

6 Overcoming the challenges to integration: embracing complexity in forest policy design through multi-level governance

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Abstract: Forest policy at the international level suffers from both difficulties in securing agreement on policy goals as well as a lack of implementation on the ground. Attempts to respond to these problems through repeated efforts at top-down regime redesign have so far had little success. Even though many continue to argue that creation of a new treaty-based international regime might be an optimal solution, it remains an unrealistic option given the highly fragmented institutional architecture of the existing mix of international agreements, the multiple interests of public and private actors, and the complex policy problems that need to be addressed in the sector. Rather than persist in advocating exclusively for the creation of a treaty-based top-down regime, this chapter argues that reformers should, rather, embrace complexity and design incremental additions or ‘patches’ to the existing mix of regime elements which can help overcome their problems of fragmentation and poor policy coordination. Some regional organisations have successfully applied new governance instruments to existing mixes in such a fashion and lessons can be drawn from those experiences. Examples from the European Union and ASEAN in particular illustrate the potential of this decentralized approach to global forest policy design.

Keywords: International governance, governance regimes, international forest regimes, regime complexes, fragmentation, subsidiarity.



6.1 Introduction

International forest governance arrangements are not based on a single instrument that places legally binding obligations on signatory states. Rather, as shown in Chapter 2, the existing international regime is composed of multiple international agreements, some with an explicit focus on forests and some that address forest-related issues indirectly. As argued in Chapter 3, it is a heterogeneous mix of soft and hard law and is more properly termed a ‘regime complex’ than a ‘regime’, per se.

Several important characteristics of these existing international governance arrangements can be identified. First, the existing mix of elements has developed incrementally over a number of years and,

again as discussed in Chapter 3, it includes elements that were designed to address a wide variety of policy goals. Second, as shown in Chapter 5, each of the elements is supported by various political groupings, making them resistant to redesign and reorientation towards new goals (McDermott et al. 2007; Pülzl 2009; Tarasofsky 1999). Third, what currently exists in terms of an international forest regime is embedded in the larger context of global forest governance, which includes all the global environmental and social governance arrangements discussed in chapters 2 and 3. Fourth, neither the international regime itself nor the larger governance framework can be thought of as ‘designed’; they are better described as broadly self-organising and as the unintended outcomes of a variety of separate initiatives undertaken over several

decades. And, fifth, chapters 2, 3 and 4 have shown that an idea around which the various policy elements could be recombined into an integrated, intentional design remains elusive. Neither ideas generated within the more narrowly defined understanding of the international forest regime, such as sustainable forest management (SFM), nor those generated by attempts to incorporate forest-related policy elements into a larger governance assemblage dealing with issues such as biodiversity conservation or climate-change mitigation, are able to function as a normative foundation for the (re)design of international forest policymaking.

Within this context, this chapter presents a range of alternatives which aim to balance the integration and fragmentation of key policy elements in the development of a new global forest governance architecture which transcends an emphasis on international treaty-making and top-down regime formation. First we focus conceptually on various dimensions of integration to generate criteria for assessing the potential effectiveness of a regime complex (Keohane and Victor 2010; Underdal 2004). Next, we identify instruments that provide alternative models to that of top-down international policy development. Third, we outline options for achieving a more effective mix of existing and new components based on principles of new governance that seek not to eliminate but rather to benefit from the complexity of forest policy.

Experience suggests that the best approach is to focus on multi-level governance and the tools and instruments required to put an effective multi-level architecture in place. Much can be learned in this area from the experiences of the Asian countries in regional-level policymaking, while the experiences of the European Union (EU) with the open method of coordination (OMC) and its principle of subsidiarity in institutional policy design are also very instructive. These experiences, principles and elements are discussed towards the end of the chapter.

6.2 Integrating complex policy mixes: coherence, consistency and congruence

Faced with coordination problems caused by global governance complexity and fragmentation, policy integration through top-down treaty-based international regime formation is one possible option for resolving gaps and contradictions between institutions, actors and existing regime elements. However, there are other, less well studied, design possibilities as well.

Briassoulis (2005:2) uses a market analogy to describe the dilemma policymakers face in many complex areas of contemporary social and political life:

“The policy market faces the following situation. On the demand side, contemporary problems are complex and inter-related, defying treatment by means either of narrow, sectoral policies or of all-encompassing, super-policies. On the supply side, numerous policies, related to particular aspects of one of more of these problems, exist.”

This, she notes, means it is often “unnecessary to devise new policies each time a problem arises.” Policymakers rather often can achieve efficiency gains through the integration of existing policies; reconciling overlaps and duplication between policy elements. In so doing they seek consistency and coherency in the creation of ‘new’ governance strategies that address interrelated policy problems using modifications to existing policy components.

While most of the academic work on policy integration has been done at the domestic level, international policymaking faces many similar situations in which complex problems must be addressed amid a wide variety of existing institutions and instruments (Biermann et al. 2008, 2009a, 2009b; Dimitrov 2006; Keohane and Victor 2010). Like its domestic counterpart, international governance is a complex arrangement of multiple goals and means that, in many cases, has developed incrementally over many years.

As Keohane and Victor (2010) note, international governance arrangements vary along a number of lines. These include:

- determinacy – the extent to which the policy outputs of the regime complex are unambiguous and convey a clear message to participants;
- effectiveness – the extent to which the regime complex can change its legitimacy and encourage compliance with its rules and norms; and
- sustainability – the ability of the regime complex to survive changes in circumstances and conditions, continue to provide its members with benefits, and encourage both new and established actors to engage with the regime complex to address relevant problems.

Integration involves the alteration of specific elements of an existing policy mix – the goals, objectives and calibrations of existing policy tools – in order to produce a new mix, with the aim of avoiding the counterproductive or sub-optimal policy outcomes associated with the old arrangement and enhancing its determinacy, effectiveness and sustainability.

