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Introduction

Traditionally, international environmental governance has focused on the issue of global public goods that states cannot provide individually, with intergovernmental cooperation being aimed at the creation of an international regime (Krasner, 1983; Young, 1997 & 2001). Over the past decade, this governance 'model' has been marked by a crisis of multilateralism that is notable for the refusal of certain large countries, such as the United States, to engage in international collective action on environmental protection. In addition, other multilateral agreements, notably on trade and production sectors, are struggling to meet objectives that are ecologically acceptable. This crisis has given rise to new forms of global environmental governance.

Alongside mechanisms for international coordination between sovereign states, a hybrid form of governance is gradually emerging: it is characterized by global policy networks (Reinike, 1998; Streck, 2002) where public and private actors share authority and a common goal. At the same time, a third 'non-state market-driven governance' (NSMD) model, where authority is diffuse and based in the marketplace (Bernstein & Cashore, 2003), has asserted itself.

This new order raises questions on the nature of international collective action and on the legitimacy of these governance systems, their comparative effectiveness – meaning their ability to provide solutions to global environmental problems – and their complementarity. These questions are particularly pointed where global forest governance is concerned.

So far, no form of international coordination focusing specifically on forest conservation and management has really materialized. Although global forest governance is a topic that continues to prompt heated intergovernmental negotiations, the relevance and legitimacy of a multilateral approach are now being addressed: at the same time as these diplomatic efforts, other governance systems are bringing non-governmental actors into play – NGOs, the private sector, local institutions – actors who have had very little influence over the globalization process up until now.

Do these newer systems represent a viable solution? Do they make it possible to overcome the constraints associated with a classical governance system in the form of a legally binding multilateral agreement on forests? This article attempts to answer these questions. After reviewing the evolution of global forest governance, we will analyze the main points of contention surrounding the new forms of governance.

Ineffectiveness of state forest governance systems

Before 1992, particularly during negotiations leading up to the Earth Summit, the international community was extremely attentive to forest matters. When it discussed ways of fighting global warming, it often stressed the impact of the world's forests on carbon storage. It also pointed out repeatedly that tropical deforestation represented the greatest threat to biodiversity. As a result, governments became actively involved in talks to put together a legally binding multilateral agreement on forests.

As early as 1985, the Ninth World Forestry Congress held in Mexico City concluded with a manifesto urging "all human beings of all nations and their governments, within the framework of their own sovereignty, to recognize the importance of forest resources for the biosphere and the survival of humanity." A few years later, in 1991, Mr Saouma, Director-General of the Food and Agriculture Organisation of the United Nations, opened the Tenth World Forestry Congress with the following remarks: "Climate change, the imperilled environment and the North/South interchange are of concern to the whole world. Preserving and developing the essential functions of the forest must therefore be tackled as a worldwide undertaking on three fronts: the ecological, the economic and the social."

At the time, global diplomacy was working to strengthen international environmental law, and the preservation of forest ecosystems – those of the tropical rainforest in particular – was generally considered to be a matter deserving of greater international collective action.

Bogging down of intergovernmental negotiation processes

Right from the start, multilateral negotiations on forests were marked by intense North-South divisions. Broadly speaking, developed countries considered that forests were part of our global heritage and required international protection. They argued that the lack of global rules for forests could lead to the rapid disappearance of rich forest ecosystems. At the same time, developing countries contended that forests were natural resources over which they had sovereignty and that their development depended in part on those resources. Consequently, at the 1992 Earth Summit in Rio, the international community was unable to reach a consensus on the substance of a global forest agreement. The vastly different goals of developed countries and developing countries stood in the way of any positive outcome. Diverse interests in forest environmental services were also overlaid by differing trade interests, with timber importers and exporters seeking a range of international provisions – not all consistent with environmental requirements.

Despite this persistent North-South impasse, specific negotiations for forests were not abandoned. Based on the Rio Declaration and Statement of Forest Principles, and Chapter 11 of Agenda 21 ("Combating deforestation"), these carried on under the auspices of the United Nations Commission on Sustainable Development (CSD). In 1995, CSD decided to set up a special body – the Intergovernmental Panel on Forests (IPF) – to develop consensual proposals to strengthen the management, preservation and sustainable development of all types of forests. In February 1997, IPF approved a set of over a hundred proposals for action designed to take up the challenge of global forest management. The delegates were unable to agree, however, on a number of vital matters, for instance those to do with financial assistance, the trade/environment relationship, and the opportunity for beginning talks on a global forest agreement.

