

## 3 Core components of the international forest regime complex

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**Abstract:** From the existing full set of international policy instruments on forests, eight core components are identified and submitted to two differing assessments. The first (consistency assessment) uses a policy design approach to match the core components with their goals, policy tools, target group preferences and justifications for the choice of goals and policy tools. The second (compatibility assessment) examines the institutional inter-linkages of the core components. Both assessments reveal a series of challenges for international forest governance that can, however, be turned into opportunities. It is proposed that the coordination of and cooperation between the representatives of forest and non-forest users be strengthened at the national, regional and international levels, under the shared overarching idea of sustainable forest management, by means of ‘forests+’ policies. Forests+ policies go beyond the forest sector and acknowledge both the inter-sectoral character of forest policymaking and the importance of international regimes that have a decisive impact on forests but for which forests are not the main focus of attention.

**Keywords:** International forest regime, international forest governance, international policy instruments on forests, international forest policy, policy design approach, institutional inter-linkages, hard and soft law on forests, REDD+, forests+ policies.



### 3.1 Introduction

Chapter 2 gives a synopsis of the existing set of international forest governance arrangements (the ‘international forest regime complex’), which is a hybrid mix of hard, soft and private international law. These arrangements are highly fragmented and characterised by a multiplicity of state and non-governmental actors and institutions. In these respects they resemble the larger set of international environmental governance arrangements, of which they form a significant part. For the sake of reducing complexity, this chapter identifies a subset of the forest governance arrangements as *core components* of the full set of international policy instruments on forests. Although they pursue different goals, such as sustainable forest management (SFM), the enhancement of forest biodiversity and the mitigation of climate change by reducing deforestation and forest degradation, the core components all deal with forests and all

involve substantial policymaking for the sustainable development of forests and people.

In order to assess the role of a core component in international forest governance arrangements, two questions are addressed. The first is: Are the internal goals coherent and the means to achieve them consistent? To interrogate this question the policy design approach is applied. This theoretical approach matches the core components with their goals, policy tools, target group preferences and justifications for the choice of goals and policy tools. Since the core components pursue different goals, a second question arises: Are the relationships between the core components neutral, synergistic or conflicting? This question is answered by examining the institutional inter-linkages of the core components. In addressing both questions, the potential of these core components to take on a more deliberative role in coordinating global forest governance is analysed.

The chapter is divided into four sections. The

core components are identified in section 3.2. As there are both legally binding and non-legally binding core components, the advantages and disadvantages of this aspect are discussed in general terms in section 3.3. Section 3.4 assesses the individual core components by means of the policy design approach and section 3.5 assesses the compatibility of the core components. The key findings of both assessments on the challenges and opportunities for global forest governance are presented in section 3.6.

## 3.2 Identification of the core components

The Global Forest Expert Panel (GFEP) defined the core components of the international forest governance arrangements as international multilateral intergovernmental treaties and agreements which directly address forests, either focusing on SFM or more specific goals, such as biodiversity conservation or climate change mitigation; and have achieved, or have the potential to achieve, significant effects on forests. GFEP members generally agreed on the policy measures crucial for resolving economic, ecological and social conflicts in forests that have a transboundary or ‘international commons’ component. There is, however, no inter-subjective approach for judging the significance of any given measure at a global level. Therefore, at its first meeting in December 2009 in Vienna the GFEP agreed to leave this decision to a sub-group\*, which subsequently proposed the following eight policy instruments as core components of the international forest regime complex:

- *Non-legally Binding Instrument on All Types of Forests (NLBI)*
- *International Tropical Timber Agreement (ITTA)*
- *forest certification schemes*
- *world trade agreements (WTAs)*
- *forest law enforcement, governance and trade (FLEGT)*
- *Convention on Biological Diversity (CBD)*
- *Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)*
- *the climate change regime.*

\*) The sub-group comprises the following GFEP members: Samuel Assembe-Mvondo, Benjamin Cashore, Steven Bernstein, Peter Glück, David Humphreys, Karl Hogl and Jeremy Rayner.

This selection is intended to be neither exhaustive (due to constraints in space and capacity) nor definitive. However, it was not challenged by the GFEP in subsequent sessions.

The core components can be grouped into legally binding instruments (‘hard’ law) and non-legally binding instruments (‘soft’ law). The relationship between hard law and soft law has great practical relevance to the international forest regime complex.

## 3.3 Advantages and disadvantages of hard and soft law

The international norms and rules that have been developed as tools of global governance can be placed on a continuum from traditional top-down, hierarchical hard-law treaties to the vaguest voluntary soft-law mechanisms (Karlsson-Vinkhuysen and Vihma 2009). In the forest sector, there exist hard-law regulations with (e.g. WTAs) and without (e.g. CBD) legal sanctions as well as a variety of soft-law agreements characterised by a lack of legal sanctions. The most important international examples of the latter are the Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests (known as the Forest Principles) and the NLBI (Auer et al. 2005). The failure at the state-to-state level to successfully negotiate an international convention on forests has no doubt paved the way for the emergence of ‘soft’, voluntary processes such as certification.

### 3.3.1 Definition of ‘hard’ and ‘soft’ law

Definitions of *hard law* tend to focus on authority. According to Abbott and Snidal (2000), hard law relies primarily on the authority and power of the state. This point is also emphasised by Kirton and Trebilcock (2004: 9), who state that hard law relies “primarily on the authority and power of the state – in the construction, operation, and implementation, including enforcement, of arrangements at international, national, or sub-national level”. Accordingly, the essence of hard law is legally binding obligation. Three dimensions are sometimes considered when evaluating the ‘hardness’ of legal commitments: *precision, obligation and delegation (of authority)* (Abbott and Snidal 2000). Each of these dimensions may vary considerably in different national settings.

Various authors have explored the role of *soft-law* approaches and standard-setting, not least in the forest sector. Some regard soft-law approaches as controversial, as formal international law remains largely

absent and competing standards strive for dominance (Cashore 2002; Cashore et al. 2004, 2005; Kirton and Trebilcock 2004). Nonetheless there is agreement that soft law at the global level extends downward from the commanding, highly legalised heights of hard law to embrace specialised agencies of the United Nations (UN) and the non-binding Forest Principles, voluntary standards and forest certification. As a legal concept, soft law can be broadly defined as “rules of conduct which, in principle, have no legally binding force but which nevertheless have practical effects” (Mörth 2004: 6); it is located “in the twilight between law and politics” (Thürer 2000). A somewhat more actor-oriented definition is supported by Kirton and Trebilcock (2004: 9), who state that soft law “relies primarily on the participation and resources of non-governmental actors in the construction, operation, and implementation of a governance arrangement”. The essence of these definitions is that soft law can be classified procedurally as *non-legally binding rules* and that it comes in many varieties. The meaning of soft law and its applicability must therefore be considered contextually; the boundaries between ‘hard’ and ‘soft’ law are, in practice, often blurred and difficult to differentiate.

### 3.3.2 Positive and negative traits of hard-law and soft-law policy instruments

Even though command-and-control steering has sometimes succeeded in dampening environmental destruction, it has limitations as a solution to complex, systemic environmental problems such as climate change or the decline of biological diversity. Hard law can be *rigid, slow and inflexible* to changes in society and often involves a *non-inclusive, top-down* approach that favours *bureaucratic, hierarchical* systems (Gunningham and Grabosky 1998). In specific contexts hard law has direct advantages to softer approaches, offering *the legitimacy, the strong surveillance and enforcement mechanisms* and the guaranteed *resources* that soft law often lacks. Hard-law instruments are also often subject to *more thorough negotiation and preparation* which, unless substantive targets have been watered down, make behavioural change and problem-solving more likely (Skjaerseth et al. 2006).