Overcoming the contextual ‘stickiness’ of earlier regime elements is critical to the success of this kind of policy integration reform effort (Keysar 2005; Saglie et al. 2006) and is a major problem with respect to global forest governance arrangements. Pre-

Table 6.1 Types of international regime complexes

	Synergistic	Cooperative	Conflictive
Institutions	One core institution; others integrated	Multiple core institutions; others loosely integrated	Multiple, largely unrelated institutions
Norms	Core norms are integrated	Core norms do not conflict	Core norms conflict
Actors	All relevant actors support the core institution	Some actors are outside core institutions but supportive	Major actors support different institutions

Source: Adapted from Biermann et al. (2008, 2009a, 2009b).

vious chapters have shown that current international forest governance is not the kind of tightly integrated, comprehensive arrangement that early international treaty proponents, and early regime theorists in general, considered desirable. Instead, it exhibits the features of a fragmented governance architecture: it is a patchwork of international institutions that are different in their character (organisations and implicit and explicit norms and goals), constituencies (public and private), spatial scope (from bilateral to global), and subject matter (from specific policy fields to universal concerns) (Biermann et al. 2009b).

6.3 International forest policy as a fragmented regime complex

In evaluating governance arrangements, Keohane and Victor (2010) focus on two key aspects of their structure and behaviour:

- their ‘epistemic’ quality – that is, their ability to perform in accordance with, and to promote, technical and scientific knowledge of the cause-and-effect relationships in the field in question; and
- their accountability – the mechanisms through which individual actors are able to express their views and participate in governance activities as well as the extent to which they are held accountable for their actions.

As Howlett and Rayner (2006a) note, both these aspects of regime structure and behaviour focus attention on the congruence of a regime’s component parts – that is, the extent to which the policy elements comprising a regime are coherent and consistent. Policy goals can be considered *coherent* if they are logically related to the same overall policy aims and objectives and can be achieved simultaneously without significant trade-offs. They are *incoherent* if they are contradictory (e.g. simultaneously promoting in

situ biodiversity conservation and the conversion of natural forests to other uses) such that the implementation of the policy can lead to the attainment of only some or none of its goals. Policy tools are *consistent* when they work together to support a policy goal. They are *inconsistent* when they work against each other and are counter-productive – such as macro-economic policies that increase the value of agricultural land relative to forest land and regulatory policies that seek to prevent the conversion of forest to agricultural land. *Congruence* is achieved when a consistent instrument mix serves a coherent set of policy goals.

The extent of consistency and coherency must be evaluated empirically on a case-by-case basis (Underdal 1980). However, congruence is the main goal of policy integration in a fragmented regime. Exactly how it can be attained, though, depends on the nature of the fragmentation found in a particular sector. Here Biermann et al. (2009a, 2009b) have argued that it is possible to identify several common types of international governance arrangements by arranging regime complexes along a continuum from integrated to fragmented. As a further simplification, Biermann and his colleagues present three typical architectural ‘styles’ at key points on this continuum: synergistic, cooperative and conflictive (Table 6.1).

In this view, complexes come about as the result of the unintended consequences of long-term processes such as layering and fragmentation and may have positive as well as negative consequences. Unmanaged conflict may result in governance failure or the movement of fragmented arrangements away from a synergistic style towards an openly conflictive one (Dimitrov 2006, Dimitrov et al. 2007).

That is, most international governance arrangements exhibit some degree of fragmentation (e.g. Alter and Meunier 2006; Dimitrov et al. 2007; Keohane and Victor 2010) and, typically, the challenge is not so much how to remove it, but rather how it can be successfully managed. As noted in Chapter 1, although global forest governance has sometimes been described as a ‘non-regime’ (Dimitrov 2002, Dimitrov et al. 2007), the current framework is more

Table 6.2 Key conclusions of previous assessments of international forest governance: common themes

Tarasofsky (1999)	Chaytor (2001)	Dimitrov (2005)	Hoogeveen and Verkooijen (2010)
Lack of coordination at all levels	Increased coordination needed	Absence of instruments for policy coordination	Legitimate multiple arenas that create management problems
Lack of effective financing and implementation	Lack of financial resources for implementation	Complex cross-sectoral issues	Fragmentation that impedes effectiveness
Lack of clear rules and measurable standards	Increasing fragmentation	No substantive policy content	Unhelpful fixation on creating a legal instrument
No consensus on a 'bottom up' approach	No consensus on the need for regulatory instrument		Non-state actors not fully engaged
	Interdependence of stakeholders not fully recognised		
Central Problem Identified			
Gaps in the regime more serious than overlaps	Significant coordination problems	Absence of reliable information on causation	Lack of effective leadership

accurately described as a “regime complex” – a set of specialised sectoral and issue-based regimes and other governance arrangements more or less loosely linked together, sometimes mutually reinforcing and sometimes overlapping and conflicting (Keohane and Victor 2010).

Previous assessments of international forest governance, summarised in Table 6.2, have detailed the drawbacks of such a fragmented governance architecture, and often blame this situation on the absence of forest-focused hard law at the international level.

However, analyses of other kinds of international regimes, especially those studies dealing with regime fragmentation and the interplay between regimes, suggest that the ‘failure’ of a regime to develop hard law may simply reflect the lack of need for such efforts at the international level and the functional need to deal with an issue at a regional, national or local level instead. Rather than signal a failure of initiative at the level of political and policy elites at a global level, in such circumstances fragmentation would not necessarily be solved by a forest convention; in fact, adding a new layer of complexity to such a regime complex might make matters worse.

In the forest policy case, there is a large set of issues and linkages that are of varying concern to different actors. International forest governance, in particular, is distinguished by the fact that many of its component instruments and institutions are only ‘forest-related’ rather than exclusively ‘forest-focused’. Linkages between issues are highly complex and often depend on the specific contexts in which

national governments operate. For example, in the international trade in forest products – which gave rise to the first legal instrument in the international forest regime complex, the International Tropical Timber Agreement – the issue is clearly of concern to both producer and importer countries but affects different countries in different ways. Trade is often linked to the problem of illegal logging, which, in turn, is linked to questions of fairness in international trade and the potential for a ‘race to the bottom’ in forest management standards. Illegal logging can also be linked to problems in the countries where it takes place, such as its effects on revenue generation and its capacity to undermine governance by promoting corruption. Other linkages relate to the effects of illegal logging on development or the conservation of biodiversity, which themselves are linked by the importance of forest products and functioning ecosystems to forest-dependent communities, the size and significance of which vary by jurisdiction. Efforts are often made to make this linkage between development and conservation as visible as possible, stressing the economic costs of biodiversity loss. In practice, however, the costs and benefits of forest use are shared unequally.