In June 1997, the governments at a UN General Assembly Special Session adopted IPF's proposals. Their commitment to implement these proposals represented an important decision on forest policy at the very highest level, without actually constituting an international forest agreement per se. IPF's successor, the Intergovernmental Forum on Forests (IFF), was mandated to facilitate implementation of the IPF proposals. In concrete terms, this new body looked at how well the different countries were getting on with implementing IPF's recommendations, based on the annual progress reports they submitted. IFF was also supposed to "identify the possible elements of and work towards a consensus on international arrangements and mechanisms, for example a legally binding instrument on all types of forests" – the key stumbling block in negotiations.

In its final report presented in 2000, IFF proposed an International Arrangement on Forests (IAF), a successor mechanism providing for two bodies. First, there was IFF's direct successor, officially instated in October 2000: the United Nations Forum on Forests (UNFF). A subsidiary

body of the Economic and Social Council (ECOSOC), UNFF was supposed, among other things, to "consider, within five years, the parameters of a mandate for developing a legal framework on all types of forests" – wording that was vague enough to satisfy those for and those against a legally binding instrument.

The second IAF component, the Collaborative Partnership on Forests (CPF) – a means for collaboration between the main international organizations involved in forest governance – was created in April 2001 to assist UNFF. CPF's 14 founding members include intergovernmental institutions (UNEP, UNDP, World Bank, FAO, ITTO), the Secretariat of UNFF and Rio's key environmental agreements (UNFCCC, CBD, CCD), international research bodies (ICRAF, CIFOR, IUFRO), the GEF Secretariat and IUCN. The CPF network was also supposed to help implement the 280 or so proposals for action coming under these successive negotiation processes.

With UNFF coming to the end of its mandate and IAF to be evaluated in the near future, the question of a legally binding agreement on forests remains very controversial. Government participation is decreasing – witness the low number of progress reports the UNFF Secretariat has received from different countries on the implementation of the proposals for action.[1] Influential players internationally with significant forests, such as Brazil, Malaysia and Sweden, are still fiercely opposed to a legally binding agreement. Even Canada, a major advocate of an international forest agreement, is beginning to express doubts regarding the possibilities of reaching that objective.

One of the ideas suggested for getting around the obstacles was moving towards a legally binding multilateral agreement in discrete stages. With this approach, an 'umbrella' agreement would contain a number of broad principles, or guidelines, and include regional protocols that would have a certain amount of autonomy while abiding by these principles. This way, each forest region would be able to promote its own interests and progress, independently from the others, in terms of implementing legally binding instruments. This idea was not acted on, however – once again, due to continued opposition to the multilateral challenges, less significant though they were – to this proposal.

Lack of consensus on international architecture

The debate on international forest governance is also wrapped up with the need to clarify the international institutional architecture, which many people consider complex and fragmentary. One of the motives for opening international negotiations on forests is therefore tackling the fragmentation of the global forest regime, including its many legal and institutional overlaps. In addition to UNFF, there are two multilateral instruments devoted to forests specifically: the International Tropical Timber Agreement (ITTA) and the FAO Committee on Forestry. Other non-specific international mechanisms also incorporate provisions that are essential for forests. For example, the Kyoto Protocol attached to the UNFCCC addresses the role played by forests as carbon sinks. The last Conference of the Parties (COP) of the CBD developed a special work program on forest biodiversity. The Unesco World Heritage Convention deals in part with protection of the world's most remarkable forest ecosystems. The CITES convention regulates trade in certain species of wood. The Convention to Combat Desertification contains provisions on the role played by forests in the preservation of arid and semi-arid ecosystems. International Labour Organization (ILO) Convention 169 deals with the issue of indigenous peoples, which is so important in tropical forested areas.

The divisions over forestry issues with these many multilateral legal instruments have led governments to debate two different options for global forest governance. The first has been discussed above: a new instrument that would be more or less legally binding and would aim, among other things, at improving coordination between these different mechanisms. The second option is less ambitious: strengthening existing institutional frameworks in order to implement the many measures currently proposed by different international authorities, in particular the IPF/IFF and CBD proposals for action.

This strictly institutional debate came to a head in April 2002, at the sixth Conference of the Parties to the Convention on Biological Diversity (CBD), where CBD addressed the forestry issue specifically for the first time. The scientific community had estimated that the world's forests

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[1] Forest Watch, Issue 91, FERN, December 2004.

contained one half to three quarters of terrestrial biodiversity. An expanded work program on forest biological diversity was adopted (Decision VI 22) and the Parties were urged to implement it on a voluntary basis, in keeping with their countries' priorities and needs.