The soft-law approach offers many advantages. Optimistic authors argue that soft law has value in making and enforcing new norms and standards and as an effective means for direct civil-society participation in global governance (cf. Kirton and Trebilcock 2004). In particular, it is claimed that soft law has greater *flexibility* with respect to participation and sectoral emphasis. Soft law can also serve as a

*precursor* and proving ground for hard law and can therefore be a useful intermediate step towards hard-law commitments (Tollefson 2004). Soft law can strengthen hard law by enhancing implementation, and ambitious norms can be achieved more easily in soft-law settings than in legally binding ones (Skjaerseth et al. 2006). In some circumstances (e.g. forest certification), soft-law norms can be more precise than those of hard law (e.g. Cashore 2002; Cashore et al. 2005). This suggests that soft law could have a comparative advantage in producing *new regimes* with innovative principles and norms, while hard law can be used to add the effective enforcement mechanisms over time.

Nonetheless, the soft-law approach comes with its own challenges. Soft law can lead to uncertainty because actors remain unclear about the costs of *compliance* (or their absence). Collaborative, ‘softer’ processes can also be *time-consuming* and *costly*, and democratic participation might be compromised when particular stakeholders are excluded. Because of the lack of legal sanctions, a certain amount of voluntary compliance is needed, and the question of *legitimacy*, especially in practical applications (e.g. forest certification), remains unclear (Bernstein and Cashore 2004; Kirton and Trebilcock 2004; Tollefson 2004).

This suggests that securing sustainability requires a flexible and open use of instruments, both hard and soft. Given the complexity and multiple causes of current global forest problems, a *portfolio* of all available policy instruments should be applied, taking advantage of mutually supportive steering instruments, processes, organisations and actors in the international arena and taking into account differences in national policy contexts. According to this view, hard law and soft law should be seen as complements rather than competitors because they serve different purposes – as long as soft law does not crowd out hard law when the latter is necessary.

## 3.4 Consistency assessment

### 3.4.1 Policy design approach

The policy design approach allows the analyst to deconstruct a policy output into a set of attributes and to reconstruct and assess the ‘intervention logic’ of a programme (deLeon 1990; Linder and Peters 1984; Schneider and Ingram 1997; Weimer 1992). On this basis the core components of the international forest regime complex are assessed here by matching the core components with the attributes of the policy design approach. The attributes are as follows:

- *policy goals*;
- *policy tools* – the means proposed to achieve the desired ends;
- the preferences and behaviours of *internal target groups* – the public or private actors (e.g. states) responsible for implementing the instruments;
- the preferences and behaviours of *external target groups* – those actors whose behaviour the forest policies intend to influence (e.g. forest users and consumers of forest products);
- *rationales* – the expressed justifications for the choice of goals and policy tools, including the causal beliefs that underpin them and the theoretical connections between attributes.

By reviewing these attributes of the core components of the international forest regime complex it is possible to determine the extent to which the policy goals of each component are internally coherent; the policy tools chosen to achieve the goals are consistent with each other; and the policy instruments themselves conform to the general preferences of the international target groups.

### 3.4.2 Non-Legally Binding Instrument on All Types of Forests

#### *The international forest deliberations*

The NLBI is the *latest international soft-law agreement on forests*, the first being the Forest Principles and Chapter 11 of Agenda 21, both of which were agreed at the UN Conference on Environment and Development (UNCED) held in Rio de Janeiro in 1992. The lack of a hard-law instrument since UNCED is particularly remarkable given that several states, including the United States of America, proposed the negotiation of a global forest convention in the preparatory negotiations for UNCED between 1990 and 1992. At the time of UNCED, a legally binding forest regime was regarded by many developed states as desirable because it would have the potential to improve the collective welfare of participants by reducing the adverse transboundary consequences of deforestation and forest degradation. Malaysia and other developing countries, however, refused to negotiate a convention, referring to their sovereign right to exploit their forests (Davenport 2005; Humphreys 1996). In 1993, however, Malaysia became one of the leading proponents of a convention that would compensate tropical forest states for the opportunity costs of implementing SFM. Nevertheless, in the aftermath of UNCED, the Intergovernmental Panel on Forests (IPF), which convened from 1995 to 1997, could not agree on either the need for a convention or financial assistance for the implementation of for-

est policies in developing countries (Dimitrov et al. 2007). In 1997 the United States officially switched from a stance that was pro a forest convention to a stance that was opposed to one. In the subsequent Intergovernmental Forum on Forests (IFF), which convened from 1997 to 2000, Brazil and the United States led an anti-treaty coalition with the effect that delegates decided to forego a legally binding instrument. Instead, they established another forum for non-binding discussions, the UN Forum on Forests (UNFF), which, according to Dimitrov et al. (2007: 243), “they explicitly deprived of a policymaking mandate”.

There are several possible explanations for the failure of negotiations on a worldwide forest convention. Lipschutz (2001) argues that national forest practices can be regulated through trade instruments because they directly relate to commerce. Humphreys (2006) sees the main reason for the non-regime in the prevailing anti-regulatory principles of neo-liberalism, global capitalism and free trade. Dimitrov et al. (2007) point to the absence of reliable scientific knowledge about the transboundary impacts of deforestation and forest degradation and also suggest that unilateral forest policies can effectively address forest-related issues internally. Davenport (2005) uses an economic analysis to argue that the United States ceased to support a convention because it perceived that the economic costs of doing so would exceed the economic benefits.

The Forest Principles lay the foundations for two *principles* that have since dominated negotiations on forests and which are also part of the NLBI: (i) the sovereign right of nation states to exploit their forest resources according to their own environmental policies, linked to the responsibility to avoid transboundary harm; and (ii) the sustainable management of forest resources and forest lands to meet the social, economic, ecological, cultural and spiritual needs of present and future generations. In addition, the NLBI contains the principle of common but differentiated responsibilities of states, as also set out in Principle 7 of the Rio Declaration on Environment and Development and Article 3.1 of the UN Framework Convention on Climate Change (UNFCCC).

#### *Focus on national forest programmes*

Under the overarching goal of SFM, the NLBI establishes objectives and policies to promote SFM at the international, regional and national levels. Together with its associated work programme, the NLBI prescribes and gives guidance for the implementation of four *global goals* set out in UNFF Resolution 2007/40 of 17 October 2007. The global goals are (cf. chapter 2): (i) reverse the loss of forest cover; (ii) enhance forest-based economic, social and environ-



mental benefits; (iii) increase significantly the area of protected forests worldwide and other areas of sustainably managed forests, as well as the proportion of forest products from sustainably managed forests; and (iv) reverse the decline of official development assistance for SFM.

In order to achieve these goals the NLBI recommends that member states apply a mix of regulatory, financial and information *policy tools* with a distinct focus on national forest programmes (NFPs) based on criteria and indicators for SFM. NFPs are a commonly agreed but novel framework for SFM which is applicable to all countries and to all types of forest. NFPs strive to render politics on forests more rational, more oriented to the long term, and better coordinated (Glück et al. 2003).

The *rationale* for using NFPs to pursue the NLBI's four global goals at the national level is, in principle, to make states accountable to other states for the implementation of their NFPs (Humphreys 2004). As the NLBI is a form of soft law, however, no state has any obligation at all to take action that is consistent with it.

The influence of the proposed tools, in particular NFPs on member states (*internal target groups*) depends on these states' preferences and behaviour towards forests. Conditions for the formation and updating of NFPs are more favourable in states with a participatory policy style (Glück and Voitleithner 2002) because NFP processes require the establishment and maintenance of a climate of mutual trust in which participants (*external target groups*) are prepared to remain at the negotiation table and to regard the dialogue on forest-related issues as an iterative and open-ended process (Glück et al. 2005). Such a climate allows all actors with a stake in forests to be embraced, not only within the forest sector but also beyond it. However, empirical evidence suggests that the success of the process depends on factors such as land tenure, legal regulations, financial incentives and political culture (Glück et al. 2003; Humphreys 2004).