Again, such problems affect different countries in different ways, making it difficult to devise a ‘one size fits all’ binding international convention on the subject. Even the legal timber trade creates patterns of public and private gain that are often unrelated to the needs of development, especially in forest-dependent communities (Hoogeveen and Verkooijen 2010). A variety of potential linkages can lead in a

number of directions, for example towards the impact of policy decisions in other sectors on the comparative value of land uses and the consequent pressure for deforestation or degradation.

As a result of such complex linkages, international forest governance has developed over time into a weak and fragmented regime with a conflictive rather than cooperative architecture (Braatz 2003; Humphreys 1996; Pülzl 2009; Tarasofksy 1995, 1999). The achievement of more cooperative relationships among the broad range of actors at play in this conflictive environment is impeded by, for example:

- resistance to the idea that forest issues are global rather than local (Betsill et al. 2007; Dimitrov 2005);
- continuing opposition to the norms of SFM by many influential NGOs (Humphreys 2001, 2004); and
- the parallel development of related treaty and non-treaty regimes such as the Convention on Biological Diversity (CBD) and the climate change regime (Gehring and Oberthuer 2009).

At the very least, these factors, are formidable obstacles to positive regime interactions in the forestry case (Ivanova 2005, 2007). Nevertheless, in terms of international regime architectures none is especially unusual, and the forest governance regime complex represents difficult but not unique challenges to global governance design (Florini and Sovacool 2009; Sending and Neumann 2006).

6.4 Difficulties in coordinating national-level initiatives: lessons from the NFP experience

In many cases, the remedy for the fragmentation of a global governance arrangement may be not so much continuing top-down treaty-making efforts as building more regime coherence through ‘bottom-up’ coordination efforts at the national and regional levels. Perhaps the most significant such attempt to build on national coordination in the forest sector has been the promotion of national forest programmes (NFPs) in regional and international agreements. Unfortunately, however, the record of these efforts at the national level in forest policy is mixed and efforts to use national initiatives as the basis for global coordination have been correspondingly disappointing.

As discussed in earlier chapters, the NFP idea emerged in the early 1990s when the Intergovernmental Panel on Forests and the Intergovernmental Forum on Forests produced a body of soft law – the ‘proposals for action’ – that forms part of the legal framework of the existing international forest regime

complex. Their proposals for action at the national level helped to firmly establish the concept of NFPs in international forest policy discourse. As noted in Chapter 3, the Non-legally Binding Instrument on All Kinds of Forests (NLBI) subsequently put particular emphasis on NFPs as a means of realising its four global goals. The Ministerial Conference on the Protection of Forests in Europe (MCPFE) was an early adopter of the NFP concept, in part as a way of promoting convergence between forest planning and practice in both EU and non-EU countries. The Convergence Plan agreed to by the heads of state of Central African countries in 2005 when they signed the Yaoundé Declaration was intended in part to serve as a basis for the formulation of national forest programmes (Koyo and Foteu 2006). Since 2002, FAO has administered an NFP facility that helps finance the development of NFPs in developing countries.

Early evaluations of NFPs in Europe revealed a set of impeding and supportive factors for the success of NFPs, many of which lay outside the control of national forest authorities and underlined the importance of cross-sectoral policy coordination even at this level. In Europe, the implementation of NFPs encountered significant problems in the capacity and political will to improve forest policy processes. An early assessment of European NFPs showed that half lacked a budget, concrete objectives and long-term commitments and that evaluation and monitoring were weakly institutionalised (Zimmerman and Mauderli 2002) (see also Table 6.3 below). The possibility that NFPs could be used in ways that simply reinforced the status quo at the national level or provided a merely symbolic response to regional and international obligations was noted early on in their development (Papageorgiou et al. 2005; Howlett and Rayner 2006a and 2006b). Subsequent research has suggested that the situation is even worse than originally suggested (Winkel and Sotirov 2010). Two criticisms, in particular, recur in this literature. The first is that the participatory requirements of an NFP are typically used to co-opt opponents of the status quo. The other is that NFPs often fail to be translated into action on the ground.

As noted in Chapter 3, the main reason for the disappointing performance of NFPs as instruments of coordination is clear. NFPs are ‘new-governance’ arrangements adopted as part of a common response by national governments to the need for change in a situation where international hard law initiatives were blocked. However, decades of piecemeal adjustment, layering and drift at the national level also had resulted in a patchwork of overlapping and ambiguous national regulations and perverse incentives in the forest sector. New-governance arrangements in the sector such as NFPs sought to alter incentive structures in order to motivate private actors to pursue public purposes without close regulatory supervi-

Table 6.3 Supportive and impeding factors related to NFP formulation and implementation

	Supportive factors that directly affect forest use	Impeding factors that may indirectly affect forest use
Land tenure	Land tenure patterns in forests generate capable but not veto-capable industrial organizations	Land tenure in areas surrounding forests; e.g. the agriculture–forestry interface, urban areas
Legal regulations	Legal regulations designed exclusively or principally for forests allow for effective control of industrial activities	Legal regulations on national sustainable development policy and agriculture; other legal arrangements that may affect forest use
Financial incentives	Grants and tax breaks directed at forest owners and users encourage compliance with government aims at a reasonable cost	The broader national tax/revenue structure; the national budget and financial plans
Political culture	A culture of cooperation exists between national and regional forest authorities	The national political culture
Institutional aspects	The existence of high capacity institutions with an exclusive or predominantly forest mandate	Institutions with other mandates, such as those that include an indirect forest-related mandate, and those with no forest-related mandate but which may affect forest use

Source: Humphreys (2004).

sion. The various forms of self-regulation, coupled with the threat of closer supervision for persistent laggards contained in many NFPs are examples of this approach (Howlett and Rayner 2006b). But fine-tuning the policy instruments needed to make new-governance arrangements work has been unexpectedly challenging. In the case of NFPs, for example, if organisational weaknesses in the private sector prevent collective action, the state must have the capacity and willingness to act as a political entrepreneur in order to promote a substantive NFP and coordinate state and private sector behaviour, attributes which are commonly lacking.