To give this program a more operational dimension, negotiations were suggested to create an additional CBD protocol. With this option, the Parties could be forced to implement the CBD forest program measures. It was opposed on two fronts, however – by those in favour of strengthening IAF with a view to a legally binding multilateral agreement on forests, and by those from developing countries who refused to see forestry issues treated from the angle of biodiversity preservation specifically and insisted that the contribution of their forests to their economic development be given greater consideration by negotiators from rich countries.

International negotiations are not the only level affected by this wrangling. In some countries, ministries in charge of forestry support one option over another based on their own trade or environmental sensibilities, sometimes to the extent that it is impossible to detect a clear position in talks.

Lack of NGO support

At the Earth Summit, NGOs held great hopes for the international negotiation. Since then, however, they have become somewhat sceptical about the potential of multilateral talks on the environment to produce regulatory instruments that are truly legally binding and are effective with good rules of observance, monitoring and sanction mechanisms. They base this position on several arguments (Guéneau & Wilson, 2003).

NGOs alert political decision-makers regularly to the slowness of multilateral talks on the environment and the risk of ending up with a consensus that reflects the lowest common denominator. They point out that a lack of political will leads to non-implementation – despite the fact that the issues are fundamental and pressing. They cite the Convention on Climate Change as an example: how long it is taking for the Kyoto Protocol to come into force, the weakness of its objectives, shortcomings in monitoring and evaluation, the red tape involved in and compliance procedures applied to the Parties' commitments (annual progress reports), and the lack of financial means and technical assistance. Lastly, they note the problems with equity in international negotiations, which result in delegations from developed countries having more influence than those from developing countries.

NGOs also point out the lack of government openness to civil society representatives in negotiations – the UNFF talks especially. Most large NGOs are therefore not very inclined to support a new international instrument. Others consider that certain conditions must be met for IAF to play its role fully as a coordinator of international collective action aimed at forests (Mankin, 2004), without actually turning it into their key concern.

Increasing influence of approaches based on public-private partnerships

In relation to the weaknesses of multilateral solutions, a pragmatic view of forest governance is emerging. This view entails forming 'coalitions of the willing' which include public actors (governments and international organizations) as well as private actors with different viewpoints (NGOs and private sector) for the purpose of reaching a common goal. There is by no means universal support for this view, however.

Regional partnerships

The heterogeneous nature of forest resources, exploitation methods, and social, cultural and environmental issues have prompted governments to decide that it is a good idea to deal with some forestry issues regionally. Forest management standards, for instance, were the subject of a dozen or so regional negotiation proceedings, or 'processes', which defined criteria and indicators for sustainable forest management that are now widely recognized by producers: the Helsinki Process for Europe (1993), Montreal Process for North America (1993), Tarapoto Process for the Amazon (1995), and the African Timber Organization's Criteria and Indicators (1996), to name a few.

In parallel with this strictly standard-based approach, more ambitious attempts were made to strengthen regional forest governance. For example, the heads of state of Central African countries

organized a summit in 1999 on the conservation and sustainable management of tropical forests. The summit was followed by the creation of the Conference of Ministers in charge of Forests in Central Africa (Comifac), which met for the second time early in 2005. This new institution, which was charged with the tasks of boosting regional cooperation and facilitating dialogue with donor countries, is still financially strapped. For Comifac's action plan to be implemented, member states would have to make a real financial contribution and donor countries would have to provide better support – and these things are far from happening. Financial considerations aside, there is also internal wrangling over leadership.

Designed to get around such recurrent institutional problems, a number of governance innovations came into being at the World Summit on Sustainable Development held in Johannesburg in 2002. Three regional public-private partnerships devoted specifically to tropical forests – referred to as Type II Initiatives – were set up. Composed of governments, international organizations and NGOs, these partnerships were created to raise funds and implement programs for the conservation and sustainable management of forests in the world's three tropical regions.

For Central Africa's forests, the Congo Basin Forest Partnership was put together by the South African and United States governments in collaboration with a number of other governments, international institutions, large NGOs (such as the Wildlife Conservation Society, WWF and Conservation International), and representatives from the private sector. In all, there are 29 partners associated with this original initiative. A similar initiative, the Asian Forest Partnership, was launched by the Japanese government. Lastly – on a more modest scale – a network of model forests in Latin America was confirmed by Canada, a number of partner countries and UNDP.