To sum up, the NLBI strengthens the principle of national sovereignty and allocates the responsibility for achieving global objectives i–iii to member states. It recommends NFPs, which represent a paradigm shift in forest policy from traditional to new forms of governance; they work best in states where the supporting conditions of new governance already exist. Simultaneously, NFPs could provide the backbone for implementing an international legally binding instrument on forests, should one be agreed (Glück et al. 1997; Humphreys 2004). Regarding the accomplishment of global objective iv, it remains to be seen whether member states are able to mobilise new financial resources from their own or other sources.

### 3.4.3 International Tropical Timber Agreement

The International Tropical Timber Agreement (ITTA) is actually a series of agreements that follows a specified cycle. The first ITTA was signed in 1983 and entered into force in 1985. A second ITTA was negotiated in 1994 and entered into force in 1997. A third ITTA was agreed in 2006.

According to Article 1 of the ITTA, 2006, the main *goal* of the Agreement is “to promote the expansion and diversification of international trade in tropical timber from sustainably managed and legally harvested forests and to promote the sustainable management of tropical timber producing forests”. To achieve this goal, a mix of economic and information *policy tools* are used, focusing on, among other things, the promotion of sustainable development and poverty alleviation, the improvement of forest law enforcement and governance, the encouragement of forest certification, and the promotion of tropical timber and non-timber forest products. The underlying *rationale* is to provide information and positive incentives rather than sanctions. For this purpose ITTA gathers tropical timber-producing and consumer countries around the same table. The ITTA creates the International Tropical Timber Organization (ITTO), which comprises two groups of members – tropical timber ‘producer’ member countries and tropical timber ‘consumer’ member countries. The highest authority of ITTO is the International Tropical Timber Council, which consists of all the members of the Organization. ITTO is responsible for the administration of the ITTA.

#### *Tropical timber trade versus SFM*

The ITTA, 1994, was the first international legally binding instrument to use ‘sustainable forest management’ terminology. In this respect, Humphreys (2004) argues that the evolution of the ITTA can be attributed not only to the members but also, to some extent, to the influence of non-governmental organisations (NGOs) on ITTO.

ITTO cannot be understood without examining its voting structure, which critics argue has often stymied normative change. It is based on the producer and consumer groups, each of which has a total of 1000 votes. The votes of individual consumer members are decided on the basis of their share of tropical timber imports, while the votes of individual producer members are decided by a complex formula that takes into account each member's share of tropical timber exports and its forest area. Among the producer members, the first 400 votes are reserved equally for countries from Africa, Asia-Pacific, and Latin America and the Caribbean. Another 300 votes

are divided between producer members on the basis of their relative share of tropical forest cover. The final 300 votes are apportioned according to the average of the values of each producer member's net exports of tropical timber during the previous three years. It is often argued by some environmental NGOs that this voting structure, which is used by the International Tropical Timber Council when making decisions, limits the promotion of SFM because while forest size is a consideration, most votes are allocated according to a country's share in the international tropical timber trade.

Nevertheless, ITTO has developed a series of SFM tools and technical norms which it places at the disposal of its member countries. The important methodological tools developed by ITTO include management guidelines, principles, criteria and indicators for SFM (ITTO 2006). ITTO also plays an important role as a sponsoring body by financing projects and studies in various tropical-timber producer member countries towards the goals of promoting the timber trade and SFM. To some extent, the effectiveness of this instrument can be judged by its impact on the behaviour of its members. In an assessment of the progress that had been made towards SFM in tropical forests since the first such assessment in 1988, the former Executive Director of ITTO states: "The data indicate that significant progress has been made since 1988 towards the sustainable management of natural tropical forests, but the extent of such progress remains far from satisfactory" (ITTO 2006: 3).

### 3.4.4 Forest certification schemes

Forest certification emerged in the 1980s as an economic *policy tool* for ensuring SFM at the management unit level amid increasing concern about global forest degradation and questions about the effectiveness of boycotts and intergovernmental processes in tackling the problem (Cabarle et al. 1995; Poore 2003). ITTO's unwillingness to support NGO proposals for a sustainable timber labeling system led a coalition of actors to conclude that such a system would operate better as a private initiative (Gale 1998; Humphreys 1996: 74–75). This opinion strengthened as preparatory meetings for UNCED ended the hopes of developed countries for a binding forest convention. All the while interest was growing in finding positive incentives for improved management rather than the negative incentive of boycotts, which some argued exacerbated forest degradation by inducing shifts to other land-uses, such as agriculture (Cabarle et al. 1995; Varangis et al. 1993). Finally, certain governments saw certification as a policy tool that could substitute for legislation intent

on improving forest management in other countries, since certification appeared less likely to being ruled illegal under the General Agreement on Tariffs and Trade (GATT; Bartley 2003).

#### *Two approaches to forest certification*

Two main approaches to forest certification have emerged. The Forest Stewardship Council (FSC) was launched in 1993 by a coalition of business and non-governmental actors seeking to advance the goal of improving forest management worldwide (Elliott 2000; Elliott and Schlaepfer 2001; Gulbrandsen 2004; Synnott 2005). The FSC coordinates an array of independent certification activities, including the Rainforest Alliance's SmartWood programme and attempts by retailers and publishers to trace and ensure the sustainability of their fibre supplies. The FSC is governed by a general assembly that since 1996 has comprised three membership chambers – social, environmental and economic – each holding one-third of voting rights, with geographical balance between the global north and south (FSC 1999; Synnott 2005). Day-to-day operations are run by a secretariat, which reports to an elected nine-member board and carries out the membership's directives and the board's strategic plans.

A second approach to certification is the development of country-level certification schemes, which emerged to pre-empt regulation and in reaction to the FSC, which many forest companies, forestland owners and governments saw as a threat because of its standards and the decision-making power it granted to social and environmental interests (Cashore et al. 2004, 2006; Ghazali and Simula 1996; Gulbrandsen 2004). Country-level programmes were also endorsed by an ITTO-commissioned report, which concluded that an international forest certification programme was unnecessary given the small proportion of timber entering global trade (Poore 2003). This support and the above-noted emphasis on NFPs following UNCED (Elliott 2000: 50; Humphreys 1996: 138) were the foundations of numerous national certification initiatives.

Many of these country-level initiatives were consolidated as a global substitute for the FSC, particularly after 2002 when the Programme for the Endorsement of Forest Certification (PEFC), which was established (as Pan European Forest Certification) in 1998, broadened its acceptance criteria (Auld 2009: 268). The PEFC is governed by a general assembly comprising representatives of endorsed national schemes, with voting power ranging from one to four votes on the basis of members' annual harvest volumes. By early 2010, 34 schemes held PEFC membership, 28 of which were officially endorsed by the PEFC. Initially, supportive organizations could

be extraordinary members (with no voting rights). In November 2009 the PEFC introduced membership for international stakeholders with the same rights as national-scheme membership but only one vote per member; in aggregate, the vote of international stakeholders cannot exceed 50% of the assembly's total votes. A 2–10 member elected board, supported by a secretariat, oversees the PEFC's overall operations (PEFC 2009).

#### *Standards-setting and auditing*

As policy tools, both the FSC and the PEFC target forest-product companies and forestland owners along the market's supply chain (external target groups) with the aim of influencing and improving forest management. To do this, the programmes set standards for the social and/or environmental impacts of the production and manufacturing processes and require product-tracking through to the final consumer. The FSC's standards are specified at two levels. Its international principles and criteria cover, among other things, tenure and use rights and responsibilities; indigenous peoples' rights; community relations and workers' rights; the use of forest products and services; maintaining biodiversity and high-conservation-value forests; forestry planning, monitoring and assessment; and the planning and management of plantations. Indicators and verifiers are developed locally through national (or sub-national) stakeholder processes and must be endorsed by the FSC board. In regions without endorsed standards, an accredited certifier may develop a 'generic' assessment standard (Evison 1998). Requirements for this process have recently been updated to increase transparency and stakeholder engagement (FSC 2009).