Significant investments have been made in NFPs: they are providing, however imperfectly, the basis for the development of national forest goals and priorities. However, confidence that NFPs will be a key instrument, exclusive of international support and in their own right, for realising the goals of the NLBI is misplaced; on their own, NFPs tend to repeat the pattern of existing forest policymaking at the national level. A consensus is emerging, however, that NFPs and similar arrangements at the regional level may have a role to play in a more multi-level governance architecture that can help re-orient both national and international forest policy and policymaking.

6.5 The recent proliferation of regional agreements

Although less well studied in their scope and impact, recent efforts at the national and global levels to improve forests and forest practices have been matched by regional-level processes. Regional-level forest-related processes have tended to be more flexible than global-level arrangements in their use of hard-law and new-governance instruments and also show greater integration with regional governance structures, and several examples of the successful application of new-governance instruments exist at this scale.

Appendix 6.1 sets out the existing legally binding regional forest processes and related agreements, and Appendix 6.2 lists those that are non-legally binding. These sets of regional multi-level agreements constitute a key building block in a strategy of diversifying and widening the policy instrument toolbox in order to embrace the complexity of forestry problems and overcome the deadlock that the international regime-building pathway has encountered.

The number and size of regional organisations have grown as international and national efforts have stalled, notably in the area of climate change but also

in international trade. Following the regime complex-building logic set out above (Bierman et al. 2009a), their proliferation raises additional challenges for policy integration, given the possibility of a large number of possibly counter-productive initiatives in different regional agreements and organisations (Strand 2004). Not all regional organisations have always delivered better results than international agreements; nor have they done better than individual states in implementing the components of regional agreements. But some successes are apparent.

As an example of the challenge posed by the proliferation of regional agreements and organisations, consider the Central African Forest Commission (COMIFAC). This regional organisation was created to coordinate and harmonise subregional policy and legislation affecting the conservation and sustainable management of the forests of Central Africa on the basis of well-recognised international forest principles (Mvondo 2006). In addition to the various SFM-based initiatives promoted by the international forest regime, COMIFAC is now charged with monitoring and coordinating REDD ('reducing emissions from deforestation and forest degradation'), the implementation of the Action Plan for Forest Law Enforcement Governance and Trade (FLEGT) and the CBD's access and benefit-sharing (ABS) initiative.

In theory, a great deal of progress can be made on all these fronts simultaneously by identifying new protected areas with large carbon stocks, promoting the reforestation of degraded forest land and improving forest management practices (Denis et al. 2009). REDD, for example, constitutes an opportunity for developing countries to advance or accelerate more coherent sectoral and cross-sectoral strategies through a series of institutional, legal and educational measures (TFD 2009). Similarly, COMIFAC's biodiversity working group (known as GTBAC) is developing a subregional ABS strategy to guide countries in the implementation of national ABS legislation and related measures. The strategy will address the results of a recent study that shows numerous inconsistencies in approaches to ABS in Central Africa based on the NLBI and the CBD, particularly around the definition of 'genetic resources', and a whole range of differences in practice and aspiration at the national level (Cabrera et al. 2010).

COMIFAC, however, finds itself in the middle of these efforts, needing both coherent direction from these overlapping international regimes and a willingness on the part of its signatory states to address their own shortcomings. Several multi-stakeholder institutional mechanisms, such as the Congo Basin Forest Partnership and the Conference on Humid and Dense Forest Ecosystems of Central African Rainforests, have been created to help facilitate subregional forest policy development and regime implementa-

tion. COMIFAC and its signatories receive guidance on navigating the complex issues surrounding ABS through the national support office of the Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ), the novel multi-donor initiative, the ABS Capacity Development Initiative for Africa, and the CBD Secretariat. Nevertheless, increased capacity building efforts remain crucial for further success (Schmidt et al. 2009). Notably, COMIFAC remains separate from regional economic integration bodies such as the Economic and Monetary Community of Central Africa and the Economic Community of Central African States, which may weaken its efficacy (Mvondo 2006).

More successful regional initiatives differ decisively from the COMIFAC model because they are linked to wider regional polity-building projects. New governance in these frameworks serves broader political interests. Thus, it is not merely a cheaper way of implementing international agreements, it involves the embedding of voluntary coordination within the firmer regional governance structures that facilitate it. The Association of Southeast Asian Nations (ASEAN) and the EU have shown that new-governance tools can enhance the positive effects of intergovernmental and supranational governance structures (in both cases at the regional level).

Unlike the forest-focused COMIFAC, ASEAN aims to create an ASEAN Community by 2015 that comprises three pillars – the ASEAN Political – Security Community; the ASEAN Economic Community; and the ASEAN Socio-cultural Community. Forest issues lie within both the economic and socio-cultural communities. In 2009, with the endorsement of the ASEAN Multi-Sectoral Framework on Climate Change: Agriculture and Forestry Towards Food Security (AFCC), forest policy became a forerunner for integrating sectoral policies into broader strategic frameworks in support of greater policy coherence and better cross-sectoral coordination. Through the AFCC, ASEAN is attempting to address the regional particularities of climate change (ADB 2009) related to food security in the most vulnerable countries and subregions of Southeast Asia (Yusuf and Francisco 2009). A number of regional soft-law agreements have been embedded into the new cross-sectoral approach. These include the ASEAN Criteria and Indicators (C&I) for SFM, the associated monitoring, assessment and reporting format, and the ASEAN C&I for Legality of Timber. The timber legality standard forms part of ASEAN's phased approach to forest certification (Hinrichs 2009).

Besides regional benchmarking and monitoring efforts, ASEAN has also created transnational expert networks to support better-informed policymaking and scientific collaboration on forest-related issues (Thang 2009). The ASEAN Regional Knowledge Network on Forest Law Enforcement and Govern-

ance advises decision-makers and others on a regional standard to assess forest law enforcement and governance in ASEAN member states (Pescott et al. 2010). The ASEAN Regional Knowledge Network on Forests and Climate Change also played an important role in facilitating the deliberations of an ASEAN common-position paper on REDD, which was submitted to the 14th Conference of the Parties to the United Nations Framework Convention on Climate Change. The establishment of an expert network, whose research agenda includes issues such as benefit-sharing and methodological approaches, and the common-position paper process, exemplify ASEAN's efforts to address REDD at the regional scale. An overall regional climate change policy in ASEAN is still in the making (Eucker and Hein 2010).