These new forms of governance reflect two fundamental trends. Firstly, there is the increase in private and government sector intervention in forest governance systems, particularly in regions where attempts to re-establish the rule of law have failed. Secondly, the global approach to the world's forests that prevailed in the late 1980s and early 1990s is apparently being supplanted by more pragmatic regional approaches. Could global forest governance be the result of the addition of such coalitions of the willing, focusing on the planet's most endangered forest areas?

Industry-based approaches: Example of the fight against illegal logging

Another way to tackle forest governance is to develop industry-based regional approaches. The fight against illegal logging and illegal trade is an example of this recent type of approach. In effect, international treatment of forestry matters involves a prioritization of problems – and illegal logging[2], or delinquent forestry practices, has gradually moved up just about to the top.

This all began in 1998 when the G-8 Summit concluded with a plea for governments to join forces and fight illegal logging. More recently, this objective, along with the reinforcement of capacities and improvement of dialogue between Central African actors, was advocated by France when it took on the leadership of the Congo Basin Forest Partnership.[3] NGOs have also made illegal logging one of their campaign themes, pointing out the role played by illegal logging and trade in deforestation, loss of tax revenue and increased poverty. According to WWF, 50% of Cameroon's logging operations are illegal and 80% of Brazil's lumber is produced illegally.[4]

In 2001, the World Bank organized a conference on illegal logging that brought together 13 countries, including the United Kingdom, the United States and a number of East Asian countries; NGOs; and representatives from the private sector. This conference gave birth to the FLEG (Forest Law Enforcement and Governance) process. In April 2002, the European Union organized a multi-stakeholder workshop to develop its own plan for fighting illegal logging: the Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan[5]. The plan aimed to increase the ability of developing countries to control illegal logging and reduce trade in illegal wood between these countries and the European Union. In Africa, a Ministerial Conference in October 2003 launched a

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[2] By illegal, we mean non-compliant with the laws of the country of origin (Brack & Hayman, 2001).

[3] cf. Speech by French President Jacques Chirac at the opening of the 2nd heads of state summit on the conservation of Central Africa's forest ecosystems, Brazzaville, February 5, 2005.

[4] WWF, *The Timber Footprint of the G8 and China,* www.panda.org

[5] cf. European Commission External Relations Directorate General, Forest Law Enforcement, Governance and Trade (FLEGT), Brussels Workshop, April 22-24, 2002, Summary of Discussions

similar process: the Africa Forest Law Enforcement and Governance (AFLEG) process[6]. These regional processes for fighting illegal logging and trade represent a concrete application of broader-based public-private partnerships such as the Congo Basin Forest Partnership.

The key measures of the action plans created by these regional processes are geared towards strengthening the laws of producing countries and improving bilateral, regional and international cooperation in the fight against illegal logging and trade. These processes result in bilateral partnership agreements, such as the agreement signed between the United Kingdom and Indonesia in April 2002 to reduce British imports of wood products and timber produced illegally in Indonesia. Among other things, this agreement provides for verification of legality through greater civil society involvement, joint examination of the legislative reforms needed to combat forest crimes, incentives for 'serious' manufacturers, mechanisms for tracking timber movement etc.

Through such examples of bilateral and regional cooperation, the first stirrings can be seen of new forms of governance, where organized civil society, the private sector and importing countries play a central role in dealing with the failings of the countries unable to govern forest resources. These industry-based, multi-actor forms of governance already appear to yield better results than classical intergovernmental processes.

For example, the legality requirement can be included in conditionalities imposed on suppliers when public timber procurement policy is designed in consumer countries. Manufacturers also become involved in legality by developing independent verification systems with NGOs. This is the case with the Congo Basin forest concession monitoring system developed by IFIA in collaboration with several NGOs, including Global Forest Watch, the World Resources Institute (WRI), IUCN and WWF. This system is designed to single out countries that comply with the laws in force by means of legality certification. Companies participate voluntarily in complying with laws and commitments to sustainable forest development, set out by a multi-party steering committee composed of represent-tatives from regional organizations (Comifac), NGOs and the private sector. WRI is responsible for auditing how these requirements are met. Mediation procedures are provided for any offenders it finds, creating reputation incentives (or disincentives) for the company in question. If the company still fails to comply at the end of a one-month time limit, its certificate of legality can be taken away. The certificate attesting to the legality of the logging operation is attached to the other documents required to export products. Certifiers have developed certification and control systems that vary somewhat, such as the "timber origin and legality certificate" created by Eurocertifor in 2004.