Under the PEFC, schemes must develop local standards that fit within the structure of the relevant intergovernmental criteria-and-indicator definitions of SFM. The process must be open to relevant parties, although forestland owners are considered the appropriate initiator of a standards-setting process (PEFC 2006). Both the FSC and the PEFC cover similar forest management issues, although the FSC generally has more stringent requirements and restricts certain activities, such as the use of genetically modified organisms, that are permitted by PEFC schemes. Variations within the FSC and PEFC programmes make blanket comparisons difficult (McDermott et al. 2008, 2009).

To provide incentives for participation, both the FSC and the PEFC have on-product labels to enable product differentiation and possible price premiums, although in practice premiums have been less widespread than some hoped for or expected (Overdevest and Rickenbach 2006). The FSC began by only labeling products with 100% FSC-

certified content (Synnott 2005). Gradual changes have reduced the percent-thresholds and introduced new rules for acceptable non-FSC content, such as recycled content (Auld 2006; Cashore et al. 2004; FSC 2004; Meidinger 2006). Tracking requirements under the PEFC are now very similar to those of the FSC, permitting either physical separation or percentage methods and specifying similar procedures to exclude controversial sources, particularly illegal timber (PEFC 2005). To ensure credible claims, both programmes require applicant operations be certified by an independent inspection audit. However, oversight of these certifiers, known as accreditation, does differ between the two programmes. The FSC initially performed accreditation itself, but in 2006 it created an independent organization, Accreditation Services International, to provide this service (Auld 2009). In contrast, PEFC schemes rely on the accreditation services provided by state-sanctioned bodies (Meidinger 2006).

#### **3.4.5 World trade agreements**

The post-Second World War international trade regime has the broad *goal* of advancing trade liberalization. The *rationale* for this goal is the belief that a rule-based, predictable agreement on trade is in the interest of all due to its benefits in enhancing growth and welfare. As a result, talks among states have long focused on this broad policy goal. After failed attempts to form an International Trade Organization through the Havana Charter (UN 1948), attention shifted to GATT, which was signed by 23 contracting parties (internal regulatory targets) in October 1947. This agreement was superseded by GATT 1994 and the creation of the World Trade Organization (WTO), which commenced operations on 1 January 1995 after the eight-year Uruguay Round negotiations (WTO 2008; Barbier 1996). At its formation the WTO had 123 contracting parties ('members') and the liberalization agenda included anti-dumping measures, non-tariff barriers, services, and intellectual property rights (WTO 2008). As a policy tool, the WTO introduced a stronger dispute settlement procedure, with binding decisions and a need for consensus among members to annul a settlement decision, which supplanted the past approach where a single party could block it. Parties to the dispute are also allowed to appeal for a review by the Appellate Body (Article 17, Annex 2) (Rao 2000). Together, these changes have given judicial decisions more influence over the development of trade law, especially since normal negotiations have slowed as developing countries have gained bargaining power (Goldstein and Steinberg 2009: 219–221).

*Relevance to forest product trade*

GATT 1994 includes several *policy tools* relevant to the trade of forest products. The Uruguay Round ushered in significant commitments to tariff reductions (WTO 2008). Developed-country members committed to reducing tariffs on most forest products, with a complete phasing out of tariffs on pulp and paper products in 8–10 years. Some members also committed to eliminating tariffs on furniture imports and there was a general agreement to reduce tariff escalation (the practice of setting higher tariffs for manufactured versus primary products). Additional commitments were made to replace preferential treatment for certain countries (most-favoured-nation status) with bound tariff rates – a ceiling rate that if exceeded would justify retaliatory trade sanctions (Barbier 1996).

The Uruguay Round also introduced the Agreement on Technical Barriers to Trade (TBT), which extended an agreement on the issue reached by 33 GATT contracting parties in the late 1970s (WTO 2005). The TBT seeks to eliminate technical regulations – mandated rules for product size, design or other characteristics – and associated standards that serve protectionist aims, parsing these from rules with legitimate aims such as the prevention of illegal or deceptive practices and the protection of environmental and human health (Barbier 1996). With these legitimate goals, the TBT requires member states to develop policies that are non-discriminatory and least trade-restrictive (Article 2.2) and to notify and consult when developing new technical regulations (Article 2.9), giving flexible timelines for enforcement where appropriate (Articles 2.10–2.12). It also promotes harmonisation across technical regulations (Article 2.6) and requires members states to use “relevant international standards” if they “exist or their completion is imminent,” with some exceptions where local circumstances would reduce effectiveness (Article 2.4). In the forest sector, many technical regulations, such as building codes and grading rules, potentially fall under the TBT definition (Barbier 1996). Yet it is still uncertain whether the TBT definitions (TBT Annex 1) will cover non-product-related production and processing methods, as advanced by certification schemes, or whether these standards will be covered by GATT’s requirements to treat like products the same (Article III) and its general exceptions for health and safety considerations (Article XX) (Bernstein and Hannah 2008). The possible applicability of the TBT to forest certification schemes is likely to remain unclear unless a WTO member brings a case against such schemes before a WTO dispute resolution panel. The provision requiring deference to existing or nearly completed international standards will also have relevance for considering how certification systems will be viewed

if a TBT complaint is ever raised (Auld et al. 2008; Bernstein and Hannah 2008).

The Agreement on the Application of Sanitary and Phytosanitary (SPS) Measures, also a product of the Uruguay Round, seeks to eliminate protectionist and unscientific restrictions disguised as policies aiming to protect against invasive species, pests and pathogens (WTO 1998). SPS measures received limited attention before the Uruguay Round, which allowed countries to create complex barriers to imports justified as SPS measures and led to frequent trade disputes (Barbier 1996).

One such dispute arose over the pinewood nematode. Acting on fears that this pest would infect European forests, the European Community banned the import of softwood lumber from Canada, the United States, Japan and China unless heat-treated or kiln-dried and accompanied by a government-approved phytosanitary certificate, a restriction considered by many softwood producers to be a non-tariff barrier (Cohen et al. 2003). The SPS agreement aims to address these disputes. It calls for, among other things, the harmonisation of standards, encouraging members to work within the Codex Alimentarius and the framework of the International Plant Protection Convention to advance international standards on SPS measures (Article 3.5).

With both the TBT and SPS agreements, members have responsibility for ensuring that sub-national governmental bodies and non-governmental bodies are compliant (external target groups). This, too, has raised questions about how voluntary forest certification schemes will be viewed in relation to these requirements (Bernstein and Hannah 2008; Rotherham 2003). The SPS agreement also presents challenges for the efforts of members to manage threats from invasive species, pests and pathogens. The requirement for a scientific risk analysis (Article 5) burdens the importing country with generating and supplying the scientific evidence to justify standards of protection above those agreed internationally (Clarke 2004). Existing trade law affects forest-products trade in other ways. For example, the Agreement on Subsidies and Countervailing Measures delineates acceptable subsidies and countervailing actions when unacceptable subsidies exist (WTO 2008). Canada used this agreement to challenge the countervailing measures of the United States in the most recent softwood lumber dispute (Zhang 2007). Beyond the WTO, there are bilateral and regional trade agreements, customs unions and common markets that further affect the trade of forest products (Rao 2000). These are beyond the scope of this review.



### 3.4.6 Forest law enforcement, governance and trade

Although illegal forest practices are a global issue, most progress in addressing them at an international level has been made in Europe. Historically, the basis for the European Union (EU) Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan is the Council Resolution of 15 December 1998 on a “Forestry Strategy for the European Union”. This non-binding instrument defines the policy basis for a new forest strategy within the EU. However, the EU FLEGT Action Plan has emerged as one of the main thrusts of the EU Forest Action Plan 2007–2011, which was adopted by the Council on 30 May 2005. The EU FLEGT Action Plan is an expression of policy commitments made by the EU, its member states and producer partner countries within the framework of the G8 Action Programme on Forests. It has led to the organisation of regional ministerial conferences on the application of forest laws, regulations and governance, with World Bank support (EFI 2009).