Regional agreements and organisations like COMIFAC and ASEAN are important parts of the puzzle in terms of assessing how to improve coordination and overcome fragmentation in forest governance architecture in the context of an already existing forest regime complex. Evaluated purely from the perspective of unifying top-down treaty-based international regime-building, they create confusion and are counterproductive to efforts to create such a regime. They are unable, on their own, to manage the complexity of a fragmented forest governance architecture and are ineffective if they are established merely as an additional layer in an already complex system of international and national elements and components. Yet if this level of agreements is linked to more substantive polity-building and political or economic integration projects at the regional level, they can be a most promising unit for the implementation of new-governance tools.

6.6 Towards a multi-level forest governance alternative: patching forest governance architecture

As this discussion has shown, the global forest governance architecture has multiple levels comprising a host of initiatives at the international, regional and national levels and a very mixed record of success. It is important to note, however, that the various levels, although often treated as such in the scholarly literature, are not independent but, rather, exist in a 'nested' form. International and regional regime elements, for example, have an impact at the national level by prescribing or demanding detailed objectives and plans for the implementation of specific aspects of forest-related industrial and other activity, and vice versa. Successful forest governance reform must take

this multi-level complexity to heart. As Bierman et al. (2009a) have argued, the management of such a complex set of arrangements may take the form of a new international treaty but this is quite rare. More common is the creation of a set of institutions and instruments which allows positive interplay among the various elements and levels of the regime complex (Oberthuer 2009; van Asselt 2007).

Where a conscious effort is made to design a more coherent governance architecture, the challenge is to achieve a clearer nested division of competencies rather than overlap, ambiguity and gaps (Alter and Meunier 2006; Nilsson et al. 2009). Most commonly, effective regime interplay is achieved through the careful use of procedural policy instruments and other techniques common to multi-level governance in other sectors (Gehring and Oberthuer 2000; Hafner 2003; Oberthuer 2005; van Asselt 2007). This has been illustrated empirically in the case of ASEAN, whose success in implementing forest policy elements has been based not on the top-down implementation of international agreements but on the application of alternative procedures within its own emerging polity framework.

Promising governance approaches are also emerging in the realm of REDD+, which is an expanded concept of REDD encompassing also the conservation and enhancement of forest carbon stocks and sustainable management of forests in developing countries.

The multitude of multilateral and bilateral institutions and initiatives supporting REDD+ suggests that there are both opportunities for and challenges to the coordination of international efforts aimed at reducing deforestation and forest degradation and restoring forests in developing countries. In particular, it has been suggested that if these institutions do not collaborate and build on their comparative advantages, efforts to address REDD+ will create unnecessary redundancies and competition (Hoogeven and Verkooijen 2010). Recognising this, various international institutions have called for a more coordinated and harmonised approach to REDD+ financing and technical assistance among existing multilateral REDD+ institutions, especially the Forest Carbon Partnership Facility (FCPF), the Forest Investment Program (FIP) and the United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD), as well as other emerging bilateral and other multilateral efforts.

The governing bodies of the three main global programs – FCPF, FIP and UN-REDD – have mandated their secretariats to collaboratively develop options to enhance cooperation and coherence among REDD+ institutions in support of REDD+ efforts (CIF 2010). Although this coordination is still in its formative stages, ongoing cooperation among the

various instruments on readiness activities and stakeholder engagement has already yielded significant results. For example, FCPF and UN-REDD have aligned some of their REDD+-readiness processes and standards in an effort to reduce transaction costs for countries that are developing national REDD+ strategies, especially those participating in both initiatives.

In many areas, however, the *locus classicus* of enhanced multi-level coordination is the European Union. The institutionalisation of the EU goes beyond that of an intergovernmental entity; it is the world's most integrated regional organisation with extensive sub-national, national, regional and international components. As the above discussion has indicated, given the failure of top-down international treaty talks, the solution to many existing forest governance problems lies in better efforts at coordinating multi-level governance initiatives in the sector. Examining the EU's multi-level governance system thus can provide important insights into the nature of effective multi-level governance in any sector, including forest policy.

Lessons from the EU multi-level governance experience

Two kinds of multi-level governance are often distinguished in the academic literature on the subject: Type I, which comprises the traditional territorial division of labour found in federal systems; and Type II, where there is a need for a tailored governmental body to address an issue that is not susceptible to policy action by a Type I organization, for example, in the international arena and when there are particular functional governance problems (Hooghe and Marks 2001, 2003; Skelcher 2005).

As Skelcher (2005) notes, however, the two types typically exist side by side in polycentric governance arrangements. While the version in which a Type II institution is embedded in a traditional state form (e.g. an agency embedded in a state) has been studied widely, the reverse – that is, where states are embedded in an international regime, with significant regional components – is equally common. In the forest sector, as we have seen, Type I elements still deliver on-the-ground forest conservation and management. While Type II elements, on the other hand, are primarily concerned with two sets of problems: coordination and policy learning; and participation and conflict resolution. Polycentric multi-level governance implies that these problems have to be addressed at three levels: international, regional and national, and the success of new governance depends to a large extent on the multi-level governance framework in which forestry institutions are embedded. A regional organisation that serves merely as an ad-

ditional layer in a structure with poor links between the international and national levels will lack the conditions to trigger voluntary coordination and thus policy learning.

In ASEAN and the EU, institutions are enshrined in larger polity-building processes and at least a limited 'shadow of hierarchy' (Heritier and Eckhart 2008; Heritier and Lehmkuhl 2008) can be cast on the participating states. New governance is therefore part of a larger polity-building objective that, intuitively, will make the concept of voluntary coordination buy-in by actors more plausible. Accordingly, regional organisations that have progressed significantly towards the formation of a supranational entity can also more easily trigger the creation of governance networks.

The existing international forest governance architecture lacks both a top-down coordinating mechanism as well as such supranational entity features. While the former may be difficult, if not impossible, to achieve, the latter can be adopted in a more piecemeal fashion, reconciling contradictions and needs between levels and improving coordination in a bottom-up fashion. To be successful, governance networks must either be embedded in supranational entity formation – which is not in the cards in the forest sector – or emerge from bottom-up policy or issue networks that have staked their claim on a policy issue. Promoting such bottom-up interest formation is a major challenge that states may be willing and able to realise only in part. And in this regard, the examination of the EU experience with multi-level governance arrangements is particularly useful.