In spite of some criticisms, NGOs – including the hardliners – consider the FLEG(T) process to be a possible way of creating an international sustainable forest management standard. They therefore suggest using FLEG(T) processes and partnership agreements to progress rapidly at the bilateral and regional levels with countries that hope to agree on the definition of a high standard of sustainable forest management and benefit from the support of the European Union and other G-8 members. According to the NGOs Greenpeace, FERN and WWF, once a critical mass of producing countries and consumer countries have agreed on guidelines for a sustainable forest management standard, it will be possible to return to a multilateral option – an option for which the EU and G-8 will have laid the groundwork at the same time as bilateral, regional negotiations.[7] A set of regional approaches directed in participatory fashion by coalitions of the willing could therefore be a viable alternative to global forest governance systems stemming from intergovernmental negotiations based entirely on nation-state participants.

Non-state network- governance systems

NGOs active in the international forest policy debate have markedly improved their ability to influence forest governance systems. During the 1980s, several NGOs, frustrated with government inaction and the absence of clear agreement at the intergovernmental level, called for a tropical timber boycott. Although some governments, such as those of the Netherlands and Austria, were ready to follow suit with official bans, this strategy was not very successful.

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[6] cf. Declaration of the Africa Forest Law Enforcement and Governance (AFLEG) Ministerial Conference, October 2003.

[7] *Illegal logging and the global trade in illegally sourced timber; a crime against forests and peoples*, NGO statement, April 2002. Available at: www.fern.org

The failure of attempts to boycott tropical timber is fairly indicative of the limited latitude for action as a result of the trade policies of consumer countries. When these countries wanted to ban tropical timber exports, they were faced with the threat of trade sanctions. Differences in forest management standards between countries are generally due to the heterogeneous nature of natural endowments, development status and community preferences, and therefore do not justify resorting to such trade policy instruments as import bans, quotas or taxes. Any attempts at arbitrary trade restrictions that are not justified on exceptional grounds, such as public health protection, could infringe World Trade Organization (WTO) rules and be the subject of a Dispute Settlement Body case.

Thus, regarding the forest sector, governing trade and environment issues within the WTO rules is obviously incomplete. And the chances of arriving at a forest agreement that is truly effective and legally binding are very low. This therefore brings us back to the well-worn question of how to govern global forestry without an international coordination mechanism playing the role of world government. It is in response to this question that NGOs supported a new network-based form of world governance.

As for the timber distribution companies, they looked for new ways to protect their activities from boycott threats, which they took very seriously. They realized that they would have problems giving consumers guarantees that the products they sold came from sustainably managed forests. They recognized that they could arrive at the most credible alternative to boycotts through greater collaboration with NGOs on the joint development of a non-state network-based governance system. Thus the Forest Stewardship Council (FSC) was born in 1993.

The FSC case

The FSC is an international association that provides standard setting, trademark assurance and accreditation services for companies and organizations interested in responsible forestry. FSC's mission is to promote environmentally appropriate, socially beneficial and economically viable management of the world's forests. Its role is both to determine good international forest management standards and to provide accreditation services to certifiers and National Initiatives.

The FSC Accreditation Program provides for three types of services: accreditation of certifiers, FSC National Initiatives, and FSC National Standards. FSC-accredited organizations certify forest owners and managers in accordance with criteria and indicators that meet FSC guidelines. The certification process is voluntary.

FSC has a unique governance structure that is founded on sustainable development principles (Bass, 2002). Since 1993, FSC has distinguished itself through its:

Sustainable development based organization: Members (primarily NGOs, forest producers and traders) are divided among three 'chambers' – economic, environmental and social – reflecting the three pillars of sustainable development.

Equity/fairness: Within each chamber, there is voting parity between North and South member countries. However, some regions are over-represented, particularly the countries of the North. Others, such as African countries, are under-represented.

Multi-stakeholder participation: Members are a diverse mixture of representatives from environmental and social groups, the timber trade and forestry profession, indigenous peoples' organizations, responsible corporations, community forestry groups and forest product certification organizations from around the world. Membership does not include government, however. This is because FSC wanted to be a voluntary initiative and avoid falling foul of trade laws, and because it did not want to duplicate the 'lowest common denominator' positions of (inter)governmental forest initiatives.

Global standard setting: The FSC has ten Principles of Forest Stewardship that apply to all tropical, temperate and boreal forests. These Principles and 56 associated Criteria (P&C) form the basis for all FSC forest management standards. They cover economic, environmental and social factors. They were arrived at as a result of a great deal of consultation; they could be said to embody 'the spirit of Rio'; and they are regularly reviewed and revised. They can be applied to all types of forests around the world.