#### *Voluntary partnership agreements*

The overall *goal* of the EU FLEGT Action Plan is to promote good governance in the forest sector and to reduce deforestation by ensuring that European companies buy timber only from producer (tropical) countries that comply with the ecological, social and economic requirements stipulated in their own forest laws. The plan therefore seeks to develop and promote market security to ensure that only legally produced timber is imported into the EU by encouraging firms and consumers to pay the real cost of timber production in keeping with laws, rather than seeking only to minimise prices. For this purpose the EU is currently preparing voluntary bilateral agreements (‘voluntary partnership agreements’ – VPAs) with countries that export tropical timber to its member states as appropriate *policy tools*. The underlying *rationale* is to ensure the rule of law. However, many stakeholders involved in forest exploitation, such as exporter and buyer companies, consumers, NGOs and local people, are concerned about the successful or failed implementation process of VPAs. Although VPAs are considered voluntary for export countries, they commit the EU and signatory countries to contributing to the improvement of forest governance by establishing efficient systems for regulating forest practices and for tracing timber and its by-products, and issuing authorisation/licensing schemes for timber exports to EU countries (EFI 2009).

After signing a VPA, the two parties (i.e. the EU and a tropical- timber-exporting country) have a period of time (a “transitional phase”) in which to set

up systems and policy and technical tools to ensure the proper application of the provisions of the VPA. The time factor is important because as a bilateral agreement between two subjects of international law, VPAs must comply with domestic procedures put in place by governments for the ratification of similar international instruments, notably by tabling them before the national parliament. As of August 2010, Congo, Ghana and Cameroon had signed VPAs. The export authorization provided by VPAs is based on standards derived from the national laws and regulations of each partner tropical- timber-exporting country. Thus, agreements focus mainly on environmental protection, rules governing the harvesting of species, the payment of fees and taxes, conditions for timber processing, standards for the transportation of products, and local community rights.

Strictly speaking, VPAs do not constitute an international timber trade regime. First, their goal is to combat illegal timber trade. In doing so they may help reduce deforestation and protect some species threatened with extinction due to overexploitation. Second, VPAs differ from one another in both substance and procedure because their contents are based on diverse forest legislations (although the key principles of forest sustainability may be the same for all countries). Thus, they may also contribute to the fragmentation of the rules governing international timber trade. Third, the impact of any given VPA on the fight against illegal forest exploitation will be limited because, in line with the principles of international law, a bilateral agreement does not have a direct effect on non-parties (Daillier and Pellet 2002). In other words, the effect of VPAs will be weak where tropical timber is traded by parties not subject to a VPA. For example, it is difficult to verify the origin of tropical timber used in a piece of furniture imported by a European consumer from a non-party. Compliance with forest legality is just one step in the long road to SFM; indeed, it constitutes a minimum requirement (Cerutti et al. 2008). In effect, the verification of legality ensuing from VPAs alone may be inadequate if the desired objective is to ensure sustainability. VPAs can still contribute to the fight against illegal activities and deforestation, albeit in limited fashion.

In an attempt to pre-empt certain weaknesses in the FLEGT/VPA approach, the EU has decided to supplement it by adopting a special illegal timber regulation. This regulation, which is currently under preparation, is expected to help tropical timber importers to reduce the risks of illegality in their international transactions, imposing on them the obligations of resources, results and accountability. The EU’s illegal timber regulation will have a similar effect to the Lacey Act in the United States, which was amended in 2008 to (among other things) prohibit commerce in plants, including timber products,

that are harvested illegally in any country. Under the Lacey Act, importers must declare the species and origin of harvest of all plants. Penalties for violations include forfeiture of goods and vessels, and imprisonment.

In short, the aim of current international and national initiatives against illegal logging (VPAs and the Lacey Act, or other initiatives as well) are to hold not only states, but also the perpetrators and major beneficiaries of economic crimes – such as multinational corporations accountable and liable for illegal transactions.

### 3.4.7 Convention on Biological Diversity

As noted in chapter 2, the CBD is built around three overarching and interrelated *goals*: i) the conservation of biological diversity; ii) the sustainable use of its components; and iii) the fair and equitable sharing of the benefits arising from the utilisation of genetic resources. The CBD was the first global agreement to address these three goals in an integrative manner (Rosendal 2003). It also strives to reconcile the development imperatives of the developing countries with the interests of developed countries in accessing and conserving biological diversity (cf. McGraw 2002). In doing so the CBD rests on the principle of the sovereign rights of states over their biological resources, also reaffirming their sovereign authority to determine access to their resources (Article 15).

The overarching goals are further defined by a number of more specific objectives, as set out in the Convention or agreed upon at meetings of the Conference of the Parties (COP) to the CBD: they include goals to conserve ecosystems and viable populations of species through in-situ and ex-situ conservation, to respect and preserve indigenous knowledge, and to cover developing countries' incremental implementation costs (CBD Article 20). The parties to the Convention (states) comprise both the internal and external target groups of the CBD's major policy tools. The COP decides on obligations; responsibility for implementation rests largely with each individual party.

#### *A cross-sectoral strategy approach*

In general terms, national biodiversity strategies, plans or programmes (NBSAPs) and the programme of work (POW) on forest biological diversity, including, in 2002, an expanded POW, are the main CBD *policy tools* that directly address forests and forest management. The Convention's Article 6 requires parties to develop NBSAPs that integrate the CBD's

goals into sectoral or cross-sectoral policies, facilitated by consultative mechanisms for implementation, monitoring, evaluation and periodic revision (UNEP/CBD 2002). The COP stresses that NBSAPs constitute a cornerstone of CBD implementation (ibid.). National formulation and implementation is supported by guidelines that provide procedural rules and guiding objectives but leave broad areas of discretion. No sanction mechanisms are provided for cases of non-compliance.

As of May 2010, 170 of the 193 parties had developed NBSAPs (CBD Secretariat 2010), indicating considerable success in the spread of the strategy approach. However, progress in implementation has remained comparatively poor. In-depth reviews indicate that NBSAPs have been far less successful in effectively integrating the CBD's objectives into national policies; they have also detected a lack of problem awareness, capacities, political commitment and horizontal and vertical coordination (UNEP/CBD 2007a, 2007b, 2007c).

Responsibility for the implementation of the POW rests with the parties, who are expected to do so on a voluntary basis "in the context of their national priorities and needs" (UNEP/CBD 2002). An in-depth review in 2006 indicated that national implementation is often hampered by a range of obstacles, such as a lack of data and capacities, and insufficient cross-sectoral coordination (UNEP/CBD 2007d). As a consequence, the COP requested the CBD's Executive Secretary to increase collaboration with the UNFF Secretariat and members of the Collaborative Partnership on Forests (CPF, see chapter 2) for more effective implementation (ibid.).

More generally, national implementation of CBD obligations is to be facilitated by global-level coordination mechanisms such as the Joint Liaison Group of the Rio Conventions, the CPF and the Biodiversity Liaison Group (cf. Wildburger 2009). Most of the conventions and processes involved have been under way for decades. However, the need to enhance coordination is still high on the agenda, seemingly indicating persistent coordination problems.

Another tool for facilitating implementation is national reporting (Article 26), which is the only CBD mechanism for monitoring the national-level implementation of NBSAPs and the POW. Reports are to be delivered at approximately three-year intervals, based on COP guidelines. Again, no sanctioning mechanisms are provided for non-reporting. More importantly, no formalised review procedures have been established to date, although aggregated reviews are discussed in meetings of the COP and national reports are made available online. Besides regional workshops, few routines exist for facilitating mutual learning. The CBD seems to suffer from a lack of institutionalised forums for learning from national-level experiences.