The Open Method of Coordination

An aspect of the EU experience that is especially instructive for forest governance reform is the 'open method of coordination' (OMC). The notion of OMC first arose in the conclusions of the Lisbon Summit in March 2000, although it had already been envisaged in the procedures for coordinating national economic policies established in the Maastricht Treaty and in the employment chapter of the regional Amsterdam Treaty. The method involves the creation of common guidelines that are translated into national policy and periodic monitoring, evaluation and peer review organised as mutual learning processes and accompanied by indicators and benchmarks for comparing practices. As Borrás and Jacobson (2004:187) state:

“The OMC seeks the goal of strategically bridging policy areas in a double horizontal way, by linking national policies with each other, and by linking functionally different policies at EU level (and ...) explicitly seeks a further interlinking of domestic

policy-making and co-operation at EU level, combining common action and national autonomy in an unprecedented manner. The intention with the OMC is to integrate action at various levels of governance; this opens up the possibility for truly bottom-up political dynamics, which differ from the top-down structures of the previous soft law-making.”

The OMC involves actors other than state actors, is designed to foster cooperative practices and networking, and is based on the principles of voluntarism, subsidiarity, flexibility, participation, policy integration and multi-level integration (Borras and Jacobsson 2004). While international agreements that establish hard law to be implemented by states also build on a multi-level structure, the OMC takes cross-level interactions further. It builds multiple links and networks between levels, while hard-law international agreements require sovereign states to implement commonly agreed rules in a ‘silo’ fashion. In the context of multi-level governance, Benz (2007) refers to the OMC as a form of performance competition. Benchmarks are defined at a central level through negotiations or hierarchical processes, while competition for best practice takes place at a decentralised level. He points out that such performance competition may contribute to the “scientification” of policy if experts are involved in the definition of standards of comparison (ibid.).

Significantly for the international forest regime, the EU’s OMC received political support from state and non-state actors in areas where it was not possible to get consensus on the use of EU regulatory instruments. It is generally accepted in the literature (e.g. Citi and Rhodes 2007; Zeitlin et al. 2005) that the OMC supports compromise-finding on trans-boundary policy issues among sovereign states.

The effectiveness of the OMC has been the subject of controversial discussion, with assessments of it ranging from ‘paper tiger’, to ‘powerful policy tool’ and “an alternative to both intergovernmentalism and supranationalism” (Zeitlin et al 2005:22). Some scholars suggest that the logic of soft law or voluntary modes of governance such as the OMC work only (Börzel 2005; Héritier 2003; Scharpf 1993) or better (Hogl et al. 2009) in the shadow of hierarchy. Radaelli (2003) and others argue, however, that the absence of sanctions is not a problem in a governance system that is based on incentives for learning and allows flexibility in policy processes.

Many authors (e.g. Héritier 2003; Héritier and Eckert 2008; Héritier and Lehmkuhl 2008; Scharpf 2002; Smismans 2008) have discussed the conditions needed for new modes of governance to produce more efficient outcomes in such multi-level situations. Börzel (2007, 2010) refers to the paradox of non-hierarchical governance: states draw on new governance in cases in which they lack sufficient

means to command and control, but they also need a minimum level of authority in order to impose a policy when private actors lack the incentive to involve themselves in self-steering. For new modes of governance to come into effect, a shadow of hierarchy is therefore indispensable – even if it does not need to be very long (ibid.).

In the international forest context experimentation with the OMC is a promising way for overcoming observed governance deficiencies, especially as a strategy for quickly plugging gaps without waiting for consensus on the use of a regulatory approach or the development of financial mechanisms (Schaefer 2004). Moreover, the observation that the OMC promotes ideational convergence or social learning, even in the absence of policy learning (May 1992), is important given the deep ideational rifts in the existing forest regime complex.

Subsidiarity

This is the idea, based on practical experience with 50 years of policymaking in the European Union – that it is possible to promote integration in a decentralized and de-concentrated non-regime by delegating activity as much as possible to the level of administration capable of effective policy intervention, but no further. That is, not that all activity should happen at the local level but only that activity which is suitable for higher levels should occur at those levels (van Hecke 2003). The ‘principle of subsidiarity’ thus regulates authority within a political order, directing that powers or tasks should rest with the lower-level sub-units of that order unless allocating them to a higher-level central unit would ensure higher comparative efficiency or effectiveness in achieving them (Føllesdal 1998).

As Føllesdal has argued, the principle holds that an allocation of authority must satisfy a condition of comparative efficiency. Two important issues concern when and how central unit intervention may take place. Firstly, limits may be placed on the sectors to which the principle of subsidiarity applies, or else the sectors to which it applies may be determined by the principle of subsidiarity itself. The former option is illustrated in the European context by treaties specifying that the principle of subsidiarity applies to environmental regulations, the Social Charter and media policies. The latter pattern is found in so far as the Community can intervene as necessary to promote a free market in goods and services: there the principle of subsidiarity is said to regulate its own scope of application.

Secondly, the principle of subsidiarity can also regulate how the central unit is to act, so as to respect sub-unit autonomy. This Minimal Intervention Condition may have various implications. Central

regulation ought, firstly, to respect sub-unit discretion. For instance, other things being equal, a central unit might employ directives which stipulate results, while leaving choice of means to member states, rather than adopting detailed regulations which are directly applicable to member states, firms and individuals. Thus, for example, EU environmental legislation contains directives specifying maximum emission standards for carbon dioxide, leaving it to member states to decide how to meet those targets. Secondly, the central unit might actually bolster sub-unit capability, for example, by offering to monitor compliance by sub-units to agreements.