Global presence: FSC is a global network with an international centre in Bonn, regional offices in all parts of the globe, National Initiatives in 34 countries and certified forests in 62 countries. FSC operates through its network of National Initiatives in over 30 countries.

Local implementation and flexibility: National multi-stakeholder working groups translate FSC's Principles and Criteria into national and subnational standards relevant to the forest type. These are evaluated for certification purposes by certifiers and other involved and affected parties on a case-by-case basis. As a result, standards differ from one country to the next but are considered compatible internationally. The standards include implementation of all relevant legislation, but tend to set a higher benchmark.

Independence and credibility: Standards are independently verified on site in the forest (and on the basis of the logging company's documented forest management system) by accredited auditors, resulting in a certificate and labelled timber.

Relationships with major retailers/wholesalers: WWF has organized buyers' groups (usually retailers, mostly in Northern countries) that have pledged to stock FSC-certified timber only.

Incentive impact: Labelled timber offers an incentive to producers. The reward tends to be market access, but in some areas includes a price premium.

Because of its demanding requirements, FSC has not managed to impose a harmonized system for the standardization and encouragement of sustainable forest development that is acceptable to all actors world-wide. All the same, 50 million hectares have been certified over the past 10 years in over 60 countries as complying with FSC standards and several thousand products bear the FSC trademark[8]. More important still: FSC has undeniable influence over negotiations and practices in different parts of the world.

FSC's influence over forest policy

FSC's rapid success prompted certain economic operators and states with sensitive forestry interests to react by developing their own market-driven regulation systems. National certification programs were introduced in several large countries, such as Malaysia, Brazil and Indonesia, and private initiatives were born in North America, Europe and Africa. Although less restrictive than FSC's system, these certification schemes nevertheless structured and codified forest management practices.

At the same time, in order to promote FSC's system world-wide, WWF set up a network of buyers' groups, now known as the Global Forest and Trade Network (GFTN) – a partnership between different stakeholders, NGOs, local institutions, negotiators and retailers in the timber, paper, and manufactured wood products industries. The first buyers' group was created in the UK in 1991. Now this group is made up of large chains of home renovation, furniture and carpentry stores, paper firms, newspaper and magazine publishers, etc. Other groups were set up in Europe, North America and Australia, and then the trend hit Southern Europe, Asia (Japan, Taiwan, Hong Kong), Brazil and Africa. Most of the major markets are now covered by these buyers' groups. Many local institutions (municipalities, regions, etc.) have adopted procurement policies requiring wood from certified or locally logged forests – for example, the Nord-Pas-de-Calais regional council and municipalities (Lille, Rennes) in France[9]. At the beginning of 2001, Germany's North Rhine-Westphalia government decided to buy only FSC-certified timber[10]. By promoting voluntary certification at different forest governance levels, FSC provided leverage for local actors who, in the case of timber consumer countries, felt excluded from the international forest regulation process.

At the national level, the most significant governance impact has derived from the FSC national certification working groups. Multi-stakeholder in nature, and including government at this level, in many countries they are the only forum for reviewing forest matters. They have focused on such critical issues as 'What is good forestry? How should we recognize it? How can we hold managers accountable? How can we encourage improvement? And how can we reward them?' Even when certification does not itself prove to be the answer to these questions, the debate has been effective. There are cases of working group deliberations being taken into other policy arenas. At the very least, the work of such groups has had an excellent capacity development effect (Bass, 2002).

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[8] see: http://www.fsc.org

[9] *Bâtir sans détruire. Les collectivités locales protègent les forêts tropicales.* Campaign led by Les Amis de la Terre and Robin des Bois, 2000

[10] FSC Arbeitsgruppe Deutschland e.V., Press Release, 19 January 2001

Contestability of new non-state forms of governance

Public-private coalitions and network governance systems are 'competing' more and more with inter-state international governance processes, challenging the very need for a legally binding instrument on forests. The obvious popularity of these new forms of forest governance must not, however, obscure a number of questions (Guéneau, 2002). First of all, the effectiveness of market-driven regulation systems using instruments such as certification or the monitoring of illegal logging and trade is being questioned. Do these systems make it possible to fight deforestation effectively? Secondly, despite its organizational model favouring balanced representation of different categories of actors, some of the arguments against the FSC system are based on its unfairness, or inequity. Lastly, there is debate on the legitimacy of forms of governance that involve organized civil society as opposed to being based on government intervention.