While the POW is necessarily more forest-centred than NBSAPs, the two policy tools are synergistic, with similar overarching goals; the POW can be seen as complementary to the thematically broader NBSAPs. In fact, parties are urged to incorporate the objectives and activities of the POW into NBSAPs as well as into NFPs (COP Decision 6/22).

#### *Demanding prerequisites*

It is clear from the design of NBSAPs and the POW that the CBD strongly relies on a voluntary, national-level, cross-sectoral and inclusive strategy and policy planning approach for the integration of its goals into national forest policymaking. Overall, the CBD is not an instrument that, in a strict sense, regulates the conduct of its target groups: obligations are imprecise (i.e. there is ambiguity with respect to the conduct required) and there is no delegation of authority to third parties for interpreting and implementing the Convention. Although outwardly an example of hard international law, the CBD elaborates soft commitments, illustrating the continuum between hard law and soft law described above. The underlying *rationale* of the CBD is that it needs national-level cross-sectoral policy learning, coordination and cooperation to achieve its various goals, which are concerned with a wide diversity of ecosystems, sectors and interests in various national contexts. However, scholarly findings have shown that these kinds of target-setting, inclusive and cross-sectoral approaches are highly demanding (e.g. Jänicke and Jörgens 2006). Hence, they frequently remain ineffective: often, the use of biological resources is the productive foundation of powerful sectors, which tend to avoid the effective integration of environmental concerns into their sectoral policies (e.g. by rejecting the formulation of operational targets, time frames for implementation and monitoring procedures, or by promoting ‘business as usual’ targets; *ibid.*). Moreover, they presuppose, among other things, sufficient capacity and incentives for the engagement of actors, as well as the existence of an appropriate infrastructure of rights and information (*ibid.*), transparent, accurate and problem-focused information and, not least, high-ranking institutional support. In many contexts, none of these prerequisites can be taken for granted.

### **3.4.8 Convention on International Trade in Endangered Species of Wild Fauna and Flora**

CITES was signed in Washington, D.C., United States in 1973 and entered into force in 1975. The *goal* of this international legal instrument is to regulate the international trade in plant and animal species which are threatened by overexploitation. CITES does not forbid trade in species but seeks to control it through the institutionalisation of a system of permits and certificates (*policy tool*) by member states. This requires a system of authorisation to enhance the control of international trade in species listed in three appendixes, which distinguish between three levels of threat and corresponding rules, as follows:

- Appendix I (Article 2 (1)), which includes the most endangered species, or those most affected by commercial activities. The trade in and exploitation of these species is prohibited;
- Appendix II (article 2 (2)), which comprises two types of species: those that are not threatened but are likely to become so due to uncontrolled commercial exploitation, and those whose trade is free in principle but which are subject to the system of control; and
- Appendix III, which includes species nominated by range states to help prevent their illegal or unsustainable exploitation. These species are protected by the regulations of member states.

The CITES appendices contain a large number of forest species (Sand 1997), and certainly contribute to the protection and sustainability of such species. Very few tree species are listed in the CITES appendices, partly because of controversies with economic operators about the role of CITES in regulating the trade of economically valuable species. This situation stems from controversies with economic operators of the sector about economically valuable species. Nevertheless, CITES certainly contributes to the overall process of forest resources sustainability through the trade arrangements it has instituted (Assembe-Mvondo 2008).

#### *Administration of the licensing system*

The underlying *rationale* of the CITES licensing system is based on thorough monitoring of endangered species. In accordance with Article 9 of the Convention, each member state (*internal target group*) is required to nominate a national management authority, which administers the licensing system, and one or more scientific authority to provide guidance to the national management authority on the effects of trade

on conservation status of the species in question. The national management authority is responsible for implementing the Convention in a country and is the sole body which can grant import and export permits and re-export certificates on behalf of that country. The implementation of CITES involves many external target groups, including NGOs (especially TRAFFIC and the International Union for Conservation of Nature) and private companies.

Proposals for the inclusion of timber species in Appendix II were made during the eighth and ninth sessions of the CITES COP (Wijnstekers 2003) but, given the importance of the trade of these species, they were hotly debated (Ruis 2001; Sand 1997). The Preamble of Resolution 10.13 (COP 15) recognizes that amendment proposals for the inclusion of timber species should contain the maximum amount of biological and trade information on the taxon concerned and that such information could be obtained from international organisations that have expertise related to timber trade and/or forest management. The Resolution also recognised the need to clearly define the parties and products mentioned in the interpretation of Appendices I, II and III. Moreover, member states were requested to report adequately on their annual trade in timber and to use agreed units of measurement. The obligation to submit reports enables the CITES Secretariat General to ensure monitoring and control (Sand 2008).

CITES member states have underscored the need to promote the sustainable management of various timber species from different tropical regions traded on the international market, including by creating a Timber Working Group at COP 9. It was noted that some timber species are threatened with extinction owing to overexploitation and international trade. Resolution 12.3 (COP 15) requires permits and certificates to be issued for species included in Appendices II and III with the annotation “designates logs, sawn wood and veneer sheets”. For the specific cases of trade in *Percopsis Elata*, *Gonyxtylus* spp., *Swietenia macrophylla*, only sawnwood is subject to harvesting – export quotas. Resolution 14.4 (COP 14) is significant for timber species because it recommends and institutionalises cooperation between the Executive Secretariat of CITES and ITTO concerning international trade in tropical timber species.

### 3.4.9 The climate change regime

#### *The role of forests*

The goal of the UNFCCC is the mitigation of greenhouse-gas (GHG) emissions and the adaptation of ecosystems to climate change (Article 2). Forests play a key role in climate change because they are

both carbon sinks and sources of carbon dioxide emissions, the former by sequestering carbon through tree growth and the latter through deforestation and forest degradation (IPCC 2007). Correspondingly, Article 3 of the Kyoto Protocol specifies that “direct human-induced land-use change and forestry activities, limited to afforestation, reforestation and deforestation” (Decision 1/CP.3, 1997) may be used to partly meet the emission reduction commitments of Annex I (developed) countries. The contentious issue of including forestry activities in developing countries as a *policy tool* to offset GHG emissions under the Clean Development Mechanism (CDM) was resolved during COP 7 (held in Marrakech in 2001). The CDM includes afforestation/reforestation (A/R) projects but – for both technical and political reasons – not avoided deforestation or degradation. While, in general, the CDM is considered a success in terms of the number of projects and volume of Certified Emission Reductions (CER), it has been unsuccessful in raising significant funds for A/R projects. As of May 2010, only 16 of the 2191 registered CDM projects are A/R projects (CDM 2010).

#### *High expectations for REDD+*

The Bali Action Plan, which was agreed at COP 13 of the UNFCCC, proposes an additional policy tool – the reduction of emissions from deforestation and forest degradation (REDD). REDD, or REDD+ as now labeled, is a mechanism to create an incentive for forested developing countries to protect, better manage and wisely use their forest resources, thus contributing to the global efforts to limit climate change. The underlying rationale of REDD+ is to make forests more valuable than alternative land-uses – hence deterring deforestation and forest degradation – by creating a financial value for the carbon stored within them (UN-REDD Programme 2010: 4). In return for avoiding emissions by reducing deforestation and forest degradation, countries participating in REDD+ would receive payments for verified/certified emission reductions and removals, either through a market-based or fund-based mechanism, or a combination of these.

REDD+ is now ‘mainstreamed’ into climate change negotiations and debates. Yet progress on negotiations on REDD+ have been limited since 2007, except in a few areas such as local/indigenous rights and monitoring, reporting and verification (MRV) (cf. Decision 4/CP.15). Behind the broad support for REDD+ are a number of unresolved controversies related to funding, integration into carbon markets, MRV requirements, reference levels (and ensuring additionality), scale of implementation, performance criteria (e.g. emission-based vs stock-based payments), the type of activities to be credited (e.g.



reduced impact logging), and the rights of local/indigenous communities (Angelsen 2008).