The principle of subsidiarity can also include a “Necessity Condition”, allowing central unit action only when sub-units cannot achieve the desired result on their own. It is not always clear when this criterion applies, though. Parties may disagree, for instance, whether joint action is required and efficacious for environmental problems. Thus, Denmark, Germany and the Netherlands have higher environmental standards than the common level set in the EU and may just not desire any joint action. The principle of subsidiarity can proscribe central unit action in the absence of comparative efficiency, thus protecting the sub-units from intervention by the central unit. Alternatively, intervention from the central unit may be required when it is comparatively more efficient. Important governance dilemmas arise when the sub-units disagree on goals, and hence on whether cooperation is desirable. Respect for sub-unit autonomy may grant each sub-unit a veto; alternatively, central unit action may override objections to combat free-riding.

The operation of the principle of subsidiarity in EU policymaking is significant with regard to the reform of international forest policymaking in many ways. Firstly, the EU level provides a political arena for coordinating national policies and positions in the context of international processes, which parallels that of many existing regional forest regimes and can provide lessons about how that level should operate. Secondly, although the European Union Treaties make no provision for a common EU policy on forests, there is a large body of EU policies that affect the forest sector either directly or indirectly and, again, provide lessons on how such policies should be structured. Community actions like the Common Agricultural Policy, environment, and rural development policies all affect forestry. Thirdly, the evolution of a multi-level system of joint decision-making in the EU has brought about substantial changes in the logic of influence for domestic actors which might also be replicated at the regional and international forest regime levels. The supranational level comprises new actors and institutionalised arenas, provides additional points of access, and requires actors to broaden their perspectives.

6.7 Conclusion: policy patching – repairing and upgrading a fragmented governance architecture

In many sectors, including forestry, the record of attempted replacement strategies at the international level that aim to create an integrated regime founded on a hierarchical, treaty-based, architecture is poor. Disorganisation is a very common outcome of long periods of incremental policy change characterised by processes of layering and drift. While opening up better space for local innovation, disorganisation frustrates effective implementation, fuelling demands for integrated strategies that would allow multiple stakeholders to operate in a new, common and credible policy framework. However, the added complexity of attaining requisite levels of multi-sectoral coordination in a policy regime complex context is daunting (Hooghe and Marks 2001, 2003).

The difficulties of coordinating government responses across sectors in an effort to promote optimal forest policy integration are many (e.g. Fafard and Harrison 2000; Hogl 2002; MacKendrick 2005; Martinez de Anguita et al. 2008; Saglie et al. 2006; Torenvlied and Akkerman 2004; Westcott 2002; Witter et al. 2006). However, rather than reforming the existing international forest regime complex in a top-down way, the most promising alternative is to better manage the existing regime through improved multi-level governance arrangements. As discussed above, based on the EU experience and the lessons derived from successful regional initiatives in Asia, for example, patching the existing regime to allow positive interplay between regime elements on the basis of enhanced multi-level governance with a strong regional component is a promising strategy for overcoming global regime fragmentation and improving outcomes through enhanced coordination (Lidskog and Elander 2010).

Pushing international forest policymaking in a multi-level direction that not only considers lower echelons as implementing agents of intergovernmental agreements but also produces outcomes through voluntary coordination at the regional level based on mechanisms of information distribution, peer pressure (benchmarking), open-methods of coordination, subsidiarity and policy learning is essential if existing problems are to be overcome (Hoogeveen and Verkooijen 2010; Najam 2003, 2005; Najam et al. 2006).

In a highly complex issue area such as forests, multiple governance modes and regime logics are inevitable. The goal, therefore, is to avoid clashing architectures by promoting as much cooperation as possible in a fragmented architecture. As Grande (1996:333) suggested in the case of the EU:

“Compared to the ideal model of state sovereignty, a decentralized, multi-layered state with its fragmented power and its integrated, consensual decision-making must, of course, be inferior. If we take the political reality of modern democracies with their powerful interest groups as a standard, however, a multi-layered state with joint decision-making is not necessarily the less desirable alternative.”

In practice, designing and implementing such an approach requires both substantial policy analytical capacity in relevant organisations and effective governance capacity. For the latter, this implies the existence of arrangements that facilitate and promote multi-level, multi-sectoral and multi-actor policy-making (Gerber et al. 2009; Weber et al. 2007). The multi-level governance literature is an important source of information on procedural instruments that create cooperative relationships between the international, regional and national levels (Bauer 2006; Monni and Raes 2008; Nilsson et al. 2009; Torrenvlied and Akkerman 2004). It includes studies of the importance of governance at an appropriate scale, such as the relative success of regional agreements vis-à-vis international-level and national-level agreements, and the possibility of making more of the principle of subsidiarity in international forest governance as a tool to promote positive regime interaction (Carozza 2003; Hogl 2000; van Kersbergen and Verbeek 2007).

Several concrete proposals for action are raised in the literature focus on practical aspects of the principle of subsidiarity (O’Brien 2000) and the creation of networked linkages within and between the different levels (sometimes called networked regionalism). For example:

- Making greater use of the larger governance context in which the regime is embedded in two complementary ways. This might involve creating new institutional spaces in which actors can begin to build network arrangements for bridging between existing institutions (Hoogeveen and Verkooijen 2010) and “clustering” (Oberthur 2005) or providing targeted efforts to reduce overlaps and promote consultation between formal elements of the regime complex.
- Making better use of transnational expert networks or ‘informants’ to negotiate complex linkage pathways.
- Building on the strengths of civil-society actors, not just in certification but also in the development of partnerships and other public–private arrangements. This is particularly important in improving horizontal coordination between the various sectors that affect forests.
- Identifying where competition between regime elements encourages venue shopping and turf

battles, encouraging the use of negotiated linkages that promote the spill-over of rules and norms from one regime to another. Both REDD[+] and ABS have significant potential in this respect.

- Exploring the full range of informational and procedural instruments capable of promoting bottom-up coordination.

The view of the international forest regime complex as a fragmented, multi-level governance arrangement presented here suggests that its effectiveness can be improved by careful learning from the experience of entities such as the EU and ASEAN. This could include experimentation with the OMC as a means of patching gaps in the governance architecture. As Hoogeveen and Verkooijen (2010) note, the continuing focus on ‘apex-level’ diplomacy has led to the relative neglect of the task of gathering broad support and legitimacy and hence to many of the implementation problems noted in the assessment of the regime contained in earlier chapters.