Effectiveness of non-state governance instruments

Considering the certification boom around the world and the exponential increase in certified forest surface area, there is no doubt that the FSC system has achieved a high profile and has had successes. These have already inspired an extension of this market-driven regulation system to other sectors, such as the seafood industry. Plans are also under way for similar systems for the agricultural, tourism and mining industries. These outcomes are certainly significant, but should be viewed from a variety of perspectives: First, as a result of fears on the part of manufacturers and forest owners that environmentalists would force management requirements on them that would be too strict and/or irrelevant, competing certification programs have rapidly sprung up. These include the Canadian Standards Association (CSA) program, Sustainable Forestry Initiative (SFI), Pan-European Forest Certification Scheme (PEFC), Pan-African Forest Certification Scheme (PAFC), and national certification programs in Brazil, Chile, Malaysia and Indonesia. While FSC's standards apply to forests world-wide, these other programs are primarily of a regional or national nature. What we are witnessing then, is a race between programs to impose their own criteria on the market by increasing the certified surface area they control. Considering how heated the debate over certification has been between the private sector and the nongovernmental sector, it is likely that network governance systems will end up weakened by this battle for standard control, in part because of loss of credibility amongst confused consumers and state authorities.

Second, although the development of these programs has certainly regulated the timber industry – in particular, allowing 'good' producers to be distinguished from the 'bad', especially in countries where controls are difficult – there are signs that certification could merely entrench management practices suited to 'good' producers and their business models – which will not always produce desirable results. In other words, what will be the real incentives associated with market-driven governance systems?

Two things need to be pointed out here. First, the NGOs supporting FSC advocate its high performance standards, while other certification programs emphasise flexibility through procedural standards. Second, it seems obvious that market-driven governance systems will only be able to have an impact on a very limited portion of tropical forests: the part that exports timber to the European and North American markets, which discriminate in favour of 'green' products.

The following observation seems to apply to certification systems as well as programs for fighting illegal logging and trade: only large companies exporting most of their output to developed countries with strong environmental sensibilities subject themselves voluntarily to forest management and/or legality verification measures. However, neither the timber destined for the large booming consumer markets of Southern countries, with China leading the way, or the timber sold on the domestic markets of tropical countries, led by Brazil, appear at this point to be influenced by market-driven governance systems. And yet it is precisely these countries that are making the tropical timber markets so dynamic: according to ITTO, Chinese imports of tropical timber increased by 33% between 2003 and 2004 (Ze Meka, 2005) and China is soon to be the biggest timber importer. What is more, certification of good forest management does not have any significant influence over crucial issues of 'asset stripping' forms of logging or forest conversion into farmland – the leading causes of deforestation. Certification appears to offer no incentive or sanction for 'poor' producers.

Market-driven governance systems are therefore having difficulties gaining recognition in places with weak local governance systems. Kern (2003) stresses the case of Indonesia, where

illegal logging accounts for 70% and where FSC withdrew the certification of a large teak plantation subsequent to finding that its standards and procedures were not being complied with. Local governance systems, calling on local policies and controls, would therefore appear to be necessary to fight illegal logging. Despite the enthusiasm of private producers, NGOs and governments for improved forest governance systems, a number of authors (Karsenty, 2004) also feel that – more than the fight against illegal logging by repressive action – it is the fight against the underlying causes of illegal activities that needs to be given priority, i.e. fighting underdevelopment.

Are the new forms of forest governance fair?

Questions of equity, or fairness, are a central issue in discussions on market-driven forest governance systems (Thornber, Plouvier, & Bass, 1999; Thornber, 2003). The statistics speak for themselves: according to the International Tropical Timber Organization, tropical forests represent only 7% of certified forests world-wide (Ze Meka, 2005). The FSC system itself, which is organized internally around the equitable distribution of responsibilities between North and South, shows uneven results: over half of its certified forest surface area is concentrated in Europe and less than a quarter in tropical regions, where the forests are the most abundant. Out of the 50 million hectares of forest certified by FSC, only a little less than 2 million hectares are in Africa – no certificates have been issued for any countries in the Congo Basin – and less than 400,000 hectares are in Asia, half in Japan alone. Plantations account for a large proportion of FSC-certified tropical forest.