Developing the international REDD+ regime depends on the readiness of forested developing countries (*internal target groups*) and will take time. Most existing REDD+ activities are still in an initial phase: more than 40 countries are in the process of developing national REDD+ strategies, hundreds of demonstration activities are in the pipeline or on the ground, and there are several large bilateral and multilateral initiatives. Some countries have taken steps to initiate and implement large policy reforms, while agreements that Norway has entered into with Brazil and Guyana are performance-based with payments directly linked to emission reductions (although not to carbon markets).

#### *Future prospects*

An initial vision of REDD+ as part of a market mechanism in a post-2012 climate agreement is unlikely to be realised in the short to medium term. In addition to the slow progress towards an overall climate agreement, in particular on post-Kyoto emission reduction targets, many long-standing issues are not yet satisfactorily resolved. Even if a new climate agreement is not concluded (or if REDD is not included in such an agreement), however, REDD+ credits can potentially become an offset option in a future United States carbon market and integrated into the EU's existing emissions trading scheme. A third option for inclusion in a compliance carbon market – a market where countries or companies have been assigned a cap on emissions – would be a broadening of the CDM but this has not yet been the subject of negotiations.

After the failure of COP 15 to reach consensus on a post-2012 climate agreement in Copenhagen in December 2009, the REDD+ Partnership was formed by 58 Partner countries on 27 May 2010 in Oslo, Norway to complement and feed into the UNFCCC process. As a voluntary, non-legally binding framework for REDD+ efforts, the partnership aims to mobilize further public funding, establish a database for information exchange, and attempt to coordinate activities. REDD+ is likely to develop as an umbrella term for a large number of heterogeneous projects, policy initiatives and funding mechanisms. Several multilateral mechanisms have been established – notably the UN Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries, the Forest Carbon Partnership Facility, the World Bank's Forest Investment Programme and the REDD+ Partnership – and will provide some overall coordination. However, loosely coordinated national, bilateral and private efforts are likely to play a dominant role along these global

initiatives and – perhaps – the gradual inclusion of REDD+ in national/regional compliance carbon markets (Meridian Institute 2009).

Despite the current bleak short-term prospects for an all-inclusive post-2012 climate agreement, REDD+ can achieve its main goal of reducing emissions if it succeeds at two levels. At the *international* level, sufficient funding must be mobilised and sound mechanisms established to channel funding to REDD+ countries. At the *national* level, funds received for REDD+ must be used to undertake policy reforms and create incentive mechanisms that deliver real emission reductions. Effective REDD+ policies must also be identified and designed. Institutions are needed to manage the flow of information on changes in forest carbon stocks (or proxies of that), and the flow of funding from domestic and international sources. Many actors will be seeking REDD+ rents, and the successful implementation of REDD+ will hinge on good governance and domestically driven reforms.

### **3.4.10 Discussion**

As well as differences, the policy design approach revealed many commonalities between the core components of the international forest regime complex, although they target different aspects of forests. Commonalities can be found in the goals, policy tools and rationales, and in the preferences and behaviours of the internal and external target groups.

The *goals* of the core components have in common that they aim to resolve forest issues in which at least two main sets of actors are involved: powerful economic actors who use timber and other biological resources, and actors who share environmental and social concerns. Sabatier and Jenkins-Smith (1999) call the normative commitments and causal perceptions across a subgroup of actors “policy core beliefs”. These are the fundamental glue of the individual subgroups (“advocacy coalitions”; *ibid.*) and are difficult to modify. The high level of conflict between advocacy coalitions results in agreement only on generalised and vague goals in the formulation of policies (cf. Chapter 5). In the implementation phase, powerful sectors use the ambiguity in the phrasing of goals to advance their own interests. Consensus is most likely to be achieved only on some empirically accessible elements (“secondary aspects”; *ibid.*) by policy-oriented learning (e.g. Elliott 2000).

In almost all core components, soft *policy tools* prevail, even if their use is authorised by a legally binding instrument. Among the examples identified in this chapter are the CBD and the ITTA. In contrast, the WTAs are endowed with the authority to enforce strict rules for the liberalisation of trade, including

changes to national law on pain of sanctions. In environmental policy, soft policy tools use a mix of economic and information means. In the cases of forest certification and REDD+, the focus is on positive economic incentives to induce behavioural change in forest users. The NLBI and the CBD target states by means of national programmes, national strategies and programmes of work in order to achieve their multifaceted goals. The latter require a climate of mutual trust to be effective and will fail if there is a lack of problem awareness, capacity, political commitment and coordination. FLEGT relies on the voluntary consent of timber-producing countries to uphold the rule of law in combating illegal forest practices. CITES uses a licensing system for protecting endangered tree species which, however, is determined not only by scientific knowledge but also by powerful interests in the international trade of tropical timber.

The *rationales* underlying each individual core component correspond to the goals of that core component and the policy tools to be applied. The justification for the trade rules of the WTAs is the belief that predictable agreements on trade are in the common interest of all. FLEGT tries to combat illegal logging by ensuring the rule of law through VPAs. In contrast to the hard multilateral provisions of the WTAs, however, FLEGT VPAs are bilateral and voluntary. The use of financial incentives to promote SFM (such as the disbursement of aid for ITTO projects, the promise held out by forest certification schemes of growing market share, and the opportunity to receive financial returns for conserving rather than converting forests under REDD+) is often justified by empirical evidence that such incentives are more effective than coercive policies such as fines and sanctions. New modes of governance such as the national programmes and strategies favoured by the CBD and the NLBI can enable the active participation and involvement of manifold political actors with different interests, values and power. In the process they can also promote cross-sectoral policy learning, vertical and horizontal coordination, and cooperation. The CITES licensing system and much of the work of the UNFCCC operates on the basis of scientific monitoring.

With the exception of forest certification, which targets international supply chains, all core components target national policy processes to achieve intended goals (cf. chapters 6 and 7). The outcomes of these efforts depend on whether an international policy instrument on forests increases governmental concern, enhances the contractual environment and increases national capacity (Keohane and Levy 1996). To determine the extent to which this occurs, empirically based research would be required.

### 3.5 Compatibility assessment

The core components of the international forest governance arrangements are not independent of each other but, rather, intersect. ‘Institutional linkages’ are politically significant connections between multiple, nominally separated institutions, including regimes (Young 1994). Four types of institutional linkage can be distinguished (ibid): (i) *embedded*, when regimes share a broader context of existing principles (e.g. the NLBI and CBD share the principle of state sovereignty and both promote protected areas as a conservation tool); (ii) *nested*, when one agreement is established under a wider framework agreement (e.g. the Kyoto Protocol under the UNFCCC); (iii) *clustered*, when different functional arrangements are combined in comprehensive package deals (e.g. Joint Implementation and the CDM in the climate change regime); and (iv) *overlapping*, when the functional scope of one regime protrudes into the functional scope of others. Among these four types of institutional linkage, overlapping regimes are decisive for the purpose of assessing the compatibility of the core components.

Selin and VanDeveer (2003) differentiate between functional and political overlaps. *Functional overlaps* exist in biophysical and socio-economic terms and occur when a biophysical or socio-economic process in one issue area has consequences for another. For example, new plantations of fast-growing exotic species for carbon sequestration will help to meet the objectives of the climate change regime but may have negative ramifications for the objectives of the CBD. The clearfelling of forests for agricultural production will help to promote food security but will reduce both carbon-sink capacity and the area of habitat available for biodiversity conservation. In *political overlaps*, the content and design of one regime or the interests and capabilities of regime actors affect the formation or operation of another. This can be observed between various global regimes and between global and regional regimes. The CPF can facilitate the management of some of these overlaps but because it lacks executive power it cannot manage them all.