This chapter has elaborated on this alternative by illustrating what the linking of the various elements of a highly complex set of governance arrangements would imply. It has focused on extending the toolbox of policy instruments and distilling from existing international, national and regional experiences what the conditions are that need to be in place for new governance to be an effective alternative to traditional regime-building through top-down treaty-making.

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Appendix 6.1 Legally binding regional forest-related agreements

Name	Date	Membership	Content
Yaoundé Declaration	1999	10 Central African countries	This declaration constitutes the basis of the treaty establishing COMIFAC. The scope of both the Declaration and COMIFAC is the conservation and sustainable management of forests in Central Africa
African Convention on the Conservation of Nature and Natural Resources	1968	The original convention entered into force in 1969 and has been ratified by 30 parties. The revised convention has been signed by 36 countries but not yet ratified.	This convention aims to enhance environmental protection; foster the conservation and sustainable use of natural resources; and harmonise and coordinate policies in these fields with a view to achieving ecologically rational, economically sound and socially acceptable development policies and programmes (Article II)
Common Market for Eastern and Southern Africa (COMESA)	1994	COMESA has evolved a comprehensive decision-making structure, at the top of which are the heads of state of the 20 member countries	COMESA's forestry management strategy outlines key priority sectors for investment in the forest sector, such as payments for ecosystem services, combating illegal trade in forest products, and capturing the value of the sector in national economies
South African Development Community (SADC)	1992	15 member states in the South African region	SADC members agreed on the Forestry Protocol in 2002, the objectives of which are to promote the development, conservation, sustainable management and utilisation of all types of forests and trees; promote trade in forest products throughout the region in order to alleviate poverty and generate economic opportunities for the peoples of the region; achieve effective protection of the environment; and safeguard the interests of both the present and future generations (Article 3). To achieve the objectives, the protocol sets out measures and guiding principles for cooperation
Regional Convention for the Management and Conservation of Natural Forest Ecosystems and Development of Forestry Plantations	1993	6 signatory states in Central America	The objectives of this convention are to prevent land-use changes in forested areas located on properties that are suitable for woodlands; restore deforested areas; establishing a standard soil classification system; readjust settlement policies in forested areas; discourage the destruction of forests in lands that are suitable for woodlands; and promote land management and sustainable options (Article 2)
Central American Convention for the Protection of the Environment	1989	5 Central American States	The main objectives of this convention are coordinated action for sustainable development and conservation and the determination of priority areas for action, including for tropical forest management (Article 2)
Association of Southeast Asian Nations (ASEAN)	1967	10 states in Southeast Asia	For the forest sector, ASEAN has developed actions under the ASEAN Economic Community Blueprint, with a focus on enhancing intra- and extra-ASEAN trade and the long-term competitiveness of forest products; actions under the ASEAN Socio-Cultural Community Blueprint, with a focus on promoting the sustainable management of natural resources and biodiversity, responding to climate change and addressing its impacts, and promoting SFM; and a number of strategic thrusts under the ASEAN Multi-Sectoral Framework on Climate Change: Agriculture and Forestry Towards Food Security

Name	Date	Membership	Content
Convention on the Conservation of European Wildlife and Natural Habitats	1979	50 parties	The aims of this convention are to conserve wild flora and fauna and their natural habitats, especially those species and habitats whose conservation requires the cooperation of several states; and promote such cooperation (Article 1). Particular emphasis is given to endangered and vulnerable species, including endangered and vulnerable migratory species
Convention on the Protection of the Alps	1991	8 European Alpine Countries	The Protocol on Mountain Forests, agreed in 1996, aims to preserve mountain forests as near-natural habitat and, whenever necessary, to develop them or increase their extent and improve their stability (Article 1). The protocol commits parties to general and specific measures regarding forest management, the integration of its provisions in other sector policies, local participation, international cooperation, planning procedures, protective, economic, social and ecological functions of forests, access to forests, forest reserves, incentives, research, education, and information
Framework Convention on the Protection and Sustainable Management of the Carpathians	2003	All countries in the Carpathian region	This convention sets out <i>legally binding measures</i> to integrate the conservation and the sustainable use of biological and landscape diversity into sectoral policies, such as mountain forestry; to promote and support the use of instruments and programs, compatible with internationally agreed principles of sustainable forest management; to apply sustainable mountain forest management practices in the Carpathians, taking into account the multiple functions of forests; and to designate protected areas in natural, especially virgin, forests. Recently, a Protocol on Forests has been discussed in the fora of the Carpathian Convention, but has not yet been agreed
Forest-related legislation of the European Community	Various years	27 member states	<p>Regulation (EC) No. 2152/2003 provides for measures such as the harmonised collection, handling and assessment of data regarding atmospheric pollution, forest fires, biodiversity, climate change, carbon sequestration, soils and protective functions of forests. This regulation expired on 31 December 2006 and was replaced by a new financial tool for the environment, LIFE+, which operates in a broader context.</p> <p>In the context of <i>combating illegal harvesting and illegal timber trade</i> in environmental and development cooperation policies, the European Commission adopted the Action Plan for Forest Law Enforcement Governance and Trade; this plan was later endorsed by the EU Council. The Council also adopted Council Regulation (EC) No 2173/2005 on the establishment of a licensing scheme for imports of timber into the European Community</p>

Appendix 6.2 Non-legally binding forest-related processes

Lepaterique Process		Central America, 7 participating countries
Tarapoto Process		Amazon forest, 8 participating countries
Dry-zone Africa process		28 participating countries
Dry forest in Asia process		9 participating countries
Near East process		30 participating countries
Montreal process		Temperate and boreal forests outside Europe; 12 participating countries
Europe and North Asia Forest Law Enforcement and Governance process	2004	An international steering committee comprising 13 countries, the European Commission and the World Bank was established to guide the process
East Asia Forest Law Enforcement and Governance process	2001	
African Forest Law Enforcement and Governance process	2003	
FAO regional commissions	Six regional forestry commissions established between 1947 and 1959	African Forestry and Wildlife Commission, Near East Forestry Commission, European Forestry Commission, North American Forestry Commission, Latin American and Caribbean Forest Commission, Asia-Pacific Forestry Commission
The Ministerial Conference on the Protection of Forests in Europe	1988	46 European countries and the European Community
Pan-European Biological and Landscape Diversity Strategy		55 countries
African Timber Organization	1976	14 African member states