It is a fact that it is easier to certify the forests that are the most homogeneous ie. plantations and temperate forests, where resource inventories and development plans are also well established; there are less land ownership problems; practices are recorded clearly; forestry employees are competent and well-trained, laws are obeyed and controls facilitated; and the political regimes are stable. In some countries – those of Central Africa, for instance – the implementation of sustainable development plans, which should inevitably lead to certification, necessarily takes longer and is more costly than in the countries of the North, even though most tropical timber is in competition with certified temperate and boreal forest products. In addition, the threat of reducing non-certified timber imports for public markets or industrial lumber markets is very real in Europe. The risk is that part of the flow of tropical timber will be redirected towards markets where legality controls are limited and/or the demand for certified timber is low.

Problems of fairness are also related to company size. The costs of certification, which include the cost of the preliminary certification evaluation, making the management changes required to obtain certification, and the annual audits, effectively limit the certification prospects of small producers. A portion of these costs are fixed costs, and consequently induce scale effects: the bigger the forestry operation, the smaller the proportion of the overall cost of the certified product, and the more competitive advantages forest certification generates. Small operations, on the other hand, have the most difficulty bearing these costs. Even though FSC addressed this problem a while back by setting up a special certification program for small owners and producers, most of the companies certified to date are bigger and well-resourced – or are small tropical community groups whose certification was funded by donors. Certification has therefore had the initial effect of recognizing the best producers and making good ones even better – with little impact on the real forest problem of the asset-stripping behaviour of the bad producers.

How legitimate are non-state governance systems?

Traditional global governance systems are based on relationships between states, with the outcome being the creation of institutions responsible for organizing cooperation so that states can pursue common or shared goals. Opting for this kind of regime gives states a number of rights and obligations to guide their public policy. With these systems, governance is founded on democratic legitimacy in sovereign countries.

The source of legitimacy with the new forest governance systems is completely different, however. The institutions created under these systems are based on markets rather than territory. International pressure from NGOs makes it possible to govern at least some forestry matters independently of states, on political terrain that is different from that of intergovernmental relations (Bernstein & Cashore, 2003). What are the underlying reasons for legitimacy with these governance systems? How are they more legitimate than systems based on the democratic

legitimacy of states? These questions are vital insofar as certain actors contest the legitimacy of non-state actors to play what they see as the state's role. Also, the privatization of a number of the sovereign functions of states, such as creating standards and implementing or enforcing them, is problematic. If companies pay for access to the regulation system, and specialized bodies or organizations are remunerated for monitoring compliance with standards, how can the system's neutrality and independence be guaranteed?

In the opinion of Bernstein and Cashore (2003), actor participation and responsibility is more important than democratic legitimacy in judging a system's legitimacy. In other words, a rule or an institution is legitimate if the different groups of actors concerned by this question consider it to be relevant and appropriate.

From this angle, transparency, better participation, and the way interests are allocated and distributed both by FSC's decision-making power structure and national working groups in the forest industry are indications of legitimacy. FSC's openness to the private sector, and companies' attempts at self-regulation through certification or voluntary codes of conduct, also back up this system's legitimacy (Kern 2003). Lastly, civil society participation in decision-making processes in places where the rule of law is difficult to enforce is another argument used to demonstrate the legitimate nature of non-state governance systems.

At the national level, FSC working groups are created wherever possible. When this is not possible, however, procedures are provided to assure the system's legitimacy locally. They include mandatory consultation of local actors and mechanisms for communities and local NGOs to lodge complaints. Kern therefore considers that, in some countries, the rights granted to local people via FSC can be better than those they are granted by national laws. This statement needs to be put into perspective, however, considering the lack of means and deterioration in government services in many forestry countries. Should the improvement of local forest governance be prompted by outside intervention or, conversely, should it be founded on the development and support of an indigenous vision embraced by local actors?

Conclusion

We can conclude that non-state forest governance systems will have increasingly significant effects on how forestry is treated at different levels, from the local to the global. They 'compete' with the international governance process and call into question the need for a legally binding instrument on forests. If the legitimacy of market-driven systems has gained growing recognition locally and internationally, their effectiveness remains to be proven – particularly with regard to the more vulnerable actors, the majority of whom are found in tropical forested areas under highest pressure.

What seems to impress most observers about FSC is its role as a catalyst for change in forest practices and policy. This influence, which is considerable, revolves around its role in reinforcing the articulation between public and private spheres in the development of global forest governance mechanisms. Forest governance cannot be dogmatically based on one approach alone, but rather requires better articulation between different systems.

We would not advocate a swing too far towards NSMD forms of governance. Excessive attention to NSMD, at the cost of basic state processes and capacities, runs the risk of establishing two-tier governance. Evaluating market-driven governance systems through the lenses of effectiveness, fairness and legitimacy has begun to reveal their incompleteness, as well as their potential.

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