Finally, overlaps can be *synergistic*, when two institutions are mutually reinforcing; or *conflictive*, when the objectives of two institutions contradict each other, hampering international cooperation and problem-solving. An example of synergistic overlap is that between CITES and the CBD. While these two regimes have different emphases – CITES has a species-specific focus while the CBD applies at the level of ecosystems – each promotes nature conservation, and the effective implementation of one will likely promote the objectives of the other. Synergistic overlaps also occur between the aims of the UNFCCC and the Kyoto Protocol on the one hand

Table 3.1 Types of overlap between the core components

	Compatible norms	Diverging norms
Compatible rules	I (e.g. CBD/NLBI)	II (e.g. CBD/ITTA)
Diverging rules	III (e.g. CBD/UNFCCC-KP)	IV (e.g. TBT/forest certification)

Source: Rosendal (2001: 98)

and those of the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer on the other. The reduction of chlorofluorocarbons (which are major greenhouse gases) under the Montreal Protocol contributes to the objectives of the UNFCCC. An example of overlaps that may be conflicting is the relationship between the WTAs, which aim to further liberalise international trade, and forest certification schemes, which aim to promote the trade of timber only from sustainably managed forests.

Rosendal (2001: 97) proposes a matrix that distinguishes between “the norms generated by a regime, and the explicit rules to which states may commit themselves. Norms refer to the overall policy objectives and principles of a regime that tend to have legitimacy among participating actors. Explicit rules prescribe specified regulations for state behaviour in the implementation phase.” Norms and rules can be compatible or diverging; thus, four types of overlap can be identified (Table 3.1).

*Type I* shows a largely synergistic situation; among the core components the relationship between the CBD and CITES and between the CBD and the NLBI are examples. With regard to the latter, there are synergies between the four NLBI objectives and the three CBD principles. Rosendal (2001: 98) points out that even though a synergistic situation provides a high degree of scope for exploiting synergies between overlaps, this potential is not necessarily tapped: “Overlap between two or more such institutions may result in significant double work in terms of, for instance, national reporting. Type I will not automatically give rise to synergies, unless the parties establish some form of cooperation or coordination mechanisms”. In the case of the linkages between the CBD and the NLBI, coordination may also be impeded by ideological convictions and competition between the bureaucracies.

*Type II* overlaps are characterised by a relatively synergistic situation with diverging norms and compatible rules. An example is the relationship between the CBD or the NLBI on the one hand and the ITTA on the other, the principal goal of the latter being to increase the international trade in tropical timber and promote the sustainable management of tropical timber-producing forests.

*Type III* overlaps share compatible norms but diverging rules, as is the case in the relationship between the CBD and the UNFCCC and its Kyoto Protocol. Both aim to reduce deforestation and forest degradation, but for different reasons. From a climate change perspective, plantations with uniform, fast-growing tree species would be the most efficient way to ensure carbon sequestration. However, this may not be compatible with the objective of enhancing biodiversity (Rosendal 2001). In Type III overlaps, some compromises may be necessary if the goals of all instruments are to be realised and collective welfare maximised.

*Type IV* overlaps occur between regimes (e.g. the TBT and forest certification) in which both the norms and rules relating to an issue area diverge. Type IV overlaps may be assumed to represent the situation with the highest potential for conflict. Learning more about such situations, however, requires additional investigation that would go beyond the scope of this chapter. Rosendal (2001) proposes further research on the potential interests behind diverging norms; they can be either policy core beliefs or secondary aspects in the sense of Sabatier and Jenkins-Smith (1999).

Regarding diverging rules, Rosendal (2001: 101) distinguishes between regulatory (i.e. they refer to explicit obligations) and programmatic (i.e. they refer to enhancing knowledge in an issue area) rules. The situation with the highest scope for conflict is an overlap between regimes with diverging norms relating to the core beliefs of an issue area and with diverging regulatory rules. “The other three types of situations will be assumed to have a relatively higher potential for synergies, because learning and diffusion of policy ideas may give rise to compatible solutions” (ibid.).

3.6 Conclusions

This chapter identifies eight core components that are central to international forest governance arrangements. Embedded within these core components – which encompass a hybrid mix of hard, soft and private international law on forests and forest-related

issues – are many different goals – some of which are complementary and some of which are conflicting – that reflect the various values of the political actors with a stake in forest conservation and use. Given the complexity and multiple causes of current global forest problems, a *portfolio* of hard and soft law should be applied. Hard and soft law should be seen as complements rather than competitors because they serve different purposes – as long as soft law does not crowd out hard law when the latter is necessary.

The consistency and compatibility assessments of the core components reveal a series of *challenges* to international forest governance that can, however, be turned into *opportunities*. Although more research is needed to comprehensively map the areas of overlap, the compatibility assessment shows that many overlaps between the core components are more or less synergistic. This is certain the case for the relationship between the NLBI and the CBD and therefore the preconditions exist for close cooperation between the UN Forum on Forests (responsible for the implementation of the NLBI) and the CBD Secretariat. There are many other synergistic relationships between the core components, or at least parts of them (e.g. the adaptation of forests to climate change is a goal shared by the NLBI and the climate change regime) that merit coordinating around common strategies and work programmes. In addition to synergistic relationships there are also more or less diverging overlaps, such as the legally unclear situation between the TBT and forest certification and the impacts of CDM-promoted monoculture afforestation on biological diversity. *Engaging the various actors in dialogue, mediating among their goals and coordinating common activities* could be an additional responsibility of the CPF, although final decision-making authority will continue to reside with the governing bodies of the various international instruments.

The core components of international forest governance differ from those found in many other regimes (e.g. the trade regime) in that there is a wide variety of political actors with different interests, values and expectations who introduce different discourses to forest policy to legitimise their political positions (cf. chapter 4). The core components are more diffuse than the trade regime and are administered by many bureaus and secretariats rather than by one organisation such as the WTO. It can be argued that this situation is not accidental, with a majority of the world's states assigning more political will and resources to the objectives of the WTO relative to those of international environmental instruments. With no coordinated and coherent system of governance for forests equivalent to that of the WTO the bureaus and secretariats of forest-related instruments seek to achieve their various goals by means of a

wide range of regulatory, economic and information policy tools. Nevertheless, the different actors share an overarching idea – SFM (cf. chapter 5), albeit not always consistently. The broad and all-encompassing nature of SFM provides an opportunity to embrace all actors with a stake on forests, not only those in the forest sector but also in other sectors at the national (e.g. those involved in NFPs), regional (e.g. those involved in the Ministerial Conference on the Protection of Forests in Europe) and international (e.g. members of the CPF) levels with the aim of creating a climate of mutual understanding. The active engagement of all actors is a precondition for integrating SFM in other sectors by means of *forests+* policies. Forests+ acknowledges the inter-sectoral character of forest policymaking and the importance of international regimes that have a decisive impact on forests but for which forests are not the main focus of attention, such as those on biodiversity and climate change. Nonetheless, forests+ is intended to retain, as the fundamental organising principle for the various goals of global forest governance, the improvement of forest conditions and forest livelihoods.

If deforestation and forest degradation are to be slowed and, ultimately, halted, the main challenge that needs to be addressed is the dominance of powerful economic actors who impede the integration of environmental and social concerns in almost all the core components. These actors are partly inside but mainly outside the forest sector within the international trade, agriculture, energy production, mining and infrastructure sectors. They make use of forests for non-forest uses and are largely responsible for deforestation and forest degradation in developing countries. The policy tools applied in the past to reduce deforestation and forest degradation at the national level are very likely to fail if the opportunity costs of foregone alternative socio-economic benefits are not adequately compensated. Therefore, great hope is placed in REDD+. While REDD+ is, in many respects, a new approach, to be effective its implementation on the ground must draw on the decades of experience that have been gained in SFM and forest conservation. Successful REDD+ implementation also requires forests+ policies that go beyond the forest sector to influence the main drivers of deforestation and forest degradation.



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