Primer on the Principles* (available at www.unglobalcompact.org/)
- Waldron, J.** 1993. A rights-based critique of constitutional rights. *Oxford Journal of Legal Studies*, 13(1): 18–51.
- Waldron, J.** 1999. *The Dignity of Legislation*. Cambridge University Press.
- World Bank.** 2005. *Going, Going, Gone. The Illegal Trade in Wildlife in East and South East Asia*. Environment and Social Development Department, East Asia and Pacific Region (available at www.worldbank.org/biodiversity/)
- World Bank.** 2006. *Strengthening Forest Law Enforcement and Governance: Addressing a Systemic Constraint to Sustainable Development*. Report No. 36638-GLB, August 2006. Washington, DC, World Bank (available at www.worldbank.org/)
- World Bank Inspection Panel (WBIP).** 2006. *Cambodia: Forest Concession Management and Control Pilot Project* (Credit No. 3365-KH and Trust Fund. 26419- JPN). Report No. 35556, 30 March 2006.